

# Housing Operations Policies & Procedures



## Succession Policy

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| <b>1.</b> | <b>Policy objective</b>  |
| 1.1       | This Policy sets out the circumstances under which a spouse/partner or family member may remain in a WCH property following the death of the tenant. As a community organisation, Watford Community Housing ('WCH') recognises that housing stock is not just a home to a tenant but to members of their family also. We will deal with succession enquiries and applications sensitively following any tenant's death.  |
| <b>2.</b> | <b>Legislative &amp; regulatory requirements</b>   |
| 2.1       | <p><u>Legislative:</u><br/> Rent Act 1977<br/> Housing Act 1985 (section 113) -<br/> Housing Act 1988 (section 17 and Schedule 4) -<br/> Civil Partnerships Act 2004 – amended the above Housing Acts to extend statutory succession rights to same sex couple.<br/> Localism Act 2011<br/> Marriage (Same Sex Couples) Act 2013<br/> Housing &amp; Planning Act 2016</p>  |
| 2.2       | <p><u>Regulatory:</u><br/> RSH Regulatory Framework – Consumer Standards (April 2024)<br/> Tenancy Standard</p>  |
| 2.2.1     | <p>Required Outcomes - 1.3 Tenure<br/> 1.3.1 Registered providers shall offer tenancies or terms of occupation which are compatible with the purpose of the accommodation, the needs of individual households, the sustainability of the community, and the efficient use of their housing stock.<br/> 1.3.2 They shall meet all applicable statutory and legal requirements in relation to the form and use of tenancy agreements or terms of occupation.</p>   |
| 2.2.2     | <p>Specific Expectations - 2.3 Tenure<br/> 2.3.1 Registered providers shall publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud, and set out:<br/> a) The type of tenancies they will grant.<br/> b) Where they grant tenancies for a fixed term, the length of those terms.<br/> c) The circumstances in which they will grant tenancies of a particular type.<br/> d) Any exceptional circumstances in which they will grant fixed term tenancies for a term of less than five years in general needs housing following any probationary period.<br/> e) The circumstances in which they may or may not grant another tenancy on the expiry of the fixed term, in the same property or in a different property.</p> |

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|           | <p>f) The way in which a tenant or prospective tenant may appeal against or complain about the length of fixed term tenancy offered and the type of tenancy offered, and against a decision not to grant another tenancy on the expiry of the fixed term.</p> <p>g) Their policy on taking into account the needs of those households who are vulnerable by reason of age, disability or illness, and households with children, including through the provision of tenancies which provide a reasonable degree of stability.</p> <p>h) The advice and assistance they will give to tenants on finding alternative accommodation in the event that they decide not to grant another tenancy.</p> <p>i) Their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members.</p> |
| 2.3       | <u>Statutory</u> : As a registered housing provider, WCH must grant successions in accordance with Section 17 of the Housing Act 1988 and The Localism Act 2011.   |
| 2.4       | <u>Contractual (Tenancies)</u> : According to the tenancies granted by WCH, or transferred from WBC in 2007, there may be permission to succeed as stated in the tenancy agreement. This type of succession will be granted on a case by case basis after review of the said Tenancy Agreement.  |
| <b>3.</b> | <b>Scope &amp; definitions</b>   |
| 3.1       | <b>Scope</b>   |
| 3.1.1     | This Policy applies to all WCH <b>assured</b> and <b>fixed term</b> tenants referred to in this Policy as 'customers'. It excludes shared owners, joint venture tenants, market rent tenants leaseholders and those on Assured Shorthold tenancies.  |
| 3.1.2     | <p>This policy sets out how WCH manage 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.</p> <p>We recognise that the death of a tenant is often a very distressing and 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.</p>  |
| 3.2       | <b>Definitions</b>   |
| 3.2.1     | <u>Assignment</u><br>The legal transfer of a tenancy to an eligible person by one (living) person to another, the subsequent person then becoming the tenant and acquiring the benefits and obligations of the original tenant.  |
| 3.2.2     | <u>Successor</u><br>A person who 'succeeds' to a tenancy following the death of a spouse, partner or parent or other close family member.  |
| 3.2.3     | <u>Survivorship</u><br>Where one tenant in a joint tenancy dies, the tenancy automatically continues in the surviving tenant's name, providing there has been no previous Statutory Succession (as defined at 3.2.4 below).  |
| 3.2.4     | <u>Statutory Succession</u><br>The right granted by legislation for a successor to inherit an existing tenancy, rather than the property. A succession to the tenancy occurs automatically by law and does not require our   |

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| <p>3.2.5</p> <p>3.2.6</p> <p>3.2.7</p> | <p>consent as landlord. Because the successor is technically inheriting the tenancy rather than the property this means that WCH <i>will</i> encourage the tenant to 'rightsize' to a smaller property and where they do not voluntarily do so WCH can take legal action which may lead to the person being evicted.</p> <p><u>Contractual Succession</u></p> <p>The right granted by a (contractual) Tenancy Agreement for a successor to inherit an existing tenancy, rather than the property. The nature of the right will depend on the specific wording in the relevant Tenancy Agreement, <b>and this must be checked in all cases</b> by reference to both the Summary of Tenancy Agreement Succession Rights document at Appendix 1 and the original Tenancy Agreement held by the Housing Operations team. The right to succeed under statute is reflected within some of our Tenancy Agreements.</p> <p>Discretionary Tenancy</p> <p>A discretionary tenancy may be granted where there is no right to succeed but there are mitigating circumstances as to why we would offer the customer a new tenancy. This would not necessarily be at the same property and the customer would be offered a property that is suitable for their needs.</p> <p><u>Tenants on Watford Borough Council (WBC) Existing Terms</u></p> <p>Where a tenant has elected to remain on the original WBC terms and conditions as part of the stock transfer, only one Statutory Succession can take place.</p> <p><u>WCH Assured Transferred Tenants</u></p> <p>Where a tenant agreed to transfer on to WCH terms and conditions as part of the stock transfer, any previous Statutory Succession occurring before the stock transfer date will be disregarded and they will have a new right to Statutory Succession.</p> |
| <p>3.2.8</p> <p>3.2.9</p>              | <p><b><u>Tenancies issued before 1 April 2012</u></b></p> <p><u>Secure tenancies</u></p> <p>A person has a statutory right to succeed to a secure tenancy if they occupy the property as their only or principal home at the time of the tenant's death. The following order of priority applies:</p> <ol style="list-style-type: none"> <li>1. The tenant's spouse or civil partner.</li> <li>2. Family member, including a cohabitee, who has lived with the tenant for a period of 12 months or more before their death, and the property was their main residence.</li> </ol> <p><u>Assured tenancies</u></p> <p>A person has a statutory right to succeed to an assured tenancy if they occupy the property as their only and principal home at the time of the tenant's death and they are the deceased tenant's spouse, civil partner or cohabitee. Family members have no statutory right to succeed.</p> <p><b><u>Tenancies issued after 1 April 2012</u></b></p> <p>A person has a statutory right to succeed to a tenancy if they occupy the property as their only and principal home at the time of the tenant's death and they are the deceased tenant's spouse, civil partner or cohabitee. 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.</p> <p><u>Contractual succession</u></p> <p>A contractual succession takes place where succession rights are granted through the tenancy agreement, rather than by statute. Where a person has a contractual right to succeed, but not a</p>      |

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|           | <p>statutory right, we will issue a new tenancy agreement. The new tenant will not be a statutory successor, meaning that there will be a further right of statutory succession on their death. Contractual successions are only approved where the applicant meets the contractual rights of succession. Contractual rights are granted where:</p> <ul style="list-style-type: none"> <li>• this meets the requirements written in the deceased tenant's tenancy agreement</li> <li>• this is a condition of a stock transfer.</li> </ul> <p><u>Discretionary tenancies</u></p> <p>In occasional circumstances, we consider granting a discretionary tenancy where there are no statutory or contractual rights to succeed. Discretionary tenancies are granted in line with our tenancy policy. We treat each case on its merits. The new tenant will not be a statutory successor, meaning that there will be a further right of statutory succession on their death. When deciding whether to grant a discretionary succession, we will take the following facts (the list is not exhaustive) into account:</p> <ul style="list-style-type: none"> <li>• The applicant's relationship to the deceased tenant (e.g. spouse, family member or carer)</li> <li>• The length of time the applicant has lived at the property</li> <li>• Whether the property is the applicant's only or principal home</li> <li>• The age of the applicant (e.g. whether they a minor)</li> <li>• Whether the applicant has any support needs</li> <li>• How suitable the property is for the applicant's needs</li> <li>• the applicant's eligibility for housing</li> <li>• The composition of the household planning to live in the property</li> <li>• Whether or not permission to reside has been previously sought but not granted</li> <li>• The local demand for housing</li> <li>• The extent of any under occupation</li> <li>• The applicant's ability to pay the rent and sustain the tenancy</li> </ul> <p>The tenancy offered at our discretion may be for the deceased tenant's property or another property. The occupant will be liable for use and occupation charges after the Notice to Quit expires if the request for a discretionary tenancy is still being considered.</p> |
| <b>4.</b> | <b>Eligibility</b>  |
| 4.1       | Following the death of a customer, the right to succession is dependent upon the following factors:   |
| 4.2       | <ul style="list-style-type: none"> <li>• The Type of Tenancy Agreement (<b>as per section 3.2.5 the terms of the relevant Tenancy Agreement should be checked in all succession cases</b>);</li> <li>• Evidence of the existing tenant's death;</li> <li>• Evidence of successor's required length of residency at property (see section 5);</li> <li>• Proof of the necessary relationship between the deceased tenant and the successor (see section 5); and</li> <li>• The successor having no other principle home</li> <li>• Please review Succession Eligibility Guidance Table document for more information</li> </ul>  |
| <b>5.</b> | <b>Proof of Relationship and Residency</b>  |
| 5.1       | WCH will require evidence for <b>all</b> succession requests to confirm the identity of the person claiming succession. WCH requires evidence to establish:   |
| 5.2       | <ul style="list-style-type: none"> <li>• Their relationship to the deceased tenant (i.e. marriage / civil partnership certificate);</li> <li>• That the successor has resided at the home for at least 12 months as their only or principal home (where this is unclear the Area Housing Manager will consider whether to approve the succession application or obtain further evidence of residency; and</li> <li>• Their 'right to rent' where the successor is a non-EU citizen.</li> </ul>  |

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| 5.3       | Further information on this is provided at section 4 of the Succession Procedure.   |
| <b>6.</b> | <b>Multiple Successors</b>  |
| 6.1       | Where there is more than one eligible successor, a spouse / partner will take precedence over other relatives. If there is more than one family member claiming succession and the family cannot reach agreement as to who will succeed the tenancy, WCH will decide to whom the tenancy will pass to, seeking advice in appropriate cases. For more information see section 6 of the Procedure.  |
| 6.2       | <p><b>Rent arrears</b><br/> <u>Survivorship</u><br/> Where succession is claimed through survivorship, the remaining tenant is liable for any arrears and entitled to any credit on the rent account.</p> <p><u>Statutory, contractual succession and discretionary tenancies</u></p> <p>For successions not claimed through survivorship, the rent arrears pass to the deceased tenant's estate and should be dealt with by the personal representatives (if there are any)</p>  |
| <b>7.</b> | <b>Under-occupation</b>   |
| 7.1       | Under-occupation is considered to exist where a property size exceeds the housing need by one or more bedrooms.   |
| 7.2       | Where a successor is inheriting a tenancy and property, for example, to a spouse or partner through survivorship, the successor will be able to remain in the same property regardless of size. However, they will be offered and encouraged to consider the Rightsizing incentive of up to £2200 in alliance with the Rightsizing Policy.  |
| 7.3       | Where a successor is inheriting an existing tenancy, rather than a property, they will be required to move to a smaller, more suitable property if they are under-occupying the current home.   |
| 7.4       | The successor would be referred to the WCH Housing Panel and made one reasonable offer of suitable housing under a managed transfer. If the successor does not accept the offer within 6 months of the original customer's death, a possession notice will be served.   |
| 7.5       | Where we are entitled to do so, we reserve the right to refuse a claim for succession where the property will be under-occupied.  |
| 7.6       | <p><b>Statutory succession</b><br/> A spouse or civil partner has the right to succeed to the tenancy whether or not they are under-occupying. Where reasonable, we will ask successors to move to more suitable accommodation. If they refuse and hold a secure tenancy, we consider taking legal action in accordance with Ground 15A of schedule 2 of the Housing Act 1985. If they refuse and hold an assured tenancy, we consider taking action in accordance with Ground 9 of Schedule 2 of the Housing Act 1988. Where there are mitigating circumstances which would mean moving the customer would be severely harmful to their wellbeing the HO should completed a panel case requesting the customer remain at the current property.</p> |
| 7.7       | <b>Contractual succession</b>   |

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|            | <p>We offer contractual successors who are under occupying two offers of a suitable alternative accommodation. If the occupant does not move voluntarily, we consider, on a case-by-case basis, whether to seek possession of the property through legal action.</p>  |
| 7.8        | <p><u>Discretionary tenancies</u></p> <p>Where a customer is not eligible to succeed but can evidence has been living at the property for a long time or has vulnerabilities we may offer a discretionary tenancy. This should go through the Housing Panel to agree. Where approved the customer will get two offers of suitable accommodation.</p>  |
| 7.9        | <p>No claim for succession</p> <p>Where there is no successor we will serve a Notice to Quit on the personal representative of the deceased and serve at the property and on the Public Trustee.</p> <p>This will bring the tenancy to an end.</p>  |
| <b>8.</b>  | <b>Vulnerability of Proposed Successor</b>  |
| 8.1        | <p>Where an individual seeking succession does not meet the Succession Criteria at Table 1, but they or a member of their household (e.g. a child) is considered vulnerable under the Vulnerable Customers Policy &amp; Procedure, consideration of their succession claim will be given on a case by case basis.</p>   |
| 8.2        | <p>These cases should be referred to the Area Housing Manager for consideration.</p> <p>In cases where the spouse / partner / household member being considered for a discretionary offer of tenancy is particularly vulnerable, we will give special consideration to the circumstances of the case and the individual's vulnerability so that reasonable steps can be taken to manage the applicant's circumstances.</p> <p>Where there is a need for additional support from either internal or external teams in order to ensure appropriate safeguarding of the vulnerable person and their interests, appropriate referrals will be made.</p> |
| <b>9.</b>  | <b>Adapted Homes and Older Peoples/Flexicare Housing</b>  |
| 9.1        | <b>Adapted homes</b>  |
| 9.1.1      | <p>It should be borne in mind that a successor is technically inheriting a deceased customer's tenancy rather than their property. Where a home has had substantial adaptations made to accommodate the deceased customer which would not be required for the prospective successor, they will be encouraged and supported to 'rightsize' to a more suitable property, as shown in guidance table. Adaptations which could benefit future customers with disabilities will not be removed. Where the successor is unwilling to move, WCH will consider taking possession action.</p>  |
| 9.2        | <b>Independent Living/Flexicare Housing</b>   |
| 9.2.1      | <p>Where the 'inherited' home is Independent Living or Flexicare housing and the prospective successor does not meet the qualifying criteria for the accommodation, the successor will be encouraged and supported to 'rightsize' to a more suitable property. Again, where the successor is unwilling to move, WCH will consider taking possession action.</p>   |
| <b>10.</b> | <b>Rent Liability – Use and Occupation</b>  |

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| 10.1       | An eligible successor will be required to pay for the use and occupation of the property from the point of the expiration of the NTQ whilst the issue of their succession status or whether a discretionary tenancy is granted is determined. This will be calculated on a weekly basis.   |
| 10.2       | In a discretionary succession situation, WCH may reject the succession application where there are outstanding charges on the use and occupation account.  |
| 10.3       | The successor will be liable for rent, service charges and any other charges payable under the tenancy (e.g. recharges) at the date they succeed. However, if succession takes place by way of the grant of a new tenancy consideration will be given as to whether any arrears need to be cleared before granting the new tenancy.  |
| <b>11.</b> | <b>Arrears and Debts in Joint Tenancy</b>  |
| 11.1       | A Joint Tenant will remain liable for any rent arrears or other debts owed jointly under the tenancy at the time of death of the joint tenant.   |
| 11.2       | Any rent arrears or debts owed by a sole tenant would form part of their estate although the successor may be willing to settle these on taking over the tenancy.  |
| 11.3       | The Rent Arrears Recovery Procedures should be referred to for further information.  |
| <b>12.</b> | <b>Right to Buy and Right to Acquire</b>   |
| 12.1       | Where the deceased person had the preserved Right to Buy or Right to Acquire, a Statutory Successor may also “inherit” this preserved right. The original Tenancy Agreement should be checked in all cases to confirm the situation. The successor can count their own period of occupation before they succeeded to the tenancy for the purposes of calculating the minimum period for the exercise of the right, and the discount. |
| <b>13.</b> | <b>Diversity and Inclusion Considerations</b>  |
| 13.1       | WCH will act fairly and consistently in the application of this Policy and will not discriminate against any person on the grounds of their age, race, ethnicity/nationality, gender, religion, sexual orientation, marital/civil partnership status, pregnancy status or disability.  |
| <b>14.</b> | <b>Related documents</b>   |
|            | <ul style="list-style-type: none"> <li>• Access to Housing Policy &amp; Procedure</li> <li>• Mutual Exchange Policy &amp; Procedure</li> <li>• Tenancy Policy</li> <li>• Vulnerable Customers Policy &amp; Procedure</li> <li>• Rent Arrears Recovery Procedures</li> <li>• Service Standards</li> <li>• Termination of Tenancy Procedures</li> <li>• Rightsizing Policy</li> </ul>  |
| <b>15.</b> | <b>Appendices</b>  |
|            | Appendix 1 - Summary of Tenancy Agreement Succession Rights<br>Appendix 2 - Succession Procedure   |
| <b>16.</b> | <b>Approval</b>  |
|            | Approved by: EMT   |
|            | Review date: November 2023   |
|            | Next review date: November 2026  |
|            | Policy ‘owner’: Housing Operations Manager   |

