

SUCCESSION POLICY

1. Purpose

- 1.1 This policy sets out our approach to dealing with changes to tenancies by way of succession (statutory and contractual).
- 1.2 The purpose of this policy is to provide clarity for colleagues and tenants on the circumstances in which a succession may take place. It sets out our approach, including considerations we may make and the circumstances in which a succession may be refused.

2. References

- 2.1 The Regulator of Social Housing sets out its expectations of Registered Providers (RPs) within the Regulatory Code which includes the Consumer Standards. The standards relate to providers being viable, properly governed and properly managed. The Tenancy Standard sets out specific expectations for RPs in the management of tenure and allocations. The Transparency, Influence and Accountability Standard sets out expectations around information, advice and opportunities for tenants to engage in more meaningful ways on decisions that affect them.
- 2.2 The Housing Transfer Offer document sets out protected rights following transfer from Wycombe District Council (now Buckinghamshire Council), including the additional right of succession.

3. Responsibilities

- 3.1 The Head of Community is responsible for ensuring adherence and reviewing this policy.
- 3.2 The Tenancy Specialist Manager is responsible for supporting for ensuring this policy is implemented and monitoring its effectiveness
- 3.3 Responsibilities of Red Kite Community Housing
 - 3.3.1 To manage successions in a fair, transparent and efficient manner, meeting legislative requirements and following guidance laid out in the Consumer Standards.
 - 3.3.2 To be transparent and helpful to tenants to ensure they understand their responsibilities and our policy and procedure when succeeding a tenancy or going through the process of moving whether their application is successful or has failed.
 - 3.3.3 Ensure our homes are allocated and managed in a fair, efficient and proportionate manner having regard to our Tenancy Policy and Allocations policy.

3.3.4 To ensure our policy enables us to meet our responsibilities as a social landlord fairly and consistently and with due regard to making best use of social homes for the benefit of the communities we serve.

3.3.5 To support tenants in ways that accommodate their needs and any vulnerabilities in order that they may participate in and engage with our services e.g. advice, information or practical assistance.

4. Definitions

4.1 A **sole tenancy** is where one person has legal responsibility for a tenancy.

4.2 A **joint tenancy** is defined as one tenancy between a landlord and two or more tenants, with each tenant being jointly and individually responsible for the tenancy.

4.3 **Succession** refers to the legal transfer of a tenancy to someone else following the death of a tenant. A succession can be statutory or contractual but there can only be one succession of the tenancy, and this must be to a Qualifying Person.

4.4 **Statutory Succession** is a right set down in legislation to inherit a tenancy on the death of a tenant. Only Qualifying Persons are eligible to inherit a tenancy in this way. The tenancy does not end following the death of a tenant – it continues in the name of the successor.

4.5 **Survivorship** is when one tenant in a joint tenancy dies and the remaining joint tenant becomes a sole tenant, if they have been resident in the home. Survivorship is a type of statutory succession and is automatically applied for joint tenants.

4.6 **Contractual succession** is a succession that refers to the right of the tenant's right to pass on their tenancy to a Qualifying Person based on the terms of the tenancy agreement rather than by Statutory Succession.

4.7 A **Qualifying Person** is a relative of a tenant who is able to provide evidence that they satisfy the requirements to succeed the tenancy.

4.8 **Assignment** refers to the legal transfer of a tenancy from one person (the assignor) to another (assignee) during the lifetime of the tenant. This is done through a Deed of Assignment and all of the rights, responsibilities and conditions of the tenancy pass to the assignee. This can only be done once in the lifetime of the tenancy.

4.9 **Mesne profit account** – this is an account set up to receive payments of use and occupation charges from an occupier who has no permanent right to a tenancy.

4.10 **Occupier** – a person or household who we give permission to occupy a home without the legal rights to a tenancy being confirmed.

4.11 Notice of Seeking Possession (NOSP) - A **Notice of Seeking Possession (NOSP)** is a **formal legal notice** issued by a landlord to a tenant, informing them that the landlord intends to seek possession of the home.

4.12 **Antisocial Behaviour (ASB)** - conduct that has caused, or is likely to cause harassment, alarm or distress to any person; or conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises; or conduct capable of causing housing-related nuisance or annoyance to any person.

5 Policy Statement

5.1 This policy aims to:

- ensure compliance with regulator of Social Housing's Tenancy and Governance & Financial Viability Standards
- ensure that succession rights are correctly assessed and applied, in accordance with legislation and rights under the deceased tenant's tenancy agreement
- set out our stance and reasons for granting or refusing any discretionary succession
- ensure that we are making the best use of our homes to meet the needs of our tenants
- provide tenants with a clear outline of our approach to Successions and the law that applies to them.

5.2 This Policy applies to all tenants and, where appropriate, to spouses, partners and members of a tenant's family and any other person left in occupation following the death of the tenant.

6 Requesting succession

6.1 Requesting a succession comes at a time of sadness for family members. We recognise this and will at all times deal sensitively and kindly with requests, putting information in writing and meeting face to face if family members require. It is our responsibility to guide applicants through the process and help them understand what we need to assess the application, as well as the possible outcomes. We will also advise relevant parties to seek independent advice.

6.2 We will make all reasonable enquiries, including requests for information and evidence to ensure successions are correctly and legally processed. We will keep applicants informed throughout the process of what to expect and when, providing them with a direct email contact for our team processing their application.

6.3 A request for succession should be made within 1 month (where possible) of notifying us of the death of the tenant. We can extend this deadline where we have

been working closely with the applicant and agree the delay is reasonable. This is to minimise our costs and ensure timely processing of the application.

- 6.4 The death certificate must be provided before the application can be considered – we will be unable to proceed without one. If a death certificate is not provided, we will take steps to regain possession of the home.
- 6.5 We will require proof for all succession cases to confirm the identity of the person who is claiming succession, their relationship to the tenant, the length of residence with the tenant and, where a discretionary succession, evidence of their right to rent.
- 6.6 Once we receive all the information we will determine if the applicant has the right to a statutory or contractual succession and write to them to inform them of our decision.

7 Multiple successors

- 7.1 Where there is more than one eligible successor, we will need those parties to resolve this and propose a single successor. We cannot make that decision on their behalf. In the event the parties are unable to agree there are 2 options, and the choice of these is dependent on when the tenancy started:
- 7.2 Where the tenancy was granted prior to 1st April 2012, we will refer to the tenancy agreement provisions for any determining factors and then intervene with a decision. We will decide based on the ability of parties to resolve their own housing need and the length of time in the home prior to the death of the tenant.
- 7.3 Where the tenancy was granted on or after 1st April 2012, the parties will need to apply to the Courts for a judgement if they cannot agree.
- 7.4 In all cases the tenancy will be sole – there is no option to succeed as joint tenants as this creates survivorship in the event of the death of one of the parties and there can only be 1 succession.

8 Discretionary succession

- 8.1 While this policy sets the framework for decision making in Statutory and Contractual Succession, we reserve the right to apply discretion in succession decisions. A discretionary succession will be considered 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 but they wish to take on the tenancy. We are not obliged to consider or approve a discretionary succession and will apply this on a case-by-case basis – the circumstances must be exceptional for us to approve a discretionary succession, and we will consider the risks of setting a precedent in each case so that the exception does not become the rule.

8.2 In cases where a discretionary succession is approved but will lead to under occupation, we will require the tenant to move to a smaller home and will make one offer of suitable alternative accommodation. If the offer is refused, we will look at our options to gain possession of the home, which may include serving a Notice of Seeking Possession. An alternative to discretionary succession may be to grant a new tenancy. In the case of discretionary award of new tenancy this will be a Starter Tenancy and will not be considered a succession.

8.3 In both cases, we would take into consideration:

- Whether the applicant would qualify for social housing via CBL
- Any previous successions to the tenancy.
- The relationship to the original tenant
- Where the applicant has lived for the 12 months before the tenant's death
- The right to rent of all adults in the home
- The size of the home and who could reasonably be expected to live there with the applicant
- Affordability, operation of the mesne profit account and any tenancy sustainment risks
- Medical needs, vulnerabilities or support needs
- Tenancy history e.g. ASB or tenancy breaches
- Rights to other homes and any actions needed to gain possession

8.4 Our fixed term tenancy does not allow for discretion in succession. A joint tenant or a successor would succeed to the remainder of the fixed period.

8.5 Approval for discretionary successions will be gained from xxx.

9 Succession to a minor

9.1 In cases where a person under the age of 18 meets the conditions for succession we will support their legal right to do so by seeking to find an appropriate adult to hold the tenancy in trust until the 18th birthday.

9.2 Where there is a Last Will and Testament the executor of this will automatically be held as the trustee. In the absence of a Will, we will talk to other adult family members, social workers or other guardians to ensure an appropriate trustee is appointed.

9.3 We recognise this is a significant responsibility at a difficult time for a family – we will work with all parties to ensure they are supported and cared for and understand the legal agreement they are entering into.

9.4 In the event there is no adult to act as a trustee we will take legal advice to establish how best to protect the rights to the tenancy on behalf of the minor.

10 Under occupation

10.1 The right to succession is personal to the individual tenant, not the home. This means that where a home is larger than the needs of the successor or has been provided or adapted for an elderly or disabled person and the successor is not elderly or disabled, the succession will be granted but to a smaller home. We will apply the bedroom size criteria in line with our Allocations Policy.

10.2 There may be exceptional circumstances when this size criteria is not met which will be considered on a case-by-case basis.

11 Successions in sheltered housing

11.1 If the proposed successor is under 60 and the home is in sheltered housing, so long as there is a statutory or contractual succession right, the succession will be granted but on the basis that the new tenant moves to a suitable general needs home. There may be some exceptional circumstances where the successor may be able to remain in the home as per our Allocations Policy.

12 When a succession will be refused

The circumstances in which a succession will be refused are:

12.1 Second succession application: There can only be one succession in the lifetime of a tenancy, either statutory, contractual or by assignment. If there has already been a succession, we will be unable to accept a further application and notice to regain possession of the home will be issued. We will provide advice and support to the applicant to find suitable alternative accommodation but will not be able to offer a tenancy. The exception to this is where a pre-LSVT tenancy document contains the legacy right that successions before transfer will be disregarded or grants an additional contractual right.

12.2 Non occupation of the applicant: A statutory successor must have been living with the tenant as their main and sole residence at the time of the tenant's death. A contractual successor must have been living with the tenant as their main and sole residence for at least 12 months prior to the death of the tenant. In both cases we will require evidence of the home being the applicants main and sole residence.

12.3 Non-qualifying person: In tenancies that began before 1st April 2012 s113 Part 4 of the Housing Act 1985 defines a qualifying person as:

- Spouse
- Civil Partner
- Partner (including same sex)
- Joint tenants
- Cohabitees
- Relatives (parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces)

- Step-relations, half-relations, relations by marriage and illegitimate children

12.4 For tenancies granted on or after 1 April 2012 the Localism Act 2011 amended this list and restricted the right of succession to:

- Spouse
- Civil Partner
- Partner (including same sex)
- Joint tenants

12.5 Other members of the household are not entitled to succeed any tenancy that was created after 1 April 2012, unless it is stated in the tenancy that contractual succession is permitted.

12.5.1 Evidence we will accept for this includes: 4 or 5 different official documents showing residency of the applicant and any other subsequent occupants at the time of application. These include Council Tax statements, DWP or HMRC letters and statements utility bills, bank statements or medical letters and must be dated 12 months or just before the death of the tenant. We will not accept documents from years prior to the passing of the tenant.

12.5.2 Evidence we will **not** accept includes letters from friends or family, documents older than one year prior, insurance documents or mobile phone bills, personal letters or unofficial documents at the address.

12.6 Non occupation of the tenant: Where a tenant has moved out of the home, either for respite or permanent care, and subsequently dies in this care, the rights to succeed the tenancy are no longer in place (Dudley Metropolitan Borough Council v Mailley (2022) EWHC 2328 (QB)). However, If a home has been significantly adapted and a qualifying person remains in the home who would benefit from these adaptations, consideration will be given to a discretionary award of a tenancy. This would be approved by xx

12.7 Mutual exchange - new home but no new rights: The right to succeed carries forward and this right transfers with the tenant(s) when they move in a mutual exchange. If the incoming tenant has previously succeeded to a tenancy no further successions would be permitted even though it is a different property.

12.8 The proposed tenant owns or has a legal interest in another property including another tenancy.

12.9 The proposed tenant has previously been convicted or has voluntarily relinquished a tenancy for an offence under the Prevention of Social Housing Fraud Act 2013.

- 12.10 In cases where we have significant concerns about a potential risk to the tenant or someone else in the household in terms of vulnerability, harm or safeguarding we may explore other options than a succession.
- 12.11 The tenant is a starter tenant unless this is succession by survivorship or statutory (as by definition the applicant will not have been there for 12 months)
- 12.12 The proposed tenant does not have capacity and/or there are other concerns relating to the sustainability of the tenancy
- 12.13 If during the lifetime of this policy other legal or policy precedents are set, we reserve the right to refuse an application on this basis, notwithstanding our obligation to amend policies and ensure they remain live.

13 Right of appeal

- 13.1 There will be a right of appeal if any request for a succession is refused.
- 13.2 When writing to you with a decision on a succession application, we will advise you of the reason for our decision and of your right to appeal.
- 13.3 You can appeal our decision for the following reasons
- You believe we have made a mistake when deciding they are ineligible or non-qualifying
 - There is information that you think we have not taken into account, either about their status as a non-qualifying person or in relation to any disability, medical condition or vulnerability.
- 13.4 We cannot accept an appeal for any other reason – we know tenants and applicants may not be happy with a decision but unless the appeal is for one of the reasons here, we will be unable to consider it.
- 13.5 To appeal our decision, you should contact us and tell us the reason you are appealing and provide us with any supporting information. There is a deadline for this - you will need to contact us within 15 working days of our decision.
- 13.6 We accept an appeal in all of the following ways:
- Emailing relationship.co-ordinator@redkitehousing.org.uk with the title – Request to Appeal Decision; or
 - Telephoning us on 01494 476100 advising us you are appealing a decision. We will ask for you to provide the information above and may need you to send further information in by email or post.
 - In person – you can advise any member of staff that you wish to appeal a decision. We will ask for you to provide the information above and may need you to send further information in by email or post.

- By post to Red Kite Community Housing, Kingsmead Business Park, Frederick Place, London Road, High Wycombe HP11 1JU – please title your letter Request to Appeal Decision.

- 13.7 The appeal will be heard by another senior member of staff not involved in the original decision and our response to your appeal will be sent within 15 working days. In exceptional cases it may take us a little longer to consider the appeal. If this is the case, we will let you know and agree a date when you will have a decision.
- 13.8 As part of dealing with the appeal, we may contact you to ask questions to ensure we have all of the right information.
- 13.9 Once the appeal decision has been made there will be no further appeal.
- 13.10 If you are unhappy with how we have managed your case, you can make a complaint via our Feedback Policy which is available on our website or on request. However, this will not form an appeal of the decision made.

Document Controls			
Version	1	Effective date	March 2025
Subject matter expert drafter	Head of Relationships	Process owner	Head of Community
Related Pod	Community Relationship Finance	Related Policy	Allocations Policy Mutual Exchange Policy Anti-social Behaviour Policy Tenancy Change Policy Tenancy Policy Priority Move Policy
Review period	3 Years	Next review due by	March 2028
Delegated approvals			
Approved by ELT	Director of Customer Services	Approved Date	03 April 2025