



**Address:** Unit A, Arc House, 82 Tanner Street London SE1 3GN  
**Helpdesk:** 0204 551 0080  
**Email:** [talktous@cds.coop](mailto:talktous@cds.coop)

# Succession Policy

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<b>Author</b>	<b>Temi Awolaja</b>
<b>Approver</b>	<b>Board of Management</b>
<b>Applies to</b>	<b>General Needs Social Tenanted</b>

## 1 Introduction

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- 1.1 The purpose of this policy is to clarify the circumstances in which a person can take over a secure or assured tenancy following the death of a tenant.
- 1.2 CDS recognises that following the death of a tenant, their family members will be upset and grieving and that any requests for succession need to be handled with sensitivity and care.
- 1.3 The policy covers three types of succession, and where we may use discretion where there is no right to succession.
- 1.4 This policy applies only to general needs social rented accommodation owned by CDS. It does not apply to shared owners, leaseholders or properties owned by clients, but client may choose to adopt this policy as their own.

## 2 Principle

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- 2.1 Succession relates to the statutory right of certain people to succeed to a tenancy following the death of a tenant.
- 2.2 This policy sets out our approach to succession, ensuring it is consistent, and we meet our legal and contractual obligations.

## 3 Definitions

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- 3.1 We've defined the following terms we use throughout the Policy:
- 3.2 **Statutory rights:** Legal rights established under the Acts referred to in this Policy.
- 3.3 **Contractual rights:** Rights given to some people through the tenancy agreement, rather than by statute.
- 3.4 **Discretionary rights:** When we may use our discretion to offer a new tenancy where there are no succession rights.

3.5 **Successor:** The person who becomes the tenant after the succession is complete.

## 4 Policy Statement

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- 4.1 We will comply with the legislative requirements set out in the Housing Act 1985 and Housing Act 1988 (as amended) and relevant provisions in the tenancy agreement of the deceased tenant.
- 4.2 Successions will be granted fairly and efficiently.
- 4.3 If a tenant dies without any potential successors, we'll follow our Death of a Tenant Procedure.
- 4.4 Succession rights will be governed by the type of tenancy and, are dependent on the detail in the tenancy agreement held by the deceased tenant. In the first instance, we will always refer to the tenancy agreement of the deceased tenant to determine succession rights. Those potentially qualified to succeed a tenancy are set out in the relevant Housing Acts and/or tenancy agreement.
- 4.5 In considering applications for succession, we will consider the implications of:
- The Housing Act 1985/Housing Act 1988 (as amended), as it applies to the tenancy.
  - Under or over occupation by the statutory successor, where the statutory successor is a member of the family.
  - Properties adapted for tenants with medical requirements when the successor does not have such requirements.
  - How long the applicant has lived in the home.
  - Persons who are left in possession but not eligible to succeed or inherit the tenancy. Such persons will be provided with advice on other housing options.
- 4.6 We will ensure that the statutory rights of persons qualifying to succeed to the tenancy or entitled to a grant of tenancy are acted upon.

## 5 Types of Succession

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- 5.1 Succession rights differ, depending on the type of tenancy and the date the tenancy started.
- 5.2 Most of our tenants have assured tenancies, but we do have some secure tenancies. We have explained the differences between the two in [Appendix 1](#). It's important to know the tenancy type when looking at succession rights.
- 5.3 The Localism Act 2011 changed the law on succession. This means the statutory (legal) right of succession is different, depending on whether a tenancy started before or after 1 April 2012.

## 5.4 Survivorship

- 5.4.1 In the case of a joint tenancy, where a joint tenant dies, the tenancy automatically passes to the surviving joint tenant and continues in their name. The remaining joint tenant is classified as a “successor”. The legal term for this is survivorship. The remaining tenant becomes a sole tenant.
- 5.4.2 If there is more than one surviving joint tenant, further survivorships can happen until there is only one remaining tenant.
- 5.4.3 Survivorship happens automatically at the point of death. The spouse of a tenant (i.e. husband or wife) or civil partner or person who has been living with the tenant as spouse or civil partner (including same sex partner) will automatically succeed to the tenancy so long as they were living at the property at the time of the death, and there has been no previous succession with CDS as the landlord.
- 5.4.4 In all cases of survivorship, the successor will keep the original tenancy agreement. A new tenancy is not issued.
- 5.4.5 If the surviving tenant re-marries, their new spouse has no rights to succeed the tenancy.
- 5.4.6 If the remaining tenant does not live at the property, as their only or principal home, CDS may take action to end the tenancy.
- 5.4.7 Survivorship counts as a succession and there are no further rights of succession.
- 5.4.8 If the successor held a joint tenancy with the deceased tenant, then any issues regarding the preserved right to buy (if the tenancy is secure) or rent arrears accrued by the original tenant will be passed to them.
- 5.4.9 **Exception:** where two joint secure tenants were granted a tenancy and the first joint secure tenant died before 3<sup>rd</sup> October 1980, the law allows for one further succession on the tenancy.

## 5.5 Statutory succession

- 5.5.1 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.

## 5.6 Contractual succession

- 5.6.1 Where the tenancy agreement provides qualifying family members of Assured or Secure tenants from 1<sup>st</sup> April 2012, rights of succession; when a sole tenant dies, and the tenancy is ‘succeeded to’ by a qualifying family member in accordance with a term in the tenancy agreement.
- 5.6.2 Should the tenant not be living at the property as their sole or principal home at the time of their death e.g. if they have moved to a permanent placement in a care home, then there

is no right of succession as the tenancy is no longer Assured. A discretionary offer of tenancy may be considered instead.

## 5.7 Discretionary succession

- 5.7.1 CDS is under no obligation to offer a spouse, partner or family member a tenancy of the deceased's property, or any other CDS property, if they have no statutory or contractual right to succeed. CDS will, entirely at its discretion, consider offering a new tenancy to an applicant if there are exceptional circumstances in line with its Allocation policy.
- 5.7.2 If we are unable to reach a decision within a reasonable amount of time, we will keep potential successors updated until a decision has been reached. The process will be the same if there is more than one potential successor claiming succession or if the property of the deceased tenant is either too big or too small for the potential successor.
- 5.7.3 Whilst a decision is being reached, the potential successor will not be our tenant but payment for use and occupation must be made.
- 5.7.4 In all cases of discretionary succession, it is entirely at CDS's discretion as to whether to offer a tenancy of the property of the deceased, or another more suitable property, to a qualifying family member of the deceased tenant in line with our Allocations Policy.
- 5.7.5 When deciding to exercise this discretion, we'll consider the following:
- The type of tenancy
  - How long the applicant has lived in the property
  - Their relationship to the deceased tenant
  - Their housing needs
  - Their financial situation
  - Any vulnerabilities

## 6 Who is eligible to succeed?

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### 6.1 Secure tenants

- 6.1.1 **For secure tenancies granted before 1 April 2012:** the rules for qualifying to succeed to a tenancy on the death of a tenant are laid out in s113, part 4 of the Housing Act 1985, as amended.
- 6.1.2 There can only be one statutory succession to either a surviving spouse, civil partner or partner, who is occupying the property as their only or principal home at the time of the tenant's death.
- 6.1.3 If there is no spouse or civil partner, then a member of the tenant's family can succeed who was living in the property as their only or principal home at the time of the tenant's death and has been living with the tenant for the 12 months prior to the tenant's death.
- 6.1.3 **Definitions of a family member are set out in section 113 of the Housing Act 1985:**
- Spouse
  - Civil partner
  - Parent

- Grandparent
- Children
- Grandchildren
- Siblings
- Uncle and Aunt
- Nephew and niece
- A relative by marriage is treated as if they were a blood relative and step and half relatives are treated as full relatives.

6.1.4 It is important to look at the terms of the tenancy agreement in each case as the contractual criteria will be different depending on when the tenancy agreement was granted.

6.1.5 There can be no statutory succession if the deceased was already a successor.

6.1.6 **For secure tenancies granted on or after 1 April 2012** – following the implementation of the Localism Act 2011, it was amended to restrict the right of succession only to a tenant's spouse, civil partner, partner (including same sex). Other members of the household are not entitled to succeed the tenancy. **CDS do not have any secure tenancy created after 1 April 2012.**

## 6.2 Assured tenants

6.2.1 **For Assured tenancies granted before 1 April 2012**, the only person with the statutory right to succeed is a spouse/civil partner or cohabitee, who must have been living in the property as their only or principal home at the time of the tenant's death. The deceased tenant must not have been a successor themselves. In such cases, succession is automatic and there is no need to grant a new tenancy agreement.

6.2.2 The definition of spouse in this context includes persons who have been living together as husband and wife or civil partners.

6.2.3 There can be no statutory succession if the deceased was already a successor.

6.2.4 Other family members of an Assured tenant do not have a statutory right to succeed but may have a contractual right under the tenancy agreement. It is important to look at the tenancy agreement in each case as the contractual criteria will be different depending on when the tenancy agreement was granted.

6.2.5 **For Assured tenancies granted on or after 1 April 2012**, another member of the tenant's family (other than a spouse/civil partner or cohabitee), may also have the statutory right to succeed, but only if the tenancy agreement allows for such a succession.

6.2.6 The Localism Act means that any contractual terms in assured tenancy agreements that started on or after 1 April 2012 operate as a statutory succession rather than contractual.

6.2.7 In such cases, succession is automatic and there is no need to grant a new tenancy agreement. If the tenancy agreement does not permit another family member to succeed, then they have no right to do so.

### 6.3 Inheriting a tenancy

6.3.1 Where there is no statutory succession right, it is possible for an Assured tenancy to pass to a person under an existing tenant's will or, if they die without leaving a will, through the rule of intestacy because a tenancy is an interest in land.

6.3.2 If the beneficiary (the person to whom the tenancy passes) lives in the property as their only or principal home at the time of death, they may inherit the tenancy. We may not agree to allow someone who has inherited the tenancy to remain in the property if they do not meet our housing obligations or the criteria for succession. If this is the case, then we may take legal action to regain possession of the property.

### 6.4 Shared Owners

6.4.1 If a shared owner resident dies, and the lease is in joint names, the lease will transfer to the sole name of the remaining leaseholder. If the lease is in the deceased resident's sole name, the part of the property that is owned will transfer to a person named as the beneficiary in the will. The rented part will transfer to any successor. Where these two people are different, the tenant will have the right to occupy and the beneficiary will have the equitable interest, which would only be realised when the property is sold. If there is no will, legal advice should be sought.

6.4.2 If there is no successor and no one to inherit the equity, then CDS will obtain vacant possession and the equity will eventually pass to the Crown under the laws of intestacy. The shared ownership lease should be checked for any clauses relating to these situations and legal advice should be sought.

6.4.3 CDS will require the successor to qualify for shared ownership under its policy at the time of becoming aware of the resident's death. If they are not eligible, depending on the terms of the lease, they may be required to sell their share.

6.5 Unless the tenancy agreement allows for it, there can be no further succession if the deceased tenant:

- was a successor to the tenancy, or to an earlier tenancy of the same premises
- became a tenant by will or under intestacy rules, or
- was the survivor to a joint tenancy.
- Where a person is occupying a property as a licensee, such as decanted tenants, there is no right of succession to the property they are decanted to.

## 7 Multiple succession claims

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7.1 For all types of succession, only one person can succeed - two people cannot succeed to a tenancy. For example, two qualifying family members cannot succeed to a tenant jointly.

7.1.2 Where more than one person claims a right of succession, CDS will require them to resolve between themselves who will succeed the tenancy. If they are unable to decide who will succeed, it will be determined by:

- 7.1.3 For secure tenancies, any spouse, civil partner or partner with the right of succession have priority over qualifying family members. If there is no spouse, or civil partner or partner, with the right to succeed, but there are more than one family member with a right to succeed, and the potential successors cannot decide amongst themselves, CDS will, at its absolute discretion, decide who the tenancy should pass to. It will usually pass to the person who has resided in the property the longest as their main home.
- 7.1.4 For Assured tenancies granted prior to 1 April 2012, it depends on the provisions of the tenancy agreement as these determine who decides, but it will usually be CDS.
- 7.1.5 For Assured tenancies granted on or after 1 April 2012, the potential Successors must apply to Court for the dispute to be determined.

## **8 Under occupation**

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- 8.1 If a contractual succession would result in under occupation, by one bedroom or more, we may refuse a claim for succession to that property. The successor may be able to succeed to the tenancy, but we would seek to rehouse the successor into suitable alternative accommodation.
- 8.2 If the successor remains in the property until they're able to move to an alternative property, they must pay a use and occupation charge. Any debt accrued through non-payment of use and occupation must be cleared before an alternative accommodation is offered. If the successor refuses the offer of accommodation, we may seek possession of the property.
- 8.3 Where it is a statutory succession or survivorship that results in under occupation, we will still discuss rehousing to a more suitable sized property with the new tenant as part of CDS's efforts to make best use of our homes.

## **9 Adaptation and special properties**

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- 9.1 If a property has been majorly adapted (as defined in CDS' Aids and Adaptations Policy) to assist a deceased tenant, we may refuse a claim for succession because the adaptations are no longer required. We may not offer Discretionary Succession on a property with adaptation unless the adaptations are required by the successor. If Discretionary Succession is offered, it will be for an alternative property that is not adapted.
- 9.2 We may refuse a claim for succession if the property has been developed for a specific client group and a successor do not meet the requirements. For example, the property has a minimum age limit, and you're too young.

## **10 No right to succession /disputed succession**

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- 10.1 In cases where we believe there is no right of succession and there is/are remaining occupant(s) in the property, and there is no agreement to offer a discretionary offer of tenancy, we will offer support and advice for them to secure alternative accommodation elsewhere. CDS will, if necessary, commence legal proceedings to obtain possession.

## 10.2 Unauthorised Occupiers

- 10.2.1 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.
- 10.2.2 In the interim we will set up a Use and Occupation account for the occupants to make payments to cover the charge once the original tenancy has ended (this is because the Assured status is lost, and the contractual tenancy ends once the notice expires).

## 11 Mutual exchanges

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- 11.1 Under a mutual exchange, tenants retain their own rights of succession. This means that if the tenant had the tenancy assigned to them through a mutual exchange and had not already used up their own right of succession on their original tenancy they would be able to pass on their new tenancy through succession regardless of whether the tenant they exchanged with was a successor.

## 12 Arrears /credits

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- 12.1 Any rent credits or arrears on a tenancy that has been succeeded to by way of statutory or contractual succession (not including survivorship) become a debt owed by/to the deceased tenant's estate and cannot be claimed from/by the successor. Neither the arrears nor any credit at the time of the tenant's death pass to the successor.
- 12.2 However, any outstanding possession order will generally still take effect. If there is a possession order in force at the time of the tenant's death, the successor must comply with the terms of the order and can be at risk of eviction if they don't comply with the order.
- 12.3 If the successor is a remaining joint tenant, they remain legally responsible for any outstanding debt.
- 12.4 While a request for succession is being considered, the potential successor is expected to pay use and occupation charge.

## 13 Appeals

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- 13.1 If an applicant wishes to challenge our decision on succession, they must do so within 14 working days of our decision in writing.
- 13.2 The applicant must tell us why they feel our decision is wrong. A relevant manager not involved in the original decision will review it. We'll only uphold the appeal if we find that the original decision did not follow the law, and CDS policy.

## 14 Equality

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- 14.1 CDS will ensure that this policy is applied fairly and consistently and will not directly or indirectly discriminate against any person or group in line with equality laws and principles.

## 15 Monitoring and Compliance

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- 15.1 This policy will be kept up to date and amended accordingly to reflect any changes in legislation, standards, and guidelines.
- 15.2 The policy update is scheduled for a three-year period and will also be reviewed as legislative changes are put in place.
- 15.3 Compliance with this policy will be monitored by regular sampling of succession cases.

## 16 Legislation and Regulation

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- 16.1 This policy meets the legal requirements set out in the following Act and complies with the Regulatory Framework and guidance from The Regulator of Social Housing:
- Localism Act 2011
  - Housing Act 1985 for secure tenants
  - Housing Act 1988 for Assured tenants

Both Housing Acts were amended by the Civil Partnerships Act 2004 to extend statutory succession rights to same sex couples.

## 17 Associated Policies and Procedures

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- 17.1 The following procedures are associated with this policy:

- Allocation policy

- 17.2 This policy is supported by:

- Data protection policy
- Aids and adaptation policy
- Sign-up policy
- Complaints policy

### Version control

Date	Amendment	Version control
January 2025	Policy created	V1.0

# Appendix 1

## Secure tenants

**A tenancy is likely to be secure if it was granted before 15<sup>th</sup> January 1989**

**For secure tenancies that began before 1 April 2012:**

When a secure tenant dies, the tenancy may be passed on to a qualified successor. Persons qualified to succeed to a secure tenancy are:

- The tenant's spouse or civil partner, who is occupying the property as their only or principal home at the time of the tenant's death.
- If there is no spouse or civil partner, then a member of the tenant's family who was living in the property as their only or principal home at the time of the tenant's death and has been living with the tenant for the 12 months prior to the tenant's death.

**Definitions of a family member are set out in section 113 of the Housing Act 1985:**

- A person with whom the tenant lived as husband or wife or as if they were civil partners (cohabitee).
- The tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, or niece.
- A relative by marriage is treated as if they were a blood relative and step and half relatives are treated as full relatives.

**For secure tenancies that began on or after 1 April 2012:**

For secure tenancy agreements which started on or after 1 April 2012 succession is limited to the tenant's spouse, civil partner, or cohabitee, who must have been living in the property as their only or principal home, unless the tenancy agreement expressly allows for someone else to succeed.

**CDS HAS NO SECURE TENANCIES THAT BEGAN ON OR AFTER 1 APRIL 2012**

## Assured tenants

These are tenancies created after 15<sup>th</sup> January 1989; created by the 1988 Housing Act.

**For sole assured tenancies granted before 1 April 2012**, the only person with the **statutory** right to succeed is a spouse/civil partner or cohabitee, who must have been living in the property as their only or principal home at the time of the tenant's death. The deceased tenant must not have been a successor themselves. In such cases succession is automatic and there is no need to grant a new tenancy agreement.

In relation to tenancies granted before 1 April 2012 family members cannot succeed by statute, so it is important to look at the tenancy agreement in each case. For tenancies

granted before 1 April 2012 it will usually be necessary to grant the **contractual** successor, if they qualify, a new tenancy agreement.

**For sole assured tenancies granted on or after 1 April 2012**, another member of the tenant's family (other than a spouse/civil partner or cohabitee), may also have the statutory right to succeed, but only if the tenancy agreement allows for such a succession. The Localism Act means that any contractual terms in assured tenancy agreements that started on or after 1 April 2012 operate as a statutory succession rather than contractual. In such cases, succession is automatic and there is no need to grant a new tenancy agreement. If the tenancy agreement does not permit another family member to succeed, then they have no right to do so.

Unless the tenancy agreement allows for it, there can be no further succession if the deceased tenant:

- was a successor to the tenancy, or to an earlier tenancy of the same premises
- became a tenant by will or under intestacy rules, or
- was the survivor to a joint tenancy.

## Assured shorthold tenants

**CDS has no assured shorthold tenancies with a fixed term of two or less years.**

**Fixed term assured tenancies with a fixed term of two or more years:**

The Localism Act amended section 17 of the Housing Act 1988 to extend the **statutory** right of succession of assured tenants to tenants with a fixed term assured shorthold tenancy of not less than two years. There is no **contractual** right of succession to fixed term assured shorthold tenancies.

**Fixed Term assured shorthold tenants with a fixed term of less than two years**

For assured shorthold tenancies which have a fixed term of less than two years, unless they are a joint tenant, no one has the right to succeed to the tenancy. The tenancy will pass under an existing tenant's will or through the rules of intestacy.