



NCHP096

NOTTINGHAM CITY HOMES' SUCCESSION POLICY & PROCEDURE

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Scope of document	<p>This policy and procedure applies following the death of a tenant.</p> <p>In the case of a death of a tenant, it is the policy of Nottingham City Homes ("NCH") to grant rights of succession to other occupiers within legislative requirements and in line with the Terms and Conditions of the Tenancy Agreement. Those who do not qualify for consideration under this policy should refer to Nottingham City Council's Allocations Policy [http://www.nottinghamcity.gov.uk/housing/social-rented-housing/housing-allocations-policy] for other re-housing options.</p>			
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1.0 Introduction

1.1 Succession is a legal right to succeed to or “inherit” a tenancy following the death of a tenant.

1.2 This document is to assist in setting out Nottingham City Homes’ Policy and procedure in such circumstances, in addition to those cases where NCH may consider the granting of a new tenancy to certain occupiers of Council accommodation, upon the death of the tenant. This policy also includes details on how a tenancy can be ended upon the death of a tenant.

2.0 The Law - Who can succeed under the law?

2.1 The right to succeed – General

2.2 There can only be one succession in law in England.

2.3 Successions include;

- By way of survivorship in the case the joint tenants where one of them has died.
- Upon a tenant’s death according to statute.
- Upon assignment to someone entitled to succeed upon death.
- Where the deceased tenant became the tenant of the property by way of exchange and he/she was a successor to the tenancy which he/she assigned in exchange.

2.4 If succession takes place, then it is the existing tenancy as it stands that is taken over by the successor;

- Subject to existing arrears or rent credits but for successors who were not previously tenants, there will be no liability for rent arrears accruing before a statutory succession occurs
- Subject to existing legal notices
- Subject to all rights and responsibilities under the tenancy agreement
- Subject to any rights to compensation for the previous tenant’s improvements.

2.5 Any “succession” (such as by survivorship) that took place prior to the coming into force of the Housing Act 1980 does not count as a statutory succession.

2.6 There cannot be a joint succession. Therefore if more than one person is entitled to succeed then it is expected that the family will decide who will succeed to the tenancy. Where they are unable to agree, NCH will make the decision.

2.7 Spouses and registered civil partners have preference over other family members for secure tenancies entered into before 1 April 2012. For secure tenancies entered into after that date, spouses, registered civil partners and people who lived with the tenant as if they were spouses or civil partners have preference over other family members.

2.8 A person under 18 can succeed to a tenancy. The tenancy would have to be held on trust for the child until he or she reaches 18. A trustee can be a family member,

a friend or a representative (such as a social worker). It can also be the Local Authority as a last resort. If there is no one to act as trustee then legal advice should be taken before agreement is reached that the Local Authority acts as trustee.

2.9 The rules differ depending on the type of tenancy held by the deceased tenant. In the case of secure tenancies, the rules also differ depending on whether the deceased person's tenancy pre or post-dated 1 April 2012.

3.0 **Secure Tenancies pre- 1st April 2012**

3.1 The following points should be considered if the tenancy started before 1 April 2012:

1) Has there been a previous succession?

- If one joint tenant dies, the remaining tenant will take the tenancy as a sole tenancy by survivorship regardless of the relationship between the tenants (they do not have to be spouses/partners for example). This is so even if the joint tenant is not occupying the property. (But in such cases the tenancy may be ended by NTQ and possession proceedings as the joint tenant is not occupying as only or principal home).
- Survivorship counts as a succession and if this has happened there can be no further succession.
- If the deceased tenant themselves statutorily succeeded to the tenancy (as a spouse, civil partner or family member) then there can be no further statutory succession.
- For secure tenancies, assignment to the deceased tenant as someone who was entitled to succeed upon death counts as a succession. No further statutory succession is possible.
- Pre-1980 successions should be ignored for the purposes of statutory succession.

3.2 If there has been no previous succession then in order to assess whether or not a person occupying the premises can succeed, the following will apply:

2) Was the Tenant occupying as only or principal home at date of death?

- Succession can only take place if the deceased tenant was occupying the premises as his/her only or principal home at the date of death.
- If the deceased was not occupying the property as their only or principal home at the date of death, then there can be no succession. If he/she was so occupying, then consider;

3) Is the Applicant a Qualifying person?

3.3 A person is only qualified to succeed if he/she occupied the property as his/her only or principal home at the time of the tenant's death **and**

- i. He/she is the spouse or civil partner of the deceased tenant **or**
 - ii. He/she is another member of the tenant's family **and** has resided with the tenant for 12 months preceding the tenant's death
- 3.4 **Note:** - For tenancies pre dating 1 April 2012, people living together **as if** they were spouses or civil partners fall in to the category of other family members and need to satisfy the 12 month requirement. This is different for tenancies **after** 1 April 2012.

3.5 **Qualifying Persons ("Qualifying Persons") are:**

- Spouse or civil partner (same sex couples who have formally registered their relationship under the Civil Partnership Act 2004)
- Someone who lived with the deceased as spouse or civil partner
- Parents
- Grandparents
- Child
- Step-child
- Adopted child
- Grandchild
- Brother/Sister
- Uncle/Aunt
- Nephew/Niece

4) More than one Qualifying Person?

- 3.6 If there is more than one qualifying person then spouses and registered civil partners take precedence over other family members. If more than one person is entitled to succeed then it is expected that the family will decide who will succeed to the tenancy. Where they are unable to agree, NCH will make the decision.

5) No successor

- 3.7 Where no-one succeeds to the tenancy and no "**REQUEST FOR A DISCRETIONARY SUCCESSION FORM**" has been completed and signed, then Notice to Quit should be served by the Next of Kin or by NCH if that is not possible. See section 12.3 on ending the tenancy.

6) Eligibility

- 3.8 A statutory successor does not have to prove that they are eligible for an allocation of housing, or complete a habitual residency or eligibility assessment, as succession is not a new allocation under law.
- 3.9 If it is considered that a statutory succession may have occurred, the occupant will be required to complete and sign Form "**CLAIM TO SUCCEED TO A TENANCY ON STATUTORY BASIS**" so that NCH can check that all the criteria is met and update their tenancy records accordingly. [See letter 1, Appendix 1.](#)

4.0 **Secure Tenancies after 1 April 2012:**

4.1 The following points should be considered if the tenancy started after 1 April 2012;

1) Has there been a previous succession?

- If one joint tenant dies, the remaining tenant will take the tenancy as a sole tenancy by survivorship regardless of the relationship between the tenants (they do not have to be spouses/partners for example). This is so even if the joint tenant is not occupying the property. (But in such cases the tenancy may be ended by NTQ and possession proceedings as the joint tenant is not occupying as only or principal home).
- Survivorship counts as a succession and if this has happened there can be no further succession.
- If the deceased tenant themselves statutorily succeeded to the tenancy (as a spouse, civil partner or family member) then there can be no further statutory succession.
- For secure tenancies, assignment to the deceased tenant as someone who was entitled to succeed upon death counts as a succession. No further statutory succession is possible.
- Pre-1980 successions should be ignored for the purposes of statutory succession.

4.2 If there has been no previous succession then consider:

2) Tenant occupying as only or principal home at date of death?

- Succession can only take place if the deceased tenant was occupying the premises as his/her only or principal home at the date of death.
- If the deceased was not occupying as only or principal home at date of death then there can be no succession. If he/she was so occupying, then consider;

3) Is the Applicant a Qualifying person?

4.3 A person is qualified to succeed the tenant under a secure tenancy of the dwelling house (post April 2012) if:-

- a) He/she occupies the dwelling house as his/her only or principal home at the time of the tenant's death **and**
- b) He/she is the tenant's spouse or civil partner (and this includes cohabitants- i.e. people living together as spouses or civil partners who do **not** have to have lived in the accommodation for 12 months)

4.4 If yes, then that person succeeds to the tenancy on a statutory basis. If it is considered that a statutory succession may have occurred, the occupant will be required to complete and sign Form "**CLAIM TO SUCCEED TO A TENANCY ON**

STATUTORY BASIS” so that NCH can check that all the criteria is met and update their tenancy records accordingly.

4.5 If the applicant is **not** a Qualifying Person,

4) Does the applicant need to be considered for a discretionary succession?

4.6 Statutory succession rights of other family members are not available automatically after 1 April 2012. Instead, under section 86A(2) Housing Act 1985, a person is qualified to succeed if there is no qualified spouse or civil partner and an express term of the tenancy allows for a person (other than a spouse or civil partner) to succeed **and** the succession is in accordance with the term.

4.7 The relevant term of the Council’s tenancy terms and conditions currently states that where there is no spouse or civil partner, Nottingham City Homes may grant a **discretionary succession** to qualifying family members if they have been living with the tenant for at least **12 months** prior to the date of death and that any decisions in relation to discretionary succession will be made in line with this policy (see section 10 on Discretionary Successions). Should the tenancy agreement terms be amended at any point, then those terms will be taken to apply to this policy in substitute of the current terms.

4.8 If a decision is made to consider a discretionary succession and that application is successful, a new tenancy will be granted rather than the old tenancy continuing. This may be a grant of a new tenancy at the current property or of a more suitable property. The deceased person’s tenancy will **not** continue. See section 10 on Discretionary Successions.

5) No successor

4.9 Where no-one succeeds to the tenancy Notice to Quit should be served by NCH.

6) Eligibility

4.10 A statutory successor does not have to prove that they are eligible for an allocation of housing, or complete a habitual residency or eligibility assessment, as succession is not a new allocation under law.

5.0 Introductory Tenancies

5.1 The position for introductory tenancies is the same as for secure tenants **post** 1 April 2012.

6.0 Demoted Tenancies

6.1 The following points should be considered;

1) **Has there been a previous succession?**

- If the tenant was a successor then the tenancy ceases to be demoted when the tenant dies, but does not become secure.

If one joint tenant dies, the remaining tenant will take the tenancy as a sole tenancy by survivorship regardless of the relationship between the tenants (they do not have to be spouses/partners for example). This is so even if the joint tenant is not occupying the property. (But in such cases the tenancy can be ended by NTQ and proceedings as the joint tenant is not occupying as only or principal home). Survivorship counts as a succession and if this has happened there can be no further succession.

- If the deceased tenant statutorily succeeded to the tenancy when it was secure or introductory (as a spouse, civil partner or family member) then there can be no further succession.
- If the deceased became the tenant on assignment by way of exchange and he was a successor to the tenancy which he assigned in exchange, then that counts as a succession
- If this tenancy was assigned to the deceased tenant as someone who was entitled to succeed upon death then that counts as a succession. No further succession is possible.
- Ignore pre-1980 successions.

6.2 If there has been no previous succession then consider;

2) **Was the tenant occupying the property as only or principal home at date of death?**

6.3 Succession can only take place if the deceased tenant was occupying the premises as his/her only or principal home at the date of death. If the deceased was not occupying as only or principal home at date of death then there can be no succession.

6.4 If he/she was so occupying, then consider;

3) **Is the Applicant a Qualifying Person?**

A person is qualified to succeed if:-

- a) He occupies the property as his only or principal home at the time of the tenant's death and
- b) He is a member of the tenant's family (see list of Qualifying persons in section 3.5 above) and
- c) He has resided with the tenant throughout the period of 12 months ending with the tenant's death.

4) **More than one Qualifying Person?**

- 6.5 If more than one person is qualified to succeed then the tenant's spouse/civil partner or person residing with them as such is preferred over other family members. Whether there are two or more other family members then the person preferred should be agreed between them and failing that NCH will make the decision.
- 6.6 See section "Secure tenancies pre-2012" for definition of Qualifying family members.
- 6.7 **Note:-** all family members need to satisfy the 12 month occupancy requirement.

5) No Successor

- 6.8 Where no-one succeeds to the tenancy and no discretionary allocation is to be considered, see section 12 on how to end the tenancy

7.0 Succession to Minors

- 7.1 It is important to note that in cases where the statutory successor is a minor, it will be necessary for the tenancy to be held on trust for the minor, until they reach the age of 18. In such cases, any person requesting to hold a tenancy on trust for a minor, will be required to seek independent legal advice. The Local Authority will be the trustee, by default, should no other person be appointed trustee.

8.0 Statutory succession cases where the property is too extensive

- 8.1 In certain cases of statutory succession, NCH may decide that it is reasonable to seek possession on the basis that a property is too extensive for the successors needs. Such action will be taken in accordance with the relevant legislation and will be dealt with as sensitively as possible, working together with the tenant to try to avoid the need for any court action.

9.0 PROCEDURE FOR STATUTORY SUCCESSIONS

- 9.1 If it is considered that a statutory succession may have occurred, the occupant will be required to sign Form "**CLAIM TO SUCCEED TO A TENANCY ON STATUTORY BASIS**" so that NCH can check that all the criteria is met and update their tenancy records accordingly.

9.2 Decision Making

- 9.3 If NCH consider it appropriate to do so, the case may be referred to the Tenancy Management Panel for consideration instead. **This could be necessary for a number of reasons, including:**

- There are competing applicants claiming a right to succeed statutorily
- The successor is a minor and a decision needs to be made as to who will hold the tenancy on trust for the minor if appropriate

- An applicant is claiming a statutory entitlement to succeed, however they have failed to provide sufficient proof of their eligibility or that they meet the qualifying criteria
- An applicant has succeeded to a tenancy, but the property is too extensive, so consideration has to be given to whether or not it is appropriate to seek possession

10.0 **DISCRETIONARY “SUCCESSIONS”**

10.1 In certain circumstances as set out below and in the relevant terms and conditions of tenancy, NCH will consider a discretionary succession, which is the allocation of a new tenancy to an eligible person.

10.2 This section should be read in line with the Council’s current terms and conditions of tenancy which set out any circumstances that additional statutory or discretionary successions may be considered and must be read in conjunction with the Council’s Allocations Policy.

10.3 Unlike with statutory successions, the tenancy of the deceased will not continue and instead, a new tenancy will be allocated. That tenancy may be at the existing property, or at a suitable alternate property, as outlined below.

10.4 NCH will consider a discretionary allocation only in the following circumstances:

- a) The occupier (“**the Applicant**”) is a family member that had been residing at the premises as their only or principal home for a period of at least 12 months preceding the tenant’s death including at the date of death; **and**
- b) The original tenancy commenced after 1 April 2012; **and**
- c) There has been no previous succession (after April 1980); **and**
- d) The Applicant is over 18

10.5 **The relevant family members that will be considered for discretionary allocations are as follows:**

- Someone who lived with the deceased as spouse or civil partner.
- Parents
- Grandparents
- Child
- Step-child
- Adopted child
- Grandchild
- Brother/Sister
- Uncle/Aunt
- Nephew/Niece

- 10.6 **Note:-** spouses and civil partners are still eligible to succeed on a **statutory** basis if the original tenancy commenced **after** 1 April 2012 tenancies. For tenancies that started **before** April 2012, the above family members may also succeed on a **statutory** basis so it is not necessary for them to apply to be considered for a **discretionary** succession.
- 10.7 In any request for a discretionary succession, a spouse or civil partner will be given precedence over any other family member.
- 10.8 In addition to the requirement that applicants must satisfy a), b), c) and d) at 10.4 above, requests for discretionary successions **will only be considered if the applicant meets the following criteria:**
- i. That the Applicant has signed and returned a “**REQUEST FOR A DISCRETIONARY SUCCESSION FORM**” within 28 days of receiving the form (or longer if NCH consent to extend that period)
 - ii. That the Applicant has notified NCH of the death of the tenant, within 8 weeks of the tenant’s death
 - iii. That the Applicant is eligible for social housing (as defined in the Allocation Policy and any relevant legislation and Regulations)
 - iv. That the Applicant has provided all requested information, evidence and documents to NCH
 - v. That the Applicant can demonstrate that they have a housing need (at the time of application and at the time of allocation of any tenancy if proof is requested by NCH)
 - vi. That the Applicant does not owe former tenancy arrears and has paid the weekly charge due for occupation of the property since the tenant’s death
 - vii. That the allocation of any property is in compliance with the Council’s Allocations Policy
 - viii. That prior to the death of the tenant, the tenancy had been conducted satisfactorily, particularly by the Applicant and there was no history of anti-social behaviour or other breach of tenancy
- 10.9 **Consideration to grant a new tenancy at an alternative property**
- 10.10 If an Applicant is accepted as being eligible for a discretionary succession, in a number of circumstances, it will not be appropriate for the deceased tenant’s property to be the one allocated to the applicant. In such circumstances, applicants would be offered suitable alternative accommodation. Only one offer of suitable alternative accommodation will be made in line with the Council’s Allocations Policy.
- 10.11 In deciding whether or not an applicant should remain in the deceased tenant’s property or if they should be provided with suitable alternative accommodation, **the following (non-exhaustive) factors will be considered:**

1. That the best use of social housing stock is being made by the allocation, including the size of the property in relation to the size of the household in occupation at the date of the tenant's death and the date of allocation of any new tenancy. This factor will be the primary consideration and will be given weight above all other factors
2. If the property is in a sheltered scheme the prospective tenant must fulfil the individual schemes age and eligibility criteria
3. If the property is subject to an age qualification the prospective tenant must be of the appropriate age.
4. If the property is a 2 or 3 bedroom bungalow the prospective tenant must require bungalow accommodation due to medical or other welfare reasons.
5. The Applicant's contributions (financial) to the tenancy over time
6. The Applicant's age and how long they have resided at the premises
7. Any other matters relevant in the circumstances of the case

10.12 **All Other Occupants:**

10.13 Any other occupant(s) that do not meet the criteria for a discretionary or statutory succession, under the succession provisions outlined above, will be required to vacate the property.

10.14 Prior to the commencement of any possession proceedings against any occupants of the property (for example unpaid carers or other family members that resided with the tenant at the time of death), they will be permitted to make representations, about any personal circumstances they wish NCH to consider. Such representations must be made within 28 days of NCH writing to "all occupants" or an occupant directly, inviting them to make any such representations or if no such letter is sent (for example because NCH are unaware of any occupant remaining in the property), within 28 days of any Notice to Quit being served by NCH or the Personal Representative.

10.15 **Those occupants that wish to be considered under this section must:**

1. Be eligible under the Council's allocations policy; and
2. Have been occupying the property at the time of the tenant's death as their only or principal home and at least 12 months prior to the tenant's death or the Applicant can demonstrate that they gave up a tenancy in order to be a carer for the deceased tenant; and
3. Be over 18; and
4. Not have other accommodation that is available for their occupation. Such accommodation may for example be any other accommodation that NCH

consider it is reasonable to expect them to occupy in order to meet their housing needs. Housing needs may be assessed on the basis of the household size and type in occupation as at the date of the tenant's death and the date of allocation of any new tenancy.

5. Not have the financial ability to meet their own housing needs
 6. Have notified NCH of the death of the tenant, within 8 weeks of the tenant's death
 7. Have provided all requested information, evidence and documents to NCH
 8. Have paid the weekly charge due for occupation of the property since the tenant's death
 9. Not have engaged in any anti-social behaviour or acts that would constitute breaches of the council's terms and conditions of tenancy
 10. Detail their individual circumstances or matters that they wish the council to take in to account prior to issuing possession proceedings
- 10.16 Direct offers made under this section, will be of a new tenancy in suitable housing accommodation, taking in to account the best use of housing stock. In exceptional cases, the offer of a new tenancy may be the deceased person's property. Each such case will be considered on its individual circumstances and offers will be made in line with the Council's Allocations Policy taking in to account the size of the property in relation to the size of the household.
- 10.17 **Late Notification of Death of Tenant (Discretionary Successions and All Other Occupants)**
- 10.18 If any applicant does not notify NCH of the death of a tenant within 2 months of the person's death, NCH may take that in to account in deciding whether or not to exercise any discretion in the favour of an Applicant/occupant, once they are notified of a death. Furthermore, if such situations extend to circumstances where an occupant has failed to notify us of a tenant's death **and** has continued to benefit from occupation of the premises, NCH is entitled to refuse consideration for a discretionary succession and NTQ will be served.

11.0 **Decision Making Process**

- 11.1 In cases concerning discretionary successions and all other occupants that make representations, decisions regarding the allocation of accommodation will be made by an NCH panel, in liaison with Nottingham Homelink.
- 11.2 If Applicants are approved as qualifying for an allocation of accommodation under this section, thereafter they will be dealt with through Nottingham Homelink and under the rules contained within the Council's Allocations Policy.

12.0 **ENDING A TENANCY AND ASSISTING THOSE OCCUPYING THE PROPERTY**

- 12.1 In the case of the death of a tenant, at the appropriate point, it will be necessary to end the tenancy of the deceased tenant, unless a statutory succession has taken place.
- 12.2 NCH aims to do so sensitively. However, it is an inevitability that the deceased person's tenancy has to be ended even where other steps are being taken to assist the remaining occupiers.

12.3 **Procedure for Ending the Tenancy**

- 12.4 If NCH consider that a statutory succession has occurred by operation of law, then the tenancy will continue and there is no need for a Notice to Quit to be served. (The exception to that will be if the successor wishes to serve notice themselves and give up their rights to the property).
- 12.5 In all other cases, it is necessary to serve a Notice to Quit. If NCH are aware of the Personal Representatives (PR) identity, then an attempt will be made to contact them in the first instance to ask them to sign a NTQ on the deceased tenant's behalf.

If the identity of the PR is unknown or they are not willing to co-operate or there are other circumstances which give rise to it being difficult for a PR to give notice, then Notice to Quit can be served by NCH.

Full details can be obtained from the government website under "Tenancy agreements: a guide for landlords (England and Wales) under section 7 "If your tenant dies without an executor or a will".

12.6 **Occupants will be advised of their options and to confirm whether they wish to either:**

1. Make an application for a discretionary succession using the "**REQUEST FOR A DISCRETIONARY SUCCESSION FORM**" (should they qualify for a discretionary allocation under Section 10), such form to be signed and returned within 28 days; or
 2. Should they not qualify to be considered for a discretionary allocation under 1. above, whether they wish to make representations to NCH prior to the commencement of any possession proceedings for a direct offer of accommodation, such representations to be made within 28 days; or
 3. If they wish to vacate the property, whether they need any advice or assistance with re-housing
- 12.7 In the absence of a response regarding points 1, 2 or 3 above from the occupant(s) (or their representatives), possession proceedings will be commenced.

