SUCCESSION PROCEDURE



MONITORING INFORMATION:

POLICY/PROCEDURE/STRATEGY:	**SUCCESSION PROCEDURE**
DATE APPROVED:	**FEBRUARY 2025**
EXPIRY DATE:	**FEBRUARY 2028**
OWNER:	**COMMUNITIES AND COMPLIANCE MANAGER**
APPROVAL ROUTE:	**RESIDENTS' FORUM/EXECUTIVE MANAGEMENT TEAM**

Succession Procedure

1. Introduction

1.1 The purpose of this procedure is to clarify the steps that must be taken on the death of a tenant and when a succession can occur. This procedure will give the appropriate guidance to staff when dealing with succession applications and clarifies the appropriate course of action.

2. Procedure

2.0 When we learn of the death of a tenant it is important to consider a number of factors which are outlined below. Different actions will be taken depending on whether it was a joint or sole tenancy.

2.1 Joint tenancies

2.1.1 If it was a joint tenancy and the other joint tenant is alive and living at the property, then the tenancy will continue as a 'survivorship'.

2.1.2 A survivorship counts as a succession, there can only be one statutory succession per tenancy.

2.1.3 Survivorship will take priority over succession, e.g. if two brothers hold an assured joint tenancy and one dies the other brother will become the sole tenant, even if the deceased brother had a resident wife.

2.1.4 Teign Housing will require a copy of the death certificate for our records and will need to amend any housing management systems and files to reflect this change. We will write to the joint tenant to confirm these amendments have been made.

2.2 Sole tenancies

Statutory Succession:

2.2.1 The statutory right of succession is defined by Section 17 of the Housing Act (1988). The Act gives succession rights to the spouse of an assured tenant. The Act allows one succession by a spouse or someone living with the tenant as his or her husband or wife

and same sex partners living together whether or not they are civil partners within the meaning of the Civil Partnerships Act 2004.

2.2.2 A statutory right of succession will apply if;

- immediately before the death the spouse was occupying the dwelling-home as his/her only or principal home **and**
- the tenant was not a successor him or herself (only one statutory succession is permitted);
- if the person applying is a spouse or civil partner. We will treat same sex couples the same as those in heterosexual relationships.

2.2.3 Where a statutory succession takes place, it is effective from the date of death. A new tenancy is not created, and the occupier will inherit the existing tenancy.

2.2.4 The succession request form should be completed as part of the process and retained on file. Prior to the Succession taking place the 'Succession checklist' should be completed and signed off by your line manager.

2.2.5 The statutory right of succession is automatic and is not dependent on any other variables, for example the size of the dwelling. We will update our records accordingly and write out to confirm the succession. A home visit will normally be conducted to confirm the succession and provide a copy of the specific Tenancy Agreement that applies to the successor.

2.3 Contractual Succession

Contractual Succession is a right to succession that is implied by the terms of the Tenancy Agreement of the deceased. It is important to refer to the Tenancy Agreement as each historical Tenancy Agreement may have different provision in respect of Succession. Any tenancy granted after April 2012 which gives the applicant a contractual right of succession will automatically take over the tenancy as if it was a statutory succession.

2.3.1 Upon notification of the death of a sole tenant by a family member residing at the address there may be a right to a contractual succession. The application will only be considered where there is no spouse in occupation and there is no statutory succession right. A succession application form must be completed by any person wishing to claim a right to

a tenancy. All claims to succeed to the tenancy or to be granted a new tenancy must be made to us in writing within three months of the tenant's death.

2.3.2 A family member (as defined by the Housing Act 1985 section 113) for these purposes is a parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.

2.3.3 When an application for succession is received there are a number of key points that need to be considered. The points addressed below need to be cross referenced with the terms of the Tenancy Agreement that the deceased was on.

- Has a succession already taken place?
- Did the applicant occupy the dwelling as their main and principal home?
- Did the applicant occupy the dwelling as their main and principal home for at least 12 months prior to the date of death?
- What is the relationship between the applicant and deceased? We would normally consider applicants from family members defined as a grandparent, parent, children, grandchild, sibling, uncle, aunt, nephew or niece.
- Is the dwelling a suitable size for the applicant and any other residents residing in the property?
- Was the applicant providing care to the deceased?
- Had the applicant accepted responsibility for the deceased's dependants and needs to live with them in order to do so?

2.3.4 When we receive notification of a death of a tenant and the tenancy was granted pre April 2012 the Community Housing Officer (CHO)/Independence and Wellbeing Advisor (IWA) will serve a Notice to Quit as soon as practicable and no later than seven days after the notification of death. The Notice to Quit should be addressed to the "The Personal Representatives of [the deceased tenant]". A copy should also be sent to the Public Trustee's Office along with an NL1 form and a cheque for the relevant fee (currently £40). During this time, it is obviously important to be mindful that the involved parties are likely to be grieving. It is important to act in a timely manner to ensure that the tenancy is brought to an end, so that rent loss is mitigated.

2.3.5 If the Tenancy Agreement of the deceased refers to a contractual right to taking on the existing tenancy (as opposed to issuing a new tenancy) a Notice to Quit cannot be served and the Tenancy Agreement cannot be brought to an end. This assessment should be undertaken within the first seven days upon receiving notification of a death.

2.3.6 Rent arrears will be the responsibility of the estate until the Tenancy has come to an end. Successors do not take on arrears belonging to the previous tenant. A separate account must be set up for Former Tenant Arrears and the successor will be responsible for the rent and other charges from the date of their succession.

2.3.7 Upon serving the Notice to Quit where we have received an application for succession a letter will be sent to the applicant confirming that there is no statutory right of succession and that we are investigating a contractual right of succession.

2.3.8 Whilst the right to a contractual succession is investigated and after the Notice to Quit has bought the existing tenancy to an end, the occupants of the property will be liable for a use and occupation charge of the dwelling which ordinarily is equivalent to the rent figure for the specific dwelling. The occupant should be given advice on how to obtain benefit support for the use and occupation charge if appropriate or details of ways they can pay the use and occupation charge provided.

2.3.9 When investigating an application for succession the CHO/IWA should ensure that appropriate evidence is provided to ensure that we mitigate against tenancy fraud. Liaison with other agencies may be necessary to assist with these investigations.

2.3.10 The CHO/IWA will collate the information and complete the succession checklist for their line manager to consider.

2.3.11 If there is more than one claim for succession, then the parties will need to agree on who will succeed to the Tenancy. If a decision cannot be made, we will use our discretion to decide who will succeed.

2.3.12 We will ordinarily provide a decision to the applicant regarding the succession within 28 days of the application. If a decision cannot be made in this timescale the applicant should be advised of a revised timescale.

2.3.13 If a contractual right to succession is approved but the property is unsuitable because of size and/or type and/or significant adaptations, the applicant will remain on use and occupation. We will discuss the housing options with the applicant and will make a suitable offer of accommodation. The applicant should also register on Devon Home

Choice with the Local Authority. If a suitable offer of accommodation is refused we will consider taking possession proceedings against the applicant.

2.4 No right to statutory or contractual succession

2.4.1 If an application for succession is refused a Notice to Quit should be served on the personal representatives of the deceased along with a letter referring them to the Local Authority for housing advice. A copy of this Notice to Quit should also be sent to the Public Trustees.

2.4.2 On expiry of the Notice to Quit an application for Possession should be prepared; this includes preparing a N5 claim form, particulars of claim and witness statement. The ground for Possession relevant in this respect is trespass.

2.4.3 The Notice to Quit should be served irrespective of the proposed intentions of the applicant for example, to vacate the property.

2.5 Changes in Household composition

2.5.1 When we are notified of a change in the household composition (e.g. somebody moving into an address). We will write to the tenant reminding them of their responsibilities as per the Tenancy agreement.

2.5.2 If a succession has already taken place, we will notify the tenant. We will also refer the tenant to their Tenancy Agreement with regards to succession and offer further advice if required.

2.6 Discretion

2.6.1 Where a contractual succession is implied as discretionary in the Tenancy Agreement, a new tenancy may be granted at the discretion of the Compliance Manager where the applicant's circumstances meet the following criteria:

- the home is the principal or only residence of the applicant at the time of the tenant's death and had been for the year preceding it AND
- the applicant is in high housing need according to the allocations system at the time AND
- there are no grounds in our Allocations Policy at the time that make the applicant and/or their household unsuitable to become tenants AND

- serious deterioration of health and/or wellbeing of a household member(s) would occur OR
- serious financial hardship would occur OR
- the applicant had been providing care to the deceased OR
- the applicant had accepted responsibility for the deceased's dependants and needs to live with them in order to do so

However, we are not obliged to do so even if the above criteria are met.

2.6.2 Where statutory and contractual succession rights have been exhausted, a new tenancy may be granted at the discretion of the Compliance Manager and Head of Communities and Estates where the applicant's circumstances meet the criteria detailed above.

2.6.3 Evidence to support the above criteria from other professionals would be required, for example from a GP.

2.6.4 Where a new tenancy is granted following a contractual or discretionary succession, we will normally make an offer of a tenancy at a new home, rather than the current home, in the following circumstances:

- where the property is too large or too small for the household's needs;
- ere the property is assessed as unaffordable for the applicant;
- where the property is adapted for people with disabilities and the applicant does not need the adaptation(s);
- where the property is designated for older people or for a specific client group and the applicant does not meet the criteria;
- where the property has been designated for disposal or alternate use;
- where the property is subject to a local lettings plan and the applicant does not meet the criteria.

2.6.5 We will only make one reasonable offer of an alternative home. When determining what is reasonable, we will take account of the following factors:

- property size (allocation policy bedroom need criteria will apply);
- property type (including access, adaptations);
- property location;
- household vulnerability, health & wellbeing needs;
- household employment & education needs;
- household affordability;

- household's established community links;
- household's caring responsibilities.

2.6.6 There is no right of appeal where discretion is applied but applicants can make personal representations to us in order that we can ensure we have given full consideration to their circumstances before taking this decision, or they can use our complaints procedure if they feel we have not followed our own policy or procedure.

2.7 Quality Monitoring

2.7.1 The Compliance Manager and Independence, Wellbeing and Occupational Therapy Services Manager will check 15% of succession cases to ensure that the policy and procedure have been correctly applied. Statistics relating to succession will be included in the quarterly performance report.