**SUCCESSION POLICY AND PROCEDURE**

**Aim of Policy and Procedure**

The purpose of this procedure is to ensure that Winchester City Council’s Housing Service fulfils its statutory and contractual obligation to the investigation of any potential succession case.

**What is a Succession?**

Succession is the right of a spouse, civil partner, partner or, in some cases, family member to take over the secure tenancy following the death of the tenant, where the property was the applicant's only or principal home.

**Investigation Process**

All succession cases are investigated by the Tenancy Housing Officer in a timely fashion, depending on what evidence is required. For a spouse or partner automatically entitled to succeed to the tenancy, the Tenancy Housing Officer will aim to notify the outcome within 10 working days. For some cases, proof of identity, residence and relationship are required and it may take longer to make a decision, however the applicant will be informed throughout the process.

**What is the Legal Basis for a Succession?**

The statute relating to succession to a secure tenancy is contained in Section 87 and 89 of the Housing Act 1985.

A person is qualified to succeed to the tenancy under Section 87 of the Housing Act 1985 if the tenancy commenced before 1st April 2012 and they occupy the property as their only or principal home at the time of the tenant’s death and either:

* they are the tenant’s spouse or civil partner; or
* they are another member of the tenant’s family and has resided with the tenant for twelve months preceding the death of the tenant.
* unless, in either case, the tenant was himself a successor, as defined in Section 88.

There can only be one statutory succession to a tenancy with two joint tenants. Therefore, if the deceased tenant was a successor, or survivor, there can be no further succession**.**

**Succession to a Tenancy Created on or after the 1st April 2012**

Succession to a secure and introductory tenancy created on or after 1st April 2012 will be subject to the provisions introduced by the Localism Act 2011, which amended the provisions in the Housing Act 1985, regarding who can succeed to a tenancy.

The Localism Act states that only a spouse or civil partner can succeed to a secure or introductory tenancy.

Other family members no longer have the right to succeed to tenancies created on or after 1st April 2012.

If the spouse or civil partner of the deceased is already a successor, there is no further right of succession.

**Tenancies Created Before 1980**

Secure tenancies were created by the Housing Act 1980, which came into force on 3rd October 1980. The provisions were later incorporated into the Housing Act 1985.

Any survivorships or successions occurring before 3rd October 1980 are not counted as successions, as they pre-date the relevant legislation.

**Who can Succeed?**

For family members, the onus lies with the potential successor to prove that they meet the principal home and the twelve month residency requirement for succession.

There is no residency requirement for a successor spouse or civil partner.

A temporary absence from the property by the potential successor or exclusion under a court order, does not preclude the ‘only or principal home’ condition being filled.

Members of the family are defined in Section 113 of the Housing Act 1985 as:

* parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews & nieces, including step-relation, half-relation & illegitimate children and persons living together as husband & wife or as civil partners.

**No-one Entitled to Succeed to the Tenancy**

When a tenant dies and there is no one entitled to succeed and there is no property transfer order application pending, the tenancy automatically ceases to be secure and can not be made secure

The tenancy does not end on death and the landlord is not entitled to possession of the property while the tenancy is still in existence. The tenancy must be brought to an end by service of a Notice to Quit.

In cases where there is no statutory or contractual right to succeed. Winchester City Council may in exceptional circumstances; where for example there are dependant children or vulnerable adults who would otherwise be statutorily homeless; agree to rehouse the household or grant a new tenancy.

**Termination of Tenancy by Next-of-Kin**

If a sole tenant passes away and there is no one who qualifies to succeed to the tenancy, or no right of succession and there is no one left in occupation at the property, the tenancy can be brought to an end by the deceased tenant’s next-of-kin giving four weeks’ notice to end the tenancy. This must be done in writing to the Voids & Allocations Officers, supplying a copy of the death certificate.

**Survivorship Rules, Relating to Joint Tenancies**

Where there is a joint tenancy, held by two persons, and one of the joint tenants dies, the tenancy passes automatically to the remaining joint tenant through the common law concept of survivorship. The tenant can not succeed to the tenancy, as they are already a tenant. Where only one right of succession is allowed, survivorship will count as such, and therefore, no further rights to succession exist.