

Reidvale Housing Association

Succession of Tenancy Policy



R E I D V A L E

H O U S I N G A S S O C I A T I O N

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Policy Number	
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Purpose:	To set out Reidvale Housing Association's approach to Succession of Tenancy
Guidance:	Statutory Guidance The Scottish Social Housing Charter Requirements of the Scottish Housing Regulator
Regulatory Compliance	<p>Standard 1: The governing body leads and directs the RSL to achieve good outcomes for its tenants and other service users.</p> <p>Standard 2: The RSL is open about and accountable for what it does. It understands and takes account of the needs and priorities of its tenants, service users and stakeholders. And its primary focus is the sustainable achievement of these priorities.</p> <p>Standard 3: The RSL manages its resources to ensure its financial well-being, while maintaining rents at a level that tenants can afford to pay.</p> <p>Standard 4: The governing body bases its decisions on good quality information and advice and identifies and mitigates risks to the organisation's purpose.</p>
Financial Impact	Low
Risk Assessment	Low
Date Reviewed:	August 2021
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1. INTRODUCTION

- 1.1** The purpose of this policy is to clearly outline Reidvale Housing Association's (RHA) 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** The circumstances of each case will vary and the Association's response will clearly be dependent on these circumstances.
- 1.3** The rights to succeed to a tenancy arise from provisions contained within the Housing (Scotland) Act 2001, as amended by the Housing (Scotland) Act 2014 and the terms of the tenancy agreement. The legislation sets out the principles that should guide the practice of social landlords in relation to managing applications for succession of tenancy.

The 2014 Act changed some of the rules around when certain people can succeed to a Scottish Secure Tenancy on the death of the tenant.

To ensure rights to succession are protected the tenant must have told the landlord that the person wishing to succeed to a tenancy had moved into the household at the time they did so.

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

If a tenant dies, the tenancy may be inherited by one of the following people.

2.1 Spouse, civil partner and joint tenancy

- the late tenant's spouse, civil partner 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.

2.2 Unmarried Partners

Section 13(a) and 13(d) of the Housing (Scotland) Act 2014 Act made changes to the rules on succession for unmarried partners:

- the house must have been the unmarried partner's only or principal home for 12 months before they qualify to succeed to the tenancy; and
- the 12 month period cannot begin unless the landlord has been told that the individual is living in the property as their only or principal home. The landlord must have been told that by the tenant, a joint tenant, or the person who wishes to succeed to the tenancy.

2.3 Family Members

Section 13(b) and 13(d) of the Housing (Scotland) Act 2014 Act made changes to the rules on succession for family members:

- the house must have been the family member's only or principal home for 12 months before they qualify to succeed to the tenancy; and
- the 12 month period cannot begin unless the landlord has been told that the family member is living in the property as their only or principal home. The landlord must have been told that by the tenant, a joint tenant, or the person who wishes to succeed to the tenancy.

2.4 Carers

Section 13(c) and 13(d) of the Housing (Scotland) Act 2014 Act made changes to the rules on succession for carers:

- the house must have been the carer's only or principal home for 12 months before they qualify to succeed to the tenancy; and
- the 12 month period cannot begin unless the landlord has been told that the carer is living in the property as their only or principal home. The landlord must have been told that by the tenant, a joint tenant, or the carer.

- 2.5** Where the house has been designed or substantially adapted for a person with special needs, if someone qualifies for the tenancy and does not have special needs requiring accommodation of that kind, RHA have the right to terminate the tenancy and offer that person suitable alternative accommodation. Section 15 of the Housing (Scotland) Act 2014 Act allows any social landlord to ask a sheriff to grant an order to end the tenancy of an adapted property that is not being occupied by anyone who needs the adaptations. This only applies where the landlord requires the property for someone who does need the adaptations. If this situation happens RHA would give the resident notice before applying to the sheriff. RHA would offer suitable alternative accommodation. The resident would be able to ask the sheriff to consider whether the landlords actions were reasonable and to challenge the suitability of the alternative accommodation.

- 2.6** If someone qualifies for the tenancy but does not want it, they should tell RHA 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 and Section 13 of the Housing (Scotland) Act 2014. 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.

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. WHEN THOSE REMAINING IN THE HOUSE HAVE NO RIGHTS OF SUCCESSION

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. This circumstance will be assessed under the exceptional circumstances provision within RHA's allocation policy.

4. APPEALS

If any applicant is unhappy regarding the outcome of their application for succession of tenancy they may appeal to the senior management team of RHA to request a review of their application.

5. FALSE INFORMATION

Should the 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.

6. STAFF TRAINING

Reidvale Housing Association will ensure that all staff who are required to undertake work in the succession of tenancy process receive appropriate and regular training.

Clear procedures and guidelines will be maintained to ensure consistent and equitable treatment of applicants seeking succession of tenancy.

7. EQUALITY AND DIVERSITY

Reidvale Housing Association is an equal opportunities organisation. We are committed to providing an environment of respect, understanding, encouraging diversity and eliminating discrimination. No person or group of persons applying for housing and housing services will be treated less favourably than any other persons or groups of persons because of their age, disability, gender reassignment, marriage and civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation.

8. COMPLAINTS

Although we are committed to providing high levels of service, we accept that there may be occasions where a service user may not be satisfied with the service received from the Association. We value all complaints and use this information to help us improve our service. Any service user, complying with the procedure, but remaining dissatisfied with any aspect of the service they have received have the right to submit a complaint to the Association in accordance with the Complaints Handling Procedure.

9. GDPR

Reidvale Housing Association will treat your personal data in line with our obligations under the current General Data Protection Regulation and our Privacy Policy. Information regarding how your data will be used and the basis for processing your data is provided in our Fair Processing Notice.

10. POLICY REVISION

The Association undertakes to carry out a comprehensive review of all aspects of this policy at least every three years. The review will take account of legislative changes, new policy guidance, best practice advice and the views of service users.