

## STATEMENT OF INTENT

Saffron recognizes that following the death of a tenant, their family members will be grieving and any requests for succession should be handled sensitively.

### 1. PURPOSE

- 1.1 This Policy is designed to set out Saffron's position and approach to succession of tenancy.

### 2. POLICY

- 2.1 This policy covers 3 types of succession:

**Survivorship** - Where a joint tenant dies and the tenancy continues in the surviving tenant's name. The surviving tenant is classed as a successor and there are no further succession rights

**Statutory Succession** - Where succession rights are granted by law to the deceased tenant's spouse/civil partner/partner. Saffron will in addition permit a qualifying member of the tenant's family, or other member of the household (e.g. unpaid carer) to succeed to the tenancy (non-statutory)

**Contractual Succession** - The tenancy agreement provides Contractual succession rights to qualifying family members

The potential successor must be residing at the address with the tenant at the time of death as their main and principal home. Qualifying family members other than spouse/civil partner/partner must also show that they have been residing with the deceased tenant through the 12 months prior to their death.

The onus is on the potential successor to provide adequate evidence of residency for the required time period, proof of relationship to the deceased tenant, along with a copy of the tenant's death certificate. We will also require proof of ID to confirm they have the right to rent in the UK.

- 2.2 Succession will generally be to a tenancy of the same home. However, Saffron reserves the right to rehouse the successor to suitable alternative accommodation if Saffron is satisfied that this is a priority when viewed in the context of the property type and other demands on its housing and the housing needs of the area. This will not apply where the successor was previously a joint tenant, spouse, civil partner or partner as he/she will qualify to remain in the same property.
- 2.3 Only one succession is permitted, so if the deceased tenant themselves succeeded to the tenancy on the death of the previous tenant, or had the tenancy previously assigned to them, his or her potential successors are not qualified to succeed.

However, all tenants who have transferred from South Norfolk Council will be treated as 'first time' tenants even if they have already previously succeeded to the tenancy.

- 2.4 Where there is more than one person who is qualified to succeed to the tenancy, the spouse/ civil partner /partner will automatically take precedence over other relatives. If there is no spouse/ civil partner / partner the eligible relatives should decide who should have the tenancy and if they cannot agree, Saffron will make the decision or determination will be made by the County Court whichever is applicable under the provisions of the 1988 Housing Act as amended by the Localism Act 2011.
- 2.5 If the accommodation is larger than is reasonably required by a successor - who is not the deceased tenant's spouse/civil partner/ partner - or the property was converted for a tenant with special needs which do not apply to the successor, Saffron may make one offer of suitable alternative accommodation and seek possession of the property using Grounds 9 and 12 as set out in the Housing Act 1988 or other relevant ground(s) for possession. In deciding whether to seek possession, Saffron will take into account:
- (a) The age of the potential successor
  - (b) The period of time for which the potential successor lived in the property as his or her only or principal home.
  - (c) Any financial or other support the 'potential successor' gave to his or her predecessor.
- 2.6 A family member is defined as one of the following:
- (a) A spouse, civil partner or a person with whom the tenant lived as husband or wife.
  - (b) The tenant's parent, grandparent, child (including adopted child), grandchild, brother, sister, uncle, aunt, nephew, or niece, or stepchild. This will also include relationships by marriage and 'half-blood' relationships.
- 2.7 here a resident has no right to succeed to a tenancy following the death of the tenant and the resident has been living with the tenant for the previous 12 months (this situation may arise if a previous succession to the tenancy has taken place or the resident is not a 'qualifying person' to succeed) Saffron may consider whether in such instances it is appropriate to make an offer of suitable alternative accommodation (or same accommodation) subject to good use of Saffron's stock.

- 2.8 If the tenancy is devolved under the will or intestacy of the deceased tenant to a person other than someone who is entitled to statutorily succeed to the tenancy or to succeed under the provisions of the tenancy agreement, Saffron will consider - subject to 2.6 above - repossession of the property using Ground 7 as set out in the Housing Act 1988 or other relevant ground(s) for possession.
- 2.9 If a decision is made that any remaining occupants have no right to succeed to the tenancy, we will notify all occupants and the deceased's representative of our intention to seek possession of the property, and Saffron will serve a Notice to Quit. Once the tenancy has ended, we will set up a use and occupation account for the occupants to make payments until possession is granted. During this time we will signpost the occupants for assistance to gain alternative accommodation.

### **3. APPEALS**

- 3.1 Appeals against a refusal to permit a succession of tenancy should be made in writing to the Assistant Director – Housing Operations within 28 days of the decision being advised to the applicant, advising why they feel the decision is not justified.

### **4. KEY LEGISLATION**

Housing Act 1988 (amended by the Civil Partnership Act 2004 to extend statutory succession rights to same sex couples)

Localism Act 2011

### **5. POLICY REVIEW**

- 5.1 Saffron will review this Policy at least every 3 years or if the government revises its policy on Succession.
- 5.2 Saffron recognizes that there may be circumstances where it will need and/or wish to take different or alternative action to that outlined in this Policy and it reserves the right to do so.

## SUCCESSION - Procedure

**To be applied where an application to succeed to the tenancy is received or where Saffron become aware of the death of a tenant**

### Succession

Succession is the transfer of a tenancy following the death of a sole or joint tenant.

Following death of tenant /joint tenant the potential successor is to complete the succession application form. On receipt of an application form a succession process will be started on C365 and owned by the Neighbourhood Officer (NO).

**Does the 'applicant' have the right to succeed? Note - there can only be one succession to a tenancy.**

### Statutory Successions

#### Survivorship (Joint Tenancies)

Following the death of a joint tenant, the surviving tenant continues the tenancy as a sole tenant under the law of survivorship. Succession by survivorship counts as one act of succession to a tenancy.

Process – Death certificate required, and proof that successor resided at property at time of death. (no new tenancy created or endorsement needed) Once details checked, action request to rents on C365 for tenancy to be amended to sole name of surviving tenant and NO to send confirmation letter to successor.

#### Sole Tenancies

In the case of a sole tenancy (where the tenant was not him or herself a successor) spouse/civil partner/same sex partner/ or somebody living with the tenant as such will automatically succeed to the tenancy if they were living at the property at the time of the death as their only or principal home, and if there has been no previous succession.

Process – Death cert required, proof of relationship to tenant, proof that successor resided at property at time of death. (no new tenancy created) Once details checked, endorsement to be signed by successor. Action request to rents team on C365 for tenancy to be amended to sole name of successor, and NO to send confirmation letter, with copy of tenancy with a copy of the signed endorsement attached, to the successor

## Non- Statutory Succession

### For sole tenancies (granted prior to 1st April 2012)

Other persons as set out in the tenancy agreement including parents, grandparents, children, sisters, brothers, aunts, uncles, nieces, nephews grandchildren, stepchildren, relations by marriage and 'half-blood' relationships may have a non-statutory contractual right to succession provided they resided at the property as only or main home for previous **12 months**.

Process – Death cert required, proof of relationship to tenant, proof that successor resided at the property for a **minimum of 12 months directly prior to death**, once details checked and right to succeed established, the tenancy will need to be terminated (either by executor of the estate or by service of Notice To Quit on the Public Trustee.) a new tenancy will be required, Action request on C365 to Lettings to draw up new tenancy, once signed and returned Action request on C365 to Rents team to set up new tenancy. Copy of tenancy agreement and confirmation letter to successor by NO.

### For sole tenancies (granted on or after 1st April 2012)

(Changes implemented following the Localism Act 2011)

Other persons who are listed as contractual successors under a tenancy agreement granted after 1 April 2012 (see paragraph above) will have a right to succeed by statute and will have tenancy vested in them automatically with no granting of a new tenancy.

Process - Death cert required, proof of relationship to tenant, proof that successor resided at the property for a minimum **of 12 months directly prior to death**, once details checked and right to succeed established, an Endorsement needs to be signed by successor, Action request to rents team on C365 for tenancy to be amended to sole name of successor, and NO to send confirmation letter, with copy of tenancy with a copy of the signed endorsement attached, to the successor.

## Notes

- There must not have been a previous succession since 17<sup>th</sup> May 2004 (the day of transfer).
- Saffron may also consider applications from other members of the household such as a live-in carer. Such applications must be discussed with the Neighbourhood Manager
- Applications and required proofs should be supplied to Saffron within 28 days of the death of the tenant, and the applicant will normally receive a decision within 14 days of all information being received to enable Saffron to make a decision.
- Where an endorsement is required (sole tenancies to spouse/partner or contractual successions where no new tenancy is required)the following is to be attached to the original tenancy agreement:

**On the death of .....on.....the tenancy of .....was vested in the name of .....(successor and stating their relationship to deceased tenant) as successor in accordance with the provisions of the Housing Act 1988.**

- If an arrear or credit (unless separate arrangements have been made in the will in terms of any credit) exists on the account, this will pass to the successor.
- If an application is refused the applicant will be advised that they have 28 days within which to appeal this decision to the Assistant Director of Housing Operations.

**Under-occupation (note where there is a right to succeed, under-occupation does not impede this right)**

- If there is under-occupation (other than by spouse/common law partner/civil partner) – meaning if there is an excess of more than one bedroom, discuss with Neighbourhood Manager.
- If a decision is made that it is seen as reasonable to offer smaller accommodation (suitable alternative accommodation) then this should be discussed with the qualifying person. Saffron will take into consideration; the individual's age, the period of time during which they lived in the property as his or her only or principal home – the final decision is to be made in agreement with the Assistant Director of Housing Operations.
- **Inheritance of tenancy** – Where a tenancy is inherited by someone who would not qualify either statutorily or contractually as a successor the Trust would seek to repossess the property (Ground 7 Housing Act 1988).
- **Special adaptations** – if the property has been adapted for a person with special needs and the successor tenant does not require these adaptations Saffron can also seek to offer suitable alternative accommodation as outlined above. This would generally apply to 'significant' adaptations (stair lifts/level access showers/extensions etc) not hand rails etc.

**Where no right to succession exists/ or second discretionary succession**

Where a resident has no right to succeed to a tenancy following the death of the tenant and the resident has been living with the tenant for the previous 12 months (this situation may arise if a previous succession to the tenancy has taken place or the resident is not a 'qualifying person' to succeed). The Trust may consider whether in such instances it is appropriate to make an offer of suitable alternative accommodation (or same accommodation) subject to good use of the Trust's stock. Note a decision in this case would be authorised by the Assistant Director of Housing Operations and would necessitate a new tenancy being granted.

Note Where the late tenant was a 'protected' tenant at the time of stock transfer, there are certain circumstances where the successor may have a 'preserved' right to buy as conferred in the transfer agreement between SNC and Saffron/SNHP. No advice should be given on this matter without confirmation being received from the Finance

Note; on exchange the successor tenant (spouse/partner/civil partner – statutory succession) will take the successor status with them.

At all stages the applicant will be advised of progress and will receive letters and tenancy agreements as outlined above. Notes on progress will be made on C365.

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