



# Succession Policy

## 1.0 Purpose and scope

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This policy sets out our approach to succession. It outlines how we manage succession claims after the death of a tenant. Depending on the type of tenancy agreement, tenants have different statutory and contractual rights.

We understand that the death of a tenant can be upsetting for their family. We ensure that we are sensitive to the needs of applicants and households when dealing with succession requests. We ensure that we work quickly to inform them whether they have a right to succeed to the tenancy and whether the right is statutory or contractual.

This policy applies to general needs and supported housing residents. This policy does not apply to temporary housing, Home Ownership (leaseholders), market rent, intermediate market rent, key workers and student lets residents. Residents living in properties that have a licence agreement (known as licensees), do not have succession rights.

## 2.0 Definitions

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**Succession** - Succession rights mean the right to take over the tenancy or inherit it when a tenant dies.<sup>1</sup>

**Assured tenancy** – refers to both periodic assured and assured shorthold fixed-term tenancies, unless stated otherwise.

**Secure tenancy**- Secure tenancies are regulated by the Housing Act 1985 and are sometimes referred to as 'lifetime' tenancies. We do not issue secure tenancies for new tenants; however, anyone who has a tenancy that was granted before 1 April 1989 is likely to be a secure tenant. The tenancy will not usually be terminated unless there are serious tenancy breaches.

**Family member / qualifying member** – for the purpose of this policy we adopt the definition of a family member as found in s.113 of the Housing Act 1985

'(1) A person is a member of another person's family [...] if-

(a) [they are] the spouse or civil partner of that person, or [they] and that person live together as husband and wife (or as if they were civil partners), or

(b) [they are] that person's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.'

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[https://england.shelter.org.uk/housing\\_advice/council\\_housing\\_association/can\\_you\\_inherit\\_a\\_council\\_tenancy](https://england.shelter.org.uk/housing_advice/council_housing_association/can_you_inherit_a_council_tenancy)

An adopted child is treated as a member of the family. A foster child does not qualify as a member of the family.

**Cohabitee** – a person living with the resident as a long-term partner (including same sex relationships). For assured tenancies, a cohabitee is treated in the same way as a spouse or civil partner. For secure tenancies, a cohabitee is treated as a member of the family.

**Under-occupation** – having one or more bedrooms than is required according to our bedroom standard, as set out in NHG's lettings and allocations policy.

**Tenancy approval panel**- a group of operational managers and senior managers who review succession claims and discretionary tenancy requests.

## 3.0 Types of succession and eligibility

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### 3.1 Survivorship

In most cases, when one joint tenant dies, the tenancy automatically transfers to the remaining tenant. This type of succession is called 'survivorship'. Survivorship happens automatically at the point of death and does not need our permission. The remaining tenant becomes a sole tenant, as long as they occupy the property as their only or principal home before any notice to quit, we have served expires. Some of our tenancy agreements state that we do not consider survivorship as succession. In such cases, a contractual succession can take place following the death of the remaining joint resident. The type of relationship between the joint tenants does not have a bearing on whether the remaining tenant succeeds to the tenancy via survivorship.

Secure joint tenants are always eligible for succession via survivorship, even if a succession has previously taken place. Assured tenants are not eligible for another succession after survivorship has happened.

### 3.2 Statutory succession

Statutory successions are granted by law. We do not decide when/if a statutory succession can take place. Legislation provides for one statutory succession. Unless the tenancy agreement allows for it, there can be no further succession if the deceased tenant:

- was a statutory successor
- was a survivor to a joint tenancy

The statutory successor succeeds to the existing tenancy agreement. We do not issue a new tenancy agreement.

### 3.3 Tenancies issued before 1 April 2012

#### Secure tenancies

A person has a statutory right to succeed to a secure tenancy if they occupy the property as their only or principal home at the time of the tenant's death. The following order of priority applies:

1. The tenant's spouse or civil partner.

2. Family member, including a cohabitee, who has lived with the tenant for a period of 12 months or more before their death, and the property was their main residence.

### **3.4 Tenancies issued after 1 April 2012**

A person has a statutory right to succeed to a tenancy if they occupy the property as their only and principal home at the time of the tenant's death and they are the deceased tenant's spouse, civil partner or cohabitee.

Family members do not have a statutory right to succeed in the absence of a spouse, civil partner, or cohabitee unless the tenancy agreement states otherwise. Where a succession occurs as a result of rights provided for in the tenancy agreement, it will operate as a statutory succession, and there will be no further rights of succession.

### **3.5 Contractual succession**

A contractual succession takes place where succession rights are granted through the tenancy agreement, rather than by law.

Where a person has a contractual right to succeed, but not a statutory right, we will grant a new tenancy agreement. The new tenant will not be a statutory successor, meaning that there will be a further right of statutory succession in the event of death.

### **3.6 Discretionary tenancies**

In very few circumstances, we consider granting a discretionary tenancy where there are no statutory or contractual rights to succeed. Discretionary tenancies are granted in line with our [tenancy policy](#).

The new tenant will not be a statutory successor, meaning that there will be a further right of statutory succession in the event of their death.

The tenancy offered at our discretion may be for the deceased tenant's property or another property. The occupant will be liable for use and occupation charges after the Notice to Quit expires if the request for a discretionary tenancy is still being considered. In all circumstances we will refer to our equality, diversity and inclusion policy and our vulnerability policy.

When deciding whether to grant a discretionary succession, we will take the into account:

- The property is the applicant's main and principal home, where they have been living for at least 12 months prior to the death of the resident.
- That the applicant is eligible for social housing and meets the criteria set out in their local authority's allocations policy.

The household member must request to be verified by their local authority; they will have until the end of the Notice to Quit to provide us with this verification.

## **4.0 Dealing with succession claims**

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We investigate each succession claim thoroughly to ensure that the applicant is eligible to succeed to the tenancy. We will ask the applicant to provide documents or

evidence to support their claim for succession (e.g., proof and length of their residence).

Each succession claim request must be reviewed by the tenancy approval panel.

If we suspect tenancy fraud, we investigate the application request in line with our tenancy fraud and unauthorised occupants' policy.

#### **4.1 Occupants with support needs**

We will assist eligible applicants with support needs to ensure that they have the relevant support services they need. We will liaise with support services for advice and offer them an assessment of their need for support. This would not be a reason for us to refuse a succession claim.

#### **4.2 Multiple claims for succession**

Only one person can succeed to the tenancy. We will not permit joint successors under any type of succession.

Where we receive more than one claim for succession to the same tenancy, we will ask the potential successors to decide among themselves who should be the successor. If the potential successors cannot decide, we will make the final decision based on the following criteria:

- The nature and length of the relationship with the deceased
- The length of residency at the property
- Whether there is any other accommodation the potential successor could reasonably be expected to occupy
- Ties to local area (e.g., school or work commitments)
- Applicants' housing needs.

If potential successors requesting a joint tenancy do not agree with our decision, we will seek possession on expiry of the Notice to Quit.

#### **4.3 Succession to an affordable rent property**

Where a discretionary tenancy is granted on a property that is let at affordable rent, the new tenancy will be offered at the affordable rent level.

#### **4.4 No succession rights**

Household members who have been informed that they are not eligible to succeed to a tenancy can make a complaint in accordance with our [complaints policy](#) if they believe the decision is not in line with this policy, the tenancy agreement or existing legislation.

## **5.0 Rent arrears**

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### **5.1 Survivorship**

Where succession is claimed through survivorship, the remaining tenant is liable for any arrears and entitled to any credit on the rent account.

### **5.2 Statutory, contractual succession and discretionary tenancies**

For successions not claimed through survivorship, the rent arrears pass to the deceased tenant's estate.

## 6.0 Property unsuitable

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Where a succession would result in under-occupation or would result in the successor occupying either an adapted property or supported housing accommodation, we make an offer of alternative, more suitable accommodation. If offers are refused, we consider seeking possession in accordance with:

- Ground 15A of schedule 2 of the Housing Act 1985 (secure tenancies)
- Ground 9 of Schedule 2 of the Housing Act 1988.

In the case of fixed-term assured shorthold tenancies, the successor succeeds to the remaining term of the tenancy. At the end of the fixed-term period, the successor will be subject to the standard tenancy review process which will consider under-occupation.

We do not grant a discretionary tenancy where the potential tenant would under-occupy the property. We may consider making one offer of alternative accommodation. If this offer is refused, we seek possession of the property, treating the applicant as an unauthorised occupant. We accept payment for use and occupation rather than rent during this process.

## 7.0 Allocating suitable alternative accommodation

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Where we have committed to seeking suitable alternative accommodation for successors, we will follow our lettings and allocations policy and work with local authority partners to prioritise the move.

## 8.0 Successors under 18

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There is no minimum age for someone to statutorily succeed to a tenancy. Successors under the age of 18 years cannot hold a legal interest in land.

For statutory successions, we will hold the tenancy on trust for the minor. A minor statutory succession will be provided with an equitable tenancy agreement.

For minors who have contractually succeeded to the tenancy, we will grant an agreement for tenancy or a licence agreement until they turn 18. Further information is provided in our tenancy policy.

We recognise that other agencies may need to be involved in these cases, such as social services, and we will work closely with them to support the minor to establish themselves in the tenancy. We refer to our safeguarding children policy where we have concerns about the wellbeing of a tenant who is under 18.

## 9.0 Inheriting a tenancy

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A tenancy can be inherited on the death of the resident, either through the rules of intestacy or under a will. If the inheritor qualifies, the tenancy will remain an assured tenancy. To qualify the inheritor must:

- Occupy the property as their only or principal home

- Have a right to succeed to the tenancy.

If the above conditions are not met, we may take legal action to repossess the property using either a Notice to Quit or a Notice of Seeking Possession using the mandatory ground 7 for possession as set out in schedule 2 of the Housing Act 1988.

## **10.0 No claim for succession**

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If we do not receive a claim for succession, the tenancy does not come to an end but is vested in the deceased tenant's estate. We will serve the appropriate notice(s) to end the tenancy and notify the Public Trustees Office.

Where there are occupiers who do not qualify as successors or who have had their application to succeed refused, we explain that they do not have the right to succeed or continue to occupy the dwelling and ask them to leave. We follow internal procedures on ending a tenancy and unauthorised occupants and take possession action against the occupants.

## **11.0 Our approach**

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In writing this policy we have carried out assessments to ensure that we are considering Equality, Diversity & Inclusion

## **12.0 Reference**

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List key legislation, regulation or external links

Legislation relating to succession is set out in the following Acts.

- For secure residents, Section 87 of the Housing Act 1985.
- For assured, periodic assured and periodic assured shorthold residents, Section 17 of the Housing Act 1988.
- For assured shorthold fixed term tenancies, Localism Act 2011

## Document control

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## Version Control

Date	Amendment	Version
2 October 2019	New NHG Policy	1.0
5 February 2020	Added at end of section 3 statement on discretionary tenancies and no further opportunity to appeal	1.1
24/03/2021	Contractual successors that under occupy will receive a direct offer of a suitable alternative accommodation	1.2
10/03/2022	Policy reviewed.	2.0
29/11/2022	Clarified that contractual succession to an unsuitable property cannot be refused	2.1
21/09/2023	4.4 added	2.2
04/06/2024	Statement added about succession claims requests being reviewed by (tenancy approval panel) TAP.	2.3
01/07/2024	Policy review. Tightened criteria for discretionary tenancies	3.0