

Succession Policy

1 Purpose

This policy outlines the approach taken by MTVH in dealing with successions. A succession is the transfer of a tenancy to a qualifying person following the death of a sole or joint tenant.

2 Policy Statement

MTVH defines succession as the process by which MTVH agrees for a tenancy to be taken over by another person on the death of a tenant. A successor will take on the original terms and obligations of the original tenancy agreement.

Where applicable, MTVH will provide all tenants with equivalent rights to pass on their tenancies through the appropriate means of succession, mutual exchange or assignment.

MTVH will ensure all applications are dealt with promptly, taking account of appropriate legislation, the requirements of the applicant and the requirements of MTVH. Where an application to succeed has been approved, MTVH will carry out the necessary actions and make the administrative changes quickly. Where applications are denied, MTVH will inform the applicant of this, stating the reasons for the decision.

3 Our Approach

3.0 Definitions

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. A new tenancy is not issued.

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 there is not a joint tenant, if the tenancy contains a clause explicitly providing for it. The tenancy continues in the name of the successor.

There can only be one successor. There cannot be joint successors.

Contractual succession

Where the tenancy agreement provides qualifying family members of assured or secure tenants from 1 April 2012 with legal rights of succession should they meet the necessary criteria set out in the agreement.

Family Members

Members of the family are defined (by section 113 of the Housing Act 1985) as: spouses, civil partners, persons living together as if they were a married couple or civil partners, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces. For the purpose of this policy, this definition also includes stepchildren, sister/brother by one parent, children born outside of wedlock.

Spouse

The terms 'spouse' and 'civil partner' are used in section 113 of the Housing Act 1985, but for the purpose of this policy, as long as all other eligibility criteria are satisfied, it also includes

- Persons living together as if they were a married couple or civil partners

At MTVH we recognise diversity, we will take into account persons who are living together, who are not married (cohabiting persons). We will need to make further assessments and will consider all factors on a case-by-case basis.

3.1 Types of Tenancy Agreement

As a registered social landlord, MTVH will give customers the most secure form of contract appropriate to their particular circumstances. The main agreements used will be as follows:

- Secure
- Assured
- Fixed Term
- Starter
- Affordable Rent Probationary

Secure and assured tenants have different succession rights given to them by the 1985 and 1988 Housing Acts as amended by the Localism Act 2011.

3.2 Death of a Joint Tenant

Where one joint tenant dies, regardless of the type of tenancy, the tenancy is vested in the survivor (or survivors if there had originally been more than two joint tenants) under the doctrine of survivorship. Although this is technically not a 'succession', the Housing Acts 1985 and 1988 specifies that the only allowable succession will have occurred where a former joint tenant becomes a sole tenant through survivorship.

3.3 Statutory Succession for Secure Tenancies

The Housing Act 1985 as amended by the Localism Act 2011 allows for a spouse, civil partner, person who was living together with the deceased as if they were a married couple or civil partners, to succeed to a secure tenancy. They must have been living at the property together as their only or principal home at the time of the tenant's death.

Where the above does not apply, the Housing Act 1985 as amended by Localism Act 2011 allows for another member of the family to succeed to the tenancy where the tenancy commenced before 1 April 2012. They must have been living at the property as their only or principal home 12 months prior to the tenant's death.

If there is a remaining joint tenant, they will automatically 'succeed' through survivorship. If the tenancy was not previously a joint tenancy and more than one person has the right to succeed, then the spouse, civil partner, person who was living together with the deceased as if they were a married couple or civil partners, has priority.

If the tenancy was granted before 1 April 2012 and the above doesn't apply; the members of the family will decide between themselves who will succeed. For all types of succession, only one person can succeed. Two qualifying family members cannot succeed to a tenancy jointly. If they cannot decide who will succeed and the provisions of the tenancy agreement do not stipulate this, then MTVH will decide. It will usually pass to the person who has resided in the property the longest as their main home. In some cases, the potential successors must apply to Court for the dispute to be determined.

For secure tenancies, if the potential successor succeeds to an unsuitable property (see section 3.10 Unsuitable Accommodation below), MTVH will rely on Grounds 13, 15, 15A or 16 of the 1985 Housing Act and seek to move the potential successor to suitable alternative accommodation. For under-occupied properties, we will do this at least 6 months but no more

than 12 months after the death of the tenant or, if a Court directs, the date on which we became aware of the death of the tenant. By law, spouses and civil partners and a person who was living together with the deceased as if they were a married couple or civil partners, will not be expected to move if the property is under occupied.

3.4 Statutory Succession for Assured and Fixed Term Tenancies

The Housing Act 1988, as amended by the Localism Act 2011, allows succession by a spouse or civil partner or person who was living together with the deceased as if they were a married couple or civil partners, if they were occupying the dwelling as their only or principal home at the time of death and there was no previous succession to the property. The potential successor will succeed to the same type of tenancy as the person who died.

As with a secure tenancy, there will have been a prior succession if a joint tenant has died and the surviving joint tenant has obtained a sole tenancy through survivorship.

3.5 Contractual 'Succession' for Secure and Assured Tenancies

A contractual right of succession is one which is set out in the tenancy agreement, in addition to the statutory rights set out in law. The way in which the succession takes place will be determined by the succession clause in the tenancy agreement held by the deceased tenant. Ordinarily, this clause will require that the existing tenancy is passed on to the contractual successor. Where the tenancy agreement does not stipulate the mechanism by which a contractual 'succession' will be managed, a new tenancy will be granted to the succeeding tenant.

A contractual right for an individual to succeed to the tenancy is created if:

- They meet the requirements written in the terms of the deceased's tenancy agreement
- It meets the criteria as specified in an existing MTVH policy (for example, guaranteeing the same rights between secure and assured tenancies)
- It is a condition of stock transfer (offer document)

3.6 Death of a Customer Where There is No Eligible Successor

If no one is entitled to succeed, it may be possible for the tenancy to be passed on through the deceased person's will or by the rules of intestacy. However, in most cases, MTVH will retain the right to be able to evict the person(s) who stay on by following the correct legal process.

3.7 Starter and Demoted Tenancies

Statutory succession rights remain for starter and demoted tenancies (a spouse, civil partner, person who was living together with the deceased as if they were a married couple or civil partners or a joint tenant, will still have statutory succession rights). The tenancy succeeded will also be starter or demoted tenancy. For contractual succession, it is dependent on the actual terms of their agreement (for example, there may be no right for a contractual succession during the starter period).

3.8 Minors and Equitable Tenancy Agreements

If an eligible successor is under 18, we will grant an Equitable Tenancy to a Minor. By signing the agreement, the minor agrees to comply with the conditions of the tenancy agreement until they become 18. Failure to comply means we may take steps to end the agreement. The full tenancy will pass to the minor on the first Monday after their 18th birthday.

The minor must have a suitable trustee. The trustee will be responsible for assisting the minor to sustain the tenancy and will be liable for all conditions of the tenancy, such as paying rent, whilst the tenant is a minor. A trustee can be a private individual, local authority or Social Services

Department.

We will use our discretion in any decision to grant an additional right to a tenancy to a minor. As this is not a tenancy itself, the rights included within the tenancy agreement such as mutual exchange, assignment and succession, will not apply until the tenant reaches 18 and the tenancy is formally granted.

3.9 Unsuitable Accommodation

MTVH will consider the circumstances of each succession case. We will decide if a property is unsuitable with reference to our statutory and legal requirements. Potential successors who succeed to an unsuitable property will be offered alternative accommodation.

The exception is we cannot move spouses, civil partners or a person who was living together with the deceased as if they were a married couple or civil partners, who under-occupy after succeeding to a secure or assured tenancy.

Circumstances where the property will be considered unsuitable may be where:

- The potential successor is a family member who under-occupies the property by more than one bedroom
- The property has major aids or adaptations which the potential successor does not need
- The potential successor remains in a property which has been developed for a specific client group, for example, sheltered housing and they are not in that client group

3.10 Confidentiality

All applications and tenants are subject to UK GDPR along with the Data Protection Act 2018. Where specific permissions are required to make enquiries with individual support workers or other third parties, the applicants are required to sign a declaration giving their consent. Identification markers on our computer databases are also used to denote risks, vulnerability or for regard to be given to special requirements.

For more information, please see our **Privacy Policy**.

3.11 Quality assurance and monitoring

MTVH will monitor the implementation of this policy through complaints and appeals and, where necessary, court cases.

4 Appeals Process

Applicants have the right to request a review of a decision to refuse a succession and may request an agency or organisation to make an appeal on their behalf. Depending on the reasons for refusal, the appeal may be referred to the MTVH Allocations Panel. The panel will review this and make a decision based on individual circumstances. An appeal does not interfere with an individual's rights to make a complaint to the independent Housing Ombudsman.

5 Background legislation

- Statutory rights of succession in secure tenancies are set out by the Housing Act 1985 sections 86 to 90 as amended by the Localism Act 2011
- Statutory rights of succession in assured tenancies are set out by the Housing Act 1988 section 17 as amended by the Localism Act 2011
- The Civil Partnership Act 2004

6 Our commitment to Equality, Diversity and Inclusion

In implementing this policy MTVH will not discriminate against any colleague, resident or stakeholder on the grounds of their gender, sexual orientation, gender reassignment status, ethnic origin, age, religious belief, disability, marital status and pregnancy/maternity.

7 Key Policy Information

Procedure Owner	Regional Director (North London and Central)
Author	Heads of Housing Services (Midlands and East, South London and South)
Approved by	Customer Services SLT
Effective from	July 2022
Approach to review	This Policy & associated Procedures will be reviewed if legislation, regulatory changes or operational need requires. Any amendments will be appropriately consulted on and signed off before being clearly communicated to customers and colleagues.
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