



Tenancy Assignment, Succession and Discretionary Tenancy Policy

SER-POL-36

Version 4.0

Date approved: 21 March 2023

Approved by: Parent Board

1. Introduction and Aims

- 1.1 This Policy outlines Southway Housing Trust's (the Trust's) approach to tenancy succession, tenancy assignment and discretionary tenancies.
- 1.2 The aim of this policy is to provide clear guidance on tenancy assignment and 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.
- 1.3 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. Tenancy Assignment

- 2.1 A tenancy assignment is the transfer of an assured tenancy during the lifetime of the tenant.
- 2.2 An assignment does not mean that a new tenancy is signed but that the existing (original) tenancy is transferred to somebody else.
- 2.3 There are 3 types of assignment:
- Assignment to potential successor (including the conversion of a joint tenancy to a sole tenancy)
 - Assignment in pursuance of a court order
 - Mutual Exchange (this is covered in a separate policy)

Assignment to a potential Successor

- 2.4 Where the Trust receives an assignment request, or they wish to convert the tenancy to a joint tenancy, this can only be done when someone has the right to succeed the tenancy and is recognised as a potential successor.
- 2.5 Requests to assign can come from current joint tenants, spouses/civil partners, and family members. Requests to assign the tenancy to anyone other than these qualifying people will be refused.

- 2.6 Following an assignment, the assignee will become the tenant of the Trust under the same tenancy agreement as the previous tenant.
- 2.7 In all cases the tenant requires the Trust's written permission to assign a tenancy, and applications can be refused if it is not in the best interest of the Trust to grant them.

Termination of a Joint Tenancy by one Joint Tenant

- 2.8 A tenancy cannot be assigned from joint to sole. When a relationship breaks down or one joint tenant leaves the property and one tenant decides to terminate the joint tenancy, the Trust may grant the same property to the tenant remaining in occupation, unless that tenant was the perpetrator of domestic abuse.
- 2.9 The tenant will always be advised to seek independent legal advice as there may be implications for their tenancy rights under any new tenancy agreement.

Assignment pursuant to a Court Order

- 2.10 In certain matrimonial, civil partnership or Children Act proceedings the court can order one party to assign the tenancy to another party. This transfer of tenancy can be ordered under the following acts:
- Matrimonial Causes Act 1973- Section 24(1)
 - Matrimonial and Family Proceedings Act 1984
 - Children Act 1989- Schedule 1
 - Family Law Act 1996

3. Types of Succession

- 3.1 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.
- 3.2 Succession rights meet the requirements of an assured tenancy set by legislation. The extent of the rights of succession depends on the type of Tenancy Agreement the deceased tenant had entered into:

Tenancy Agreement	Relevant Tenants	Statutory Succession Right	Contractual Succession Right	Discretionary Tenancy
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

There are three types of succession:

Statutory Succession

- 3.3 Statutory succession is a right that is given in all of Southway’s tenancy agreements: 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

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 and Special Succession

- 3.4 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).
- 3.5 The potential successor must be a family member and must have been living at the property at the time of the tenant’s death and for at least six months preceding this.

Contractual Succession

- 3.6 For a contractual succession the family member must also provide evidence that they have the right to the tenancy through will or intestacy.
- 3.7 If the necessary criteria is met, then the family member will be granted a succession to the tenancy and at the property of the deceased tenant regardless of its size and household composition.

Special Succession Right

- 3.8 If the criteria above is not met, then a tenancy may be provided through the Special Succession criteria. Whether or not the successor remains at the property is at the discretion of the Trust and they will be required to sign a new tenancy agreement.

Discretionary Tenancy

- 3.9 For tenants who entered into a tenancy agreement after 2017 (V17 or V21 tenancy agreement) there is no provision for family members to succeed upon the death of a tenant other than through statutory succession.
- 3.10 However, a tenancy may be offered as a Discretionary Tenancy and will be considered for family members and carers of the deceased tenant.
- 3.11 To apply for a discretionary tenancy 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.
- 3.12 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.
 - The person requesting to succeed is a perpetrator of ASB or Domestic Abuse

4. Allocating Properties for Special and Discretionary Succession

4.1 In the case of both Special and Discretionary succession the person succeeding does not have a legal right to remain at the existing property and the Trust will usually seek to offer alternative accommodation if:

- The property has been adapted and these adaptations are not required by the person or a member of their family
- 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 household members do not meet this age restriction.
- The applicant is unable to afford to pay the rent or any shortfall in rent caused by an under-occupation charge
- It is not in the Trust's best interests to allow the applicant to remain in the existing property.

4.2 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.

In addition, in determining if the family member or household can stay in the property the following matters may be taken into account by the Trust:

- The applicant or their 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 applicant or a household member have lived at the property prior to the death of the tenant.
- The age of the potential applicant and household members. The decision of whether to award a discretionary tenancy will be made by a Strategic Director or the Chief Executive.

4.3 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 and the applicant will also be advised

to register for rehousing to improve their chances of finding a home. If the homes offered by the Trust are refused, the Trust will take appropriate legal action to regain possession of the property.

5. Monitoring and Evaluation

- 5.1 The Head of Customer Operations is responsible for the implementation of the Policy and will carry out regular checks of compliance.
- 5.2 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.
- 5.3 Information regarding the number of successions and discretionary tenancies that occur each year will be included in the annual Allocations and Lettings Report presented to People and Places Committee.

6. Equality and Diversity

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

7. Related Documents

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

8. Policy Review

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

POLICY REVIEW HISTORY

Succession and Discretionary Tenancy Policy

SER-POL-36

Version 5.0

To be completed during each review

Previous versions

(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

4.0 March 2023

Summary of main changes:

- Addition of tenancy assignments to the Policy
- Removal of procedural information on tenancy succession – now in a procedure
- Minor tidy up of language

Date of last EIA:

March 2023

Review lead by:

Jane Gant, Strategic Director – People and Places

Next review due:

Q3 2025/26

Approval level:

Parent Board