

DERBY HOMES SUCCESSION POLICY

Succession is a statutory right given under the Housing Act 1985 for Secure Tenants to pass on their tenancy to their husband/wife/civil partner or family member following their death. Where the right is also available to family members it is a requirement that the successor must have been living with the tenant for at least the past twelve months.

Statutory succession can only happen once. There are two main circumstances where a succession occurs and these are detailed below. These are statutory succession rights.

- **Following the death of a sole tenant**

If the tenant dies, provided that they had not inherited the tenancy, it will automatically pass to their husband/wife/civil partner or otherwise onto a family member, in the latter case provided that the family member has lived with the tenant for the past twelve months.

- **Where a joint tenancy changes to a sole tenancy**

Where a tenancy is held in joint names and one of the tenants dies, the surviving tenant succeeds to the tenancy as a sole tenant. There is no further right of succession so the tenancy cannot be passed on again.

As long as there is a right to succeed the property, its size is irrelevant. However the Housing Act 1985 does reserve landlords the right to re-house qualifying family members where a succession would result in under occupation of the property. Where a reasonable offer of suitable accommodation is made to an under-occupying successor, and it is refused, possession proceedings may be started against the successor to recover the property.

Example 1

Mr & Mrs Smith are joint tenants and they occupy a three bedroom house, together with their adult son. Mr Smith dies. Mrs Smith remains as the sole tenant, but she is a 'successor' because the joint tenancy has become a sole one, therefore she has no right to pass on the tenancy again in law.

Two years later Mrs Smith dies, leaving in occupation her adult son, he has lived in the household for the past 10 years. The son has no right of succession, this being used on the death of his late father when the tenancy passed to his mother.

The adult son would receive advice and assistance in registering for suitable alternative accommodation through Derby Homefinder and would be supported in securing a home within the next six months. If the adult son refused to co-operate, or

in the event that a suitable alternative offer of accommodation was refused, legal proceedings would be taken to gain possession of the original property.

Example 2

Mr Jones is a sole tenant, he occupies a three bedroom house along with his adult son. Mr Jones dies and his son asks to succeed to the tenancy. The son does have a legal right to succeed to the tenancy as he has lived there for more than 12 months. However because he is not husband/wife/civil partner of the tenant the law reserves the right for the landlord to ask him to move to a smaller more suitable property. Such requests to move to alternative accommodation will be determined by whether or not the applicant meets the eligibility criteria within the Housing Policy.

Family members in this situation will be supported in seeking suitable alternative accommodation and we will demonstrate understanding during the 'grieving' period. We would normally have expected to have secured suitable accommodation however within a period of 6-12 months, but must be within 12 months. It may be necessary to use legal proceedings to gain possession of the original property in extreme cases where the occupier refuses to co-operate.

The law provides that there can only be one successor. In the case of married couples or civil partners, when one of the partners dies the other partner automatically takes the tenancy by succession. Where there is no husband/wife/civil partner it is up to the family members may become joint successors.