

## 1.0 CONTEXT

1.1 The Housing (Scotland) Act 2001, and more recently the Housing (Scotland) Act 2014, make provisions for succession to a Scottish secure tenancy on the death of a tenant. The legislation defines the person(s) qualified to succeed to a tenancy, and the circumstances in which they can do so.

## 2.0 AIMS

- 2.1 To ensure equality of opportunity and consistency of approach in dealing with a request from a person to succeed to a tenancy.
- 2.2 To ensure compliance with legislation, guiding standards and best practice.
- 2.3 To mitigate risk.

## 3.0 DEFINITIONS

- 3.1 *Succession to tenancy* operates when the tenancy is passed to another person on the death of the tenant.
- 3.2 *Qualified persons* are those defined within the Housing (Scotland) Act 2001 as being eligible for succession. The Housing (Scotland) Act 2014 introduced a mandatory 12-month qualifying period of residence for 'qualified persons'. Section 4.2 of this policy outlines the order of succession and associated criteria in further detail.
- 3.3 A *Co-habitee* is a person, whether of the opposite sex or not, who is living with the tenant in a relationship similar to that of husband and wife, or civil partner.

## 4.0 POLICY

### 4.1 General

- 4.1.1 On the death of a Scottish secure tenant, the tenancy passes by operation of law to a qualified person.
- 4.1.2 A person succeeds to a tenancy (as opposed to a property). Therefore the Successor is entitled to identical tenancy conditions, rights, obligations and responsibilities including date of entry, as the original tenant. As such, the Successor will be required to sign an Addendum to the Tenancy, as opposed to signing a new Tenancy Agreement.
- 4.1.3 In line with legal advice, the successor is not responsible for the payment of rent arrears accrued by the deceased tenant; and in this event a claim will require to be made on the deceased tenant's estate.
- 4.1.4 If, following the death of a GWHHA Tenant, there is no qualified person, or every qualified person declines the tenancy, the tenancy is terminated.
- 4.1.5 Legislation includes a right to a second round of succession. Upon the death of the first successor the tenancy passes by operation of law to another qualified person.
- 4.1.6 Legislation defines that no more than two rounds of succession is permissible. Upon the death of the second successor, the tenancy is terminated.

### 4.2 Order of Succession – Qualified Persons

4.2.1 Housing legislation defines the persons entitled to succeed to a tenancy ("qualified persons") and the levels of priority as follows:

**LEVEL ONE** First priority goes to the surviving spouse, civil partner or co-habitee providing the house was the person's only or principal home throughout the period of 12 months ending with the tenant's death; or the surviving joint tenant.

**LEVEL TWO** Second priority (if nobody qualifies or chooses to succeed from the first priority group) goes to other members of the tenant's family providing they are aged at least 16 years and the house was the person's only or principal home throughout the period of 12 months ending with the tenant's death.

**LEVEL THREE** Third priority (if nobody qualifies or chooses to succeed from the first or second priority group) goes to a carer providing they are aged at least 16 years and the house was the

person's only or principal home throughout the period of 12 months ending with the tenant's death.

- 4.2.2 The 12-month period of residence for qualified persons is a mandatory legislative requirement, and commences only from the date the landlord was notified that the house in question was the person's only or principal home. Consistent with legal advice, GWHA requires such notification in writing and will acknowledge receipt of any notification.
- 4.2.3 Where there is more than one qualified person, the parties may agree who should succeed to tenancy. Failing agreement between parties, or if no written response is received within 28 days from the date of death, legislation stipulates that the Association will be entitled to decide. GWHA's succession to tenancy procedure outlines how such a decision will be reached: generally priority will be given in the following order:
- i. The joint tenant
  - ii. The surviving spouse, civil partner or common-law partner.
  - iii. The immediate family member with the longest period of residency (immediate family being a son or daughter of the deceased tenant).
  - iv. The extended family member who has lived in the property for the longest period of time (extended family being the parent, grandparent, grandchild, brother, sister, uncle, aunt, stepchild, niece or nephew of the deceased tenant).
  - v. The carer who has lived in the property for the longest period of time.

Any such decision will be legally binding.

### **4.3 Notification of Right to Succeed to Tenancy**

- 4.3.1 GWHA will use its best endeavours including writing to those noted on the household profile, to ascertain whether there are any persons who may be entitled to succession to tenancy and will give notice to each such person in writing.

### **4.4 Declining the Tenancy**

- 4.4.1 Qualified persons may decline the tenancy by giving the Association notice, in writing, within 28 days of the Tenant's death.
- 4.4.2 In line with legislation, qualified persons who decline the tenancy must vacate the property within three months.
- 4.4.3 An equivalent payment to rent will be due from the qualifying person for the period of occupancy commencing from the date of the tenant's death, and ending on the date the property is vacated and keys returned to the Association.

### **4.5 No Qualified Persons Identified**

- 4.5.1 If there is no qualifying person, the effective date of the tenancy end will be the date of the tenant's death.

### **4.6 Exceptional Circumstances**

#### **4.6.1 Specially Adapted Accommodation**

- 4.6.1.1 GWHA has a small number of properties that have been designed or specially adapted for the use of persons with special needs, for example: wheelchair users. Only spouses, civil partners, co-habitees, joint tenants or persons with a corresponding special need will be entitled to succeed to such a tenancy. Other persons who would otherwise be qualified to succeed will have a right to suitable alternative accommodation, as appropriate as per 4.6.2.1
- 4.6.1.2 In the event the spouse, civil partner, co-habitees or joint tenant does not require specially adapted accommodation, GWHA will make an alternative offer of rehousing. However, acceptance will be at the discretion of the successor as s/he is not legally required to remove from the property.

4.6.1.3 Any other person(s) entitled to succeed will have a statutory right to suitable alternative accommodation. If such a qualified person refuses to voluntarily remove from the specially adapted property, it will be a matter for the courts to determine whether it is reasonable for a repossession order to be granted and whether the alternative accommodation on offer is suitable.

4.6.1.4 Where a tenant has to move to alternative accommodation, the Scottish Secure Tenancy will continue, for the purposes of succession.

#### **4.6.2 Suitable Alternative Accommodation**

4.6.2.1 In determining the reasonable suitability of alternative accommodation for the purposes of section 4.6.1 above, the requirements of the Housing (Scotland) Act 2001, Schedule 2, Part 2 will be taken into account as follows:

- i. Its proximity to the place of work (including attendance at an educational institution) of the tenant and members of the tenant's family, compared with the existing house;
- ii. The extent of the accommodation required by the tenant and the tenant's family;
- iii. The character of the accommodation offered compared to the tenant's existing house;
- iv. The terms on which the accommodation is offered to the tenant compared with the terms of the tenant's existing tenancy;
- v. If any furniture was provided by the landlord for use under the existing tenancy, whether furniture is to be provided for use under the new tenancy which is of a comparable nature in relation to the needs of the tenant and the tenant's family;
- vi. Any special needs of the tenant's family.

#### **4.6.3 Joint Tenancies**

4.6.3.1 Only in extreme circumstances (for example: where a household member is likely to be severely disadvantaged by not being a joint tenant), and with the express permission of GWHA's Management Committee that a joint tenancy will be created whilst succession is operating.

#### **4.6.4 Rehousing for Multiple Parties**

4.6.4.1 Where there are multiple qualified persons who are eligible to succeed, and the property in question is a 4/5 apartment; if the circumstances are that no such agreement can be reached in terms of who should succeed to the Tenancy, the Association may consider offering each of the parties alternative accommodation on Scottish Secure Tenancy Agreements.

4.6.4.2 The maximum which can be offered under this section is two, 2 apartment properties.

### **5.0 FEEDBACK, APPEALS AND COMPLAINTS**

#### **5.1 Feedback**

5.1.1 GWHA Tenants and other customers may provide feedback about this document by emailing [admin@glasgowwestha.co.uk](mailto:admin@glasgowwestha.co.uk)

#### **5.2 Appeals and Complaints**

5.2.1 Applicants with a grievance arising from their application for succession to tenancy will be considered in accordance with GWHA's Comments and Complaints Policy.

5.2.2 Once the Association's Comments and Complaints Policy is exhausted, there is a right of appeal to the Scottish Public Services Ombudsman (SPSO). As the SPSO is unlikely to comment on matters of a legal nature, a review will focus on the proper application of the Association's policy, rather than the legalities of succession.

5.2.3 There is no statutory right of appeal against decisions made by the Association in respect of succession.

### **6.0 REVIEW**

6.1 This policy will be reviewed every 5 years, or sooner, subject to a change in legislation or circumstance.

6.2 The policy, in parts, attempts to summarise current legislation. In any case of conflict between the two, legislation will always preside.

**7.0 DELEGATED AUTHORITY**

7.1 Delegated authority is granted by the Management Committee to the Chief Executive and Staff to implement this Policy and the associated procedures.