



Tenancy Succession Policy

Document Control						
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May 2013		1	Final	Head of N'hoods		New policy
Oct 2016		2	Final	Head of N'hoods		Updated
Oct 2017	Oct 2020	3	FINAL	Head of N'hoods	Programme Board Dec 2017	No changes
Jan 2021	Jan 2024	4	FINAL	Head of N'hoods	Co-Exec	Change to Section 3.2 reference to Partner/Spouse – no longer required to evidence resident in same property for 12 months prior to death of tenant.
Jan 24	Jan 27	5	FINAL	Director of Housing	Co-Exec	Changes to team names and role titles. Update on S.3.2 ref evidence of residency requirements.
Distribution/Confidentiality:			Group Documents Not Confidential			
Other Relevant Documents:			Tenancy Policy; Allocations Policy; EDI Policy			
Comments:						

1. Introduction

Succession is the means by which a tenancy passes to someone who is entitled to take on the tenancy on the death of the original tenant. When a tenant dies, one succession of the tenancy is allowed by law.

This does not include the transfer of tenancy from joint tenants on the death of one tenant. In this event, the tenancy passes to the surviving joint tenant automatically and is a “Right of Survivorship”.

2. Policy Statement

This policy sets out our approach to dealing with applications to succeed to a tenancy where it is set out in the Tenancy Agreement a succession may occur. This Policy includes tenancies offered by Futures Homescape, Futures Homeway, Five Doorways Homes.

It is Futures Housing Group (FHG)’s aim to ensure maximum security of tenure where possible, taking in to account the purpose of the accommodation and the needs of individual households in such a way which supports the ongoing sustainability of the community in line with our corporate objectives.

Legislation, including the 1988 Housing Act, 1996 Housing Act, and Localism Act 2011, set out the rights and responsibilities of landlords and tenants that impact on the services FHG provide and these have been taken into account when producing this policy.

We aim to ensure that our policies are fair and transparent, and we will work towards achieving balanced and sustainable communities that are a true reflection of the communities we serve in accordance with all relevant legislation and our Equity, Diversity and Inclusion policy.

The aims of the policy is to provide clear advice and guidance to those who apply for a succession on a tenancy.

3. Delivering the Policy

The ways in which we will achieve our aims is set out below:

3.1 Who can succeed to a tenancy?

The Localism Act 2011 amended succession rights and now allows for one statutory right of succession between married couples and civil partners, which includes partners living together as a couple (including same sex couples).

In 2012 we reviewed our social and affordable tenancy terms and conditions to take into account legislative changes since 2003, including the changes to succession rights. Where tenants remain subject to the terms and conditions of Amber Valley or Daventry and District Housing tenancies, they have different succession rights.

The table below has been produced to help tenants identify the succession rights associated with their tenancy;

Type of Tenancy	Tenancy Start Date	No. of Successions	Who can succeed?	Type of Tenancy
Assured – Pre-transfer to AVHL/DDH - & 2012 variation to terms & conditions not signed	Prior to February 2003 / November 2007	2	Spouse, Partner or Family Member	New
Assured – Pre-transfer to AVHL - & variation to terms & conditions signed in 2012	Prior to February 2003 / November 2007	1	Spouse or Partner	New
Assured – Post-transfer to AVHL - & variation to terms & conditions not signed in 2012	Prior to February 2003 / November 2007 to April 2012	1	Spouse, Partner or Family Member	New
Assured – Post-transfer to AVHL - & variation to terms & conditions signed in 2012	Prior to February 2003 / November 2007 to April 2012	1	Spouse or Partner	New
Assured	April 2012 onwards	1	Spouse or Partner	Vested
Assured Short-hold Fixed Term Tenancy or periodic monthly	April 2012 onwards	1	Spouse or Partner	Vested

In respect of tenancies that provide ‘family members’ with a right to succeed, FHG have defined these as:

- son / daughter (including adopted and step-children)
- parent
- grandparent
- grandchild
- brother / sister
- uncle / aunt
- nephew / niece.

3.1.1 What if there is more than one person who wants to succeed?

If the tenancy is subject to the FHG terms and conditions, only a spouse or partner is eligible to succeed to the tenancy.

Where the tenancy is subject to Amber Valley Housing/Daventry & District Housing Limited terms and conditions, a spouse or civil partner will take precedence in a claim to succeed to a tenancy. Where a claim is received from more than one party, the family will be asked to resolve the issue by agreement. Where the family are unable to agree, FHG will make a decision in accordance with who, based on the information provided/obtained by our Communities Team, will make the best use of the property, e.g. financial resources, availability of alternative accommodation and consideration of any legal advice sought.

In exceptional circumstances the Court can be asked to make the decision.

3.2 Conditions for succession

Before confirming that a succession of tenancy has occurred, FHG must be satisfied that the successor meets defined criteria and that the tenancy had been conducted satisfactorily, as this can result in the right to succeed being lost.

FHG must also determine that the defined number of successions have not already taken place in respect of the tenancy. These are set out in the table shown in 3.1.

Where an application is received from the partner/spouse of the deceased, the guidance states:

Persons qualified to succeed tenant:

(1) A person ("P") is qualified to succeed the tenant under a secure tenancy of a dwelling-house in England if—

(a) P occupies the dwelling-house as P's only or principal home at the time of the tenant's death, and

(b) P is the tenant's spouse or civil partner.

Where the tenancy may be succeeded by a family member, and an application is received, the following criteria must be met:

(1) The family member must have been living at the property at the time of the tenant's death, and

(2) The family member must have been using the property as their main home for at least 12 months prior to the tenant's death. This 12-month period does not have to have been in the current property.

(3) Where the family member is under 18, they can succeed to tenancy where a Trustee can be appointed to hold the tenancy in trust.

An unpaid carer (as defined by the Carers (Recognition and Services) Act 1995, Section 1) who had given up their own accommodation to care for the tenant **and** had been living with the tenant for 12 months or more may also apply to succeed to the tenancy. However, an application from a family member would always take precedence over one from an unpaid carer.

The following additional conditions may also apply:

- a) the successor meets the criteria for the accommodation
 - (i) If the property is a sheltered property
 - (ii) If the property is subject to an age qualification
 - (iii) If the property has been adapted for occupation by a disabled person, and such adaptations are required by the successor or another person within their household

3.2.3 Evidence of Residency

We will require proof of residence to establish if a family member has a right to succeed.

The evidence provided will need to cover the full period of the last 12 months and be addressed to the applicant at the address they are applying to succeed. A potential successor may be required to provide:

- Bank statements
- Wage slips or benefit letters
- Named bills addressed to the property

Where none of these forms of evidence are available, FHG may consider evidence from; doctors, teachers, employers or government departments.

FHG will review their own records to assess applications, which may include reviews of the deceased benefits, where applicable. i.e., If a tenant has declared they live alone for benefits purposes, FHG could use this as evidence that the potential successor was not resident in the property. For example, if a tenant claimed benefits as a single person, this might be evidence that a cohabiting couple were not living as husband and wife.

3.3 Right of Survivorship

In the event of the death of a joint tenant, the tenancy transfers automatically to the surviving tenant as a Right of Survivorship. However, a right of survivorship counts as a statutory succession right.

When processing a Right of Survivorship claim, the surviving tenant is only required to provide FHG with certified copy of the death certificate. There are no additional conditions to be met.

3.4 When does a statutory succession occur?

The following circumstances will give rise to a statutory succession of tenancy being created.

- Where the deceased tenant was assigned the tenancy,
- Where a previous joint tenancy transferred to a sole tenancy on the death of one joint tenant,
- Where a tenant was appointed as a result of a Court Order under Section 24 of the Matrimonial Causes Act 1973 **and** the other party to the marriage was a successor,
- Where the tenancy was created via Mutual Exchange **and** this tenant was a successor to their previous tenancy.

Where a statutory succession has previously taken place, there may be **no** further rights of succession for a tenancy.

3.5 Refusing a Succession Claim

FHG cannot refuse a claim for succession if a legal right exists. However, action can be taken to end the tenancy in certain circumstances, and we can ask the successor to move to another home if:

1. the property is designed for an elderly or disabled person and there is no such person living there that needs that type of property, or
2. the property is larger than they reasonably require, but only if
 - The successor is not the spouse or civil partner of the deceased tenant,
 - Suitable alternative accommodation is available; and
 - We serve a legal notice on the successor at least 6 months but no more than 12 months after the death of the previous tenant

Where we ask a successor to move to another home, we will provide details of this in writing.

We will serve a Notice of Seeking Possession using Ground 7 or Ground 9 of the Housing Act 1988, Schedule 2 and apply to the Court to recover possession of the property if

- A Home Options/ Home Choices form is not completed and returned with all necessary documents to allow a bidding number to be created,
- Suitable alternative accommodation is available via the Home Options / Home Choices process and no bids are made within a six-month period; or
- One offer of suitable alternative accommodation is made by FHG and this is refused.

The Grounds for possession are detailed within the terms and conditions of tenancy.

3.6 Appealing a Decision

Where an applicant wishes to appeal this decision, this must be completed in writing to the Communities Team Leader. The request for an appeal must contain further evidence that was not made available at the time of the original enquiry.

The Communities Team Leader will review the appeal along with documentation to support the original decision within 10 working days of receipt and notify the applicant in writing of the outcome of the review.

There will be no further right to a review after this has been completed. If the decision remains to refuse the application to succeed, and the applicant does not vacate the property, an application will be made to the Court for an order of possession.

4. Responsibilities

The Director of Housing is responsible for ensuring that we have an effective policy and approach to succession applications, the Communities Team Leader is responsible for ensuring that applications that meet the defined criteria are approved and day to day implementation of the policy is thorough, and the Communities Team are responsible for processing applications, ensuring the relevant information is provided and documentation is completed fully.

5. Review

FHG will undertake a review of this policy every 3 years, unless there are changes in legislation that require an earlier review. We will review procedures relating to it and staff training needs at regular intervals to ensure that it continues to operate best practice and that service improvements are made and implemented.