

Succession Policy: Assured Tenancies

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| 1.0 | SCOPE |
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| | Purpose |
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| 1.1. | <p>whg recognises that following the death of a tenant can be a very difficult time for all concerned, especially family members. whg will ensure that any requests for succession of the tenancy will be handled with sensitivity and care to avoid any further distress.</p> <p>This document sets out whg's policy towards tenancy succession following the death of a tenant.</p> |
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| 1.2. | <p>Succession occurs when a tenant dies and there is an eligible person who has the right either by law or given in the tenancy agreement to take over the tenancy.</p> <p>This policy gives guidance on what happens to the tenancy when a tenant dies.</p> |
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| 1.3. | <p>This policy applies to all assured and assured shorthold tenancies. This policy does not apply to leaseholders or to secure tenancies. The rules for succession for secure tenancies are governed by Housing Act 1985 Section 86A – Section 89. The rules of succession are also different for succession whether the secure tenancy began before 1 April 2012 or on or after 1 April 2012. whg will provide advice separately on the rights of succession in these cases and potential successors may also seek advice independently.</p> |
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| | Legal and regulatory framework |
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| 1.4. | <p>Common law: Survivorship</p> <p>If the tenancy agreement is in joint names and one of the joint tenants die the tenancy will continue with the surviving tenant as a sole tenant. This is called the 'right of survivorship'. A tenancy is considered property in this context and as such property owned jointly will pass to the surviving owner on the death of the other party.</p> |
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| 1.5. | <p>Housing Act 1988 Section 17: Succession</p> <p>At the tenant's death, an Assured tenancy passes to the tenant's partner if they were living in the property as their only or principal home; if there is no such partner,</p> |

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| | the tenancy passes to anyone specified within the tenancy agreement as eligible to succeed. This does not apply if the tenant was a successor. |
| 1.6. | Housing Act 1988 Schedule 2: Grounds for Possession Ground 7: whg can apply for mandatory possession of a tenancy which has devolved under a will or intestacy, i.e. where no succession rights apply, provided whg begin possession proceedings within twelve months of the tenant's death. |
| 1.7. | Equality Duty 2010 Section 149: Public Sector Equality Duty As a Registered Provider of Social Housing, whg are mindful of our duties under the Public Sector Equality Duty (PSED), within the Equality Act 2010. The PSED requires organisations to: a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it |
| 1.8. | Regulator of Social Housing: Tenancy Standard Registered providers shall let their homes in a fair, transparent and efficient way, and make the best use of housing stock. They should have clear decision-making and appeals processes [1.1.1], and publish their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members [2.2.1]. |
| 2.0 | POLICY STATEMENT |
| | Survivorship |
| 2.1. | When a joint tenant has died, the tenancy will continue as a sole tenancy in the name of the surviving tenant, from the date of death. This does not apply if there has been a previous succession. No further succession is permitted, subject to any Discretionary Succession (see below). |
| | Statutory Succession |
| 2.2. | When a sole tenant has died if they lived with their partner as a husband or wife, their partner will succeed to the tenancy from the date of death. See Appendix 1 below. This does not apply if there has been a previous succession. No further succession is permitted, subject to any discretionary succession. |
| | Contractual Succession |

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| 2.3. | When a sole tenant has died if they did not live with a partner as a husband or wife, a family member can succeed to the tenancy from the date of death, provided that they meet the criteria for succession in the tenancy agreement, and can evidence that they have lived with the tenant in the property as their only or main home for 12 months prior to the death of the tenant. The definition of a family member is also set out in Appendix 1 below . This does not apply if there has been a previous succession. No further succession is permitted, subject to any Discretionary Succession. |
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| | Discretionary Succession |
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| 2.4. | <p>An occupant left in a property following the death of a tenant, where there is no statutory or contractual right to succeed, may request whg to exercise our discretionary rights to let them stay as a tenant, whg is under no obligation to exercise that discretion.</p> <p>A Discretionary succession may be awarded if there is a substantial reason why it would be unreasonable to remove the occupant from their home, for example due to care and support needs that would be unsupported if the occupant were to move.</p> |
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| 2.5. | Discretionary succession rights will not normally be awarded to occupants who have lived in the property for less than twelve months, or who were not a member of the tenant's household. |
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| | General Principles |
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| 2.6. | <p>An occupant claiming succession must provide sufficient proof of the succession, including death certificate, proof of occupancy and proof of relationship to the tenant.</p> <p>An occupant left in the property and claiming a Discretionary Succession must provide also provide proof of all their personal circumstances and other matters that they wish to rely upon.</p> |
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| 2.7. | Where there has been no succession and the tenancy has not been vested in a will or intestacy, whg will apply for possession of the property if the property has not been vacated. Where there is no executor or administrator, the tenancy will be ended through notice served on both the Personal Representatives and Public Trustee. |
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| 2.8. | Any occupant left in possession of the property following the death of a tenant, where there is no right to succession and no Discretionary Succession has been awarded, will be signposted appropriately for assistance in looking for alternative accommodation. Any occupant left in possession will be required to pay use and occupation charges and all applicable bills and council tax from the end of the tenancy until they leave the property. |

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| 2.9. | All claims for succession will be treated with sensitivity and care. Decisions which may result in someone losing their home due to failed succession must be made by a Regional Community Housing Manager, with due regard to the needs of vulnerable household members. If a customer is unhappy with the outcome they can appeal through the whg complaint process. |
| 3.0 | PERFORMANCE MEASURES |
| 3.1. | The Community Housing Team carries out monthly assurance checks that review whether successions have been conducted in line with policy. Additional reviews are carried out on monthly basis by the Assistant Director of Housing These check whether whg is compliant with the Tenancy Standard and all applicable legislation in carrying out successions. |
| 4.0 | EQUALITY AND DIVERSITY |
| 4.1. | Through use of discretionary succession rights, this Policy ensures decisions are made with due regard to the individual circumstances of the case, in particular where customers may be at greater disadvantage due to a protected characteristic. |
| 5.0 | TRAINING AND DISSEMINATION |
| 5.1. | Colleagues responsible for assessing and completing succession claims will receive training on the policy and all associated procedures and guidance notes. |
| 6.0 | MONITOR AND REVIEW |
| 6.1 | This policy will be monitored by the Director of Housing and Customer Services and reviewed every three years by the Policy Group. |
| 7.0 | ASSOCIATED DOCUMENTS, POLICIES AND PROCEDURES |
| 7.1 | <p>Documents, policies and procedures associated with this policy are:</p> <ul style="list-style-type: none"> • whg tenancy agreements • Whg Equality, diversity and inclusion Policy • whg Allocations Policy • whg Lodgers, Subletting and Tenancy Fraud Policy • whg Unauthorised Occupiers Policy • whg Complaints policy |

APPENDIX 1

Rights of Succession

On your death the following people have a right to succeed to this tenancy:

- a) Any surviving joint tenant(s) if they occupied your home as their only or principal home at the time of your death. This will apply even if you are already a successor;
- b) If there are no surviving joint tenants, your spouse, civil partner or a person living with you as your husband or wife provided that they occupied your home as his or her only or principal home at the time of your death and as long as you are not a successor (as defined in Condition 4.17); and
- c) If there are no joint tenants or surviving spouse, civil partner or partner who succeeds to the tenancy, a member of your family (as defined in Section 113 Housing Act 1985) may succeed as long as:
 - i. they occupied your home as their only or principal home throughout the period of 12 months ending with your death;
 - ii. they notify us in writing of their claim to succeed within six months of your death (at our discretion whg may allow a longer period);
 - iii. you were not a successor; and
 - iv. that your home is not larger than their needs and has not been provided or adapted for an elderly or disabled person and the successor is not elderly or disabled, or if there is a policy which restricts the age of occupants allowed to stay in your home. In these cases (subject to the other conditions), whg will offer the family member a new tenancy of suitable alternative accommodation. The tenancy terms and conditions will be the current terms and conditions that whg use at that time.

If there is more than one member of your family qualified to succeed under this Condition 4.16(c), they should agree which of them will claim the benefit. If more than one claim is received and the claimants cannot resolve the dispute within a reasonable time, a Court may decide.

You are a "successor" for the purposes of this agreement if you:

- a) are a person who was a joint tenant and have become a sole tenant;
- b) are a spouse in whom the tenancy has vested under Section 17 Housing Act 1988;
- c) fall within the definition of successor set out in Section 17 of the Housing Act 1988;
- d) became the tenant under the will or on the intestacy of a former tenant of your home;
- e) were granted this tenancy under a right of succession which whg granted under any tenancy agreement containing provisions similar to Conditions 4.16 of this Agreement;
- f) you became the tenant as a result of an assignment other than in the circumstances set out in Conditions 3.81(a);
- g) you became the tenant as a result of a court order under Section 24 Matrimonial Causes Act 1973 and the other party to the marriage was a successor; or
- h) you became the tenant under the right to exchange (see Condition 4.15) and you were a successor under your previous tenancy.

Family Members

Are defined under the Housing Act 1985 section 113, for the purposes of any contractual succession, as a person's spouse, civil partner, parent, grandparent, child, grand-child, brother, sister, uncle, aunt, nephew or niece, including by marriage, by half-blood relation or by step relation.

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| Document author | Assistant Director of Housing – Community |
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