

Brentwood Borough Council

Succession Policy

September 2022 - 2026

Introduction

Succession is the legal right of a qualifying person to take over a secure tenancy on the death of the current tenant.

The Council will allow one succession in the lifetime of a secure tenancy as laid out in the Housing Act 1985.

This Succession Policy also reflects the amendments in the Localism Act 2011 which allows for the right to succeed to be limited to the married or civil partner of a tenant or those living with a tenant as if they were a married or civil partner. For the purposes of this Policy we call these people cohabitants.

Any secure successions that took place prior to 03/10/1980 are exempt from this ruling and will not be counted.

Key Issues for Statutory Succession

- Only one succession per tenancy is allowed. Therefore, if a tenant is already a successor the tenancy cannot be passed on again
- Tenancies cannot be 'gifted' in a will
- Where there is a joint tenancy and one tenant dies then this is classed as a succession of tenancy
- Where a request is made to change a joint tenancy to a sole tenancy then this is classed as a succession of tenancy
- Use and occupation charges (Mesnes Profits) equivalent to the normal rent due will be chargeable during any period of occupation of a property by any person/s following the death of the current tenant

Succession rights for a person cohabiting with a secure tenant

For tenancies that started on or after 1 April 2012; the remaining cohabitee can succeed to the tenancy if they were residing in the property as their sole or principal home when the tenant died.

For tenancies that started before 1 April 2012; the remaining cohabitee can inherit the tenancy if they were residing in the property as their sole or principal home at the time the tenant died, and they were living together in this way for at least 12 months before the tenant died.

Succession rights of relatives of a secure tenant

For tenancies that started on or after 1 April 2012:

A right of succession to another family member is only possible if the tenancy agreement says this is allowed.

For tenancies that started before 1 April 2012:

A relative may succeed to the tenancy if:

- The property was their sole or principal home when the tenant died
- The tenant did not have a spouse or civil partner who can inherit the tenancy
- They were living with the tenant at the property for at least 12 months before they died
- Time spent living together elsewhere under a tenancy at another Brentwood Borough Council property counts

Relatives who can inherit a council tenancy that started before 1 April 2012 include:

- Parents or grandparents
- Child or grandchild
- Brother or sister
- Uncle, aunt, nephew or niece
- Step-relations, half-relations and in-laws are also included, but not foster children

Disputes about who can succeed to the tenancy

The husband, wife or civil partner will always take priority over anyone else unless it is a joint tenancy when the tenancy continues in the name of the other joint tenant.

If there is a choice between qualifying relatives, they can decide among themselves who succeeds to the tenancy. Two or more relatives cannot succeed together as joint tenants.

If they cannot agree, the Council will make the decision.

If there is a right of succession but the inherited home is too large

The Council will ask the successor to move (with the exception of a surviving spouse/civil partnership or joint tenancy).

The Council will provide one offer of suitable alternative accommodation, if the property is larger than needed by the successor and the family living with them at the date of succession. Eviction will only take place if this offer is refused and the Council obtains a possession order at the county court.

With effect from 1 April 2012 a new ground for possession (15A) has been introduced into Schedule 2 to the Housing Act 1985 by Section 162 of the Localism Act 2011. A landlord wishing to use this ground against a successor must serve Notice of Seeking Possession or

begin proceedings no sooner than six months after the death of the previous tenant and not later than 12 months after the death, or the date upon which they learn of the death if later.

Where there are no succession rights

The Council will give notice to leave at any time following the tenant's death or the date it became aware of the tenant's death if this is later.

Succession rights if the council tenancy is not a secure tenancy

The rights to inherit a flexible tenancy are the same as those for secure council tenancies that started on or after 1 April 2012.

The rights to inherit an introductory tenancy are the same as those for secure council tenancies that started before 1 April 2012.

Husbands, wives, civil partners, cohabitees and close family members can inherit a tenancy demoted for antisocial behaviour if they lived with the tenant for at least 12 months before they died.

Temporary accommodation

There are no rights to succeed to an occupancy agreement of temporary accommodation granted after a homelessness application made by the person who died.

Local Policy

Where a statutory succession has already taken place the Council may give consideration of granting a new tenancy where a child or spouse or civil partner (as amended by the Civil Partnership Act 2004 (Schedule 8 (20) 24/05/07) of the deceased can demonstrate;

- They were living with the tenant for at least 10 years before they died.
- The tenancy was their sole or principal home when the tenant died.
- The tenant did not have a spouse or civil partner who can inherit the tenancy.
- Who apart from the 'one succession rule would otherwise have had the right to succeed

The burden of proving consecutive residency for the required ten years will fall to such a person (called the applicant for the purpose of this policy) who is requesting a new tenancy and not the Council.

Only household occupants who were living with the tenant before they died will be considered part of the applicant's household.

Please note that this is a local policy with no statutory rights for a new tenancy. Each case will be considered on the basis of its own facts and circumstances with no obligation upon the Council to offer a new tenancy.

If approved a new introductory tenancy will be offered, but if the Council is of the opinion that the particular property falls within any of the below categories then we will refuse a new tenancy to that property:

- The Council considers the property to be significantly adapted or located within certain types of accommodation that the applicant or accepted members of his/her household have no age disability medical or other requirement for
- The property is not in accordance with the applicant's household need, i.e. under-occupation
- The type of property would not be allocated to the applicant under our allocations policy from time to time

We will advise the applicant accordingly of that the decision and that they may join the Council's housing register as a homeseeker. Please refer to our allocations policy.

If you don't have the right to succeed to the tenancy

The Council will ask any remaining occupant to leave following the tenant's death if the remaining occupant does not have the right to succeed to the Council tenancy.

The Council will take action to evict the remaining occupant/s if they continue to live in the property after the death of the tenant and they do not have the right to do so.

If vacant possession is not given then the Council will take action in the county court to recover possession of the property and the costs of doing so. This type of possession claim is mandatory meaning the court must grant the Council possession.