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Approved by:	Customer Services Management Team
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1 Overall purpose

This policy sets out the guiding principles that Leeds Federated Housing Association will follow in respect of a tenant's right to succession that will be granted in accordance with current legislation.

The Policy supports Leeds Federated's vision of 'Building Futures Together' and is aligned with the following goals of the Association:

Goal 1: Sustain
Goal 2: Engage
Goal 3: Grow

2 Background

Guidelines on succession are laid down in legislation. The Localism Act 2011, with effect from 1 April 2012, amended the statutory succession rights of social housing tenants who entered into a tenancy agreement on or after this date. Sections 160 and 161 of the Localism Act insert new provisions into the Housing Acts 1985 (secure tenancies) and 1988 (assured tenancies) which amended the succession rights for secure and assured tenancies which were granted on or after 1 April 2012.

Leeds Federated Housing Association (the Association) recognises statutory rights but also grants additional rights to qualifying family members where there is no spouse, civil partner or cohabitee entitled to succeed.

This policy is consistent with the requirements of the Tenancy Standard within the Regulatory Framework and has regard to the Association's Lettings Policy.

This policy covers the legal process of transferring a tenancy from a deceased tenant to another person(s) who is eligible to succeed, taking in to account the needs of vulnerable household members.

It covers:

- When succession can take place
- When succession cannot take place
- Safeguards for the successor
- Process of appeal

The rules for succeeding assured and secure tenancies are different and care must be taken to ensure that the correct part of the policy is followed.

Linked Documents:

- Succession Procedure
- Disposal of Goods Policy & Procedure
- Left in Occupation Guidance

3 Introduction

A “Succession” is the legal transfer of an existing tenancy from the existing tenant(s) to another person(s) on the death of the tenant.

The tenancy agreement makes reference to whether a succession can take place or not, and the terms which must be followed in order to do this.

Types of Tenancy that allow for succession:

- Assured
- Secure

4 Succession Policy

Succession can take place in one of four ways:

1. Survivorship
2. By way of Statute i.e., operation of law
3. By way of Contract i.e., under the terms of the tenancy agreement
4. By way of discretion

Survivorship

If a tenant who has died was a joint tenant, the remaining joint tenant will succeed to the tenancy by way of survivorship. This is an automatic succession and the remaining joint tenant does not need to meet any additional criteria detailed in the procedure or sign a new tenancy agreement. The remaining joint tenant will succeed to the tenancy even if they were not residing in the Property. No further successions can take place following this.

Statutory Succession

Assured Tenancy - where the tenancy was entered into **before 01 April 2012** and the tenant who died was not a successor themselves, their spouse, civil partner, or cohabitee can succeed to the tenancy if they were living in the property as their only or principal home at the time of the tenant’s death. Fixed term tenants and the tenant’s family members do not have a statutory right to succeed.

Where the tenancy is assured, an assured shorthold tenancy or fixed for at least two years and was entered into **on or after 01 April 2012** and the tenant who died was not a successor themselves, their spouse, civil partner or cohabitee can succeed to the tenancy if they were living in the property as their only or principal home at the time of the tenant’s death.

Where the property is not occupied by a spouse, civil partner or cohabitee then other persons can statutorily succeed to the tenancy where the terms of the tenancy agreement allow this.

Secure Tenancy - where the tenancy was entered into **before 01 April 2012** and the tenant who died was not a successor themselves, their spouse or civil partner can succeed to the tenancy if they were living in the property as their only or principal home at the time of the tenant's death. Cohabitees and family members can succeed if they were living in the property as their only or principal home and had resided with the tenant for 12 months before the tenant died.

Where the tenancy was granted **on or after 1 April 2012** and the tenant who died was not a successor themselves, their spouse, civil partner, or cohabitee can succeed if they were living in the property as their only or principal home at the time of the tenant's death. Where the property is not occupied by a spouse, civil partner or cohabitee then other persons can statutorily succeed to the tenancy where the terms of the tenancy agreement allow this.

Statutory succession happens by operation of law and therefore unless the tenancy was entered into on or after 01 April 2012 and the terms of that tenancy make it clear that the person entitled to succeed will, if the Property is unsuitable for their needs, be offered suitable alternative accommodation, the successor will succeed to the tenancy and this includes the Property, regardless of whether it is suitable for their needs.

If any statutory successions took place before a stock transfer that succession may be discounted but this does not include statutory succession by way of survivorship. However, promises made on stock transfer may discount all successions prior to the stock transfer and as such will need to be considered on a case-by-case basis.

Contractual Succession

Succession can take place where the terms of the tenancy agreement (contract) allow. Succession under the contract will also be statutory succession if the tenancy agreement was entered into on or after 1 April 2012. Where the succession is only by way of contract the deceased tenant's tenancy will need to be terminated by way of Notice to Quit and a new tenancy will need to be granted to the successor.

Discretionary Succession

If no one is entitled to statutorily or contractually succeed to the tenancy, a discretionary tenancy could be granted to the person left in occupation if the tenancy agreement allows for this and it would not be in breach of any other policies or procedures. Discretionary succession should be considered where the property is suitable for the persons needs and / or it would be reasonable and proportionate to allow them to succeed and remain in occupation of the property.

Who is a Successor

Assured

A person will be a successor if:

- The tenancy vested in them under the statutory right to succession.
- The tenancy vested in them under the former tenant's will or intestacy.

- At some time before being granted the tenancy, they were a successor in relation to an earlier tenancy of the same (or substantially the same) property.
- At all times since they became a successor they have been a tenant (in his sole name or jointly with others) of the property.

Secure

A person will be a successor if:

- The tenancy vested in them under the statutory right of succession.
- They were a joint tenant and became the sole tenant.
- The tenancy was previously an introductory tenancy, and they were a successor to the introductory tenancy.
- They became the tenant upon the tenancy being assigned to them. However, if the tenancy was assigned to them pursuant to a property adjustment order made under one of the following property adjustment orders, they will only be a successor if the person who assigned the tenancy was a successor themselves:
 - section 24 of the Matrimonial Causes Act 1973;
 - section 17(1) of the Matrimonial and Family Proceedings Act 1984;
 - Part 2 of Schedule 5 to the Civil Partnership Act 2004; or
 - paragraph 9(2) or (3) of Schedule 7 to the Civil Partnership Act 2004,
- The tenancy was assigned to them under a mutual exchange, and they were themselves a successor to the tenancy which was assigned.

Only or Principal Home

What is someone's only or principal home can be complex so obtain legal advice if in doubt but think about whether the potential successor has a physical presence at the Property, where do they sleep, what are their long-term intentions, where is their post sent.

Residing with

To be residing with requires more than physical presence at the Property, residing at is different to residing with, "with" suggests a degree of shared living and companionship. A period of absence does not necessarily break continuity of residence but will be a question of fact and degree in every case. In order to qualify as a person living with the deceased as if they were their spouse or civil partner it is not sufficient for a couple to simply be living together. Their intention to cohabit must be demonstrated by their conduct.

Family member

A family member includes parent, grandparent, child, grandchild, sibling, uncle, aunt, nephew or niece. A relationship by marriage or half-blood shall be treated as a relationship by whole blood and a step child or illegitimate child will be treated as a legitimate child.

Multiple Successors

If more than one person is eligible to succeed to the tenancy, all would be successors must agree who will be the successor. If agreement cannot be reached, where the tenancy is secure the Association will decide on a case by case basis who can succeed. If the tenancy is assured, all would be successors must agree who will be the successor or the county court will need to decide.

Where Succession cannot take place

Assured Tenancy

The following people may not succeed under statute or the terms of the tenancy agreement but may qualify for a new tenancy at the Associations discretion:

- Family members who have lived in the property for 12 months prior to the death of the tenant.

We will consider whether to grant a new tenancy or offer suitable alternative accommodation to a member of the tenant's family who either:

- o had been living with the tenant for the year before the tenant's death, or
- o had been looking after the tenant and had given up permanent accommodation to live with the tenant, or
- o had accepted responsibility for the tenant's dependants.

This will be decided on a case by case basis using the following criteria:

- o whether the property is suitable for the needs of the incoming tenant and, if relevant, their family
- o if the incoming tenant would be excluded from accommodation as per our Lettings Policy
- o consideration will be given to the personal circumstances of the incoming tenant

Where the incoming tenant meets the above criteria save for the fact that the property is unsuitable for their needs, up to 3 offers of suitable alternative accommodation will be made to them. If all 3 offers are refused possession will be commenced in reliance upon the Notice to Quit which should already have been served on the Personal Representatives of the Deceased tenant.

Where the incoming tenant is also the deceased tenant's next of kin, there is an argument that the tenancy devolves to them by way of statutory trust and if the next of kin was residing at the property at the time of the tenant's death, they will have security of tenure i.e. they will inherit the tenancy. The tenancy would remain an assured tenancy and the Association would need to serve a Notice of Seeking Possession (NOSP), relying on Ground 7 of the Housing Act 1988, on the incoming tenant (beneficial owner) and Personal Representatives of the deceased (legal owner) and file a copy with the Office of the Public Trustee. If the occupier fails to vacate upon the Notice taking effect, possession proceedings can be issued.

A NOSP relying on Ground 7 of the Housing Act 1988 must provide a 2 month notice period and therefore it should be served immediately upon it becoming apparent that the incoming tenant will not be given a discretionary tenancy in respect of the property.

Possession in reliance upon a Ground 7 NOSP must be commenced within 12 months of the date of the deceased tenant's death or, if the court so directs, after the date on which, in the opinion of the court, the landlord became aware of the deceased tenant's death, otherwise Ground 7 cannot be relied upon.

Secure Tenancy

The following people may not succeed under statute or the terms of the tenancy agreement but may qualify for a new tenancy at the Associations discretion:

- Family members who have lived in the property for 12 months prior to the death of the tenant.

We will consider whether to grant a new tenancy or offer suitable alternative accommodation to a member of the tenant's family who either:

- had been living with the tenant for the year before the tenant's death, or
- had been looking after the tenant and had given up permanent accommodation to live with the tenant, or
- had accepted responsibility for the tenant's dependants.

This will be decided on a case by case basis using the following criteria:

- whether the property is suitable for the needs of the incoming tenant and, if relevant, their family
- if the incoming tenant would be excluded from accommodation as per our Lettings Policy
- consideration will be given to the personal circumstances of the applicant

Where the incoming tenant meets the above criteria save for the fact that the property is unsuitable for their needs, up to 3 offers of suitable alternative accommodation will be made to them. If all 3 offers are refused possession will be commenced in reliance upon the Notice to Quit which should already have been served on the Personal Representatives of the Deceased tenant.

Possession Following Succession

Assured Tenancy

Where a person has automatically succeeded under the Housing Act 1988 or the terms of the tenancy agreement and has therefore become the tenant, but the property is unsuitable for their needs for any reason consideration can be given to relying on Ground 9 of Schedule 2 of the Housing Act 1988 where suitable alternative accommodation is available for the tenant or will be available for them when the order for possession takes effect.

Secure Tenancy

Where a person, who is not the deceased tenant's spouse or civil partner, has automatically succeeded under the Housing Act 1985 or the terms of the tenancy agreement and has therefore become the tenant, but the property is more extensive than is reasonably required by the tenant, consideration can be given to relying on Ground 15A of Schedule 2 of the Housing Act 1985 where suitable alternative accommodation is made available to the tenant.

A Ground 15A NOSP must be served more than 6 months but less than 12 months after the date of the deceased tenant's death or if no NOSP was served proceedings must be begun more than 6 months but less than 12 months after the date of death or if the court so directs, the date on which, in the opinion of the court, the landlord became aware of the deceased tenant's death.

The matters to be taken into account by the court in determining whether it is reasonable to make an order on this ground include—

(a) the age of the tenant,

(b) the period (if any) during which the tenant has occupied the dwelling-house as the tenant's only or principal home, and

(c) any financial or other support given by the tenant to the previous tenant.

Safeguards for incoming and existing tenants

Rights and Obligations of successors

If a sole tenant dies, the succeeding tenant will not be liable for any rent arrears that accrued prior to the succession taking place. We will seek to recover any rent arrears that accrued prior to the succession taking place from the deceased tenant's estate.

If a joint tenant dies, the surviving tenant will remain liable for any arrears that accrued before the deceased tenant's death. Any Notices served prior to the deceased tenant's death would remain active on the basis that any Notice would be addressed to both joint tenant's and a copy would have been served on them each.

We will:

- where possible ensure that the security of tenure is maintained for the successor
- ensure all parties understand their rights and responsibilities

Timeframe for Succession

There is no time limit for an automatic succession. However, if the succession is not automatic, the request to succeed must be received within 4 weeks from the date of the deceased tenant's death, otherwise it should be refused unless there are extenuating circumstances.

Use and Occupation

Where the deceased tenant's tenancy has been terminated by Notice to Quit we may consider accepting payment for Use and Occupation from the occupier, to manage a succession request which is pending decision.

Process for appeal

Please refer to the Appeals process.

5 Communication Plan

Leeds Federated will:

- Ensure that all staff are aware of the policy and any changes through staff induction and team meetings. This will be reviewed through the staff supervision and appraisal process.
- Ensure that customers are advised of any relevant policy reviews and updates to the Tenancy Guide through general communication methods, including via the e-News, Leeds Federated website etc.

6 Implementation

The Customer Services Management Team are responsible for ensuring that this policy is implemented and reviewed.

It is the responsibility of all Leeds Federated Housing Association staff to ensure that their work is carried out in accordance with this Policy. This will ensure that the Succession Policy is delivered consistently.

This Policy will be reviewed every three years or earlier if necessary to ensure it is meeting its overall purpose and supporting the goals of the Corporate Plan.\

7 Monitoring, evaluation and reporting

Leeds Federated Housing Association do not currently monitor how many successions take place. Each tenancy is reviewed as part of the succession procedure to ensure that the succession is a legitimate one.

8 Equality Analysis

An Equality Analysis has been completed for the Succession Policy.