



SUCCESSION & ASSIGNMENT POLICY

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Responsible Senior Manager:	Assistant Director of Housing
Approved By:	Customer Committee
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1. Introduction

This policy outlines the legal requirements when dealing with succession and assignment requests. The council has certain duties under law in how we process such requests. These requests are currently dealt with under Section 87 of the Housing Act 1985 and the Localism Act 2011.

2. Policy Statement

Succession is the process by which a tenancy is passed to another person on the death of the original tenancy holder. This policy identifies our process for dealing with all successions and assignments.

3. Definitions

The following definitions apply to this policy:

- Statutory Succession is the transfer of a tenancy (not a property) to another (qualifying) person upon the death of a tenant.
- Qualifying Person is someone that meets the relevant criterion to succeed or be assigned an existing tenancy.
- Assignment is when a living tenant transfers the rights of their secure tenancy (not a property) in full to a (qualifying) person.
- Tenancy is any tenancy between a secure, fixed term or introductory tenant and Shropshire Council.
- A Tenant is anyone who has a tenancy with Shropshire Council.
- Sole Tenancy is one tenancy that is held by one person.
- A Joint Tenancy is one tenancy that is held by two or more people, whereby each tenant is jointly and severally liable for the tenancy. Legally it is not possible to have more than four joint tenants.
- An Introductory Tenancy is a 12-month probationary tenancy, which offers tenants limited rights.
- A Secure Tenancy is granted to some tenants automatically after 12 months of being on an Introductory Tenancy, provided they have met the conditions of their Tenancy Agreement. Secure tenants have more rights with their tenancy. Prior to the changes introduced in the Localism Act 2011, all tenants were granted secure or life-time tenancies, after the completion of their Introductory Tenancy, providing they had met the conditions of their Tenancy Agreement.
- A Fixed Term Tenancy is a form of secure tenancy which lasts for a fixed period, i.e. 5 years. It will be granted to most new tenants after 12 months of being on an Introductory Tenancy. Tenants with a Fixed Term Tenancy will mostly have similar rights as other secure tenants.

- A Demoted Tenancy may be given to tenants of secure or fixed term tenancies who have breached their Tenancy Agreement for anti-social behaviour and reduces security of tenure to that of an Introductory Tenancy. If a Fixed Term Tenancy is demoted, the Council will serve a Notice to the tenant prior to the end of the demotion period to make them aware that the tenancy is to become a Fixed Term Tenancy and specifying the fixed term.
- An Equitable Tenancy is one where the legal title is held in trust by an adult (or corporate entity).
- Members are defined under Section 113 of the Housing Act 1985 as being: A spouse, civil partner (as defined in the Civil Partnership Act 2004) or a partner with whom the tenant lived as husband or wife, parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew and niece. For the purposes of this policy, couples who have separated and live apart do not qualify for succession unless they hold a joint tenancy and have not given up their rights.
- A Minor is any child under the age of 18.
- A tenant may be classed as vulnerable because of age, mental illness or physical disability.
- Under-occupied means that a property is more extensive than is reasonably required.

4. Right to Succession

Only one statutory succession is permitted.

Joint Tenancies

When a joint tenant dies, the tenancy will pass to the other joint tenant by the common law rules of 'survivorship'. This will count as the one succession allowed by the Housing Act 1985 (no-one will be able to succeed to the tenancy when the surviving joint tenant dies). Where there are three or four-way joint tenancies and one of the joint tenants dies, the surviving joint tenants will be given the option of either:

- One of them succeeding the tenancy only; or
- Becoming joint tenants on a new tenancy.

Sole Tenancies

The arrangements for secure tenants whose tenancies pre-date the changes introduced by the Localism Act 2011 are slightly different to those for more recent tenants. In accordance with the Localism Act 2011, unless the tenancy agreement expressly allows for someone else to succeed there is a right of one succession to a spouse or partner. In order to make the best use of the housing stock, following the death of a secure tenant, there is no statutory right of succession to other family members. **This applies to tenancies which commenced after April 2012.**

If the tenancy was issued before these changes in legislation; when a sole tenant dies, the tenancy may be passed to their spouse, civil partner, partner, or other family member. However, this is dependent upon there never having been a previous succession or assignment; and also, that the successor was living at the property as their only or principal home.

If the accommodation is larger than is reasonably required by the successor, who is not the deceased tenant's spouse, then STAR Housing can seek possession under Ground 15A Schedule 2, Part 111 of the Housing Act 1985. We will work with the successor to seek smaller, more suitable alternative accommodation. Every effort will be made to find accommodation that the successor will be happy to move to. However, if the successor refuses to move or does not apply for alternative accommodation, then STAR Housing may consider taking action to regain possession of the property.

Where there is more than one qualified successor, the spouse takes precedence over other relatives. If the tenant does not have a spouse, civil partner, or partner then the tenancy may be able to be passed to a member of the family that were living at the property consecutively for 12 months ending at the tenant's death.

The eligible relatives decide who should have the tenancy and if an agreement cannot be made then STAR Housing will make this decision. In some cases, the Civil Court may need to decide.

As an existing tenancy is passed to another person, a new tenancy is not created, however the qualifying successor to a sole tenancy will need to sign confirming they accept the terms of the Tenancy Agreement.

No Succession Rights

If there has already been a succession to the tenancy, then the person remaining in the property is not entitled to succeed. We can exercise our discretion to offer a new tenancy to anyone left in occupation on the death of the current tenant (of the existing property or an alternative property), but in exercising this discretion we will make sure that our Shropshire Council's Allocations Policy and Scheme is not being undermined and in particular that we do not allow under occupancy of our properties to take place without good reason.

We may exercise our discretion in the following circumstances:

- The applicant had taken up permanent residence with the deceased tenant at least 12 months before their death.
- The health or needs of the applicant is such that it would be unreasonable for them to find alternative accommodation.

In cases where an offer of alternative accommodation is unreasonably refused, we may begin legal proceedings to gain possession of the property.

5. General Rules

The successor or potential successor(s) must notify STAR Housing in writing within one calendar month of the tenant's death. Where applicable, this should include details of any agreement reached or on-going dispute relating to the succession to the property.

Where a qualifying successor, whose permanent place of residence was with the deceased tenant, but they are absent from the property on a temporary basis (such as being in receipt of medical care), they are still entitled to succeed the tenancy as long as:

- They will not be absent from the property for more than six months; and
- There are no rent arrears or other breaches of the Tenancy Agreement, and someone else accepts responsibility for paying the rent (and any other charges) on their behalf until they can return to the property.

6. Right to Assignment

We only allow tenants to assign their tenancy to another person who would qualify for statutory succession in the event of the tenant's death (this will count as the statutory succession).

Requests for assignment will be refused if:

- There are arrears on the tenancy.
- The tenancy is subject to legal action; or
- The property would not be suitable for the needs of the person to which the tenancy would be assigned.

Other Changes to Tenancies

The following changes to tenancies count as assignments of tenancy but are not classed as a right of succession:

- Swapping tenancies by way of mutual exchange with a tenant from another social landlord; and
- Changing a tenancy from joint to sole due to a Property Adjustment Order in accordance with the Matrimonial Clauses Act 1973 / The Matrimonial & Family Proceedings Act 1984.
- Tenants with an existing social tenancy will be given a tenancy with no less security where they choose to move to another social rented home by way of mutual exchange. To achieve this, in cases where:

- At least one tenant who wishes to transfer has a secure tenancy which began before April 2012
- At least one of the tenants has a Fixed Term Tenancy
- The exchange must be done by surrender and granting a new tenancy.
- In other cases, mutual exchanges will take place by Deed of Assignment. This means that each party will “take over” the tenancy of the other.
- We can refuse an exchange where at least one tenant has a fixed tenancy term.
- of less than two years.
- An unauthorised Mutual Exchange is a breach of tenancy, and we will take legal action against any persons who are unlawful occupiers without security of tenure.
- The tenant will be liable for any costs associated with such action.

7. Property Rights

If the tenancy passes to someone other than a joint tenant and this results in the property being under-occupied, the successor may be required to transfer to smaller accommodation, suitable to their needs, when it becomes available.

Where the property is designed or adapted for a person with disabilities or it is designated sheltered / independent living accommodation and the person entitled to the succession does not require such accommodation, then that person may be required to transfer to a more suitable property.

If a request to move is refused, then we may begin legal proceedings to recover possession of the property.

8. Vulnerable Tenants

If a succession would result in a tenant who is vulnerable being in a property unsuitable for their needs, we will offer suitable alternative accommodation when it becomes available as per our vulnerable customer policy.

Succession for Minors

By law, minors have the same statutory succession rights as individuals over 18. However, as minors, they may be regarded as vulnerable and assessed by Shropshire Council’s Children’s Services for any risks and support requirements as well as any measures put in place to address them.

When there is a statutory succession to a tenancy, the minor will become the tenant in equity. The minor will be bound by the terms of the original agreement before the succession took place. We will require a third party to act as guarantor in respect of a tenancy for a 16- or 17-year-old. The guarantor, who may be the council’s Children’s Services, a voluntary organisation or an individual may also act as a trustee and ‘litigation friend’. All

correspondence relating to the tenancy sent will be copied to the guarantor until the minor turns the age of 18. The tenancy will transfer to the minor upon their 18th birthday.

9. Information for Successors

If a joint tenant succeeds to the tenancy, he/she becomes responsible for any outstanding rent arrears on the property.

Only tenants succeeding a joint secure tenancy will become a secure tenant. A person succeeding to an introductory tenancy will become an introductory tenant for the remainder of the introductory tenancy's original 12-month probationary period. They will then become a secure tenant if they have met the conditions of the Tenancy Agreement.

Anyone succeeding a secure tenancy will have the same rights as the previous tenant.

Anyone succeeding a Fixed Term Tenancy will remain as a fixed term tenant and the end date will remain the same as was specified at the beginning when the tenancy was granted to the original tenant.

For the purposes of this policy, anyone succeeding a Demoted Tenancy will be classed as an Introductory Tenant.

10. Unauthorised Occupants

Where there is no legal right to the property, we will pursue legal action to gain possession.

Any person remaining in the property until the Court issues a Possession Order will not hold a tenancy of the property but will be liable for use and occupation charges.

11. Responsibility

Overall responsibility for the implementation of this policy lies with the Neighbourhoods Manager.

The Senior Neighbourhood Officer is responsible for the day-to-day management and implementation of the succession and assignment policy and procedures, monitoring and reviewing performance and making recommendations for improvement.

All staff have a responsibility for the delivery of the succession and assignment policy.

12. Customer Responsibility

Customers must accept their responsibilities regarding changes to their tenancy as stated in the Tenancy Agreement.

13 Consultation

Shropshire Towns and Rural Housing consults with staff, external agencies, tenant Policy focus groups and STAR's customer services subcommittee to promote continuous improvement and develop good practice in the use of this policy.

14. Review

The Succession and Assignment Policy will be reviewed on a 3 yearly basis unless changes in legislation or regulation require an earlier review.

15. Training

Shropshire Towns and Rural Housing provides continuous development and training for its staff who are responsible for implementing this policy.

16. Roles and Responsibilities

All employees	General Overview of Policy
Neighbourhood Housing Officers	Implementation of Policy
Senior Neighbourhood Officers	Line Management Responsibility of neighbourhood officers in the implementation of this policy
Neighbourhood Manager	Overall responsibility for the operational day to day implementation of this policy. Monitoring performance indicators and management information and day to day oversight of the quality of service and outcome
Assistant Director of Housing	Accountable for the implementation of this policy and for reporting performance to key stakeholders including SMTs, ET and Customer Committee and Board

17. Equality and Diversity

We will ensure that this policy is applied fairly and consistently to all our customers. We will not directly or indirectly discriminate against any person or group of people because of their race, religion, age, gender, marital status, sexual orientation, disability, or any other grounds set out in our Equality, Diversity, and Inclusion policy.

When applying this policy, we will:

- Act sensitively towards the diverse needs of individuals and communities.
- Take the necessary positive action to reduce discrimination and harassment in local communities.

This policy and any other related publications of Shropshire Towns and Rural Housing are available on request in other formats (e.g., in an alternative language, in Braille, on tape, in large type).