



Medway Council's Succession Policy

1. Introduction

- 1.1. Succession is the process by which a tenancy is passed to another person on the death of the original or joint tenant. This policy outlines the process for how the Council will deal with requests for assignment by way of succession and clarifies the circumstances under which a person may succeed to a tenancy.

2. Purpose

- 2.1. The purpose of this Policy is to:
- ensure the succession and assignment of council tenancies complies with legislation, statutory guidance and good practice.
 - offer guidance and clarification to staff and tenants on the circumstances where succession will be granted or refused.
 - make best use of the housing stock.

3. Scope

- 3.1. This policy applies to tenants that hold a Flexible, Secure or Introductory tenancy with Medway Council and persons residing in the property as members of the household.
- 3.2. This policy applies to all Medway Council staff involved in Landlord Services.

4. Legislation and Guidance

- 4.1. **External**
- Housing Act 1985 S.88 and S.89
 - The Civil Partnership Act 2004 Schedule 8 Section 41
 - The regulatory framework for social housing
 - Disability Discrimination Act 1995
 - Localism Act 2011
 - Equality Act 2010

5. The Policy

5.1. Legal Framework

- 5.1.1. In all situations there is only one right of succession. So if a tenant obtained their tenancy by succeeding to it from someone else, there is no further right of succession.

- 5.1.2. Succession rights for tenants vary, depending on the type and date of tenancy.
- 5.1.3. **Secure tenants whose tenancy began before 1 April 2012** – the tenancy can be succeeded by a spouse (see 5.2.1 for definition of spouse) or a close family member (see 5.2.3 for definition) which includes a cohabitee (see 5.2.2 for definition).
 - 5.1.3.1. A spouse has the right to succeed provided they were living with the tenant at the time of their death.
 - 5.1.3.2. A qualifying family member (including a cohabitee) has the right to succeed provided they were living with the tenant at the time of their death, and had been living with the tenant for the 12 months prior to the tenant's death. The 12 month period can include time living together at a different address.
- 5.1.4. **Secure tenants whose tenancy began after 1 April 2012** – the tenancy can be succeeded by a spouse (see 5.2.1 for definition of spouse) or a cohabitee (see 5.2.2 for definition of cohabitee).
 - 5.1.4.1. There are no other rights of succession, but Medway Council may at its discretion consider requests from family members who meet the other criteria for succession (see 5.7).
 - 5.1.4.2. A spouse or cohabitee has the right to succeed, provided they were living with the tenant at the time of their death. There is no requirement for a 12-month residence period.
- 5.1.5. **Flexible Tenancies** – same as for secure tenancies that began after 1 April 2012 (see 5.1.4.). Any succession would be for the remaining term of the original flexible tenancy.
- 5.1.6. **Introductory Tenancies** – same as for secure tenancies that began before 1 April 2012 (see 5.1.3.). Any succession would be for the remaining term of the original introductory tenancy, to be followed by a flexible tenancy, subject to the usual Introductory Tenancy review criteria being met.
- 5.1.7. **Joint Tenancies** - if one party to a joint tenancy dies the tenancy automatically passes to the remaining joint tenant. This is irrespective of the type of tenancy held. This action counts as an act of succession.
- 5.1.8. **Non-Secure Tenancies and Mobile Home Plot Licenses** – there are no rights of succession.

5.2. Definitions

5.2.1. Spouse

A spouse is a husband or wife, or civil partner of the tenant

5.2.2. Cohabitee

A cohabitee is someone who lives with the tenant as though they were married or in a civil partnership.

5.2.3. Family Members

For the purposes of this Policy, family members are considered to be the following; The tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece (s113 Housing Act, 1985). This shall include step-relations and illegitimate children.

5.3. Applying for a succession

5.3.1. On notification that a tenant has died, Landlord Services will make enquiries to find out details of anyone living with the tenant at the time of their death and to find out if any claim for succession is likely to be made.

5.3.2. An information sheet and application form will be issued to the household (although a claim for succession need not be on the Medway application form)

5.3.3. The information sheet will set out the legal framework around succession and give information around the process such as time scales, and evidence requirements.

5.3.4. Any person who wishes to claim a tenancy following the death of a tenant must make a claim within one month of the death of a tenant. Landlord Services may grant an extension of time in exceptional circumstances.

5.3.5. All succession applicants will need to provide evidence and information to prove they qualify to succeed under this policy.

5.3.6. An application by a person qualified to succeed to the tenancy must include formal proof of residency at the property at the time of the tenant's death, and where required for a period covering the entire twelve months prior to the death of the tenant.

5.3.7. On receipt of an application to succeed and receipt of all the required supporting evidence, Medway Council will aim to give a decision within 20 working days.

5.3.8. The Head of Housing Management will have the final decision in respect of any application for succession received. If an application is refused, the occupation will be managed as an unauthorised occupancy.

5.4. Where more than one person qualifies to succeed

5.4.1. **Tenancy began before 1 April 2012** - The tenant's spouse or civil partner will always have priority if s/he was occupying the dwelling as her/his 'only or principal home' at the time of the tenant's death.

5.4.2. **Tenancy began on or after 1 April 2012** - The tenant's spouse, civil partner or cohabitee will always have priority if s/he was occupying the dwelling as her/his 'only or principal home' at the time of the tenant's death.

5.4.3. In cases where there is more than one eligible successor who has a statutory right to succeed and an agreement cannot be reached between which household member should succeed to the tenancy, Landlord Services will select a successor to the tenancy. There can be no joint succession.

5.5. Terms and obligations of succession

- 5.5.1. A statutory successor will take on the terms and obligations of the original tenancy agreement. Any Possession Order in force at the time of the tenant's death will remain in force.
- 5.5.2. Rent arrears cannot be inherited, so any arrears outstanding at the time of the tenant's death cannot be recovered from the successor as a condition of the succession or the new tenancy. Recovery will be attempted from the deceased tenant's estate.

5.6. Succession and Under occupancy

- 5.6.1. Where a family member (excluding spouse or cohabitee) legally succeeds to a tenancy, and the property is deemed to be larger than is reasonably required (under occupied), the council may seek to move the new tenant to another suitable property using Ground 15A Schedule 2 of the Housing Act 1985.
- 5.6.2. The legal Notice to start this action will be served no sooner than six months after the death of the previous tenant and not later than 12 months after the death, but the Council's intention in this regard will be discussed with the successor sooner.

5.7. Circumstances where there are no automatic rights of succession – 'Discretionary Succession'

- 5.7.1. Where the death of a sole tenant leaves someone in the property without an automatic right to succeed to the tenancy, Landlord Services will consider granting a tenancy in certain circumstances (or the tenancy of an alternative property through the allocation process if the current property would be under-occupied or not be suitable to meet their current need) at the discretion of the Head of Housing Management.
- 5.7.2. The decision to grant a succession in these circumstances will be made by taking into account the needs of the household and the local housing demand. Consideration will also be given to the Code of Guidance on the Allocation of Accommodation for Local Authorities 2002.
- 5.7.3. If a discretionary 'succession' is granted, this is done by way of a new tenancy, not by legal succession of the existing tenancy. A discretionary 'successor' will be granted a new Introductory tenancy, followed by a Flexible tenancy.

5.8. Assignment to a 'would be successor'

- 5.8.1. Secure tenants who have not succeeded to the tenancy themselves have the right to assign (pass) their tenancy to their spouse or a family member, provided that the spouse or family member would have qualified to succeed to the tenancy if the tenant had died immediately before the assignment. An assignment must be completed by a legal document called a Deed of Assignment.
- 5.8.2. The eligibility criteria for assignments is the same as those applying for an application to succeed following the death of a tenant (see 5.1).

- 5.8.3. Examples of where a tenant may wish to assign a tenancy to someone who would have succeeded them include where a person moves into a residential care home or moves to another country.
- 5.8.4. Assignments must be requested prior to the tenant moving out. If the tenant moves out before requesting an assignment, the tenant will no longer have security of tenure.
- 6. Role, Responsibilities and Authority**
- 6.1. The Assistant Director of Physical and Cultural regeneration will retain the overall responsibility for the implementation of this policy.
- 6.2. The Head of Housing Management is responsible for the operational delivery of this policy and the associated procedures. This includes responsibility for monitoring and reviewing, staff awareness and training, policy development and communication to tenants.
- 7. Monitoring, Review and Evaluation**
- 7.1. Regular monitoring will take place to ensure that the Council is dealing with applications for succession in line with this policy.
- 7.2. This policy will be reviewed every two years or in line with legislative or regulatory changes.

Policy Version Control Sheet
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Policy Author(s) Housing Manager
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Cross References Medway Council Secure and Flexible Tenancy Agreement, Tenancy Management Policy, Mutual Exchange Policy
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