



# Succession Policy

## **1.0 Purpose of the Policy**

- 1.1 Succession is the process by which a tenancy is passed to another person on the death of the original or joint tenant.
- 1.2 The purpose of this policy is to outline how Maidstone Borough Council will deal with requests for assignment by way of succession.

## **2.0 Policy Objectives and Scope**

- 2.1 This policy applies to all Maidstone Borough Council tenants. The policy is intended to observe people's legal rights, whilst ensuring the best use is made of MBC's residential housing stock in an area of high demand for affordable housing.
- 2.2 The Council will ensure it:
  - Treats requests with respect and acknowledge that bereavement is a difficult experience for most people
  - Responds promptly to all applications received to succeed and make application forms, advice, and assistance easily available
  - Makes former tenants who may have an additional right to succeed aware of this right
  - Carries out succession and non-succession in an efficient and sensitive manner, whilst abiding by legal requirements

## **3.0 Legal Framework**

- 3.1 Maidstone Borough Council abides by the following legislation and requirements:
  - Housing Act 1985 S.88 and S.89
  - The Civil Partnership Act 2004 Schedule 8 Section 41
  - The Regulatory Framework for Social Housing
  - Disability Discrimination Act 1995
  - Localism Act 2011
  - Equality Act 2010

## **4.0 Definitions**

- 4.1 Family member / qualifying member

Under this policy, family members are defined as: the tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, or niece (s113 Housing Act, 1985). This also includes step-relations and illegitimate children.

## **5.0 Types of Succession and Eligibility**

- 5.1 The succession rights for tenants will depend on the date and the type of the tenancy. The four types of succession are:

- 5.2 Survivorship is where a joint tenant passes away and the tenancy continues in the surviving tenant's name. The remaining joint tenant or 'survivor' is a successor and therefore no further succession rights exist.
- 5.3 Statutory successions are granted by law, which give successors the right to succeed a tenancy on the death of a tenant. Legislation provides for one statutory succession only, this includes survivorship, as above.
- 5.4 Contractual succession is where the tenancy agreement provides additional rights of succession, without needing consent or permission.
- 5.5 In exceptional circumstances, discretionary succession may be considered where a spouse or family member does not have a legal right to succeed a tenancy, but where offering a new tenancy is appropriate to the circumstances. Discretionary requests will be determined by the Housing Portfolio Manager or a more senior officer with the appropriate delegation.
- 5.6 When deciding whether to grant a discretionary succession, Maidstone Borough Council will consider the following:
- How long the applicant has been living in the property for
  - Whether the property is the applicant's principal home
  - The relationship between the applicant and the deceased tenant (e.g., family member, spouse, or carer)
  - The age of the applicant (e.g., whether they are a minor)
  - How suitable the property is for the applicant's needs
  - Whether the applicant can pay the rent and sustain the tenancy
  - The relationship between those planning to live in the property
  - Whether the applicant's eligibility for housing is part of a scheme, such as sheltered or supported housing
  - The local demand for housing
  - Whether applicants had previously requested to reside but had not been granted
  - The extent of any under occupation
  - Whether the applicant has any support needs

## **6.0 Secure Tenants**

- 6.1 The tenancy can be succeeded by a spouse or a cohabitee. There are no other rights of succession, but as in Paragraph 5.5 above, may at its discretion consider requests from family members who meet the other criteria for succession.
- 6.2 A spouse or cohabitee has the right to succeed, provided they were living with the tenant at the time of their death. There is no requirement for a 12-month residence period.

## **7.0 Introductory Tenancies**

- 7.1 Any succession would be for the remaining term of the original introductory tenancy, subject to the usual introductory tenancy review criteria being met.

## **8.0 Joint Tenancies**

- 8.1 If one party to a joint tenancy dies the tenancy automatically passes to the remaining joint tenant. This is irrespective of the type of tenancy held. This action counts as an act of succession.

## **9.0 Non-Secure Tenancies and Mobile Home Plot Licenses**

- 9.1 There are no rights of succession but a request for a discretionary succession may be considered in line with Paragraph 5.5 above.

## **10.0 Applying for Succession.**

- 10.1 When informed that a tenant has died, Maidstone Borough Council will make enquiries if there was anyone living with the tenant at the time of their death and whether a claim for succession is likely to be made.
- 10.2 The Council will provide an application form and information sheet to the household. The information sheet will set out the legal framework surrounding succession and provide details of the process such as evidence requirements and time scales.
- 10.3 If someone wants to claim a tenancy after the death of a tenant, they must make a claim within one month of the death of a tenant. Maidstone Borough Council may grant an extension in exceptional circumstances.
- 10.4 All succession applicants must provide evidence to prove they are eligible to succeed under this policy. This includes formal proof of residency at the property at the time of the tenant's death, and where required for a period covering the entire twelve months prior to the death of the tenant. When Maidstone Borough Council has received the application and required evidence, the Council will aim to give a decision in 20 working days.
- 10.5 Applications for succession will be determined by the Senior Accommodation Officer or more senior officer with the appropriate delegations. If an application is refused, the occupation will be managed as an unauthorised occupancy and the occupancy brought to an end by service of a Notice to Quit authorised by the Housing Portfolio Manager.

## **11.0 Multiple Claims for Succession**

- 11.1 Only one person can succeed to the tenancy. Maidstone Borough Council will not authorise joint successors under any type of succession. Where the council receives more than one claim for succession to the same tenancy, Maidstone Borough Council will request that the potential successors decide between each other, who should be the successor. If the potential successors cannot decide, the Housing Portfolio Manager will make the final decision based on the following criteria:
- Whether a legal will is in existence and the information contained in the will relates to the tenancy
  - The length of residency at the property
  - The nature and length of the relationship with the deceased
  - Whether there is any other accommodation which the potential successor could be expected to occupy
  - Ties to local area (e.g., school or work commitments)
  - Applicants' housing needs.
- 11.2 If potential successors requesting a joint tenancy do not agree with the Council's decision, Maidstone Council will seek possession on expiry of the Notice to Quit.

## **12.0 Under Occupation**

- 12.1 Where a family member (excluding spouse or cohabitee) legally succeeds to a tenancy, and the property is deemed to be larger than is required (under occupied), the Council may seek to move the new tenant to another suitable property using Ground 15A Schedule 2 of the Housing Act 1985.
- 12.2 The legal Notice of Seeking Possession to start this action will be served no sooner than six months after the death of the previous tenant and not later than 12 months after the death, but the Council's intention in this regard will be discussed with the successor sooner.

## **13.0 Occupants with Support Needs**

- 13.1 Maidstone Borough Council will not decline a succession claim due to an applicant's support needs if it is satisfied that suitable support is available to enable the tenancy to be sustained. Where a tenant with support needs is eligible to succeed a tenancy, the Council will cooperate with support services for advice and offer them an assessment of their need for support.

## **14.0 Rent Arrears**

- 14.1 If the successor held a joined tenancy with the deceased tenant, then any rent arrears accrued on the joint tenancy will be passed to them. In all other circumstances the rent arrears will form part of and be recovered from the deceased tenant's estate.

## **15.0 Adapted Properties**

15.1 Maidstone Borough Council can reserve the right to refuse a claim for succession where:

- The property has been adapted for special use 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.

## **16.0 Successors who are Minors**

16.1 A minor is a person aged under 18 years. They are legally qualified to succeed a tenancy if the conditions for succession have been met. Maidstone Borough Council will always attempt to find an adult to be the trustee to hold the tenancy interest until the minor reaches 18 years of age.

16.2 If the deceased tenant had a will, then the executor will be the trustee automatically. If there was no will, the Council will speak to a social worker or another adult family member to ask one of them to act as the trustee. Where social services are involved, Maidstone Borough Council will work with both the family and social services to try to ensure sufficient support is provided. The Council will take legal advice about how to move forward, if no adult will agree to act as trustee.

## **17.0 Equality and Diversity**

17.1 Maidstone Borough Council adopts a flexible approach to ensure that different needs are met and well supported.

17.2 The Council recognises that some individuals may experience discrimination and disadvantage. An Equality Impact Assessment has been undertaken on this policy to ensure that all customers are treated fairly, regardless of any characteristics.

17.3 Maidstone Borough Council will make sure all complaints will be taken seriously and responded to efficiently.

## **18.0 Monitoring and Reviewing**

18.1 This Policy will be reviewed every 5 years, or sooner if significant and relevant statutory changes occur.



**Further information: [maidstone.gov.uk/housing](http://maidstone.gov.uk/housing)**