

WISHAW AND DISTRICT HOUSING ASSOCIATION

SUCCESSION POLICY

As with all the Association's policies and procedures, this document, where required, can be translated into other community languages on request. For people with visual impairment, taped, large print or Braille versions can also be provided. Further information on the implementation of this policy is available at the office.

Wishaw and District Housing Association acknowledges that, under the Housing (Scotland) Act 2001, it is required to consult with residents on policies that directly affect the management of the properties. The consultation process on the Succession Policy took place between January and February 2010.

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1.0 INTRODUCTION

Wishaw and District Housing Association recognises that a house is not just the home of the tenant but also that of members of the tenant's family. As such the Association believes that where appropriate and desirable members of the family should be able to remain in the family home even after the death of the tenant.

Both the Housing (Scotland) Act 2001 and the Scottish Secure Tenancy Agreement provides for succession to the tenancy by a qualified person upon the death of the tenant. The Succession Policy is intended to clarify the conditions that must be met for a legal succession and to give guidance to both staff and potential successors on the succession process.

2.0 LEGAL FRAMEWORK

In all aspects of the succession process, the Association will seek to conform and comply with all legislation, performance standards, guidance and good practice that directly or indirectly affects the process.

THE HOUSING (SCOTLAND) ACT 2001, Section 22 and Schedule 3 makes provision for succession to a Scottish Secure Tenancy by a qualified person on the death of the tenant. Schedule 3 defines who is a qualified person and the circumstances in which they can succeed.

THE HOUSING (SCOTLAND) ACT 2001, Section 63, Schedule 7 Part 1 allows Housing Associations to grant a tenancy, a transfer of tenancy or a mutual exchange to an employee, former employee, committee member or former committee member only providing that the applicant fully meets the Association's criteria and has no involvement in, or influence over, the process by which the Association grants approval.

THE SCOTTISH SECURE TENANCY AGREEMENT, Part 7 clarifies the rights for succession and the process for both the applicant and the Association.

THE RACE RELATIONS ACT 1974, THE RACE RELATIONS (AMENDMENT) ACT 2000 AND THE RACE RELATIONS ACT 1976 (AMENDMENT) REGULATIONS 2003 make it unlawful for an Association to discriminate on the basis of colour, ethnic or national origin, race or nationality.

THE SEX DISCRIMINATION ACT 1975 makes it unlawful for the Association to discriminate on the basis of sex.

THE DISABILITY DISCRIMINATION ACT 1995 as amended and extended by THE DISABILITY DISCRIMINATION ACT 2005 makes it unlawful for the Association to discriminate against disabled people by treating them less favourably than someone else.

THE DATA PROTECTION ACT 1998 imposes obligations on the Association not to disclose personal information held on computer or certain types of non-computerised data.

ACCESS TO PERSONAL FILES ACT 1987 gives individuals the right to have access to personal information about themselves in files held by the Association.

THE CIVIL PARTNERSHIP ACT 1999 obliges the Association to ensure that civil partners are given the same rights as married couples.

3.0 AIMS AND OBJECTIVES

The primary aim of the Succession Policy is to put a structure in place which ensures that those that would qualify to succeed to a tenancy are aware of that right and that staff are able to implement the correct procedures to consider and process an application for succession. The policy is also intended to ensure that all parties are aware of their legal obligations and are able to fulfil their respective responsibilities.

Arising from these overall aims, the key objectives of the Succession Policy include:

- Ensuring that all applications for succession are treated in a fair and equitable manner.
- Recognising and protecting the legal rights of all members of the household.
- Ensuring that the Association, at all times, meets its legal obligations and operates in accordance with good practice guidelines.
- Protecting the Association from the succession process being used as a mechanism for bypassing the Allocations system and allowing people to 'queue-jump'.
- Trying to make best use of the housing stock.
- Allowing the Association to keep accurate records of the tenants and households in their properties.

4.0 QUALIFYING PERSONS

In the event of the tenant's death, the tenancy may be inherited by a qualified person as defined by the Housing (Scotland) Act 2001. A qualified person is, in order of priority;

4.1 First Priority

- The surviving husband, wife or civil partner of the tenant if the house was their only or principal home at the time of the tenant's death OR
- The tenant's co-habitee or same sex partner providing they had lived in the house as their only or principal home for no less than six months prior to the death of the tenant OR
- The surviving joint tenant if the house was their only or principal home at the time of the tenant's death.

4.2 Second Priority

If no one under the first category qualifies or chooses to succeed to the tenancy, applications will be considered from a member of the deceased tenant's family providing that;

- The applicant is aged at least 16 years of age at the date of the tenant's death AND
- The house was the applicant's only or principal home at the time of the tenant's death.

4.3 Third Priority

If no one under either category one or two or they choose not to succeed to the tenancy, applications will be considered from a carer as long as;

- The applicant is at least 16 years of age at the time of the tenant's death AND
- The house was their only or principal home at the time of the tenant's death AND
- The applicant had given up another only or principal home before the death of the tenant AND
- The applicant is providing, or has provided, care for the tenant or a member of the tenant's family.

4.4 Adapted Houses

Under terms of paragraph 5 of schedule 3 of the Housing (Scotland) Act 2001, a house that has been designed or substantially adapted for the use of persons with special needs can only be inherited by;

- The surviving husband, wife or civil partner, providing the house was their only or principal home at the time of the tenant's death OR
- The co-habitee or same sex partner providing the house had been their only or principal home for at least six month prior to the tenant's death OR
- The surviving joint tenant if the house was their only or principal home at the time of the tenant's death OR
- A qualifying person under Categories 2 and 3 that has special needs requiring the adaptations made to the property, providing the house was their only or principal home at the time of the tenant's death.

A persons that would have qualified under either category 2 or 3 but does not have special needs, have right to suitable alternative accommodation as defined in part 2 of schedule 2 of the Housing (Scotland) Act 2001. They will have the right to remain living in the house until the Association is in a position to offer suitable alternative accommodation.

4.5 More Than One Qualifying Person

Where there is more than one person that would qualify under the same category of priority, it is expected that the qualifying persons and/or the family members would agree amongst themselves who should succeed to the tenancy.

The Association will accept a joint application from the qualifying persons and, providing the succession is approved, would grant a joint tenancy.

However, where no agreement can be reached between the qualifying persons within 2 weeks of the tenant's death, the Association may make the decision as to who will succeed to the tenancy. In making the decision the Association will take into consideration factors such as;

- The wishes of the deceased that may be included or indicated in their will.
- The length of time each qualifying person has actually resided in the house.
- The housing needs of each applicant.
- The size of the property and the composition of each applicant's household.
- Past conduct within the house of each applicant.

The selection of the successor must be approved by the Housing Operations Manager.

5.0 PERMITTED ROUNDS OF SUCCESSION

Under the Housing (Scotland) Act 2001, two rounds of succession are permitted. However, where both rounds of succession have passed, the Association will consider the housing needs of the remaining household.

Where a member of the remaining household would have been a qualifying person but cannot succeed to the tenancy because both rounds of succession have been used, they have the right to remain in the property for six months after the tenant's death under a statutory tenancy (this will NOT be a Scottish Secure Tenancy).

However, the Association will consider an application from the qualifying person to either have the tenancy transferred into their name or to be considered for suitable alternative accommodation. In making a decision, the Association will consider:

- The size of the property.
- The household composition.
- The applicant's length of residency in the property.
- The applicant's previous conduct within the house.

Permission to transfer the tenancy will not normally be given where this would result in the property being either overcrowded or under-occupied.

All applications will be treated on their own individual merit and no decision made in one case will be taken to be setting precedence for any future applications. Permission to transfer the tenancy or to offer suitable alternative accommodation must be approved by the Housing Operations Manager and will be reported to the Association's Board of Directors.

6.0 APPLYING FOR SUCCESSION

Applications for succession should be submitted in writing to the Association no later than 2 weeks after the death of the tenant. Applicants will be required to complete the Association's application form, providing all the information and evidence required by the Association to correctly determine the applicant's eligibility to succeed to the tenancy.

Although not governed by statute, the Association will endeavour to respond in writing to the application within 28 days of the completed application being received.

7.0 PROVISION OF INFORMATION

It is the responsibility of the person(s) applying for a succession to provide all the necessary evidence required to support their application. Any costs incurred in obtaining this evidence will be the applicant's responsibility.

8.0 UNSUCCESSFUL APPLICATIONS

Applications for succession will only be refused where the applicant cannot show, to the Association's satisfaction that they are a qualified person. It will be the responsibility of the applicant to provide the Association with the evidence required to prove they have the right to succeed to the tenancy.

Where an application is unsuccessful, the Association will write to both the applicant and the deceased tenant's next of kin (if applicable) stating the reasons for refusing the succession. The applicant will also be advised of their right to appeal the decision.

9.0 THE SUCCESSION PROCESS

Successors to a tenancy will not be required to sign a new tenancy agreement but will sign an agreement stating that they are accepting the terms, conditions and responsibilities of the Scottish Secure Tenancy Agreement. The date of succession will be the date of death of the preceding tenant.

Any arrears outstanding at the time of the tenant's death will be charged against the tenant's estate. Where there is no estate, there is no legal obligation on the successor to pay any monies owed to the Association by the deceased and the arrear will be treated as a former tenant debt. Where the tenancy is transferred to another person because the two rounds of succession have been used, the original tenancy will be ended on the date of death and a new Scottish Secure Tenancy Agreement signed by the new tenant. The tenancy start date will be the date of death of the preceding tenant.

10.0 SCHEDULE 7 CONSENT

In order to ensure that the Association is able to comply with the requirements of Schedule 7 of the Housing (Scotland) Act 2001, all applicants for a succession will be asked to declare any relative status and/or relationship that may bring their application within the scope of the Schedule 7 provisions. Specifically, applicants will be asked to declare any direct relationship with an employee or former employee of the Association and/or current Board member or former Board member.

Where such a relationship is declared, no consent for the succession will be given without the express approval of the Board. All such approved successions will be recorded in the Association's Benefits Register.

11.0 DELEGATION OF AUTHORITY

The practical implementation of the policy and the day-to-day operation of the succession procedures will be undertaken by members of the Association's Tenancy Services Department. The Housing Operations Manager will have delegated authority to grant or withhold consent for a succession.

Where an application does not meet the normal conditions for approval but it is felt that to refuse permission would be extremely harsh or detrimental to the tenant, the household or the Association, the Assistant Chief Executive will consider the application.

12.0 CONFIDENTIALITY

All personal information provided to the Association during the course of processing a succession application will be treated with the strictest of confidence. Any applications referred to, or reported to, the Board of Directors will be made anonymously.

Personal details provided in the course of processing the succession application will only be disclosed to the Association's staff on a 'need to know' basis as determined by the Housing Operations Manager and in line with the Succession Procedures.

No personal details will be divulged to any other body or person other than those mandated by the tenant or allowed under the Association's Data Protection Policy or the Data Protection Act 1998.

13.0 ACCESS TO INFORMATION

The Association maintains computerised tenancy records. In line with the Data Protection and Access to Information legislation the Association will therefore respond to written requests by a tenant or applicant for access to any records stored pertaining to their application. Under normal circumstances there will be a fee of £10.00 made for requests for copies of information. This fee is to cover administration, stationary, postage and incidental expenses. However, the Association reserves the right to waive the fee where it is felt appropriate to do so.

In line with the Association's Equal Opportunities Policy no charge will be made in respect of charges incurred by the Association in providing information in alternative formats such as large print, Braille and languages other than English.

14.0 EQUAL OPPORTUNITIES

Wishaw and District Housing Association is committed to Equal Opportunities and will endeavour to ensure that all functions with the successions process are carried out in a fair and undiscriminating manner in line with both the Successions Policy and the Equal Opportunities Policy.

In particular the Association will not discriminate on the grounds of race, colour, culture, age, gender, religious beliefs, sexual orientation, national or ethnic origin, political affiliations or beliefs, disability, marital status or social background and medical conditions (including those with AIDS or are HIV positive).

To ensure that the Association's succession process is accessible to all applicable residents, translation and interpretation services will be provided where required and, where appropriate, information will be made available in other formats including tape, Braille and large print. These services will be provided in line with the Association's Translating & Interpreting Policy.

15.0 THE RIGHT OF APPEAL

Any party directly affected by the Association's decision on a succession application has the right to appeal any decision made by the Association in relation to that application. They may also make a formal complaint if they feel aggrieved at the treatment they received from staff during the process of making the application. A copy of the Complaints and Appeals Procedures will be made available at the office.

16.0 INFORMATION & ADVICE

A summary of the Association's Succession Policy will be made available on request and, where necessary, will be made available in other medium such as on tape or in Braille or will be translated into other languages as required.

17.0 REVIEW OF THE POLICY

The full Succession Policy will be reviewed at least once every three years. However, elements of the policy may be reviewed within that timescale if required.

18.0 CONSULTATION

The Association will seek to carry out a consultation exercise prior to final approval being given for any proposed review and/or amendment to the Association's Succession Policy and, where appropriate will seek comments and views from interested and affected parties. All comments and views formally expressed and notified to the Association as part of the consultation exercise will be considered prior to final implementation.

However, in order to allow the Association to provide as high a standard of services as possible the proposed reviewed and/or amended policy may be implemented as an interim policy during the consultation period, pending further approval.

Document History

First Approved by Management Committee	-	7 December 1989
First Revision by Management Committee	-	22 June 1999
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Written by EL