



## Succession Policy

ENFORCEMENT POLICY			
Author:	Lisa Griffin	Authorised by:	Sharon Morgan
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## 2. PURPOSE OF THE POLICY

The purpose of this policy is to clarify the circumstances in which the law entitles a person to take over a tenancy following the death of a secure tenant.

The policy sets out which persons are qualified to apply to succeed to a secure tenancy on the death of the existing tenant, circumstances in which a tenancy of a different property will be offered, and reasons why a succession application will be declined.

## 3. SCOPE

It is possible for a resident spouse, Civil Partner or family member to apply for the right to succeed to the tenancy of a deceased tenant.

## 4. BACKGROUND

### 4.1 Background/legal framework

Succession is a legal term used to describe the passing of a secure tenancy to another person on the death of the tenant. The person who takes on the tenancy is called a 'successor'.

The legal position on succession set out within the Council's Allocations Policy 2014 reflects Section 86A and (the former) Section 87, Part IV Housing Act 1985, which provides the basis on which a secure tenancy can be succeeded by another eligible person.

Amendments made to the Housing Act 1985 by the Localism Act 2011 removed the entitlement to succeed to tenancies created on or after 1 April 2012 from family members other than spouse/civil partner or partner. The Act gave councils power to extend succession rights by making provision for this in their secure tenancy agreement. The Council has chosen not to do so.

## 5. POLICY

### 5.1 Policy statement

**Succession will only take place when all of the following apply:**

- The deceased tenant was not him/herself a successor
- The deceased tenant had been using the property as their only or principal home before their death.



- The person wishing to succeed to the tenancy is qualified to succeed.

### **Joint tenancy**

On the death of one of two (or more) joint tenants the tenancy will pass automatically “by survivorship” to the surviving joint tenant(s). Whether it remains a secure tenancy will depend upon whether the surviving joint tenant(s) (or one of them) was/were resident in the premises as their only or principal home at the date of death. In such case, the statutory rules of succession do not apply. Even if the surviving joint tenant is not resident, but there is an otherwise qualifying relative (not a joint tenant) who is resident, the joint tenant takes the tenancy, not the resident qualifying relative.

A joint tenant who becomes the sole tenant (whether or not secure) by survivorship is treated as a successor.

### **No succession if the deceased tenant is a successor**

If the deceased tenant him/herself was a successor, no further succession can take place.

A tenant is a successor if s/he:

- Became the tenant by an assignment permitted by the Act (but see below); or
- Became entitled to the tenancy as a surviving joint tenant; or
- Succeeded to the tenancy under these statutory rules

Assignments by mutual exchange or under property adjustment orders (on divorce or dissolution of civil partnership) are ignored. In the case of a mutual exchange, the deceased tenant is a successor where s/he was a successor in relation to their original tenancy; in the case of property adjustment orders, the deceased tenant is a successor if the spouse/civil partner from whom the tenancy was transferred was him/herself a successor.

### **Who qualifies to succeed?**

To be a ‘successor’ the applicant has to meet certain criteria set out below.



**For tenancies granted before 1 April 2012** – The rules describing who is qualified to succeed to a tenancy on the death of a tenant are set out in the former section 87 and in s113 of the Housing Act 1985. The persons entitled are:

Partners:

- Spouse
- Civil Partner
- Person living with the tenant as if husband or wife or civil partner (i.e. including same sex couples)

A member of the family listed below who has been resident with the deceased secure tenant at the premises throughout the 12 months prior to the death of the tenant:

- parent, grandparent
- child, grandchild,
- brother, sister,
- uncle, aunt, nephew or niece;

**It should be noted that** a foster child is not counted as a child for the purposes of succession. Only blood relations (including step-children and illegitimate children) or those by legal adoption are entitled to succeed.

**For tenancies granted on or after 1 April 2012** – Following the implementation of the Localism Act 2011, the policy was amended to restrict the rights of succession to partners as set out above.

## Refusal

Succession will therefore **not be allowed** when:

- The deceased tenant was a successor to the tenancy.
- The deceased tenant had been living alone.
- The deceased tenant had left the property and was not using it as their only or principal home.
- The deceased tenant had left the property and been admitted to hospital or a residential home for long-term care or treatment with no prospect of return.
- There had previously been an assignment of the tenancy.



- The person asking for succession is unable to prove their relationship to the deceased tenant, or their residence at the address at the date of death or (where relevant) throughout the 12 months prior.

**Where succession is refused because of a prior succession or assignment, there is a discretion to grant a new tenancy (see the Grant of Tenancy Policy). Such a tenancy will be a new tenancy and carry new succession rights.**

### **Statutory Succession and underoccupation**

- If the spouse or civil partner of the deceased tenant (or, where the tenant died on or after 1 April 2012, a person living with the deceased tenant as such) succeeds to the tenancy, they have a right to stay in the property on a permanent basis (even if the property is larger than they need), subject to the terms and conditions of the tenancy. If the successor is under-occupying a home, they could nevertheless be subject to Welfare Reform i.e. reduced housing benefit entitlement 'bedroom tax'. Homes for Haringey's Financial Inclusion Team will provide further assistance.
- Due to the severe shortage of family-sized and specially adapted accommodation, where members of the deceased tenant's household (including, where the death occurred before 1 April 2012 tenancies, partners who are not civil partners and have not married) have succeeded and their existing home is bigger than they need or it has been specially adapted and they do not require those adaptations Council policy is to move them where possible to an alternative home that is more suited to their assessed needs.
- Where the Council decides that the applicant should move to alternative accommodation, the applicant will be required to join the Housing Register and bid for accommodation through the Choice Based Lettings Scheme. To assist their early rehousing, their housing application will be placed in Housing Needs Band A and, where appropriate, they will be made a 'direct offer'.



- If the applicant does not secure alternative accommodation within six months, Haringey Council will review their situation and bidding history and may decide to make a 'direct offer'.
- If the applicant has not moved to alternative accommodation six months after the 'relevant date' i.e. the date previous tenant was deceased or if the court so directs, the date on which, the landlord became aware of the previous tenant's death; a Notice of Seeking Possession on ground 15A (where the accommodation is more extensive than required) of the Housing Act must be served. This Notice can only be served no earlier than six months after the 'relevant date' and no later than twelve months after that date. A Ground 13 notice (in the case of specially adapted property) can be served earlier than 6 months after the relevant date, but should not usually be served within 6 months of the date of the tenant's death. The Notice does not require the successor to move out but does give notice of the Council's intention to repossess the property.
- If a suitable offer is made and refused, or if the applicant refuses to join the Housing Register, or fails to bid, the Council may commence possession proceedings. On a claim for possession the Council would have to secure suitable alternative accommodation for the applicant and also satisfy the Court that it was reasonable to make an order for possession.

## 5.2 Implementation

Homes for Haringey Tenancy Management staff are responsible for implementing this policy and will assess each application against the above criteria.

All applications are referred to the Fraud Team to confirm the identity and residency of the applicant.

If the applicant does not meet the criteria the application will be refused and the applicant notified of the decision in writing. Homes for Haringey



will seek to recover the property in order to make available for those in the council Waiting List. There is no right of appeal.

Where a person is not satisfied with a decision made in relation to their succession request or with the level of service they receive in relation to the implementation to this policy, the complaints procedure should be adhered to.

### **5.3 Enforcement and recharge**

If the applicant is not successful and refuses to vacate the property when informed of this, Tenancy Management staff will take action to recover the property. They will also arrange for an “Unauthorised Occupant” account to be established and will collect an unauthorised occupant (use and occupation) charge equal to the weekly rent for the period of recovery action.

### **5.4 Service standards**

Outcome within 20 working days from receipt of all verified supporting evidence.

### **5.5 Value For Money**

Value for Money will be achieved by correct application of this policy and ensuring properties go to those on the waiting list as they should. Robust adherence to policy and procedure will minimise any loss of rent or equivalent charge.

### **5.6 Equalities**

The 2014 Housing Allocations Policy was subject to an Equalities Impact Assessment.

## **6 MONITORING AND REVIEW**

This is a Haringey Council policy. The Deputy Director of Operations in Homes for Haringey will monitor implementation and performance.



Revision	Date	Description of changes	Was a consultation carried out ? Who	Reviewed by
1.0	01/06/15	Initial Release		Lisa Grififn