

POLICY ON SUCCESSION TO TENANCY FOLLOWING DEATH OF A TENANT

1. INTRODUCTION

- 1.1** The purpose of this policy paper is to clearly outline the Association's policy in the event of the death of a tenant where family members or others, resident in the house prior to the death, wish to take on the tenancy of the property.
- 1.2** Reidvale Housing Association is an equal opportunities organisation which is committed to compliance with all aspects of the Equality Act 2010 and the Human Rights Act 1998. No person applying for succession will be treated less favourably than any other person because of their sex, marital status, family circumstances, race or national origins, disability, age, religion, political orientation or sexual orientation.
- 1.3** The circumstances of each case will vary and the Association's response will clearly be dependent on these circumstances. In general, however, these circumstances fall into two main categories.
- 1.4** The first category is where the person(s) resident has automatic rights to succeed to the tenancy previously held by the person who has just died. These rights arise from provisions contained within the Housing (Scotland) Act 2001 and the terms of the tenancy agreement. The Housing (Scotland) Act 2001 widens the rights of succession and provides a clear hierarchy of successors. Co-habitees may succeed regardless of gender and carers may now succeed. The total number of successions permitted under statute is increased from one to two.
- 1.5** The second category covers cases where none of the people resident have succession rights and the Association has discretion as to what action to take.

2. STATUTORY RIGHTS OF SUCCESSION FOLLOWING THE DEATH OF A TENANT

- 2.1** If a tenant dies, the tenancy may be inherited by one of the following people in the following way. There are three levels of priority.

2.2 Level One

- the late tenant's spouse or co-habitee if the house was their only or principal home at the time of the tenant's death; OR
- a joint tenant, if the house was his or her only or principal home at the time of the tenant's death.

In the case of a co-habitee, he or she must also have occupied the house as his/her only or principal home for at least 6 months immediately before the death of tenant. If more than one person qualifies for the tenancy under Level One, they must decide among themselves who should get the tenancy. If they cannot agree, we will decide.

2.3 Level Two

If no-one qualifies at Level One, or a qualified person does not want the tenancy, it may be inherited by a member of the late tenant's family as long as:

- he or she is aged at least 16 at the date of death;
- the house was his or her only or principal home at the date of death.

If more than one person qualifies for the tenancy under Level Two, they must decide among themselves who should get the tenancy. If they cannot agree, we will decide.

2.4 Level Three

If no-one qualifies at Level One or Level Two, or a qualified person does not want the tenancy, it will be inherited by a carer as long as:

- he or she is aged at least 16 at the date of death;
- the house was his or her only or principal home at the date of death;
- he or she gave up another only or principal home before the death of the tenant;
- he or she is providing, or has provided, care for the tenant or a member of the tenant's family.

If more than one person qualifies for the tenancy under Level Three, they must decide among themselves who should get the tenancy. If they cannot agree, we will decide.

- 2.5** Where the house has been designed or substantially adapted for a person with special needs, if at the first succession someone qualifies for the tenancy at Level Two or Level Three and does not have special needs requiring accommodation of that kind, we have the right to terminate the tenancy and offer that person suitable alternative accommodation. Where, in the case of such a property, at the point of a second succession someone qualifies at Level One, Level Two or Level Three and does not have special needs requiring accommodation of that kind, we have the right to terminate the tenancy and offer that person suitable alternative accommodation.
- 2.6** If someone qualifies for the tenancy but does not want it, they should tell us in writing within four weeks of the death and leave the house within three months. The qualifying successor who declines the tenancy is liable to pay rent for the period spent in occupation after the tenant's death. In this situation a charge equivalent to the monthly rental charge will be levied and any monies received will be placed in a new separate account rather than the original rent account – it is of paramount importance that a new tenancy is not created at this stage.
- 2.7** The tenancy can only be inherited twice under the provisions noted above. If the tenancy has already been inherited twice, the third death will normally end the tenancy. This will not happen if there is a surviving joint tenant whose Scottish Secure Tenancy will continue. However, if there is still a person in the house who would otherwise qualify to inherit the tenancy under the above paragraphs, the tenancy will continue for up to 6 months after the last death. The tenancy will not be a Scottish Secure Tenancy for that period.
- 2.8** The provisions noted above are a summary of the law which is contained within Section 22 of the Housing (Scotland) Act 2001. In order to ensure compliance with the statutory provisions, the Association will request satisfactory evidence from persons applying to succeed to the tenancy with regard to their occupancy of the property as their principal home and where applicable their role as carer and of having given up their only or principal home for the purpose of caring.

The issue concerning whether or not a house is a person's principal home is a question of fact and each case requires to be assessed on its merits. Types of factors to be taken into account are as follows:

- information about another tenancy for example, as provided by other landlords.
- information from official sources such as employer or medical records.
- information from other agencies/depts such as Social Work or DWP.
- information from neighbours, relatives, etc

The Association will deal with all matters in a sympathetic manner but reserves the right to seek the opinion of a doctor, social worker or other professional as appropriate.

3. DISCRETIONARY ALLOCATIONS

3.1 It is clear from the above that situations can arise where, following the death of a tenant, those remaining in the house have no rights to succeed to the tenancy.

3.2 An example here might be where the person concerned might be a co-habitee who has only occupied the house as his/her principal home for less than the required 6 months immediately before the death of the tenant.

3.3 In such circumstances the Association has the following options:

- a) require the person(s) to vacate the property
- b) offer the person(s) a new tenancy of the property
- c) offer the person(s) a tenancy of another Association property.

3.4 Each case will be looked at individually. If it is felt that there are exceptional reasons why a person should be considered for a new tenancy of an Association property the full details will be discussed initially at staff's weekly Co-ordination meeting. These documented discussions will form the basis of the decision to recommend to the Housing Services Sub-Committee, or Office Bearers as appropriate, that the Association grants a new tenancy.

3.5 Where the person is required to vacate the property advice will be given on rehousing options and an application for the Association's housing list will be accepted from the address they move on to.

4. FALSE INFORMATION

4.1 Should that Association discover that an application for succession has been granted on the basis of false information then the Association may commence legal action with a view to repossessing the tenancy.

5. APPEALS

5.1 The appeals procedure will apply to all applicants aggrieved by any decision made in respect of this policy.

5.2 If any applicant is unhappy regarding the outcome of their application for succession to tenancy then the process of that appeal is:

⇒ Housing Services Sub-Committee

⇒ Appeals Committee

5.3 Applicants should note that the Appeals Committee consists exclusively of Management Committee members who were not involved in the original decision at sub-committee level.

6. COMPLAINTS

6.1 Any applicant who is unhappy with the manner in which his/her application for succession has been dealt with should notify the Housing Officer with whom they have been dealing with. If following this they still feel aggrieved, they should follow the formal Complaints Policy, a copy of which is available from the Association's office.

7. REVIEW OF POLICY

7.1 The Association undertakes to carry out a comprehensive review of all aspects of this policy at least every five years.

7.2 This policy was agreed by the Management Committee on 26th January 2011.