



## SUCCESSION POLICY

**Review/Approved by Committee: November 2012**

**Date Due for Review: 2015**

## **1. INTRODUCTION**

Succession to a Scottish Secure Tenancy (SST) tenancy is governed by Section 22 and Schedule 3 of the Housing (Scotland) Act 2001. Section 22 includes a right to a second round of succession on the death of the succeeding tenant. Schedule 3 defines who is a person qualified to succeed to a tenancy and the circumstances in which they can succeed. For each separate round of succession there are 3 levels of priority. There are special rules relating to properties adapted for special needs.

## **2. RISK MANAGEMENT**

By having a written detailed Succession Policy & Procedure the Association is able to ensure that a uniform and professional approach is adopted throughout the Organisation and the service delivered is compliant with law, best practice and internal policy.

The risk of not having this Policy in place is an absence of the above, poor record keeping regarding tenancy information and a poor reputation. This could leave the Association open to legal challenge.

## **3. EQUAL OPPORTUNITES**

The Association aims to be non discriminatory in its policies and practices. We aim to promote equal opportunity by the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age , sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions, such a religious beliefs or political opinion unless discrimination is permitted by law.

## **4. QUALIFYING PERSONS**

A qualified person is in order of priority for each round of succession.

- First priority goes to the surviving spouse, co-habitee of either sex (provided the house has been their only or principal home for at least 6 months before the tenant's death) or joint tenant;
- Second priority (if nobody qualifies or chooses to succeed from the first priority group) goes to other members of the family provided they are at least 16 years of age and that the house was their only or principal home at the time of the tenant's death ( and for the last 6 months prior to this);
- Third priority (if nobody in any of the above categories qualifies or chooses to succeed) goes to carers at least 16 years where the house was their only or principal home at the time of the tenant's death and where they have given up their only or principal home to care for the tenant or a member of the tenant's family.

Where there is more than one qualifying person at any level it is open for the qualifying persons to come to an agreement about which one of them should succeed. Failing agreement within 4 weeks of the tenant's death the landlord will decide who is to succeed.

Where we are making the decision as to who will succeed, the circumstances of each case will be taken into consideration. We will take account of, amongst other things, the length of time each person has been living in the property and if any of the qualifying persons would be more vulnerable if not given the tenancy.

## **5. CONDITIONS**

In all cases the house of the deceased person must have been the only or principal home of the qualifying person and in the case of co-habitees, or family members should have been so for a period of 6 months preceding the death of the tenant.

In the case of carers no definition of carer is provided in the Act. This is to allow for a wide spectrum of care from informal to formal caring arrangements. The main test will be whether the carer has given up their only or principal home for the purpose of caring.

## **6. PROPERTIES DESIGNED OR ADAPTED FOR TENANTS WITH SPECIAL NEEDS**

Where a house has been designed or substantially adapted for the use of a person with special needs, then only spouses, co-habitees, joint tenants or persons with special needs can succeed to that tenancy. Other persons who would otherwise be qualified to succeed have a right to suitable alternative accommodation. Solicitors advice should be sought as to rental obligations in this situation as it could be a considerable amount of time before a 'suitable' property becomes available.

## **7. APPLICATIONS FROM PERSONS AFTER SECOND ROUND OF SUCCESSION HAS PASSED**

### **7.1 Joint Tenants**

Normally the death of a tenant who had succeeded under a second round of succession would lead to the termination of the tenancy. However in the case of joint tenancies, tenancies are not terminated on the death of a joint tenant if the remaining joint tenant or tenants continue to live in the house. Neither is there any limit to the number of occasions on which a joint tenancy could be created.

### **7.2 Other Residents**

Where someone would have succeeded to the tenancy if the second round of succession had not passed, the Act allows for that person to continue as a tenant for a period not exceeding 6 months but not under an SST or an SSST. This is to allow the person to find

alternative accommodation. The Association's solicitors should be contacted if this situation arises to ascertain what type of tenancy agreement this person should be offered and how it can be terminated. The person should be advised to go their nearest Homeless Casework Team to have a homeless assessment carried out. They should also be given a housing application form for this Association and advised of the other housing providers.

#### **8. RIGHT TO BUY (RTB)**

Those succeeding to existing tenancies under the provisions of section 22 and Schedule 3 of the 2001 Act will generally have a RTB entitlement based on the modernised terms and conditions, providing the property in question are not subject to any of the specified exemptions. The exceptions to this are:

- The qualifying person is a tenant or spouse who occupies the property at the time of the tenant's death as their only or principal home.
- The qualifying person is a co-habitee or same sex partner of the tenant and had been living in the house as their only or principal home for at least six months before the tenant's death.
- The qualify person is a joint tenant.

In these cases the successor will succeed to the RTB on pre-2001 Act terms and conditions, so long as the original tenant was covered by these earlier terms.

#### **9. SOLICITORS ADVICE**

Solicitor's advice should be sought where the application is not clear cut. In particular in cases where no-one will succeed but they will remain in the property for a set period of time advice will be sought on rental obligations and the type of tenancy agreement, if any, to be offered.

#### **10. RIGHT OF APPEAL**

The Act does not allow for a right of appeal through the courts against decisions made on succession. The landlord's decision is final.

Any applicant aggrieved by a decision made regarding succession will be able to appeal to the Housing Management Sub-Committee, and beyond this the Ombudsman.