

Tenancy Succession

A guide for Tenants and Their Families



This guide gives advice about who can succeed to a tenancy upon the death of a council tenant. It explains the process that Wigan Council follow when dealing with a request to succeed to a tenancy.

What is tenancy succession?

When a Council tenant dies, it may be possible for a husband/wife/civil partner, or other family member to take over the tenancy. This is known as succession. A person who has succeeded to a tenancy is called a successor. Succession can only occur following the death of the tenant. If the deceased person was a joint tenant, the only person who may be able to succeed the tenancy would be the remaining joint tenant. A succession can only happen once. This means that if the deceased person was a successor (including a previous joint tenant), there cannot be a succession by another family member. The Council's policy on succession reflects the legal position and the rights of successors as laid out in the Housing Act 1985.

Which family members are eligible to succeed to a tenancy?

The following family members may succeed to a tenancy: A family member under the age of 18 can also succeed to a tenancy, subject to the usual conditions of succession being met. In such cases, a trustee would need to be agreed to hold the tenancy in trust for the child. This could be a family member or the local authority.

As well as the person being a family member, there are other conditions that must be met to allow a succession to take place.

- Husband/Wife
- Uncle/Aunt
- Civil partner (civil partners are same-sex couples who have formally registered their relationship under the Civil Partnership Act 2004)
- Unmarried heterosexual partners
- Niece/ Nephew
- Same-sex partners
- Grandfather/Grandmother
- Father/Mother
- Brother/Sister
- Daughter/Son
- Stepson/Stepdaughter
- Adopted child
- Grandson/Granddaughter

What conditions must be met to allow a succession to take place?

1. The deceased tenant must have been using the property as their only home before their death.
2. The person wishing to succeed to the tenancy must be a partner or one of the family members outlined above.
3. The person wishing to succeed must have lived with the deceased tenant for a minimum of the 12 consecutive months before the date of death.
4. If a husband/wife or civil partner wishes to succeed, they must have been living with the deceased tenant at the date of the death. The 12-month residence period will **not** apply in this case. .

When dealing with a succession request, the successor may be asked to provide evidence of any relationship to the deceased and also the length of residency at the property. Once approved, a succession will be backdated to the date immediately after the tenant's death. Examples of the type of information that will be accepted proof that you have lived at the property include letters from the DWP, wage slips, bank statements and utility bills.

Can more than one person ask for succession to the same tenancy?

The law does not allow for two or more people to succeed to a tenancy. Only one person can be granted succession. In the case of an existing joint tenancy, the successor may be the remaining joint tenant. Where more than one person applies for succession and there is no remaining joint tenant, the law gives preference to the tenant's spouse or civil partner, above any other family member. Where more than one person applies for succession and there is no spouse or civil partner eligible to qualify, the family members must decide between them who will succeed. If they are unable to agree, the Council will make the decision. The Council's decision is final.

When will a succession not be allowed?

A person cannot succeed to a tenancy if any of the following apply:

1. The deceased tenant had previously succeeded to the tenancy (including a person who was joint tenant and later became a sole tenant after the other joint tenant died).
2. There had previously been an assignment of the tenancy or property adjustment order under the Family Law Act.
3. The deceased person had been living alone.
4. The deceased tenant had left the property and was not using it as their only home.
5. The deceased tenant had left the property and been admitted to hospital or a residential home for long-term care or treatment.
6. Where court proceedings had previously been commenced for possession of the property and a possession order had been granted which ended the tenancy.
7. The applicant asking for succession is unable to prove their relationship to the deceased tenant, or their period of residence at the address.

Once a family member has succeeded to a tenancy, can they continue to live at the property permanently?

If a husband/wife or civil partner has succeeded to a tenancy, they will be allowed to stay in the property on a permanent basis, subject to the terms and conditions of the tenancy. However, if the successor is another family member (including unmarried partners and unregistered same-sex partners) the Council can legally move them to smaller accommodation if the property is larger than they need.

If a person has been living at the property but does not meet the succession criteria following the death of the tenant, it is likely that they may have to move out and find their own accommodation. There are limited circumstances where the person may qualify for alternative housing assistance. Examples are as follows:

1. If the applicant has lived with the deceased person for at least the five consecutive years prior to the death of the tenant and provided them with a high level of personal care. Full details of the care provided would have to be supplied as well as evidence of any formal Carer Allowance and/or Attendance Allowance benefits that may have been received.
2. If the applicant will be considered to be a vulnerable homeless person, and in priority need, if they were forced to leave the property. Any consideration as a homeless applicant will be in line with the homeless legislation.

How do I apply for succession and what will happen next?

If you already have this guide, you may have already applied for succession. If you want to apply, contact Wigan Council (01942) 489005 Email: myhome@wigan.gov.uk and speak to the Tenancy Management Officer responsible for the tenancy that you would like to succeed to. We understand this may be a very distressing time for you, following the sad loss of a family member. In addition to applying for a succession, it may be the first time that the Council has been notified about the death of the tenant.

To apply for succession, you need to complete and sign a 'Request for Amendment of Tenancy Application form for Succession', which is available from Wigan Council. The Tenancy Management Officer can help you complete the form. You will need to provide evidence to confirm any information supplied. The Tenancy management Officer will explain what documents are needed. Once you have provided the necessary information and documents Wigan Council will make a decision.

Wigan Council may contact other organisations and agencies to confirm any of the information provided by you. This may include The Department of Work and Pensions, Social Security, Housing Benefits and the Crime and Anti Fraud Team. In some cases, it may be necessary for you to provide more information or to attend the office for an interview. If there is a delay in the Council receiving this information or you do not attend the interview, the case may be put on hold.

What will happen if I am allowed to succeed to the tenancy?

If the Wigan Council is able to approve your request to succeed you will be sent a letter of confirmation. We will then arrange the following:

1. The Tenancy Management Officer will contact you within seven days to sign the necessary tenancy paperwork.
2. You will need to sign an 'Acknowledgement of Succession' agreement. This finalises the succession and formally recognises you as the successor. It is not a new tenancy agreement.
3. The existing rent account will be transferred into your name and you will be provided with a rent payment card.
4. If you are on a low income, you may need to apply for Housing Benefit and Council Tax Benefit.
5. If you are in a property larger than you need, you may be transferred to alternative smaller accommodation and we will make contact with you to discuss this further.

What will happen if I am not allowed to succeed to the tenancy?

If the Wigan Council is unable to approve your request, you will be sent a letter with full details of the decision. The following will take place:

1. Wigan Council and their Legal Services Team will commence proceedings to recover vacant possession of the property.
2. You, and any other occupant of the property, will need to make arrangements to leave the accommodation as soon as possible, and will be referred our Housing Options Team.
3. You will be expected to make payments for the use and occupation of the property, during the time that you have occupied the accommodation. In addition, you may also have to pay Council Tax.

I am allowed to succeed to the tenancy, but why do I have to move to smaller accommodation?

Wigan Council understands that the sad loss of a family member can be distressing and will take this into account when dealing with your case. In addition, we also understand that if a succession is approved, there may be an emotional attachment to the accommodation and that you would like to remain in the property.

However, the severe housing shortage has left the Council with many thousands of people living in overcrowded conditions and in desperate need of family-sized homes. This means if the property does have more bedrooms than you need, you may have to move to a smaller property.

Will I be able to choose where I live?

You may want to live in a particular area or in a similar location to your present home. In view of this, the Council will endeavour to give you as much choice as possible, subject to available accommodation.

What is the process for moving to smaller accommodation?

During the succession assessment process, the Wigan Council officers will tell you whether or not you may have to move. However, we will first need to decide whether you are legally entitled to succeed to the tenancy. If the succession is approved, the tenancy will be transferred into your name. Once this is done, we will start to re-house you. This may involve Wigan Council serving you with a formal Notice of Seeking Possession. This may be served between six and 12 months following the date of the tenant's death.

In some cases, a Notice of Seeking Possession may be served while a succession request is being assessed. In such circumstances, this will be served on a 'Without Prejudice' basis. Initially, a Notice of Seeking Possession is only served to protect the Wigan Council interest. You should not worry unnecessarily at this stage, as we will only take further legal action (apply to the County Court for vacant possession of your property) if you fail to accept an offer of accommodation made to you.

Ordinarily, applicants can apply for vacant properties advertised through the Wigan Council Choice based letting. High priority will be awarded for a fixed period of three months and full details of the scheme will be given to you. You should carefully consider what properties you apply for as you will only be made one offer of alternative accommodation. If you do not choose a property or are unsuccessful, Wigan Council will make you one direct offer of alternative accommodation only. Please note that to make best use of the available housing stock, Wigan Council reserves the right to intercept and end the three-month high priority bidding period at any time with one direct offer of alternative accommodation only. Whatever happens, you will only receive one offer. If you accept an offer, the process will end once you formally vacate your current home and move into your new property.

What will happen if I refuse an offer of Alternative accommodation?

In most cases, applicants understand that Wigan Council needs them to move to more appropriate smaller accommodation. However, occasionally we have to resolve a case where an offer has been refused. In this case, Wigan Council will start legal action and apply to the County Court for a date for the possession proceedings to be heard. Wigan Council and the tenant will be expected to attend Court and give evidence as directed by the judge.

Additional Information.

1. Wigan Council will process all requests for succession as soon as possible. Any decision may be delayed if more information is needed from you or other departments and official agencies.
2. Wigan Council will deal with your request in a sensitive manner and will ensure that you are provided with written confirmation of all decisions relating to your case.
3. All decisions will be made by a Wigan Council Manager.
4. You will be interviewed by an officer from Wigan Council when you make a request for succession.
5. You may ask to discuss your case and check on the progress of your succession request during any part of the process. You may also request an interview if you wish.
6. You have the right to seek your own independent advice if you would like further information regarding the process, your rights, or Wigan Council obligations to you.
7. We are committed to ensure that you receive a high quality service and are treated fairly and with respect by our staff. If you are unhappy about any aspect of the service provided to you, please let us know by telephone on (01942) 489005 or email: myhome@wigan.gov.uk.