



Housing Management

Successions

Scope:	This policy applies to Circle 33 Housing Trust, Mole Valley Housing Association, Old Ford Housing Association, Roddons Housing Association, Russet Homes, South Anglia Housing and Wherry Housing Association
Effective Date:	November 2008
Review Date:	November 2010
Signed Off :	Group Policy Forum, 20 th November 2008
Author:	Zoe Buick, Policy Manager Abi Patience, Policy Officer
Policy Owned by:	Policy and Planning
KLOE:	Tenancy and Estate Management
QAF (Supported Housing):	n/a
Statute:	Housing Acts 1985 and 1988 Matrimonial Causes Act 1973 and the Matrimonial and Family Proceedings Act 1984 Children Act 1989 Civil Partnership Act 2004
Regulatory Code:	3.5

Successions Policy

1 Scope

- 1.1 This policy applies to the supported and general needs tenants of:
- Circle 33 Housing Trust
 - Mole Valley Housing Association
 - Old Ford Housing Association
 - Roddons Housing Association
 - Russet Homes
 - South Anglia Housing
 - Wherry Housing Association
- 1.2 Succession occurs when a sole tenant dies and an eligible partner or qualifying member of his or her family takes over the tenancy, or when a joint tenant dies and the surviving partner succeeds to the tenancy, known at law as survivorship.
- 1.3 There is a separate [Death of Tenant policy](#) covering situations where there is no right of succession or no successor.

2 Policy Statement

- 2.1 Secure, assured and assured protected tenants have different statutory and contractual succession rights, although Circle Anglia will treat all classes of tenants and their possible successors equally.
- 2.2 It is our overall policy approach to grant only a single succession, unless exceptional circumstances or non-standard tenancy agreement terms apply (for example in the case of stock transfer tenancies).
- 2.3 Circle Anglia aims to provide a fair and efficient service when processing requests for successions by:
- dealing sensitively with residents at a time of grief and loss
 - meeting our statutory and contractual obligations
 - adhering to additional rights granted under the terms of localised tenancy agreements
 - making the most efficient use of available housing stock
- 2.4 Under the terms of our [Equality and Diversity](#) policy, Circle Anglia undertakes to treat all tenants equally, regardless of their marital status or sexual

orientation. However, we recognise that there are occasions when the law distinguishes between married or civil partners, and common law partners, and that this may override our stated approach.

3 Policy

3.1 This policy covers the three different types of succession:

- **Survivorship**, when a joint tenant dies and the remaining joint tenant succeeds to the tenancy
- **Statutory** succession, where succession rights are granted by law to a partner of a secure or assured tenant or a qualifying family member of a secure tenant
- **Contractual** succession, where Circle Anglia’s tenancy agreements accord qualifying family members of assured tenants equivalent rights of succession to secure tenants

3.2 The table below can be used to establish what type of succession would apply in each situation, assuming appropriate proof of relationship is gained.

Claimant	Assured	Secure
Joint Tenant	Survivorship	Survivorship
Partner	Statutory	Statutory
Qualifying family member	Contractual	Statutory

3.3 Circle Anglia may in exceptional circumstances grant a new tenancy to someone who was living with the tenant at the time of their death where we are not required to by law or by the tenancy agreement. We term this a “[discretionary ‘succession’](#)”.

3.4 The law relating to successions for **secure** tenants is set out in Section 87 of the Housing Act 1985, as amended by the Civil Partnership Act 2004. 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 and in the following order of priority they are:

- the tenant’s married or civil partner or person living as if they are the tenant’s married or civil partner **or**
- a qualifying member of the tenant’s family who has lived with the tenant for a period of 12 months or more before the tenant’s death.

3.5 The law relating to successions for **assured** tenants is set out in Section 17 of the Housing Act 1988, as amended by the Civil Partnership Act 2004. 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 tenant's married or civil partner or person living as the tenant's married or civil partner (co-habiting).

The right to succession

- 3.6 The law provides for one succession only. For contractual successions Circle Anglia also awards only one succession right through the tenancy agreement. Therefore there will generally be no-one with a right of succession if the deceased tenant was a successor themselves (including if the succession was by survivorship).
- 3.7 This general principle may be overruled under the terms of various stock transfer arrangements within the group, as there are a number of localised tenancy agreements where the tenant is granted the right to further successions, or where survivorship is not counted as a succession. We will adhere to these rights as granted and emphasise the importance that individual tenancy agreements are carefully checked by staff in each succession case.
- 3.8 An additional exception is where two joint secure tenants were granted a tenancy and the first joint secure tenant died before 3 October 1980. The law allows for one further succession on the tenancy.
- 3.9 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 the 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.
- 3.10 The situation where a tenant was themselves a successor before carrying out a mutual exchange is less clear, and guidance should be sought from the policy team for individual cases.

Requests to succeed

- 3.11 A successor to a tenancy may be a married, civil or co-habiting partner, or a qualifying family member.
- 3.12 We require potential successors to submit their succession request to us in writing within one month of the date of the tenant's death. Proof of relationship to the tenant must be provided in all cases and for family members additional proof of 12 months' residency at the property is required.

- 3.13 However, we need to bear in mind that a statutory succession (including survivorship) happens automatically, so that we could not refuse a statutory succession if the successor applied late.
- 3.14 If more than one person may be entitled to succeed and there is no married, civil, or co-habiting partner who is entitled to succeed, then the other members of the tenant's family must decide between themselves who is to succeed.
- 3.15 Where this cannot be agreed, Circle Anglia will carefully consider the competing claims and make the decision. Wherever possible, we will give preference to the tenant's partner, including same sex partners, where they are in residence at the property.

4 Different types of succession

Joint tenants and survivorship

- 4.1 On the death of one joint tenant, the other tenant succeeds to the tenancy. In legal terms this is called survivorship. This happens automatically at the point of death and does not require our approval.
- 4.2 The remaining tenant inherits all the rights and responsibilities of the previous joint tenancy. In effect they are now a sole tenant.
- 4.3 Survivorship differs from other successions in that the remaining tenant is liable for any rent arrears.
- 4.4 A joint tenant will succeed the tenancy by survivorship regardless of whether the other joint tenant had been a successor themselves.

Married, civil and co-habiting partners

- 4.5 Successions of married, civil and co-habiting partners to both secure and assured tenancies are protected by law (statutory successions). If there is a remaining right to succession on the tenancy, this type of succession occurs automatically at the point of death.
- 4.6 Under law, priority for succession is given to a married or civil partner, or person living as if they were the married or civil partner, over other qualifying members of the tenant's family, provided that they occupied the property as their only or principal home when the tenant died.

Qualifying family members

- 4.7 For **secure** tenancies, successions of qualifying family members are protected by law (statutory successions). For **assured** tenancies, successions of qualifying family members are granted contractually through the tenancy agreement by Circle Anglia.
- 4.8 We define a qualifying member of the tenant's family as their:
- parent or grandparent
 - child or grandchild
 - brother or sister
 - uncle or aunt
 - nephew or niece.
- 4.9 Step and half relatives will be treated as full relatives.
- 4.10 For both secure and assured tenancies for succession to take place the family member must have lived at the property with the tenant for 12 months before the tenant's death, using it as their only or principal home.
- 4.11 We regard the 12-month residency period as applying to the length of time that the qualifying family member has been living with the tenant, rather than the length of time the qualifying family member has lived in the property where the tenant died.
- 4.12 Where the potential successor fulfils the 12-month residency rule but is temporarily absent at the time of death, they will still be eligible to succeed, providing that the property is their principal and only home. This may apply if the qualifying family member was in hospital or on holiday at the time the tenant died.

5 Discretionary 'successions'

- 5.1 In some circumstances we may grant a tenancy to a claimant where we are not legally obliged to. This could be:
- where the succession right on the tenancy has not been used up but the person applying would not usually qualify to succeed (for example a carer living at the property, or a non-family member taking care of the tenant's dependants)
 - where the succession rights on the tenancy have been used up but there is a claimant who would otherwise qualify to succeed (for example where a son or daughter has been living at the property their whole life)

The policy team can be consulted for advice on specific situations. Decisions for discretionary 'successions' must be made by an appropriate manager.

- 5.2 In some situations where RSLs do not have their own housing registers or where Local Authorities have 100% nomination rights we may work with the Local Authority to consider the options for a discretionary 'succession'.
- 5.3 If we receive an application for a discretionary 'succession' we will consider it carefully, and only refuse if it is reasonable to do so. This means assessing the individual circumstances of the applicant and balancing them against the criteria listed below. Where we do refuse it we will make careful and thorough records of the reasons.
- 5.4 Decisions about discretionary 'successions' will be made by a manager and will take into careful consideration:
- how long the claimant has lived at the property (in general we would require a minimum of 12 months)
 - the fact that new succession rights will be granted with the new tenancy
 - the extent of housing need in the area
 - the potential successor's circumstances, where undue hardship or distress may be caused
 - the potential successor's suitability to the property, where there may be a question of adaptations in the property, or under-occupation
 - their ability to pay rent and sustain the tenancy
 - whether they had priority need and would be eligible for re-housing by the local authority under the Homelessness Act Policy Briefing 25, The Homelessness Act 2002.
- 5.5 In every case, a new assured tenancy will be granted, regardless of the tenancy type held by the original tenant.
- 5.6 In legal terms, this discretionary decision does not constitute a succession. This means that the new tenant cannot be excluded from their statutory rights and will be granted the right of succession along with their new tenancy.

6 Other considerations

Supported housing

- 6.1 Successions in supported housing, where tenants are in receipt of specialised care and potential successors may have no need of that care or support, may present certain difficulties. This situation may occur particularly in sheltered

- housing, where a younger surviving partner may be entitled to take over the tenancy, in accommodation where the age threshold for entry may not be met.
- 6.2 Tenancy agreements in supported housing usually do not include a clause allowing contractual succession for family members of assured tenants. However, statutory succession rights exist outside of the tenancy agreement. They cannot be refused or excluded, even if they are not mentioned in the tenant's tenancy agreement.
- 6.3 Where the tenancy is **secure**, there is a statutory right for a married, civil or co-habiting partner to succeed, as well as for a qualifying family member. For **assured** tenancies there is a statutory right for a married, civil or co-habiting partner to succeed. We cannot override this statutory right, even where the successor has no eligibility for the type of care and support offered in supported housing accommodation. The succession takes place automatically at the point of death (assuming there is someone eligible to succeed to the tenancy).
- 6.4 In the case of **assured** tenancies, we may use a Ground 9 application for possession, in order to move the successor to more suitable accommodation. Ground 9 details the provision of suitable alternative accommodation if a possession order is made and also insists the landlord pay reasonable removal expenses. The possession order can be opposed on the grounds that the alternative accommodation is not suitable.
- 6.5 For **secure** tenancies we may offer the surviving partner or family member suitable alternative general needs accommodation but there is no obligation on the part of the successor to accept. There are specific grounds for possession against secure tenants but these will only rarely apply and would be where the accommodation is:
- specially adapted for use by a disabled person
 - used for those with special needs and is in close proximity to a social service or special facility
 - belongs to an organisation which caters solely for the provision of housing to those in need of care and support.
- 6.6 In making decisions we will be guided by the terms of the individual tenancy agreement or licence, which may often contain clauses specifying that it is solely the tenant who occupies the property. However, these restrictions will not stop a person who is entitled to succeed from succeeding if the tenant dies and the person remains in the property.

6.7 Household arrangements are monitored throughout the course of a tenancy in supported housing. This monitoring should prevent the situation described above from happening.

Making best use of our stock

6.8 In some circumstances we will want to oppose the succession of a tenancy to make best use of our stock. This could be:

- in order to prevent underoccupation
- where the property has been adapted for use by a disabled person

6.9 A surviving joint tenant takes the tenancy of the property by right and there are no grounds for requiring them to move to alternative accommodation if they are underoccupying, or where the property they are living in has been adapted.

6.10 In all other succession cases, we will normally request that the successor moves to alternative accommodation, as long as the offer is reasonable.

6.11 In general we accept that the successor may under-occupy by one bedroom, though where RSLs have particular local shortages of certain sizes of property they may overrule this.

6.12 We will consider the nature of any adaptations and only require the successor to move if it is considered to be necessary. In general we would not require a move where the adaptations were minor, under the definition set out in our [Adaptations Policy](#).

6.13 We will make two reasonable offers of alternative accommodation, taking into consideration the needs of the person in terms of location and suitability of property. We will pay reasonable removal costs. For discretionary 'successions' we will make one reasonable offer of alternative accommodation.

6.14 Where the successor is unwilling to agree to a move voluntarily, we may seek to enforce it through the courts. For underoccupation we can use Ground 13 of Schedule 2 of the Housing Act 1985 for Secure tenants or Ground 9 of the Housing Act 1988 for assured tenants. Where the property has been adapted we can use Ground 16 of Schedule 2 of the Housing Act 1985 for Secure tenants or Ground 9 of the Housing Act 1988 for assured tenants

Illegal occupation

- 6.15 In some cases, occupiers who have had their application to succeed refused may still be in residence. We will serve a Notice to Quit (NTQ) to end the tenancy and attempt to recover the property at its expiry in line with the [Death of Tenant policy](#).
- 6.16 It is our policy to treat this as a case of illegal occupation and we will take court action to recover the property. See [Abandonment and Absent Tenants policy](#).

Tolerated trespassers

- 6.17 Tolerated trespassers have no succession rights.

7 Rent charges and arrears

Rent charges

- 7.1 As statutory successions do not create a new tenancy, the existing rent charge will continue to apply to a successor. Rent increases will be implemented in line with the existing timetable.
- 7.2 Where a new assured tenancy has been created on a discretionary basis the new tenant will be charged the relet rent for their property along with the relet service charge.
- 7.3 A contractual successor will pay the rent currently being charged on the tenancy of the deceased tenant. However, this does not apply to service charges and the relet service charge will be applied.
- 7.4 As a new tenancy has been created, a rent increase will not occur until the second April of the tenancy, in the case of either contractual or discretionary successions.

Rent credits and arrears

- 7.5 Where the succession is claimed by way of survivorship, the remaining sole tenant becomes liable for the deceased tenant's rent arrears and likewise will inherit the deceased tenant's rent credits.
- 7.6 Any rent credits or arrears on a tenancy that has been succeeded to by way of statutory succession (not including survivorship) become a debt owed by/to the deceased tenant's estate and cannot be claimed from/by the successor.

7.7 Likewise, rent credits or arrears belonging to a tenancy succeeded to by way of a contractual or discretionary 'succession', belong to the deceased tenant's estate and cannot be transferred to the successor.

8 Service Standards

8.1 We will visit a property and serve notice within seven working days of receiving notification of the death of a tenant, where no succession claim is involved.

8.2 We will respond to a written request for succession within 10 working days.

8.3 Tenants can expect that all requests for succession will be dealt with as sensitively and compassionately as possible, with appropriate advice and information provided by our staff to ensure that there is a smooth tenancy transition.

8.4 In cases where there is more than one eligible successor we will allow family members to agree among themselves who is to succeed to the tenancy. Only in the absence of such an agreement will we intervene with a ruling, and where there is a partner involved we will usually decide in their favour.

8.5 We will ensure wherever possible that appointments for sign-ups will be made within five working days of the succession being approved. New tenancies are only relevant to discretionary or contractual successions.

9 Monitoring

9.1 We record all applications for succession and note the reasons for refusal or approval on Orchard or equivalent system. This applies to discretionary successions as well.

9.2 We monitor our performance against all of our [customer service standards](#).

10 Equality and Diversity

10.1 Circle Anglia recognises that customers of all races, ages, religions, gender, sexual orientation and disability should be treated equally and fairly and we will not discriminate in implementing these policies and procedures.

10.2 As part of this undertaking, we give equal standing to tenants who are married, civil partners, or gay, lesbian or heterosexual common-law partners, except where this approach is overridden by the law.

-
- 10.3 We will be sensitive to tenants' individual needs and will tailor our services and approach accordingly.
- 10.4 We will take steps to identify any language or communication requirements and ensure that we provide information in the appropriate format.
- 10.5 All customers will have access to this document upon request or from our website www.circleanglia.org/customers where appropriate.
- 10.6 This document can be translated or provided upon request in alternative formats, such as, Braille, large print and audio.
- 10.7 Equality and diversity training is mandatory for all staff.

11 Publicising the Policy

- 11.1 Circle Anglia publicises its policies and procedures on Successions to residents and staff in a number of ways:
- Resident Handbook
 - Resident Newsletter
 - CIRANO
 - Policy Briefings and
 - Training

Glossary

Term	Definition
Succession / successor	When a tenant dies there is a right for a partner or member of their family to inherit the tenancy. This is called succession, and the person who inherits the tenancy is called the successor.
Statutory succession	This is where the law says that the partner or member of the family has the right to succeed to the tenancy
Contractual succession	This is where we give a partner or member of the family the right to succeed to the tenancy through our tenancy agreements
Discretionary succession	This is where there are no rights to succeed, but we make a decision to let someone have a new tenancy in the property because of some specific circumstances
Survivorship	This is where one joint tenant dies and the other one becomes the sole tenant

Related Documents

Document	Link
Connected Policies:	Assignment to a potential successor Equality and Diversity Grounds for Possession Abandonment and Absent Tenants Death of Tenant
Forms and Letters:	Assured Succession Agreement Confirmation of Survivorship letter Illegal Occupant and Squatters Referral form Secure Succession Agreement Succession Application Acknowledgement letter Succession - Discretionary Request Response letter Succession Refused letter Succession Approved - Assured Statutory letter Succession Approved – Contractual or Discretionary Succession Approved - Secure Statutory letter
Leaflets:	N/A
Other:	

Version history

Version no.	1	Date effective:	May 2007
Full / partial review?	n/a		
Brief summary of changes:	n/a		
Staff consultation (teams):	Staff, SMPRG		
Resident consultation:	OF HS, OF TML, GPF		
Legal consultation:	Devonshires		
Signed off by:	Group Policy Forum 23 rd October 2006		
Author:	Zoe Buick, Policy Officer		

Version no.	2	Date effective:	October 2008
Full / partial review?	Full		
Brief summary of changes:	Integration with new business partners, increased emphasis on documentation of "reasonableness" when refusing discretionary decisions, and dealing with underoccupation and adapted properties.		
Staff consultation (teams):	Neighbourhood and Income teams at all RSLs Supported Housing Heads of Continuous Improvement SMPRG 6 th November 2008		
Resident consultation:	Mole Valley Operations Working group Mole Valley Policy Forum Roddons editorial group (customer letters) Russet Residents' Panel		
Signed off by:	Group Policy Forum, 20 th November 2008		
Author:	Zoe Buick, Policy Manager Abi Patience, Policy Officer		

Version no.	3	Date effective:	
Full / partial review?			
Brief summary of changes:			
Staff consultation (teams):			
Resident consultation:			
Signed off by:			
Author:			