

Succession Policy – HO102

1. Policy Principles

- 1.1 A succession is where a qualifying person takes over the tenancy upon the death of the existing tenant including their tenancy agreement and conditions of tenancy.
- 1.2 This policy sets out our approach to succession, ensuring it is consistent, we meet our legal and contractual obligations and allows for discretion where appropriate.
- 1.3 This policy applies to tenants with protected assured and assured tenancies, including periodic and fixed term assured shorthold tenancies of 2 years or longer. This policy does not apply to shared owners, leaseholders or intermediate rent customers.

2. How we Deliver the Succession Policy

- 2.1 We comply with the legislative requirements set out in the Housing Act 1985 and Housing Act 1988 (as amended) and relevant provisions in the tenancy agreement of the deceased tenant.
- 2.2 Successions are granted fairly and efficiently.
- 2.3 Tenants and bpha employees have clear and accessible information on the legislation and the process in relation to succession.

3. Policy Statement

- 3.1 bpha will comply with housing law when administering succession rights.
- 3.2 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.
- 3.3 In the first instance we will always refer to the tenancy agreement of the deceased named tenant to determine succession rights. Those potentially qualified to succeed a tenancy are set out in the relevant Housing Acts and/or tenancy agreement.
- 3.4 In considering applications for succession, we will consider the implications of:
 - The Housing Act 1985/Housing Act 1988 (as amended), as it applies to the tenancy.
 - Under or over occupation by the statutory successor, where the statutory successor is a member of the family.
 - Properties adapted for tenants with medical requirements when the successor does not have such requirements.
 - Persons who are left in possession but not eligible to succeed or inherit the tenancy. Such persons will be provided with advice on other housing options and potential re-housing.
- 3.5 We will 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.

3.6 Survivorship

- 3.6.1 If a joint tenant dies, the remaining joint tenant(s) is(are) entitled to remain in the property (having a right of survivorship).
- 3.6.2 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.

3.7 Succession

3.7.1 If there is no joint tenancy, then there are three ways succession can happen following the death of a tenant which may happen in the order set out below:

- **Statutory succession** – when a sole tenant dies and succession rights to the tenancy are granted by operation of law under the Housing Act 1985 for secure tenancies or the Housing Act 1988 for assured tenancies.
- **Contractual succession** – when a sole tenant dies and the tenancy is ‘succeeded to’ by a qualifying family member in accordance with a term in the tenancy agreement, which will in effect operate as a new grant of tenancy.
- **Discretionary** – when a sole tenant dies, we may offer, at our sole discretion, a qualifying family member of the deceased tenant a tenancy if the criteria for statutory or contractual succession is not fulfilled. We may offer a tenancy of the property of the deceased tenant or another property.

3.7.2 Statutory Succession

- The spouse of a tenant (i.e. husband or wife) or civil partner or person who has been living with the tenant as spouse or civil partner (including same sex partner) will automatically succeed to the tenancy so long as they were living at the property at the time of the death and there has been no previous succession with bpha as the landlord.
- In some cases, another member of the tenant’s family may be able to succeed to the tenancy if there is no spouse or civil partner that is entitled to succeed.
- If there has not already been a succession, then a statutory succession will always happen by operation of law regardless of whether the successor would be under or over occupying the property succeeded. However, if the succession results in significant over or under occupation by more than one bedroom, the relevant ground for possession would be relied upon to seek possession of the property and we would seek to rehouse the successor into suitable alternative accommodation.
- For assured shorthold tenancies, where there has not already been a succession, statutory succession may take place so long as the tenancy is periodic or for a fixed term of not less than 2 years and the tenant is not a sole tenant. The only category of assured shorthold tenancies that will not accrue statutory succession rights, are fixed term tenancies of less than 2 years that have not expired and become statutory periodic tenancies.
- Where there is no statutory succession, an assured tenancy can pass to a person who inherits the tenancy under the rules of intestacy. We may not agree to allow someone who has inherited the tenancy 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.

3.7.3 Contractual Succession

- For assured tenancies pre-April 2012, a successor must have occupied the property of the deceased tenant as his or her only or principal home immediately before the tenant died and they must be a spouse/civil partner. However, there is no right to succeed if succession has already taken place.
- For tenancies granted post April 2012, these will take effect as a succession if the tenancy agreement makes express provision to that effect. Dependent on the terms of the tenancy agreement, succession may take place, or we may have to grant a tenancy for the property of the deceased tenant, or the tenancy agreement may allow flexibility to enable us to grant a tenancy of an alternative property if the applicant would be under or over occupying.

3.7.4 Discretionary Succession

- bpha reserves the right to allow discretionary succession. For example, when a potential successor may have a housing need with circumstances which 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.
- If we are unable to reach a decision within a reasonable amount of time, we will keep potential successors 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. Whilst a decision is being reached, the potential successor will not be our tenant but payment for use and occupation must be made.
- 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 all cases of discretionary succession, 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.

3.7.5 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 in line with our Allocations Policy and this decision will be final. Only one succession is permitted 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 discretionary successions.

3.7.6 No Right to Succession

- In cases where there are no succession rights and there is/are remaining occupant(s) who do not qualify for Discretionary Succession, we will offer support and advice for them to secure alternative accommodation elsewhere. Whilst this is on-going, the occupier(s) will not be our tenant but will be charged for use and occupation of the property. Any debt accrued through the non-payment of use and occupation will be transferred to the new tenancy and if these are not paid then bpha will rely on the appropriate ground of possession to take legal action.

3.7.7 Over or 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, but we would seek to rehouse the successor into suitable alternative accommodation.

3.7.8 Adapted Properties

- If a property has been majorly adapted (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. We may not offer Discretionary Succession on a property with adaptations, unless the adaptations are required by the successor. If Discretionary Succession is offered, it will be for an alternative property that is not adapted.



3.7.9 Rent Arrears

- 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 all other cases the rent arrears will form part of the deceased tenant’s estate.

4. Regulatory and/or Legal Compliance

- 4.1 Succession provisions are set out in the Housing Act 1988 for assured tenants and the Housing Act 1985 for secure tenants.
- 4.2 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 “2.1.9 their policy on granting discretionary succession rights, taking account of the needs of vulnerable household members”.

5. Associated Legislation, National Standards and Regulations

- 5.1 The Tenancy Standard in the Regulator of Social Housing’s Regulatory Framework 2012
- 5.2 Housing Act 1985
- 5.3 Housing Act 1988
- 5.4 Localism Act 2011

6. Monitoring, Reviews and Evaluation

- 6.1 This policy will be kept up to date and amended accordingly to reflect any changes in legislation, standards and guidelines.
- 6.2 The policy update is scheduled for a three-year period and will also be reviewed as legislative changes are put in place.

7. Associated Documents

- 7.1 Allocations Policy
- 7.2 Tenancy Policy

Approved by	SMT
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Owner	Head of Housing Operation
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