



Succession Policy

1.0 Introduction

- 1.1 Succession is when a family member takes over a tenancy when a tenant dies. They take over the rights and responsibilities of the tenancy. This Policy explains how we approach succession to a tenancy.
- 1.2 This Policy applies to residents living in rented homes owned by Southern Housing, excluding those managed by Spruce Homes Ltd.
- 1.3 The right to succeed depends on:
 - The law
 - The tenancy agreement
 - The relationship between the tenant and the applicant
 - How long the applicant has lived in the home.
- 1.4 Our Succession Policy explains:
 - The different types of succession, and who is eligible to succeed
 - Succession by survivorship for joint tenants
 - How we deal with succession claims
 - When we may agree to a discretionary succession
 - Multiple succession claims
 - Under occupation
 - Adapted/special accommodation
 - Rent arrears.
- 1.5 If a tenant dies without any potential successors, we'll follow our Death of a Tenant Procedure.

2.0 Definitions

- 2.1 We've defined the following terms we use throughout the Policy:

Statutory rights: Legal rights established under the Acts referred to in this Policy.

Contractual rights: Rights given to some people through the tenancy agreement, rather than by statute.

Discretionary rights: When we may use our discretion to offer a new tenancy where there are no succession rights.

Cohabitee: When a couple is living together as if married or civil partners. Whether a couple meet these criteria will depend upon the facts in each individual situation.

Successor: The person who becomes the tenant after the succession is complete.

- 2.2 The terms 'you' and 'your' in this Policy mean successors and potential successors. The terms 'we', 'our' and 'us' mean Southern Housing.

3.0 Types of succession

- 3.1 There are three types of succession. These are common law (survivorship), statutory, and contractual.
- 3.2 Succession rights differ depending on the type of tenancy and the date the tenancy started.
- 3.3 Most of our tenants have assured tenancies, but we do have some secure tenancies. We've explained the differences between the two in [Appendix 1](#). It's important to know the tenancy type when looking at succession rights. If you're not sure what type of tenancy you have, please contact us.
- 3.4 The Localism Act 2011 changed the law on succession. This means the statutory (legal) right of succession is different, depending on whether a tenancy started before or after 1 April 2012.
- 3.5 If there's any variance between this Policy and the terms of an individual tenancy agreement, we'll follow the tenancy agreement.

4.0 Joint tenants

- 4.1 In the case of a joint tenancy, when one tenant dies the tenancy automatically passes to the surviving joint tenant(s). The legal term for this is survivorship. The remaining tenant becomes a sole tenant. If there is more than one surviving joint tenant, further survivorships can happen until there is only one remaining tenant.
- 4.2 This happens automatically at the point of death and does not require authorisation from us, although we do need you to tell us as soon as possible so we can update our records.
- 4.3 If the remaining tenant does not live in the property, as their only or principal home, we may take action to end the tenancy.
- 4.4 Survivorship counts as a succession and there are no further rights of succession, except in the following circumstances:
- The tenancy agreement gives another succession right

- The tenancy is secure, and the survivorship happened before 3 October 1980. In this case, the law allows one further succession.

5.0 How we will deal with succession claims

- 5.1 We understand a succession claim takes place at a difficult time, following the death of a family or household member. We'll consider succession claims as sensitively and quickly as possible.
- 5.2 To consider a succession claim and determine eligibility, we'll need certain information from you, as well as supporting documents. We may also need to visit you at the property and conduct further checks into who was living at the property prior to the tenant's death. If we suspect fraud, we'll investigate this in line with our tenancy fraud process.
- 5.3 We're only able to consider requests for contractual or discretionary successions made within three months of the tenant's death.
- 5.4 We'll keep you informed during the process and write to you with our decision. If you're not eligible to succeed, we'll explain the reasons why.
- 5.5 If there is no statutory right to succeed, any person living in the property must pay a charge to us. This charge is due while you remain in the property once the tenancy has ended, and while we explore any additional rights and advise you of your options. We call this a 'use and occupation' charge. We'll provide you with details of the money due and how to pay.

6.0 Discretionary succession

- 6.1 A discretionary succession is where there are no rights to succeed, but we decide to offer a new tenancy in exceptional circumstances. We won't consider discretionary succession in intermediate market rented (IMR) accommodation.
- 6.2 When deciding to exercise this discretion, we'll consider the following things:
 - The type of tenancy
 - How long you've lived in the home. You must have been living with the deceased tenant for at least the 12 months prior to their death.
 - Your relationship to the deceased tenant
 - Your housing need. Please refer to our [Housing Options and Lettings Policy](#) for eligibility criteria. You must be eligible for social housing in the local authority area you live in to be considered for a discretionary succession.
 - Your financial situation
 - Any vulnerabilities – see section 13.
- 6.3 As this is not legally a succession, in these cases we'll offer a new tenancy rather than transferring the existing tenancy. The new tenancy offered may be at a different property if we consider another property more suitable.

- 6.4 We'll make you one offer of a new tenancy. This may be at the current property, or a new property. Where the offer is to a new property, we'll make this offer within 12 months of our decision to offer a discretionary tenancy. If you refuse this offer, we'll seek possession of the property.
- 6.5 If we offer you a new tenancy at a new property but one isn't available immediately, we'll allow you to stay in the current property until we have a suitable property to offer you. You'll be able to stay on a use and occupation basis, this means you'll be able to live in the property for a short period and you'll:
- Pay a charge for occupying the property
 - Stay in touch with us – we'll agree with you how we'll do this
 - Look after the property and notify us of any repairs needed
 - Allow us access to complete safety checks and repairs.
- 6.6 If you do not keep to the agreement laid out in 6.5, we may withdraw our offer of a new tenancy and seek possession of the property.

7.0 Multiple succession claims

- 7.1 For all types of succession, only one person can succeed. The only exception is in cases of survivorship if there is more than one surviving tenant (see [section 4](#)).
- 7.2 For secure tenancies, any spouse, civil partner (and for tenancies that began on or after 1 April 2012, cohabitee) with the right of succession have priority over qualifying family members. If there is no spouse, civil partner, or cohabitee with the right to succeed, and the potential successors cannot decide amongst themselves, we will decide.
- 7.3 This decision will be made by a Panel of three staff members including two members of our Housing Management Team (HMT) and one member of our Legal Team. At least one member of the HMT will be Head of Region level or above. All members of the Panel will not have had any previous involvement with the case.
- 7.4 For assured tenancies, if the potential successors cannot decide amongst themselves, they must apply to the County Court for a decision.

8.0 Under occupation

- 8.1 Where we're entitled to do so, we may refuse a claim for succession where the property would be under occupied. We define under occupation as having at least one more bedroom than you need, as defined in the bedroom standards in our [Housing Options & Lettings Policy](#).
- 8.2 In this situation, we'll make you one alternative offer of a tenancy to suitable accommodation. We'll make this offer within 12 months of our confirmation of your eligibility to succeed. If you remain in the property until you're able to move to this new property, you must pay a use and occupation charge. If you refuse the offer of accommodation, we'll seek possession of the property.

9.0 Adapted and special accommodation

- 9.1 Where the law allows it, we may refuse a claim for succession if the property has been adapted for a special use you don't need.
- 9.2 We may refuse a claim for succession if the property has been developed for a specific client group and you don't meet the requirements. For example, the property has a minimum age limit, and you're too young.

10.0 Rent arrears

10.1 Survivorship (joint tenancies)

If you succeed to a tenancy through survivorship, you are liable for any arrears and entitled to any credit on the rent account.

10.2 Statutory succession

If you succeed to a tenancy through a statutory succession, you will not be liable for any rent arrears owed by the tenant at the time of their death. The arrears will pass onto the deceased tenant's estate.

However, if there is a possession order in force at the time of the tenant's death, you must comply with the terms of the order. You will be at risk of eviction if you don't comply with the order.

10.3 Contractual succession

If you succeed to a tenancy through a contractual succession, the tenancy agreement will state if you need to clear any arrears.

If the tenancy agreement requires you to accept all outstanding obligations arising from the tenancy, you may pay any arrears as a lump sum or in installments. We'll include any payment plan agreed into the tenancy agreement.

10.4 Discretionary succession

If we grant you a new tenancy as a discretionary succession, we may require you to pay any rent arrears as a condition of the new tenancy. You may pay any arrears as a lump sum or in installments. We'll include any payment plan agreed into the tenancy agreement.

11.0 Inheriting a tenancy

- 11.1 If no one is entitled to succeed, it is possible for the tenancy to pass under an existing tenant's will or, if they die without leaving a will, through the rules of intestacy. If the beneficiary (the person to whom the tenancy passes) lives in the property as their only or principal home, they may inherit a secure / assured

tenancy. If the person who has inherited the tenancy has no right to succeed to the tenancy, we may seek to regain possession of the property.

12.0 Appeals

- 12.1 If you wish to challenge our decision on succession, you must do so within 14 working days from the date we advise you of our decision. We may refer you to an external agency for support with your appeal.
- 12.2 You must tell us why you feel our decision is wrong. A manager not involved in the original decision will review it. We'll only uphold your appeal if we find the original decision did not follow the law, or this policy.

13.0 Meeting our residents' needs

- 13.1 We'll consider resident needs and adjust our process, where reasonable, in line with our [Reasonable Adjustments & Vulnerable Needs Policy](#).
- 13.2 Vulnerability may be the result of personal circumstances, life events, timing, and/or whether there's existing support in place. It may be short or long term and residents may require additional support from us to access and use our services. We define 'vulnerability' in our [Reasonable Adjustments & Vulnerable Needs Policy](#).
- 13.3 We'll assess vulnerable needs/priority on a case-by-case basis to ensure that we tailor our services to meet individual needs.

Policy controls

Version 1.1 – effective 1 October 2025
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Appendix 1 – Who is eligible to succeed

Secure tenants

When a sole secure tenant dies, the tenancy may be passed on to a qualified successor. Persons qualified to succeed to a secure tenancy are:

For secure tenancies that began before 1 April 2012:

- The tenant's spouse or civil partner, who is occupying the property as their only or principal home at the time of the tenant's death.
- If there is no spouse or civil partner, then a member of the tenant's family who was living in the property as their only or principal home at the time of the tenant's death and has been living with the tenant for the 12 months prior to the tenant's death.

Definitions of a family member are set out in section 113 of the Housing Act 1985:

- A person with whom the tenant lived as husband or wife or as if they were civil partners (cohabitee).
- The tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, or niece.
- A relative by marriage is treated as if they were a blood relative and step and half relatives are treated as full relatives.

Some of our tenancy agreements give additional **contractual** succession rights for other members of the household. It is important to look at the terms of the tenancy agreement in each case as the **contractual** criteria will be different depending on when the tenancy agreement was granted. For tenancies granted before 1 April 2012 it will usually be necessary to grant a **contractual** successor a new tenancy agreement.

Where there is more than one qualified successor the spouse/civil partner will take priority over other relatives.

For secure tenancies that began on or after 1 April 2012:

For secure tenancy agreements which started on or after 1 April 2012 succession is limited to the tenant's spouse, civil partner, or cohabitee, who must have been living in the property as their only or principal home, unless the tenancy agreement expressly allows for someone else to succeed. The Localism Act means that any **contractual** terms in secure tenancy agreements that started on or after 1 April 2012 operate as a **statutory** succession rather than **contractual**. In such cases succession is automatic and there is no need to grant a new tenancy agreement. If the tenancy agreement does not permit another family member to succeed, then they have no right to do so.

Only one **statutory** succession is allowed in secure tenancies. If the deceased tenant succeeded to the tenancy on the death of the previous tenant or was a joint tenant and then became the sole tenant, there is no further right of succession (subject to the exceptions set out in **section 4.4** above). Succession cannot take place if there has already been an assignment to someone who was qualified to succeed.

Assured tenants

For sole assured periodic tenancies granted before 1 April 2012, the only person with the **statutory** right to succeed is a spouse/civil partner or cohabitee, who must have been living in the property as their only or principal home at the time of the tenant's death. The deceased tenant must not have been a successor themselves. In such cases succession is automatic and there is no need to grant a new tenancy agreement.

For sole assured periodic tenancies granted on or after 1 April 2012, another member of the tenant's family (other than a spouse/civil partner or cohabitee), may also have the **statutory** right to succeed, but only if the tenancy agreement allows for such a succession. The Localism Act means that any **contractual** terms in assured tenancy agreements that started on or after 1 April 2012 operate as a **statutory** succession rather than **contractual**. In such cases succession is automatic and there is no need to grant a new tenancy agreement. If the tenancy agreement does not permit another family member to succeed, then they have no right to do so.

Although in relation to tenancies granted before 1 April 2012 family members cannot succeed by statute, many of our tenancy agreements give a **contractual** right for family members to remain in the property provided they meet the criteria set out in the tenancy agreement. It is important to look at the tenancy agreement in each case as the **contractual** criteria will be different depending on when the tenancy agreement was granted. For tenancies granted before 1 April 2012 it will usually be necessary to grant the **contractual** successor a new tenancy agreement.

Unless the tenancy agreement allows for it, there can be no further succession if the deceased tenant:

- was a successor to the tenancy, or to an earlier tenancy of the same premises
- became a tenant by will or under intestacy rules, or
- was the survivor to a joint tenancy.

Tenants who have already succeeded to a tenancy prior to their property being transferred to the Group from a local authority, as part of a stock transfer, will not be treated as a successor.

Assured shorthold tenants

Fixed term assured tenancies with a fixed term of two or more years:

The Localism Act amended section 17 of the Housing Act 1988 to extend the **statutory** right of succession of assured tenants (as set out above in Section 7 of the policy), to tenants with a fixed term assured shorthold tenancy of not less than two years. There is no **contractual** right of succession to fixed term assured shorthold tenancies.

Fixed Term assured shorthold tenants with a fixed term of less than two years

For assured shorthold tenancies which have a fixed term of less than two years, unless they are a joint tenant, no one has the right to succeed to the tenancy. The tenancy will pass under an existing tenant's will or through the rules of intestacy. See section 16 of this policy.

Periodic assured shorthold tenants

Periodic assured shorthold tenants have **statutory** rights of succession to their spouse, civil partner or someone living with the tenant as such (cohabitee). They must be living in the property as their only or principal home. No other family member is entitled to succeed. Periodic assured shorthold tenants do not usually have a **contractual** right of succession, but it is important to check the terms of the tenancy agreement.