

Succession Policy

Date written: January 2013

Date(s) reviewed: February 2016; April 2019

Purpose:

To set out Bernicia's approach to granting successions and the circumstances in which it will do so, consistent with Acts of Parliament and the contractual terms within tenancy agreements

Scope:

This policy covers three different types of succession:

- Survivorship – when a joint tenant dies and the remaining joint tenant succeeds to the tenancy.
- Statutory succession – where succession rights are granted by law to a partner of a statutory/protected, secure or assured tenant or a family member of a statutory/protected or secure tenant.
- Contractual successor – where the Bernicia Group's tenancy agreement(s) give qualifying family members of assured tenants the equivalent rights of succession to secure tenants

Definitions: None

Associated documents:

Tenancy Agreement(s)
Succession Procedure
Equal Opportunity Policy
Tenancy Policy
Rent Act 1977
Housing Act 1985
Housing Act 1988
The Civil Partnership Act 2004

Date for review: April 2022

Responsibility: Head of Housing

Policy

1. Introduction

- 1.1 Succession occurs when a sole tenant dies and an eligible partner or qualifying member of his or her family takes over the tenancy, or when a joint tenant dies and the surviving partner succeeds to the tenancy, known in law as survivorship.
- 1.2 Protected, statutory, secure and assured tenants have different statutory and contractual rights. Bernicia will treat all classes of tenants and their possible successors in line with their respective rights.
- 1.3 The key aims of this policy are to:
- Ensure that the legal requirements for dealing with claims for succession are followed.
 - Ensure that the wrong tenancy status is not inadvertently created.
 - Ensure that a successor's rights are upheld and that complaints against Bernicia are minimised as a result.
 - Ensure maximum rent and service charge income through effective and efficient management of succession claims.
 - Give clear support and guidelines to officers dealing with sensitive issues following the death of a tenant.
 - Ensure that Bernicia's stock is used effectively in the way successions are managed.

2. Policy statements

- 2.1 The following chart sets out the rules relating to succession for tenancies granted before the coming into force of the Localism Act 2011. After the Act came into force on 1 April 2012, statutory succession to secure tenancies will be limited to spouses, civil partners and cohabitants but local authorities will have the power to grant more generous succession rights through the tenancy.

	Rent Act 1977	Housing Act 1985	Housing Act 1988
Type of tenancy?	Protected and statutory tenancies.	Secure and introductory tenancies.	Assured tenancies, including assured shorthold tenancies.

	Rent Act 1977	Housing Act 1985	Housing Act 1988
Who can succeed?	Spouse, civil partner, cohabitee, member of family (not defined).	Spouse, civil partner, member of family (defined and includes cohabitee).	Spouse, civil partner, cohabitee.
Conditions	Spouse/civil partner/cohabitee must be residing in premises immediately before death. Family member must be residing in premises for two years before death.	Spouse/civil partner must be occupying as only or principal home at the time of death. Cohabitee/family member must have been residing with the deceased for 12 months before death and be occupying premises as only or principal home at time of death.	Must be occupying as only or principal home immediately before death.
What kind of tenancy does successor get?	Spouse/civil partner/cohabitee gets statutory tenancy. Family member gets assured tenancy.	The tenancy of the deceased: secure or introductory tenancy.	The tenancy of the deceased: assured or assured shorthold tenancy.
Number of successions	Two are possible only if first succession (to a statutory tenancy) is by spouse/civil partner/cohabitee and second succession (to an assured tenancy) is by a person who is a family member of both original and the successor tenant.	One only. Joint tenancy becoming sole tenancy = one succession. If there has been an assignment to a potential successor no 'further' successions possible.	One only. Only a sole assured tenancy carries a right of succession.

2.2 Bernicia operates a 'non statutory' succession scheme, the terms of which are contained within Assured and Assured Shorthold (Starter) tenancy agreements. In all cases the tenancy agreement should be checked to determine the succession rights granted at the demise of the tenancy.

2.3 Bernicia may in exceptional circumstances grant a new tenancy to someone who was living with the tenant at the time of their death where there is no right of succession in law or under the terms of the tenancy agreement. This is referred to as a discretionary succession but is actually the creation of a new tenancy which will be an Assured Shorthold (Starter) tenancy.

The Right to Succession

- 2.4 With the exception of tenancies granted under the Rent Act 1977, the law provides for one succession only as does Bernicia's Tenancy Agreement. Therefore there will generally be no one with a right of succession if the deceased tenant was a successor themselves (including succession by survivorship).
- 2.5 If the tenant had the tenancy assigned to them through a mutual exchange and there was no previous succession on their previous tenancy, a qualifying successor would be able to succeed regardless of whether the tenant they exchanged with was a successor.

Requests to Succeed

- 2.6 A successor to a tenancy may be married, a civil or cohabiting partner, or a qualifying family member.
- 2.7 A potential successor will need to submit their succession request to Bernicia within one month of the date of the tenant's death. The tenant's death certificate and proof of relationship must be provided in all cases and for family members additional proof of 12 or 24 month's residency at the property is required.
- 2.8 A statutory succession happens in law, automatically therefore Bernicia will not be in a position to refuse it should the successor apply late.
- 2.9 If more than one person is entitled to succeed and there is no married, civil or cohabiting partner who is entitled to succeed, then the other members of the tenant's family must decide between themselves who is to succeed. In the absence of agreement, Bernicia will consider the competing claims and make the decision.
- 2.10 Where there is no statutory successor the tenancy does not end but becomes part of the tenant's estate. In these circumstances, it must be brought to an end by a Notice to Quit served on either:
- The executor of the estate if there is a will.
 - The Public Trustee if there is no will.

Different Types of Succession

Joint Tenants and Survivorship

- 2.11 On the death of one joint tenant, the other tenant succeeds to the tenancy, known in legal terms as survivorship. This is automatic and does not need landlord approval.
- 2.12 The remaining tenant inherits all the rights and responsibilities of the previous joint tenancy. In effect they are now a sole tenant. Under common law this occurs even where the surviving joint tenant no longer resides in the property, although in this scenario they do not have any security of tenure. In this scenario the surviving tenant can either reinstate their security rights by returning to home or they can terminate the tenancy. Bernicia can, and will end the tenancy through the service of a notice to quit where the surviving tenant does not return to the home or does not terminate the tenancy.
- 2.13 In survivorship the remaining tenant is liable for any rent arrears.

Married, Civil and Cohabiting Partners

- 2.14 Successions of married, civil and cohabiting partners to both secure and assured tenancies are protected by law (statutory successions). If there is a remaining right to succession on the tenancy, this type of succession occurs automatically, in law at the point of death.
- 2.15 Under law, priority is given to a married or civil partner or person living as if they were the married or civil partner, over other qualifying members of the tenant's family, provided that they occupied the property as their only or principal home when the tenant died. The 12 month residence period may not apply in this case.

Qualifying Family Members

- 2.16 For protected, statutory and secure tenancies successions of qualifying family members are protected by law (statutory successions). For assured tenancies, successions to qualifying family members are granted contractually through the tenancy agreement(s) by Bernicia.
- 2.17 A qualifying member of the tenant's family is defined as:
- Parent or grandparent.
 - Child (including adopted child) or grandchild.
 - Brother or sister.
 - Uncle or aunt.
 - Nephew or niece.
- 2.18 Step and half relatives will be treated as full relatives.

- 2.19 Under the Housing Act 1985 (secure tenants) family members include cohabitants. The definition of cohabitant is defined as a person who is living with the tenant as their husband or wife or as if they are civil partners.
- 2.20 The family member must have lived at the property with the tenant for 12 or 24 months before the tenant's death, using it as their only or principal home. Cohabitants of secure tenants will therefore have to fulfil the 12 month residency criteria.

Discretionary 'Succession'

- 2.21 In some circumstances Bernicia may grant a discretionary tenancy to a claimant where we are not legally or contractually obliged to. The circumstances include:
- Where the succession right on the tenancy has not been used up but the person applying would not usually qualify to succeed (for example a carer living at the property, or a non-family member taking care of the tenant's dependants).
 - Where the succession rights on the tenancy have been used up but there is a claimant who would otherwise qualify to succeed (for example where a son or daughter has been living at the property their whole life).
- 2.22 If an application for discretionary succession is made Bernicia will consider it carefully and only refuse it if it is reasonable to do so. Various criteria will be used in this process.
- How long the claimant has lived at the property (a mandatory 12 months will apply).
 - The potential successor's circumstances, where undue hardship or distress may be caused.
 - The potential successor's suitability to the property, where there may be a question of adaptations in the property or under occupation.
 - Their ability to pay rent and sustain the tenancy.
 - Whether they had priority need and would be eligible for rehousing by the local authority under the Homelessness Act 2002.
- 2.23 In every discretionary succession case a new Assured Shorthold (Starter) tenancy will be granted.

Best Use of Stock

- 2.24 Bernicia will reserve the right to oppose the succession of a tenancy to make best use of the stock. This typically will be to prevent under occupation or where the property has been adapted for use by a disabled person.
- 2.25 The exception would be when a surviving joint tenant or spouse or partner takes the tenancy of the property by right.
- 2.26 In all other succession cases, Bernicia may request that the successor moves to alternative accommodation, as long as it is reasonable to do so and suitable alternative accommodation can be offered.
- 2.27 Where the successor is unwilling to move voluntarily, Bernicia may seek to enforce it through the courts using the relevant grounds in the Housing Acts.
- 2.28 These are discretionary grounds whereby Bernicia must prove in Court that it is reasonable to make the order and suitable alternative accommodation is either available or will be available at the time of the order.

Illegal Occupation

- 2.29 In some cases occupiers who have had their application to succeed refused may still be in residence. Bernicia will serve a Notice to Quit (NTQ) to end the tenancy and attempt to recover the property at its expiry.
- 2.30 Bernicia can use a mandatory ground for possession, but proceedings for possession must be commenced no later than twelve months after the death of the tenant (or the court accepts that the landlord became aware of the death of the tenant).

Rent Charges and Arrears

- 2.31 As statutory successions do not create a new tenancy, the existing rent charge will continue to apply to a successor.
- 2.32 A contractual successor will pay the rent currently being charged on the tenancy of the deceased tenant.
- 2.33 Where a new assured tenancy has been created on a discretionary basis, the new tenant will be charged the relet rent for the property along with the relet service charge.
- 2.34 Where the succession is claimed by way or survivorship, the remaining sole tenant becomes liable for the deceased tenant's rent arrears and likewise will inherit the deceased tenant's rent credits.
- 2.35 Any rent credits or arrears on a tenancy that has been succeeded to by way of statutory succession (not including survivorship) become a debt owed by/to the deceased tenant's estate and cannot be claimed from/by the successor.

- 2.36 In the same way rent credits or arrears belonging to a tenancy succeeded to by way of a contractual or discretionary 'succession', belongs to the deceased tenant's estate and cannot be transferred to the successor.
- 2.37 Bernicia will record all requests to succeed a tenancy and note the reasons for approval or refusal.

3. Responsibility for implementation

- 3.1 It is the responsibility of the Head of Housing (North & South); the Retirement Housing Manager or the Assistant Director (Care & Support) to ensure that this policy is carried out efficiently with the support of Service Managers/Co-ordinators and Housing Officers.

4. Actioning the policy

- 4.1 This policy will be actioned in response to all claims for succession.

5. Monitoring the policy

- 5.1 Bernicia will record all applications for succession and note the reasons for approval or refusal.

6. Resources

- 6.1 There are no resource implications as a consequence of this policy as all actions will be delivered by existing resources.

7. Equality and Diversity

- 7.1 An equality and diversity impact assessment has been undertaken on this policy. In carrying out our services, we are committed to:
- Treating all customers and employees positively regardless of any personal characteristics including gender, age, ethnicity, disability, sexuality, gender reassignment or religion.
 - Taking seriously all complaints and investigating and responding accordingly.
 - Using plain language and providing information in other languages, large print, audio and Braille on request.

Uncontrolled if printed – This may not be the latest version of the policy

All policies must be printed from Connect only – please make sure it is the latest version.