

SUCCESSION POLICY

Responsible Officer

Director of Customer Services

Aim of the Policy

This policy outlines Phoenix approach to tenancy succession specifically when there is a claim for succession on the death of a tenant.

Policy Scope

Succession occurs when a sole tenant dies and an eligible partner or qualifying member of his or her family takes over the tenancy. Succession also includes when a joint tenant dies and the surviving joint tenant succeeds to the tenancy – this is also known as survivorship.

Phoenix recognises that following the death of a tenant, their family members may be upset and grieving and that any requests for succession need to be handled with sensitivity and care.

This policy applies to Phoenix Assured Tenancies

The Policy

What is the legal basis for succession at Phoenix?

The policy covers three types of succession:

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 rights of succession e.g. if the tenant remarries, their new spouse has no rights to succeed the tenancy. A new tenancy is not issued.

Statutory - As a social landlord who is a registered provider of social housing, Phoenix must grant successions in accordance with Section 17 of the Housing Act 1988 (HA 1988). A new tenancy is not issued.

Contractual – where the tenancy agreement provides qualifying family members potential rights of succession / possibility with the grant of a tenancy of another property. On the 3rd of December 2007, the London Borough of Lewisham transferred its housing stock to Phoenix; promises were made in the Transfer Agreement relating to succession and these are reflected in the standard terms of Assured (AT) and Assured Shorthold (AST) Tenancy agreements operated by Phoenix. This is the non-statutory contractual basis for succession which sometimes exists in addition to the statutory basis for succession under the HA 1988.

In deciding who may or may not succeed to a Phoenix tenancy consideration must be given to the statute, then the express terms of the tenancy agreement. If succession rights are granted further to the express terms of the tenancy agreement then a new tenancy is issued.

Can there be a succession?

If the deceased was a joint tenant, the remaining joint tenant will succeed to the tenancy by way of survivorship.

An individual **will** be entitled to succeed to a sole tenancy, provided that:

- they are not already a successor themselves, **AND**
- if they are a spouse, civil partner of a deceased tenant, or someone living with the tenant as his/her spouse or civil partner, **AND**
- providing they were occupying the property as his or her only or principal home immediately before the tenant's death.

If there is no spouse, civil partner or co-habiting partner, and there hasn't already been a succession, the following people **may** be entitled to succeed, always providing the tenancy terms and conditions allow it,:

- a) a qualifying family member who lived continuously with the deceased at the property for 12 months up to the date of the deceased's death; **OR**
- b) a carer who lived continuously with the deceased at the property for 12 months up to the date of the deceased's death.

In either of the circumstances set out in a) or b) above, if the property is bigger than reasonably needed by the successor, we may offer suitable alternative accommodation. If a reasonable offer of alternative accommodation is refused, Phoenix will seek to recover possession of the original property and will not offer further accommodation. Also, if the property is designed for a person with physical disabilities or is designated for older people and the successor does not need an adapted property or is not such a person, Phoenix may offer suitable alternative housing in order to ensure the best use of its stock.

Who might already be a successor?

A successor is defined under Section 17(2) and (3) of the HA 1988 as:

- 1) Someone who succeeded to the tenancy (either by will or intestacy or by Section 17 HA 1988) on the death of the previous tenant;
- 2) Someone who was originally one of two or more joint tenants and became a sole tenant by survivorship;

Competing interests

If more than one family member or a carer wishes to succeed, they must agree amongst themselves or if they cannot decide, Phoenix can make the ultimate decision.

Succession within the Hazelhurst Court Extra Care scheme

A surviving joint tenant within the Hazelhurst Court Extra Care scheme will automatically succeed by right of survivorship.

A spouse, civil partner or a co-habiting partner residing who was occupying the property as his or her only or principal home immediately before the tenant's death will be entitled to succeed to the tenancy, providing there has been no previous succession. However, Phoenix will consider whether the individual is suitable for the scheme and/or has verified support need that would best fit the nature of the scheme.

If a support need cannot be substantiated or the succession would result in the property being under-occupied or inappropriate for the occupant, Phoenix will make an alternative offer of suitably-sized accommodation. Whenever an alternative offer of accommodation is recommended Phoenix will try to discuss a suitable offer with the individual.

No right of succession will be granted to other family members as outlined in the tenancy agreement. Phoenix will endeavour to provide advice and guidance to occupants that do not qualify to succeed and will refer them to the local authority for an independent housing needs assessment.

Succession to Affordable Rent Tenancies

Succession is limited to a surviving joint tenant or a spouse/civil partner/co-habiting partner who was occupying the property as his or her only or principal home immediately before the tenants death.

No right of succession will be granted to other family members.

Phoenix will endeavour to provide advice and guidance to occupants that do not qualify to succeed and will refer them to the local authority for an independent housing needs assessment.

Exceptional Circumstances - where there is no right to succeed

In cases where there is no right to succeed, Phoenix may in exceptional circumstances agree to rehouse the household or grant a new tenancy of the property. This will be at the discretion of the Director of Customer Services but must be approved by the local authority who have 100% nomination rights for Phoenix properties and the Phoenix Chief Executive. There will be no right of appeal.

Children or persons under 18 years old

If the successor is under 18 years old and requests s/he may succeed if all the relevant conditions are satisfied. The tenancy will need to be held in trust for them by a trustee. If the deceased tenant leaves a will appointing a personal representative or trustee, the tenancy is held in trust by that person until the child becomes an adult i.e. attains the age of 18 years upon which event the legal tenancy will become her/his.

Appeals

Any decision made by Phoenix in disputed successions is final, unless the applicant feels that the policy has not been properly administered or the matter is referred to County Court for determination.

In any instance of alleged maladministration on the part of Phoenix, the applicant should use the Complaints Policy to request a review of the decision.

Monitoring and review

This policy will be reviewed every three years or sooner whenever there are changes to legislation, good practice or other learning.

This policy will be monitored through key performance indicators including:

- Numbers of unauthorised occupants at end of period.
- Number of new succession applications
- Number of successions granted.
- Number of successions refused.

Legislation

Including:

- Housing Act 1988
- Phoenix/London Borough of Lewisham Stock Transfer Agreement 2007
- Equality Act 2010
- Localism Act 2011
- Data Protection Act 2018
- Coronavirus Act 2020

Reference to other documents and associated policies and procedures

Including:

- Phoenix Tenancy agreements
- Hazelhurst Court Tenancy agreement
- Succession Procedure
- Allocations and Lettings Policy
- Hazelhurst Court Allocations and Lettings Policy
- Phoenix Standards
- Equality and Diversity Charter
- Data Protection Policy
- Complaints Policy

Definitions

Term/acronym	Description
Phoenix	Phoenix Community Housing.
HO	Housing Officer
Qualifying Person	Someone who can succeed or is eligible to take over a tenancy
Survivorship	Term to describe how the tenant remaining after one joint tenant dies can succeed to the tenancy

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