



Succession to Tenancy Policy

Approved: August 22

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If you have difficulty with sight, or if you require a translated copy of this policy, we would be pleased to provide the information in a form that suits your needs.

- The purpose of this policy is to provide clear guidance on how we will manage succession rights of our tenants. These rights are set out in the Housing (Scotland) Act 2001 section 22 and Schedule 3 as amended by the Housing (Scotland) Act 2014 and in the Association's Scottish Secure Tenancy Agreement.

What is succession?

- Succession to tenancy takes place automatically when the present tenant dies and there is a qualifying person who chooses to succeed. There is no need for people to 'apply' to succeed. However, procedures are in place to ensure that we follow the legal rules. Only 'qualifying persons can succeed to a tenancy and there are conditions and qualifying time periods set out in law before a succession can go ahead.
- The 2001 Act stipulates the definition of 'qualifying person', and the 2014 Act made changes to qualifying periods stipulating that, apart from a spouse or civil partner, the qualifying person must have lived in the property as their only and principal home on a continuous basis for the 12 months prior to the tenant's death. Succession only applies to Scottish Secure Tenancies.

2.0 SCOPE & PRINCIPLES of POLICY

2.1 Scope

- To ensure equality of opportunity and consistency of approach in dealing with a request from a person to succeed to a tenancy.
- To ensure compliance with legislation, guiding standards and best practice.
- To mitigate risk.
- To deal sensitively with requests for succession acknowledging that bereavement is a stressful challenging time.
- To deal with each case individually mindful of any exceptional circumstances
- To make best use of our stock, mindful of applicants on our housing list

2.2 Principles

- A person succeeds to a tenancy (as opposed to a property). Therefore, the Successor is entitled to identical tenancy conditions, rights, obligations, and responsibilities including date of entry, as the original tenant. As such, the Successor will be required to sign an Addendum to the Tenancy, as opposed to signing a new Tenancy Agreement.
- Legislation includes a right to a second round of succession. Upon the death of the first successor the tenancy passes by operation of law to another qualified person.

- Legislation defines that no more than two rounds of succession is permissible. Upon the death of the second successor, the tenancy is terminated. The tenancy will not end, however if there is a surviving joint tenant the 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 tenancy agreement if it had not been previously succeeded to on two occasions, the tenancy will continue for up to 6 months after the last death.
- Consent to succeed a tenancy will only be given by the Association after consideration of the circumstances of qualified person(s). If there is no qualifying person or the qualifying person does not wish to succeed to the tenancy, the tenancy will be terminated.
- It is the responsibility of the successor to advise the statutory authorities, including Council Tax, Housing Benefit, Department of Works and Pensions (Universal Credit), gas, electricity, and telephone suppliers of the death of the tenant and the date of their succession. The Association will provide advice and assistance with this.
- The successor is only responsible for the payment of rent arrears, or any other tenancy debt accrued by the deceased tenant if they were a joint tenant otherwise, they are not responsible, and a claim will require to be made on the deceased tenant's estate.

Specially Adapted Accommodation

- Only spouses, civil partners, co-habitees, joint tenants or persons with a corresponding special need will be entitled to succeed to such a tenancy. Other persons who would otherwise be qualified to succeed will have a right to suitable alternative accommodation
- In the event the spouse, civil partner, co-habitees or joint tenant does not require specially adapted accommodation, GhHA will make an alternative offer of rehousing. However, acceptance will be at the discretion of the successor as they are not legally required to remove from the property
- Any other person(s) entitled to succeed will have a statutory right to suitable alternative accommodation. If such a qualified person refuses to voluntarily remove from the specially adapted property, it will be a matter for the courts to determine whether it is reasonable for a repossession order to be granted and whether the alternative accommodation on offer is suitable.
- Where a tenant has to move to alternative accommodation, the Scottish Secure Tenancy will continue, for the purposes of succession.

Suitable Alternative Accommodation

- In determining the reasonable suitability of alternative accommodation for the requirements of the Housing (Scotland) Act 2001, Schedule 2, Part 2 will be considered as follows:
 - i. Its proximity to the place of work (including attendance at an educational institution) of the tenant and members of the tenant's family, compared with the existing house.
 - ii. The extent of the accommodation required by the tenant and the tenant's family.
 - iii. The character of the accommodation offered compared to the tenant's existing house.
 - iv. The terms on which the accommodation is offered to the tenant compared with the terms of the tenant's existing tenancy.
 - v. If any furniture was provided by the landlord for use under the existing tenancy, whether furniture is to be provided for use under the new tenancy which is of a comparable nature in relation to the needs of the tenant and the tenant's family.
 - vi. Any special needs of the tenant's family

Limitation on succession

- If there is a qualifying person left in the tenancy who wants to succeed (but is not entitled to since the tenancy has already been succeeded to twice) they are able to remain in the property for 6 months after the tenant dies. They are liable to pay rent and abide by the terms of the tenancy from the date of the tenant's death until they leave.

3.0 REGULATORY STANDARDS, LEGAL FRAMEWORK & GUIDANCE

Regulatory Standards: Scottish Social Housing Charter

Charter Outcome: Access to housing & support 7,8 & 9: Housing options

Social landlords work together to ensure that:

- *people looking for housing get information that helps them make informed choices and decisions about the range of housing options available to them*
- *tenants and people on housing lists can review their housing options.*

Social landlords ensure that:

- *people at risk of losing their homes get advice on preventing homelessness.*

These outcomes cover landlords' duties to provide information to people looking for housing and advice for those at risk of becoming homeless. These duties include helping tenants and people on housing lists to review their options to move within the social housing sector or to another sector.

Legal Framework: Housing Scotland Act 2014

- Provision for a qualifying person to succeed a Scottish Secure Tenancy is outlined in Section 13 of the Housing (Scotland) Act 2014 which amends schedule 3 to the Housing (Scotland) Act 2001. The Housing Scotland Act 2014 Introduced a new 12 month qualifying period.

Qualifying Period

- There is no qualifying period for the tenant's spouse, civil partner or joint tenant provided (in all cases) that the person's only or principal home was the house in question at the time of the tenant's death.
- A person falling within the following categories are qualified persons where the house has been their only principal home throughout the 12 months ending in the tenant's death:
 - Partners (cohabitants of either sex and including same sex cohabitants).
 - Members of the tenant's family aged 16 or over; and
 - Carers aged 16 or over who have given up a previous only or principal home.
- To have the right to succeed to a tenancy after living in the house for 12 months, the "qualifying person" or the tenant must also have notified the Association that the person wishing to succeed to the tenancy is living in the house and that the house is that person's only or principal home.
- The 12-month qualifying period does not start until that notice has been given. The tenant (or any one of joint tenants) or the person who has moved into the house are responsible for notifying the Association that the person has moved in.

GhHA Scottish Secure Tenancy Agreement: Section 7

7 AFTER THE TENANT'S DEATH

7.1 If you die, the tenancy may be inherited by one of the following people in the following way.

7.2 Level One

- your spouse, civil partner or co-habitee if the house was their only or principal home on your death, OR
- a joint tenant, if the house was his or her only or principal home on your death.

From 1 November 2019 a co-habitee must also have occupied the house as his/her only or principal home for at least 12 months immediately before your death.

The 12-month period cannot begin unless we have been told that the individual is living in the property as their only or principal home. We must have been told that by you, a joint tenant, or the person who wishes to succeed to the tenancy. The length of time they have been living in the property starts from the date we are notified that the person is living in the property as their only or principal home.

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.

7.3 Level Two

If no-one qualifies at Level One, or a qualified person does not want the tenancy, a member of your family may inherit it if:

- 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.

The member of your family must have occupied the house as his/her only or principal home for at least 12 months immediately before your death to qualify to succeed to the tenancy. The 12-month period cannot begin unless we have been told that your family member is living in the property as their only or principal home. We must have been told that by you, a joint tenant, or the person who wishes to succeed to the tenancy. The length of time they have been living in the property starts from the date we are notified that the person is living in the property as their only or principal home.

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.

7.4 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 if:

- 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.

The carer must have occupied the house as his/her only or principal home for at least 12 months immediately before your death to qualify to succeed to the tenancy. The 12-month period cannot begin unless we have been told that the carer is living in the property as their only or principal home. We must have been told that by you, a joint tenant, or the carer who wishes to succeed to the tenancy.

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.

- 7.5 If the house was designed or substantially adapted for a person with special needs, no person will qualify under level two or three above unless that person has special needs requiring the type of accommodation in the house. If a person would have qualified, but for this paragraph, we will make other suitable accommodation available.
- 7.6 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. Rent will be charged only for the actual period of occupation.
- 7.7 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.

4.0 OUR APPROACH

Permission to reside requests

- Any change in household details must be recorded on Capita with a clear note on the tenancy record noting when this notification was received. The request must be investigated, and a written decision issued within 28 days.

Failure to respond within 28 days will result in the request (legally) deemed as granted.

- On notification, the Association will consider whether it is appropriate for that person to reside in the property. We will not unreasonably withhold 'permission to reside' unless e.g., this would lead to overcrowding, or the person has committed acts of anti-social behaviour within the preceding 3 years. Refusals should be discussed with the Senior Housing Officer.
- Any period following refusal of consent to reside will not count towards any qualifying period for succession.

On the death of the tenant

- When implementing this Policy Staff will bear in mind that bereavement is a stressful and challenging time for individuals, succession should be dealt with sensitively. Whilst legislative rules are in place, staff should treat each case individually and be aware of exceptional circumstances.
- GhHA will use its best endeavours including writing to those noted on the household profile, to ascertain whether there are any persons who may be entitled to succession to tenancy and will give notice to each such person in writing.

Definition of a Family Member

A family or household member can include:

- A spouse/wife or civil partner or partner whom the tenant has lived with as spouse
- Tenants' parents, grandparents, grandchild, brother, sister, uncle, aunt, nephew, or niece
- Children (including foster children, stepchildren, and any other children treated by you as your own)

Proof of Succession rights

- Where a person claims to be entitled to succeed through a relationship to the deceased tenant they must produce birth, marriage, or civil partnership certificates to prove a relationship that would entitle them to succeed to the tenancy.
- Level three successors must provide or have provided evidence to confirm that
 - That they gave up another only or principal home prior to the date of death of the tenant and

- That they provided care for the (deceased) tenant or that they continue to provide care for a surviving member of the tenant's family.

More than one claim to succeed to the tenancy

- Where there is more than one qualified person, the parties may agree who should succeed to tenancy. Failing agreement between parties, or if no written response is received within 28 days from the date of death, legislation stipulates that the Association will be entitled to decide.
- The Association will carefully consider the respective needs and circumstances of all qualifying successors prior to reaching a decision. This will include interviews with all those involved.
- Unless there are exceptional circumstance to the contrary, we will prioritise those qualifying to succeed as follows:
 - i. The joint tenant
 - ii. The surviving spouse, civil partner, or common-law partner.
 - iii. The immediate family member with the longest period of residency (immediate family being a child of the deceased tenant).
 - iv. The extended family member who has lived in the property for the longest period (extended family being the parent, grandparent, grandchild, brother, sister, uncle, aunt, stepchild, niece, or nephew of the deceased tenant).
 - v. The carer who has lived in the property for the longest period.
- Any such decision will be legally binding.

Adapted Properties

- Where the person with a particular need is not the tenant or joint tenant (e.g., a child) the death of that person will not affect the right of the tenant to continue to hold a tenancy with us, although to make best use of stock we may offer suitable alternative accommodation. It should be noted however that there is no requirement for the tenant to accept that offer.
- Family members and carers do not have the right to succeed to the tenancy of a property that has been designed or adapted for someone with particular needs, but they have an entitlement to be rehoused elsewhere by the Association.
- The Association is required to provide such persons with suitable alternative accommodation. We will seek to offer suitable properties as outline in Section 2.2 Suitable Alternative Accommodation. If these persons fail to adhere to the conditions of the original tenancy agreement or repeatedly refuse appropriate alternative

accommodation, the Association may move to raise recovery action based on them having no right, title, or interest to the property

Persons who do not meet the qualifying period

- Where an applicant does not meet the criteria for succession e.g., someone who has been residing with the tenant prior to their death but where the qualifying period has not been met, GhHA will carefully consider all the circumstances of the individual case and consider whether it is appropriate to allocate a new tenancy for the same or another property. Such cases will be approved by the Head of Tenancy Services

Limits on Succession .

- If there is still a person in the house who would otherwise qualify to inherit the tenancy under the tenancy agreement if it had not been previously succeeded to on two occasions, the tenancy will continue for up to 6 months after the last death.
- They will be given a copy of the original tenancy agreement as well as a letter which makes clear that they are not legally entitled to succeed but states that the Association will permit them to remain in the property for a period of up to 6 months and that they must adhere to the conditions of the tenancy agreement in terms of paying the rent and other obligations of tenancy.
- Staff will maintain contact with the household including home visits we will provide advice and assistance to secure new accommodation as well as providing help to make housing benefit /UC claims for housing costs
- Whilst there is no statutory obligation to permit a third tenancy, in certain circumstances the Head of Tenancy Services may grant a new tenancy to a person who would meet the qualifying criteria. Each case will be considered on its own merits.

Declining the Tenancy

- Qualified persons may decline the tenancy by giving the Association notice, in writing, within 28 days of the Tenant's death.
- In line with legislation, qualified persons who decline the tenancy must vacate the property within three months.
- An equivalent payment to rent will be due from the qualifying person for the period of occupancy commencing from the date of the tenant's death and ending on the date the property is vacated and keys returned to the Association.

No Qualified Persons Identified

- If there is no qualifying person, the effective date of the tenancy end will be the date of the tenant's death

Following on from a succession

- We will write to the qualifying person who has succeeded to the tenancy confirming that they are now the tenant from the date of the tenant's death and that they are responsible for the tenancy including payment of rent.
- A new tenancy agreement is not given as the successor tenant takes on the terms and conditions of the original tenancy as signed by the original tenant. A new tenancy agreement would give a further two rounds of succession
- The successor tenant cannot be held liable for rent arrears or any other housing debts. However, where the tenancy was a joint tenant, the joint tenant is liable.
- When a tenancy has been succeeded to the Association will not be responsible for carrying out repairs that were the previous tenant's responsibility. In addition, the re-let standard does not apply and there is no need for gas/electric checks where these are up to date.

.5.0 EQUALITIES IMPACT ASSESSMENT

- We recognise our pro-active role in valuing and promoting diversity, fairness, social justice, and equality of opportunity by adopting and promoting fair policies and procedures.
- GhHA is committed to providing fair and equal treatment to all our customers and to comply with the Equality Act 2010. The Act established 9 protected characteristics (the grounds on which discrimination is unlawful) i.e., of age, race, sex, religion/belief, sexual orientation, pregnancy/maternity, gender reassignment, disability, and marriage/civil partnership.
- Whilst much of this policy is determined by legislation, we will monitor the impact of our approach to implementation and take any required action to ensure the policy complies with the Equality Act 2010

6.0 GENERAL DATA PROTECTION REGULATIONS

- The Association will treat all personal data in line with our obligations under the current General Data Protection Regulations and our own Data Protection Policy Statement, Privacy Policy, and Data Retention

Policy. Information regarding how your data will be used and the basis for processing your data is provided within our employee and resident Fair Processing Notices.

7.0 APPEALS & COMPLAINTS

- Any applicant unhappy about a decision relating to a succession to tenancy request must submit a written appeal to the Tenancy Services Manager within 28 days of receiving the decision.
- The Tenancy Services Manager will review the appeal and provide the applicant with the result of their decision in writing. If the applicant is still dissatisfied, recourse can be sought through the Association's Complaints Policy and Procedure.
- Once the Association's Complaints Policy is exhausted, there is a right of appeal to the Scottish Public Services Ombudsman (SPSO). As the SPSO is unlikely to comment on matters of a legal nature, a review will focus on the proper application of the Association's policy, rather than the legalities of succession.
- There is no statutory right of appeal against decisions made by the Association in respect of succession.

8.0 REVIEW OF THIS POLICY

- This policy will be reviewed at least every five years and earlier should there be any legislative or regulatory changes in the meantime.