

## 1. What is the purpose of this policy?

This policy outlines our approach to tenancy succession. A succession is where a qualifying person takes over the tenancy upon the death of the existing tenant, under the specific succession clauses in their tenancy agreement.

## 2. Who is the policy for?

This policy is for all tenants with protected assured and assured tenancies, including periodic and fixed term assured shorthold tenancies of two years or longer. It also applies to bpha colleagues, to ensure that both employees and tenants have clear and accessible information on the legislation and process in relation to succession.

The policy does not apply to shared owners, leaseholders or intermediate rent customers, including rent to homebuy.

## 3. What are the main principles of this policy?

We will

- Comply with legislation set out in the Housing Act 1988 (as amended) and relevant provisions in the tenancy agreement of the deceased tenant.
- Grant successions fairly and efficiently.
- Ensure that the statutory rights of persons qualifying to succeed to the tenancy or entitled to a grant of tenancy are protected and acted upon.
- Only grant one succession per tenancy. If the deceased tenant was themselves a successor, there are no further grounds for succession
- Define members of the family as follows: cohabitees, parents, grandparents, children, grandchildren, siblings, uncles, aunts, nephews and nieces, step relations, half relations, relations by marriage, illegitimate children can be included if the relationship subsisted at the time of the succession. Foster children are not included

## 4. What are the arrangements for applying for succession?

We recognise that claims for succession are made at a time of bereavement and are committed to dealing with cases sensitively. We will make reasonable enquiries and assess applications made, however, the person claiming the right to succeed must provide the necessary evidence to establish their right and tenancy agreement.

Applications for succession should be made in line with the tenancy agreement. If not specified, we expect applications to be made within one month of notifying us about the death of the tenant. We will work closely with the potential successor in cases where we need to extend these timeframes. We must receive a copy of the death certificate before we can agree a succession.

A request for a succession should be received by bpha within four weeks the death of the tenant unless the tenancy agreement of the deceased tenant states any other timeframe.

Decisions will be made by bpha within twelve weeks of the succession request being made and bpha being provided with all relevant supporting evidence and completed suitability assessment. If we are unable to reach a decision within three months of the request being made, we will keep family members updated until a decision has been reached. The process will be the same if there is more than one potential successor claiming succession, or if the property of the deceased tenant is either too big or too small for the potential successor.

If a tenant loses their security of tenure before they die, , for example by abandoning the property or subletting the whole property, there will be no right to succession or assignment. If a tenant is admitted to a care home for more than 28 days, we ask that they, or someone assisting them, notify us so we are aware of the situation.

Where an assured tenancy passes to a person who inherits the tenancy under the rules of intestacy, we may not agree to allow them to remain in the property if they do not meet our housing obligations or the criteria for succession. If this is the case, then we may take legal action to take back possession of the property

## 5. What are the circumstances in which a tenancy succession will be granted?

Succession rights are governed by the type of tenancy and, in some cases, are dependent on the detail in the tenancy agreement held by the deceased tenant. In the first instance we will always refer to the tenancy agreement of the deceased named tenant to determine succession rights. Those potentially eligible to succeed a tenancy are set out in the relevant Housing Acts and tenancy agreement.

In considering applications for succession, we will consider the implications of:

1. The Housing Act 1985/Housing Act 1988 (as amended), as applicable to the relevant tenancy.
2. Under or over occupation either by the statutory nor contractual successor.
3. Whether the relationship of the successor to the deceased tenant complies with the definition of family members as set out in the relevant legislation. (see Point 13 below)
4. Properties adapted for tenants with medical requirements when the successor does not have such requirements.
5. How long they have been living at the property.
6. Their rights granted in their tenancy agreement.
7. Our allocations policy.

## 6. What types of succession exist?

The type of succession will depend on the type of tenancy, the applicant's relationship with the deceased tenant, whether there has already been a succession and when the tenancy started.

### Joint tenancies

Where a joint tenant dies, the remaining joint tenant is entitled to remain in the property (having a right of survivorship). If the successor held a joint tenancy with the deceased tenant, then any issues regarding the preserved right to buy or rent arrears accrued by the original tenant will be passed to them. Survivorship is treated as a statutory succession. This means that there is no

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further right of succession. This applies whether or not the tenancy was granted before or after 1 April 2012.

#### Assured tenancies granted before 1 April 2012 (Housing Act 1988 ("HA 1988"))

Under the HA 1988 only spouses or civil partners have a statutory right of succession to an assured Tenancy.

In circumstances where the tenancy is periodic, on the death of a sole assured tenant, the tenancy will automatically rest with the spouse or civil partner (or a person who lives with the tenant as their spouse or civil partner) of the deceased, provided that the spouse or civil partner was occupying the dwelling as their only or principal home at the time of the death of the tenant. However, this does not apply if the deceased tenant was a successor.

The above applies to assured shorthold tenants and fully assured tenants. The above does not apply to fixed term tenants. Other family members do not have the statutory right to succeed.

#### Assured tenancies granted after 1 April 2012 (Housing Act 1988 ("HA 1988"))

If the tenancy is an assured tenancy for a fixed term of at least two years, on the death of a tenant, the tenancy will automatically vest in the spouse or civil partner (or a person who lives with the tenant as their spouse or civil partner) of the deceased provided that the spouse or civil partner was occupying the dwelling as their only or principal home at the time of the death of the tenant.

Unlike the law pre-1 April 2012, there is no need to grant the successor a new tenancy.

The Localism Act amended section 17 of the HA 1988 to create additional succession rights. Now, under section 27 of the HA 1988, family members may have a right under the terms of the tenancy agreement. However, all of the following must apply:

- a) The property was not occupied by a spouse or civil partner (or cohabitee in an equivalent relationship) as their only or principal home.
- b) There is an express clause in the tenancy agreement that provides for another person to succeed the tenancy.
- c) There is a person who meets the criteria of the clause in the tenancy agreement.

bpha, at its discretion, can grant succession rights to persons other than family within the tenancy agreements.

#### **Contractual succession**

As part of the stock transfer with Bedford Borough Council, we gave existing secure council tenants contractual rights in their new tenancy agreements with bpha. These 'protected assured tenancy agreements' allow bpha at its discretion, to grant succession rights similar to those set out in secure tenancy agreements (those tenancies governed by the Housing Act 1985). These rights are set out below. It is important that any tenant understands the succession terms set out in their tenancy.

In some cases, the tenancy agreement will give qualifying family members the ability to succeed the tenancy if there is no spouse or civil partner that is entitled to succeed. Family members are defined above in section 3. If we grant a contractual succession, the old tenancy ends and a starter tenancy is granted in the name of the successor.

#### Secure tenancies granted before 1 April 2012 (Housing Act 1985)

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In circumstances where a secure tenancy has been granted before 1 April 2012 and the tenant was not a successor themselves, a person is able to succeed a tenancy where they occupy the property as their only or principal home at the time of the tenant's death and are either:

- a) The sole tenant's spouse or civil partner; or
- b) Another member of the sole tenant's family who has lived with the tenant for 12 months prior to the death of the tenant.

Where a person is qualified to succeed and meets the criteria above, the tenancy will be automatically vested in them on the death of the tenant.

#### Secure tenancies granted after 1 April 2012 (Housing Act 1985)

In circumstances where a secure tenancy has been granted after 1 April 2012 and the tenant was not a successor themselves, a person is able to succeed a tenancy where they occupy the property as their only or principal home at the time of the tenant's death and provided that they are the tenant's spouse or civil partner.

A person living with the tenant as the tenant's spouse or civil partner do not need to have resided with the tenant for 12 months before the tenant's death.

In contrast to tenancies granted before 1 April 2012, family members no longer have the statutory right to succeed in relation to secure tenancies made after 1 April 2012. A tenancy agreement can grant family members succession rights; however, a spouse or civil partner will take priority.

## **7. What other considerations apply to succession?**

### Inheriting an Assured Tenancy

In addition to the above rights, it is possible for an assured tenancy to pass under a tenant's will or, if they die without leaving a will, through intestacy rules. This is because a tenancy is an interest in land. If the beneficiary (the person to whom the tenancy passes under the will) lived in the property as their only or main home at the time of death, they will inherit an assured tenancy. We will not accept a claim for inheritance and we will take legal action under Ground 7 of Schedule 2 of the 1988 Act.

### Under occupation

If succession results in significant over or under occupation, by more than one bedroom, the successor may be able to succeed to the tenancy, on condition that we would seek to rehouse the successor into suitable alternative accommodation. In some cases, this will involve using the relevant ground for possession. This also applies where there is no succession, but we have decided to use our discretion. Normally, we would have twelve months to find alternative accommodation. If two offers are refused, we will start legal proceedings.

### Multiple succession claims

If there is more than one person claiming succession and the family cannot reach agreement, then bpha will decide who the tenancy should pass to, based on suitability, affordability, housing need and in line with our Allocations Policy. This decision will be final. Only one succession is allowed per tenancy by law and upon the death of a successor, or where a non-family member requests a succession, then this request will be considered under the criteria for using our discretion.

### No right to succession

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In cases where there are no succession rights and there is/are remaining occupant(s) who do not meet our housing need or the succession criteria, we will offer support and advice for them to secure alternative accommodation elsewhere.

In exceptional circumstances and where someone would have qualified for succession had there not already been a succession, we can use our discretion to offer someone a new tenancy.

Using our discretion where there is no right of succession.

Where there are no succession rights to a tenancy, bpha reserves the right to use its discretion to grant a new tenancy to family members. This is **not** a succession and decisions will be based on the housing requirements in line with our allocations policy.

For example, when a person with no succession rights may have a housing need with circumstances that may warrant them obtaining a social housing tenancy, granting the tenancy may represent a good use of housing stock. Or, where there are particular issues relating to the applicant, such as vulnerability or disability, that would mean that it would be appropriate, taking all relevant factors into account, to exercise discretion. In making this decision, we will use the criteria outlined in.

It is entirely at bpha's discretion as to whether to offer a tenancy of the property of the deceased, or another property, to a qualifying family member of the deceased tenant in line with bpha's Allocations Policy.

In some cases, we may consider granting a discretionary tenancy to a carer if they meet the following criteria:

- a) They are in receipt of Carer's Allowance for the tenant they are looking after
- b) They are the main carer and are a permanent resident in the household
- c) The tenant they are looking after is in receipt of higher rate Disability Living Allowance or Personal Independence Payments

Where the criteria in paragraphs (a) to (c) above are met, and the applicant's relationship to the tenant is eligible under this policy, the following additional conditions must be satisfied before a discretionary tenancy can be considered.

- a) The application must have been made within four weeks one month of the tenant passing away or within the timescales set out in the tenancy agreement
- b) The applicant must have a legal right to hold a tenancy and have recourse to public funds
- c) The applicant (and any other household members) must have lived with the tenant for the previous 12 months as a minimum
- d) The applicant must not have a legal interest in another property which could be available for their occupation
- e) The tenancy must have been conducted satisfactorily, and there is no risk of harmful impact on the home, neighbourhood, or community by awarding the applicant a discretionary tenancy
- f) The applicant does not have the financial capacity to rent or purchase another property (such as private sector rent or homeownership)
- g) The granting of a discretionary tenancy does not conflict with our charitable objectives or legal, regulatory, or moral obligations as a responsible and caring social landlord
- h) If the applicant had a previous tenancy with us, they must not owe us a debt or have been evicted for a tenancy breach
- i) The applicant must meet the housing needs outlined in our allocations policy

We need to check the applicant's intention before they moved into this property, for example, we may not grant a new tenancy if there is sufficient evidence to indicate that the applicant gave up another property with the intention of seeking this tenancy. In addition and in exceptional circumstances, where a tenant dies leaving only her/his minor child, who is 16 or 17 years old, in occupation at the time of her/his death, it is possible for bpha to grant a tenancy to the minor for the long-term needs of the household. If succession is allowed by the tenancy agreement and agreed by bpha, the minor will become an equitable tenant. This means bpha retains the legal title on trust for the benefit of the minor, and the minor holds the tenancy in equity. In making these decisions we must work with the next of kin and where appropriate social services.

Where we use our discretion, the old tenancy ends, and a starter tenancy is granted in the name of the successor.

If it is determined that a discretionary tenancy will not be granted, the applicant will have the right of appeal. The applicant will have seven calendar days to appeal in writing, and the appeal will be heard by a Head of Service.

Except for the circumstances outlined, we do not consider awarding discretionary tenancies to household members remaining in a property after a tenant has voluntarily left the property. In such circumstances, we provide housing options advice, make the appropriate referrals for further support (such as to our local authority partners) and take action to obtain possession of the property.

#### Adapted properties

If a property has received major adaptations (as defined in bpha's Aids and Adaptations Policy) to assist a deceased tenant, we may claim the property back because the adaptations are no longer required. In certain circumstances we may use our discretion and offer the remaining family members alternative accommodation to a property that is not adapted.

#### Rent arrears and payments.

In respect of any arrears that accrue before the tenant dies, if the successor held a joint tenancy with the deceased tenant, then any rent arrears accrued on the joint tenancy will be passed to them. In addition, a successor would be subject to any form of possession order that had been made before a tenant's death so may in effect, be responsible for payment of the rent arrears in that circumstance.

In all other cases and where there is not a possession order, the rent arrears will form part of the deceased tenant's estate and we cannot claim this from the successor. Where use and occupation is being charged for the use of the property, it is essential that regular payments are made in full by the occupiers. If an occupier does not pay, this may impact bpha's decision on the succession application.

#### Use and occupation charges.

With the exception of survivorship, while we are responding to a request for succession all applicants must pay use and occupation charges.

#### Fraud

To claim succession falsely or dishonestly, or to provide false or misleading information to support a claim, is fraud. Covering up the death of a tenant to benefit from their tenancy is also fraud.

We will take appropriate enforcement action where we believe a fraudulent claim has been made. We may also engage with third parties such as the police and local authorities.

## 8. How can further support, advice and assistance be obtained?

We are committed to providing customers with support, advice and assistance in circumstances where bereavement impacts on a tenancy.

We will work with our local authority partners and third-party support agencies to help provide all necessary advice on how to apply for alternative sources of housing.

If customers have a vulnerability or require an adjustment to our services including support with understanding the legal requirements of a tenancy, we offer support in line with our Customer Reasonable Adjustment Policy and/or our Vulnerability Policy.

## 9. How will this policy be communicated to customers?

We will:

- Place a copy of this policy on our website.
- Advise all new tenants of the type of tenancy they are signing.

## 10. What legislative and regulatory requirements is bpha required to consider?

Succession provisions are set out in the Housing Act 1988 for assured tenants and the Housing Act 1985 for secure tenants. Further requirements are set out in the Tenancy Standard in the Regulator of Social Housing's Regulatory Framework 2012 that "Registered providers shall publish clear and accessible policies which outline their approach to tenancy management", and in particular "their policy on using our discretion to take into account of the needs of vulnerable household members".

Specific legislation which is relevant to this policy is:

The Tenancy Standard in the Regulator of Social Housing's Regulatory Framework 2012.

Housing Act 1985.

Housing Act 1988.

Localism Act 2011.

## 11. How will this policy be monitored and reviewed?

This policy will be kept up to date and amended accordingly to reflect any changes in legislation, standards, and guidelines.

The policy will be reviewed every three years or sooner if there is a change in regulation or legislation governing the items that this policy covers.

| Policy Number | Approved by | Date Approved | Policy Owner |
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## Succession Policy - HO102

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| HO102 | ELT | June 2024 | Director of Customers & Services |
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Related documents:

| Document reference | Document name     |
|--------------------|-------------------|
| HO003              | Allocation Policy |
|                    |                   |
|                    |                   |

## Frequently Asked Questions: Tenancy Succession

These frequently asked questions summarise the Succession Policy. Each application is considered individually and the deceased tenant's tenancy agreement will always be checked.

### 1. What is tenancy succession?

Tenancy succession is the legal process by which a qualifying person takes over a tenancy after the tenant dies. Eligibility depends on the type and date of the tenancy, the wording of the tenancy agreement, the applicant's relationship to the tenant and whether a succession has already taken place.

### 2. Who may be able to succeed to a tenancy?

A spouse, civil partner or person living with the tenant as their spouse or civil partner may qualify. In some cases, another family member may qualify under the tenancy agreement. The property must normally have been the applicant's only or principal home when the tenant died. Some family members may also need to show that they lived with the tenant for at least 12 months.

### 3. Is succession available for every type of home?

No. This policy applies to protected assured and assured tenancies, including periodic tenancies and fixed-term assured shorthold tenancies of two years or longer. It does not apply to shared owners, leaseholders or intermediate rent customers, including rent to homebuy.

### 4. Can there be more than one succession?

No. Only one succession is normally allowed for each tenancy. A surviving joint tenant taking over through survivorship counts as that succession.

### 5. How do I apply?

Tell bpha that the tenant has died and ask to make a succession claim. Follow any timescale stated in the tenancy agreement. If it does not give a timescale, the policy expects the request within four weeks of the tenant's death. Contact bpha as soon as possible if you need more time.

### 6. What evidence will I need?

You must provide a copy of the death certificate before a succession can be agreed. You will also need evidence showing your identity, relationship to the tenant, residence at the property and any other facts relevant to the tenancy agreement and suitability assessment. bpha may make reasonable enquiries.

## 7. How long will a decision take?

bpha aims to decide within 12 weeks after receiving the succession request, all relevant supporting evidence and the completed suitability assessment. If a decision cannot be reached within three months, bpha will keep the family updated.

## 8. What happens to a joint tenancy when one tenant dies?

The surviving joint tenant is entitled to remain under the right of survivorship. This counts as a statutory succession, so there is normally no further right of succession. Joint-tenancy rent arrears and any existing possession order may also pass to the surviving tenant.

## 9. Will I always be able to stay in the same home?

Not necessarily. If the home is more than one bedroom larger or smaller than the household needs, or it has major adaptations that are no longer required, bpha may seek to rehouse the successor in suitable alternative accommodation via a management move. If two suitable offers are refused, legal proceedings may follow and you may will lose your right to succession as we will take action to take back the property.

## 10. What if more than one person applies?

If the family cannot agree, bpha will decide who should receive the tenancy by considering suitability, affordability and housing need in line with the Allocations Policy. The policy states that this decision is final.

## 11. Do I need to make payments while the application is considered?

Yes. Except in survivorship cases, applicants must pay use and occupation charges while bpha considers the request. Payments must be made regularly and in full, as non-payment may affect the decision.

## 12. Will I be responsible for the deceased tenant's rent arrears?

A surviving joint tenant may be responsible for arrears on the joint tenancy. A successor may also be affected by a possession order made before the tenant died. In other cases, where there is no possession order, arrears normally form part of the deceased tenant's estate and are not claimed from the successor.

## 13. What happens if I do not have a right to succeed?

bpha will offer support and housing advice to help remaining occupants find alternative accommodation. In exceptional circumstances, bpha may use its discretion to offer a new tenancy to a qualifying family member or carer. This is not a succession and is assessed against the policy and the Allocations Policy.

## 14. Can I appeal if a discretionary tenancy is refused?

Yes. If you would qualify for a succession but bpha decides not to grant a discretionary tenancy, you may appeal in writing within seven calendar days. A Head of Service will hear the appeal.

## 15. What happens if false information is provided?

Making a dishonest succession claim, providing false or misleading information, or concealing a tenant's death to benefit from the tenancy is fraud. bpha may take enforcement action and may work with the police or local authorities.

## 16. What support is available?

bpha will provide advice and assistance where bereavement affects a tenancy and may work with local authorities and support agencies. If you are vulnerable or need an adjustment to access or understand the service, support can be provided in line with bpha's Customer Reasonable Adjustment Policy and Vulnerability Policy.