

# Succession Policy (Tenants)



## Document Control

Responsible Person	Operations Director			
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Associated Documents Considered	Yes	✓	No	

## **1. Introduction**

- 1.1. This policy outlines the rights of succession granted to Scottish Secure Tenants under the provision of the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014 and the Company's Scottish Secure Tenancy Agreement. The changes introduced by the Housing (Scotland) Act 2014 come into force from 1 November 2019.

## **2. Purpose**

- 2.1. By having a written detailed Succession Policy, Waverley Housing is able to ensure that a consistent and professional approach is adopted throughout the organisation and, the service delivered is compliant with law, best practice and internal policy.

## **3. Aims of Succession Policy**

- 3.1. Waverley Housing recognises that a house is not just the home of the tenant but also that of members of the tenant's family. As such we believe 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 as amended by the Housing (Scotland) Act 2014 and the Scottish Secure Tenancy Agreement provides for succession to the tenancy by a qualified person (see section 5) 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 this process.

- 3.2. The primary aim of the Succession Policy is to put a structure in place which ensures that those persons who 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.
- 3.3. Arising from these overall aims, the key objectives of the Succession Policy include:-
  - a) Ensuring that all applications for succession are treated in a fair and equitable manner
  - b) Recognising and protecting the legal rights of all members of the household
  - c) Ensuring that Waverley Housing, at all times, meets its legal obligations and operates in accordance with good practice guidelines
  - d) Trying to make best use of the housing stock
  - e) Allowing Waverley Housing to keep accurate records of the tenants and households in their properties.

## **4. Policy Statement**

- 4.1. It is Waverley Housing's policy to consider all written claims from members of a tenants household to the right to succeed to a tenancy.

## 5. Eligibility

- 5.1. To be eligible to succeed a tenancy the person(s) must meet the qualifying criteria (see 5.2), providing that the tenancy has previously been succeeded to, on no more than one other occasion. The exception to this is joint tenancies where the limit on two successions does not apply.

They must live in the tenant's house and it be their only or principal home when applying to succeed the tenancy at the time of the tenant's death.

- 5.2. Qualifying person's criteria - for each separate round of succession there are 3 levels of priority.

First priority goes to the late tenant's surviving spouse or a person living with the tenant as a co-habitee, of either sex (providing he/she occupied the property as his/her only or principal home for 12 months previous to the late tenant's death) or joint tenant. Waverley Housing must have been notified of and given consent to the proposed successors residency in the property.

If nobody qualifies or chooses to succeed from the first priority group, the tenancy can be succeeded by a member of the tenant's family who has attained the age of 16 years where the property was his/her only or principal home at the time of the tenant's death and had been so for at least 12 months prior to the date of death of the late tenant. Waverley Housing must have been notified of and given consent to the proposed successors residency in the property.

If nobody qualifies or chooses to succeed from either the first or second priority groups, the tenancy can be succeeded by a carer who is providing, or has provided care for the tenant or a member of the tenant's family, who has attained the age of 16 years and has given up his/her previous only or principal home. The house was their only or principal home at the date of death of the tenant and for a period of at least 12 months prior to the date of death of the late tenant. Waverley Housing must have been notified of and given consent to the proposed successors residency in the property

- 5.3. Where there is more than one qualified person at any level of priority, they should agree between themselves who should succeed.

If they cannot agree within 28 days of the tenant's death, or of the date of notification of right to succeed to the tenancy, Waverley Housing will determine to whom the tenancy will pass to. In making the decision Waverley Housing will take into consideration factors such as:

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

- 5.4. Where a house has been designed or substantially adapted for the use of persons with particular needs, only spouses, co-habitees, joint tenants or persons with particular needs can succeed to that tenancy. Other persons who would otherwise

be qualified to succeed have a right to alternative accommodation (as defined in Schedule 2, Part 2 of the Housing (Scotland) Act 2001. Until suitable alternative accommodation became available for such other persons they would be allowed to remain in the property on a Short Scottish Secure Tenancy Agreement.

- 5.5. Staff shall speak to the successor in order to ascertain their wishes should the house become under-occupied as a result of the succession. Should the successor wish to move to smaller, more suitable accommodation, the appropriate re-housing advice will be given.
- 5.6. Staff shall give re-housing advice 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 Short Scottish Secure Tenancy Agreement.

To have a right to succeed to a tenancy after living in a house, the tenant or joint tenant or the person who has moved into the property must have notified Waverley Housing of the person who has moved in and that the property is the persons only or principal home. The qualifying period does not commence until Waverley Housing has been given such notification.

Waverley Housing will accept such notification in writing or by email. In the case of children in the household reaching the age of 16 who were part of the household when the property was allocated and it is their only or principal home no further notification is required.

On notification Waverley Housing will consider whether it is appropriate for that person to live in the property. We will refuse consent if it is not reasonable that they do. The applicant will be notified of any reason for refusal.

Level three successors must provide evidence that they gave up their only or principal home prior to the date of death of the tenant and that they provided care for the late tenant.

## **6. Implication of Succession**

- 6.1. 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 late tenant.
- 6.2. Any arrears outstanding at the time of the late tenant's death will be charged against their tenant's estate. Where there is no estate, there is no legal obligation on the successor to pay any monies owed to Waverley Housing by the deceased and the arrear will be treated as a former tenant debt. However successors who were joint tenants prior to the death of the late tenant shall have responsibility for rent arrears and rechargeable amounts that are outstanding at the date of death of the late tenant.
- 6.3. 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.

## **7. Timescales**

- 7.1. Waverley Housing is committed to respond within 28 days of receipt of the written succession request. If consent is withheld the applicant will be provided with details of the reasons for refusal.
- 7.2. Waverley Housing will ensure this policy is reviewed every three years or earlier if there are any changes to legislation.

## **8. Equalities Commitment**

- 8.1. Waverley Housing is committed to tackling discrimination on the grounds of age, disability, gender re-assignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.
- 8.2. Waverley Housing seeks to embrace diversity, promote equal opportunities for all and eliminate any unlawful discrimination.