



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. The Council's policy on succession reflects the legal position and the rights of successors as laid out in the Housing Act 1985. As amended by the Localism Act 2011.

What is tenancy succession? When a Council tenant dies, it may be possible for a husband/wife/civil partner, or another family member in certain circumstances, 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. The tenancy automatically transfers to the remaining tenant, and they will become the sole tenant. The legal term for this is 'survivorship'.

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 law does not allow for two or more people to succeed to a tenancy. Only one person can be granted succession. 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.

Which family members are eligible to succeed to a sole tenancy?

Tenancy beginning before 1st April 2012

The following family members may succeed to a tenancy: sec 113 housing act 1985

- 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/same-sex partners
- Niece/Nephew
- Grandfather/Grandmother
- Father/Mother
- Brother/Sister
- Daughter/Son
- Stepson/Stepdaughter
- Adopted child
- Grandson/Granddaughter

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:

1. The deceased tenant must have been using the property as their only home before their death.
2. 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.
3. 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 the length of residency at the property. Examples of the type of information that will be accepted proof that you have lives at the property include letters from the DWP, wage slips, bank statements and utility bills.

Tenancy beginning on or after 1st April 2012

For tenancies granted on or after 1st April 2012, the only persons who now have the right to succeed a tenancy are:

- Spouse
- Civil Partner
- Partner (including same sex)
- Joint tenants In addition to meeting one of the above, the successor must also have occupied the property as their only or principal home at the time of death of the tenant.

When dealing with a succession request, the successor may be asked to provide evidence of any relationship to the deceased and proof of residency at the property. Examples of the type of information that will be accepted proof that you have lives at the property include letters from the DWP, wage slips, bank statements and utility bills.

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 tenant had been living alone.
4. The deceased sole tenant had left the property and was not using it as their only home.
5. The deceased sole tenant had left the property and been admitted to hospital or a residential home for long-term care or treatment.
6. Where 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 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?

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. Tel: (01942) 489005 Email: myhome@wigan.gov.uk

You can also do this online via Amending / ending your tenancy (wigan.gov.uk)

Please contact a Neighbourhood Tenant Officer if you require help completing the form.

You may need to provide evidence to confirm information supplied. The Tenancy Management Officer will explain what documents are needed. Once you have provided the necessary information and documents Wigan Council will decide.

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 approves your request to succeed you will be sent a letter of confirmation. We will then arrange the following:

1. The Neighbourhood Tenant officer will contact you in due course 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, you will then need to request a bar code letter from the rent collections team.
4. If you are on a low income, you may need to apply for Housing Benefit and Council Tax Benefit or universal credit.
5. If you are in a property larger than you need, you may be transferred to alternative smaller accommodation, and we will contact you to discuss this further.
6. Once approved, a succession will be backdated to the date immediately after the tenant's death.

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

Wigan Council understand there may be an emotional attachment to the property and that you would like to remain in the property, however there is a severe housing shortage at present. There are many thousands of people living in overcrowded or homeless 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.

In addition to this, if you remain in a property with additional bedrooms, you will be paying a higher rent and/or liable for under occupancy charges.

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?

Ordinarily, applicants can apply for vacant properties advertised through the Wigan Council Choice based lettings www.wigan.gov.uk. Wigan Council can choose to award additional priority to assist with this. 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 end the additional priority bidding 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.

This process may involve Wigan Council serving you with a formal Notice of Seeking Possession. This is a formal process which will allow Wigan Council to apply to the County Court for possession proceedings of your property if you fail to accept a reasonable offer of accommodation made to you.

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

If 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 will contact you to make an agreement on a date you will be vacating the property. You, and any other occupant of the property, will need to plan to leave the accommodation.
2. You will be referred our Homeless Solutions Team. You can also contact them yourself via telephone on 01942 487732 or online via [Are you at risk of being homeless? \(wigan.gov.uk\)](http://www.wigan.gov.uk)
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. This will be confirmed in writing.
4. If you do not arrange to leave the property, the matter will be referred to our Legal Services Team who will commence proceedings to recover vacant possession of the property.

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 or 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 may 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