



## Succession/Survivorship Procedure

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## **Guidance Notes for Succession**

### **Heading**

Succession/Survivorship procedure

### **Purpose**

To provide guidance to colleagues:

- How to respond to requests from customers enquiring about succession rights
- Required information and documentation

These guidance notes should be read in line with the Tenancy Management Policy.

### **Who it covers**

The Customer HUB  
Neighbourhood Advisors  
Neighbourhood Officers  
Neighbourhood Managers

### **Overview**

The guidance notes will:

- Ensure that colleagues make the correct judgements as outlined in housing legislation and the Tenancy Management Policy, make reasonable judgements where discretion can be applied, and process requests quickly and effectively.
- Ensure customers fully understand their rights and responsibilities.



## **Key / overarching principles**

These guidance notes will help to ensure that colleagues are delivering a quality customer service, in line with the Housing Act 1985 and 1988, the Localism Act 2011 and WCHG Tenancy Management Policy:

- Accurate information is provided to customers at the point of request
- We are clear, fair and transparent in our decision making
- We can deal quickly with requests.

## **Contents**

Sub headings are used to help the reader



## Background and general principles

Following the death of a tenant, a tenancy may be brought to an end in one of a number of ways; tenancies do not automatically end at the date of death.

Alternatively, the tenancy may be passed to an eligible person by way of survivorship or succession.

Details of this are all outlined in this guidance.

### Definitions:

**Survivorship** – where, on the date of death of the joint tenant, the tenancy continues in the name of the remaining tenant(s) under the common law rules of survivorship. This is often referred to as ‘the right of survivorship’. Where there are more than two joint tenants, it is possible for there to be more than 1 survivor/cases of survivorship.

**Statutory succession** –the legal right of an individual to succeed to that tenancy as outlined in housing legislation: Housing Act 1985, Housing Act 1988, Localism Act 2011.

### Tenancies which started post April 2012:

S161 of the Localism Act 2011 (Assured)

<https://www.legislation.gov.uk/ukpga/2011/20/section/161>

S160 of the Localism Act 2011 (Secure)

<https://www.legislation.gov.uk/ukpga/2011/20/section/160>

### Tenancies which started pre April 2012:

Housing Act 1988 (Assured)

<https://www.legislation.gov.uk/ukpga/1988/50/section/17>

Housing Act 1985 (Secure)

[https://www.legislation.gov.uk/ukpga/1985/68/part/IV/crossheading/succession-on-death-of-tenant#:~:text=\(a\)the%20tenant's%20spouse%20%5B,be%20selected%20by%20the%20landlord.](https://www.legislation.gov.uk/ukpga/1985/68/part/IV/crossheading/succession-on-death-of-tenant#:~:text=(a)the%20tenant's%20spouse%20%5B,be%20selected%20by%20the%20landlord.)

**Contractual succession** –the legal right to succeed to that tenancy through the tenancy agreement rather than by statute; contractual succession trumps statutory succession rights

**Discretionary succession** –the granting of a new WCHG tenancy at that same address or another suitable alternative property, depending upon circumstances and considerations as outlined in the Tenancy Management Policy

**Unless stated in the tenancy, only one succession is permitted; survivorship is classed as succession.**

### **Process – Ending a tenancy**

Tenancies can be ended via an executor named in the will of the deceased tenant. No minimum notice period is required but a period of no longer than 4 weeks would normally be agreed. Confirmation of the tenancy end date should be confirmed in writing along with arrangements for key return and payment to clear the rent account balance wherever possible.

Where there is no person able to bring the tenancy to an end, the tenancy is ended by serving a 28-day Notice to Quit on both the property and public trustee – see **Appendix 1**. The tenancy end date will be the Notice to Quit expiry date unless the Public Trustee contacts WCHG during the notice period to say that investigations are still in progress.

We do accept tenancies being ended via the next of kin or by agreement with the relevant Neighbourhood Officer, but only where we are not aware of a risk of someone claiming succession.

### **Process – Succession**

Colleagues should always check the tenancy agreement, the tenancy history and the eligibility criteria cited below (see also Tenancy Management Policy, **Appendix 2**) when determining succession rights.

Where a colleague has been notified that a tenant is deceased and there is a succession query or request, colleagues should make the following enquiries and gather the necessary information. This is to determine whether there is a right of succession.

#### **Initial checks:**

- Statutory succession – check whether the criteria is met for the relevant tenure and the start date of original tenancy (see legislation or **Appendix 2** / Tenancy Management Policy)
- Are there contractual succession rights? Check the tenancy agreement; contractual succession trumps statutory succession
- Non-statutory succession – see **Appendix 2** / Tenancy Management Policy for eligibility

- Tenancies passed via a will to a household member – request copy of will and Grant of Probate.
- Has there been a previous succession or survivorship? Check the tenancy agreement, Orchard Housing System and Docuware.
- Ensure the tenant is deceased:
  - Request a copy of death certificate and save to Docuware.
- Request necessary proofs from the individual asking to succeed to the tenancy; there is no 'prescribed evidence' however this may typically be:
  - Documents providing proof of residency, e.g. bank statements, official letter such as council tax, housing benefit, electoral role or DWP benefits.
  - Photographic proof of identity.
- All notes relating to correspondence with the individual claiming succession and documents seen, should be noted on Orchard.
- Where the tenancy agreement cannot be located, request a copy of the tenancy agreement from the person claiming succession; where this isn't available, check any template agreement used at the time of issue held by WCHG. Without either of these being available, a claim for contractual succession would be difficult to determine.

#### **Further considerations:**

- Further checks can be undertaken as deemed reasonable, e.g. there may be more than one successor.
- Colleagues should consider best use of available housing stock when deciding about discretionary succession; therefore, it may be reasonable for an alternative property to be offered which is more suitable for the individual's need; e.g. a one bedroom flat instead of a family home.
- Where succession is being refused, the reasons for this should be explained to the individual and provided in writing.
- Only where the colleague is satisfied that succession is possible and the individual is eligible, should the succession proceed. This should be confirmed in writing with the eligible person. Where colleagues are not certain, advice should be sought from the Neighbourhood Manager.

#### **Completing the succession:**

- Survivorship, statutory and contractual – mark tenant as deceased on Orchard and update details of new tenant.
- Statutory Succession – Succession letter to be sent to tenant following approval of succession/survivorship

- Discretionary – create a new tenancy on Orchard and add any relevant notes. Use Assured Shorthold Tenancy Agreement (signed by staff and new tenant)
- Successors are liable for arrears in the following way:
  - If a joint tenant has been granted survivorship they are liable for all arrears, including prior to death
  - Anybody else will be liable for the rent from the Monday following the date of death

### **Tenancies passed to a beneficiary via a will:**

This will generally be accepted where the property is deemed suitable for the beneficiary and their household. Where it is felt that the property is not suitable, e.g. too large or adapted and the beneficiary does not require an adapted home, for assured tenancies, we would initially serve an NTQ on the executor of the will. We can also use Ground 7 of the 1988 Housing Act to seek possession. There is a 12-month limit for any action on this ground. Any possession action will be taken by the Neighbourhood Officer.

Where there is no named beneficiary or no will – see Tenancy Management Policy

### **Persons left in occupation after the expiry of the NTQ:**

- Where there is no succession but a person(s) remain left in occupation, actions should be reasonable and proportionate:
- Write to the person as soon as possible letting them know the date to vacate the property by and support the person(s) to be re-housed, e.g. by providing details about housing options and the Manchester Move process; it may be reasonable to send more than one letter
- It may be appropriate to allow the person(s) to remain living in the property for a short period. Checks as to the validity of their circumstances should be made. A Use and Occupation agreement (with a daily charge) for should be signed and a Use and Occupation account set up on Orchard
- Any decision made should be with the agreement of the Neighbourhood Manager
- Where a person(s) remains in occupation but without WCHG permission, then possession of the property must be obtained through the County Court; any application will be made by the Neighbourhoods Team

## **Mesne profits**

Mesne Profit is to be only used when there is no intention to award succession as there is no legal right to the tenancy.

- Mesne Profit is to be used when the succession applicant has refused to sign a Use and Occupation agreement or the NOK has refused to end the tenancy.
- This can also be used when the tenant has been taken into care and has lack of capacity.
- NTQ must be served and expired prior to a Mesne Profit being set up on Orchard
- Any legal action to be taken by the Neighbourhood Officer with assistance from our Solicitors

## **Responsibilities**

### **Customer Hub**

- Record as many details as possible. Request a copy of the death certificate (to be sent to Neighbourhood Advisors)
- Open a New Contact on Orchard and send to the Neighbourhood Advisors in the first instance:
  - Succession – to be used in most cases
  - Survivorship – when one joint tenant dies

### **Neighbourhood Advisor**

- Triage the contact from the Customer Hub
- Contact the person(s) requesting the succession
- Allocate to the relevant Neighbourhood Officer for them to process with details attached



## **Neighbourhood Officer – Approving Succession**

Progressing the succession request as outlined in these guidance notes and confirm any decision in writing

- Contact the succession applicant advising what information is required
- Review information provided to ensure they qualify
- Approve a statutory or contractual succession
- Pass to Neighbourhood Advisor to update Orchard with the details attached

## **Neighbourhood Officer – Approving discretionary succession**

- Contact the succession applicant advising what information is required
- Review information provided
- Approve discretionary succession
- Pass to Neighbourhood Advisor to update Orchard who will:
  - End the current tenancy
  - Set up new customer and start a new tenancy on Orchard
  - For tenancy start date this should generally be the Monday following the date of death

## **Neighbourhood Officer - Declining the succession**

- Dealing with any persons left in occupation:
  - Corresponding with persons left in occupation
  - Setting up a Use and Occupation agreement, including detailed Orchard notes to explain circumstances leading to this decision
  - Refer for legal action where Use and Occupation agreement is not appropriate and person remains in occupation.

## **Neighbourhood Officer – Legal action**

- NTQ to be served on Personal Representatives and the Public Trustee
- County Court application for possession where person remains in occupation after the end of the tenancy. To be completed with assistance of Solicitors.

## Appendix 1 – Public Trustee Guidance

- 1) The fee of £40 per Notice must be paid online by credit or debit card through the following link: <https://products.payments.service.gov.uk/pay/0dfbc53f61b6427e8159ddc8096a9fe0>
- 2) When the payment has been submitted, you will be emailed a reference number which needs to be quoted when completing the online NL(1) form.
- 3) The online NL(1) form is completed online through the following link: <https://apply-to-register-a-notice-with-the-public-trustee-nl1.form.service.justice.gov.uk/>. You do not need to attach a separate NL (1) to the application.
- 4) The Notice (e.g. Notice to Quit) must be attached to the online application.
- 5) You do not need to attach a death certificate, statement of service or a covering letter.

If you have any questions about the new system, please email [TODenquiries@ospt.gov.uk](mailto:TODenquiries@ospt.gov.uk).

## Appendix 2 - Eligibility Criteria

### Assured (non shorthold) – Statutory

- Deceased was not already a successor
- A spouse or civil partner (or person cohabiting with the tenant as spouse or civil partner)
- Where the tenancy was granted on or after 1 April 2012, if there is a person who would clearly qualify for succession under the terms of the tenancy then succession takes place automatically without WCHG consent or approval
- **Succession to Assured Tenancy permitted**

### Assured (non shorthold) Succession – Discretionary

WCHG may award a new tenancy to other members of the household who:

- Lived with the tenant for 12 months prior to their death, or were looking after the tenant or accept responsibility for the tenant's dependents and would be made homeless if required to vacate the home
- Discretionary succession will be subject to the suitability of the property and the successor's eligibility to become a tenant
- **New Assured Shorthold Tenancy to be granted**
- **A new tenancy at an alternative and more suitable property may be offered**

### Assured Shorthold Succession

Assured Shorthold tenants have the same rights to statutory and discretionary succession as Assured (non-shorthold) tenants. The successor would succeed to the existing Assured Shorthold agreement and the conversion date to non-shorthold would remain the same.

### Secure (pre April 2012) – Statutory

Qualifying persons are defined as:

- The spouse or civil partner who was occupying the property as a their only or principal home at the time of the tenant's death, or
- A member of the tenants family who lived with the tenant for 12 months before the tenant's death and who was occupying the property as a their only or principal at the time of the tenant's death (if there was no spouse or civil partner who was occupying the property as a their only or principal home at the time of the tenant's death)

- A member of the tenant's family is defined as: Parent, Grandparent, Child, Grandchild, Brother, Sister, Uncle, Aunt, Nephew, Niece (N.B. half-brothers and half-sisters are counted; step-children/parents are counted; adopted relations are counted but foster relations are not)
- **Succession to Secure Tenancy permitted**

### **Secure (pre April 2012) - Discretionary**

- This is not available for secure tenancies dating pre April 2012

### **Secure post April 2012 – Statutory**

Qualifying persons are defined as:

- The spouse or civil partner (or person cohabiting with the tenant as spouse or civil partner) of the deceased tenant who is living in the property as their only or principal home at the time of the tenant's death
- **Succession to Secure Tenancy permitted (Survivorship)**

### **Secure post April 2012 – Discretionary**

WCHG may award a new tenancy to other members of the household who:

- Lived with the tenant for 12 months prior to their death, or were looking after the tenant or accept responsibility for the tenant's dependents and would be made homeless if required to vacate the home.
- Discretionary succession will be subject to the suitability of the property and the successor's eligibility to be a tenant.
- **New Assured Shorthold Tenancy to be granted**
- **A Tenancy of an alternative and more suitable property may be offered**



## **Risk assessments**

There are minimal health and safety risks.

## **Costs**

None

## **Review**

Neighbourhood Managers are the owners of this document and will review these following any request to do so, following any situation which arises which isn't already covered by the notes, following any legislative or good practice changes.

