Succession Policy

Policy owner	Sam Taylor – HSH Operations Manager
Confidentiality	C1
Distribution list	HSH Operational Staff, HSH Board of Trustees, HSH Tenants
Sign off date / version	24/01/2024 V1

1. Overview

Succession occurs when a tenant dies and an eligible person has a right either by law or given in the tenancy agreement to take over the tenancy.

This policy provides guidance on what happens to the tenancy when a tenant dies.

We recognise that following the death of a tenant, their family members will be grieving and that any requests for succession of the tenancy need to be handled with sensitivity and care.

Residents will have different succession rights depending on the type of tenancy agreement they hold.

- This Policy applied to all assured and assured shorthold tenants, including starter tenancies.
- This Policy does not apply to licensees (because they do not have rights of succession)

Hawes Street Housing aim to provide a fair and efficient service when processing succession requests by:

- Dealing sensitively with residents at a time of grief and loss
- Meeting our statutory and contractual obligations; and
- Making the best and most efficient use of our housing stock.

2. Policy Outcomes

This policy aims to:

- Ensure compliance with the Regulator of Social Housing's Tenancy and Governance & Viability Standard Standards.
- Ensure that succession rights are determined correctly in accordance with legislation and right under the deceased tenant's tenancy agreement; and
- Ensure that we are making the best use of our homes to meet the needs of our residents
- Provide residents with details of our approach to Successions and the law that applies to them.

3. Regulatory and Legal Framework

- Regulator of Social Housing Consumer Standards – Tenancy Standard
- Regulator of Social Housing Economic Stantards – Governance & Financial Viability Standard
- Localism Act 2011
- Housing Act 1988

4. Policy Statement

There are several ways a tenancy can pass on death.

Surviving Joint Tenant
If the tenancy agreement is in joint names and one of the joint tenants dies, the tenancy will continue with the surviving joint tenant as a sole tenant. This is called the 'right of survivorship' and happens automatically on the date of death.

Statutory Succession
If an assured tenancy agreement is in the name of a sole tenant and they die, then his or her spouse/civil partner (or person who has been living together with a tenant as their spouse/civil partner) succeeds the tenancy. This is as long as immediately before the death the spouse/civil partner/ partner was occupying the property as their only principal home.

The successor will take over the existing tenancy: no new tenancy shall be issued.

Contractual Succession
A contractual succession is where additional succession rights have been included in the tenancy agreement. If there are any, these are usually only granted to a family member (other than a spouse, civil partner or partner) who lived with the tenant in the property as their only main home for 12 months prior to the death.

For the purposes of succession, family members are usually defined as: spouse, civil partner, parent, grandparent, children, grandchildren, siblings, uncle, aunt, nephew and niece, including step relations, half relations and illegitimate children, as well as persons living together as husband and wife or civil partners.

Where the applicant qualifies to a contractual right of succession

- If the original tenancy was granted prior to April 1st 2012, a new tenancy agreement will be granted to the successor applicant: or
- If the original tenancy was granted on or after April 1st 2012, the tenancy will vest in the successor. No new tenancy shall be issued.

Discretionary Succession
A discretionary succession is where the person requesting to succeed to the tenancy was left in the property on the death of the tenant but has no statutory or contractual right to succeed. They are asking us to exercise our discretion to let them stay as a tenant: we are under no obligation to exercise that discretion.

The criteria we will take into account when considering whether or not to grant a discretionary succession are listed under discretionary granting of tenancy section.

In deciding whether to exercise this discretionary grant of tenancy, the Housing Officer will consider the following factors:

- Any previous successions to the tenancy
- That the would-be successor is a family member of the deceased tenant as defined in paragraph two under contractual succession above or the appointed guardian for the deceased tenant's children.
- The would-be successor has lived in the property as their only or main home in the 12 months prior to their death as their only home.
- That all adult household members have the right to rent

- The property is not too large for the remaining occupants in accordance with our lettings Policy or the relevant lettings policy at the time of request.
- The rent payable is affordable to the would-be successor (either because they can directly afford the rent, or they would be entitled to sufficient Housing Benefit or Universal Credit). Payment of any use and occupation/mesne profit charges that must be set up in the meantime may be an indicator of affordability.
- Throughout the tenancy, the property has been kept in a clean and well-maintained condition and there were no complaints of anti-social behaviour or other breaches of tenancy against the tenant or any member of their household.
- The applicant agrees to pay any arrears that have accrued since the tenant's death; and
- That the applicant has the right to live in another property (for example, they own another property) which is either vacant or could be vacant by the applicant taking actions (for example, seeking possession of a tenanted property).

The following issues will also be considered:

- The property type e.g. adapted, sheltered accommodation.
- Over-crowding or under-occupation
- Medical needs and vulnerabilities of the applicant and the intended household members; and
- The demand from other applicants for this type of property.

The Housing Officer will present any cases of Discretionary Succession to the Board for approval.

For discretionary offers of tenancy, we will offer the form of tenancy required by our Tenancy Policy at the time for new tenants. At the date of this policy that would be a starter tenancy.

It is important to note that someone who is granted a tenancy under this option, will not be treated as a successor as defined under section 17 of the Housing Act 1985. This means their spouse, civil partner or partner living together with them as their spouse in the future would have a statutory right of succession.

Inheriting an Assured Tenancy

In addition to the above rights, it is possible for an assured tenancy to pass under a tenants Will or, if they die without leaving a Will, through intestacy rules. This is because a tenancy is an interest in land. If the beneficiary (i.e. the person to whom the tenancy passes under the will) lived in the property as their only or main home at the time of the death, they will inherit an assured tenancy. Ground 7 of Schedule 2 of the 1988 Act exists for these circumstances.

If someone claims to have inherited a tenancy or we realise that an inheritance situation arises, we will require a copy of the Will and Grant of Probate.

Previous Successions

There can only be one statutory or contractual succession. So, if there has been a previous succession (either statutory or contractual) there will be no further right of succession.

5. ID and Proof of Residency

Hawes Street Housing will require proof for all succession cases to confirm the identity of the person who is claiming succession, their relationship to the deceased, the length of residence with the tenant and where a discretionary succession, evidence of their right to rent.

The onus is on the potential successor to provide a sufficient level of evidence. Documents should cover the entire qualifying period. They must also provide the death certificate.

We may also conduct other checks where necessary to ascertain who was residing in the property in the qualifying period prior to the tenant's death.

6. Under Occupation

Where there has been a statutory or contractual succession or the right of survivorship has taken effect and the successor is under occupying, we will discuss rehousing to a more suitably sized property with the successor.

We will generally not allow a discretionary succession, where this would lead to under occupation as determined by our Lettings Policy.

7. Succession to a Minor

A minor is a person aged under 18 years of age. If they meet the conditions for succession, they are legally entitled to succeed to a tenancy regardless of how young they are. We will always seek to find an adult to be a trustee to hold the tenancy interest until the minor reaches 18 years of age. If the deceased tenant had a Will, then the executor will be the trustee automatically. If there was no Will, we will speak to other adult family members or a social worker to ask one of them to act as a trustee.

Where there is social services involvement, we will work with both the family and the social services to try to ensure sufficient support is provided by the family. If no adult will agree to act as a trustee, we will take legal advice about how to proceed.

8. Multiple Successors

Where more than one person claims to be eligible to succeed, we will require them to resolve between themselves who will succeed the tenancy. If they are unable to:

- For assured tenants whose tenancy was granted prior to April 1st 2012, it depends on the provisions of the tenancy agreement as these determine who decides. It will usually be us who decides if the applicants cannot agree between themselves
- For assured tenants whose tenancy was granted on or after April 1st 2012, they must apply to the Court if they cannot agree.

We will not create a joint tenancy on succession.

9. No Right to Succeed

Once we have decided that a remaining occupant has no right to succeed to the tenancy, we will follow our Death of a Tenant Policy.

10. Complaints

If a person claiming succession is dissatisfied with the operation of this policy, they may use our complaints procedure. However, we will not generally delay taking possession proceedings even if a complaint is being pursued.

Whether or not someone is entitled to succeed to a tenancy is a question of fact, ultimately for the court.

11. Monitoring & Review

In line with Hawes Street Housing Policy Framework, this policy is scheduled to be reviewed every three years, unless due to a change in Government legislation or regulatory requirements, then the review period will be brought forward in order to ensure compliance.

12. Responsibilities

It is the responsibility of the Board of Trustees to approve this Policy.

The Company Secretary is responsible for the monitoring and review of this policy.

The Hawes Street Housing Operations Manager is responsible for ensuring the implementation of this policy and supporting procedures for the maintenance of all necessary records on the CRM system to enable the compilation of regular reports on performance and for the monitoring of performance.

The Housing Officer of Hawes Street Housing is responsible for the day-to-day management and oversight of this policy.