



# **Uttlesford District Council Housing**

## **Succession policy**

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# Succession Policy

## 1.0 POLICY STATEMENT

- 1.1 This policy explains how Uttlesford District Council, 'the Council' will deal with successions in respect of secure tenancies created before 1 April 2012 when the original tenant of a property dies and how the change in the law affects successions to secure tenancies created on or after 1 April 2012.
- 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. The Localism 2011 Act section 160 introduced amendments to the legislation which redefines who can succeed to a tenancy before or after 1 April 2012.

## 2.0 DEFINITIONS

- 2.1 For the purpose of this policy the following definitions shall apply drawn from S.113 of the Housing Act 1985, which defines "members of your family" as
- Your spouse (the person named on your marriage certificate)
  - Your civil partner (the person named on your civil partnership certificate)
  - The person you live with as if you were spouse or civil partner
- 2.3 In addition, the following people are family members whether the relationship arises by blood (full or half), marriage/civil partnership, step relationships or birth outside marriage/civil partnerships.
- Your parent or grandparent
  - Your child, stepchild or grandchild
  - Your brother or sister
  - Your uncle or aunt
  - Your nephew or niece.

## 3.0 INTRODUCTION

- 3.1 Succession is the statutory process by which a husband, wife, civil partner, close family member (as defined by statute) can become the Council's tenant after the death of the tenant to whom the tenancy was granted originally. There can be only one succession. On the termination or death of the succeeding tenant the tenancy will come to an end.

## 4.0 AIMS OF POLICY

- 4.1 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

## **5.0 Applying for succession**

- 5.1 Following the loss of a family member we understand this may be a very distressing time for you. The checks we make and questions we ask are necessary for us to make the right decision about the tenancy. Your co-operation will help us to make a decision in a timely manner.
- 5.2 If you believe you have the right to succession you need to contact your housing officer as soon as possible. Ideally 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.
- 5.3 You will be provided with information about the evidence you need to supply to demonstrate your relationship to the deceased and confirm the length of time you have lived at the property.
- 5.4 Our officers will commence their 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.
- 5.5 We will if appropriate and with your consent refer to external organisations that may provide support following bereavement.

## **6.0 Succession Policy (How the Council will consider your application)**

- 6.1 The Housing Operations Manager ('the Manager') will be responsible for the day-to-day implementation of the policy.
- 6.2 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, an extension of time may be granted in special circumstances.
- 6.3 The housing officer will investigate and respond to an application for succession as soon as possible after receipt of a written application for succession. A successor will be granted a tenancy on the original terms of the tenancy agreement (including the payment of any rent arrears).
- 6.4 For secure tenancies, 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.

## **7.0 Succession – Policy for tenants whose tenancy started before 1 April 2012.**

- 7.1 If you are a sole tenant and are married or in a civil partnership, then your spouse or civil partner will automatically succeed to the tenancy provided he or she is living in the property at the date of your death.

- 7.2 If you are not married or in a civil partnership or are separated and your spouse or civil partner does not live in the property then if a close relative (as defined by the Housing Act 1985) is living with you at your death and has been living with you for the whole of the twelve (12) months immediately before your death then that person will automatically succeed to the tenancy.
- 7.3 For the purposes of the policy on succession where two people live together as husband and wife or as civil partners they are regarded as being spouses or civil partners.
- 7.4 These provisions do not apply if you acquired the tenancy yourself upon the death of another person. In such a case no-one can succeed, and the tenancy will come to an end.
- 7.5 If the successor is a close relative (not your surviving spouse) we may require the successor to move to a smaller property if the existing property would be under-occupied.
- 7.6 If you are joint tenants, then on the death of either of you the tenancy will automatically pass to the survivor by the common law of survivorship. However, if the survivor is not occupying the property as their only or principal home the tenancy will no longer be secure.
- 7.7 Wherever there is a change in the identity of the tenant on death either because of a succession referred to above or because the property passes to a surviving tenant there can be no further succession to the tenancy.
- 7.8 Where there is more than one eligible successor and agreement cannot be reached between them as to who should succeed to the tenancy, the Council will select a successor to the tenancy. A tenancy cannot be inherited until it has been established who is to succeed.
- 7.9 In making its decision the Council will consider factors including the wishes of the original tenant(s), care of children, suitability and any other issue relevant to the application.
- 7.10 Subject to very few exceptions a secure tenancy may not be assigned. Some of the permitted exceptions give rise to a situation where the person taking the tenancy will be deemed to have succeeded to it to prevent the possibility of a further succession occurring.

## **8,0 Succession – Policy for tenants whose tenancy started after 1 April 2012.**

- 8.1 Statutory succession to a secure 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.
- 8.2 If you are joint tenants, then on the death of either of you the tenancy will automatically pass to the survivor.

- 8.3 Wherever there is a change in the identity of the tenant on death, either because of a succession as referred to below or because the property has passed to a surviving joint tenant there can be no further successions to the tenancy.
- 8.4 The following provisions do not apply if you acquired the tenancy yourself upon the death of another person. In such a case no-one can succeed to the tenancy and the tenancy will therefore come to an end
- 8.5 If you are a sole tenant and are married, in a civil partnership, or living with a partner as if you were married or in a civil partnership, then your partner will automatically succeed to the tenancy provided he or she is living in the property as their only or principal home for at least 12 months at the date of your death
- 8.6 Other resident family members may have a contractual right to succeed rather than a statutory right.
- 8.7 If you are a sole tenant and at the time of death your spouse or partner is not living with you then an immediate family member who is living with you will be allowed to succeed to the tenancy.
- 8.8 This is providing they meet all of the succession rules set out under the Housing Act 1985 Part IV, have been living in your household as their only or principal home for at least the **three years** preceding your death and are judged to be in housing need as defined by the council's allocations policy.
- 8.9 If an immediate family member (See definition in section 2.0 above) is eligible to succeed but the property is under-occupied they will be made one offer of suitable alternative accommodation. If the successor tenant refuses to move, then the Council would take Court action to seek possession under Ground 15A of Schedule 2 of the Act.
- 8.10 This is a discretionary ground for possession. The court must be satisfied that suitable alternative accommodation is available to the succession and it is reasonable to order possession.
- 8.11 If there is more than one family member who is eligible to succeed, in the absence of agreement between the parties who should succeed, the Council will decide who should succeed to the tenancy. There can be no joint succession.
- 8.12 Subject to a very few exceptions a secure tenancy may not be assigned. Some of the permitted exceptions give rise to a situation where the person taking the tenancy will be deemed to have succeeded to it to prevent the possibility of a further succession occurring.

## 9.0 Supporting Evidence

- 9.1 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 the appropriate qualifying period prior to the death of the tenant.
- 9.2 Formal proof that the Council needs 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

- 9.3 Any other documents/information the Council considers necessary to evidence the necessary appropriate period of occupation of the property as sole or principal home.
- 9.4 It is essential that the applicant can provide proof for the entire qualifying period prior to the death of the tenant and not just part of it. The applicant may also be required to attend an interview.
- 9.5 The decision made will be based on a number of pieces of evidence provided rather than a single piece of evidence supplied. Utility bills can be provided as part of the evidence, but not as sole evidence.

## **10.0 Under-occupation**

- 10.1 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 Schedule 2 of the Housing Act 1985 and serve a Notice Seeking Possession and requiring the successor to move to smaller or more suitable accommodation.
- 10.2 The notice will be served no sooner than 6 months after the death of the previous tenant and no 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.
- 10.3 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.

## **11.0 Moving to alternative accommodation**

- 11.1 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.
- 11.2 The 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 with reference to 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 the Council becomes aware of.

- 11.3 Where succession is granted, but the successor is required to move to more suitable accommodation this will be facilitated by banding the successor in the highest band or by making the successor a direct offer of what is considered to be a suitable accommodation.

## **12.0 Anti-social behaviour**

- 12.1 Where an applicant for succession has been involved in anti-social behaviour including being the subject of a civil injunction or an 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.

## **13.0 The Council's Discretionary Policy for no automatic rights of succession**

- 13.1 Where the death of a sole tenant leaves someone in the property who does not have a legal right to succeed to the tenancy, the Council will consider granting a tenancy in certain limited circumstances at that property or an alternative one (if the current property would be under-occupied or not be suitable to meet their current need) at the discretion of the relevant Director.
- 13.2 A tenancy granted on a discretionary basis is a new tenancy.
- 13.2 You will be considered for re-housing if you:
- are recorded on the Council's systems as a household member
  - are a resident carer, including those who have given up their own home to provide care to the deceased tenant.
  - have accepted responsibility for any dependants of the tenant and need to live with them in order to fulfil that responsibility.
  - an adult child with a disability, particularly where the property has been adapted to meet your needs.
  - have always lived with the tenant.
  - have no other housing alternative.
- 13.3 and are one of the following:
- vulnerable (as defined by our homelessness policy)
  - a parent to dependent children and a move will cause hardship.
  - have been living with the deceased tenant continuously for three or more years and will face hardship in securing alternative accommodation.



- 13.4 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 the housing officer who will make a decision on succession and record the outcome.
- 13.5 If no discretionary succession is likely and there is a risk of homelessness then the housing officer will need to refer the case to the Housing Options Team under a Duty to Refer.
- 13.6 The Housing Option Team will assess the Council's duty under Homelessness legislation. The applicant will be advised on their options after the assessment is concluded.
- 13.7 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 so they can bid on properties more suitable for their needs. During this time, the Council may make a reasonable offer of accommodation.
- 13.8 For applicants who do not fall into the above category they will be given appropriate advice and assistance to find alternative accommodation. The housing officer will serve notice to commence eviction proceedings to return the property into housing stock.
- 13.9 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.
- 13.10 If you do not pay it or fall into arrears, then you will be asked to leave the property as soon as possible. Housing Operations 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.

#### **14.0 Cancellation of a succession claim.**

- 14.1 The Council will automatically seek possession of a property where 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 committing themselves to the deceased tenant in a manner akin to marriage or civil partnership. Demonstrated for example in the applicant claiming benefits separately or the deceased tenant failing to declare the existence of the applicant as being in occupation as sole or principal home. (An example of this could be joint names on Council Tax records.)

## 15.0 Appeals

- 15.1 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 Operations Manager. If they are still dissatisfied, then the complaint will be dealt with through the Council's complaints policy.
- 15.2 The Council will always advise potential applicants for succession to seek independent legal advice.

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**Table: Sole council tenancy succession**

Use this table to find out who has a statutory right to succeed to a sole council tenancy when the tenant dies.

	<b>Secure tenancy began before 1 April 2012</b>	<b>Secure tenancy began on or after 1 April 2012</b>
Who succeeds	Spouse, civil partner, cohabitee, or member of the tenant's family.	Spouse, civil partner, or cohabitee. Other people can qualify for a statutory succession if the tenancy allows.
How many statutory successions	One. A previous succession includes a joint tenancy becoming a sole tenancy by survivorship, or assignment to a potential successor.	One. A previous succession includes a joint tenancy becoming a sole tenancy by survivorship, or assignment to a potential successor.
Conditions for succession	Tenant's spouse or civil partner must occupy property as only or principal home at the time of tenant's death. Cohabitee or family member must have been residing with the deceased tenant for 12 months before death and occupy premises as only or principal home at time of death.	Successor must occupy property as only or principal home at time of death. (Three years for immediate family members)
Who takes priority	Spouse or civil partner.	Spouse, civil partner, or cohabitee.
What kind of tenancy does the successor get	The same as the deceased tenant: secure.	The same as the deceased tenant: secure.

## ROLES AND RESPONSIBILITIES

Role:	Responsibilities:
Strategic Director, Housing, Environment and Communities	<ul style="list-style-type: none"> <li>▪ Oversight and monitoring of the policy.</li> <li>▪ Ensuring that this Policy is operationally effective.</li> </ul>
Service Director	<ul style="list-style-type: none"> <li>▪ Responding to residents' requests to appeal a decision to not grant a succession.</li> <li>▪ Authorisation of any Discretionary Successions agreed.</li> </ul>
Housing Operations Manager	<ul style="list-style-type: none"> <li>▪ Authorisation of Succession applications.</li> <li>▪ Annual Review of Succession Outcomes.</li> </ul>
Housing Officer	<ul style="list-style-type: none"> <li>▪ Processing of the initial Succession application.</li> </ul>
Housing Options Manager	<ul style="list-style-type: none"> <li>▪ Review of potential homelessness implications</li> </ul>

## POLICY MONITORING

The policy will be monitored by the Strategic Director, Housing, Environment and Communities

The policy should be reviewed on an annual basis to ensure that compliance is achieved.

## COMPLAINT, CHANGE & MODIFICATION

### Complaint

Complaints made in relation to this policy, or its application shall follow the Council's corporate complaint policy

### Modification

Minor changes will be signed off by the appropriate service Director following CMT approval.

Substantial changes will be referred to the CMT for approval.

The decision on what changes will constitute minor or substantial change will be determined by CMT

### Change

The Strategic Director, Housing, Environment and Communities shall be responsible for reviewing /updating the policy in accordance with changes to best practice, statutory guidance and legislation.

Substantial changes made shall be presented to CMT for formal approval.

## Reference Section.

## KEY CONTACT

- Lead Officer: Simone Russell
- Service Area/Directorate: Housing, Environment & Communities.  
Landlord Services
- Lead Member: Councillor Arthur Coote

## LINK TO CORPORATE PLAN PRIORITIES

Corporate Priorities	Yes/No
Putting residents first	Yes
Protecting and enhancing our environment	No
Building strong communities	Yes
Encouraging economic growth	No

Document History			
Date	Amendments Made	By Whom	Approval
14.11.2024	1 <sup>st</sup> Formal Draft of Policy	A Alexander	Simone Russell
02.12.2024	2 <sup>nd</sup> Formal Draft of Policy	A Alexander	
03.03.2025	3 <sup>rd</sup> Formal Draft of Policy	A. Alexander	
21.03.2025	Final Draft	A. Alexander	
<i>Version Number</i>		0.1 – November 2024	
<i>Reviewed By</i>			
<i>Approval Body</i>			
<i>Date Adopted</i>			

Next Review Date	
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## CONTEXTUAL INFORMATION

### Update Overview

This policy will be reviewed every 3 years or if there are any major changes in legislation that may impact on this policy.

### Legislative Context

#### The key legislation for statutory succession is:

Localism Act 2011 – amended succession rights for new tenancies to give the same statutory rights of succession to a married, civil or ‘common law partner’ (including same-sex partners) for both Secure and Assured tenancies starting on or after 1 April 2012.

Housing Act 1985 for Secure tenants - sections 88 and 89

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

### Local Government Context

The Localism Act 2011 amended the succession rights of people living with secure council tenants in England where the tenancy was created after 1 April 2012. In these cases, a statutory right to succeed is limited to the spouse/partner of the deceased tenant. This has always been the case in regard to succession to an assured housing association tenancy.

For secure tenancies created before 1 April 2012, the right to succeed may, currently, be claimed by a member of the deceased tenant’s family, subject to certain eligibility criteria.

### UDC Policy History

This policy provides a based on both the conditions of tenancy and Secure Tenancy at Uttlesford.

### Policy Scope: Resident and/or Internal

The policy provides guidance for residents on how successions of tenancy will be granted by the housing service.

### Related Policies & Corporate Governance Matters

Allocation Policy  
Assignment Policy  
Equalities Policy

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## APPENDIX A – Equality Impact Assessment

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