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## **Succession and Discretionary Tenancy Policy**

**SER-POL-36**

**Version 3.0**

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**Date approved: 09 November 2021**

**Approved by: People and Places Committee**

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## 1. Introduction and Aims

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

1.2 It relates to the following Tenancy Agreements:

<b>Tenancy Agreement</b>	<b>Relevant Tenants</b>	<b>Statutory Succession Right</b>	<b>Contractual Succession Right</b>	<b>Discretionary Tenancy</b>
Assured Tenancy (Protected Rights) and Assured Tenancies	Tenants transferring to the Trust in November 2007 and any new tenants between December 2007 and December 2016.	Yes	Yes	Yes
V17 and V21 Assured and Assured Starter Tenancies	Tenants new to the Trust from January 2017 onwards.	Yes	No	Yes

1.3 Succession is the right of an individual to take over the tenancy of a deceased tenant where certain criteria is met. There can only be one succession at a tenancy; therefore if the deceased tenant succeeded, or was assigned the tenancy, a further succession cannot take place in law.

1.4 Succession rights meet the requirements of an assured tenancy set by legislation. The extent of the rights of succession depend on the type of Tenancy Agreement the deceased tenant had entered into. 1.5 The aim of this policy is to provide clear guidance on the different types of succession that can be granted and to provide a framework and criteria for circumstances where we may offer a discretionary tenancy to a failed successor.

1.5 The Trust will ensure that all succession claims are dealt with in a fair, honest, consistent and timely manner having full regard to the difficult circumstances that the potential successor finds themselves in.

## 2. Types of Succession

### Statutory Succession

- 2.1 Statutory succession is a right in all Southway tenancy agreements.
- 2.2 There are two types of statutory succession:
- Succession by a joint tenant following the death of the other joint tenant;
  - Succession by the husband, wife, civil partner or partner of a deceased tenant
- 2.3 When a joint tenant has passed away, succession will be granted once proof of the joint tenant's death is provided.
- 2.4 When a request is made to succeed by a husband, wife, civil partner or partner, statutory succession can only occur if the deceased tenant has not already been classed as a successor.
- 2.5 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.
- 2.6 If the deceased tenant was a successor and/or the husband, wife, civil partner or partner, has no right to succeed to the tenancy, then a decision will be made as to whether to offer a tenancy using the discretionary criteria at section 2.15-20).
- 2.7 With Statutory Succession, the tenancy continues in the name of the successor and they are able to stay in their existing home regardless of its size or their household size.

### Contractual Succession

- 2.8 There are two types of contractual succession: a "contractual succession" right and a "special succession" right. These only apply to the Trust's Assured and Assured with protected rights tenancy agreements (pre 2017).
- 2.9 Succession can only occur if the deceased tenant has not already succeeded to the tenancy and if the potential successor is a family member.

In a situation where more than one family member applies to succeed, the Trust, working with the family will decide which claim to consider for a potential succession.

2.10 To apply for Contractual Succession the family member must request to succeed, in writing, within 6 months of the date of the tenant's death. They must provide proof of death, proof that they are a family member of the deceased tenant, and proof that they lived at the property at the time of the tenant's death and for the 6 months preceding the tenants' death.

2.11 The family member must also:

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

OR

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.

2.12 If the criteria is met, then the family member will be granted a succession to the tenancy of the deceased tenant at the property at which the deceased tenant lived regardless of its size and household composition.

If a family member is unable to meet the above criteria, then they may still be able succeed the tenancy under the Special Succession Right below.

Special Succession Right

2.12 To apply for a Special Succession 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.

2.13 If the deceased tenant was a successor and/or the family member does not meet the above criteria then they will be dealt with as a failed successor. In this circumstance, the Trust may wish to provide a Discretionary Tenancy (see section 2.15-20).

2.14 If the criteria are met, then the Trust will enter into a new tenancy with the successor. This will be at the existing property or at another property, that

the Trust believes is more suitable for the household. The type of tenancy granted will be a V17 Assured Shorthold (Starter) Tenancy.

Discretionary Tenancy

- 2.15 For tenants who entered into a tenancy agreement after 2017 (V17 tenancy agreement) there is no provision for family members to succeed upon the death of a tenant other than through statutory succession.
- 2.16 However, a tenancy may be offered as a Discretionary Tenancy.
- 2.17 A Discretionary Tenancy will only be considered following the death of a sole tenant who was not a successor themselves, and will be considered for family members and carers of the deceased tenant.
- 2.18 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.
- 2.19 To apply to succeed the family member or carer 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, or their long-term carer, and that they lived at the property at the time of death and for the 12 months before.
- 2.20 A Discretionary Tenancy will not usually be offered if:
- Any member of the household has an outstanding debt to the Trust;
  - A member of the household is currently on the Manchester City Council Rehousing Review List.

Allocating Properties for Special and Discretionary Succession

- 2.21 In the case of both Special and Discretionary succession the person succeeding does not have a legal right to remain at the existing property.
- 2.22 The Trust will usually seek to offer alternative accommodation if:
- The property has features that have been adapted or designed for a disabled person that the successor does not need;
  - The successor and their household will be under occupying the property by one or more bedrooms (only household members living at the premises at the time of the tenant's death will be taken into account);

- The property is age restricted and the successor and /or their household members do not meet this age restriction;
- 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;
- It is not in the Trust's best interests to allow the successor to remain in the existing property.

2.23 This is not an exhaustive list and it is at the discretion of the Trust, acting reasonably, to decide if the property is suitable for the successor.

2.24 In addition, in determining if the family member who is succeeding under the Special or Discretionary Succession clause can stay in the property the following matters may be taken into account by the Trust:

- 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;
- The length of time the successor and or a household member have lived at the property prior to the death of the tenant;
- The age of the potential successor and household members.

2.25 The decision of whether to award a discretionary tenancy will be made by a Strategic Director or the Chief Executive.

2.26 If it is decided that a move to another more appropriate property is required, two offers of alternative accommodation will be provided within the first nine months of the death of the main tenant. If these are refused then the Trust will take appropriate legal action to regain possession of the property.

### **3. Monitoring and Evaluation**

3.1 The Head of Customer Operations is responsible for the implementation of the Policy and will carry out regular checks of compliance.

3.2 The Policy is supported by a detailed procedural guide and regular training will take place to ensure that staff are both aware of and comply with the Policy.

3.3 Information regarding the number of successions that occur each year will be included in the annual Allocations and Lettings Report presented to People and Places Committee.

#### 4. Equality and Diversity

4.1 An Equality Impact Assessment has been completed to ensure that all appropriate actions are put in place to support tenants who have protected characteristics.

#### 5. Related Policy Documents

- Succession Procedure
- Allocation Scheme
- Assignment Policy and Procedure
- Mutual Exchange Policy and Procedure
- Tenancy Policy

#### 6. Policy Review

6.1 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)  1.0 Succession and Discretionary Tenancy Policy - 22 November 2016 2.0 November 2019 3.0 September 2021  <u>Summary of main changes:</u>  <u>Minor language amendments</u> <u>Addition of two reasonable offers of alternative accommodation in circumstances of discretionary and special succession where the family member is asked to move.</u>

## Succession and Discretionary Tenancy Policy

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<b>Date of last EIA:</b>	September 2021 reviewed and no additional changes required.
<b>Review lead by:</b>	Jane Gant, Strategic Director – People and Places
<b>Next review due:</b>	<b>Q3 2022/23</b>
<b>Approval level:</b>	<b>Parent Board</b>