



# **SUCCESSION POLICY**

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# SUCCESSION POLICY

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# SUCCESSION POLICY

## 1.0 Statement

Succession occurs when a joint tenant dies and the surviving joint tenant succeeds to the tenancy, known in law as survivorship. Succession also occurs when a sole tenant dies and an eligible partner or a qualifying member of their family takes over the tenancy.

## 2.0 Aims

RHS understands and recognises that following the death of a tenant, their family members will be upset and grieving and that any requests for succession need to be handled with sensitivity and care.

## 3.0 Objectives

3.1 The purpose of this policy is to:

- Outline the statutory rights available to tenants and their family members
- Outline the contractual rights available to our tenants and their family members
- Respond sensitively with residents at a time of grief and loss
- Make the best use of the limited housing stock we own

3.2 This Policy applies to all RHS tenants with Assured, Secure and both periodic and fixed term Assured Shorthold tenancies. Licensees do not have succession rights.

## 4.0 Survivorship

When a joint tenant dies, the tenancy continues in the surviving tenants' name. The remaining joint tenant is classified as a "successor" so there are no further succession rights, eg if the tenant re-marries, their new spouse has no right to succeed the tenancy. A new tenancy is not issued.

## 5.0 Statutory Succession

5.1 This is when succession rights are granted by Law to a partner of a Secure or Assured tenant or, where the tenancy was granted prior to 1 April 2012, to a qualifying family member of a Secure tenant, where they are not a joint tenant.

5.2 The potential successor must, at the time of death of the tenant have been occupying the property as their only or principal home. In the case of anyone other than a spouse/civil partner/partner, it is also necessary for them to prove they have been residing with the late tenant throughout the 12 months, prior to their death.

5.3 There can be no statutory succession if the deceased was already a successor.

5.4 For any secure tenancies granted on or after 1 April 2012, only the spouse, civil partner or partner who was living in the property, as their only or principal home at the time of the tenants death, has a statutory right to succeed. There can be no statutory succession if the deceased was already a successor. The statutory right of succession of a member of the family has been removed by the Localism Act 2011.

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## 6.0 Contractual succession

- 6.1 Where the tenancy agreement provides qualifying family members of Assured tenants, or Secure tenants from 1 April 2012, rights of succession, without the need for our consent or permission.
- 6.2 Where no family members qualify to succeed on either a statutory or contractual basis we may consider, at our sole discretion whether to offer a tenancy to the family member. Where we use our discretion to do this, there will be no further succession rights. See 8.0 for criteria for a discretionary offer of a tenancy to be considered.

## 7.0 Definition of Family Members

- 7.1 For the purposes of succession, family members are defined as:
- Spouse or Civil Partner
  - Parent or Grandparent
  - Children or Grandchildren
  - Siblings
  - Uncle or Aunt
  - Nephew or Niece
- 7.2 These include 'step' relations, as well as a person living together as husband and wife, or civil partners.

## 8.0 Discretionary Offers

- 8.1 If a spouse or partner cannot succeed to the tenancy because there has been a previous succession, eg to a former spouse, then we could consider a discretionary granting of a tenancy as long as the:
- Would-be successor proved they have lived in the property with the tenant, in the 12 months prior to their death, as their only home
  - Property is not too large or too small for the remaining occupants in accordance with our Housing Options Policy at the time of the request
  - The applicant has sufficient income to pay the rent and passes our affordability checks
  - The deceased tenant had no rent arrears at the time of their death, no ASB complaints against them (or any member of their household) or any other breaches of tenancy
  - The property is in a clean and well-maintained condition
  - The applicant agrees to pay any arrears that have accrued since the tenant's death
- 8.2 For other remaining household members who do not qualify to succeed the tenancy, a discretionary granting of tenancy can be considered, as long as, all of the following conditions are met:
- There has been no previous succession
  - The deceased tenant was a parent or legal guardian of the would-be successor
  - The would-be successor has always resided in the property with the tenant, as their only or main home since the tenancy start date, or their birth whichever was more recent

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- The would-be successor is at least 18 years of age
- The property is not too large or too small for the remaining occupants in accordance with our Housing Options Policy at the time of the request.
- The application has sufficient income to pay the rent and passes our affordability checks
- The deceased tenant had managed the tenancy well, had no rent arrears at the time of their death, no ASB complaints against them (or any member of their household) or other breaches of tenancy
- The property is in a clean and well-maintained condition.
- The applicant agrees to pay any arrears that have accrued since the tenants' death.

8.3 For discretionary offers of a tenancy, a six-year fixed term tenancy will be offered, including a one year probationary period, which may be renewed in line with our Tenancy Policy.

8.4 Where all the conditions are not met, we will set up a 'use and occupation' account (once the existing tenancy has ended) and seek to repossess the property. We will offer advice to the occupier(s) to find suitable and alternative accommodation.

8.5 Where all the conditions are met, other than that the property is too large for the current occupier(s) under the terms of our Housing Options Policy, we will only make one offer of suitable alternative accommodation.

## **9.0 Vulnerable Household Members**

9.1 In cases where the spouse / partner / household member(s) being considered for a discretionary offer of tenancy is particularly vulnerable, we will give special consideration to the circumstances of the case and individual's vulnerability, so that reasonable steps can be taken to manage the applicant's circumstances.

9.2 Where we have identified the need for additional support, we will make appropriate referrals to external agencies, in order to ensure appropriate safeguarding of the vulnerable person and their interests.

9.3 In some cases it may be suitable to consider the discretionary offer of a tenancy at the original or another address. However, vulnerability will not be a passport to overriding Policy, procedure, related Law, regulation or rights, as set out in the tenancy.

## **10.0. ID and Proof of Residency**

10.1 RHS will require evidence for all succession request cases to confirm the identity of the person who is claiming succession, their relationship to the deceased, the length of residence with the tenant and for non-EU citizens their immigration status and entitlement to social housing.

10.2 It is the responsibility of the potential successor to provide sufficient levels of evidence. Documents should cover the entire qualifying period and a death certificate must also be provided.

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10.3 We will conduct relevant checks to determine who was residing at the property, in the qualifying period prior to the tenants' death.

10.4 We will complete affordability checks for the applicant and conduct suitability assessments as outlined in the Succession Checklist (Appendix I).

## 11.0 Mutual Exchanges

11.1 Under a mutual exchange, tenants retain their own rights of succession. This means that if the tenant had the tenancy assigned to them through a mutual exchange and had not already used up their own right of succession on their original tenancy, they would be able to pass on their new tenancy through succession. This is regardless of whether the tenant they exchange with, was a successor.

## 12.0 Under Occupation

12.1 If a contractual succession would lead to under occupation as explained in our Housing Options Policy, we will make one offer of suitable alternative accommodation. If the offer of accommodation is not accepted, we reserve the right start legal proceedings to gain possession of the property.

12.2 If the successor remains in the property until a suitable offer can be made, the arrangements during that time will depend on whether a new tenancy has to be granted (in which case a 'use and occupation' account may be set up) or the tenancy automatically passes to the successor, in which case the successor will be required to pay rent.

12.3 Where it is a statutory succession or survivorship that results in under occupation, we will still discuss rehousing into a more suitable sized property with the new tenant to make best use of our homes.

## 13.0 Multiple Successors & Disputes

13.1 For all types of succession, only one person can succeed; two persons cannot succeed to a tenancy. For example, two qualifying family members cannot succeed to a tenant jointly.

13.2 Where more than one person claims a right of succession, we will require them to resolve between themselves, as to who will succeed the tenancy. If they are unable to decide who will succeed, it will be determined by:

- For Secure tenancies, any spouse, civil partner or partner who has a right of succession will succeed over qualifying family members. If there is no spouse, civil partner or partner with a right to succeed but more than one family member has a right of succession, we will decide. It will usually pass to the person who has resided in the property the longest, as their main home.
- For Assured tenancies granted prior to 1 April 2012, it depends on the provisions of the tenancy agreement as these generally determine who decides, or we will
- For Assured tenancies granted on or after 1 April 2012, the potential successor must apply to Court, for the dispute to be determined.

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13.3 Where we believe that there is no right of succession and there is no agreement to make a discretionary offer of tenancy, eg where an adult child of the deceased tenant is claiming to have lived in the property, despite evidence to the contrary, RHS will, if necessary commence legal proceedings to obtain possession.

13.4 Whether or not someone is entitled to succeed to a tenancy is a question of fact, ultimately for the Court. Someone may succeed even though there may be substantial evidence suggesting that he/she was not there.

## 14.0 Unauthorised Occupiers

14.1 Once it has been decided any remaining occupants have no right to succeed the tenancy, we will inform the occupants and the deceased's representative of our intention to seek possession of the property. We will also serve a Notice to Quit to the Public Trustee.

14.2 We will set up a 'use and occupation' account for the occupants to make payments to cover the rent charge once the original tenancy has ended (this is because the Assured status is lost, and the contractual tenancy ends, once the notice expires).

## 15.0 Appeals

15.1 If an applicant wishes to challenge a decision on succession, they can do so in writing by email or letter and will be reviewed in line with our Complaints Policy. This must be within 10 days of the decision.

15.2 The appeal must set out why they feel the decision is not justified. The Operations Director will review the decision and will only uphold the appeal, if they find that legal requirements or our Policy criteria are not met.

## 16.0 Legislation

16.1 The legislation for statutory succession is set out:

- Localism Act 2011 have amended succession rights for new tenancies to give the same statutory rights of succession to a married, social or common law partner (including same sex partners) for both Secure and Assured tenancies starting on or after 1 April 2012
- Housing Act 1985 for Secure tenants
- Housing Act 1988 for Assure tenants

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## Appendix I



### Succession checklist

#### Initial desktop review:

Name	
Property address	
Property type (house, flat, etc.)	
Number of bedrooms	
What type of tenancy did the deceased tenant have? (e.g. assured, secure, fixed term)	
Has there been a previous succession?	Yes / No
If yes, are there any further succession rights?	Yes / No
Were there any tenancy breaches? (e.g. rent arrears, outstanding anti-social behaviour case). If yes, please give details.	Yes / No Details:

#### ***To be completed during the home visit, alongside the completed Tenancy Changes application form:***

Is the property adapted? If yes, please give details.	Yes / No Details:
Does the proposed successor need the adaptations? If yes, advise we'll need to see medical evidence to support this.	Yes / No



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Are there any restrictions on the property (age restriction or support needs)? If yes, please state what these are.	Yes / No Details:
If yes, does the proposed successor meet the criteria?	Yes / No
How many bedrooms does the proposed successor need?	
Considering all the information above, is the property suitable? Please give details why.	Yes / No Details:

## Verification following home visit

Activity	Outcome
Identity verified? <ul style="list-style-type: none"> <li>Flag if the identity documents provided are counterfeit or forged.</li> </ul>	Yes/No
Proof of address verified? Refer to Prove It Factsheet. <ul style="list-style-type: none"> <li>Verify the proof provided and take copies</li> </ul>	Yes/No
Affordability check consistent with data provided by applicant? <ul style="list-style-type: none"> <li>Review information provided from the home visit</li> <li>Flag any inconsistency.</li> </ul>	Yes/No
Do we have a live possession order for any breach of tenancy?	Yes/No
<b>Verification outcome</b>	<b>Outcome</b>
Housing Management checks – PASSED / FAILED	
<b>Staff Name:</b>	
<b>Staff Signature:</b>	
<b>Date:</b>	