



SUCCESSION POLICY



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1. Definition

1.1. Succession is a legal term used when a person inherits a tenancy when the existing tenant dies. It occurs automatically when there is an eligible successor and occurs on the date of death.

2. LEGISLATION

2.1. This Policy and Procedure takes into consideration the following legislation:

- Ground 15a Schedule 2 of the 1985 Housing Act

3. The legal position

3.1. In law, there can only be one succession during the lifetime of a tenancy. Therefore, if the deceased tenant themselves were a successor as defined in S.88 of the Housing Act 1985 (secure tenancies) or as defined in S.132 of the Housing Act 1996 (introductory tenancies), then by rights there can be no further succession.

3.2. All secure, introductory, flexible and demoted tenancies have a right of succession, as outlined in S.89 of the Housing Act 1985 (secure tenancies) and S.133 of the Housing Act 1996 (introductory tenancies). Flexible tenancies created by S.154 Localism Act 2011 are secure tenancies and Demoted tenancies created by the Anti-social behaviour Act 2004 are treated in the same way as an introductory tenancy.

4. Who has statutory rights to succeed to a sole tenancy?

4.1. For any tenancy that commenced before 1st April 2012, the following persons qualify to succeed:

- Spouse
- Civil Partner
- Cohabitee
- Another member of the tenant's family

4.2. In the case of a deceased tenant's spouse or civil partner, to qualify for succession, they must be occupying the property as their main and principal home at the time of the tenant's death.

4.3 For a Cohabitee or another family member, they must have been occupying the property with the deceased tenant for a minimum of 12 months immediately prior to the death and be occupying the premises as their main and principal home at the time of death, to qualify for succession rights. The twelve months residence with the deceased tenant does not need to have been at the property to which succession is being claimed.

4.4 For any tenancy that commenced on or after 1st April 2012, the following persons qualify to succeed:

- Spouse
- Civil Partner
- Cohabitee

4.5 For each of those qualified to succeed in this instance, the one condition they must meet is that they are occupying the property as their main and principal home at the time of death.

4.6 However, in the case of a demoted tenancy a spouse, civil partner, or cohabitee, they must demonstrate that they lived with the tenant continuously for a period of 12 months prior to their death and it was their main and principal home.

5. Definition of a Cohabitee

5.1. Cohabitees are couples who live together as if they are married or civil partners. This includes those that are married under Sharia Law which is not recognised as a valid marriage in the UK.

6. Definition of a family member

6.1. S.113 of the Housing Act 1985 defines a member of a person's family as:

- (a) They are the spouse or civil partner of that person, or he/she and that person live together as a married couple or civil partners
- (b) They are that person's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.

6.2. In addition to this, step-relations, half-relations, and relations by marriage are considered family members.

6.3. Foster children however are not defined as family members in this regard.

7. Civil Partnerships

7.1. Since the introduction of the Human Rights Act 1998, discrimination on the grounds of sexual orientation is unlawful. Same sex partners therefore have succession rights.

7.2. The Civil Partnerships Act 2004 came into force on 5th December 2005. The Act provides that same-sex couples who form a civil partnership have the same rights as those who are in a heterosexual marriage and therefore in this context the same succession rights.

7.3. Same sex partners who have not formed a civil partnership can succeed though as with heterosexual cohabitants, are treated as a member of the family and must have been living with the tenant in the premises as their main and principal home for a minimum of 12 months before the death of the tenant

8. Succession rights for those aged under 18

8.1. Those under the age of 18 can also qualify to succeed a tenancy, but a responsible adult must hold the tenancy in trust until the successor turns 18.

9. Joint tenancies / survivorship

9.1. In the case of joint tenancies whereby one tenant dies then the surviving tenant automatically succeeds to the tenancy from the date of death under the common law rule of survivorship unless there has previously been a succession.

9.2. On the basis that the tenancy will always be inherited by the surviving tenant, there are no grounds for the tenancy to be succeeded by another member of the household, even if they would ordinarily qualify to succeed a sole tenancy.

9.3. Survivorship is not considered as a statutory succession but counts as one when determining if there is a further right to succeed to a tenancy.

9.4. If at the point of death, the surviving joint tenant has moved out of the property and is not occupying it as their main and principle home, the tenancy loses its security which is acknowledged by a Notice to Quit.

9.5. The surviving tenant would therefore not be able to succeed the tenancy on the grounds of survivorship unless they move back into the property as their main and principal home before the Notice to Quit expires.

10. What counts as a succession

10.1. The deceased tenant would be classed as a successor themselves if:

- They were previously a statutory successor.
- They were previously a survivor to a joint tenancy.
- The tenancy was previously assigned to them as a potential successor.
- The tenancy was previously assigned to them via a Court Order.
- They succeeded to a previous tenancy held with West Northamptonshire Council (WNC) and were granted another Introductory or Secure tenancy by WNC within 6 months.

10.2. Assignment via a Mutual Exchange does not count as a succession, and so by extension, a tenant who was a successor before the mutual exchange would remain a successor in their new property.

11. Discretionary succession

11.1. West Northamptonshire Council's Tenancy Policy allows for discretionary succession rights to secure and flexible tenancies granted after 1st March 2013.

11.2. This is restricted to spouses, partners and cohabiters unless discretionary succession rights are exercised in accordance with paragraph 2.1 (i1) of the Tenancy Standard within the Regulatory Framework where the granting of the succession takes account of the needs of vulnerable household members.

12. Proving succession rights

12.1. To establish succession rights, supporting information will be requested to verify this.

12.2. For those succeeding the tenancy of their spouse / civil partner, a copy of the marriage certificate will be required to confirm their marriage status.

12.3. For those claiming succession on the grounds of being an unmarried qualifying successor, evidence will be required in respect of residency status and the qualifying length of time (minimum of 12 months).

12.4. Sufficient evidence of residency would include:

- Bank Statements
- Wage slips or benefit letters.
- Named bills addressed to the property.

12.5. In the absence of the aforementioned evidence, considerations should be made around acquiring other evidence, including statements or documentation from Doctors, Schools, Employers, or other Government Departments that can verify residency status.

13. No succession rights

13.1. If it is determined that the person claiming succession rights has not provided sufficient evidence to verify this, arrangements should be made to end the tenancy via a Notice to Quit.

14. Succession and under occupancy

14.1. Where an occupier succeeds to a secure tenancy on the death of the previous tenant, and the dwelling is deemed to be more extensive than is reasonably required, (e.g. a single person succeeds to a two-bed property or

larger), NPH can lawfully seek to rehouse the successor to a suitable sized alternative property.

14.2. If a successor living in a property that is more extensive than reasonably required does not comply with the request to be rehoused, NPH can apply for a Possession Order as per Ground 15a of the 1985 Housing Act which was amended following the Localism Act 2011.

14.3. Ground 15A of Schedule 2 (the successor Ground) provides a Ground for possession that can be used by a Local Authority where there is a statutory right to succeed, but where the property in question is deemed to be too large for the successor's needs. This helps to allow Local Authorities to make better use of their stock.

14.4. This Ground can never be used where the successor is the spouse/civil partner of the deceased secure tenant.

14.5. A local authority wishing to use Ground 15A against a successor must serve notice or begin possession proceedings no sooner than six months after the death of the previous tenant and not later than 12 months after the death.

14.6. Before a court will issue a possession order under Ground 15A it must be satisfied:

- that it is reasonable to order possession; and
- that suitable accommodation will be available for the tenant when the order takes effect.

14.7. In determining whether it is reasonable to make an order under this ground, the court must take into account:

- the age of the tenant;
- the period during which the tenant has occupied the dwelling as his only or principal home; and
- any financial or other support given by the tenant to the previous tenant.

15. Rent including Housing Benefit and Universal Credit claims

15.1. On occasions, a tenant will pass away owing rent. For sole tenant's, liability for the rent arrears passes to their estate.

15.2. For any person who succeeds a sole tenancy, they would not generally be liable for any existing rent arrears owed by the original tenant at the time of their death.

15.3. If however the tenancy is subject to a suspended possession order, the successor must still comply with the terms of the order to pay any arrears relating to the original tenancy. Failure to comply with the terms of the order could result in NPH making a new Possession Order against the successor.

15.4. In the case of the death of a joint tenant where the rule of survivorship applies, the surviving tenant remains liable for any existing rent arrears accrued prior to the death of the other joint tenant on the basis they were jointly liable.

15.5. For any successor who qualifies for Housing Benefit or Universal Credit to pay their rent, a claim must be made immediately, even if their right to succeed is still being reviewed or disputed. Once succession is confirmed, payments should then be made to cover their required housing costs from the date they succeeded the tenancy.

16. Sole tenancy Council succession table (taken from Shelter, October 2023)

	Secure tenancy began before 1 April 2012 or introductory tenancy	Secure tenancy began on or after 1 April 2012 or flexible tenancy
Who succeeds	Spouse, civil partner, cohabitee, or member of the tenant's family.	Spouse, civil partner, or cohabitee. Other people can qualify for a statutory succession if the tenancy allows.
How many statutory successions	One. A previous succession includes a joint tenancy becoming a sole tenancy by survivorship, or assignment to a potential successor.	One. A previous succession includes a joint tenancy becoming a sole tenancy by survivorship, or assignment to a potential successor.
Conditions for succession	Tenant's spouse or civil partner must occupy property as only or principal home at the time of tenant's death. Cohabitee or family member must have been residing with the deceased tenant for 12 months before death and occupy premises as only or principal home at time of death.	Successor must occupy property as only or principal home at time of death.
Who takes priority	Spouse or civil partner.	Spouse, civil partner, or cohabitee.
What kind of tenancy does the successor get	The same as the deceased tenant: secure or introductory.	The same as the deceased tenant: secure or flexible.

