

Succession and Assignment Policy

1. Introduction

1.1 This policy sets out our approach to succession and assignment for all tenants of the Peabody Group and all subsidiaries, except for Town and Country Housing and Peabody Central Housing Trust.

1.2 This policy has links to some of our other policies, and we've thought about these links when reviewing the policy. This policy should be read in conjunction with the Succession Procedure and Tenancy Policy. Other related policies include:

- Death of a Customer
- Lettings
- Rehousing
- Mutual Exchange
- Regency (Crown Estates) Portfolio
- Safeguarding Adults
- Safeguarding Children

2. Scope

2.1 This policy applies to all Social Rent and Affordable Rent tenants. It does not cover Intermediate or Market Rent tenants, Regency Crown Estate properties, licensees, shared owners, leaseholders or freeholders.

2.2 This policy does not cover the assignment of a joint tenancy to a sole tenancy or adding someone to a tenancy; this is detailed in our Tenancy Policy.

3. Key terms and definitions

3.1 **Succession** refers to the transfer of a tenancy to someone else following the death of a tenant. Succession rights depend on several factors including the type of tenancy, date of issue, the terms of the tenancy agreement, and the relationship of the successor to the deceased tenant.

3.2 **Statutory succession** is a right outlined in legislation. It gives certain people (statutory successors) the legal right to inherit a tenancy on the death of a tenant. In this event, the tenancy does not end following the death of a tenant and continues in the name of the successor.

3.3 **Contractual succession** is where the tenancy agreement provides qualifying family members succession rights. In this event, the tenancy ends and a starter tenancy is granted in the name of the successor.

3.4 An **assignment** is where a tenant can legally pass their tenancy to someone else during their lifetime via a Deed of Assignment. 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. The ability to assign is limited by the terms of the tenancy and by legislation.

3.5 **Survivorship** is when the remaining joint tenant becomes a sole tenant on the death of a joint tenant. Survivorship is treated as a statutory succession.

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3.6 **Family member** is defined by the Housing Act 1985 (Section 113) as: a spouse or civil partner, a parent, grand-parent, child, grand-child, brother, sister, uncle, aunt, nephew or niece. This includes family relationships through marriage or civil partnership, relationships by half-blood, and stepchildren.

4. Succession

4.1 This section applies to tenants who have the right to succession as set out in legislation or additional rights in their tenancy agreement.

4.2 The right to a succession is unchanged after a mutual exchange – any successor remains a successor in their new home with no new right of succession.

Requesting succession

4.3 We recognise that claims for succession are made at a time of bereavement and are committed to dealing with cases sensitively. We will make reasonable enquiries and assess applications made, however the person claiming the right to succeed must provide the necessary evidence to establish their right.

4.4 Applications for succession should be made within one month of notifying us about the death of the tenant. We will work closely with the potential successor in cases where we need to extend these timeframes.

4.5 We will not process successions unless we are in receipt of the death certificate.

4.6 To claim succession falsely or dishonestly, or to provide false or misleading information to support a claim, is fraud. Covering up the death of a tenant to benefit from their tenancy is also fraud. We will take appropriate enforcement action where we believe a fraudulent claim has been made in line with our Lodgers, Subletting and Unauthorised Occupants Policy and the relevant legislation. We may also engage with third parties such as the Police and local authorities.

4.7 A potential successor (and any other household members) must be in occupation of the tenancy address as their only or principal home at the time of death of the tenant and for at least a period of 12 months before death.

4.8 Where there is more than one potential successor, we will ask them to decide on who will succeed the tenancy. Where a decision is not made, depending on the tenancy type, this will be decided by a court or by us. Where we are making the decision, we will consider housing need, dependents, and relationship with the deceased tenant.

Granting a succession

4.9 In the case of a joint tenancy, the tenancy is automatically succeeded by the remaining joint tenant by what is known as 'survivorship'. Survivorship is treated as one succession which means that there is no further right of succession.

4.10 There is one statutory right of succession for a secure or assured tenancy. In addition to the statutory succession rights set out in legislation, some of our tenancy agreements include additional contractual succession rights. We may also consider granting a new 'discretionary tenancy' where there is neither a statutory nor contractual right to succession.

4.11 A child under the age of 18 may succeed to a tenancy where they meet the relevant criteria. However, the tenancy will need to be held on trust by a guarantor until the child reaches 18 years of age. The guarantor can be a private individual, Local Authority or Social Services.

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Department. We will grant an 'Agreement for Tenancy' and the full transfer of tenancy will be completed shortly after the minor's 18th birthday.

- 4.12 If the property is not suitable for the successor, we will, where the law allows us to, require the successor to move to an alternative property. We will consider a home unsuitable if the property is:
- Larger than the successor's housing need (i.e., under-occupying) or would lead to overcrowding.
 - Adapted and the successor has no need for the adaptations.
 - A supported, sheltered or older person's home and the successor has no need for this type of housing.
 - Deemed unsuitable for any other consideration that reasonably applies.

Where no succession rights exist

- 4.13 If a tenant loses their security of tenure before they die or wish to assign, for example by abandoning the property or subletting the whole property, there will be no right to succession or assignment. If a tenant is admitted to a care home for more than 28 days, we ask that they, or someone assisting them, notify us so we are aware of the situation.
- 4.14 Where no statutory or contractual rights to succession exist for a member of the household occupying the home of a deceased tenant, we may consider offering a new tenancy where there is a housing need, and any significant housing related health or welfare needs.
- 4.15 Where occupiers have no right to remain in the property, we will provide advice on finding alternative accommodation and where necessary, take legal action to take possession of the property.
- 4.16 We do not give succession rights to properties not let as a home or for sub-units (parking bays, stores and garages etc.)

Discretionary tenancies

- 4.17 Any discretionary offer to grant a new tenancy will be in line with our Tenancy Policy and Lettings Policy.
- 4.18 Where there is no statutory or contractual right to succession or assignment of a tenancy, but remaining household family members wish to be granted a tenancy, we may consider the award of a discretionary tenancy under certain circumstances. These will be:
- Where the tenant has died, and there is no right to succession, or;
 - Where the tenant has gone into residential care on a permanent basis, and there is no option or right to assign, or;
 - In rare cases, where we may consider other special circumstances, for example but not necessarily limited to:
 - Where domestic abuse is a factor in a case where a perpetrating tenant has ended the tenancy and/or vacated the property with no intention to return, and there are no assignment rights for the victim and any remaining household members.
 - Where a vulnerable minor remains in the property following the death of the tenant, and there is no right to succession (subject to the conditions described in 4.11).

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- Where a case poses a risk (i.e., legal, regulatory or reputational) to the organisation, or other relevant sensitivities, vulnerabilities and grounds that should be reasonably considered.

4.19 In the case of a discretionary tenancy, a family member is defined as: *Spouse; Civil partner; Unmarried partner; Sibling; Parent; Grandparent; Child and adopted child; Grandchild; Uncle or aunt; Niece or nephew; Step relation; Half relation.*

4.20 In some cases, we may consider granting a discretionary tenancy to a carer if they meet the following criteria:

- They are in receipt of Carer's Allowance for the tenant they are looking after.
- They are the main carer and are a permanent resident in the household.
- The tenant they are looking after is in receipt of higher rate Disability Living Allowance or Personal Independence Payments.

4.21 Except for the circumstances outlined, we do not consider awarding discretionary tenancies to household members remaining in a property after a tenant has voluntarily left the property. In such circumstances, we provide housing options advice, make the appropriate referrals for further support (i.e., to our Local Authority partners) and take action to obtain possession of the property.

4.22 If both the case circumstances and the relationship to the tenant are assessed as eligible under these definitions, we require the following conditions to be satisfied in order to further consider a discretionary tenancy:

- The applicant must have a legal right to hold a tenancy and have recourse to public funds.
- The applicant (and any other household members) must have lived with the tenant for the previous 12 months, as a minimum.
- The applicant must not have a legal interest in another property which could be available for their occupation.
- The tenancy must have been conducted satisfactorily, and there is no risk of harmful impact on the home, neighbourhood, or community by awarding the applicant a discretionary tenancy.
- The applicant does not have the financial capacity to rent or purchase another property (i.e., private sector rent or homeownership).
- The granting of a discretionary tenancy does not conflict with our charitable objectives or legal, regulatory, or moral obligations as a responsible and caring social landlord.

4.23 In cases where the remaining family/household members would be under-occupying the property, or if the property is adapted and the adaptations are no longer required, we will expect the applicant/household to move to suitable, alternative accommodation. In such cases where this is relevant, this will be a condition of the discretionary tenancy being awarded. The applicant will be given two property offers, and if both are refused then action will be taken to end the tenancy.

4.24 If it is determined that a discretionary tenancy will not be granted, the applicant will have the right of appeal. The applicant will have 7 calendar days to appeal in writing, and the appeal will be heard by a Head of Service, Assistant Director, or Director.

4.25 Where the right of appeal is exercised and our original decision is upheld, this will be our final decision and no further right of appeal will be granted.

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5. Assignment

5.1 This section applies to tenants who have an assured or secure tenancy. Our fixed term tenants have the right to assign where this is set out in their tenancy agreement.

5.2 Assured shorthold tenants, including those within the starter period, do not have the right to assign.

Requests for assignment

5.3 An assignment can only take place if the original tenant has the right to assign. We will consider the following types of assignment:

- **By mutual exchange:** Tenants who have the right to mutually exchange can 'swap' their home with another tenant of a registered provider of social housing, such as another housing association or local authority. A mutual exchange cannot be carried out with a tenant of a private landlord. For further information, see our Mutual Exchange Policy.
- **By a court order:** We will always agree to an assignment if ordered to do so by a court order.
- **To a potential successor:** Secure tenants have the right to assign their tenancy to someone who would be an eligible successor. Other tenants may have the right to assign to a potential successor if stated in their tenancy agreement.

5.4 An assignment does not count as a succession where it is required by a court order or occurs through a mutual exchange.

5.5 We may refuse a request of assignment where the:

- Tenant has rent arrears or any other outstanding breach of their tenancy
- Tenant is subject to legal action by us
- Property would not be suitable for the needs of the person the tenancy would be assigned to (assignee) or their household. This includes some sheltered housing schemes or where the property has been adapted and the assignee or any member of their household does not require the adaptation.
- The tenancy has already been assigned or succeeded where the request is not via a court order or mutual exchange.

5.6 Where there are outstanding arrears, we will agree with the tenant that they must clear these before proceeding with their application to assign their tenancy unless there are exceptional reasons, or it is in our interest to do so.

6. Equality, Diversity and Inclusion

6.1 We will treat all applications for succession sensitively and fairly in line with this policy and legislation. To make the best use of our adapted properties we will assist successors who are not in need of the adaptation to move to a more suitable property.

6.2 An Equality Impact Assessment (EqIA) has been completed for this policy. Ongoing monitoring of residents' protected characteristics will be conducted to identify any adverse impact and future actions.

6.3 This policy aligns with our wider Equality Diversity and Inclusion Strategy by supporting the vulnerable, creating places where people want to live and building resilience in people and communities.

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7. Legislation and Regulation

7.1 Key legislative and regulatory requirements affecting this policy:

- Housing Act 1985 and 1988 (as amended)
- Localism Act 2011
- Matrimonial Causes Act 1973
- Family Law Act 1996
- Equality Act 2010
- Regulator of Social Housing's Regulatory Standards

8. Responsibilities

8.1 The Managing Director of North Counties has overall responsibility for the delivery of, and compliance with, this policy.

8.2 The Assistant Directors of Customer Service are responsible for training and monitoring that this policy is followed.

Approval

Version number	1
Effective from	1 April 2023
Policy owner	Managing Director of North Counties