

East Devon District Council

Succession Policy

Version 1

Officer responsible: Housing Solutions Manager

Authorised by: Housing Review Board

Authorisation date: 8th March 2018

1 Previous Policies/Strategies

None

2 Why has the council introduced this policy?

To ensure that succession is dealt with consistently and in line with current legislation

3 What is the council's policy?

3.1 Policy statement

3.1.1 This policy sets out how East Devon District Council ('the Council') will deal with succession in respect of secure tenancies created before 1 April 2012 and how the change in the law affects successions to secure and flexible tenancies created on or after 1 April 2012

3.1.2 Succession is the transfer of a tenancy following the death of a sole or joint tenant. The rights of tenants to succeed secure and flexible tenancies are set out in Section 87 of the Housing Act 1985

3.1.3 The Localism Act section 160 introduced amendments to the legislation which redefines who can succeed to a tenancy before or after 1 April 2012.

The key objectives of the Succession Policy are:

- To investigate and respond promptly and sensitively to applications for succession;
- To allow only one succession in line with the provisions of the Housing Act 1985, as amended by the Localism Act 2011.
- Offer guidance and clarification to tenants on the circumstances where succession will be granted or refused.
- Making best use of council stock

3.2. Definitions

For the purpose of this policy the following definitions shall apply

Succession is the statutory process by which a husband, wife, civil partner, close family member (defined by statute) can become the Council's tenant after the death of the tenant to whom the tenancy was granted. There can be only one succession.

On the termination or death of the succeeding tenant the tenancy will come to an end.

3.2.1 For secure tenant(s) who were granted a tenancy prior to 1 April 2012, a qualifying **successor is:**

- a tenant's partner-either spouse or civil partner
- another qualifying family member of the tenant
- the remaining joint tenant provided that the deceased tenant was not a successor themselves.

3.2.2 For secure or flexible tenant(s) who were granted a tenancy post 1 April 2012, a qualifying **successor is:**

- a tenant's partner or spouse in occupation for at least 12 months prior to the date of death provided that the tenant was not a successor themselves

3.2.3 Schedule 8 section 41 of the Civil Partnership Act 2004 has amended the Housing Act 1985 to allow succession to persons who have been living with the deceased tenant as a civil partner or as though they were civil partners. There is no requirement for a civil partnership to have taken place.

3.3 Applying for succession

Following the loss of a family member we understand this may be a very distressing time for you. However the checks we make and questions we ask are necessary for us to make the right decision about the tenancy. The case may be put on hold if you do not attend interviews if requested or send us the information we need to process your application.

3.3.1 If you believe you have the right to succession you need to contact the Housing Service as soon as possible but within 28 days of the date of death of the tenant to put the Council on notice that it is your desire to remain at the property.

3.3.2 You will be asked to complete a 'Request for succession' application form which lists the evidence you will be required to supply to evidence your relationship to the deceased and the length of time you have lived at the property.

3.3.3 Our officers will commence our investigations which will include contacting other organisations and agencies, and teams within the Council to confirm any information you supply. This may include Department of Work and Pensions and our Council Tax and Housing Benefits Teams.

3.4 Succession Policy (How the Council will consider you application)

3.4.1 The Housing Enabling and Allocations Manager ('the Manager') will be responsible for the day-to-day implementation of the policy.

3.4.2 Any person who wishes to make a claim for the right to succession following the death of a tenant must make a claim within 28 days from the death of the

tenant. However the Manager may grant an extension of time in special circumstances.

- 3.4.3 The Housing Allocations Team will, where possible, investigate and respond to an application for succession within ten working days of receipt of a written application for succession. Estates Management officers may be asked to comment on an application.
- 3.4.4 A successor will be granted a tenancy on the original terms of the tenancy agreement (including the payment of any rent arrears).
- 3.4.5 Where tenancies are secure, successions by qualifying family members are protected by law (statutory successions). As statutory successions do not create a new tenancy, the existing rent charge will continue to apply to a successor.

Joint tenancies (for all secure tenancies before or after 1 April 2012)

- 3.4.6 Where a joint tenant exists and one of the tenants dies the tenancy automatically continues and the surviving joint tenant becomes a sole tenant. They retain all the rights and obligations of the tenancy (including any rent arrears or credit). There is no further automatic right of succession.

A spouse/civil partner (for all secure tenancies before or after 1 April 2012 and for flexible tenancies after 1 April 2012)

- 3.4.7 On the death of a sole tenant, who is not a successor, the tenancy will pass to the tenant's spouse or civil partner.
- 3.4.8 The spouse/civil partner must have occupied the property as his or her only or principal home for at least 12 months prior to the tenant's death.
- 3.4.9 Where a spouse/civil partner of the tenant makes an application to succeed the tenancy they would need to provide formal proof of marriage/partnership and residency at the property at the time of the tenant's death.

Non spouse/family member successions (for tenancies granted before 1 April 2012 only)

- 3.4.10 On the death of a sole tenant, where there is no spouse or civil partner to succeed, a member of the tenant's family may do so providing that s/he has been residing in the property as his/her only or principal home throughout the period of twelve months ending with the tenant's death and providing that the original tenancy was granted prior to 1 April 2012.
- 3.4.11 A family member (defined in s113 Housing Act 1985) includes a tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece, stepchild. This shall include relationship by adoption but not foster children.

3.4.12 An application by a person qualified to succeed to the tenancy would need to be supported by formal proof of residence at the property for a period covering the entire twelve months prior to the death of the tenant. Formal proof that the Council will require to see includes:

- copy of the death certificate
- Department of Work and Pensions (DWP) Benefit documents (Housing, employment, disability etc.)
- Council Tax statements
- Bank statements
- Utility bills
- Medical information (12 month registration with a local GP)
- Drivers licence (demonstrating registration at the property for 12 months)
- A current passport (for identification)
- Pay slips, income tax documentation
- Electoral registration
- Any other documents/information the Council deems necessary to evidence the necessary 12 month period of occupation of the property as sole or principal home.
- An applicant may also be asked to produce evidence of their five year housing history (including any periods of imprisonment)

It is essential that the applicant is able to provide proof of the entire 12 month period prior to death of the tenant and not just part of it. The applicant may also be required to attend an interview.

It is important to note that the Manager will make the decision on a number of pieces of evidence provided, and not take into account single pieces of evidence supplied. Therefore utility bills can be provided as part of the evidence, but not as sole evidence.

3.4.13 In cases where the original tenant was granted the tenancy prior to the 1 April 2012 and where there is more than one eligible successor and agreement cannot be reached between them as to who should succeed to the tenancy, the Manager will select a successor to the tenancy. In making this decision the Manager will consider factors including the wishes of the original tenant(s), care of children suitability, and any other issue relevant to the application. The applicant making the request will need to provide substantiating evidence and information to prove they qualify.

3.4.14 Where a succession is granted to a non-spouse/family member but the property is larger than would be reasonably required by the successor the Council will use Ground s15 and 15A of the Housing Act 1985 and serve a Notice Seeking Possession and requiring the successor to move to smaller or more suitable accommodation. The notice will be served no sooner than 6 months after the death of the previous tenant and not later than 12 months after the death if the successor remains in a property that is considered under occupied or has been adapted for a tenant with specific physical or mental health needs.

The Council will make one reasonable offer of accommodation. The Council can seek possession of the property after 6 months if the successor has not agreed to move to suitable alternative accommodation.

3.4.15 Circumstances where the council may decide the tenant will have to move will be made on a case by case basis. The decision will be made on the following points:

- The property will be under occupied.
- The property is for those with a support need.
- The property is adapted for the needs for a disabled person
- The property is not affordable
- Any additional information that we become aware of.

3.4.16 Where succession is granted, but the successor is required to move to more suitable accommodation the Housing Allocations team will aid the move by banding the successor in the highest band or make the successor a direct offer of what is considered to be a suitable accommodation.

Anti-social behaviour

3.4.17 Where an applicant for succession has been involved in anti-social behaviour including being the subject of a civil injunction or acceptable behaviour contract linked to his/her occupation of the property or received a criminal caution, the Council will not consider the application and will seek possession of the property in line with the Tenancy Agreement.

3.5 Moving to a different property

3.5.1 Where an occupier (with the exception of the surviving spouse/civil partner) succeeds to a secure tenancy on the death of the previous tenant the Council may seek to move the tenant to a more suitable property using Ground 15A Schedule 2 of the Housing Act 1985.

3.5.2 Statutory succession to a secure or flexible tenancy entered into after 1st April 2012 only applies to a spouse or civil partner of the deceased tenant living at the premises at the time of death. Other resident family member do not have the right to succeed.

3.6 The Council's Discretionary Policy

Circumstances where there are no automatic rights of Succession

3.6.1 Where the death of a sole tenant leaves someone in the property who does not have a legal right to succeed to the tenancy, Housing Allocations will consider granting a tenancy in certain circumstances at that, or an alternative, property (if the current property would be under-occupied or not be suitable to meet their current need) at the discretion of the Head of Housing Services in accordance with appropriate section of Devon Home Choice.

You will be considered for re-housing if you:

- are named on the tenancy agreement as an occupant
- have always lived with the tenant
- have no other housing alternative

and are one of the following:

- vulnerable (as defined by homelessness legislation)
- a parent to dependent children and a move will cause hardship
- have been living with the deceased tenant continuously for 20 or more years and will face hardship in securing alternative accommodation

3.6.2 Where a tenant has died, and there are other people/person still residing in the property who are not entitled to succeed to the tenancy EDDC will work with the Housing Allocations and Options Team and Estates Management Team and have regard to:

- A meeting with the Housing Options team will be arranged who will investigate whether the occupant is in priority need under Homelessness legislation, taking into consideration the following points
- The length of time the applicant has shared the tenants home
- The circumstances in which the applicant moved into the property
- The vulnerability and health needs of the applicant
- The housing need and the resources of the applicant
- The financial resources of the applicant
- The likely effect of any decision by EDDC not to exercise its powers on health, safety or wellbeing of the parties and of any relevant child.

3.6.3 Where a priority need is found under Homelessness legislation the Council may use its discretion to assist with moving the occupant to more suitable accommodation either within its own stock or into the private sector.

3.6.4 When a discretionary tenancy is offered and the property is not suitable for the need of the applicant the Council will assist the occupant to make an application on the Housing Register (Devon Home Choice) so they can bid on properties more suitable for their needs. During this time the Council may make a reasonable offer of accommodation.

3.6.5 For applicants who do not fall into the above category they will be given appropriate advice and assistance to find alternative accommodation. During this time the file will be handed over to our Estates Management Team who will serve notice to commence eviction proceedings to return the property into housing stock.

3.6.6 The Council will automatically seek possession of a property where it is clear that a succession applicant has:

- deliberately or recklessly concealed their occupation of a property, for example collusion in benefit fraud which is a criminal offence,
- a record of anti-social behaviour at the property,
- criminal convictions for supply of drugs, domestic abuse, violent crime, etc., at the property,

- where an applicant cannot evidence that he/she had committed himself/herself to the deceased tenant in a manner akin to marriage or civil partnership. For example, where they had been careful to claim benefits separately or had failed to declare the existence of the applicant as being in occupation as sole or principal home. (They should have made a public affirmation of their relationship, such as to display commitment to the outside world.) An example of this could be joint names on Council Tax records

3.6.7 While we consider your application for a discretionary tenancy you must pay charges for living in the property. This is known as a “use and occupation” charge, it will not be considered to be rent demanded under a formal contractual tenancy agreement. If you do not pay it or fall in to arrears then you will be asked to leave the property as soon as possible. Estates management will serve a trespass notice at the property. If you do not move out within a reasonable time then the Council will commence legal action to take possession of the property and will seek its legal costs against you.

3.7 Appeals

3.7.1 Any person(s) who are dissatisfied with a decision made concerning their application for succession should discuss that matter in the first instance with the Housing Enabling and Allocations Manager. If they are still dissatisfied, then the complaint will be dealt with through the Council’s complaints policy.

3.7.2 The Council will always advise potential applicants for succession to seek independent legal advice.

3.8 Equality and Diversity

3.8.1 The Housing Service recognises that it operates in a community with very wide social diversity. It is committed to providing equal opportunities and valuing diversity.

3.8.2 We aim to treat all customers fairly, and with respect and professionalism regardless of their gender, race, age, disability, religion, sexual orientation and marital status.

3.8.3 Full details of the Services’ approach is set out in the Council’s Equality and Diversity Policy.

3.9 Responsibility

3.9.1 The Strategic Lead-Housing, health and Environment retains the overall responsibility for the implementation of this policy.

3.9.2 The Housing Needs and Strategy Manager is responsible for the operational delivery of this policy and the associated policies and procedures. This includes responsibility for monitoring and reviewing, staff awareness and training, policy development and communication to tenants.

4 Equality impact considerations – the policy is high relevance to equality if it has a big impact on residents and users of the service
low

5 Appendices and other relevant information
None

6 Who authorised the policy/strategy and date of authorisation.
Authorised by the Housing Review Board
Date: 8 March 2018

7 Related Policies/Strategies, Procedures and Legislation
EDDC Tenancy Agreement
EDDC Tenancy Policy
EDDC Tenancy Strategy

8 Policy date for review and responsible officer
Review date: 1 April 2021
Responsible officer: Housing Enabling and Allocations Manager