

Policy

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Succession Policy

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Service area applies to:

Customer Experience

Approved by:

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1. Introduction

- 1.1 Halton Housing (HH) is committed to providing an efficient and effective service to its customers, which includes providing clear and accessible information on current legislation, customer's rights and our legal obligations as a registered social housing provider.
- 1.2 When a Halton Housing customer dies, it may be possible for a spouse, partner or other family member to take over the tenancy. This is known as succession.
- 1.3 This policy sets out customers' rights in relation to taking over or 'succeeding' a tenancy, the relevant legislation, Housing Act 1985 (Section 113) the conditions that need to be met for succession to take place, and the process surrounding succession.

2. Policy Statement

- 2.1 The aim of this policy is to provide clear guidelines on the circumstances in which someone may succeed (take over) a tenancy.
- 2.2 This policy aims to ensure that:-
 - Succession takes place in line with relevant legislation.
 - Customers understand their rights in relation to succession.
 - Tenancy agreements are adhered to
 - Joint tenants and or family members have the opportunity to succeed a tenancy that meets their needs and individual circumstances.
- 2.3 When a Halton Housing customer has died, we will respond to all applications for succession in a timely and sensitive manner, offering advice and support to anybody still living at the property or enquiring about succeeding the tenancy.

Types of Succession:

- 2.4 There are a numbers of ways that a tenancy can be succeeded when a tenant dies.

Survivorship

- 2.5 This occurs when the tenancy agreement is in joint names and one of the joint tenants dies. The remaining joint tenant becomes a sole tenant automatically upon the death of a joint tenant. This is called the "right of survivorship" and is a type of statutory succession.

Statutory succession

- 2.6 If the tenancy agreement is in the name of a sole tenant and the tenant dies, certain people (statutory successors) have a legal right to inherit the tenancy. In this event, the tenancy does not end the successor takes over the existing tenancy and no new tenancy is issued.

For secure tenancy that began before 1st April 2012

- 2.7 The deceased tenant's spouse or civil partner automatically succeeds the tenancy if they were living with the tenant as their only home at the time of the tenant's death.
- 2.8 Where there is no spouse or civil partner, a cohabitee (not spouse or civil partner but in a long term relationship living together) or member of the tenant's family automatically succeeds the tenancy, if they lived the property as their only home for a period of 12 months or more prior to the tenant's death.

For secure tenancy that began before 1st April 2012

- 2.9 The deceased tenant's spouse or civil partner automatically succeeds the tenancy if they were living with the tenant as their only home at the time of the tenant's death.
- 2.10 Other family members do not have automatic statutory succession rights but may have contractual succession rights under the tenancy agreement.

Contractual succession

- 2.11 This is a succession that takes place through an additional right to succession that is included in the tenancy agreement, as opposed to a legal right. This is usually awarded to family members where statutory succession does not apply.
- 2.12 If the tenancy started prior to 1st April 2012 the existing tenancy is ended and a new tenancy is issued, meaning there may be a new right of succession when the successor dies.
- 2.13 For Tenancies on or after 1st April 2012 there is no further right to succession when the successor dies.

Discretionary Succession

- 2.14 A discretionary succession is where people are occupying the property at the time of the tenant's death but have no statutory or contractual rights to succeed the property. We may exercise discretion and grant a new tenancy if we

consider the circumstances to be exceptional, but we have no obligation to exercise any discretion.

- 2.15 In all cases, the remaining occupant(s) will need to demonstrate housing need and must have lived at the property as their only home, for 12 months, at the time of the person's death. The person(s) will be treated as a direct applicant i.e. they will be interviewed and will be notified in writing of our final decision.
- 2.16 Examples of factors that we may take into account when exercising discretion may include, but are not limited to:
- The length of time the applicant has lived at the property as their only home.
 - The length of time the applicant has been a member of the Customer's family.
 - Any vulnerabilities or additional needs of the applicant.
 - Whether the applicant and other adult household members have a Right to Rent.
 - The housing needs and housing options of the applicant
 - The likely effect of any decision by us not to exercise our powers on the health, safety, or well-being of the applicant or any of their dependants.
 - The nature of the relationship to the deceased.
 - The length of time that has elapsed since the parties ceased to live together.
 - Whether granting of a discretionary tenancy would be the best use of our properties
- 2.17 If a decision is made to offer a discretionary tenancy it may be offered at another property. We will try to find 'suitable accommodation'. However, this suitable accommodation may not be immediately available. If a decision is made to offer a discretionary tenancy at another property, only one such offer will be made and if the applicant declines that offer no further offers will be made and steps will be taken to recover possession of the deceased tenant's property.
- 2.18 In all discretionary tenancy cases a new tenancy agreement will be granted, and there will be no further succession rights, unless a statutory provision overrides this.
- 2.19 For the purpose of succession (statutory, contractual or discretionary) family members include parents, grand-parents, children, grandchildren, siblings, uncles, aunts, nephews or nieces. This includes family relationships through marriage or civil partnership, relationships by half-blood, and stepchildren.
- 2.20 There can only be one succession (statutory or contractual) so if there has been a previous succession on the tenancy there will be no further right of succession. However, successions before the Large Stock Voluntary Transfer from Halton Borough Council (December 2005) do not count.

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- 2.21 Only one succession is permitted per tenancy by law, and upon the death of a successor or where a non-family member requests a succession, we will consider such requests under the criteria for discretionary second successions.

Over or under occupation or occupation of adapted properties

- 2.22 Succession only applies to the tenancy and not the property, and when a “would be” successor would result in significant over-occupation or under-occupation or it is an adapted property and that adaptations are no longer required, they may be offered suitable alternative accommodation.
- 2.23 If a contractual succession would lead to under occupation as determined by our Lettings Policy, we will make one offer of suitable alternative accommodation. If that accommodation is not accepted, we may start legal proceedings to gain possession of the property.
- 2.24 If contractual succession leads to over-crowding, we will work with the successor to find a property which suits their needs.
- 2.25 If the successor remains in the property until a suitable offer can be made, the arrangements during that time will depend on whether a new tenancy has to be granted (in which case an in-occupation agreement may have to be set up) or the tenancy automatically passes to the successor, in which case, the successor will be required to pay rent.
- 2.26 Where it is a statutory succession or survivorship that results in under occupation or over occupation, we will still discuss rehousing to a more suitable sized property with the new tenant as part of our efforts to make best use of our homes.
- 2.27 During this period, we will aim to provide financial assistance and support via our welfare benefits team to ensure housing costs are met, and to minimise the risk of falling into rent arrears.

Fixed Term Tenancies including Rent to Buy

- 2.28 Fixed term tenancies will be issued in some circumstances, including where the current social housing tenancy commenced after 1st April 2012, or where they have agreed to participate in a Rent to Buy Scheme. Under these circumstances providing the successor meets the affordability criteria for this product, our Fixed Term Tenancies offer the same succession rights to spouse/partners and family members as our newer periodic assured tenancy agreements.

Succession Rights and shared ownership

- 2.29 If a shared owner resident dies, and the lease is in joint names, the lease transfers into the sole name of the remaining leaseholder. If the lease is in the deceased resident's sole name, the percentage of the property that is owned will transfer to a person named as the beneficiary in the will. The rented element of the tenancy will transfer to any successor.
- 2.30 Where these two people are different, the tenant will have the right to occupy and the beneficiary will have the equitable interest, which would only be realised when the property is sold. If there is no will, legal advice should be sought.
- 2.31 If there is no successor and no one to inherit the equity, then the landlord will obtain vacant possession and the equity will eventually pass to the Crown or the Duchy of Cornwall or Lancaster under the laws of intestacy. This should be covered in the Shared Ownership lease which have a clause to clarify these potentially complex situations.

No succession rights

- 2.32 In cases where there are no succession rights and there is/are remaining occupant(s), we will deal with these sensitively offering support and advice for the remaining occupant(s) to secure alternative accommodation.
- 2.33 Whilst this is on-going, the occupier(s) will be given a temporary license agreement in their own name, for them to remain in the property for a fixed term and the original tenancy of the deceased tenant will be terminated.
- 2.34 Any issues regarding the preserved right to buy or rent arrears accrued by the original tenant will be considered on an individual basis, taking into account relevant legislation and case law.
- 2.35 If there are no identified successors then the Neighbourhood Officer will serve a notice to quit on the personal representative of the deceased tenant, with a copy to the Public Trustee to formally determine the tenancy.

Rent Arrears and Other Breaches on Succession

- 2.36 In the case of a joint tenancy, the remaining customer has joint liability for any arrears together with the estate of the deceased customer. The arrears will remain on the account.
- 2.37 Following the succession, we can also pursue the deceased customer's estate to recover rent arrears or other debts as part of the former tenants' arrears recovery process.

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- 2.38 A possession order made before the succession can be enforced against the new tenant. If there is a suspended possession order, it will be necessary to apply to the court for an order substituting the new tenant as defendant in the proceedings.

3. Responsibilities

- 3.1 The Head of Neighbourhoods has responsibility to ensure this policy is followed within Halton Housing and managed appropriately.
- 3.2 The Neighbourhood Managers and Neighbourhood Officers have responsibility for ensuring that Halton Housing are compliant with Legislative / Regulatory requirements and good practice.
- 3.3 Responsibility for the execution of this policy rests with all staff and contractors working on behalf of Halton Housing, whether that work is paid or voluntary.

4. Regulatory and/or Legal Compliance

- Housing Act 1985 Housing Act 1988 Housing Act 1996
- Human Rights Act 1998
- The General Data Protection Regulations 2018
- Data Protection Act 2018
- The Equality Act 2010
- The Localism Act 2011
- The Housing and Planning Act 2016
- RSH's Regulatory Standards (Tenancy Standard)

5. Diversity Considerations

- 5.1 All applications will be dealt with in line with Halton Housing's Diversity Policy.
- 5.2 An EIA Stage 1 Screening Form has been completed as part of the review of the initial review of this policy. This has determined that a stage 2 full assessment is not required.

6. Links to Strategies, Policies and Associated Documents

- 6.1 The policy is linked to the following strategies policies and procedures:
- Property Pool Plus Policy
 - Succession Procedure

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- Assignment and Mutual Exchange Policy
 - Transfer Policy
 - Tenancy Policy
 - Charges to Customer Policy



Translations are available on request, by calling 0303 333 0101.

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