

Policy



Succession

Responsible Officer:	Assistant Chief Executive Neighbourhoods
Approved:	May 2018
Review Date:	May 2021
Scope:	Group Wide
Regulatory Framework:	Tenancy Standard

Succession Policy

1.0 Introduction

- 1.1 Reference to 'Incommunities /the landlord/our/we' in this policy shall be deemed to apply to Group subsidiaries as appropriate unless specified otherwise
- 1.2 All references in this Policy to sections and schedules of Acts of Parliament are to be regarded (unless we decide otherwise) as including references to those sections and schedules as amended, varied, replaced or re-enacted from time to time.
- 1.3 Successions take place when a sole tenant dies and an eligible partner or qualifying person (member) of his or her family takes over the tenancy, or when a joint tenant dies and the surviving tenant(s) succeeds to the tenancy.
- 1.4 Policy definitions:
- **“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 an assured tenant (this includes 'assured shorthold tenancies')
 - **“Contractual succession”**, where Incommunities' tenancy agreements give an assured tenant rights to succeed in addition to those granted by law.
 - **“Discretionary succession”**, where Incommunities tenancy agreements give Incommunities discretion to permit a succession where there is no statutory or contractual right.
- 1.5 For the purposes of this policy, **“Qualifying Persons”** are defined as a parent, child, grandparent, brother, sister, uncle, aunt, nephew, niece, step-relative or adopted child.

2.0 Policy Statement

- 2.1 Incommunities aims to provide a fair and efficient service when processing successions by:
- Dealing sensitively with customers at a time of grief and difficult circumstances.
 - Meeting its statutory obligations
 - Making the most efficient use of its available housing stock
 - Applying best practice, and
- 2.2 It is our overall policy approach to grant only a single succession, unless exceptional circumstances apply or the tenancy agreement grants additional rights to succeed.

3.0 Policy

Requests to Succeed

- 3.1 We require potential successors to submit their succession request to us in writing within one month of the date of the tenant's death. However, it is noted that a statutory succession (including survivorship) happens automatically, so that we could not refuse a statutory succession if the successor applied late.
- 3.2 On receipt of a request to succeed, Incommunities will request proof of the potential successor's relationship to the tenant and proof that the potential successor was occupying the property as their only or principal home. Where the potential successor is a Qualifying Person they must provide additional proof of 12 months' residency for the 12 months immediately prior to the tenant's death. The 12-month residency period applies to the length of time that the qualifying person has been living with the tenant in the 12 months preceding the tenant's death, rather than the length of time the qualifying person has lived in the property where the tenant died.
- 3.3 A succession cannot be granted to more than one person, therefore only a sole person can succeed to the tenancy. If there is no spouse, civil partner, or co-habitee who is entitled to succeed but there is more than one Qualifying Person who may be entitled to succeed, then these potential successors must decide between themselves who is to succeed. Where this cannot be agreed, an application must be made to the County Court to make the decision. Incommunities will not intervene if competing successors are unable to decide who is to succeed. During this time, the tenancy will continue and rent must still be paid. In most circumstances, Incommunities will agree to the person remaining in the property to pay 'use and occupation' while the succession is decided.

Survivorship (applicable to joint tenants only)

- 3.4 On the death of one joint tenant, the other joint tenant(s) automatically become the tenant(s). In legal terms this is called survivorship. Survivorship applies to Starter Tenancies as well as assured tenancies.
- In law, this happens automatically at the point of death and does not require our approval.
 - The remaining tenant(s) inherits all the rights and responsibilities of the previous joint tenancy. In effect they are now a tenant(s) of the same continuing tenancy.
 - Survivorship differs from other successions in that the remaining tenant(s) is liable for any rent arrears and recharges and likewise will continue to be entitled to any rent credits.
 - A joint tenant will succeed the tenancy by survivorship regardless of whether the other joint tenant had been a successor themselves.

Statutory Succession

- 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 the right to succeed to an assured tenancy if they are the tenant's spouse, civil partner or person living with the tenant as their spouse or civil partner ("co-habitee") and they were occupying the property as their only or principal home immediately before the tenant's death. In the case of a statutory succession, the successor does not have to have lived

with the deceased tenant for 12 months prior to the death. Statutory succession applies to Starter Tenancies as well as assured tenancies.

- 3.6 The law provides for one succession only, unless additional rights are provided under the tenancy agreement (see 'contractual succession' section). Therefore, there will generally be no-one with a right of succession if the deceased tenant was a successor themselves (including if the deceased tenant was a successor by survivorship). However, any tenant granted a tenancy through succession by Bradford MDC prior to stock transfer (24th February 2003), will not be treated as a successor for the purposes of a succession after stock transfer
- 3.7 A tenancy which passes to a statutory successor under the Section 17 Housing Act 1988 vests in the successor by virtue of the Act and the deceased's tenant's spouse, civil partner or cohabitee takes over their tenancy following their death. As statutory successions do not create new tenancies the existing rent charge will continue to apply to the successor. Rent increases will be implemented in-line with the existing timetable. Rent credits, arrears and recharges belonging to the tenancy cannot be transferred to the successor. Any arrears and/or recharges will have to be pursued against the estate of the deceased tenant and any credit will have to be paid to the estate.

Contractual Succession

- 3.8 Where the tenancy agreement grants additional rights of succession, we will grant a new tenancy in line with this policy and in accordance with the applicable legal provisions and the terms of the tenancy agreement.
- 3.9 We will treat the following persons as a 'relative or qualifying person' as per Incommunities Ltd's tenancy agreement:
- A relative, namely; a parent, child, grandparent, brother, sister, uncle, aunt, nephew, niece, step-relative or adopted child.
- 3.10 In applying this policy to a succession we will consider that;
- A relationship by marriage is treated as a relationship by blood
 - A relationship of the half blood is treated as a relationship of the whole blood
 - A child whose parents are neither married nor in a civil partnership shall be treated the same as a child whose parents are married or in a civil partnership.
- 3.11 Where a 'qualifying person' is identified as a potential successor, they must also meet the criteria set out within Incommunities Allocations and Lettings Policy. If the potential successor does not meet these criteria, Incommunities will not grant a new tenancy at the deceased tenant's property.
- 3.12 For a contractual succession to take place the qualifying person must be aged 18 or over* have been living with the deceased tenant, as their main or only home, for at least the 12 months prior to the tenant's death.

*Note: If the potential successor is under 18 years of age then they cannot hold a tenancy in their own name. However, this does not prevent the succession. The tenancy can be held on behalf of the child by a responsible adult until the child reaches the age of 18 years when it can be vested in them.

- 3.13 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 or only home. This may apply if the qualifying person was in hospital or on holiday at the time the tenant died.
- 3.14 Qualifying persons will not have a right to a 'contractual succession' if the deceased tenant held a Starter Tenancy at the time of death. In most circumstances this would mean they do not meet the 12 month residency test.
- 3.15 Rent credits, arrears and recharges belonging to the tenancy cannot be transferred to the successor. Any arrears and/or recharges will have to be pursued against the estate of the deceased tenant and any credit will have to be paid to the estate.

Discretionary 'successions'

- 3.16 In line with Incommunities tenancy agreements we reserve discretion to grant a new tenancy at the deceased tenants property under certain circumstances which do not fall into any of the above categories.
- 3.17 We may exercise our discretion to grant a new tenancy in favour of:
- A person remaining in the property after the death of the tenant who has been living with and caring for the deceased tenant for at least 12 months prior to the tenant's death. This does not apply to household members recorded as 'lodgers' but have not been caring for the deceased tenant.
- 3.18 We may exercise our discretion to grant a new tenancy to a potential successor at the deceased tenants property, after an initial succession has already taken place (therefore meaning a 'second succession' cannot take place, by law) in favour of:
- A spouse, civil partner or cohabitee who was residing with the deceased tenant immediately prior to his/her death, or
 - A qualifying family member who was residing with the deceased tenant at the time of death and for the 12 months immediately preceding the tenant's death
- 3.19 If we receive an application for a discretionary 'succession' we will consider it carefully, assess the individual circumstances of the applicant and balance them against the criteria listed below. Where we do refuse, we will make a record of the reasons in line with our Succession Procedure.
- 3.20 Decisions about discretionary 'successions' will be authorised by a Housing Manager/Housing Services Team Leader and will take into account all relevant factors, including but not limited to:
- 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 created with the new tenancy
 - The extent of housing need in the area
 - The potential successor's connection with the property and the area, for example proximity to work, education and support networks.
 - 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, under-occupation or over 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.
- Eligibility based on 'Right to Rent' Checks under the Immigration Act 2014
- If the property is within the Trustcare scheme whether the potential successor requires the Trustcare services.
- Breaches of Tenancy including any relating to anti-social behaviour and the condition of the property.

3.21 In every case, where we exercise our discretion, a new tenancy will be granted, regardless of the tenancy type held by the original tenant. Refer to the Tenure & Starter Tenancy Policy for details on the type of tenancy to be granted.

3.22 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 entitled to the right of succession along with their new tenancy. The contractual succession rights will not apply. Rent credits, arrears and recharges belonging to the tenancy cannot be transferred to the successor and will belong to the estate of the deceased tenant.

3.23 Where we do not exercise our discretion to grant a new tenancy at the deceased tenants property, we may consider making one offer of a tenancy of an alternative accommodation which Incommunities considers to be suitable.

Unsuitable Accommodation

3.24 With regard to sheltered housing, statutory succession rights cannot be refused or excluded. For **assured** tenancies there is a statutory right for a spouse, civil partner or co-habitee 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).

3.25 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.

Making best use of our stock and sustaining tenancies

3.26 With the exception of survivorship and statutory successions, we may consider offering suitable alternative accommodation to a successor to enable the best use of our stock. Some examples of cases where we may do this are listed below but Incommunities are not limited to these circumstances:

- Where the potential successor is unable to demonstrate that they are able to afford the rent
- In order to prevent under occupation
- Where the property has been adapted for use by a disabled person
- Where the property is age restricted (including sheltered accommodation)

- In cases of overcrowding
- 3.27 In cases where we offer alternative accommodation, Incommunities will make two offers of alternative accommodation which we deem to be suitable, taking into consideration the needs of the person in terms of location and suitability of property. We will pay reasonable removal costs.
- 3.28 Where the successor is unwilling to agree to a move voluntarily, we may seek an order for possession through the Courts.

Illegal occupation

- 3.29 In some cases, occupiers who have had their application to succeed refused may still be in residence after the refusal. In these cases, we will serve a Notice to Quit (NTQ) to end the tenancy on the deceased tenant's personal representation/executor and seek possession through the Courts on expiry of the NTQ.

4.0 Service Standards

- 4.1 Tenants holding Assured Shorthold (Fixed-Term) Tenancies of at least two years shall have the full rights of this policy.
- 4.2 We will acknowledge a written request for succession within 10 working days.
- 4.3 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.

5.0 Appeal

- 5.1 Applicants for succession who have had their application to succeed to a tenancy refused will have the right to appeal against that decision within 10 days of the date they the decision letter was sent. The appeal should be made in writing. A Neighbourhood Director, other appropriate Head of Service or delegated individual (such as a Neighbourhood Manager), with advice from legal services if required, will review the decision within 10 working days of the appeal request. All relevant information will be sought and taken into account. If the application cannot be resolved by the Director the appellant will have the right to appeal to a panel of members of the Community Trust Panel who will review the decision.

6.0 Related Documents

- Incommunities Succession Procedure
- Incommunities Ltd Allocations and Lettings Policy
- Incommunities Ltd Tenure & Starter Tenancy Policy
- Sadeh Lok Tenure & Starter Tenancy Policy
- Incommunities Group Equality & Diversity Policy
- Incommunities Group Data Protection Policy
- Incommunities Group Complaint Handling Policy

7.0 Review

- 7.1 There will be an automatic review of this policy whenever there is a change of statutory or regulatory provisions, or when other information becomes available that will impact on this policy. In any event there will be a substantive review of this policy every three years.

- 7.2 In addition, the policy and the accompanying procedures will be subject to on-going scrutiny and operational review, in consultation with all relevant stakeholders and with regard to feedback obtained by virtue of customer involvement.