

Mid Devon District Council

Housing Services

**Succession and Assignment
Policy**

March 2012 v4.1

Contents

PART 1: Statement of Policies

Policy Statement	4
Definitions.....	4
Rights to Succession.....	5
General Rules	6
Rights to Assignment.....	7
Property Rights	7
Vulnerable Tenants	8
Information for Successors	8
Unauthorised Occupants	9
Garage Succession	9
Support	9

PART 1: Statement of Policies

POLICY STATEMENT

Succession is the process by which a tenancy is passed to another person on the death of the original tenancy holder. This policy identifies our process for dealing with all successions and assignments. This policy should be read with the Devon Home Choice Policy and the Tenancy Agreement.

This policy has been written in line with relevant current legislation. Unless there are changes to such legislation beforehand, the next review of this policy is due June 2015 and every four years thereafter

DEFINITIONS

The following definitions apply to this policy:

- **Statutory Succession** is the transfer of a tenancy (not a property) to another (qualifying) person upon the death of a tenant.
- **Qualifying Person** is someone that meets the relevant criterion in order to succeed or be assigned an existing tenancy.
- **Assignment** is when a living tenant transfers the rights of their secure tenancy (not a property) in full to a (qualifying) person.
- **Tenancy** is any tenancy between a secure, flexible or introductory tenant and Mid Devon District Council (MDDC).
- A **Tenant** is anyone who has a Council tenancy with Mid Devon District Council.
- **Sole Tenancy** is one tenancy that is held by one person.
- A **Joint Tenancy** is one tenancy that is held by two or more people, whereby each tenant is jointly and severally liable for the tenancy. Legally it is not possible to have more than four joint tenants.
- An **Introductory Tenancy** is a 12 month probationary tenancy, which offers tenants limited rights.
- A **Secure Tenancy** is granted to some tenants automatically after 12 months of being on an Introductory Tenancy, provided they have met the conditions of their Tenancy Agreement. Secure tenants have more rights with their tenancy. Prior to the changes introduced in the Localism Act 2011, all tenants were granted secure or life-time tenancies, after the completion of their Introductory Tenancy, providing they had met the conditions of their Tenancy Agreement.
- A **Flexible Tenancy** is a form of secure tenancy which lasts for a fixed term. It will be granted to most tenants after 12 months of being on an Introductory Tenancy. Tenants with a Flexible Tenancy will mostly have similar rights as other secure tenants.
- A **Demoted Tenancy** may be given to tenants of secure or flexible tenancies who have breached their Tenancy Agreement for anti-social

behaviour and offers the same rights as an Introductory Tenancy. If a Flexible Tenancy is demoted, the Council will serve a Notice to the tenant prior to the end of the demotion period to make them aware that the tenancy is to become a flexible tenancy and specifying the fixed term.

- An **Equitable Tenancy** is one where the legal title is held in trust by an adult (or corporate entity).
- **Family Members** are defined under Section 113 of the Housing Act 1985 as being:
 - a) A spouse, civil partner (as defined in the Civil Partnership Act 2004) or a partner with whom the tenant lived as husband or wife. For the purposes of this policy, couples who have separated and live apart do not qualify for succession unless they hold a joint tenancy and have not given up their rights.
 - b) The tenant's parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew, niece including step relation, half relation and an illegitimate child.
- A **Minor** is any child under the age of 18.
- A tenant may be classed as **vulnerable** as a result of age, mental illness or physical disability.
- **Under-occupied** means that a property is more extensive than is reasonably required.

RIGHTS TO SUCCESSION

Only one statutory succession is permitted.

Joint Tenancies

When a joint tenant dies, the tenancy will pass to the other joint tenant. This will count as the one succession allowed by the Housing Act 1985 (no-one will be able to succeed to the tenancy when the surviving joint tenant dies).

Where we have three or four-way joint tenancies and one of the joint tenants dies, the surviving joint tenants will be given the option of either:

- One of them succeeding the tenancy only; or
- Becoming joint tenants on a new tenancy.

Sole Tenancies

The arrangements for secure tenants whose tenancies pre-date the changes introduced by the Localism Act 2011 are slightly different to those for more recent tenants. Tenants are advised to refer to their tenancy agreements for more information and to see which rights apply to their tenancy.

In accordance with the Localism Act 2011, there is a right of one succession to a spouse or partner. In order to make the best use of the housing stock, following the death of a secure tenant, there is no statutory right of succession

to other family members. This applies to tenancies which commenced after June 2012.

If the tenancy was issued before these changes in legislation; when a sole tenant dies, the tenancy may be passed to their spouse, civil partner, or partner. However, this is dependent upon there never having been a previous succession or assignment; and also that the successor was living at the property as their only or principal home. Where there is more than one qualified successor, the spouse takes precedence over other relatives. If the tenant does not have a spouse, civil partner, or partner then the tenancy may be able to be passed to a member of the family that were living at the property consecutively for 12 months ending at the tenant's death. The eligible relatives decide who should have the tenancy and if an agreement can not be made then MDDC will make this decision. In some cases a court of law may need to decide.

As an existing tenancy is passed to another person, a new tenancy is not created, however the qualifying successor to a sole tenancy will need to sign a Tenancy Agreement confirming they accept the terms of the tenancy.

No Succession Rights

If there has already been a succession to the tenancy, then the person remaining in the property will receive guidance from us. We can exercise our discretion to offer a new tenancy to people left in occupation on the death of the current tenant (of the existing property or an alternative property), but in exercising this discretion we will make sure that our Allocations Policy is not being undermined.

We may exercise our discretion in the following circumstances:

- The applicant had taken up permanent residence with the deceased tenant at least 12 months before their death
- The health or needs of the applicant is such that it would be unreasonable for them to find alternative accommodation

In cases where an offer of alternative accommodation is unreasonably refused, we will start legal proceedings to gain possession of the property.

GENERAL RULES

The successor or potential successor(s) must notify the Council in writing within one calendar month of the tenant's death. Where applicable, this should include details of any agreement reached or ongoing dispute relating to the succession to the property.

Where a qualifying successor, whose permanent place of residence was with the deceased tenant, but they are absent from the property on a temporary basis (such as being in receipt of medical care), they are still entitled to succeed the tenancy as long as:

- They will not be absent from the property for more than six months;
and

- Someone else accepts responsibility for paying the rent (and any other charges) on their behalf until they are able to return to the property.

RIGHTS TO ASSIGNMENT

We only allow tenants to assign their tenancy to another person who would qualify for statutory succession in the event of the tenant's death (this will count as the statutory succession).

Requests for assignment will be refused if:

- There are arrears on the tenancy;
- The tenancy is subject to legal action by the Council; or
- The property would not be suitable for the needs of the person to which the tenancy would be assigned.

Other Changes to Tenancies

The following changes to tenancies count as assignments of tenancy but are not classed as a right of succession:

- Swapping tenancies by way of mutual exchange with a tenant from another social landlord; and
- Changing a tenancy from joint to sole due to a Property Adjustment Order.

Tenants with an existing social tenancy will be given a tenancy with no less security where they choose to move to another social rented home by way of mutual exchange. To achieve this, in cases where:

- At least one tenant who wishes to transfer has a secure tenancy which began before April 2012
- At least one of the tenants has a flexible tenancy

the exchange must be done by surrender and granting a new tenancy.

In other cases, mutual exchanges will take place by Deed of Assignment. This means that each party will "take over" the tenancy of the other.

The Council will refuse an exchange where at least one tenant has a fixed tenancy term of less than two years.

An unauthorised assignment is a breach of tenancy and we will take legal action against any persons who are unlawful occupiers without security of tenure. The tenant will be liable for any costs associated with such action. If the tenant is deceased, please refer to general rules.

PROPERTY RIGHTS

If the tenancy passes to someone other than a joint tenant and this results in the property being under-occupied, the successor will be offered smaller accommodation, suitable to their needs, when it is available.

Where the property is designed or adapted for a person with disabilities or it is sheltered accommodation for the elderly and the person entitled to the succession does not require such accommodation, then that person will be required to transfer to a more suitable property.

If either request to move is refused then we will start legal proceedings to recover possession of the property.

VULNERABLE TENANTS

If a succession would result in a tenant who is vulnerable being in a property unsuitable for their needs, if possible, we will offer suitable alternative accommodation when it becomes available.

Succession for Minors

By law, minors have the same statutory succession rights as individuals over 18. However, as minors, they may be regarded as vulnerable and assessed by the Devon County Council's Children and Young People's Services for any risks and support requirements as well as any measures put in place to address them.

Minors under 18

When there is a statutory succession to a tenancy, the minor will become the tenant in equity. The minor will be bound by the terms of the original agreement before the succession took place. We will require a third party to act as guarantor in respect of a tenancy for a 16 or 17 year old. The guarantor, who may be the Children and Young People's Services, a voluntary organisation or an individual may also act as a trustee and litigation friend'. All correspondence relating to the tenancy sent from the Council will be copied to the guarantor until the minor turns the age of 18. The tenancy will transfer to the minor upon their 18th birthday.

Minors under 16

In addition to the conditions for minors under 18, Children and Young People's Services will need to make sure that the minor and any dependents in the property are cared for at the property offered. To fulfil the occupancy condition, a carer must agree to take custody and move in to the premises as their principal home. The carer will act as the minor's guarantor. We will grant the succeeded tenancy in trust to the carer until the minor's 18th birthday, upon which the tenancy will be transferred to the entitled person.

INFORMATION FOR SUCCESSORS

The person who succeeds to the tenancy becomes responsible for any outstanding rent arrears on the property.

Only tenants succeeding a joint secure tenancy will become a secure tenant. A person succeeding to an introductory tenancy will become an introductory tenant for the remainder of the introductory tenancy's original 12-month probationary period. They will then become a secure tenant as long as they have met the conditions of the Tenancy Agreement.

Anyone succeeding a secure tenancy will have the same rights as the previous tenant.

Anyone succeeding a flexible tenancy will remain as a flexible tenant and the end date will remain the same as was specified at the beginning when the tenancy was granted to the original tenant.

For the purposes of this policy, anyone succeeding a Demoted Tenancy, will be classed as an Introductory Tenant.

UNAUTHORISED OCCUPANTS

Where there is no legal right to succession of the property, we will pursue legal action to gain possession of the property within six months of being informed of the tenant's death.

Any person remaining in the property until the Court issues a Possession Order will not hold a tenancy of the property, but will be liable for use and occupation charges.

GARAGE SUCCESSION

Where a garage or garage ground rent plot tenancy has ended because the tenant has passed away, the tenancy will be offered to a surviving member of the tenant's household in line with this policy. If this tenancy is declined, or after ten working days has not been accepted, the garage will be treated as a normal void and where applicable will be re-let to the next appropriate person on the waiting list.

SUPPORT

Mid Devon District Council and its partner agencies will provide support services to both qualifying and non-qualifying successors of the tenancy and their families, either directly or through other agencies. Support will include:

- Housing and tenancy advice; and
- Referrals to other agencies or services for non-housing support such as emotional support, advocacy and counselling services.

Potential successors have the right to challenge any decision we make about the succession of a tenancy. Complaints can be channelled through the formal complaints process; details of which are available on MDDC website or can be reported directly through the Housing Service.