

Derby City Council Succession Policy

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This policy sets out the circumstances in which a City Council tenancy passes on to a qualifying person who was living with the tenant when they died.

This process is known as “succession.” It is governed by the Housing Act 1985, and as amended by The Localism Act 2011, which provides certain statutory rights.

When responding to a claim of succession our role is to establish that:

1. The tenancy type is one that can be succeeded to:

This includes:

- a) a secure tenancy
- b) introductory, flexible, and demoted tenancies, where a person will succeed to the remaining period of the respective tenancy
- c) that there has been no previous succession of the tenancy

There are no succession rights to a temporary tenancy or licence.

There can only be one statutory succession of a tenancy.

2. The claimant qualifies to succeed to the tenancy:

a) Joint tenancies

A joint tenant who becomes a sole tenant due to the death of the other joint tenant (or because it had been assigned/surrendered to them by the previous joint tenant) will be deemed to have succeeded to the tenancy. This is regardless of any relationship between the two. There will be no further right for anyone else living at the property to succeed to the sole tenancy.

b) For tenancies that began before 1 April 2012:

- I. Where there has been no previous succession, the deceased's husband, wife, or civil partner will succeed. They must have been residing with the late tenant at the property when they died.
- II. If there is no spouse or civil partner, then a member of the family (as defined below) may succeed to the tenancy. This includes unmarried partners, including same sex cohabitantes.
- III. The claimant successor must have been residing with the deceased tenant for at least a year up to when the tenant died, as their sole or principal home.

Family Members

A family member who had been living with the deceased tenant for at least a year, as their sole or principal home, before the tenant died may be able to succeed to a tenancy that began before 1 April 2012. The law regarding succession defines a 'family member' as:

- Parent
- Grandparent
- Child
- Grandchild
- Sibling
- Uncle or aunt
- Adopted child or stepchild
- Unmarried partner, including same sex partner (see below - for tenancies created after 1 April 2012, a cohabitee will be assessed the same as a spouse or civil partner).

What if more than one family member is qualified to succeed?

If you are a family member who is qualified to succeed but there are one or more other family members who also qualify, you should reach an agreement between yourselves as to who inherits the tenancy.

If you cannot agree, we will select who succeeds. In reaching our decision we will take into consideration:

- a) We will normally prefer someone who was the deceased tenant's partner, including a same sex partner, over any other member of the family
- b) The length of time each family member has been living at the property
- c) Age of each family member
- d) Whether any of the family members have dependent children of their own, including any access rights to children who live at the property some of the time
- e) The need for any live-in carer
- f) If a family member requires any aids or adaptations that are available at the property

We will also consider any other relevant information presented to us.

There can be no joint succession.

c) For tenancies that began on or after 1 April 2012:

- I. Where there has been no previous succession, the deceased's husband, wife, or civil partner will succeed. They must have been living with the deceased tenant at the property when they died, as their sole or principal home.
- II. Unmarried partners, including same sex partners, will be assessed the same as a spouse or civil partner and so will be able to succeed if they were living with the deceased tenant when they died, as their sole or principal home.
- III. Other members of the deceased tenant's family have no statutory right to succeed.

See Section 3 below for circumstances where we will consider granting a new tenancy to someone who had been living with a tenant who has died but is not eligible to succeed.

What we will check when considering a request to succeed to a tenancy:

- a) Confirmation that a joint tenant is living at the property
- b) The type of tenancy
- c) The date the tenancy was granted, whether this was before or after 1 April 2012
- d) That no previous succession has occurred
- e) Evidence that a spouse/civil partner or cohabitee was living at the property when the tenant died
- f) That the relationship of the family member to the tenant is included in the statutory definition listed above, and that they can substantiate that they were living with the deceased tenant for at least a year before they died
- g) The size and type of the property

Examples of evidence of occupation we may require could include:

- benefit records
- medical records
- tax records
- details of any tenancy history that we may have.

What if I have succeeded but the property is too big for my household?

If you have succeeded as a previous joint tenant or because you were the tenant's spouse or civil partner, we will not require you to move regardless of any under-occupation. We may discuss with you the option of a voluntary move to smaller accommodation.

We may require you to move where you are a member of the deceased tenant's family and have succeeded to a tenancy that began before 1 April 2012 but you would not normally be eligible for the type of property being occupied (for example you are a single person occupying a house with 2 or more bedrooms, or the property is substantially larger than you need).

This is to make sure that we are properly managing all our properties, which is a legal requirement, and because they are a scarce resource for those who need them.

We would help you to move to other suitable accommodation.

We would not take any action to recover the property for at least six months following your succeeding to the tenancy but would need to do so within 12 months should you refuse to move to suitable alternative accommodation. If necessary, we would apply for a Court Order for possession of the property.

A property would be substantially underoccupied where there would be at least two bedrooms more than you require for your household, as defined by the Council's Allocation Policy. (For example, we would normally expect a wife, husband, civil partner, or cohabitee to be sharing a bedroom, similarly with dependent children of the same sex, or those of opposite sex below a certain age.)

In making our decision we will consider:

- the vulnerability of anyone in the household (e.g. due to their age, mental or physical health)
- whether the property has any aids or adaptations and if there is anyone in the household who requires these
- the needs of anyone in the household and any support being received at the property, which may not be available should they move
- any shared access rights to children who regularly occupy the property
- whether there is a live in carer that requires a bedroom
- the length of time that the successor and members of their household have lived at the property as their principal home
- any financial or other support given by the tenant to the previous tenant.
- the number of applicants on the Housing Register who need a similar size and type of property in the area, together with the regularity, or otherwise, such properties become available for letting
- any other relevant information presented to us

3) What if rent was owed or in credit when the tenant died?

- a) If you are a remaining joint tenant, any debt or credit will be yours (because you had been jointly responsible for the tenancy, which continues).
- b) Any rent credit or arrears on a tenancy that has been statutorily succeeded to by a qualifying person other than a succeeding joint tenant become a debt owed by or to the deceased tenant's estate.
- c) Any outstanding possession order and its terms will remain in force on a tenancy that has been statutorily succeeded to i.e. by a remaining joint tenant.
- d) If you did not qualify for a statutory succession and were granted a new tenancy in line with our "discretionary succession" policy, you will not be responsible for any arrears nor due any credit from the former tenancy account.

4. What if you do not qualify to succeed to the tenancy?

A secure tenancy will end on the death of the tenant if there is no one who qualifies to succeed or where the deceased tenant had previously succeeded to the tenancy.

If you were living with the tenant when they died but we find you have no statutory right to succeed, we will use our discretion to consider granting you a new tenancy in the following circumstances:

- a) You would have succeeded but there has already been a succession
- b) You are a member of the deceased tenant's family but have no statutory right to succeed because the tenancy began on or after 1 April 2012
- c) You are claiming to be a member of the tenant's family and you had been living with the deceased tenant for at least a year prior to their death, but your relationship is not listed within the statutory definition
- d) You had been living with the tenant as their carer
- e) You have accepted responsibility for the deceased tenant's dependents.

We will use the statutory succession framework as our guide for considering discretionary claims. This includes the definition of a family member, your household circumstances, the kinds of evidence of occupation we will require, and the checks we will carry out.

Before agreeing to grant a new tenancy, we will also consider:

- that the tenancy, prior to the tenant's death, had been managed satisfactorily (such as the rent was paid on time and there had been no complaints of nuisance or antisocial behaviour)
- that you would be eligible to register on Derby Homefinder (though actually registering will not be required unless we are supporting a move to other social housing)
- whether anyone moved into the property after the tenant died

Where the former tenancy was a demoted tenancy, we will consider how the behaviour of any members of the remaining household contributed to the reasons for the demotion and any incidents of antisocial behaviour since the tenancy was demoted.

What type of tenancy might I be given?

It would be an Introductory Tenancy.

- For most types of property this would become a secure tenancy automatically after 12 months (subject to it been managed satisfactorily within that period).
- For a property that has 4 or more bedrooms or has been substantially adapted (for which you are eligible) the introductory period will be followed by a flexible (fixed term) tenancy.

Where we decide to offer you a new tenancy this may be for the current property or a different property.

What if the property would be underoccupied?

We will consider granting you a new tenancy where:

- There would not be more than 1 bedroom in excess of the number of bedrooms necessary for your household.

- Your household is eligible for the type of property for which we are considering granting a tenancy, for example, you would not be eligible as a single person for a 2bed house.

Please be aware that Housing Benefit for working-age tenants in social housing with more bedrooms than deemed necessary for their household will be subject to an under-occupation charge.

Our approach to your claim for a “discretionary succession” will consider your needs and circumstances, whilst at the same time adopting a balanced and proportionate approach to our legal obligations to ensure the best use of social housing resources in Derby.