

# *Succession to Tenancy Policy*

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## Succession to Tenancy Policy

### 1. Purpose

The purpose of this policy is to clearly set out the qualifying criteria for succeeding to a tenancy. The attached procedures outline the process involved when a succession to tenancy arises.

Succession to a tenancy only occurs on the death of the tenant and involves another adult or adults in the house taking over the tenancy.

### 2. Legislation, regulation and guidance

This policy adheres to all legal, regulatory and statutory guidance, in particular:

- Housing (Scotland) Act 2001
- Housing (Scotland) Act 2014
- Matrimonial homes (Family Protection(Scotland)) Act 1981
- Succession (Scotland) Act 1964
- Civil Partnerships Act 2004

### 3. Organisational Values

#### *Our Vision:*

"We will provide excellent quality affordable and efficient homes in neighbourhoods that are well managed and maintained; we will contribute to sustaining communities where people feel safe and want to live by providing housing and other services and working with our voluntary and statutory partners."

#### *Our Values:*

Our Core Values are:

We Will

- Invest and Support

We will be

- Engaged and Responsive
- Accountable and Compliant
- Fair and Approachable

- Efficient and Responsible
- Excellent and Committed

#### **4. People Centred Approach**

Rosehill recognises that when there has been a death in a family it can be a very difficult time for people. Therefore staff will proceed in a sympathetic and sensitive manner and will be responsive to the needs of the individual.

Staff will process any application for succession to the tenancy as quickly as possible to reduce any distress to the person during his/her difficult time.

On hearing of a tenant's death staff will not approach the family/household members. Staff will wait until the family make contact unless there has been no contact within a month of the tenant's death.

#### **5 Qualifying Criteria**

##### ***Rounds of Succession***

Under the Scottish Secure Tenancy two rounds of succession are available. For example a couple living together (either married or co-habiting) where only one is the tenant and the tenant dies the tenancy would then pass to the spouse/partner. If subsequently the partner dies the tenancy may be passed to an adult member of the tenant's family living in the house e.g. son or daughter. After this there are no further entitlements to succession.

##### ***Qualifying Period and Notification of Residency:***

Section 13 of the Housing (Scotland) Act 2014 amends schedule 3 to The Housing (Scotland) Act 2001. It introduces a new 12 month Qualifying period and notification requirement before certain categories of persons become 'qualified persons' and have the right of succession to a Scottish Secure Tenancy. There continues to be no qualifying period under the new provisions for the tenant's spouse, civil partner or joint tenant, provided (in all three cases) that the persons only or principal home was the property in question at the time of the tenant's death.

The notification requirement is that the 'qualifying person' must have notified Rosehill in writing at the point of moving into the property. This notification must have been received and acknowledged in writing at least 12 months prior to the date of the tenant's death. A qualifying person could be, for example, a tenant's adult son or daughter or other adult relative.

### *Levels of Priority*

When a tenant dies and there is more than one adult remaining in the house the following order of entitlement to succeed is applied:

- Priority 1:** the surviving spouse, or co-habitee (including same sex couples) providing the house was their only or principal home at the time of the tenant's death or in the case of co-habitees that the house had been their only or principal home for at least 12 months before the tenant's death,
  
- Priority 2:** where nobody qualifies or chooses to succeed from the first priority group then succession can be given to a member of the tenant's family aged at least 16 years, provided that the house was their only or principal home at the time of the tenant's death. Written notification that the property is this person's only or principal home will need to have been received and acknowledged at least 12 months prior to the tenant's death.
  
- Priority 3:** where nobody qualifies or chooses to succeed from the above priority groups then succession can be given to a carer, aged at least 16 years, where the house was their only or principal home at the time of the tenant's death and where they had given up their only or principal home to care for the tenant or a member of the tenant's family. Written notification that the property is this person's only or principal home will need to have been received and acknowledged at least 12 months prior to the tenant's death.

**6. Membership**

Before succeeding to the tenancy the qualifying person(s) must apply for membership of Rosehill and be accepted as a member.

**7. Special Needs Housing**

Where a house has been designed or substantially adapted for the use of persons with special needs, in the first round of succession only spouses, co-habitees, joint tenants or a qualifying person with special needs may succeed a tenancy in such cases. In the second round of succession only a qualifying person with special needs may succeed to a tenancy. The 12 month approved residency applies in this case.

Others, who would have qualified, had the house not been for special needs, would have a right to alternative suitable accommodation.

**8. Number of Qualifying Persons**

Where more than one person is qualified to succeed, the tenancy may pass as decided by agreement between all the qualified persons. Failing such agreement within four weeks of the death of the tenant, Rosehill may decide.

**9. Succeeding to a Tenancy**

When a tenant dies his/her tenancy is formally ended at the date of death. Any person succeeding to the tenancy will succeed from that date. There is no gap between the former tenancy ending and succession of the tenancy.

In most cases a period of time passes before Rosehill is advised of a tenant's death. Therefore any changes to the tenancy and Rosehill's records will be implemented retrospectively. The successor to the tenancy will be granted the tenancy backdated to the date the deceased tenant's tenancy ended and the successor will be responsible for the rent from that date onwards.

**10. Declining Succession**

Where a person qualifies to succeed but declines the tenancy he or she must provide Rosehill with written notice within four weeks of the tenant's death. Such persons may continue to occupy the house for up to three months from the date of notice.

**11. Qualifying Persons – No right to succession**

Where under normal circumstances a person would qualify to succeed to a tenancy but can not because the two rounds of succession have occurred, he/she will be able to continue to occupy the house for up to six months from the date of the tenant's death.

The period of occupation is to provide the person with time to find alternative accommodation. Rosehill may, where possible, consider assisting the person with alternative housing.

**12. Non-qualifying persons**

Where no person qualifies to succeed to the tenancy, the tenancy shall be ended. At the discretion of Rosehill any non-qualifying person can be given up to four weeks from the date of the tenant's death to vacate the house. This period may be extended up to a maximum of three months from the date of the tenant's death.

This period of occupation is to provide the person with time to find alternative accommodation. Rosehill may, where possible, consider assisting the person with rehousing.

**13. Conditions of Occupancy**

If a succession to tenancy is not happening for whatever reason but a period of occupation is being granted the following conditions apply:

- 1) the person is required to pay Rosehill an occupancy charge for the duration of their occupation which will not be less than the rent for the house.
- 2) at the end of the period of occupation the person must hand in the keys to Rosehill by the specified deadline. At the same time any final payment in relation to compensation for occupation must be made.
- 3) At the end of the period of occupation the house must be cleared of all contents belonging to the tenant and/or person including carpets and any items stored in the attic space if applicable.
- 4) In the event the tenant lived alone, relatives responsible for managing his/her estate will be given up to four weeks from the date of the tenant's death to clear

the house and return the keys to Rosehill. Rosehill may choose if necessary to extend this period for a further two weeks.

#### **14. Appeals Process**

Rosehill operates an internal appeals process for dealing with any disputes which may arise regarding a decision made by Rosehill.

Throughout this process tenants may wish to take advice from an independent source such as the Citizens Advice Bureau, Law Centre or Solicitor.

#### **15. Equality and Diversity**

We are committed to providing fair and equal treatment for all our staff and customers including tenants and will not discriminate against anyone on the grounds of race, colour, ethnic or national origin, language, religion, belief, age, gender, sexual orientation, marital status, family circumstances, employment status, physical ability and mental health. In implementing this policy we will positively endeavour to achieve fair outcomes for all.

#### **16. Data Protection**

16.1 On the 25<sup>th</sup> May 2018 the legislation governing data protection changed with the introduction of the General Data Protection Regulation (GDPR).

16.2 We hold a variety of Personal Data relating to individuals including tenants, waiting list applicants, factored owners, other service users, employees and Committee Members. Our Privacy Policy sets out the basis on which we can process and share such data with third parties, it also sets out how we will securely store individuals' data, whether electronically or in paper format. It also provides information on individuals' rights under GDPR including: to view personal data held about them by us; to request a restriction of processing of their data; the right to be forgotten and a right to object to us processing their data. In terms of the rights to be forgotten and to restrict or object to processing of Personal Data, any such requests will require to be considered on their own merits and legal advice will need to be obtained in some circumstances. We have the responsibility for accepting or refusing such requests and will do so in writing.



- 16.3 Under GDPR we are required to provide all customers whose Personal Data we hold with a Fair Processing Notice (also known as a Privacy Notice). The Notice sets out the Personal Data we process and the basis for doing so.
- 16.4 We will only keep and process Personal Data for the original purpose we gathered it for and we will not keep it for any longer than necessary. Attached to our Privacy Policy is a table of Retention Periods for Personal Data held and processed by us. We recognise that not all Personal Data can be processed and kept for the same period of time, and this will vary depending on the individual circumstances of each person whose Personal Data we hold.
- 16.5 The Privacy Policy sets out what should happen in the event of a Data breach e.g. does the breach require reporting to the Information Commissioner's Office and whether the individual affected should be notified. Timescales are set out for dealing with data breaches.
- 16.6 Full copies of our Privacy Policy are available upon request at our office or from our website [www.rosehillhousing.co.uk](http://www.rosehillhousing.co.uk)

## **17. Complaints**

Our aim is to get services right first time. Where customers are dissatisfied with any part of this process, we have a Complaints Policy and procedure. The procedure can be used where there is dissatisfaction with this Policy or its operation. Our Complaints Policy is available in our office or online at [www.rosehillhousing.co.uk](http://www.rosehillhousing.co.uk)

## **18. Tenant Participation**

One of our strategic objectives is to engage effectively with tenants and service users so that our service delivery meets their requirements. In order to ensure we do this effectively we have a tenant participation strategy. Tenants are encouraged to engage with the operational design of services.

Further details of this can be found in our Tenant Participation Strategy. Copies of this are available in our office or online at [www.rosehillhousing.co.uk](http://www.rosehillhousing.co.uk)

## **19. Risk Management**

In all the key areas of our business we need to consider any risks which may arise. To this end we have in place a robust Risk Management Policy and from this flows our Risk Register. We have identified our “Top 5” risks which are regularly monitored by our Management Team and Audit Sub-Committee.

Key to the mitigation of the risks associated with tenancy management issues and the subsequent impact on the reputation of the co-operative and possible litigation risk is having a comprehensive policy in place to govern the management of tenancy issues.

## **20. Policy Review**

This Policy will be reviewed at least every five years or sooner to ensure it continues to reflect current thinking and practice and to comply with legislative requirements and regulatory guidance.

Any tenant wanting to get involved with the review of any Rosehill policy can do so. Further details of this can be found in our Tenant Participation Strategy. Copies of this are available in our office or online at [www.rosehillhousing.co.uk](http://www.rosehillhousing.co.uk)