



# SUCCESSIONS POLICY

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The information in this document is available in other languages or on tape/CD, in large print and also in Braille.

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## **SUCCESSIONS POLICY**

### **1 INTRODUCTION**

The purpose of this policy is to set out how we will manage succession rights to Abronhill Housing Association tenancies. Succession rights are set out in the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014. This policy takes effect from 1 November 2019, which is the date from which the amendments of the Housing (Scotland) Act 2014 apply in relation to this area of housing law.

### **2 SUCCESSION**

Succession is the passing of a tenancy from a person who has died to another person who lives in the property. Only “qualified persons” may succeed to a tenancy. The law clearly defines who is a “qualified person”. The Association has no discretion in this and succession occurs by operation of law.

### **3 QUALIFIED PERSONS**

The law defines the order of succession for qualified persons.

#### **3.1 Level One Successors**

The highest priority to succeed to a tenancy attaches to any person who is;

- the tenant’s spouse or civil partner provided that they were living at the house in question as their only or principal home at the time of the tenant’s death.
- the tenant’s co-habitee provided that they were living at the house in question as their only or principal home for a minimum of 12 months prior to the tenant’s death AND that the Association had been notified of their residence.
- Any surviving joint tenant provided that the house was their only or principal home at the time of the tenant’s death.

If more than one person qualifies for the tenancy as a Level One successor they should, in the first instance, decide amongst themselves who will become the tenant. If they cannot agree the Association will decide who becomes the tenant.

#### **3.2 Level Two Successors**

If a person is qualified to succeed to the tenancy as a Level One successor and that person does not decline the tenancy, no-one who qualifies as a Level Two successor may succeed to the tenancy. Level Two successors can only succeed to the tenancy if there are no Level One successors or the Level One successors have declined the tenancy.

Level Two successors are persons who are members of the tenant's family and who meet all of the following criteria;

- He or she is aged 16 or older at the date of the tenant's death.
- The house was their only or principal home for a minimum of 12 months prior to the tenant's death.
- The Association had been notified of and had given consent to their residence in the property.

If more than one person qualifies for the tenancy as a Level Two successor they should, in the first instance, decide amongst themselves who will become the tenant. If they cannot agree the Association will decide who becomes the tenant.

### 3.3 Level Three Successors

If no-one qualifies at Level One or Level Two, or all qualified persons at Level One and Level Two decline the tenancy, it may be inherited by a Level Three successor. Level Three successors are carers who meet all of the following criteria;

- He or she is aged 16 or older at the date of the tenant's death.
- He or she was providing, or had provided, care for the tenant or a member of the tenant's family.
- The house was their only or principal home for a minimum of 12 months prior to the tenant's death.
- He or she had a previous only or principal home which was given up.
- The Association had been notified of and had given consent to their residence in the property.

If more than one person qualifies for the tenancy as a Level Three successor they should, in the first instance, decide amongst themselves who will become the tenant. If they cannot agree the Association will decide who becomes the tenant.

## 4 CARERS

Where a carer is not qualified to succeed to a tenancy in law simply because they do not meet the 12 month qualifying period, and where there are no other qualified persons, we will carefully review all the circumstances of the individual case and consider whether it is appropriate to offer a new tenancy for the same property or another property to them.

This is in recognition of the vital role that carers play in our community and also contributes to our responsibility to prevent homelessness.

## **5 QUALIFYING PERIODS & NOTIFICATION**

There is no qualifying period for the tenant's spouse, civil partner or surviving joint tenant provided that the person's only or principal home was the house in question at the time of the tenant's death.

For all other potential qualified persons the house in question must have been their only or principal home throughout the 12 months prior to the tenant's death. Furthermore, the Association must have been notified that the person is living in the house. The 12 month qualifying period does not start until that notice has been given.

The Association will accept notification of a change in household in writing, this should include the person's full name, date of birth and relationship to the tenant. On receipt of notification that someone wishes to reside in the property on a permanent basis we will decide whether or not it is appropriate to grant permission for that residence. We will not unreasonably withhold permission, however, we reserve the right to refuse permission in certain circumstances, for example, where this would lead to overcrowding. Where permission is refused any occupation of the property will not count towards a qualifying period.

## **6 LIMITS ON SUCCESSION**

The same tenancy can only be inherited twice under these provisions. If the tenancy has already been inherited twice the third death will normally end the tenancy. However, this will not happen if there is a surviving joint tenant; their Scottish Secure Tenancy will continue.

If there is still a person in the house who would otherwise qualify to inherit the tenancy, if it had not been previously succeeded to on two occasions, 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. We will support the person to secure suitable alternative accommodation should they wish us to do so.

## **7 QUALIFIED PERSONS WHO DO NOT WISH TO SUCCEED**

If someone qualifies, at any level, but does not wish to succeed to the tenancy, they should confirm this in writing within 4 weeks of the death and vacate the house within 3 months of the death. Rent will be charged only for the actual period of occupation.

## **8 ADAPTED OR SPECIALLY DESIGNED PROPERTIES**

If the house was designed or substantially adapted for a person with special needs, no person can qualify as a Level Two or Three successor unless that person themselves has special needs requiring the type of accommodation in the house. In the instance where a person would have qualified but for this condition we will offer reasonable alternative accommodation.

## **9 SHORT SCOTTISH SECURE TENANCIES (SSSTs)**

Where a Short SST is in place and the sole tenant dies the tenancy is terminated. Where a Short SST is in place and a joint tenant dies the tenancy will remain with the surviving joint tenant.

## **10 REPAIRS & MAINTENANCE RESPONSIBILITIES**

Where a tenancy has been succeeded to the Association will not carry out repairs that were the responsibility of the deceased tenant. The Association will carry out responsive repairs that are the landlord's responsibility in the normal way.

## **11 RENT ARREARS & RECHARGES**

Only successors who were joint tenants prior to the death of the tenant will have responsibility for rent arrears and recharges that are outstanding at the death of the tenant. Where the deceased person was a sole tenant we will seek to recover any outstanding debts from their estate as per the Association's former tenants arrears policy and procedure.

## **12 TIMING & INFORMATION**

All tenants were informed of the changes to this area of law, and in particular, the requirement that the Association must be notified of who is resident in the property. This information was supplied individually to all tenants before 1 November 2018, thereby allowing tenants to meet the 12 month qualification period prior to the change in law taking effect. Individuals becoming tenants on or after 1 November 2018 were also notified of the changes. From 1 May 2019 the changes are incorporated in the Scottish Secure Tenancy Agreement as per Scottish Government instruction.

## **13 DATA PROTECTION**

Abronhill Housing Association will treat tenants' personal data in line with its obligations under the current General Data Protection Regulation and its own Privacy Statement. Information regarding how tenants' data will be used and the basis for processing data is provided in the Association's Privacy Notice.

## **14 EQUAL OPPORTUNITIES**

The Association will seek to ensure that in implementing this policy that no group, organisation or individual will receive less favourable treatment or be discriminated against regardless of their race, colour, ethnic or national origin, language, belief, age, sex, sexual orientation, gender realignment, disability, marital status, pregnancy or maternity. We will positively endeavour to achieve fair outcomes for all.

## **15 COMPLAINTS**

Any tenant who feels aggrieved by their treatment under this policy can ask for a copy of the Association's Complaints Handling Procedure which is available on the Association's website or from our office. Any tenant making a complaint will be advised of their right to complain to the Scottish Public Services Ombudsman.