

Please use EMS Code SOT that indicates the steps required and time frames for completing the request.

5.22.1 Introduction

From 3rd October, 1980, a secure tenancy can be succeeded to as a further secure tenancy, as long as the successor occupied the property as their only or principal home immediately preceding the death of the tenant, and the person is the tenant's spouse (i.e. legally married to the deceased); or where there is no spouse a member of the tenant's family (which includes a common-law partner) and had occupied the dwelling with the tenant for the twelve months preceding the tenant's death. [Sections 87 and 89 Housing Act 1985]. The 12 month residence requirement does not apply to spouses.

Section 113 of the Housing Act 1985 defines the meaning of 'family'.

A secure tenancy can only be succeeded to once, where a joint tenant becomes a sole tenant on the death of one partner this is not a succession as such but no further right of succession exists. This clause does not apply to assignments by way of exchange unless the tenant was a successor to the tenancy they assigned. This is also true for assignments under Section 24 of the Matrimonial Causes Act 1973. [Section 88 Housing Act 1985].

5.22.2 Succession/Concessionary Offer

The following factors must be taken into consideration when assessing whether or not the applicant is entitled to succeed or receive a concessionary offer.

1. If there is more than one person entitled to succeed, the spouse will be preferred, or in the case of two or more members of the tenant's family, if they cannot agree, it is up to the landlord to select the successor. We use the following criteria:-
 1. Partner
 2. Son or Daughter
 - a) length of occupancy and then, if necessary,
 - b) age as a criteria.
 3. Brother or Sister
 4. Parents
 5. Grandparents/Grandchildren
 6. Uncle or Aunt or Nephew or Niece.

Where there is no person entitled to succeed, the secure tenancy comes to an end, although the tenancy still legally has to be ended by service of a Notice to Quit on a next of kin; or the Public Trust Office, where there is no Will or next of kin (section 18 of the Law of Property (Miscellaneous Provisions) Act 1994).

2. **Right to Succeed but Under occupation - Legislation**

The Housing Act 1985 Schedule 2 Part III details 'Grounds on which the Court may order possession if it considers it reasonable and suitable alternative accommodation is available'. Ground 16 of Schedule 2 details the ground on which a Court may order possession where under occupation arises following succession. The Court when considering whether it is reasonable to grant possession will take into account:-

- a) The age of the Tenant;
- b) The time which the Tenant has occupied the dwelling as his only or principal home;
- c) Any financial support given by the Tenant to the previous Tenant.

Under occupation Principles

1. Under occupation by one bedroom only is permitted in houses or low-rise flats (up to and including four floors).
2. Under occupation is allowed in high rise flats (regardless of floor).

Under occupation - Exceptions Allowable

- i) Any successor to the tenancy or property who is over 60 years should be allowed to continue in occupation without the tenancy being contested.
- ii) Any successor who has resided at the property for over ten years be allowed to remain uncontested.
- iii) If a successor has provided financial support for the deceased from his/her earnings or savings (not including state benefits) and lived in the property for at least 12 months, the person should be allowed to remain uncontested.
- iv) Any successor who has provided significant support over and above the sharing of cleaning, washing etc. for at least one year be allowed to retain the tenancy.

Where under occupation are not allowable proceedings are to be instituted between 6 and 12 months from the death of the former tenant and suitable alternative accommodation is provided in accordance with Schedule 2, Parts iii and iv of the Housing Act 1985.

3. **No Right to Succeed - There Already Having Been One Succession**

Applicants are considered in accordance with the following criteria:-

- a) The reason for the applicants return to live with the deceased tenant.
- b) The length of residence in the property prior to the death of a tenant. This could be at least two years or say the last year and seven out of the previous ten.
- c) Any medical or social factors which may be relevant.
- d) Qualification, based upon existing policy, to be either housed by the Council or in the property in question.
- e) Details of any housing waiting list or homeless applications made to this or any other Local Authority which will make them eligible for the property in question.
- f) Any other factors considered to be relevant.
- g) Relationship to tenant. Lodgers should only be considered in exceptional circumstances.

Where applicants meet the criteria consider in accordance with the under occupation principles - see 2) above and offer tenancy of dwelling or alternative. The alternative accommodation to be a flat or maisonette with the number of bedrooms required. Note that exceptional cases falling outside (a to f) can be referred to the Housing (Needs & Allocation) by the Community Housing Manager if there are, in their opinion circumstances on which they are unable to make a decision.

4. **Group Manager Community Housing**

In the absence of the Group Manager Community Housing the authority to make the decision is delegated to the Tenancy Service Manager. In emergencies or any long term absence by

the Group Manager Community Housing, the Divisional Director of Housing Services will make the decision.

5. **Appeals**

Appeals should only be taken on points of law, fact or substantial change of circumstances. Appeals should be submitted to the Divisional Director of Housing Services with accompanying documents and a report outlining the recommendations of the Community Housing Manager.

5.22.3 **Procedures**

On receipt of information that a secure tenant is deceased, the Estate Officer must investigate the circumstances surrounding the tenancy. If a claim for succession is made then the Estate Officer must visit the property complete the standard interview form (see Appendix 5.34) and take the following action:-

- 1) Have sight of the original death certificate.
- 2) Establish the relationship between the applicant for the tenancy (and any other members of the household) and the deceased tenant.
3. Establish whether or not the applicant occupies the premises as their only or principal home and the length of time that they resided with the tenant prior to his/her death.
4. Carry out a property inspection.
5. Establish the degree of under occupation (if any).

The Estate Officer must then make recommendations to his/her Tenancy Services Manager on whether or not the applicant is entitled to succeed to the tenancy. The Estate Officer, when making recommendations and the Tenancy Services Manager when deciding whether or not the applicant has a right to succeed or concessionary offer, must have regard to the Council's policy on rights of succession and take into account the factors in Section 5.22.2.

Once a decision has been reached by the Tenancy Services Manager then the following procedures must be taken:-

1) Applicant is entitled to succeed

The Interviewing Officer must compile the tenancy details e.g. succeeding tenant's name, date of birth, rental, water charges etc. and notify the Director of Finance and the Needs and Allocations Section of the new tenant. A letter must be delivered to the succeeding tenant confirming their succession and the tenancy details. A copy of the letter to the succeeding tenant and the sheet confirming delivery must be placed on the house file with one orange copy being attached to the deceased tenant's tenancy agreement.

2. Entitlement to succeed but with under occupation

Where under occupation is acceptable due to one of the exceptions in 5.22.2 (2) being met, and then procedures in (1) above must be followed.

Where under occupation is not allowable then proceedings are to be instituted between 6 and 12 months from the death of the former tenant and the Tenancy Service Manager must liaise with Needs and Allocations for suitable alternative accommodation to be offered.

3. Concessionary offers - No Right to Succeed

Where a concessionary offer is to be made in accordance with 5.22.2 (3) then the Tenancy Services Manager must decide whether to grant the applicant the tenancy of the existing property or make an offer of alternative accommodation. The rules governing under occupation must be considered.

If the applicant is to be made an offer of alternative accommodation then the applicant will be given a direct offer of alternative accommodation from Allocation section.

The Estate Officer must visit the applicant and advise that they do not qualify to remain in the property, but, the Housing Services are in a position to offer alternative accommodation. The tenancy must be determined by a Notice to Quit. A copy of the report with a copy of the letter which will accompany the Notice to Quit must be sent to the legal section for information and any possible further action. The Estate Officer must serve the Notice to Quit (on the Public Trustee if the next of kin is

unknown). A copy of the report and checklist must be sent to the Director of Customer Services once the Notice has been served. The Estate Officer should complete a housing waiting list form with the applicant and the standard form (see appendix 5.35) and also carry out a Property Inspection at the time of the visit. Any offer must be subject to review of the rent/use and occupation account and the condition of the property.

The following information must be obtained as appropriate:-

1. Proof of residence in the Borough for the last 12 months, or child benefit letter etc;
2. Birth certificates of everyone on the form;
3. Clinic card - household member pregnant;
4. Marriage certificates;
5. Divorce documents/separation documents or signed affidavit;
6. Child custody/staying/access documents;
7. Property transfer document (owner occupiers only) - Deed of Sale
8. Property adjustment document (owner occupiers only) (Court Order dividing up property in the event of a marital breakdown);
9. For Armed Forces Personnel - letter from Commanding Officer giving discharge date.

The completed form along with an instructing memorandum should be sent to the Needs and Allocations Section for action.

The Applications Officer will notify the Tenancy Services Manager accordingly of what can be offered. If the application is successful, they will be made an offer in the areas of their choice. The Applications Officer will notify the Tenancy Services Manager.

The Estate Officer must then liaise with the applicant and arrange for an accompanied viewing of the property being offered. If the applicant refuses the concessionary offer then the Estate Officer must make a record of the reasons for refusal and then liaise with the Community Housing Manager to seek guidance as to whether a further offer should be considered (in conjunction with the Needs & Allocations Section).

The applicant will receive one reasonable offer of alternative accommodation. If a reasonable offer is refused then possession proceedings must be commenced.

4. Occupation of at least 12 months but not eligible for a concessionary offer

There are people not eligible for assistance under 5.22.2(3), but we will consider for a Housing Waiting List offer as they would be eligible if they were approaching us having to leave a property in similar circumstances in the private sector. When dealing with applications from people that have no right to succeed, or remain at the property nor are eligible for a concessionary offer, such cases should be treated as normal housing waiting list cases and not afforded any preferential consideration.

The applicant should be visited by the Estate Officer to advise the applicant that they do not qualify to remain in the property, and that the authority will be seeking to gain possession of the property. The applicant should be advised that a Notice to Quit will be served.

The applicant should be advised that they might qualify for an offer via the Housing Register before the expiry of the Notice to Quit.

If the applicant is not already registered on the Housing Register a form should be completed by the Estate Officer. The applicant should be advised that if their requirements are too specific then it is conceivable that an offer will not be made before the expiry of the Notice to Quit, and as such, in line with current policy, their application will be suspended. A Property Inspection should also be completed. Any offer will be subject to a review of the rent/use and occupation account and the condition of the property.

The Estate Officer will check that all documentation is correct and complete.

The information in paragraph 3 (page 6) of this policy must be obtained as appropriate as in Number 1-9.

The Estate Officer must send an instructive memorandum or email with the completed forms to the Application Officer.

5. Occupation of less than 12 months

The Estate Officer must visit the applicant and advise that we are unable to assist but that the occupants can go on the Housing Register. The applicant must be advised that if he/she remains in occupation after expiry of the Notice to Quit the Housing Register application will be suspended. The Estate Officer must prepare and serve the Notice to Quit.

5.22.4 Transfers of Tenancy

1. No right to succeed exists where the tenant has simply moved away (see Section on Assignments of a Tenancy). However, the Council can still grant a further tenancy if it so wishes. A Notice to Quit must be served to determine the outgoing tenant's tenancy.
2. As a matter of general principle, applications will not be accepted where the tenant has transferred to public sector housing (including sheltered accommodation) or has purchased or obtained private accommodation. It is expected that ongoing tenants take their family with them. In the case of a move to private accommodation, exceptions can be made, where the outgoing tenant is not the parent and intends to form a new household, on say marriage. Applications will be considered where the tenant has gone into a home or other such institution on a permanent basis. The Community Housing Manager has delegated authority to deal with such cases.
3. When a request is received to have the tenancy transferred the tenancy must be determined by a Notice to Quit served by the outgoing tenant. Alternatively, where the tenant has moved away from the property and has lost security of tenure but fails to terminate the tenancy, the Tenancy Services Manager must arrange for the service of a Notice to Quit to terminate the tenancy.
4. A visit must be carried out by the EO and the circumstances surrounding the tenancy must be established. A property inspection must be carried out with a note being made of any details as would be the case for a transfer inspection. A check must be made of the rent account and recommendations should then be made to the Tenancy Services Manager.
5. Depending on the decision by the Tenancy Services Manager either a new tenancy agreement must be signed or action to recover possession of the property instigated (see Section 5.11 on Unauthorised Occupants).

Joint Tenancies

Unless either joint tenant wishes it, there is no need to act, as a joint tenancy is unaffected by one partner being absent. We should resist any efforts to manipulate the situation. For example allowing a party to terminate the joint tenancy and obtain a sole tenancy where this is opposed by the other party. In such cases we may need to refuse granting a sole tenancy. In relationship breakdowns, Property Adjustment Orders may be suitable.

Where a joint tenant has left the dwelling, does not wish to return and no longer requires an interest in the property he/she can terminate the joint tenancy by giving proper Notice to Quit (4 clear weeks notice in writing to expire on a Monday), which terminates the whole joint tenancy, and we can then offer the remaining tenant a sole tenancy (subject to rent arrears, Possession Proceedings etc.). We are not obligated to offer a tenancy to the remaining joint tenants and this course should not be recommended where we do not intend to offer a sole tenancy, but a valid Notice to Quit will bring the joint tenancy to an end.

Where the joint tenants cannot agree on a course of action we should avoid becoming enmeshed in the dispute - they may need to seek their own legal remedy - see above.

Where we are satisfied (as far as we can be) that a joint tenant has left the house, does not wish to return and apparently no longer requires an interest in the property the remaining joint tenant can serve a Notice to Quit and seek a sole tenancy. In such cases, the remaining joint tenant should be advised to seek our agreement for a sole tenancy prior to the issue of the Notice to Quit.

Before giving agreement to a sole tenancy we should reassure ourselves that the remaining joint tenant has made every effort to trace the other party and honestly cannot. We also need to make some enquiries to satisfy ourselves to the position. A visit must be carried out by the EO and action progressed as in 5.22.4(4). As a rule of thumb the absent joint tenant should have left more than 12 months ago at least (to avoid this absence being the result of an extended holiday or working away from home). Additionally, we must now ask the remaining joint tenant to swear a Statutory Declaration before a Commissioner of Oaths (most Solicitors can do this) to the effect that their partner has permanently left, (their address is unknown) does not to their knowledge intend to return and does not require an interest in the property. This will have application where, say the remaining joint tenant is seeking a transfer but cannot do this whilst a joint tenancy exists.

If in doubt, we should take no action, and leave it to the remaining joint tenant to take their own legal action or consult with our Legal Department.