

Introduction and Overview

The purpose of this procedure is to guide staff through the succession process to ensure that succession to tenancy applications are processed in accordance with the legal provisions of the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014 and the contractual provisions contained within the Scottish Secure Tenancy Agreement.

Succession Procedures

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1. Legal Provisions

The Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014 contain the legal provisions that govern the right to succession of a Scottish Secure Tenancy (SST).

2. Qualifying Persons

The legislation provides for two rounds of succession and for each separate round of succession there can be three qualifying levels as detailed below:

Qualifying Person: Level 1

First priority is given to the tenant's spouse, civil partner, partner (cohabitants of either sex and including same sex cohabitants), or the surviving joint tenant. In the case of the spouse, civil partner or joint tenant the house must have been the person's only or principal home at the time of the tenant's death.

In the case of cohabitants, it is also a requirement that the house must have been the person's only or principal home throughout the twelve months ending in the tenant's death.

In order for a cohabitant to have the right to succeed to a tenancy after living in the house for twelve months, the 'qualifying person' or the tenant must have notified the Association that the person wishing to succeed to the tenancy is living in the house and the house is that person's only or principal home. The twelve month qualifying period does not commence until this notice has been provided. The tenant, any joint tenant or the person who has moved into the property is responsible for notifying the Association that the person has moved in.

Qualifying Person: Level 2

If no one qualifies or declines to succeed from the first priority group, then a member of the tenant's family aged at least sixteen will succeed where the house was the person's only or principal home throughout the twelve months ending in the tenant's death.

The list of possible family members includes grandparent, children (including step children), grandchildren, sister, brother, aunt, uncle, niece and nephew.

In order for A member of the tenant's family to have the right to succeed to a tenancy after living in the house for twelve months, the 'qualifying person' or the tenant must have notified the Association that the person wishing to succeed to the tenancy is living in the house and the house is that persons only or principal home. The twelve month qualifying period does not commence until this notice has been provided. The tenant, any joint tenant or the person who has moved into the property is responsible for notifying the Association that the person has moved in.

Qualifying Person: Level 3

If no one qualifies or declines to succeed from either the first or second priority groups then a carer may succeed.

A carer can succeed the tenancy provided the following conditions are met:

- The carer is at least sixteen years of age;
- The house was the carer's only or principal home throughout the twelve months ending in the tenant's death; and
- The carer has given up his / her only or principal home to care for the tenant, or a member of the tenant's household, for example a child with learning difficulties.

There is no definition of carer within the legislation. This is intentional to cover a broad range of caring arrangements, including both formal and informal arrangements. The legal position is aimed at protecting individuals who give up their homes to care, either for the tenant or a member of the tenant's family, from becoming homeless.

In order for A carer to have the right to succeed to a tenancy after living in the house for twelve months, the 'qualifying person' or the tenant must have notified the Association that the person wishing to succeed to the tenancy is living in the house and the house is that persons only or principal home. The twelve month qualifying period does not commence until this notice has been provided. The tenant, any joint tenant or the person who has moved into the property is responsible for notifying the Association that the person has moved in.

If no one qualifies at Level 3 the tenancy will be terminated in accordance with the Association's Dealing with the Death of a Tenant procedure.

3. Application for Succession

All applications for succession will be responded to within four weeks of the date the application is received. The following procedures should be followed when dealing with an application for succession from the following qualifying persons:

Spouse and Joint Tenants

When a Scottish Secure tenant dies, the spouse or joint tenant will succeed automatically to the tenancy provided it is their only or principal home at the date of the tenant's death.

In the case of a joint tenancy, the tenancy will continue but Housing Management will instruct Finance that one tenant has died and request that the rent account be updated accordingly to reflect the surviving joint tenant as the sole tenant from the day after the tenant's death.

In the case of a spouse, the spouse will be required to apply to succeed the tenancy by completing an Application for Succession. The application should then be acknowledged by issue of a notification letter. The successor will be required to sign a new tenancy agreement with the date of entry being the original tenant's date of entry.

Following the tenancy sign up Housing Management will instruct Finance to create a new account in the successor's name. For rent charging purposes the tenancy start date will be the date of succession (date following the date of death) but a comment should be inserted advising that the date of entry is the original date of entry owing to the new tenant being a level one successor.

The original tenancy will be terminated on the date of death.

Cohabitees

Cohabitees of either sex will qualify to succeed the tenancy where they satisfy the twelve-month residence requirement. The cohabitee will be required to apply to succeed the tenancy by completing an Application for Succession.

The application should then be acknowledged by issue of a notification letter. The successor will be required to sign a new tenancy agreement with the date of entry being the original tenant's date of entry. Following the tenancy sign up Housing Management will instruct Finance to create a new account in the successor's name.

For rent charging purposes the tenancy start date will be the date of succession (date following the date of death) but a comment should be inserted advising that the date of entry is the original date of entry owing to the new tenant being a level one successor. The original tenancy will be terminated on the date of death.

Member of the Tenant's Family

Members of the tenant's family qualify to succeed where they are sixteen years or over and have occupied for at least twelve months at the time of the tenant's death. Members of the family includes grandparent, children (including step children), grandchildren, sister, brother, aunt, uncle, niece and nephew. Members of the family will be required to apply to succeed the tenancy by completing an Application for Succession.

The application should then be acknowledged by issue of a notification letter. The successor will be required to sign a new tenancy agreement with the date of entry being the day after the original tenant's date of death. Following the tenancy sign up Housing Management will instruct Finance to create a new account in the successor's name. The original tenancy will be terminated on the date of death.

Carers

Carers qualify to succeed where they are sixteen years or over and have occupied the house as their principal home for at least twelve months at the time of the tenant's death. The carer would qualify if the care is for the tenant or a member of the tenant's household, for example a child with learning difficulties. Carers will be required to apply to succeed the tenancy by completing an Application for Succession.

The application should then be acknowledged by issue of a notification letter. The successor will be required to sign a new tenancy agreement with the date of entry being the day after the original tenant's date of death. Following the tenancy sign up Housing Management will instruct Finance to create a new account in the successor's name. The original tenancy will be terminated on the date of death.

4. Notification of Right to Succeed

Where any of the qualifying persons under Level 1 decline the tenancy, the Association must investigate within seven working days whether there are any other persons who may qualify to succeed. The Association must use its "best endeavours" to ascertain whether other qualifying persons exist. Prior to doing this staff should check to ensure that there are no qualifying persons under Level 1, e.g. a spouse fleeing domestic violence.

Staff should check whether there are any family members who qualify to succeed. Where such persons are found the Association must serve notice in writing to each person who may be entitled to succeed.

Where a qualifying person is identified, they must apply to succeed the tenancy by completing an Application for Succession. The application should then be acknowledged by issue of a notification letter and the tenancy created in accordance with procedures noted above.

5. Where a Qualifying Person Fails to Respond to a Notification of Right to Succeed

Where a qualifying person fails to respond to the notice within twenty-eight days of the date the notice was served, staff should follow up by writing to confirm that the tenancy will be terminated. The tenancy will be terminated in accordance with the Association's Dealing with Death procedures.

6. Joint or Sole Tenancy

Where there is more than one qualifying person entitled to succeed to the tenancy, they are entitled to decide whether or not the tenancy should be a sole tenancy or a joint tenancy. In order to facilitate this decision, staff should offer advice regarding the advantages and disadvantages of holding a sole or joint tenancy in the particular case.

Where the qualifying persons cannot decide within twenty-eight days of the tenant's death, the Association should decide who will succeed the tenancy.

7. Declining a Tenancy

A qualifying person may decline the tenancy by giving the Association written notice within twenty-eight days of the tenant's death. In cases where the Association has served Notification of Right to Succeed, the qualifying person has twenty-eight days from the date of notice to decline the tenancy.

A qualified person who declines the tenancy must vacate the house within three months of giving notice to the landlord. As the notice is to be treated as having effect from the tenant's death, the person must therefore leave the house within three months of the tenant's death.

A qualifying person who declines the tenancy is liable for rent for the period that they occupy the property after the tenant's death. Where a qualifying person declines the tenancy, a letter should be issued to the person advising them of when they must vacate and asking them to attend an appointment to make arrangements to meet their rent liability.

8. Refusal of an Application for Succession

Where an Application for Succession is refused by the Association, staff must notify the person in writing that the application has been refused and the reason for refusal.

Applicants wishing a review of the decision made to their request should write to the Association's Housing Management Department within fourteen days giving their reasons for appeal. The application will then be reviewed and a written response will be provided within five working days outlining any new decision. If the applicant is still dissatisfied then he / she should write to the Association's Director who will investigate all circumstances and will respond to the applicant in writing within five working days.

If the applicant remains dissatisfied then the Association's complaints procedures will apply.

9. Houses Designed or Specifically Adapted for Tenants with Particular Needs

Where a house has been designed or significantly adapted for someone with particular needs, succession will only be granted to qualifying persons with a requirement for this type of accommodation. Only qualifying persons at level 1, without a requirement for this type of accommodation can qualify for succession to that specific property. Persons with a requirement for this type of accommodation at level 1, 2 or 3 can be considered for succession.

Where a qualifying person at any level is not entitled to succession to the specific property as a result of not having a requirement for that type of accommodation, the Association must offer alternative accommodation within a reasonable time period. The successor can remain in the property until such times as the Association has identified appropriate accommodation. A new tenancy must not be created until appropriate alternative accommodation is found.

10. Creation of a New Tenancy

Any right to a registered rent will end on the death of the tenant unless the tenancy is succeeded by a level 1 successor. A Level 1 successor will retain this right and the original date of tenancy will apply.

Where the tenancy is succeeded by a Level 2 or 3 successor a new date of tenancy will be issued with the tenancy date being the day after the original tenant's date of death. Level 2 or 3 successors will not retain right to a registered rent.

11. Register of Successions

The details and outcomes of all Applications for Succession received must be recorded in the Register of Successions.

12. Appeals

Tenants wishing a review of the decision made by the Association should write to Housing Management within fourteen days of the date of the decision letter giving their reasons for appeal. The application will then be reviewed by a staff member not involved in the original decision and a written response will be provided within five working days outlining any new decision. If the tenant is still dissatisfied then he / she should write to the Association's Director within fourteen days of the decision letter. The Director will investigate all circumstances and will respond to the applicant in writing within five working days. If the tenant is still dissatisfied then the Association's complaints procedures will apply.