

Policy Purpose

This policy applies to Derby Homes Assured and Assured short hold (starter) tenancies only. Please see the Derby City Council policy for secure and introductory tenancies.

This policy sets out how Derby Homes deal with succession claims following the death of a tenant. Tenants have a range of statutory and contractual rights which vary according to the type of tenancy agreement they hold.

We recognise that the death of a tenant can be a traumatic time for their family. When dealing and processing any succession requests, we ensure that we are sensitive to residents and applicants' needs by working with occupants to quickly establish whether they have statutory or contractual succession rights to succeed and promptly informing them.

Policy Control

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Department	Housing Management
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1. AIM OF SUCCESSION POLICY

Succession is a statutory right given under section 17 of the Housing Act 1988 for Assured Tenants to pass on their tenancy to qualifying successors following their death.

The Localism Act 2011 altered the process for contractual succession rights for family members of assured tenants if their tenancies started on or after 1st April 2012. It also amended section 17 of the 1988 Act to extend the statutory right of succession of assured tenants to tenants with a fixed term assured shorthold tenancy of 2 years or more.

The 1988 Act was amended by:

- The Civil Partnerships Act 2004 which extended statutory succession rights to same sex couples; and
- The Marriage (Same Sex Couples) Act 2013 which states all references to marriage in legislation shall be read as including a reference to marriage of a same sex couple.

The policy covers three types of succession, and where we may use discretion where there is no right to succession:

2. KEY TERMS AND DEFINITIONS

Assured tenancy – refers to both periodic assured and assured shorthold fixed term tenancies, unless stated otherwise.

Family member / qualifying member – for the purpose of this policy we adopt the definition of a family member as found in s.113 of the Housing Act 1985

‘(1) A person is a member of another person’s family [...] if-

(a) [they are] the spouse or civil partner of that person, or [they] and that person live together as husband and wife (or as if they were civil partners), or

(b) [they are] that person’s parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.’ An adopted child is treated as a member of the family. A foster child does not qualify as a member of the family.

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Cohabitee – a person living with the resident as a long-term partner (including same sex relationships). For assured tenancies, a cohabitee is treated in the same way as a spouse or civil partner.

Under-occupation – having one or more bedrooms than is required according to our bedroom standard, as set out in Derby City Councils Lettings and Allocations policy.

Any reference to 'we' or 'us' refers to Derby Homes

3. TYPES OF SUCCESSION AND ELIGIBILITY

Survivorship - where a joint tenant dies the tenancy continues in the surviving tenants' name. The remaining joint tenant is classified as a "successor" so there are no further succession rights e.g. if the tenant re-marries, their new spouse has no rights to succeed the tenancy. A new tenancy is not issued.

Statutory succession - where succession rights are granted by law to a partner of a Secure or Assured tenant or, where the tenancy was granted prior to 1 April 2012, to a qualifying family member of an Assured tenant where they are not a joint tenant.

Post April 2012 family members do not have a statutory right to succeed in the absence of a spouse, civil partner or cohabitee unless the tenancy agreement states otherwise. Where a succession occurs as a result of rights provided for in the tenancy agreement, it will operate as a statutory succession, and there will be no further rights of succession.

Statutory succession can only happen once.

Contractual succession - where the tenancy agreement provides qualifying the Partner/family members of Assured tenants' rights of succession

- pre-April 2012, a successor must have occupied the property of the deceased tenant as his or her only or principal home immediately before the tenant died and they must be a spouse/civil partner unless the tenancy provided otherwise. However, there is no right to succeed if succession has already taken place.
- post April 2012, these will take effect as a succession if the tenancy agreement makes express provision to that effect, they must be a spouse/civil partner unless the tenancy agreement states otherwise.

The applicant making the request will need to provide substantiating evidence and information to prove they qualify. Examples of this might include, benefit records, medical records, tax records etc.

Where one or more family member is eligible, they should reach an agreement between themselves as to who inherits the property. If they cannot then we will select a successor to the tenancy. In making this decision we will take into consideration:

- The size of each family member's residual family – including any access rights to children.
- The size of the property.
- Whether the family member has a live in carer that requires a bedroom.
- whether the property has any aids or adaptations for the family member.
- the age of each family member.

- the length of time that each family member has resided at the property prior to the claim to statutory succession rights.
- Where relevant, the nature and location of the property against the current and reasonably foreseeable strategic, operational, and financial requirements of the Council such as relating to regeneration, site assembly and transport issues; and
- any other relevant information presented to us

If the member of the family succeeding the tenancy is the spouse or civil partner, they have the right to remain in the family home. Outside of this the law allows the landlord the right to ask anyone other than the spouse or civil partner to move if the property is larger than they need.

In making this decision we will take into consideration:

- The size of the residual family – including any access rights to children
- The size of the property
- Whether the successor has a live in carer that requires a bedroom
- whether the property has any aids or adaptations
- the housing need in the area
- the age of the successor
- the needs and wishes of the successor
- any other relevant information presented to us
- the length of time that the successor has resided at the property prior to the claim to statutory succession rights

Discretionary allocations to non-statutory successors

Where the death of a sole tenant leaves someone in the property without an automatic right to succeed to the tenancy, we will consider granting a new tenancy in certain circumstances at that, or an alternative property (if the current property would be under-occupied by more than one bedroom or not be suitable to meet their current need). This is in line the Council's Allocations Policy 2020-25.

This could include cases where the person is:

- a non-qualifying member of the tenant's family but has lived at the property for at least a year before the tenant's death
- a family member of a deceased tenant who had previously been a successor at the property
- someone who has cared for the deceased tenant whilst living in the property
- someone who has accepted responsibility for the deceased tenant's dependents.

In deciding whether to offer a discretionary allocation we will take into account the following:

- The size of the residual family – *including any access rights to children*
- The size of the property
- Whether the successor has a live in carer that requires a bedroom
- whether the property has any aids or adaptations

- the housing need in the area
- the age of the proposed tenant
- the needs and wishes of the proposed tenant
- any other relevant information presented to us
- the length of time that the proposed tenant has resided at the property prior to the death of the tenant

Discretionary allocations will allow for under occupancy where occupation/household criteria are met and the under occupation does not exceed one bedroom.

In adopting this approach to considering discretionary allocations, Derby Homes will give due consideration to the needs of the individual and their family whilst at the same time adopting a balanced and proportionate approach to the statutory function of ensuring the best use of social housing resources in the city.

4. MONITORING COMPLIANCE AND EFFECTIVENESS

In line with the Derby Homes Policy Framework, this policy is scheduled to be reviewed every three years, unless due to a change in Government legislation or regulatory requirements, then the review period will be brought forward in order to ensure compliance.

5. REFERENCES AND GLOSSARY

- Housing Act 1988 (the “1988 Act”); and
- Localism Act 2011
- Civil Partnerships Act 2004
- Marriage (Same Sex Couples) Act 2013