

# South Kesteven District Council

## Succession Policy & Procedures

<b>Policy Owner</b>	<b>Harrinder Rai</b>
<b>Authorised by</b>	<b>Cabinet</b>
<b>Service Area</b>	<b>Housing</b>
<b>Date</b>	<b>4<sup>th</sup> October 2018</b>
<b>Review date</b>	<b>4<sup>th</sup> October 2019</b>
<b>Linked policies</b>	<b>Mutual Exchange Policy</b> <b>Assignment Policy</b> <b>Allocations Policy</b> <b>Tenancy Policy</b>

# Contents

<b>Section Number</b>	<b>Section Heading</b>	<b>Page Number</b>
<b>1</b>	<b>Introduction</b>	<b>3</b>
<b>2</b>	<b>The Right to Succeed – All Secure Tenancies</b>	<b>3</b>
<b>3</b>	<b>The Right to Succeed – Who Qualifies</b>	<b>4</b>
<b>4</b>	<b>Discretionary Successions</b>	<b>5</b>
<b>5</b>	<b>Where No Succession is Permitted</b>	<b>5</b>
<b>6</b>	<b>Implementation of the Policy</b>	<b>6</b>
<b>7</b>	<b>Equality and Diversity</b>	<b>6</b>
<b>8</b>	<b>Monitoring and Review</b>	<b>7</b>
<b>9</b>	<b>Appendices</b>	<b>8</b>

## **1 INTRODUCTION**

- 1.1 When a Council tenant dies it may be possible for a joint tenant, husband/wife/civil partner, or other family member to take over the tenancy – this is known as a succession. The rights of tenants to succeed to a secure tenancy are laid down in section 87 of the Housing Act 1985.
- 1.2 The Localism Act 2011 (s.160) limits who can succeed to a tenancy unless a landlord specifically permits succession to others as part of its tenancy agreement. The changes made by the Localism Act are not retrospective and can only take effect for new tenancies created after April 1<sup>st</sup> 2012.

## **2 THE RIGHT TO SUCCEED – ALL SECURE TENANCIES**

- 2.1 There can only be one succession to a secure tenancy, so if the deceased tenant was a successor to the tenancy, there are no further succession rights in law. However, the Council does have discretion on this, as set out in the 'Discretionary Successions' section below (section 4).
- 2.2 Certain conditions must be met to allow a succession to take place. These are: the deceased tenant must have been using the property as their only home before their death. The person wishing to succeed to the tenancy must be a spouse/civil partner or a member of the family.
- 2.3 A successor fulfilling the requirements set out in Section 160 of the Localism Act 2011 to succeed automatically becomes the tenant and therefore succeeds to all the responsibilities, liabilities and duties of the tenancy including the obligation to pay the ongoing rent and the service charges.
- 2.4 Where more than one family member has succession rights, it is expected that the family will decide who should succeed to the tenancy. Where they are unable to agree, the Council will make the decision based on the criteria in section 4 of this document.
- 2.5 The successor succeeds to the tenancy, not the property. A successor who is the joint tenant, spouse or civil partner of the deceased may be requested to move to a different property if it is more suitable. Full reasons will be given in these circumstances. A suitable property will be offered instead.
- 2.6 Deciding whether a successor should be asked to move will be made by the Council on a case by case basis. A decision to ask a successor to move will usually (but is not restricted to) be because:
  - a property will be under occupied by the successor by more than one bedroom;
  - the property is designated for older people;
  - the property is adapted for a person with a disability.

- 2.7 The following factors will also be considered in making the decision:
- whether a suitable alternative property is available;
  - whether the successor meets the requirement for an older persons or adapted property;
  - whether the successor has a health or disability concern which would make a move to an alternative property undesirable and have an adverse impact on their health.
- 2.8 Where a succession is granted, but the successor is required to move to more suitable accommodation, the successor will be given additional priority on the Council's housing register to assist them to move quickly. Two suitable offers will be made, which if refused and it is considered to be an unreasonable refusal, this will result in a notice to commence eviction proceedings if the tenant will not move.
- 2.9 The target for a decision to be made on an application is 6 weeks from the date of the request.

### **3 THE RIGHT TO SUCCEED – WHO QUALIFIES**

- 3.1 Tenancies signed up on or before 31st March 2012:
- 3.1.1 These rights apply to people who were signed up for an introductory tenancy, or whose introductory tenancy was converted to a secure tenancy before 31st March 2012.
- 3.1.2 Where a tenant dies the legal title to the tenancy can pass to a successor in the following order of priority:
1. A joint tenant (Survivorship);
  2. The tenants spouse or civil partner, if they were living in the property at the time of the tenant's death;
  3. The tenants common law partner, parent, child, grandparent, grandchild, brother, sister, aunt, uncle, nephew or niece, including step, adoptive or half-blood relations who are 18 years of age or over (or 16 and 17 year olds to be considered on a case by case basis) and have resided at the property for at least 12 months prior to the date of death and remains there at the time of death.
- 3.1.3 A tenant whose tenancy agreement began before 31st March 2012, who later transfers to another property owned by South Kesteven District Council under a secure tenancy, will keep their original succession rights as set out above.

3.1.4 Mutual exchange tenants will not keep succession rights to the original tenancy.

3.2 Tenancies signed up on or after 1st April 2012:

3.2.1 Where a tenant dies the legal title to the tenancy passes to a successor in the following order of priority:

1. A joint tenant (Survivorship);
2. The tenant's spouse or civil partner. In this case a cohabitee is considered to have the same status as a spouse or civil partner.

#### **4 DISCRETIONARY SUCCESSIONS**

4.1 For tenancies which started on or after the 1<sup>st</sup> April 2012, the Council may, at its own discretion, consider a request to grant a discretionary succession to a tenancy. Discretionary succession rights apply to: child, brother, sister (including step or adoptive) who have resided at the property for at least 12 months prior to the date of death and remains there at the time of death.

4.2 The Council will consider each case on its own merit, but key factors in deciding whether to grant a discretionary succession may include, but will not be limited to, the following:

- The length of time the applicant has shared the former tenant's home.
- The vulnerability and needs of the applicant.
- The housing needs and housing rights to any other accommodation of the applicant and any relevant child.
- The financial resources of the applicant.
- The likely effect of any decision by the Council not to exercise its powers on the health, safety, or well-being of the parties and of any relevant child.
- The nature of the applicant's relationship to the deceased.
- The suitability of the applicants as tenants.
- The demand for housing in the area the property is in.
- Whether granting of a discretionary tenancy would be the best use of the Council's stock.

4.3 The Assistant Director-Housing will consider any discretionary succession cases for determination.

#### **5 WHERE NO SUCCESSION IS PERMITTED**

5.1 Where a tenant has died, and there are other people still resident in the property who are not entitled to succeed to the tenancy, the Council will:

- Investigate whether the occupant is eligible under homelessness legislation to be re-housed. If this is the case, the Council will allow a

reasonable amount of time for an offer of a suitable property to be made. If the offer of a suitable property is unreasonably refused, the Council may serve notice to commence eviction proceedings.

- Give appropriate advice and assistance to the occupant to find suitable alternative accommodation. This will include, but is not restricted to, liaison with private landlords. After 28 days, the Council will serve notice to commence eviction proceedings in order that the property can return into the Council's housing stock. If there are personal representatives of the deceased tenant, a copy of the notice to quit will also be served upon the Public Trustee and/or the personal representatives.

5.2 Whilst a succession application is being considered and the occupant is still resident in the property, the Council will grant a licence to allow the Council to collect income from the property. This licence does not constitute a tenancy and this will be made clear to the occupant.

## **6 IMPLEMENTATION OF THE POLICY**

6.1 We will ensure the implementation of this policy and the procedure is effective. We will do this by ensuring that once a succession application is made, we keep in regular contact with applicants and adhere to the customer service standards in the handling of the application.

6.2 We will also monitor the effectiveness of the Successions Policy and Procedures through regular review and updating of caseload activity.

## **7. EQUALITY AND DIVERSITY**

7.1 South Kesteven District Council is committed to delivering quality services to all, responding positively to the needs and expectations of all users to the service. We are dedicated to providing an accessible service for all applicants regardless of factors such as:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexuality

7.2 Equal Opportunities information will be requested from all applicants. This information will be monitored to ensure successions are accessible to all

client groups, that we promote equal opportunities, value diversity and tackle social exclusion.

## **8. IMPLEMENTATION AND REVIEW**

- 8.1 South Kesteven District Council is committed to continuous improvement of the services we offer. We will use several methods to monitor performance and customer satisfaction to ensure we continue to assist customers and that the customers' journey is transparent and efficient.
- 8.2 The review will ensure that South Kesteven District Council is in line with the most up to date Government legislation and meets the needs of our customers.
- 8.3 This policy will be reviewed annually after implementation in order to ensure it is aligned with any legislation changes and remains relevant. If there is any change in law, the review will be reported to Communities Overview and Scrutiny Committee.

## **9. APPENDICES**

Succession procedures

## **APPENDIX 1 - PROCEDURES**

In all cases when the Council is notified that a tenant has died and that there may be succession, they will treat the spouse or family member sympathetically.

### **1 Applying for succession**

- 1.1 Potential successors will be asked for details to confirm their claim to succession. An officer will check that the person making the request has a legal right to succeed. A 'Succession to Tenancy Request and Approval Form' and affordability assessment form needs to be completed.
- 1.2 All personal data collected as part of a housing application will be used for the purpose of that application and, in addition, to update our records as per our legal duty under the Data Protection Act (2018).
- 1.3 The following information is required to succeed:
  - photo ID
  - proof of residency, e.g. bank statements, utility bills, etc. These should show that the person has been living in the property for at least one year up to the date of death (the burden of proof is on the applicant to prove at least one year occupation)
  - death certificate
  - proof of priority over other possible successors eg. marriage certificate
- 1.4 A licence will be issued to the succession applicant, whilst an application is being considered.

### **2 Succession application decision**

- 2.1 In making the decision of who is eligible to succeed to a tenancy, the officer must disregard any previous successions/survivorship in the case of a joint tenant. Succession is only permitted once, except in the case of a joint tenant where the joint tenant survives the tenancy upon every death.
- 2.2 If the application for succession is approved, the successor will need to sign a new tenancy agreement. An officer will explain the tenancy agreement to the successor so they understand their rights and responsibilities and vice versa in an interview and they will be asked to sign to show that they fully understand the terms of the tenancy agreement.



- 2.3 A letter approving the succession and a 'form of assignment' will be sent to the new tenant. If the successor needs to claim welfare benefits, they will need to be signposted to the Department for Work and Pensions (DWP).
- 2.4 Where succession is refused, a refusal letter will be sent to the applicant giving the reason why.
- 2.5 The target for a decision to be made on an application is 6 weeks from the date the notification is received.

### **3 Rent arrears on a deceased account**

- 3.1 If there are rent arrears outstanding and the tenancy was a joint tenancy at the time of death, the remaining tenant will be wholly responsible for the debt outstanding. In the case of a surviving joint tenant, they will be liable for the whole of the outstanding rent arrears.
- 3.2 If the successor was not a joint tenant, then any other successors would need to clear any outstanding arrears, from the deceased's estate. However, discretion may be exercised, dependent upon the deceased's and successor's circumstances.
- 3.3 Legal action can be taken against the deceased tenant's estate to recover the debt. A decision will be made as to whether or not arrears on the account at the time of death will be written off or not and reasons will be given.

### **4 Moves to alternative accommodation**

- 4.1 Where it is decided to request that the successor moves to a different property, a direct offer needs to be made to the successor. If the successor refuses the offer and it is considered to be a reasonable offer, the Council must start legal proceedings by serving a notice no earlier than 6 months and no later than 12 months after the death of the tenant is known. If there are personal representatives of the deceased tenant, a copy of the notice will also be served upon the Public Trustee and/or the personal representatives.