



# Succession

A guide to succeeding to a tenancy



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Our Ref: ST  
Date: 27 October 2004

Ms Thomson  
175 Inverness Avenue  
Wishaw

Dear Ms Thomson

**Application for Succession to the tenancy at 175 Inverness Avenue, Wishaw**

I refer to the recent application to succeed to the tenancy of your late mother, Mrs Thomson. In order to assist with processing your application it will be necessary for you to provide official documentation as proof of residence at 175 Inverness Avenue, Wishaw, from 4<sup>th</sup> November 2003 to the present date.

Please therefore bring in at least two different types of information such as bank statements and wage slips/welfare benefit payment book.

If you would like further clarification on what is required then please contact me at this





# Succession

## A guide to succeeding to a tenancy

### What is succession?

Succession is where a person, usually a family member, inherits the tenancy upon the death of the original tenant.

Only a 'qualified person' can succeed to the tenancy and succession can only occur under certain conditions. These are laid out in the Housing (Scotland) Act 2001 and in the Scottish Secure Tenancy Agreement.

### Who can succeed to a tenancy

The Housing (Scotland) Act 2001 clarifies who is qualified to inherit the tenancy and the priority of succession rights within a household.

#### Priority 1

- The tenant's surviving spouse providing the house was his/her only or principal home at the time of the tenant's death;
- The tenant's co-habitee or same sex partner if the house was his/her only or principal home for at least 6 months immediately before the tenant's death;
- The surviving joint tenants, if the house was his/her only or principal home at the time of the tenant's death.

#### Priority 2

If no one qualifies under priority one or a qualified person at this level does not want the tenancy, the tenancy may be inherited by a member of the tenant's family as long as:

- S/he is at least 16 years of age at the time of the tenant's death; and
- The house was his/her only or principal home on the date of the tenant's death.

### Priority 3

If no one qualifies under the first two priorities or a qualified person does not want the tenancy, it may be inherited by a carer for the tenant or a member of the tenant's family as long as:

- S/he is aged at least 16 at the time of the tenant's death;
- The house was his/her only or principal home on the date of death;
- S/he gave up another only or principal home before the date of death in order to move into the tenant's house to be the carer.

If you are unsure if you, or a member of your family, would be classed as a qualifying person, please contact the office for further help and advice.

### What if there is more than one qualified person?

Where there are two or more qualified persons with the same priority who want to succeed to the tenancy, it is in everyone's best interests that these people or the family decide between themselves who should be the tenant. If all those that qualify are going to remain living in the house, one option could be a joint tenancy.

However where no agreement can be reached between the qualifying persons, the Association has the right under law to make the decision as to who will succeed to the tenancy. We will only do this after consulting with all affected parties and will try to make the decision that is in the best interests of both the family and the Association.

### What should I do if I want to succeed to the tenancy?

If you believe you qualify to succeed to a tenancy you must complete an application form and submit it to the Association as soon as possible, bearing in mind that you are required to hand the keys to the property back to the Association within two weeks of the death of the original tenant. Therefore, if you wish to succeed to the tenancy, you ideally should submit your application within this two week period.

In order to process the application as quickly as possible you should ensure that all supporting information such as proof of residence should be provided along with the application form.

If you need any help completing the form or advice on what would be accepted as proof of residence please contact the office.

### **What if the house has been specially built or adapted for a person with special needs?**

Where a house has been designed or specially adapted for people with special needs (e.g. a physical disability and/or wheelchair use) the law states that the only people that can succeed to the tenancy are:

- Spouses
- Co-habitees
- Same sex partners
- Joint tenants
- A person within the household with special needs

However, other qualifying persons still have a right to be offered alternative suitable accommodation and such a person would normally be able to stay in the house until the Association is able to offer alternative housing.

### **How many times can someone succeed to a tenancy?**

The Housing (Scotland) Act 2001 allows two rounds of succession.

However, if a member of the household would have qualified to succeed to the tenancy but can't because both rounds have already been used, the law gives them the right to stay in the house for up to six months after the tenant's death. This is to give them the chance to find alternative accommodation but it is important to remember that, in these circumstances, the person will NOT have a tenancy and will NOT have the rights and protection of the Scottish Secure Tenancy Agreement.

The Association will look sympathetically on any application from a qualifying person to either have the tenancy transferred into their name or to be considered for alternative housing by the Association.

## **What happens if my application is approved?**

If the Association agrees to let you succeed to the tenancy you will immediately become the legal tenant of that house. Although you will not need to sign a tenancy agreement, you will be required to sign an agreement stating that you are accepting all the terms, conditions and responsibilities contained within the Scottish Secure Tenancy Agreement. A member of staff will go over all the terms of the tenancy agreement so that you are fully aware of what it means to be a Scottish Secure Tenant of the Association.

Where a tenancy is transferred to a qualifying person, as opposed to a succession, because both rounds of succession have been used, a new Scottish Secure Tenancy Agreement will need to be signed.

Any arrears that are outstanding at the time of the preceding tenant's death will be charged against the tenant's estate and you will not be personally held liable for these.

You will be asked to give the Association access to carry out a full house inspection and any statutory repairs will be noted and carried out. After that you are responsible for ensuring the house is kept to an acceptable standard.

## **What happens if my application is refused?**

Applications for succession will only be refused where the applicant cannot demonstrate to the Association's satisfaction that they are a qualified person as defined in the Housing (Scotland) Act 2001. It is the responsibility of the applicant to provide the Association with sufficient evidence to prove that they have the right to succeed and that they meet the residency requirements.

Where an application is unsuccessful, we will write to both the applicant and the deceased tenant's next of kin (where applicable) stating the reasons for refusing the application.

## **Can I appeal the decision if my application is refused?**

Any party directly affected by the Association's decision relating to an application to succeed has the right to appeal any decision made by the Association in relation to the application. Details on how to appeal a decision is available from the Association's office.

A copy of the Association's Succession Policy is also available from the office on request.

**Further  
information**

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Open: Monday – Thursday: 9.00am – 4.30pm and  
Friday: 9.00am – 4.00pm  
Closed for lunch: 12.30pm – 1.30pm

