

# Succession and Assignment Policy



Directorate: Communities  
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Document Information
<p><b>Scope:</b></p> <p>This policy sets out the aims and principles which will apply in respect to the transfer of tenancy rights through succession and assignment</p> <p>The purpose of this policy is to ensure Salix Homes processes all claims for succession and assignment of tenancy in accordance with current legislation and the contractual tenancy agreement.</p> <p>The objectives of this policy are:</p> <ul style="list-style-type: none"><li>• To ensure that all claims for succession and assignment of tenancy comply with current legislation and the tenancy agreement.</li><li>• To ensure that all claims for succession and assignment are treated fairly and efficiently within a given timeframe.</li><li>• To ensure that all involved receive the support, advice and assistance required when submitting a request to succeed to a tenancy.</li><li>• To enable those who do not qualify for succession an opportunity to be considered under Salix Homes' left in occupation policy.</li><li>• To ensure that Salix Homes' allocations and lettings policies are not open to abuse by individuals taking over properties that they are not entitled to.</li></ul>
<p><b>Service Standards / Performance Measures / Corporate Strategy:</b></p> <p>Please refer to the procedural service standards in relation to this policy.</p>
<p><b>Risks:</b></p> <p><b>Risk:</b> Changes to legislation mean that Salix Homes' approach is no longer applicable.</p>

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Issue No: V5  
Author: Liz Sykes  
Owner: Allocations & Tenancy Specialist Manager  
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**Document Information**

**Mitigation:** Tenancy specialist is responsible for researching updates on government policy.  
**Owner:** Customer services manager

- Related Policy/Procedure & Documents:**
- Salix Homes’ Succession and Assignment procedure
  - Salix Homes’ Mutual Exchange procedure
  - Salford City Council’s Allocations policy
  - Salix Homes’ Left in Occupation procedure
  - Tenancy Fraud procedure
  - Succession and Assignment application form

**Related Legislation / Relevant Regulation:**

Salix Homes will comply with current legislation and guidance. Government legislation has been considered when formulating this policy and accompanying procedure. The following Acts and relevant codes of guidance should be considered as a minimum when assessing applications for succession and assignment:

- Localism Act 2011
- Housing Act 1985
- Housing Act 1988
- Housing Act 1996
- Law of Property Act 1925
- Matrimonial Causes Act 1973
- Matrimonial and Family Proceedings Act 1984
- Children Act 1989
- Civil Partnership Act 2004

Any personal information provided to us regarding customers’ personal or financial circumstances will be dealt with in the strictest confidence. All data held in respect of residents will be recorded and processed in accordance with the Data Protection Act 2018.

**Retention & Legal Basis for Storage:**

All legal basis for processing are stored within the information asset register. All retention periods for storage are held within the data retention schedule.

**Stakeholders:**

## Document Information

The policy and procedure were circulated to Neighbourhoods and Income Management Teams for comment and was referred to SMT

### **Data Protection Impact Assessment (DPIA)**

A DPIA has been performed as part of this policy review.

### **Equality Impact Assessment (EIA)**

An EIA was performed as part of this policy review.

## Introduction

1. Succession is the process by which a tenancy can be legally transferred to another person on the death of the original tenant. Assignment is one of the ways a tenancy can be legally transferred from one person to another during the tenant's lifetime.
2. This policy, in conjunction with Salix Homes' succession and assignment procedure, identifies Salix Homes' approach in relation to all applications for succession and assignment in line with current legislation.

## Definitions

3. In the context of statutory succession and assignment, the following definitions apply:

**Succession:** Process by which a tenancy can be legally transferred to another person on the death of the original tenant.

**Assignment:** One of the ways a tenancy can be legally transferred from one person to another during the original tenant's lifetime.

**Spouse:** Married partner or civil partner.

**Co-habiting partner** A person living with the tenant as if they were married or civil partners

**Family member:** Parent, grandparent, child, grandchild, sibling (including half sibling), uncle, aunt, nephews and nieces, step relations.

4. In the context of non-statutory succession and assignment (where a statutory entitlement does not apply), the following definitions apply:

**Succession:** Process by which a new tenancy can be granted to another person after the death of the original tenant (provided that the original tenancy is ended).

**Assignment:** One of the ways a tenancy can be legally transferred from one person to another during the original tenant's lifetime.

**Spouse:** Married partner or civil partner.

**Civil partner:** Civil Partner under the Civil Partnership Act 2004

**Co-habiting partner:** A person living with the tenant as if they were married or civil partners

**Family member:** Parent, grandparent, child, grandchild, sibling (including half sibling), uncle, aunt, nephews and nieces, step relations.

## Succession

5. There can normally only be one statutory succession during the lifetime of a tenancy, although there are some exceptions for Transferred Assured Tenants which are discussed below. If the deceased tenant was already a successor in their own right, the tenancy cannot automatically be passed on again to another person. For statutory succession, a previous successor is someone who:
  - Became a sole tenant by survivorship, when one of two or more joint tenants has died;
  - Gained their tenancy as a right of succession following the death of the previous tenant or under the will or intestacy of the previous tenant (although see below)
6. In addition, where Salix Homes has discretion (in non-statutory succession cases), an applicant will also be treated as a previous successor if they:
  - Gained their tenancy as a result of an exchange of tenancies and they were a successor under the original tenancy;
  - Gained their tenancy as a result of an assignment of tenancy or
  - Gained their tenancy as a result of a court order relating to matrimonial proceedings and their spouse was a successor
7. Under the Housing Act 1988:-
  - A person who gained their tenancy through the statutory succession provisions of the Housing Act 1985 while it was a secure tenancy is not counted as a “successor” if the event occurred during the Council’s ownership

BUT

  - A surviving joint tenant who gained their tenancy on the death of a joint tenant is counted as a “successor” regardless of whether the death occurred before or after stock transfer
8. However, it is the policy of Salix Homes that Transferred Assured tenants (previously secure tenants who signed assured tenancies following the transfer of stock from Salford City Council to Salix Homes on 23<sup>rd</sup> March 2015 and have protected rights) will not have any previous successions counted against them when exercising its discretion in relation to non-statutory successions. In order to give effect to this policy, Salix Homes will take steps to grant a new tenancy, where appropriate, if all statutory rights of succession have been used up.

## Assured Protected Rights Tenancies

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9. Tenants who hold an Assured Protected Rights Tenancy are allowed to pass on their tenancy to:
- Their Spouse, Civil Partner or Co-habiting Partner who was occupying the dwelling as their only or principal home at the time of the tenant's death
  - Another family member as stipulated in the Housing Act 1985 (parent, grandparent, child, step child, grandchild, brother, sister, aunt, uncle, niece, nephew whether by blood or by marriage), who has resided with the tenant (not necessarily at the property), for at least 12 months prior to the tenant's death.
10. In the event that there is more than one qualifying person, the Spouse, Civil Partner or Co-habiting Partner takes precedence but otherwise the qualifying persons must decide on a successor themselves. If they are unable to decide, Salix Homes is entitled to choose the successor, where it has discretion, taking into account all relevant matters. Otherwise, where there is more than one statutory successor, they must apply to the County Court for a determination. Only one named individual can apply to succeed; there can be no joint succession.

### **Assured and Starter Tenancies**

11. New assured and starter tenants have a statutory right to pass on their tenancy to:
- A surviving Spouse, Civil Partner or Co-habiting Partner who was occupying the dwelling as their only or principal home at the time of death. If it is a starter tenancy, it will remain a starter tenancy until the end of the starter tenancy period.

### **Property type**

12. If the property has more bedrooms than the succeeding tenant is assessed as needing under the allocations policy, Salix Homes normally seek to move them to another suitable property to ensure best use of housing stock. (This does not apply to a surviving joint tenant, Spouse, Civil Partner or Co-habiting Partner).
13. If the applicant is living in a property that has been adapted for occupation by a physically disabled person, or it is the practice of the landlord to let the property to persons with particular needs (and there is no longer such a person living in the property), then Salix Homes will normally seek to move them to another suitable property.
14. Any qualifying successors who have been offered an alternative property will be treated as a successor in their new property as far as the law allows.
15. If a structural survey reveals that the property being offered has subsidence, the applicant must attend court, solicitor's office/Commissioners for Oaths/an office appointed by the Lord Chancellor to administer statutory declarations to sign a statutory

declaration before the property is formally offered.

16. Where a family member of an assured protected rights tenant (not a Spouse, Civil Partner or Co-habiting Partner):

- qualifies to succeed to a tenancy; *and*
- under-occupies the accommodation by more than one bedroom;

a Notice of Seeking Possession will be served on Ground 9 of Schedule 2 of the Housing Act 1988. Proceedings will be initiated no sooner than 6 months and no later than 12 months after the death (or notification of the death) unless there are other housing management reasons to depart from this timescale (e.g. rent arrears, ASB, false information etc). Three suitable offers of alternative accommodation will be made by Salix Homes in the interim period.

### New tenancy offers

17. In certain circumstances, Salix Homes may consider offering a starter tenancy to a person who does not qualify for succession following the death of the tenant. To be eligible for consideration, the applicant must provide evidence that:

- They are a family member (as defined above) living in the property at the time of death; and
- They have continuously lived in the property since the start of the tenancy as their only or principal home.

Or, the applicant must:

- have been caring for and living with the tenant as their only or principal home for a minimum of 12 months; and
- have been in receipt of carers allowance for a minimum of 12 months.

Or, the applicant must:

- have accepted and can evidence legal responsibility for the tenant's dependants and needs to live with them; and
- The accommodation must be their only or principal home.

18. Consideration will be given to Salix Homes' left in occupation policy, allocations policies, as well as current homelessness legislation and the code of guidance, when assessing whether an allocation will be made.

19. Following investigation, a decision will be made as to whether the remaining occupier may be offered a starter tenancy in their current accommodation or be offered a suitable alternative property. Regard will be given, but not limited to the:

- Size and type of property

- Length of time applicant has lived with the deceased tenant
- Medical circumstances of applicant relevant to their housing
- Eligibility for assistance under Part VII of the Housing Act 1996
- Financial circumstances of applicant

20. When the tenancy has been terminated and whilst an investigation is being carried out, Salix Homes will set up an account in the name of the remaining occupier to collect payments for the use and occupation of the property, otherwise known as mesne profits. The balance of the use and occupation account must be clear before an offer can be made.
21. Where a decision is made not to offer a property, possession proceedings will be initiated.

## Assignment

22. A tenancy can only be passed on once by succession or assignment to a potential successor. An existing successor will not be permitted to assign a tenancy. In all cases of assignment, the tenancy must be assigned by way of a deed. However, a tenancy can be assigned by way of mutual exchange more than once.
23. Assured protected rights tenants will have any previous assignment prior to transfer discounted.
24. A tenancy can be assigned as follows:
- Assignments by way of exchange (otherwise known as mutual exchange)
  - Assignments under property adjustment orders in connection with matrimonial proceedings
  - Assignments to a person who would be legally qualified to succeed if the tenant had died immediately before the assignment
25. Assured tenants will only be permitted to assign their tenancy in certain limited circumstances;
- A court has ordered them to transfer their tenancy to someone else e.g. in matrimonial proceedings.
  - They are exercising their right to exchange with our permission
  - They want to assign their tenancy to someone who would be entitled to succeed as a statutory successor to the tenancy on their death. This can only be done with our permission.
26. Where a tenancy is passed to a person through the will of the late tenant or by an order of the court, where consent is not required, the tenancy will be transferred to their name. If they do not qualify as a statutory successor, Salix Homes reserves the right to use Ground 9 and offer suitable alternative accommodation.



## Rent arrears

### Succession

27. Where the tenant dies owing rent arrears these do not automatically become the responsibility of the successor, where there is a statutory succession.
28. If the 'new' tenant was a joint tenant with the deceased, they will be liable for any arrears.
29. If a tenant dies and their rent account is in arrears at the time of their death and a statutory succession takes place, Salix Homes will set the rent account to zero from the first Monday after the death. From that point onwards, any arrears that accrue are the responsibility of the successor.
30. Salix Homes will invoice the personal representative for the deceased tenant's rent arrears, which they will have to pay out of the deceased tenant's estate.
31. As the debt is owed by the deceased tenant's estate, if the statutory successor is also the personal representative and beneficiary of the estate as next of kin, he or she is responsible for paying the arrears out of the estate but this will not be due as "arrears".

### Assignment

32. Salix Homes will not give permission for an assignment where any monies are owed to Salix Homes.

## Starter tenancies

33. Starter tenants do not have the right to assign their tenancy during the first 12 months of the tenancy or any extension period.

## Minors

34. Where a minor qualifies to succeed, the tenancy will be held on trust. The minor holds the beneficial interest and the Trustee holds the legal interest. An equitable tenancy must be signed by the minor and the Trustee. Salix Homes will not act as Trustee as this can cause a conflict of interests. As the Trustee is not automatically responsible for the rent, a Rent Guarantee will be signed either by the Trustee or another adult. Once the young person reaches 18 years of age, a vesting deed will pass the legal interest from the Trustee to the young person.

## Notices & Possession claims

35. The death of a tenant does not automatically end the tenancy so where there to no statutory succession rights the tenancy needs to be ended by the service of the appropriate notice.

## Customer consultation

36. Salix Homes will consult with customers on any major revision to this policy.