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SUCCESSION AND ASSIGNMENT POLICY

Introduction

This policy sets out Sutton Housing Society's (SHS) approach to dealing with cases where Succession or Assignment applies and is in place to ensure that we are fair and transparent in our decision making.

The policy provides clear guidance to our staff when dealing with claims of succession and/or assignment.

Having this policy in place also ensures our compliance with legislation, relevant Housing Acts and our regulator, the Homes and Communities Agency (HCA).

Policy Statement

SHS Assured tenants have a statutory right to one succession to a spouse, co-habiting partner or civil partner. We may also permit a discretionary succession to a qualifying family member, or in exceptional circumstances, a vulnerable household member.

Assured tenants have the right to assign their tenancy to someone with the statutory right of succession to the tenancy. We may consider a discretionary assignment to a qualifying family member or in exceptional circumstances a vulnerable household member.

All applications to succeed to a tenancy or to apply to assign your tenancy will be dealt with sensitively and promptly. There is a right to appeal a decision in specific circumstances.

A change of name (with proof of the name change) is not a succession or assignment.

Succession

What is "Succession"?

"Succession" relates to a person "inheriting" the tenancy on the death of the tenant. An individual may have the right to succeed (inherit/"take over") the tenancy depending on their relationship to the deceased tenant and/or their length of occupation in the property.

Who qualifies to succeed?

Succession to a tenancy will be granted in the following order of priority:

- A remaining joint tenant
This is called “survivorship”; the joint tenancy is changed to a sole one. No new Tenancy Agreement is created as the successor succeeds to the current tenancy and there is no rent increase as a result of the succession.
- A tenant’s partner
This is called “statutory succession” and applies whether they were married or unmarried, same or different sex, provided they have lived with the tenant at the time of their death and that the property was their sole and principal home. A new Tenancy Agreement is created and this may result in a rent increase. If this is the case, the prospective successor will be advised.
- A family member over the age of 16 living with the tenant as their sole and principal home for 12 months prior to the tenant’s death. A new Tenancy Agreement is created (with a Guarantor for anyone aged under 18) and this may result in a rent increase. If this is the case, the prospective successor will be advised.

What other rules are there?

Only one succession is legally permitted; if the deceased tenant had themselves succeeded to the tenancy, no further right to a statutory succession can take place.

For a potentially qualifying successor, who is away from the home at the time of the tenant’s death (for example a son/daughter who is travelling during a gap year), SHS will assess whether the property is genuinely their sole and principal home for the purpose of succession. These situations will be considered by the Community Housing Services Manager (CHSM).

SHS may permit a discretionary succession to a qualifying family member or in exceptional circumstances a vulnerable household member; this is rare and on the recommendation of the CHSM with approval from the Operations Director.

Tenants with an Assured Shorthold tenancy do not have the right to succeed to a tenancy.

Joint to Sole Tenancy

One tenant can legally end the tenancy on behalf of all tenants, even without the other tenant’s consent. SHS would rather ensure that all tenants are aware of the situation when notice is given but recognises that this is not always possible e.g. ex-partners who have moved away.

SHS will make reasonable enquiries about the circumstances to ascertain why all tenants are not giving notice, particularly if one tenant making the request wishes to remain in the property.

A new Tenancy Agreement is created when a sole tenancy is put in place from a joint one and this may result in a rent increase. If this is the case, the new sole tenant successor will be advised.

Sole to Joint Tenancy

A sole tenant can request that a joint tenancy be created – this means that the existing sole tenant will share their tenancy with another person. SHS will consider these requests involving partners but will not grant joint tenancies between siblings and/or their children.

A sole tenant must be aware that by requesting a joint tenancy, the tenancy cannot be changed back (unless by an order of the Court) as they have no further rights to succession. Both the existing sole tenant and the prospective joint tenant must be aware that they are both jointly and severally responsible for the tenancy. This means that should one party not pay the rent, for example, both tenants are responsible for the full amount and for any arrears, irrespective of any arrangements between them.

A new Tenancy Agreement is created in these circumstances and may result in an increase in rent. If this is the case, the existing sole tenant and the perspective successor will be advised.

Assignment

What is an Assignment?

“Assignment” relates to the circumstances where a tenancy may be “signed over” to another person. An SHS Assured tenant can apply to assign their tenancy to another person before their death, with consent from SHS, in line with their Tenancy Agreement.

Assignment counts as a succession; therefore no further succession is permitted except where a joint tenant remains in the property after the death of the other joint tenant.

Who qualifies for an Assignment?

There can only be one assignment by law and the assignment can only be made to a person that would qualify to succeed to the tenancy on the death of the tenant (see Succession above).

The SHS Assured Tenancy Agreement states “Not to assign the Tenancy except in furtherance of a court order or with the written consent of the Society when exercising the right to exchange set out in clause 4(11) below or assigning the

Tenancy to someone that would have been qualified under clause 2(10) or 2(11) above to succeed to the Tenancy had the Tenant died.”

Mutual Exchange

Mutual Exchanges are formalised when approved by the landlord(s) by way of Assignment as governed by the Housing Act 1988. SHS has a Mutual Exchange policy and information relating to this can be found in the policy.

SHS will therefore consider assignments by:

- Mutual Exchange (see the mutual Exchange policy)
- Assignment to an eligible successor
- Assignment by court order e.g. a Property Adjustment Order

Once a tenancy is assigned, it cannot be assigned again, nor can there later be a succession. However, this does not limit assignment by mutual exchange or via a court order.

Other Rules to Consider

Joint tenants

One joint tenant cannot assign “their share” of the joint tenancy to the other joint tenant. Both tenants can agree to assign the whole tenancy to one of them. As this is by agreement, both parties sign the relevant assignment forms and deeds.

Sole Tenant

A request to assign their tenancy to someone who would have the right to succeed to the tenancy on their death can be made by an existing sole tenant. SHS will discuss the reasons for the request with the sole tenant before a decision is made. There must not be any rent arrears or any other outstanding breach of the tenancy.

In cases of domestic violence, the CHSM may recommend to the Operations Director progressing the assignment when there are breaches of tenancy.

Relationship Breakdown

Tenants will be encouraged to seek independent legal advice in the circumstances of a relationship breakdown in order to resolve the tenancy issue. SHS staff will encourage this approach and advise that the remaining tenant should seek a Property Adjustment Order as part of any divorce or to resolve the tenancy matter via an order through the Children’s Act 1989 under any Family Law proceedings.

The court order once granted is added to the existing Tenancy Agreement and relevant changes made. A Deed of Assignment does not need to be signed.

Where a joint tenant left the home and cannot be traced, SHS may accept a surrender of the tenancy from the remaining joint tenant and issue a sole tenancy to the remaining tenant. This cannot happen if there are rent arrears or any other breaches of the tenancy. This is a last resort only and the case must be reviewed with a recommendation made by the CHSM to the Operations Director.

Assignment to another member of the household

Where there is no successor to the tenancy, but there is another person residing in the home, SHS may consider an assigned in exceptional circumstances and where the individual is considered to be a vulnerable person; this is rare and on the recommendation of the CHSM with approval from the Operations Director.

Refusing an Assignment Request

There are no statutory grounds for refusing an assignment request. Our Regulatory Framework requires that we make the best use of our housing stock to meet local need and therefore refusal can be made on the following grounds:

- The tenant does not have an Assured Tenancy
- A possession order is in place against the tenancy
- There is a valid NOSP in place for breach of tenancy conditions
- There is evidence that the person to whom the tenancy is to be assigned has committed harassment or domestic abuse against the existing tenant
- The assignment will result in under occupation of the home
- The property is a specialised unit and the proposed assignee does not meet the criteria for the property e.g. property is Independent Housing for Older People (formerly called sheltered housing) and there is qualifying criteria.

Right of Appeal

All applicants making a succession or assignment claim have the right to appeal a decision if they believe that SHS has not followed this policy correctly or has not applied the policy fairly.

The appeal will be responded to by the CHSM (or where a decision has been made by them, the Operations Director, or if the decision is made by them, the Chief Executive).

Any appeal must be made in writing within five days of the refusal of the succession or assignment. The appellant must state clearly the reasons for the appeal and what decision they wish to be made.

The CHSM/Operations Director/Chief Executive will review the appeal and any additional information before making a decision. The staff member may speak to the appellant to clarify any outstanding queries before making a final decision.

The CHSM/Operations Director/Chief Executive will notify the applicant in writing within five working days as to the outcome of the appeal.

For all appeals, the tenancy will be placed “on hold” until the outcome of the appeal is known.

Equality and Diversity

SHS recognise that tenants of all races, ages, religions, gender, sexual orientation, literacy levels and disability should be treated equality and fairly and we will not discriminate in implementing this policy.

SHS will be sensitive to tenants’ individual needs and will tailor our services and approaches accordingly.

All tenants/applicants have access to this document upon request.

Equality, Diversity and Inclusion training is mandatory for all SHS staff.