

Succession Policy



1. Scope

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. Succession also includes when a joint tenant dies and the surviving joint tenant succeeds to the tenancy, known at law as survivorship.

1.2. Clarion Housing Association (Clarion) recognises that following the death of a tenant, their family members will be upset and grieving and that any requests for succession need to be handled with sensitivity and care.

1.3. The policy covers three types of succession, and where we may use discretion where there is no right to succession:

1.3.1 Survivorship - where a joint tenant dies the tenancy continues in the surviving tenants' name. The remaining joint tenant is classified as a "successor" so there are no further succession rights e.g. if the tenant re-marries, their new spouse has no rights to succeed the tenancy. A new tenancy is not issued.

1.3.2 Statutory succession - where succession rights are granted by law to a partner of a Secure or Assured tenant or, where the tenancy was granted prior to 1 April 2012, to a qualifying family member of a Secure tenant where they are not a joint tenant.

1.3.3 Contractual succession - where the tenancy agreement provides qualifying family members of Assured tenants, or Secure tenants from 1 April 2012, rights of succession without the need for our consent or permission.

1.4. Should the tenant not be living at the property as their sole or principal home at the time of their death e.g. they have moved to a permanent placement in a care home, then there is no right of succession as the tenancy is no longer Assured. A discretionary offer of tenancy will be considered instead.

1.5. Where no family members qualify to succeed on either a statutory or contractual basis Clarion may consider, at our sole discretion, whether to offer a tenancy to the family member. Where we use our discretion to do this there will be no further succession rights. Sections 3.11 – 3.14 set out the criteria we will consider for making a discretionary offer of tenancy.

1.6. This policy applies to Clarion's general needs, supported and older people's housing for tenants with Assured, Secure and both periodic and fixed term Assured short hold tenancies. Licensees do not have succession rights. Shared ownership rights are addressed at section 3.10

2. Policy Objectives

2.1. Our tenants will have different succession rights depending on the terms and conditions of tenancy and type of tenancy agreement they have, but Clarion aims to provide a fair and efficient service when processing succession requests.

2.2. This policy aims to ensure that in considering requests for succession we:

- respond sensitively to residents at a time of grief and loss
- minimise periods of uncertainty for remaining household members
- meet our statutory and contractual obligations
- make the best and most efficient use of our available housing
- weigh up the demand for the property and the housing needs of the potential successor and other housing needs where there is no right of succession.

3. **Policy Statement**

3.1. **Definition of Family Members**

3.2. For the purposes of succession family members are defined as:

- Spouse
- Civil partner
- Parent
- Grandparent
- Children
- Grandchildren
- Siblings
- Uncle and Aunt
- Nephew and niece

3.3. These include step relations and half relations as well as persons living together as husband and wife or civil partners and their children.

3.4. **Survivorship**

3.5. In all cases, where there are joint tenants and one of the joint tenants dies, the tenancy will continue in the remaining tenant's name as a sole tenant. Survivorship will apply even if the other joint tenant had been a successor themselves. This right overrides any statutory or contractual rights of succession irrespective of whether the joint tenant lives at the property or not.

3.6. The remaining sole tenant will become a successor, which will usually prevent any further successions. In all cases of survivorship, the successor will keep the original tenancy agreement. Clarion may take action to end the tenancy if the remaining tenant does not live in the property as their only or main home: in those circumstances the tenant will lose their secure/assured tenancy status so a notice to quit can be served.

3.7. **Exceptions**

There are two general exceptions to the above:

3.7.1. Under the terms of various stock transfer arrangements there are a number of localised tenancy agreements where survivorship is not counted as a succession. In these circumstances, we will adhere to those rights as granted through the tenancy agreement itself.

3.7.2. Where two joint secure tenants were granted a tenancy and the first joint secure tenant died before 3rd October 1980, the law allows for one further succession on the tenancy.

3.8. Statutory and Contractual Succession

3.8.1. Secure tenancies granted before 1 April 2012

There can only be one statutory succession to either a surviving spouse, civil partner or partner, or a member of the deceased tenant's family. The definition of spouse in this context includes persons who have been living together as husband and wife or civil partners.

The potential successor must, at the time of death of the tenant have been occupying the property as their only or principal home. In the case of anyone other than a spouse/civil partner/partner it is also necessary for them to show that they have been residing with the late tenant throughout the 12 months prior to their death.

There can be no statutory succession if the deceased was already a successor.

3.8.2. Secure tenants granted on or after 1 April 2012

For any Secure tenancies granted on or after 1 April 2012, only the spouse, civil partner or partner who was living in the property as their only or principal home at the time of the tenant's death has a statutory right to succeed. There can be no statutory succession if the deceased was already a successor. The statutory right of succession of a member of the family has been removed by the Localism Act 2011.

Other family members can only succeed if there are contractual rights in the tenancy agreement and any contractual conditions are met. There is no longer a legal requirement for them to have occupied the property for any period of time prior to the tenant's death, so the period of occupation will be that required under the terms of the tenancy agreement. Priority for succession is given to a married, civil partner or partner over other qualifying members of the tenant's family.

3.8.3. Assured Tenancies (including periodic assured short hold tenancies)

There can only be one statutory succession to a surviving spouse or civil partner provided that immediately before the death they were occupying the property as their only or principal home. The definition of spouse in this context includes persons who have been living together as husband and wife or civil partners. There can be no statutory succession if the deceased was already a successor.

NB Protected Assured Tenancies set out additional rights to succession, so that any succession that occurred prior to stock transfer of the property from the local authority will not be a succession for the purpose of the tenancy agreement.

Other family members (and perhaps other associates) of an Assured tenant do not have a statutory right to succeed, but may have a contractual right under the tenancy agreement.

3.8.4. Fixed term Assured Short hold tenancies

The Localism Act amended the 1988 Housing Act (s17) to extend the statutory right of succession of Assured Tenants to tenants with a fixed term assured short hold tenancy of not less than 2 years. There is no contractual right of succession to Fixed Term Assured Short hold tenancies.

3.9. Inheriting the Tenancy

3.9.1. In addition to the above rights, it is possible for the tenancy to pass under an existing tenant's will or, if they die without leaving a will, through intestacy rules because a tenancy is an interest in land. If the beneficiary (i.e. the person to whom the tenancy passes) lives in the property as their only or main home at the time of death, they will inherit a secure/assured form of tenancy. Clarion may seek possession of such properties where there is no right of succession.

3.10. Shared Owners

3.10.1. If a shared owner resident dies, and the lease is in joint names, the lease transfers in to the sole name of the remaining leaseholder. If the lease is in the deceased resident's sole name, the part of the property that is owned will transfer to a person named as the beneficiary in the will. The rented part will transfer to any successor. Where these two people are different, the tenant will have the right to occupy and the beneficiary will have the equitable interest, which would only be realised when the property is sold. If there is no will, legal advice should be sought.

3.10.2 If there is no successor and no one to inherit the equity, then Clarion will obtain vacant possession and the equity will eventually pass to the Crown under the laws of intestacy. The shared ownership lease should be checked for any clauses relating to these situations and legal advice should be sought.

3.10.3 Clarion will require the successor to qualify for shared ownership under its policy at the time of becoming aware of the resident's death. If they are not eligible, depending on the terms of the lease, they may be required to sell their share.

3.11. Discretion to offer a tenancy

3.12. Clarion is under no obligation to offer a spouse, partner or family member a tenancy of the deceased's property, or any other Clarion property, if they have no statutory or contractual right to succeed. Clarion will, entirely at its discretion, consider offering a new tenancy to an applicant if there are exceptional circumstances. Paragraphs 3.13 and 3.14 below set out the minimum criteria which must normally be satisfied for a discretionary offer to be made. The minimum criteria are designed to provide consistency and transparency to our decision making, for our customers and our staff who may otherwise find themselves placed in a difficult position to make an offer of tenancy to somebody who has recently been bereaved.

- 3.13. If a spouse or partner cannot succeed to the tenancy because there has been a previous succession e.g. to a former spouse, then a discretionary granting of tenancy would normally be considered either at the deceased's property or another Clarion property, provided the following minimum criteria are met:
- the applicant had lived in the property with the tenant for the 12 months prior to their death as their only home.
 - the property is not considered too large nor too small for the applicant and his/her household in accordance with Clarion's Allocation Policy at the time of the request. If it is, we may consider suitable alternative accommodation if the remaining criteria are met.
 - the applicant has sufficient income to pay the rent.
 - the deceased tenant had no rent arrears at the time of their death, no ASB complaints against them (or their visitors or anyone living at the property) or other breaches of tenancy, and had kept the property in a clean and well maintained condition.
 - the applicant agrees to pay any arrears that have accrued since the tenant's death.
- 3.14. For other remaining family or household members who do not qualify to succeed the tenancy, we will normally expect the customer to meet the following criteria in deciding whether to grant a tenancy on a discretionary basis either for the deceased's property or another Clarion property:
- there has been no previous succession (e.g. an adult son or daughter who has no statutory or contractual right of succession who was living with their mother)
 - the deceased tenant was a parent or legal guardian of the applicant
 - the applicant has always resided in the property with the tenant as their only or main home since the tenancy start date or their date of birth whichever is more recent.
 - the applicant is 18 years of age or older, but 16 & 17 year olds will be considered if there is a suitable guarantor in line with our Allocations Policy.
 - the property is considered not too large nor too small for the applicant in accordance with Clarion's Allocation Policy at the time of the request. If it is, we may consider suitable alternative accommodation if the remaining criteria are met.
 - the applicant has sufficient income to pay the rent.
 - the deceased tenant had managed the tenancy well, had no rent arrears at the time of their death, no ASB complaints against them (or their visitors or anyone living at the property) or other breaches of tenancy, and had kept the property in a clean and well maintained condition.
 - the applicant agrees to pay any arrears that have accrued since the tenants' death.
- 3.15. For discretionary offers of a tenancy, the tenancy type offered will be in accordance with the Clarion Tenancy Policy. There will be no contractual rights of succession.
- 3.16. Where these conditions are not met we will set up a use and occupation account (once the existing tenancy has ended) and seek to repossess the property and offer advice to the occupier(s) on finding suitable rehousing.
- 3.17. Where the property is too large for the current occupier(s) under Clarion's Allocation Policy, if we were to consider an offer a tenancy at another property which we consider suitable alternative accommodation, we will only make one offer.

3.18. Vulnerable Household Members and Use of Discretion

- 3.19. In exceptional cases where the spouse / partner / household member being considered for a discretionary offer of tenancy is particularly vulnerable, we will give special consideration to the circumstances of the case and the individual's vulnerability so that reasonable steps can be taken to manage the applicant's circumstances.
- 3.20. Where there is a need for additional support from either internal or external teams in order to ensure appropriate safeguarding of the vulnerable person and their interests, appropriate referrals will be made.
- 3.21. In exceptional cases it may be suitable to consider the discretionary offer of tenancy at the original property or another Clarion property, for example where the original property has been adapted for an adult child with a disability who would not otherwise meet the discretionary offer criteria; or where another adult has accepted responsibility for dependent children of the deceased, but would need to permanently give up their current home in order to do so because their current home is not large enough for the children to move in with them. Consideration will be given to both the applicants and dependents circumstances and the needs and demand of other homeless households for the size and type of property being considered. However as a rule, vulnerability will not be a passport to overriding this policy, procedure, related law, regulation or rights as set out in the tenancy.

3.22. ID and Proof of Residency

- 3.23. Clarion will require evidence for ALL succession requests cases to confirm the identity of the person who is claiming succession, their relationship to the deceased, the length of residence with the tenant and for non –EU citizens their immigration status and entitlement to social housing.
- 3.24. The onus is on the potential successor to provide a sufficient level of evidence. Documents should cover the entire qualifying period. They MUST also provide the death certificate.
- 3.25. Clarion may also conduct other checks to ascertain who was residing in the property in the qualifying period prior to the tenants' death.

3.26. Mutual exchanges

- 3.27. Under a mutual exchange, tenants retain their own rights of succession. This means that if the tenant had the tenancy assigned to them through a mutual exchange, and had not already used up their own right of succession on their original tenancy they would be able to pass on their new tenancy through succession regardless of whether the tenant they exchanged with was a successor.

3.28. Under occupation

- 3.29. If a contractual succession would lead to under occupation as determined by Clarion's Allocation Policy, we will make one offer of suitable alternative accommodation. If that accommodation is not accepted, we may start legal proceedings to gain possession of the property.

3.30. If the successor remains in the property until a suitable offer can be made, the arrangements during that time will depend on whether a new tenancy has to be granted (in which case a use and occupation account may have to be set up) or the tenancy automatically passes to the successor, in which case, the successor will be required to pay rent.

3.31. Where it is a statutory succession or survivorship that results in under occupation, we will still discuss rehousing to a more suitable sized property with the new tenant as part of Clarion's efforts to make best use of our homes.

3.32. **Multiple Successors**

3.33. For all types of succession, only one person can succeed – two persons cannot succeed to a tenancy. For example, two qualifying family members cannot succeed to a tenant jointly.

3.34. Where more than one person claims a right of succession, Clarion will require them to resolve between themselves who will succeed the tenancy. If they are unable to decide who will succeed, it will be determined by:

3.35. For Secure tenancies, any spouse, civil partner or partner who has a right of succession will succeed over qualifying family members. If there is no spouse, civil partner or partner with a right to succeed but more than one family member has a right of succession, Clarion will decide. It will usually pass to the person who has resided in the property the longest as their main home.

3.36. For Assured tenancies granted prior to 1 April 2012, it depends on the provisions of the tenancy agreement as these determine who decides, but it will usually be Clarion.

3.37. For Assured tenancies granted on or after 1 April 2012, the potential Successors must apply to Court for the dispute to be determined.

3.38. **Disputed Succession**

3.39. Where we believe that there is no right of succession and there is no agreement to make a discretionary offer of tenancy, e.g. where an adult child of the deceased tenant is claiming to have lived in the property despite evidence to the contrary, Clarion will, if necessary, commence legal proceedings to obtain possession.

3.40. Whether or not someone is entitled to succeed to a tenancy is a question of fact, ultimately for the Court. Someone may succeed even though there may be substantial evidence suggesting that he/she was not there.

3.41. **Unauthorised Occupiers**

3.42. Once it has been decided that any remaining occupants have no right to succeed the tenancy, we will inform the occupants and the deceased's personal representative of our intention to seek possession of the property and serve a Notice to Quit.

3.43. In the interim we will set up a Use and Occupation account for the occupants to make payments to cover the rent charge once the original tenancy has ended (this is because the Assured status is lost, and the contractual tenancy ends once the notice expires).

3.44. Appeals against the decision

3.45. If an applicant wishes to challenge a decision on succession, they can do so in writing by email or letter. Where necessary, we will refer the tenant for support from an external agency to produce the appeal in writing.

3.46. The appeal must set out why they feel the decision is not justified. A relevant manager not involved in the original decision will review the decision and will only uphold the appeal if they find that legal requirements or Clarion's policy criteria are not met.

4. Key Legislation

4.1. The key legislation for statutory succession is:

4.1.1. Localism Act 2011 – amended succession rights for new tenancies to give the same statutory rights of succession to a married, civil or 'common law partner' (including same-sex partners) for both Secure and Assured tenancies starting on or after 1 April 2012.

4.1.2. Housing Act 1985 for Secure tenants

4.1.3. Housing Act 1988 for Assured tenants

4.2. Both Housing Acts were amended by the Civil Partnerships Act 2004 to extend statutory succession rights to same sex couples.

5. Compliance

5.1. Compliance with this policy will be monitored by regular sampling of succession cases.

6. System Entities and Process Flows

6.1. This policy relates to the Change of Circumstances process for Succession.

Associated Documents:

Tenancy Policy
Allocations Policy and Procedure

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