



THE ROYAL BOROUGH OF
KENSINGTON
AND CHELSEA

RBKC Housing Management

Succession of tenancy and Assignment policy

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1 Introduction

- 1.1 The purpose of this policy is to clarify the circumstances in which a person can take over a secure tenancy following the death of the tenant. This does not apply to Introductory Tenancies.
- 1.2 Succession is a form of assignment. Assignment is a process whereby a tenancy is “taken over” by another person. Assignment of a secure tenancy can happen in three different ways:
 - Statutory succession takes place following the death of a joint tenant where the remaining tenant succeeds to the tenancy. Upon the death of one joint resident, the tenancy automatically transfers to the remaining resident. The legal term for this is ‘survivorship’. This happens automatically at the point of death, but the remaining tenant must inform Housing Management Team (HM Team) to update their records. The remaining resident would become the sole tenant.
 - Succession takes place when a tenant dies, and the tenancy is passed to a member of the family. There can only be one succession for each secure tenancy agreement.
 - A court order can allow a tenancy to be passed to another person as if a succession has taken place. This is under Family and Law Act, Matrimonial legislation.
- 1.3 This policy deals with the succession of the tenancy following the death of the tenant, as well as with the assignment of a tenancy to another person following a request from the tenant.
- 1.4 For information on assignment by way of exchange see the separate Mutual Exchange policy and procedure.

2 Related Documents

- Tenancy sign-up policy
- Tenancy sign-up procedure
- Complaints policy
- Introductory Tenancy Procedure
- Mutual Exchange policy and procedure
- Succession Procedure

3 Legal Context

- 3.1 Succession is the legal term for passing a secure tenancy to another person upon the death of the tenant.
- 3.2 RBKC’s policy on succession is written in line with the relevant legislation and case law.
- 3.3 Section 87, Part IV Housing Act 1985 (the Act) provides the basis on which a secure tenancy can be passed on (succeeded) to another eligible person.

- 3.4 The Localism Act 2011 changed the legislative framework and the Council's succession policy will differ depending on when the tenancy was granted. Following implementation of this act, statutory right of succession to family members (other than spouse/civil partner/partner) no longer applies to tenancies created after 1 April 2012. See section 4 of this document for further explanation.
- 3.5 An eligible person is defined in the Act as someone that would qualify to succeed to the tenancy on the death of the tenant. For a full list of qualified persons, please refer to section 4.
- 3.6 The Council will carefully, and with sensitivity, consider the circumstances following the death of the tenant in line with the conditions laid down in the Act.
- 3.7 Once a succession has been confirmed the new tenant assumes all the rights and responsibilities of the tenancy.

4 Qualified persons

- 4.1 For tenancies granted before 1 April 2012 - The rules for qualifying to succeed to a tenancy on the death of a tenant are laid out in s113, Part 4 of the Housing Act 1985, as amended. They are:
 - 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
- 4.2 For tenancies granted on or after 1 April 2012 – Following the implementation of the Localism Act 2011, it was amended to restrict the right of succession to the following:
 - Spouse
 - Civil Partner
 - Partner (including same sex)
 - Joint tenants
- 4.3 Other members of the household are not entitled to succeed any secure tenancy that was created after 1 April 2012.

5 Decision making for succession

- 5.1 Upon application, the Council will carry out investigations to verify the applicant's information and confirm whether they qualify as a successor.
- 5.2 While a succession claim is considered the Council may still serve legal notices as necessary, to ensure responsible management of the property.
- 5.3 The Council will accept a person's right to succeed a tenancy if satisfactory evidence is provided that meets the requirements set out in the succession procedure.
- 5.4 In making its decision the Council will aim to ensure the best use of its housing stock, to reduce under-occupation and ensure appropriate use of properties adapted for disability needs.
- 5.5 Where succession will result in under-occupation the NHM Team will work with Housing Needs to offer the potential successor alternative accommodation better suited to their needs. This is in line with the statutory and contractual requirements set out in Ground 15A of Housing Act 1985.
- 5.6 If the successor does not move out of the property and the law states they cannot remain, because of either under-occupation, they don't require the adaptations or the property has additional accessibility adaptations, the Council may seek to take back the property. In this case Ground 15A of Housing Act 1985 would apply.
- 5.7 The succession applicant has the right to appeal a decision by submitting their written request to the Assistant Director of Neighbourhood Management to review the decision.

6 Assignment of tenancy

- 6.1 Assignment means legally transferring a tenancy from one person to another during the lifetime of the tenant. The person who transfers the tenancy is the Assignor and the person to whom the tenancy is transferred is the Assignee. The Assignee becomes the tenant of the landlord, under the same agreement. Assignment must be done by way of a Deed of Assignment. All tenancy rights and responsibilities pass from the assignor to the assignee. In the case of both Assured and Secure tenancies the ability to assign is limited to one instance, as with succession.
- 6.2 A tenancy cannot be assigned if:
 - It's a joint tenancy
 - The tenancy has been demoted
 - It is in temporary accommodation
 - If it was inherited from a previous tenant
- 6.3 The rules relating to who is qualified to be assigned a tenancy and on who is qualified to succeed to a tenancy on the death of a tenant, are the same (see section 4. Qualified Persons)
- 6.4 Where there are outstanding arrears, the current tenant (assignor) must clear these before proceeding with their application to assign their tenancy.

7 Equalities Statement

- 7.1 The Council is committed to promoting fair and equal access to services and equal opportunities in employment, the procurement of goods and as a community leader. The Council's policies, procedures and day to day practices have been established to promote an environment which is free from unlawful and unfair discrimination, while valuing the diversity of all people.
- 7.2 Discrimination on the grounds of race, nationality, ethnic origin, religion or belief, gender, marital status, sexuality, disability and age is not acceptable: the Council will take action to ensure no person using the Council's premises or services receives less favourable treatment or is disadvantaged by requirements or conditions that cannot be justified. The Council will tackle inequality, treat all people with dignity and respect and continue to work to improve services for all service users.
- 7.3 The legal framework for the Council's approach is provided by the Equality Act 2010 and specifically by the Public Sector Equality Duty, under which a public authority must work consciously to eliminate discrimination, harassment, victimisation and to advance equality of opportunity and foster good relations between people with differing characteristics.
- 7.4 Further detail on the Duty, and the Council's approach to fulfilling its requirements, can be found at www.rbkc.gov.uk

8 GDPR and Data Protection Act 2018

- 8.1 As a directorate of RBKC, Housing Management shares the commitment to ensure that all data is:
- processed lawfully, fairly and in a transparent manner
 - collected for a specific and legitimate purpose and not used for anything other than this stated purpose, or as provided for in our privacy and fair processing notices
 - relevant and limited to whatever the requirements are for which the data is processed
 - accurate, and where necessary, kept up to date. Any identified inaccuracies will be amended or removed without undue delay
 - stored for as long as required, as specified within RBKC's Records Retention policy
 - secured with appropriate solutions, which protect the data against unauthorized or unlawful processing and accidental loss, destruction or damage.
- 8.2 For further information about the Council's commitment to the General Data Protection Regulations (GDPR), visit the Council's website at www.rbkc.gov.uk .

9 Compliance, Monitoring and Review

- 9.1 This policy and the related procedure will be reviewed in full every five years or when there are changes in legislation to ensure they are still relevant and to incorporate changes to legislation or best practice.

