

	<b>Title</b>	EST02 Succession Policy and Procedure		
	<b>Reference</b>	Volume 2	<b>Owner</b>	Guy Stovold
	<b>Approved by</b>	Holly Dagnall	<b>Approval date</b>	27/09/2021
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	<b>Advice</b>	Read changes in red		

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## 1. Purpose and scope

- 1.1 In the case of a death of a customer, it is the policy of NCHA to grant rights of succession to other occupiers within legislative requirements and the Conditions of the Tenancy Agreement. Secure, Assured tenancies have different succession rights for the remaining occupiers. This policy aims to clarify these rights for occupiers left in a property.
- 1.2 Some occupiers have rights to succeed a tenancy. Where there is no legal right to succession, NCHA may grant occupiers extra contractual rights of succession. These rights will stem from the tenancy agreement rather than from statute.
- 1.3 Both secure and assured tenancies carry with them only one right of succession.
- 1.4 It is the policy of NCHA to have efficient procedures for dealing with succession rights. This procedure must also comply with legal requirements.

## 2. Responsibilities and risk

Head of Communities  
Estates Service Manager  
Estates Officers  
Income Service Manager  
Income Officers

**This policy will reduce the risk of failure to meet legal and regulatory requirements and customers being treated unfairly or inconsistently.**

## 3. Policy details and guidance

- 3.1 Secure, Assured tenancies have different succession rights for the remaining occupiers. This policy aims to clarify these rights for occupiers left in a property.
- 3.2 Some occupiers have rights to succeed a tenancy. Where there is no legal right to succession, NCHA may grant occupiers extra contractual rights of succession. These rights will stem from the tenancy agreement rather than from statute.
- 3.3 Both secure and assured tenancies carry with them only one right of succession.
- 3.4 In line with 1, it is the policy of NCHA to have efficient procedures for dealing with succession rights. This procedure must also comply with legal requirements.

### Right of Succession for Secure Customers

- 3.5 The Housing Act 1985 Part 4 (Secure) makes provision for succession on the death of a customer. The Act allows ONE succession by a spouse or “other family member”.
- 3.6 Section 160 of the Localism Act 2011 inserts a new Section 86A into the Housing Act 1985 which states that statutory succession to a Secure tenancy entered into after April 2012 only applies to the spouse or civil partner of the deceased customer who was living in the property as their only of principal home at the time of the customer’s death. The statutory Right of Succession of a member of the family has been removed for new tenancies.

- 3.7 A spouse is a person to whom the late customer was legally married or a person who lived with the deceased as “husband or wife”.
- 3.8 On the death of a customer, if there is a right to succeed, the tenancy will automatically pass to their “husband or wife” whether or not they are a joint customer.
- 3.9 In line with our Equal Opportunities Policy and the statutory requirements NCHA will also treat same sex couples the same as those in heterosexual relationships. If joint customers of the same sex have married then the definition of “spouse” applies.
- 3.10 Other family members also include; parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece. Relationships through marriage are treated as relationships by blood or half blood, step relationships and children of common law relationships count as if full blood.
- 3.11 Should there be no spouse, family members have no right to succession unless they have been living in the property for 12 months, as their only or principal home, up to the date of death of the customer. NCHA will need proof of this, e.g. household bills or other proof of residence. The family member must also provide a copy of the death certificate.
- 3.12 The succession date is the date of death. No new tenancy is created and the occupier will inherit the existing secure tenancy.

#### **Right to Succession for Assured Customers**

- 3.13 For all assured tenancies created before 1 April 2012 the Housing Act 1988 Section 17 makes provision for succession on the death of a customer. The Act allows ONE succession by a spouse or someone living with the customer as his or her husband or wife (including civil partners)
- 3.14 Only the spouse or co-habitee has a right of succession. In line with our Equal Opportunities Policy and the statutory requirements, NCHA will also treat same sex couples the same as those in heterosexual relationships. If joint customers of the same sex have married then the definition of “spouse” applies.
- 3.15 Co-habitees and spouses do not have to prove length of residency.
- 3.16 The succession date is the date of death. No new tenancy is created and the occupier will inherit the existing assured tenancy.
- 3.17 Although other “family members” have no right to succeed to an assured tenancy, NCHA are prepared to exercise their discretion and will consider, depending on the circumstances of each case, allowing a family member to succeed rather than deprive family members of their home following the death of the customer.
- 3.18 NCHA will consider allowing an adult member of the family to succeed to the tenancy even if they have no legal right of succession.
- 3.19 This decision will be made by the Head of Affordable and Social Housing / Service Manager (Estates).

- 3.20 The decision is therefore discretionary and will be judged on a case by case basis, taking all issues into consideration
- 3.21 As provided for under the terms of the tenancy the right of a family member to succeed is only available if they have lived at the property in the 12 months prior to the customer's death. If that is the case then NCHA will go on to consider the factors set out below in deciding whether or not to allow the family member to succeed to the tenancy.
- 3.22 Factors to be taken into consideration could be:
- length of time they have lived in the property (proof of at least 12 months)
  - the property is their only or principal home
  - age – over 18?
  - relationship to customer
  - have they been caring for the customer?
  - can they sustain a tenancy?
  - other options for housing
  - have they taken on responsibility for customers' children
  - there have been issues involving anti-social behaviour involving the proposed successor, members of their family or visitors to the property
  - whether the proposed successor has any former customer arrears with NCHA
- 3.23 This is not an exhaustive list of factors and NCHA will take into account all relevant factors in the context of their duty to fairly allocate properties within their housing stock.
- 3.24 If the succession is approved the person succeeding will inherit the assured tenancy. It is not a new tenancy.
- 3.25 If NCHA decide that the proposed successor cannot succeed to the tenancy then they can ask for a review of that decision. The review will be carried out by a Service Manager or higher ranking NCHA officer who has had no prior involvement with the case. The proposed successor must, within 14 days of receiving notification of NCHA's decision, make written representations as to why they believe the decision not to allow the succession should be reversed. The officer who considers the request for review will notify the proposed successor of their decision within 14 days of receipt of the written representations.
- 3.26 Following the amendment of Section 17 of the Housing Act 1988 by the Localism Act 2011, for any assured periodic tenancy created after 1 April 2012, because NCHA have a clause in our assured periodic tenancy agreement which makes provision for a person other than a spouse or civil partner to succeed then such a tenancy will pass to a member of the deceased customer's family as long as they have lived with the customer in the property and it was their only or principal home in the period 12 months before the death of the customer.

### **Exemptions to the Right of Succession**

- 3.27 There is no right of succession if the customer who died:
- was a successor him/herself

- if the deceased was a joint customer, the customer automatically vests in the surviving joint customer. This change from joint to sole tenancy counts as one succession and thus the right cannot be extended to another family member
- had the tenancy assigned under S.24 of the Matrimonial Causes Act 1973 by a partner who was a successor
- had the tenancy assigned to them through a mutual exchange and had been a successor in the previous tenancy

### **Limits to the Right of Succession**

3.28 NCHA may legally ask an occupier to move to alternative accommodation even if they have the right to succeed if:

- the property has been adapted for someone with physical disabilities and the successor does not need the adaptations
- the property is excessively large for their needs and the successor is not the spouse of the deceased customer

3.29 The decision to offer alternative accommodation will only be made in rare circumstances and the decision must be approved by the Head of Affordable and Social Housing/Service Manager (Estates).

### **Competing Claims for Succession**

3.30 If there is a joint customer in the property, no other occupier can claim succession rights.

3.31 If there are several joint customers, then all the remaining customers will have the right to succeed.

3.32 In an assured tenancy where there is no automatic right to succession and there are a number of other family members, NCHA will ask the household to make the decision as to who will claim succession. If they cannot do this, the Head of Affordable and Social Housing/Service Manager (Estates) will use their discretion to decide who will succeed.

## **4. Supporting documentation and key legislation**

4.1 Forms  
Succession Notes  
Letter granting use / occupation of the property

4.2 Guidance  
None

4.3 Legislation  
[The Housing Act 1985](#)  
[The Housing Act 1988](#)  
[Localism Act 2011](#)  
[Matrimonial Causes Act 1973](#)

4.4. Related policies  
None

**5. Monitoring and reporting**

N/A

**6. Definitions**

N/A

**7. Equality and diversity**

7.1 This procedure has been written in line with NCHAs Equality, Diversity and Inclusion Policy and Equality Statement.

7.2 This policy is supported by an Equality Impact Assessment

**8. Appendices**

None

**9. Policy Approval**

9.1 This policy has been approved prior to issue by the Director of Homes and Wellbeing or if applicable by NCHAs Board or Customer Committee.