

## **Succession Policy (Version 1, May 2022)**

### **1.0 Purpose of policy**

- 1.1 To outline Karbon Homes' approach to requests to succeed to tenancies.

### **2.0 Objectives**

- 2.1 To ensure the legal rights of persons qualifying to succeed to a tenancy are protected and acted upon.
- 2.2 To ensure that non-qualifying persons are given appropriate advice and guidance about alternative housing options.
- 2.3 To ensure that the procedures for dealing with issues such as the appropriateness of "more suitable accommodation" and tolerated levels of under-occupation are consistent with Karbon Homes' overall priorities and policies.
- 2.4 To deal promptly with requests for succession of tenancy to:
- Ensure best use of our housing stock.
  - Apply best practice.
  - Deal sensitively with customers.

### **3.0 Policy detail**

#### **3.1 Statutory Rights- Assured Tenants**

- 3.1.1 Section 17 of the Housing Act 1988 gives succession rights to the spouse or civil partner of an sole assured tenant, provided that immediately before the death the spouse or civil partner, was living in the property as his or her only or principal home and the deceased tenant was not a successor. A person living with the deceased tenant as if they were a married couple or civil partners is to be treated as the tenant's spouse or civil partner.. Other family members may have the right to succeed. Each case will be considered on its own merit..

- 3.1.2 The succession rights as detailed at 3.1.1 also apply to:

- 3.1.2.1 a periodic assured shorthold tenancy;

3.1.2.2 a fixed term assured shorthold tenancy that was for not less than 2 years when granted.

- 3.1.3 Only one succession is allowed. If the deceased tenant succeeded to their tenancy or formerly had a joint tenancy which subsequently became a sole tenancy on the death of the other joint tenant, then no further rights of succession arise.
- 3.1.4 When there is no statutory right of succession to a tenancy and the tenancy has passed under a will or intestacy to another person, Karbon Homes (subject to any contractual rights set out below) has mandatory grounds for possession under the Housing Act 1988, Schedule 2, Ground 7.

### **3.2 Statutory Rights- Secure Tenants**

- 3.2.1 Section 86A of the Housing Act 1985 provides that when a sole secure tenant dies the tenancy may be passed on to a 'qualified' successor, provided there has been no previous succession to the tenancy. Where there has been a previous succession there can be no further succession.
- 3.2.2 Persons qualified to succeed to a secure tenancy (Section 86A, Housing Act 1985)
- The tenant's spouse, or civil partner, who was occupying the property as their only or principal home at the time of the tenant's death. A person living with the deceased tenant as if they were a married couple or civil partners is to be treated as the tenant's spouse or civil partner.
  - Subject to the property not being occupied by a spouse or civil partner at the time of the tenant's death, and there being an express term within the tenancy agreement permitting it, a member of the tenant's family who was living in the property as their only or principal home and the succession is in accordance with that express term. Where succession is by a member of the family, there is a discretionary ground for possession available Karbon Homes if the property is larger than they require. Karbon Homes will allow under-occupancy of one bedroom.
- 3.2.3 If there is more than one person qualified to succeed on the death of the tenant, a spouse or civil partner (that was occupying the property as their only or principal home at the time of the tenant's death) will take precedence. If there is no spouse or civil partner, but there are more than one family member who meet the conditions for succession, they should choose between them who will succeed to the tenancy. There can only be succession to a sole tenancy, they would not jointly succeed to a joint tenancy. Where agreement can't be made by the claimants on who will succeed the tenancy then it will be at Karbon Homes absolute discretion to select the person who may pursue the claim.
- 3.2.4 Definitions of family member (Section 113, 1985 Housing Act)

- A spouse or civil partner, or where the person with whom the tenant lived as if they were husband or wife, or if in a same sex relationship but not civil partners, lived together as if they were civil partners
- The tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece
- A relationship by marriage or civil partnership is treated as a relationship by blood
- A relationship of the half blood is treated as a relationship of the whole blood
- The stepchild of a person is treated as his or her child
- An illegitimate child is treated as the legitimate child of his mother and reputed father

### **3.3 Common Law Succession**

- 3.3.1 In addition to the statutory rights to succession detailed above there is also a “common law” right to survivorship. This applies where there is a joint tenancy and one of the joint tenants dies. Once this happens the tenancy passes to the surviving joint tenant, (or tenants) by survivorship. Survivorship will take priority over any statutory right of succession.
- 3.3.2 Where survivorship has taken place there can be no further succession to the tenancy.
- 3.3.3 Succession may also take place by way of inheritance of the tenancy via the deceased tenant's will or the rules on intestacy.

### **3.4 Contractual Rights**

- 3.4.1 As well as the statutory rights to succession set out above, tenants of the former housing companies shown below were given additional contractual rights at the time of stock transfer:
- Milecastle Housing
  - Castle Morpeth Housing
  - Derwentside Homes
- 3.4.2 It was agreed that any successions which had taken place prior to the transfer of stock from the Local Authorities to the above housing companies would be disregarded.
- 3.4.3 Further additional succession rights were granted within the individual stock transfers as follows:

### **3.5 Former Tynedale District Council tenants** at the time of stock transfer to Milecastle Housing were given the following additional contractual right:

- 3.5.1 If the deceased has no surviving spouse or partner or joint tenant, a member of the family may succeed as long as:

- they occupied the home as their only main home; and
- they lived with the deceased throughout the period of 12 months ending with the death; and
- they satisfy us (acting reasonably) that they have a right to inherit the tenancy; and
- they notify us in writing of their claim to succeed within 6 months of the death (we may allow a longer period at our discretion), and
- they apply for the Grant of Probate and/or letters of Administration and/or seek to have the tenancy vested in them under the deceased's Will or Intestacy within six months of the death.

3.5.2 If the conditions above are met then the person applying for the right of succession will be successful and they will succeed to the tenancy in question.

3.5.3 If you are not a successor (as defined above) and if on your death there is no person who is able to succeed, Karbon Homes agree that if a person:

- lawfully occupied your home as their only or main home at the time of your death and lawfully resided with you throughout the period of twelve months ending with your death (this twelve month period does not apply to partners of the same sex) and
- makes a claim in writing to us within three months of the death or such longer time as Karbon Homes shall in its discretion allow;

then Karbon Homes will end the tenancy agreement and grant a new tenancy either of the deceased's home or, at its discretion, of other premises that it considers to be more suitable. Such a tenancy shall be granted on such terms and conditions as we consider appropriate.

3.5.4 If more than one person makes a claim then in the absence of agreement between such claimants, Karbon Homes will in our absolute discretion select the person who may pursue the claim.

**3.6 Former Castle Morpeth Borough Council tenants** - At the time of transfer to Castle Morpeth Housing the following contractual rights were agreed:

3.6.1 Succession can be granted to someone other than a partner of the sole tenant, if the sole tenant was not a successor and if:-

- He/she is a member of the sole tenant's household, and

- Lived with the sole tenant for the twelve months before the sole tenant's death, and,
- Lived in the sole tenant's home, as his/her only or principle home, at the time of the sole tenant's death and
- Agrees to abide by the terms of the tenancy.

3.6.2 Possession may be sought if, six months after the death of the sole tenant, there has been no grant of probate or letters of administration. If inheritance rules do not allow someone who qualifies as above to take over the tenancy, under Ground 7 of the Tenancy Agreement, the tenancy may be ended and they may be granted a new tenancy.

**3.7 Former Derwentside District Council Tenants** at the time of the stock transfer to Derwentside Homes existing tenants were given the following succession rights.

3.7.1 On the death of a sole tenant and if no one is qualified to succeed, the tenancy shall pass to a qualifying member of the tenant's family who occupies the home as his or her only or principal home provided:

- that such a person has resided with the Tenant for 12 months prior to the Tenant's death;
- that the person has been referred to in the Tenancy Agreement when the Tenancy commenced or we received notification of them moving into the property
- such person agrees in writing to abide by the terms of this tenancy.

The Tenancy shall pass under this clause to the Tenant's spouse, civil partner or other partner, if not qualified or, if there is no such person or if he or she declines to accept the Tenancy, priority shall be accorded in the following order of preference:

- the Tenant's resident adult son or daughter; then
- any other adult resident qualifying member of the Tenant's family.
- If there is more than one person of equal priority to succeed to the Tenancy, the Tenancy shall pass to whichever is agreed between them, or, in the absence of agreement, will be determined by Karbon Homes.

### **3.8 Contractual Rights- Assured Tenants**

3.8.1 Upon the death of a sole tenant that is not themselves a successor, anyone who believes they have an entitlement to succeed to the tenancy, must make written application to Karbon Homes within 3 months of the death of the

tenant.

- 3.8.2 If the successor is the spouse or partner of the deceased tenant, then subject to the deceased tenant not being a successor themselves, the tenancy will pass to the applicant so long as they were living in the property as their only or principal home at the time of the tenant's death.
- 3.8.3 If there is no joint tenant, spouse or partner Karbon Homes will consider applications from other family members who had been living with the deceased tenant as their only or principal home continuously for a period of at least 12 months preceding the death of the tenant.

### **3.9 General Terms**

- 3.9.1 Children under the age of 18 may succeed to a tenancy. Any tenancy granted to a minor will be held in trust by a third party until they reach the age of 18.
- 3.9.2 Karbon Homes will treat same sex partners in the same way as heterosexual partners.
- 3.9.3 In the event where there is more than one person with a claim to succession, and the claimants cannot reach agreement, Karbon Homes will in our absolute discretion select the person who may pursue the claim.
- 3.9.4 Successors are not required to sign a new tenancy agreement, as this would create a new tenancy. However, the successor must sign confirmation that they have read and understand, and accept to abide by, the terms and conditions of the tenancy.
- 3.9.5 No more than one person can succeed a tenancy.
- 3.9.6 Where someone has the right to succession, Karbon Homes will reserve the right to require them to move to another property if it is felt that the property is not suitable for them, for example, it is too large for their needs or the property has been adapted and they do not need those adaptations.
- 3.9.7 Where a tenancy has been assigned to someone who would have qualified as a successor then no further successions can take place. Assignment by way of mutual exchange does not count as a statutory succession.
- 3.9.8 Karbon only permits 1 right to succession Where this has already been exercised or the household member does not qualify to succeed the tenancy, Karbon Homes may grant a new tenancy of the property in exceptional circumstances (or of another suitable property if the existing home is too large or specialist accommodation is no longer required by the surviving occupier).

'Exceptional circumstances' includes where a person is:

- A non-qualifying household member who was living in the property as their only or principal home during the twelve months up to the tenant's death.
- A family member of a deceased tenant who was himself or herself a successor.
- Someone who has cared for the deceased tenant, who was living in the property as their only or principal home during the twelve months up to the tenant's death.
- Someone who has accepted responsibility for the deceased tenant's dependents.

3.9.9 All accommodation offered will be in accordance with the size of property entitlement guidelines outlined in Karbon Homes Allocations Policy.

3.9.10 Where there is no statutory or contractual right to succeed the tenancy, Karbon Homes will seek to recover possession of the property. For any persons residing in the property, whether these are authorised occupants or unlawful occupiers, then Karbon Homes will always charge those occupiers a 'use and occupation' charge as mesne profit or compensation for lost rent. The level of use and occupation charges will be notified in writing to the occupants and will usually be equivalent to sum of full rent that would be charged if the property was let.

## **4.0 Monitoring and Review**

This policy will be reviewed every 3 years or when there are changes to legislation, regulation or best practice

## **5.0 Equality and Diversity**

This policy is applied in line with Karbon's Equality and Diversity Policy and the associated legislation including the Public Sector Equality Duty and Equality Act 2010. At Karbon we aim to eliminate discrimination, promote equality of opportunity, foster good relations and define the nine protected characteristics of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation.

However, we like to go even further. Beyond these protected characteristics we also take into consideration additional factors such as socio-economic status and language barriers which may also play a part. Our vision is for everyone to be treated fairly, have equality of opportunities, freedom, respect and access to our services.

To help us achieve this, we will work to improve accessibility for all, offering reasonable adjustments, adaptations and discussing ways that we can work to remove any barriers. A reasonable adjustment involves making a change to the way that we usually do things.

All of our customer policies and key information are made available on the Karbon Homes website. Reasonable adjustments that can help for example to make our information and services more accessible are sign language and language interpreters. We will work to improve accessibility for everybody that we deal with offering reasonable adjustments, adaptations and discussing ways that we can work to remove barriers that you may experience. A reasonable adjustment involves making a change to the way that we usually do things.

We work together to look at options and agree what adjustments would be reasonable in your individual circumstances. If you would like to find out more please get in touch with the team.

## **6.0 Data Protection and Privacy**

We have a clear policy on data protection and sharing data with other partners/third parties under the requirements of the UK General Data Protection Regulation, the Data Protection Act 2018 and other associated legislation. This is clearly set out in the Data Protection Policy for the Karbon Homes Group which, along with its associated procedures, must be followed throughout the operation of this policy.