



Succession Policy

1.0 Purpose and scope

This policy sets out how Notting Hill Genesis deal with succession claims following the death of a tenant. Tenants have a range of statutory and contractual rights which vary according to the type of tenancy agreement they hold.

We recognise that the death of a tenancy can be a traumatic time for their family. When dealing and processing any succession requests, we ensure that we are sensitive to residents and applicants' needs by working with occupants to quickly establish whether they have statutory or contractual succession rights to succeed and promptly informing them

This policy applies to General Needs and Care and Support residents. This policy does not apply to Temporary Housing, Home Ownership, 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

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

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.'

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.

Any reference to 'we' or 'us' refers to Notting Hill Genesis.

3.0 Types of succession and eligibility

When considering succession cases, we will always check the tenancy agreement.

3.1 Survivorship

In the large majority of cases, upon the death of one joint resident, 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 require our authorisation. 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 a joint resident.

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, including succession by survivorship. 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
- was an assured tenant and had been assigned the tenancy as a potential successor during the lifetime of the previous resident.

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

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.

Assured tenancies

A person has a statutory right to succeed to an assured 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 have no statutory right to succeed.

3.3 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.

3.4 Contractual succession

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

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

Contractual successions are only approved where the applicant meets the contractual rights of succession. Contractual rights are granted where:

- this meets the requirements written in the deceased tenant's tenancy agreement
- this is a condition of a stock transfer.

3.5 Discretionary tenancies

In occasional 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. We treat each case on its merits.

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

When deciding whether to grant a discretionary succession, we will take the following facts (the list is not exhaustive) into account:

- The applicant's relationship to the deceased tenant (e.g. spouse, family member or carer)
- The length of time the applicant has lived at the property
- Whether the property is the applicant's only or principal home
- The age of the applicant (e.g. whether they a minor)
- Whether the applicant has any support needs
- How suitable the property is for the applicant's needs
- Whether the applicant's eligibility for housing is part of a scheme or project (e.g. sheltered or supported housing)
- The composition of the household planning to live in the property
- Whether or not permission to reside has been previously sought but not granted
- The local demand for housing
- The extent of any under occupation
- The applicant's ability to pay the rent and sustain the tenancy.

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.

4.0 Dealing with succession claims

We investigate each succession claim thoroughly to ensure that the applicant is eligible to succeed to the tenancy. We will often ask the applicant to provide documents or evidence to support their claim for succession (e.g. proof and length of their residence).

If we suspect tenancy fraud, we will investigate the application request in line with our Tenancy Fraud and Unauthorised Occupants policy.

4.1 Occupants with support needs

We will not refuse a succession claim due to an applicant's support needs. Where an occupant with support needs is eligible to succeed to a tenancy, we will liaise with support services for advice and offer them an assessment of their need for support.

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 amongst 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 let at affordable rent, the new tenancy will be offered at the affordable rent level.

5.0 Rent arrears

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 and should be dealt with by the personal representatives (if there are any).

6.0 Under occupation

Where we are entitled to do so, we reserve the right to refuse a claim for succession where the property will be under-occupied.

Where a succession would result in under-occupation, we can ask the potential successor to move to alternative accommodation.

In the case of fixed term assured shorthold tenancies, the successor succeeds to the remainder 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.

6.1 Statutory succession

A spouse or civil partner has the right to succeed to the tenancy whether or not they are under-occupying. Where reasonable, we will ask successors to move to more suitable accommodation.

If they refuse and hold a secure tenancy, we consider taking legal action in accordance with Ground 15A of schedule 2 of the Housing Act 1985.

If they refuse and hold an assured tenancy, we consider taking action in accordance with Ground 9 of Schedule 2 of the Housing Act 1988.

6.2 Contractual succession

We offer contractual successors who are under occupying one offer of a suitable alternative accommodation. If the occupant does not move voluntarily, we consider, on a case-by-case basis, whether to seek possession of the property through legal action.

6.3 Discretionary tenancies

We do not grant a discretionary tenancy where the potential tenant would under-occupying 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 unauthorised occupant. We accept payment for use and occupation rather than rent during this process.

7.0 Adapted and care and support accommodation

Where we are entitled to do so, we reserve the right to refuse a claim for succession where:

- The property has been adapted for special use which the potential successor does not need.
- The potential successor remains in a property which has been developed for a specific client group, for example, sheltered housing and they are not in that client group.

In the case of assured shorthold fixed term tenancies, the successor will succeed to the remainder of the tenancy. At the end of the fixed term period the successor will be subject to the standard tenancy review process

7.1 Statutory succession

Where there has been a statutory succession to a secure tenancy for an adapted or special accommodation, we will ask the tenant to voluntarily move to a more appropriate suitable alternative accommodation.

Where there has been a statutory succession to an assured tenancy for adapted or special accommodation, we will seek possession under Ground 9 of Schedule 2 of the Housing Act 1988. If we decide to seek possession, we will offer suitable alternative accommodation.

7.2 Contractual succession

The rights within the tenancy agreement may allow us to refuse the succession with or without an offer of suitable alternative accommodation.

7.3 Discretionary tenancy

We only considering offering a discretionary succession at adapted or special accommodation where the occupant is eligible for the specific service or has a need for the adaptations in the property.

8.0 Allocating suitable alternative accommodation

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

9.0 Successors under 18

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.

10.0 Inheriting a tenancy

An assured 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. In order 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 the mandatory Ground 7 for possession as set out in schedule 2 of the Housing Act 1988.

11.0 No claim for succession

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.

12.0 Related internal documents

- Lettings and Allocations policy
- Ending a tenancy policy
- Tenancy Fraud and Unauthorised Occupants procedure
- Tenancies for Minors procedure

13.0 Legislation, regulation and guidance

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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Approval date	
Effective date	
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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
10/03/202	Policy reviewed.	V 2.0