



# Succession and Assignment Policy

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## 1. Introduction

- 1.1 This policy sets out Ekaya's approach to succession and assignment for all tenants. It applies to all social housing tenants, including Affordable Rent tenants. It does not cover, licenses, leaseholders or shared ownership.
- 1.2 This policy does not supersede what is stated in the tenancy agreement and should be used in conjunction with the terms of the tenancy agreement before determining eligibility for succession or assignment.
- 1.3 The succession rights of a tenancy depends on the type of agreement and the date it was issued. See Appendix 1.

## 2. Aims and Objectives

- 2.1 The aim of this policy is to outline the circumstances under which someone may succeed to (take over) a tenancy when the tenant dies and the circumstances where tenants may assign their tenancy to someone else to:
  - Comply with legislation, regulations and guidance as defined by the Housing Acts and the Social Housing Regulator
  - Respond sensitively to residents at a time of grief and loss
  - Provide clear guidance to staff when deciding on Succession or Assignment
  - Ensure that succession rights are determined correctly in accordance with legislation and rights under the deceased tenant's tenancy agreement
  - Set out the policy objectives for granting any discretionary succession

## 3. Key terms and definitions

- 3.1 "Survivorship" is when the remaining joint tenant becomes a sole tenant on the death of a joint tenant. Survivorship is statutory succession. 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.
- 3.2 "Statutory succession" is a right set down 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. The tenancy continues in the name of the successor. This applies to a tenancy granted prior to 1 April 2012. The qualified person for this definition is the remaining joint tenant, spouse, civil partner or person living with the tenant as the tenant's spouse or civil partner of spouse. In this context this includes persons who have been living together as husband and wife or civil partners but not a family member. There can be no statutory succession if the deceased was already a successor.

- 3.3 “Contractual succession” is a succession that takes place through an additional right to succession granted through the tenancy agreement, as opposed to a legal right. In this event, the tenancy ends and a new tenancy is created in the name of the successor. This is where family members (and perhaps other associates) of an Assured tenant who do not have a statutory right to succeed, but may have a contractual right under the tenancy agreement from 1 April 2012.
- 3.4 “Discretionary succession” is where the person requesting to succeed to the tenancy was left in the property on the death of the tenant but has no statutory or contractual right to succeed. In these circumstances, the person can ask Ekaya to exercise its discretion to let them stay as a tenant and we are under no obligation to exercise that discretion.
- 3.5 “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.
- 3.6 “Assignment” is the transfer of a tenancy during the lifetime of the tenant. The person who transfers the tenancy is the Assignor and the person to whom the tenancy is transferred is the Assignee. The effect is that the Assignee becomes the tenant of the landlord, under the same agreement. Assignment must be done by way of a Deed of Assignment. In the case of both Assured and Secure tenancies the ability to assign is limited.

#### **4. Policy**

- 4.1 The policy will be used in conjunction with the terms of the tenancy agreement before determining eligibility for succession or assignment.
- 4.2 If a tenant loses their security of tenure before they die / wish to assign, for example by abandoning the property or subletting the whole property, there will be no right to succession or assignment.
- 4.3 Successions or assignments will be carried out in accordance with the priorities set out in the table in Appendix 1. This also includes information about which tenancy agreements will be granted.

#### **5.0 Assignment**

- 5.1 An Assignment will only be carried out for assured tenants in the following circumstances:
- a mutual exchange with a tenant of a Registered Provider or local authority (see our Mutual Exchange policy).
  - a court has ordered the transfer of tenancy as part of divorce or separation proceedings under matrimonial or family law.
- 5.2 Unless the tenancy agreement states otherwise, we will not give our consent to an assignment where a succession has already occurred. A mutual exchange may still take place in this circumstance.
- 5.3 We will not unreasonably withhold consent for an assignment requested in accordance with this policy but may refuse permission if we have reason to believe the tenant is being coerced, exploited or is at risk of being made homeless.
- 5.4 Tenants must clear all outstanding rent arrears before proceeding with their application to assign their tenancy.

## 6.0 **Succession**

6.1 Succession occurs when a sole tenant dies and an eligible partner or qualifying member of his or her family takes over the tenancy. Succession also includes when a joint tenant dies and the surviving joint tenant succeeds to the tenancy, known by law as survivorship. Only one succession is allowed and there can be only one successor. There cannot be joint successions.

6.2 In the case of a joint tenancy, the tenancy is automatically succeeded by the remaining joint tenant, where there has not already been a succession. There is no further right of succession e.g. if the tenant re-marries, their new spouse has no rights to succeed the tenancy.

6.3 In the case of a sole tenancy, succession rights are dependent on the terms of the tenancy agreement and date of the tenancy, (see Appendix 1). In all cases, it is necessary to read the terms of the tenancy first and what happens will depend on what is stated in the tenancy agreement and when the tenancy started.

6.4 Where the successor has a financial interest in another property, we will decline the succession request.

## 6.5 **Types of Succession**

There are different types of succession and we may use our discretion if there is no right to succession. Since 1st April 2012 the Localism Act 2011 changed statutory rights of succession. It is now the same for both secure and assured tenants. Qualifying family members may have right to succession but not through statute. This can only be either through a contractual agreement or at the discretion of the Association.

6.6 **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.

6.7 **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 a secure tenant where they are not a joint tenant. For an assured tenancy the only person who is entitled by statute to succeed is a spouse/civil partner or somebody living with the tenant, but not the family members.

6.8 **Contractual succession** – This is where the tenancy agreement from the 1 April 2012 provides qualifying family members of Assured or Secure tenants rights to succession from 1 April 2012, rights of succession. Where the tenancy agreement does not permit another family member to succeed the tenancy, then they have no right to succeed the tenancy.

6.9 **Discretionary Succession** - The Localism Act 2011 has, with effect from 1 April 2012, amended Section 17 of the Housing Act 1988 to allow Housing Associations to include provisions in their tenancy agreements, granting additional succession rights to assured periodic tenancies should they choose to do so. This means that Housing Associations may give family members a 'discretionary' right to succeed the tenancy if they meet certain criteria. Many of our tenancies give a 'contractual or discretionary' right for family members to remain in the property provided they meet certain criteria.

- 6.10 'Succession' is to a non-partner i.e another family member, as such 'successions' do not occur by statute but by a contractual or discretionary provision in the tenancy agreement so a Right to Rent check must be carried out.
- 6.11 The minimum criteria which must be satisfied for a contractual and discretionary offer to be made are set out below. The minimum criteria are designed to provide consistency and transparency to our decision making, for our residents and our staff, who may otherwise find themselves placed in a difficult position to make an offer of tenancy to somebody who has recently been bereaved.
- 6.12 The following minimum criteria are met:
- the applicant had lived in the property with the tenant for the 12 months prior to their death as their only home and continuously – the Association was notified in writing by the deceased that the applicant is part of the tenant's household and have notified the Local Authority in writing for the purposes of Council Tax and any Housing Benefit or Universal credit throughout the entire time of the tenancy)
  - the deceased tenant was a parent or legal guardian of the applicant
  - the applicant is 18 years of age or older, but 17 year olds may be considered if there is a suitable guarantor in place such as Local Authority or Social Services Department or a private individual.
  - Any arrears of rent and/or other breaches of the tenancy agreement are resolved in full and to the satisfaction of Ekaya.
  - the property is not considered too large for the applicant and household in accordance with Ekaya's Allocation Policy at the time of the request. If it is, we will consider suitable alternative accommodation if the remaining criteria are met.
- 6.13 Where the potential successor fails to provide evidence that they meet the criteria for succession, we will reject their application and seek possession of the property. Pre-action protocol letters must also be sent to any occupants.

## **7.0 Under Occupation and Adapted property**

Where succession would lead to under occupation as determined by Ekaya's Allocations Policy or not suitable due to the adaptation, we will make one offer of suitable alternative accommodation.

- 7.1 Property may be considered unsuitable and an offer of suitable alternative accommodation made, if the person with right to succeed would :
- Be under-occupying the property
  - Many Aids or adaptations have been put into the property
  - The property has major adaptations and person with the right to succeed does not need the aids or adaptations
  - the property is designated for a specific client group, for example disabled property and the applicant is not in that client group
- 7.2 Failure to accept a suitable offer of alternative accommodation for a succession made through contractual or discretionary provision will result in legal proceedings being started to gain possession of the property and no further offer of alternative accommodation will be made in these proceedings. Ekaya will serve a Notice of Seeking Possession to begin possession proceedings between 6 and 12 months after the original tenant's death.
- 7.3 Where there is a statutory succession or survivorship that results in under occupation, we

will discuss rehousing to a more suitable sized property with the new survivorship as part of Ekaya's efforts to make best use of our homes.

## **8.0 Proof of Residency**

- 8.1 The onus is on the potential successor to provide a sufficient level of evidence. Documents should cover the entire qualifying period. They **MUST** also provide the death certificate.
- 8.2 Ekaya will require evidence for ALL succession requests cases to confirm the identity of the person who is claiming succession, their relationship to the deceased, the length of residence with the tenant and where there is a discretionary succession, evidence of their right to rent.
- 8.3 A potential successor must be in occupation of the tenancy address as their only or principal home. Ekaya will also conduct other checks to ascertain who was residing in the property in the qualifying period prior to the tenants' death.
- 8.4 Where the potential successor fails to provide evidence that they meet the criteria for succession, we will reject their application and seek possession of the property. Pre-action protocol letters would be sent to any occupants.

## **9.0 Carer**

Ekaya defines a carer as someone who fulfils 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.

- 9.2 We will consider granting a carer (defined in section 4.31) an assured shorthold tenancy of up to 2 years, if they meet the following criteria set below and after this period Ekaya will make a decision as to the whether to grant full tenancy:

- The carer must have an additional right to a tenancy specified in the tenancy agreement.
- The carer must have been living at the property for 12 months prior to the tenant's death.
- The carer has no suitable alternative accommodation.
- The property must be suitable for their needs.
- The carer must fulfil the lettings criteria.
- The carer provides proof of residency as per the criteria set out in 4.18

## **10.0 Devolution**

Devolution by will or intestacy is where the tenancy is passed by a sole tenant to a designated individual through their will, or to their next of kin.

- 10.1 Devolution will not transfer the security of tenure of the tenancy to an individual who would not otherwise have qualified to succeed to the tenancy. We will seek to terminate a tenancy following devolution to an individual who would not otherwise have qualified to succeed to the tenancy. Succession cannot occur if the tenancy had previously passed through devolution by will or intestacy or previous tenant was a successor.

## **11.0 Succession to a minor**

A minor (i.e a person under 18 years) cannot hold a legal interest in property such as a

tenancy. In an exceptional circumstance, Ekaya may consider granting a minor of 17 years who meets all the relevant conditions and who would have qualified for a discretionary succession. This will be at our discretion. In a case where a decision to grant succession to a minor aged 17, they must have a guarantor who could be a family member, a local authority or a social worker, until the minor reaches 18 years of age.

- 11.1 If the deceased tenant had a will, then the executor will be the trustee/guarantor automatically. If there was no will, we will speak to other adult family members or a social worker to ask one of them to act as the trustee/guarantor.
- 11.2 In the event that an eligible successor is a minor, Ekaya will grant an Agreement for Tenancy. The Agreement for Tenancy will reflect whichever standard tenancy they would be granted if they were not a minor. By signing the Agreement for Tenancy, the minor agrees to comply with the conditions of the tenancy agreement until they become 18. The minor should adhere to the conditions of the tenancy as failure to do so means we may take steps to end the Agreement. The full tenancy will pass on to the minor on the first Monday after their 18<sup>th</sup> birthday.
- 11.3 We will not grant an Agreement for Tenancy to a minor if they do not have a suitable guarantor. The guarantor will be responsible for assisting the minor to sustain the tenancy and will be liable for any rent arrears or charges whilst the tenant is a minor.
- 11.4 Because minors will have only signed an Agreement for Tenancy and not a tenancy agreement itself, the rights included within the tenancy agreement such as mutual exchange, assignment and succession, for example, will not apply until the tenant reaches 18 and the tenancy is formally granted. If the tenancy succeeded, the Agreement for Tenancy period will count towards the tenancy itself (i.e. they run concurrently).
- 11.5 Where there is social services involvement, we will work with both the family and social services to try to ensure sufficient support is provided by the family. If no adult will agree to act as trustee, we will take legal advice about how to proceed.

## **12.0 Multiple Successors**

For all types of succession, only one person can succeed – two persons cannot succeed to a tenancy. For example, two qualifying family members cannot succeed to a tenancy jointly.

- 12.1 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, a court must decide. Where we are making the decision, we will consider housing need, dependents, and relationship with the dead tenant.
- 12.2 An assignment does not count as a succession where it is instructed by a court order or occurs through a mutual exchange. The right to a succession is unchanged after a mutual exchange – if there has been a prior succession, this right does not reset; if there has not been a succession previously, this right remains.

## **13.0 Rent Arrears and other breaches**

- 13.1 In the case of a joint tenancy, the remaining tenant has joint liability for any arrears together with the estate of the deceased tenant. The arrears will remain on the account.
- 13.2 Where there is no statutory right to succeed but there is a contractual or discretionary right to succeed in the tenancy agreement, the successor will need to clear any arrears or remedy other breaches first.

13.3 Any rent credits on a tenancy that has been succeeded by way of contractual or discretionary succession (not including survivorship) cannot be claimed.

#### **14.0 Unauthorised Occupiers**

14.1 Once it has been decided that any remaining occupants have no right to succeed the tenancy, we will inform the occupants and the deceased's personal representative of our intention to seek possession of the property and serve a Notice to Quit.

14.2 In the interim we will set up a Use and Occupation account for the occupants to make payments to cover the rent charged once the original tenancy has ended (this is because the Assured status is lost, and the contractual tenancy ends once the notice expires).

#### **15.0 Appeals against the decision**

15.1 If an applicant wishes to challenge a decision on succession, they can do so in writing by email or letter. Where necessary, we will refer the applicant for support from an external agency to produce the appeal in writing.

15.2 The appeal must set out why they feel the decision is not justified. A relevant manager not involved in the original decision will review the decision in accordance with policy or legislation.

#### **16.0 Monitoring and continuous improvement**

16.1 This policy will be reviewed every 3 years – unless legislation, business or sector developments require otherwise – to ensure that it continues to meet the stated objectives and take account of good practice developments.

#### **17.0 Legislation and regulation**

17.1 Key legislative and regulatory requirements affecting this policy:

- Housing Act 1985, 1988 as amended
- Localism Act 2011
- The General Data Protection Regulations 2018
- The Equality Act 2010
- The Civil Partnership Act 2004

#### **Related Documents:**

- Allocations and Lettings Policy

#### **18.0 POLICY APPROVAL**

This policy will be reviewed once every three years except where there is a need to take account of any changes to legislation, regulation or good practice.

#### **Policy Approval**

**Approval date:** *OCTOBER 2021*

**Approved by:** *Policy & Performance Committee*

<b>Policy Author:</b>	<i>Housing Services Manager</i>
<b>Policy Owner:</b>	<i>Head of Operations</i>
<b>Consultation completed:</b>	<i>September 2021</i>
<b>Review gateway:</b>	<i>Policy &amp; Performance Committee</i>
<b>Next review date:</b>	<b>October 2024</b>



**Appendix 1: Succession and Assignment Matrix** (continuation of the policy).

	<b>Assured or Assured Shorthold Tenancy</b>	<b>Tenancy entitled to</b>
<p><b>Succession</b> (Statutory)</p> <p>Tenancy pre- 1<sup>st</sup> April 2012</p>	<p>Successors qualify in this order (if there has not already been a succession):</p> <ol style="list-style-type: none"> <li><b>1) Remaining joint tenant</b></li> <li><b>2) Spouse, civil partner or person living with the tenant as the tenant's spouse or civil partner*</b></li> </ol> <p>*Must have occupied the dwelling as their only or main home at the time of the tenant's death and 12 months prior to their death as their only home and continuously</p>	<p>Assured or Social/Affordable Lifetime</p>
<p><b>Succession</b> (Statutory)</p> <p>Tenancy on 1 April 2012 or later</p>	<p>Successors qualify in this order (if there has not already been a succession):</p> <ol style="list-style-type: none"> <li>1) Remaining joint tenant</li> <li>2) Spouse, civil partner or person living with the tenant as the tenant's spouse or civil partner*</li> </ol> <p>*Must have occupied the dwelling as their only or main home at the time of the tenant's death and 12 months prior to their death as their only home and continuously</p>	
<p><b>Succession</b> (Additional right – <b>Discretionary not statutory</b>)</p>	<p>Qualification in this order:</p> <ol style="list-style-type: none"> <li>1) Spouse, civil partner, or person living with the tenant as the tenant's spouse or civil partner who is not entitled to a statutory succession because there has already been a succession*</li> </ol> <p>*Must have occupied the dwelling as their only or main home at the time of the tenant's death and 12 months prior to their death as their only home and continuously</p> <ol style="list-style-type: none"> <li>2) Family member*</li> </ol> <p>*Must have occupied the dwelling as their only or main home at the time of the tenant's death and 12 months prior to their death as their only home and continuously</p>	