



# **Succession Policy**

November 2024

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## 1. Scope

This policy applies to all Torus Social Rent and Affordable Rent tenancies. It does not cover Intermediate or Market Rent Tenancies, licensees, shared owners, leaseholders, or freeholders.

This policy does not supersede any tenancy agreement.

## 2. Policy Statement

This policy sets out Torus's approach to succession.

The purpose of this policy is to ensure that Torus process all claims for succession of a tenancy in accordance with current legislation and the contractual tenancy agreement. It aims to set out in a clear and transparent way the approach that Torus will take.

The objectives of this policy are:

- To ensure all claims for succession of a tenancy comply with current legislation and the tenancy agreement.
- To ensure all claims for succession are treated fairly and efficiently.
- To ensure appropriate support, advice and assistance is given where there is a succession claim.
- To enable those who do not qualify for succession an opportunity to be considered under Torus's Left in Occupation Policy.
- To ensure that Torus's Allocation and Letting Policies are not open to abuse by individuals making claims for a property that they are not entitled to.
- To ensure Torus make the best use of available housing stock.

## 3. Implementation

- 3.1 Any claim to a tenancy following the death of the tenant will be thoroughly investigated to ensure the claimant has a legitimate claim. This will include confirmation of identity, relationship to the deceased tenant, proof of residence with the tenant and, where appropriate, evidence of the right to rent.
- 3.2 The onus is on the potential successor to provide a sufficient level of evidence. Documents must cover the entire qualifying period. They must also provide the death certificate.
- 3.3 Torus may also conduct other checks into the claim to the tenancy where it considers it necessary to determine whether there is a right of succession, for example, in order to determine who was residing in the property throughout the qualifying period preceding the death of the tenant.
- 3.4 Torus will take any tenancy fraud seriously in the event an occupant makes a claim for the tenancy falsely, dishonestly or provides misleading information. The Prevention of Social Housing Fraud Act 2013 makes certain elements of tenancy fraud a criminal offence. Appropriate enforcement action will therefore be taken in this event, and we may engage third parties including the Local Authority or Police.

## 4. Succession

- 4.1 A succession is the transfer of the tenancy to another person on the death of the tenant. It can only occur when the tenant has died. If a tenant wants a member of the household to take over their tenancy whilst they are resident, then this will be an assignment.
- 4.2 Succession rights depend upon several factors including the type of tenancy, the terms of the tenancy, date of issue and the relationship of the proposed successor to the tenant.
- 4.3 There can normally only be one succession during the lifetime of a tenancy. If there has been a previous succession, there will be no further statutory right of succession and only a further contractual right if the tenancy agreement provides a second succession right (which is rare).

The exception to this is for stock transfer assured tenants. A succession which took place through the statutory succession provisions of the Housing Act 1985 while the tenancy was a secure tenancy under the Local Authority is not counted as a succession.

This means if the original tenant died pre-stock transfer, the successor would be regarded as holding a new tenancy on transfer, therefore a further succession would be allowed.

### 4.4 Survivorship

In the case of a joint tenancy, the tenancy is automatically succeeded by the remaining joint tenant by what is known as "survivorship." Survivorship is treated as one succession which means that there is no further right of succession (unless the tenancy agreement provides a second succession right).

- 4.5 Succession rights can be statutory (created by law) or contractual (created by the terms of the tenancy agreement).

### 4.6 Statutory Succession

Under Section 17 of the Housing Act 1988, assured tenants have a statutory right of succession to a spouse or civil partner living at the property as their only or principal home at the time of the tenant's death. Spouse or civil partner is defined to mean those living together as a couple and includes same sex partners.

The successor will take over the existing tenancy: no new tenancy shall be issued.

### 4.7 Contractual Succession

Assured tenants do not have a statutory right of succession to family members. However, it was a requirement at stock transfer for Registered Providers to give Local Authority transferring tenants' succession rights like those of secure tenants.

A contractual succession therefore is where additional succession rights have been included in the tenancy agreement. If there are any, these are usually only granted to a family member (other than a spouse, civil partner, or partner) who lived with the tenant in the property as their only or main home for 12 months prior to the tenant's death. For the

purposes of succession, family members are usually defined as: spouse, civil partner, parent, grandparent, children, grandchildren, siblings, uncle, aunt, nephew, and niece, including step relations, half relations, and illegitimate children, as well as persons living together as husband and wife or civil partners.

Not all Torus tenancy agreements include a contractual right of succession. Torus will therefore check if contractual succession rights exist, what the criteria is and any time restrictions on an application to succeed.

#### **4.8 The Localism Act 2011**

The Localism Act 2011 altered the process for contractual succession rights for family members of assured tenants if their tenancies started on or after 1st April 2012.

##### **Where a contractual successor qualifies to a contractual right of succession:**

If the original tenancy was granted prior to 1st April 2012, a new tenancy agreement will be granted to the contractual successor; or

If the original tenancy was granted on or after 1st April 2012, the tenancy will vest in the successor. No new tenancy shall be issued.

#### **4.9 Inheriting an Assured Tenancy**

Succession operates immediately and automatically upon the death of the tenant. However, whilst a tenant may seek to pass a tenancy under their will or intestacy to a successor if it is passed to someone other than who would be entitled to succeed under the terms of the tenancy then Torus may seek possession on Ground 7 of Schedule 2 of the Housing Act 1988.

#### **4.10 Succession to a Minor**

Where a successor is under the age of 18 years, they can succeed to the tenancy provided it is held in trust by a guarantor/trustee as an equitable tenancy.

#### **4.11 Potential Successors**

Where there is more than one potential successor, Torus will ask them to decide on who will succeed to the tenancy. Where a decision is not made, depending on the tenancy type, this will be decided by the court or by us. Where Torus is making the decision, we will consider all the circumstances of the case, including, but not limited to housing need, dependents, and relationship to the deceased tenant.

Torus will not create a joint tenancy on succession.

#### **4.12 Size and Type of Property**

Torus will consider the successor's circumstances, including any under-occupation, whether the property has been designed or adapted to meet specific housing needs and consideration will be given as to whether the successor should be offered suitable alternative accommodation. In the event of refusal Torus may, having considered all the circumstances, commence legal proceeding to recover possession of the property.

#### 4.13 Left in Occupation

Where there is no statutory or contractual right of succession, we may at our discretion grant a new tenancy to an applicant who has been left in occupation.

If requested, Torus may consider the granting of the tenancy if Torus is satisfied that this is a priority when viewed in the context of the other demands on its housing and the housing needs of their area. This could be either in the same property or in suitable alternative accommodation.

In deciding whether to exercise this discretionary grant of tenancy, Torus will consider all the circumstances, including but not limited to the following factors:

- Any previous successions to the tenancy.
- That the applicant is a family member of the deceased tenant as defined in paragraph 4.6 under contractual succession above or the appointed guardian for the deceased tenant's children.
- The applicant has lived in the property as their only or main home in the 12 months prior to their death as their only home.
- That all adult household members have the right to rent.
- The property is not too large or too small for the remaining occupants in accordance with the Allocations Policy.
- The rent payable is affordable to the applicant (either because they can directly afford the rent, or they would be entitled to sufficient Housing Benefit or Universal Credit).
- The property has been kept in a clean and well-maintained condition and there were no complaints of anti-social behaviour or other breaches of tenancy against the tenant or applicant or to any member of their household.
- The applicant agrees to pay any arrears that have accrued since the tenant's death.
- Any legal interest the applicant may have in another property (for example, they own another property or have an interest in another home such as a tenancy elsewhere.)
- Where a case poses a risk (legal, regulatory, or reputational) to the organisation or other relevant sensitivities, vulnerabilities and grounds that should reasonably be considered.
- the property type, an adapted property, supported or sheltered accommodation.
- over-crowding or under-occupation.
- medical needs and vulnerabilities of the applicant and the intended household members.
- the demand from other applicants for this type of property.

Torus may decide to grant a new tenancy of the existing property or of another property.

Where Torus agrees to a discretionary grant of a new tenancy of another property, Torus will make one offer only of suitable alternative accommodation, subject to availability of suitable stock.

For discretionary offers of tenancy, Torus will offer the form of tenancy required by our Tenancy Policy at the time for new tenants. At the date of this policy that would be a starter tenancy.

It is important to note that someone who is granted a tenancy under this option, will not be treated as a 'successor' as defined under section 17 of the Housing Act 1985. This means

their spouse, civil partner or partner living together with them as if their spouse in the future may have a statutory right of succession.

## **5 Consultation/Resident Involvement**

5.6 The Transparency, Influence and Accountability Standard is one of four consumer standards that form part of the regulatory framework. The standard contains specific expectations and outcomes that the Regulator of Social Housing (RSH) require Torus to meet.

5.7 More specifically, the regulatory framework requires Torus to ensure tenants have opportunities to be involved in the management of their homes; have a say in the way services are delivered from strategic to operational issues; and can scrutinise performance and make recommendations for improvement.

5.8 This Policy has been the subject of consultation with tenants across the heartlands of Liverpool, Warrington, and St Helens.

## **6 Responsibility**

6.1 It is the responsibility of the Housing Services Director to ensure that:

- All relevant staff are aware of this policy.
- Service Users are made aware of the policy, and it is published on the company's website.

It is the responsibility of all staff to ensure that the policy is applied.

## **7 Diversity & Inclusion**

7.1 Torus will treat all applications for succession fairly in line with this policy and legislation. To make the best use of our adapted properties we will assist successors who are not in need of the adaptation to move to a more suitable property.

An Equality impact Assessment has been completed for this policy to ensure that that requests to succeed to a tenancy when a tenant dies are dealt with in a fair and consistent manner and in a way that does not discriminate against any of the protected characteristics.

## **8 Monitoring & Review**

8.1 Torus will review this policy every three years or sooner if changes to relevant legislation or Torus's strategy determines that an update is required.