

Succession policy

Department: Housing & Environment (housing management)

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1. Scope

Succession is the legal process by which a family member takes over the tenancy on the death of a lawful tenant.

This policy outlines Ealing Council's approach to tenancy succession for its secure social housing tenancies.

2. Aims and objectives

This policy aims to comply with the Regulator of Social Housing's (RSH) Tenancy Standard and cover our approach to successions ensuring Ealing Council meets its legal and regulatory responsibilities toward succession.

3. Legislative and regulatory context

Statutory rights of succession for secure tenancies are set out in:

- Housing Act 1985, sections 86-90
- Localism Act 2011

The Ealing Council tenancy agreement is silent on succession and therefore the statutory framework will apply.

2.3 of the RSH's tenancy consumer standard states that 'Registered providers shall publish clear and accessible policies which outline their approach to tenancy management, including interventions to sustain tenancies and prevent unnecessary evictions, and tackling tenancy fraud'. Registered providers shall set out their 'policy on granting discretionary succession rights, taking account of the needs of vulnerable household members'.

4. Qualifying criteria for succession

By law, there can only be one succession to a secure tenancy. If the current tenant is already a successor there cannot be any further successions. The only exception is where the previous succession occurred prior to the introduction of the 1980 Housing Act on 3 October 1980 (when secure tenancies came into effect). If the previous succession took place before this date, the original succession is disregarded, and the law allows one further succession.

If the tenancy has previously been assigned, (other than via court order or mutual exchange) the assignment counts as a succession and there are no further rights of succession to the tenancy

4.1 Succession for secure tenancies granted before 1 April 2012

The Housing Act 1985 (as amended) allows a spouse or civil partner to succeed to a secure tenancy. They must have been living with the tenant and occupying the property as their only or principal home at the time of the tenant's death.

If there is no married or registered civil partner, another member of the family can succeed to the tenancy. They must have been occupying the property as their only or principal home for 12 months continuously prior to the tenant's death.

A family member is defined by Section 113 of the Housing Act 1985 as the tenant's:

- parent
- grandparent
- child
- grandchild
- brother
- sister
- uncle
- aunt
- nephew
- niece.

Adopted and stepchildren are included but a foster child is not counted as a child for the purposes of succession. The definition also includes persons living together as husband and wife.

The law does not allow for joint succession. If more than one person has the right to succeed, then the spouse has priority and will succeed to the tenancy.

If there is no spouse, the members of the family should decide between themselves who should succeed. If they cannot decide then the council will decide based on the following criteria:

- age of the potential successors
- who will make the best use of the property
- financial resources, subject to this information being available
- whether any household member and/or potential successor has a vulnerability

4.2 Succession for secure tenancies granted after 1 April 2012

The Localism Act 2011 amended succession rights for tenancies granted on or after 1st April 2012. There is no right of a family member to succeed unless the tenancy agreement allows for it. Ealing Council's tenancy agreement does not mention succession and therefore there will be no succession to family members for tenancies granted after 1st April 2012.

The new provisions extend the definition of spouse or civil partner to include those who occupy the property and were living with the deceased as cohabitees or common law partners (including same sex partners).

4.2 Joint tenancies

Where there is a joint tenancy and one joint tenant dies, the remaining joint tenant will automatically succeed to the tenancy through survivorship.

A tenant who becomes a sole tenant from a joint tenancy is deemed to be a successor and there are no further rights of succession.

4.2 Succession by a minor

There is no minimum age for someone to succeed to a tenancy. Potential successors under 18 cannot hold a legal interest in land so will

be provided with an equitable tenancy until they turn 18. The minor will benefit from the rights of the tenancy, but the legal estate is held on trust (by a nominated trustee) on their behalf until the age of 18.

5. Under occupation

If a succession is agreed, but the successor is under occupying the property, the successor will be asked to move to alternative suitable accommodation unless their circumstances are exceptional.

This is not applicable to spouses, civil partners or persons in equivalent relationships.

We will consider the circumstances and household composition of the family and in particular the circumstances in which the court will review whether it is reasonable for the successor to move. These include:

- the age of the successor
- the period during which the successor has occupied the dwelling as their only or principal home
- any financial or other support given by the successor to the previous tenant
- whether the successor has a vulnerability

A notice of seeking possession will be served on ground 15a, more than 6 months but less than 12 months after the date of the tenant's death or the date which the council became aware of the tenant's death.

If the successor fails to accept a reasonable offer of alternative accommodation, the council will take possession proceedings to regain possession of the property. A further offer of alternative suitable accommodation will be made available at the court hearing.

6. Adapted properties

The council has a duty to ensure it makes the best use of its stock. If the property has adaptations that the successor does not need or has

been developed for a specific client group e.g. sheltered housing and the successor does not meet the criteria for that type of housing, the successor may be required to move to more suitable accommodation.

7. Discretionary succession

Where there is no statutory right to succeed, the council will service a notice to quit (NTQ) to bring the tenancy to an end and anyone remaining in the property will be deemed to be unauthorised occupants.

Where a family member does not have a statutory right of succession, the council's allocation policy sets out the criteria for considering a discretionary succession. The council only allows one statutory succession but will consider non-statutory succession requests from unauthorised occupants remaining in a property following the tenants death.

If discretionary succession is agreed, this may include an offer of the current property if it is suitable, or where the current property is not of a suitable size, priority for a move under the allocations policy.

If a discretionary tenancy is not awarded, and the applicant does not meet the criteria set out in the allocations policy for housing, legal action will be taken to regain possession of the property.

8. Rent Liability

If there is a statutory succession, the successor will be responsible for the rent from the Monday following the tenant's death.

Any rent credit or arrears from the previous tenant become a debt owed by the deceased tenant's estate.

If the successor was a previous joint tenant and automatically succeeded to the tenancy through survivorship, they will remain responsible for any arrears.

9. Governance

Ealing Council's cabinet has overall responsibility for ensuring that this policy is implemented to ensure compliance with the law.

In practical terms, the chief executive reports to cabinet to demonstrate accountability for regulatory compliance across the council and will also ensure that we are fully compliant with our landlord function with robust controls in place to keep our residents safe and to make sure our tenancies are well managed.

10. Complaints and appeals

Where the council does not agree to a succession, an occupant can request a review of the decision within 14 days. Appeals will be considered by the head of housing management.

Where an unauthorised occupant has not been approved for a discretionary tenancy, there is a statutory right of review within 21 days of being notified of the negative decision.

The occupant also has the right to make a complaint through the council's complaint process.

11. Monitoring, compliance and review

This policy will be reviewed every three years or sooner if new legislation or new regulations are introduced.

12. Diversity and inclusion

Ealing Council opposes all forms of discrimination, which cause a person to be treated unjustly including on the grounds of:

- race
- ethnic origin

- nationality
- disability
- gender
- sexuality
- age
- income
- appearance
- faith
- religious belief or non-belief
- responsibility for dependents

We are constantly looking at ways to make access to our services easier for everyone. This can include:

- providing information and responses in different ways when this will be helpful such as large print, translated into another language.
- language interpreters including British Sign Language
- hearing loops in housing hubs
- arranging appointments around times of the week or periods to suit the needs of residents
- providing additional support and reasonable adjustments for residents who are vulnerable
- undertaking home visits to residents who are unable to access our offices

13. Associated policies

This policy will be implemented in conjunction with the policies that relate to the management and allocation of tenancies:

- tenancy
- allocations