

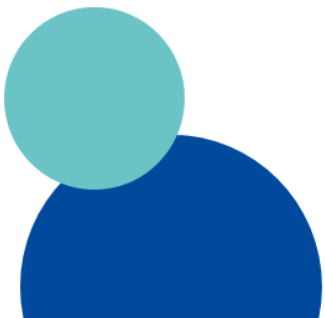


Waverley Borough Council  
**Succession Policy**

**Latest version number: V0.2**

**Latest publication date: Pre 2020**

**Lead Officer / Team: Housing Service Improvement Team**



## 1. Document Information & Governance

### Approval & Publication:

Approving Body	Approval route requirement	Publication Type	Publication requirement	Review frequency	Document owner
Executive Head of Housing in consultation with Co-Portfolio Holder for Housing	Tenant consultation at LSAB.	External.	Regulatory requirement.	3 years. Next review: January 2027.	SIT.

### Version Control Information:

Version	Version Status (Draft, Approved /Published Internally or Externally)	Date	Version Comment	Version Author
V0	Approved and published	Pre-2020		
V0.1	Working Draft	01/11/2023	Creation of the document	AW
V0.2	Final Draft	24/01/2024	Agreed by Housing Management team.	AW

### Impact Assessments and Consideration:

Impact Assessment Type	Required / Not Required	Date Completed	Impact Assessments and Considerations Comment	Assessment Owner
Equality Impact Assessment	Required	08/11/2023	No action necessary.	Amy Walton.
Data Protection Impact Assessment				
Climate Change				

## 2. Document Statement

- 2.1 Succession is the process by which a tenancy passes to another person after the death of the original tenant. This policy outlines how Waverley Borough Council will respond to succession claims following the death of a tenant and ensures that the Council responds to these claims sensitively, consistently, and in accordance with legislation.

## 3. Introduction

- 3.1 When a tenant dies, given that they were not a successor themselves, the tenancy can be succeeded by an eligible partner or family member.
- 3.2 A tenant is a successor if they previously took over the tenancy from a partner or family member after their death.
- 3.3 The eligibility for succession is determined by the date on which the tenancy began and the relationship between the tenant and the potential successor.

## 4. Definitions

- 4.1 A spouse is a married partner or civil partner of the tenant.
- 4.2 A cohabitee is someone who lives with the tenant as though they were married or in a civil partnership.
- 4.3 For the purposes of this policy, family members are as defined in section 113 of the Housing Act 1985. This means the tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, or niece. This includes step-relations.

## 5. Eligibility for Succession

- 5.1 The tenancy can only be succeeded once. This means that if the current tenant is a successor, then the tenancy will not be eligible for succession after their death.
- 5.2 For joint tenancies where neither of the current tenants are successors, the tenancy will automatically be succeeded by the joint tenant. This is known as survivorship. This tenancy cannot be succeeded again.
- 5.3 Only one person can succeed the tenancy and then this sole secure tenancy cannot be made into a joint tenancy as it cannot be succeeded by the joint tenant.
- 5.4 For sole secure tenancies which started before 1 April 2012 and where the current tenant is not a successor, then the following people are eligible to succeed the tenancy, in order of priority:
  - Spouse or cohabitee
  - Family member who has lived with the tenant as their principal home for at least 12 months. Living with them at another property counts.
- 5.5 For sole secure tenancies that started after 1 April 2012 and where the current tenant is not a successor, only their spouse or cohabitee is eligible to succeed the tenancy.
- 5.6 For sole introductory tenancies that started after 1 April 2012 and where the current tenant is not a successor, only their spouse or cohabitee is eligible to succeed the tenancy. To be eligible a cohabitee must be able to prove that they have lived with the tenant for 12 months. Living with them at another property counts.

- 5.7 Flexible tenancies are no longer used. Any remaining flexible tenancies that have not been converted to secure tenancies yet will be treated like a secure tenancy for the purpose of this policy. If there is an eligible successor, then the tenancy will be converted to a secure tenancy as they succeed.
- 5.8 For joint tenancies where one tenant has died and the tenancy has been succeeded by the other joint tenant, the rent arrears will become the sole responsibility of the surviving tenant. In all other cases the rent arrears will be owned by the deceased tenant's estate.
- 5.9 If the succession is contested between family members, then the Council will determine which potential successor can take the tenancy based on their relationship with the tenant and their housing need.
- 5.10 The Council will require evidence of the relationship between the successor and the tenant to grant them permission to succeed the tenancy. The applicant can appeal this decision by raising a complaint.
- 5.11 Once the succession eligibility has been determined, if necessary, a notice to quit will be served to end the current tenancy.

## **6. Death of a Tenant with No Successor**

- 6.1 If there is no successor, then the tenancy does not end but becomes part of the deceased tenant's estate. The executor of the estate must then surrender the tenancy. Surrendering the keys will be considered equivalent to surrendering the tenancy.
- 6.2 Rent will continue to be charged until the tenancy is ended. In most circumstances, the Council allows a two-week rent-free period for the next of kin to clear the property and return the keys.
- 6.3 If someone without the right to succeed the tenancy continues to live in the property, then the Council will take legal action to evict them. The occupier will be charged a Use and Occupation charge which will be equivalent in value to the rent and any other charges normally paid by the tenant. This charge will be adjusted in line with changes made to other charges in April each year.

## **7. Assignment**

- 7.1 Assignment is the transfer of a tenancy during the lifetime of the tenant. This requires the consent of the council and is normally completed by the signing and witnessing of a Deed of Assignment.
- 7.2 If a tenant obtains a tenancy through assignment, then they are a successor. There are two exceptions to this:
- 7.3 If the assignment took place as part of divorce proceedings and the partner assigning the tenancy was not a successor, then the part who was assigned the tenancy is not a successor either.
- 7.4 If the assignment took place as part of a mutual exchange and they were not a successor to the tenancy that they assigned in the exchange, then they are not a successor for the tenancy that they have been assigned in the exchange.

## **8. Devolution by Will**

- 8.1 This is where a tenant leaves the tenancy to a designated individual in their will. This individual will only be able to succeed the tenancy if they fulfil the eligibility criteria in this policy. The Council will take legal action to regain possession of the property if the will devolves the tenancy to an individual who is not eligible for succession.

## **9. Suitability of Accommodation**

- 9.1 The Council will consider whether the accommodation is suitable for the successor. If the successor would not be allocated the home under Waverley's allocations policy, then they will be offered alternative accommodation. For example, if succession would result in underoccupation.
- 9.2 If the person applying for succession is the spouse or cohabitee of the deceased tenant then they will have the right to succeed regardless of any underoccupation.
- 9.3 The Council will take any protected characteristics as defined in the Equality Act 2010 and any other vulnerabilities into account when making this decision.
- 9.4 The occupying person will be given a place on the housing register with an elevated banding. They will be expected to bid for all suitable properties.
- 9.5 The occupying person will be liable to pay a Use and Occupation charge.
- 9.6 If the occupying person has not moved within six months of joining the housing register then the Council may serve a notice seeking possession and take legal action to regain possession of the property.
- 9.7 The tenant can appeal this decision by raising a complaint.

## **10. The Legislative Context**

- 10.1 Part IV of the Housing Act 1985 outlines who is eligible to succeed tenancies. It states that a joint tenant will take priority for succession, followed by a co-habiting partner, and then a co-habiting family member.
- 10.2 This was modified by the Localism Act 2011 to restrict succession rights to only joint tenants and co-habiting partners for tenancies that started after 1 April 2012.
- 10.3 Schedule 2 of the Housing Act 1985 states that if a tenant succeeds a tenancy, the Council can move to the tenant to more suitable accommodation in some cases, if notice of seeking possession is given between six and twelve months after the tenant's death or the date on which the landlord became aware of the tenant's death.
- 10.4 Equality Act 2010.

## **11. Document Improvement**

- 11.1 The Council welcomes comments and feedback on its policies and procedures. Please contact Neal Davies or the Housing Management Team if you have any comments.

## **12. Other Related Council Policies / Information**

- 12.1 Tenancy Agreement
- 12.2 Housing Allocations Policy
- 12.3 Rent Account Policy
- 12.4 Tenancy Fraud Policy