



## **Succession and Discretionary Tenancy Policy**

**SER-POL-36**

**Version 1.0**

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**Approved by: Parent Board**

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## 1. Introduction and Aims

1.1 This Policy outlines Southway Housing Trust's (the Trust's) approach to succession.

1.2 It relates to the following Tenancy Agreements:

<b>Tenancy Agreement</b>	<b>Relevant Tenants</b>
Assured Tenancy (with Protected Rights)	Tenants transferring to the Trust in 2007 (including those that subsequently transferred internally)
Assured Tenancy	Tenants that were new to the Trust from 2007 to December 2016
Assured Shorthold (Starter) Tenancy	Tenants that were new to the Trust from December 2015 to December 2016
V17 Assured Tenancy	Tenants new to the Trust from January 2017
V17 Assured Shorthold (Starter) Tenancy	Tenants new to the Trust from January 2017

1.3 Succession is the right of an individual to take over the tenancy of a deceased tenant. An individual only has the right to succeed if certain criteria are met. The individual will normally be a spouse, partner or family member.

1.4 Within each of the Trust's Tenancy Agreements succession rights are granted that meet the requirements of an assured tenancy set by legislation. The extent of the rights of succession depends upon the Tenancy Agreement of the deceased tenant.

1.5 The aim of this policy is to provide clear guidance on the different types of succession that can be granted to tenants and their family members (dependant on their Tenancy Agreement) and to provide a framework and criteria for when 'Discretionary Tenancies' can be applied.

1.6 In dealing with succession the Trust will:

- Ensure that any statutory or contractual succession rights are exercised in a fair and proportionate manner;
- Ensure that its housing stock is allocated and managed in a fair, efficient and proportionate manner having regard to its Tenancy Policy, Allocations Policy and the waiting list; and
- Have regard to the needs of those people who are covered by this Policy who may be vulnerable.

- 1.7 The Policy applies to all tenants and, where appropriate, to spouses, partners and members of a tenant's family left in occupation. It also applies to any person who is left in occupation of a Southway property following the death of the tenant.

## **2. Types of Succession**

### **2.1 Statutory Succession**

- 2.1.1 The following rights are relevant for **all of the Trust's Tenancy Agreements**.

- 2.1.2 Two types of statutory succession can occur: succession by a joint tenant following the death of the other joint tenant; and succession by the husband, wife or civil partner of a deceased tenant (or by a person who was living with the deceased tenant as their husband, wife or civil partner).

- 2.1.3 When a joint tenant has passed away the only evidence required to process the succession is proof of the joint tenant's death.

- 2.1.4 When a request is made to succeed by a husband, wife, civil partner (or a person living with the deceased tenant as their husband, wife or civil partner) this type of statutory succession can only occur if the deceased tenant is not classed as a successor.

- 2.1.5 The potential successor must provide proof of the tenant's death; of their relationship with the deceased tenant; and that they lived at the property at the time of the deceased tenant's death as their only or principal home.

- 2.1.6 If the previous tenant was a successor and/or the husband, wife or civil partner has no right to succeed to the tenancy, or if the husband, wife or civil partner is unable to provide the required proof, then they will be dealt with as a failed successor.

- 2.1.7 When a statutory succession has occurred the tenancy continues in the name of the successor, who becomes the tenant and is able to stay within the existing property regardless of its size and their household composition.

### **2.2 Contractual Succession**

- 2.2.1 The following rights are relevant for **the Trust's Assured and Assured with Protected Rights Tenancy Agreements**.

- 2.2.2 There are two types of contractual succession: a contractual succession right and a special succession right.

2.2.3 In both circumstances a succession can only occur if the deceased tenant is not classed as a successor and the rights are only relevant for a family member. In a situation where more than one family member applies to succeed, the Trust will decide which claim to consider for a potential succession.

### 2.3 Contractual Succession Right

2.3.1 The following right is relevant **for the Trust's Assured and Assured with Protected Rights Tenancy Agreements.**

2.3.2 The family member must make a formal request to succeed in writing. This needs to be within 6 months of the date of the tenant's death. They must provide proof of death, that they are a family member of the deceased tenant, and that they lived at the property at the time of the tenant's death and for the 6 months before they died.

2.3.3 The family member must:

(a) Satisfy the Trust that they have the right to have the tenancy vested in them under the deceased tenant's will or intestacy;

(b) Apply for the grant of probate and/or letters of administration and/or seek to have the tenancy vested in them under the deceased tenants will or intestacy within 6 months of their death.

2.3.4 If **ALL** of the above criteria are met, then the family member will be granted a succession to the tenancy of the deceased tenant at the property.

2.3.5 If a family member is unable to meet the above criteria, then they may still be able to be considered for a succession under the Special Succession Right.

### 2.4 Special Succession Right

2.4.1 The following right is relevant for **the Trust's Assured and Assured with Protected Rights Tenancy Agreements.**

2.4.2 The family member must make a formal request to succeed in writing to the Trust. They must provide proof of death, that they are a family member of the deceased tenant, and that they lived at the property at the time of the tenant's death and for the 6 months before they died.

2.4.3 If the previous tenant was a successor and/or the family member does not meet the above criteria they will be dealt with as a failed successor.

2.4.4 If these criteria are met, then the Trust will end the deceased tenant's tenancy and enter into a new tenancy with the successor. This will either be

at the existing property or, at the Trust's discretion, at another property that the Trust believes is more suitable. The type of tenancy issued will be a V17 Assured Shorthold (Starter) Tenancy.

- 2.4.5 In determining if the existing property is suitable for the family member who is succeeding under the special succession clause of the above tenancies, the Trust will usually seek to offer alternative accommodation if:
- (a) The property has features that have been adapted or designed for a disabled person;
  - (b) The successor and their household will be under occupying the property by 1 bedroom or more (for the avoidance of doubt only household members living at the premises at the time of the tenant's death will be taken into account);
  - (c) The property is considered to be age restricted and the successor and /or their household members do not meet this restriction;
  - (d) The successor is unable to afford to pay the rent or any shortfall in rent caused by an under occupation charge or other reduction in housing benefit;
  - (e) It is not in the Trust's best interests to allow the successor to remain in the existing property.
- 2.4.6 This is not an exhaustive list and it is at the sole discretion of the Trust, acting reasonably, to decide if the property is suitable for the successor.
- 2.4.7 In addition, in determining if the family member who is succeeding under the special succession clause can stay in the property the following matters may be taken into account by the Trust:
- (a) If the successor and or a household member has some specific need or vulnerability and it is determined by the Trust that moving to another property would be severely detrimental to their wellbeing;
  - (b) The length of time the successor and or a household member have lived at the property prior to the death of the tenant;
  - (c) The age of the potential successor and household members.
- 2.4.8 This is not an exhaustive list and it is at the sole discretion of the Trust, acting reasonably, to decide if the existing property is suitable for the successor.

2.4.9 In determining if the existing property is suitable for the successor the final decision will be made by a Strategic Director or the Chief Executive.

2.4.10 If it is determined that the successor is required to move to more suitable accommodation and they refuse to do so, then the Trust will take the appropriate legal action against them to regain possession of the existing property.

### **3. Failed Successors**

3.1 In some circumstances the Trust may wish to provide a tenancy to a failed successor

3.2 This will be dealt with under the Allocation Policy and would be made as an out of turn offer through discretion applied by either a Strategic Director or the Chief Executive.

3.3 If it is decided that an out of turn offer will not be made to a failed successor and they refuse to move, then the Trust will take the appropriate legal action to regain possession of the property.

### **4. Future Succession**

4.1 No further succession can occur on a tenancy once a succession has occurred.

### **5. Discretionary Offer of a Tenancy**

5.1 The Trust's V17 Assured Tenancy Agreement does not include a right for family members to succeed upon the death of a tenant.

5.2 At the absolute discretion of the Trust an offer of a tenancy may be made as a "Discretionary Tenancy".

5.3 The Discretionary Tenancy will only be considered following the death of a sole tenant who is not a successor themselves, and will only be considered in relation to a family member of the deceased tenant.

5.4 In a situation where more than one family member wishes to be considered for a Discretionary Tenancy, the Trust will decide which claim to consider.

- 5.5 The family member is required to make an application in writing within 3 months of the tenant's death. They must provide proof of death, that they are a family member of the deceased tenant, and that they lived at the property at the time of the tenant's death and for the 12 months before they died.
- 5.6 If the above criteria are met and it is in the best interests of the Trust, acting reasonably, to rehouse the family member and their moving group, then they will be offered a Discretionary Tenancy.
- 5.7 A Discretionary Tenancy will not usually be offered if:
- (a) The family member or a member of their household has an outstanding debt to the Trust;
  - (b) The family member or a member of their household is currently on the Manchester City Council Rehousing Review List.
- 5.8 The above list is not exhaustive and the decision on whether or not to offer a Discretionary Tenancy will be made by a Strategic Director or the Chief Executive.
- 5.9 If it is determined that the family member is not eligible for a Discretionary Tenancy, then they will be required to leave the property and if they refuse to do so the Trust will take the appropriate legal action against them to regain possession of the property.
- 5.10 If it is decided that the family member is eligible for a Discretionary Tenancy the tenancy will be a V17 Assured Shorthold (Starter) Tenancy Agreement.
- 5.11 The tenancy will be issued either at the current property or at another property that the Trust believes would be more suitable. In determining if the existing property is suitable for the family member and their household, the Trust will usually seek to offer alternative accommodation if:
- (a) The property has features that have been adapted or designed for a disabled person;
  - (b) The successor and their household will be under occupying the property by 1 bedroom or more (for the avoidance of doubt only household members living at the premises at the time of the tenant's death will be taken into account);
  - (c) The property is considered to be age restricted and the successor and /or their household members do not meet this restriction;

- (d) The successor is unable to afford to pay the rent or any shortfall in rent caused by an under occupation charge or other reduction in housing benefit.
  - (e) It is not in the Trust's best interests to allow the successor to remain in the existing property.
- 5.12 This is not an exhaustive list and it is at the sole discretion of the Trust acting reasonably, to decide if the property is suitable.
- 5.13 In addition, in determining if the existing property is suitable for the family member and their household the following matters will also be taken into account by the Trust:
- (a) If the successor and or a household member has some specific need or vulnerability and it is determined by the Trust that moving to another property would be severely detrimental to their wellbeing;
  - (b) The length of time the successor and or a household member have lived at the property prior to the death of the tenant;
  - (c) The age of the potential successor and household members.
- 5.14 The final decision will be made by a Strategic Director or the Chief Executive.
- 5.15 If it is determined that the family member is required to move to more suitable accommodation and they refuse to do so, then the offer of a Discretionary Tenancy will be rescinded and they will be required to leave the property. If they refuse to leave the property, then the appropriate legal action will be taken to regain possession of the property.

## **6. Monitoring and Evaluation**

- 6.1 The People and Places: Head of Neighbourhoods will be responsible for the implementation of this Policy and will carry out regular checks of compliance.
- 6.2 The Policy will be supported by detailed procedural guides for staff, and regular training will take place to ensure that staff are both aware of and comply with the Policy.
- 6.3 Information regarding the number of successions that are processed on a yearly basis will be included in the annual Allocations and Lettings Report presented to People and Places Committee.

## 7. Equality and Diversity

- 7.1 An Equality Impact Assessment has been completed to ensure that all appropriate actions are put in place to support those tenants who have protected characteristics.
- 7.2 An EIA Action Plan has been developed and will be monitored.

## 8. Related Policy Documents

- Allocation Policy
- Mutual Exchange Policy and Procedure
- Assignment Policy and Procedure
- Tenancy Policy
- Right to Buy Policy and Procedure
- Equipment and Adaptations Policy

## 9. Policy Review

- 9.1 The policy will be reviewed at least every three years; earlier if legislation, policy or other issues require it.

<b>POLICY REVIEW HISTORY</b>	
<i>To be completed during each review</i>	
<b>Previous versions</b> (version number – approved by – approval date – title if different)	
N/A	
<b>Date of last EIA:</b>	8 November 2016
<b>Review lead by:</b>	Jane Gant, Strategic Director – People and Places
<b>Main points or amendments made and reasons</b>	
<b>Next review due:</b>	<b>Quarter 3 2019/20</b>
<b>Approval level:</b>	<b>Parent Board</b>