

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.

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 unless the deceased's tenancy agreement specifies that a contractual successor is to be granted a new tenancy.

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.

Once the application and required documentation has been received, MTVH will aim to provide a decision within 28 days, 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 as soon as practicable. Where applications are denied, MTVH will inform the applicant of this, stating the reasons for the decision.

2 Our Approach

2.1 Definitions

Survivorship

Where a joint tenancy exists and one of the joint tenants dies, the tenancy continues in the surviving tenants' name (The Survivorship Rule). The remaining joint tenant is classified as a "successor". There will be no further succession rights. A new tenancy is not issued.

Statutory Succession

- **Secure tenancies (granted before April 1st 2012):** The tenancy can pass to a spouse, partner, or another qualifying family member who has lived in the property for at least twelve months before the tenant's death.
- **Secure tenancies (granted on or after April 1st 2012):** The tenancy can only pass to a spouse or partner living with the tenant at the time of the tenant's death.
- **Assured tenancies:** The tenancy can pass only to a spouse or partner living with the tenant at the time of death unless the tenancy agreement allows for a wider right of succession.
- By law, there can only be one succession. There cannot be joint successors.

Contractual Succession

Where the tenancy agreement provides for qualifying family members of assured or secure tenants (prior to 1st April 2012) so long as the necessary criteria set out in the agreement are met.

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.

Where a tenancy agreement provides for someone other than a 'family member', MTVH will consider the applicant as they would do for a family member. For example, a full-time carer.

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, therefore we will consider persons who are living together, who are not married (cohabiting). We will carry out checks to consider all factors on a case-by-case basis.

2.2 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.

Please refer to the **Succession Guidance Table** for more information.

2.3 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 Survivorship Rule'. 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.

2.4 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 between themselves 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.

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 aim to do this within 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.

2.5 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 tenancy of 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.

2.6 Contractual 'Succession' for Secure and Assured Tenancies

A contractual right of succession is one which is set out in the tenancy agreement of the deceased tenant. Ordinarily, this clause will allow the existing tenancy to be passed on to a successor. Where the tenancy agreement does not stipulate the mechanism by which a contractual 'succession' will be managed, succession to the existing tenancy will be implied.

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

- The individual meets the requirements in accordance with the terms of the deceased's tenancy agreement
- The contractual right is a condition of stock transfer (offer document)

In accordance with section 2.10 below, alternative accommodation may be offered where the property is deemed unsuitable for the successor.

2.7 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 seek possession against any occupier.

2.8 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 successor will succeed to the starter or demoted tenancy, or in the case of contractual succession, it will depend on the actual terms of their agreement (for example, there may be no right to a contractual succession during the starter period).

2.9 Minors and Equitable Tenancy Agreements

If an eligible successor is under 18 and therefore a minor, MTVH will grant an Equitable Tenancy on Trust 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.

As this is an equitable tenancy, rights such as mutual exchange, assignment and succession, will not apply until the tenant reaches 18 and the tenancy is formally granted.

2.10 Statutory Succession and Unsuitable Accommodation

MTVH will consider the needs of the would-be successor for each case. If the successor occupies a property which is determined to be unsuitable (for example, too large) they will be made one formal offer of suitable alternative accommodation. This process could take up to 12 months or more. Some examples of considerations for suitability could be affordability, good condition, right size for the would-be successor (and family) and any health or disability issues. If relevant we may also consider travel time to work/school, disruption to education or caring responsibilities/support network.

If a suitable alternative offer of accommodation is refused, we will consider the reasons for refusal. If we agree with the reasons, we will make one further offer of suitable accommodation. If we do not agree with the reasons for refusal, we will confirm this in writing and provide a final opportunity to accept the offer before proceeding to serve a Notice of Seeking Possession on Ground 9 (Assured Tenancy) or Ground 15A (Secure Tenancy). These are discretionary grounds.

The exception is we cannot require 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 move to alternative secure or assured accommodation.

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

2.11 Rehousing

Where there are no legal grounds for succession and a discretionary offer of a tenancy has not been agreed, appropriate advice and assistance will be offered to the applicant to support with their rehousing need.

2.12 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**.

2.13 Quality assurance and monitoring

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

3 Appeals Process

Applicants have the right to request a review of MTVH's decision to refuse a succession and may request an agency or organisation to make an appeal on their behalf.

The appeal should be in writing or dictated to a MTVH colleague over the phone within 5 working days from the date of refusal. The appeal will be responded to by the relevant Manager (this will be dependent on the reason for refusal) who will investigate the reasonableness of the refusal and advise the applicant in writing of the decision within 10 working days, unless a mutually agreed alternative timescale is agreed.

Depending on the reasons for refusal, the appeal may be referred to the MTVH Allocations Panel. The panel will review the decision and either uphold the original decision or make a new decision based on the applicant's circumstances. An appeal does not interfere with an individual's rights to make a complaint to the independent Housing Ombudsman.

Where an applicant has been refused succession in accordance with MTVH's Successions Policy, and no further information is provided to support the appeal and/or there is no basis for questioning the grounds on which succession has been refused, an appeal will not be considered. This includes where a discretionary offer of a tenancy has been refused.

4 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

5 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.

6 Key Policy Information

Procedure Owner	Director of Housing
Author	Head of Lettings & Commercial
Approved by	Customer Services SLT
Effective from	
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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