



# Cassiltoun Housing Association

## GUIDANCE AND PROCEDURES

### Successions

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# Contents

**1 Introduction**

**2 The Law**

**3 Notification of the death of a tenant**

**4 Right to Review**

**5 Appendices**

# 1. Introduction

Succession to Tenancy is a process governed by statute. The right of a qualifying person to succeed to a Scottish secure tenancy on the death of a tenant is contained in schedule 3 of the Housing (Scotland) Act 2001.

Although the legislation allows only two rounds of statutory succession, Cassiltoun Housing Association has adopted a more flexible approach.

## 1.1.

Both the Allocations Policy (see the Allocations Policy, Appendix 3 (Page 32)) and the Cassiltoun Housing Association Scottish Secure Tenancy Agreement (see Part 7 of the Tenancy Agreement), extend the right of succession beyond the second round of succession to applicants who otherwise would have qualified to succeed but for the limitation contained in the legislation. The definition of 'Qualifying persons' is detailed in section 2.3 below.

## 1.2.

Although Cassiltoun Housing Association policy allows succession beyond the death of the second successor, this will be referred to as a non-statutory succession. It will only be granted where the applicant meets the criteria of the definition of a 'qualified person' as detailed at section 2.3. In this instance the non-statutory successor will be treated as a new tenant and all rights including those under the Right to Buy provisions will be the same as they are for any other new tenant.

# 2. The Law

## 2.1

Succession is a general legal right, and is governed principally by the Succession (Scotland) Act 1964, as amended. Individuals, including tenants, therefore have a general right to succeed to the interest in property of certain persons in accordance with the terms of that statute.

## 2.2

In relation to housing, the Housing (Scotland) Act 2001 specifically provides for succession to a tenancy by certain individuals. In particular, Section 22 of the Housing (Scotland) Act 2001 ('the 2001 Act') provides that:

## 2.3

**Section 22(1) (1) *On the death of a tenant under a Scottish Secure Tenancy, the tenancy passes by operation of law to a qualified person.*(2) *On the death of a qualified person who succeeded to a tenancy under subsection (1), the tenancy passes by operation of law to another qualified person.***

## 2.4

### Qualified Person

Schedule 3 of the 2001 Act sets out who is a qualified person – whose only or principal home at the time of the tenant's death was the house - in the following order:

#### **Level 1 Succession passes in the first instance to:**

- The tenant's spouse.
- The tenant's partner or same sex partner (The 2001 Act states that the partner should have resided in the house as their only or principal home for the six months ending in the tenant's death).
- A surviving joint tenant (in the case of a joint tenancy).

Cassiltoun Housing Association have taken the decision to allow a partner who does not meet the 6 month requirement to succeed to a tenancy, **but only if** there are no other qualified persons at Level 2 below.

If there are family members who would qualify at Level 2, then the partner is treated as a member of the tenant's family, and may only be entitled to succeed under Level 2.

#### **Level 2 If there is no one who meets the above criteria or the tenancy is declined by the qualifying person then the tenancy passes to:**

- A member of the tenant's family aged at least 16 years (at the date of death) where the house was the person's only or principal home at the time of the tenant's death.

#### **Level 3 If there is no one who meets the above criteria or the tenancy is declined by the qualifying person then the tenancy passes to:**

- A carer providing, or who has provided, care for the tenant or a member of the tenant's family (Cassiltoun Housing Association extends family to incorporate 'caring for someone else living in the house') where:

The carer is aged at least 16 years (at the date of death),  
and

- The house was the carer's only or principal home at the time of the tenant's death,

**And**

- The carer had a previous only or principal home, which was given up\*.

\* the carer should have given up their previous only or principal home before the death of the deceased tenant.

## 2.5

### Houses with adaptations

If the house has been adapted for special needs, then only the following qualifying persons may succeed to the tenancy:

- The tenant's husband or wife, partner or same-sex partner, joint tenant (as detailed in **2.3** Level 1 above)

**Or**

- A qualifying person (as detailed in **2.3** Levels 2 and 3 above), with special needs requiring accommodation of the kind provided by the tenancy.

Any other person, including non-statutory successors, who would otherwise have qualified had it not been for the fact that the house had been adapted, **must** be provided with suitable alternative accommodation by Cassiltoun Housing Association.

## 2.6

### Disputes

Where there is more than one qualified successor in **2.3** Level 1 above, then the parties must decide between them who is to succeed within 4 weeks of the death of the tenant or within 4 weeks of the date of the notice advising them of their right to succeed (see below). Where the parties cannot agree then Cassiltoun Housing Association as the landlord may intervene and take the decision.

Where Cassiltoun Housing Association make such a decision in cases of dispute then it may be appropriate for alternative accommodation to be offered to the qualified person who was not successful in succeeding to the property in accordance with their existing points.

A solution to this may be to offer a joint tenancy to the parties involved enabling them to be jointly and severally liable for the tenancy and remain resident in the property.

In the case of joint tenancies, then any or all of the surviving tenants may succeed to the tenancy (unless they decline the succession).

The same principles apply where there are multiple qualifying persons in **2.3** Level 1 and Level 3 above.

## 3. Succession in Practice

### 3.1

#### Notification of the death of a tenant

Upon notification of the death of a tenant, Cassiltoun Housing Association would normally receive confirmation of that from the family of the deceased tenant, who should supply a copy of the death certificate. If notification is not received, the termination of Housing Benefit may come to the attention of the Housing Officer because of accumulation of arrears on the rent account of the deceased tenant.

As soon as Cassiltoun Housing Association is notified of the death they should investigate to ascertain whether there are any qualifying persons residing in the tenancy who were included in the household composition prior to the death of the deceased tenant and who may be entitled to succeed to the tenancy. (for details on who qualifies see section **2.3** above). The LHO should also identify if there are any persons who may be entitled to the house as a non-statutory successor. Such a person or persons should have been included in the household composition prior to the death of the deceased tenant. Persons who claim to be entitled to succeed must be able to prove that they have been resident in the tenancy prior to the deceased tenant's death.

### 3.2

#### Identify Qualified Person(s)

As soon as qualified person(s) are identified then the LHO should ascertain who is entitled to succeed to the tenancy in terms of the definitions contained in sections **2.3** and **2.4**. The LHO must write to the qualifying person(s) informing them of their right to succeed to the tenancy.

If there is a qualified person in Level 1 (as set out in section **2.3**), then they will succeed to the tenancy **unless** they decline the tenancy within 4 weeks of the death of the tenant. If they fail to notify the manager in writing within 4 weeks then they succeed to the tenancy and must terminate the tenancy in the normal way (i.e. by notice in writing) if they do not wish to continue it. This has the effect of terminating the tenancy. Thereafter, other qualified persons cannot succeed to the tenancy, even if they would have qualified prior to the original succession taking place.

If there are no qualified persons in Level 1, or the qualified person(s) decline the tenancy, then a notice must be sent to all qualified persons entitled to succeed under Level 2, informing them of their right to succeed. These qualified persons would then succeed **unless** they decline the tenancy. Should they wish to decline the tenancy, they must notify the Head of Operations within 4 weeks of the date that the notice was sent to them. Should they fail to notify the Head of Operations within 4 weeks of the date of the notice then they succeed to the tenancy, with the same effect as mentioned above for Level 1.

If there are no qualified persons in Level 2, or the qualified person(s) decline the tenancy, then the same process mentioned above would be followed in relation to qualified persons in Level 3.

### 3.3 Exceptions

The exception to this is where the tenancy is a joint tenancy and on death of one of the joint tenants the tenancy continued with the other joint tenants. If one of those joint tenants then decides they no longer wish to be a joint tenant then they can terminate their interest in the tenancy under section 13 of the 2001 Act and the tenancy will simply continue for the remaining joint/sole tenant/s.

Where there is no statutory successor the tenancy can be offered as a new tenancy to a person who is resident in the house and was registered as a member of the household prior to the death of the deceased tenant. In these circumstances the Housing Officer should use the criteria set out at section 3.2 and must make it clear that the tenancy is being offered as a new tenancy. The prospective tenant should be advised that their rights will be those of a new tenant and all rights including Rent Guarantees and Right to Buy will be the same as they are for any other new tenant.

### 3.4 Administrative Practices

It should be common practice that details of qualifying occupiers are recorded by the Housing Officer as soon as we establish that they are resident in the household. Otherwise, proof should be provided by the person(s) wishing to succeed that they were resident in the tenancy prior to the tenant's death and that it was their only or principal home prior to the tenant's death.

Under the terms of Section 22 of the 2001 Act the tenancy passes 'by operation of law' immediately on the death of the tenant. This means that on SDM the date of succession should be the day after the date of the death of the tenant.

If the successor is a joint tenant, then he/she does **NOT NEED TO SIGN** a new tenancy agreement. The Housing Officer simply needs to amend the appropriate details on the SDM system and attach to the original tenancy agreement a copy of death certificate of the deceased tenant and the letter confirming entitlement to succeed.

The statutory successor, if they are the deceased person's surviving spouse who occupied the house at the time of the tenant's death as their only or principal home, the deceased person's partner or same-sex partner (provided that the same sex-partner has resided with the deceased tenant for 6 months prior to the tenant's death), retains all the rights and responsibilities held by the deceased tenant and will have the preserved Right to Buy even although they should sign a new tenancy agreement.

The Housing Officer should attach to the new tenancy agreement the deceased person's original tenancy agreement and any schedules thereto, a copy of the death certificate and a copy of the letter confirming entitlement to succeed.

Any statutory successor who does not fall into the categories of joint tenant, spouse, partner or same-sex partner will have the 'modernised' Right to Buy. The discount period will be calculated on the basis of the period during which the statutory successor has continuously resided in the property since the age of 16.

A non-statutory successor should sign a new tenancy agreement and has the same Right to Buy and Rent Guarantees as any other new tenant. The Housing Officer should attach to the new tenancy agreement the deceased person's/persons' original tenancy agreement/s, together with a copy/copies of their death certificate/s and the letter/s confirming the entitlement to succeed.

**NB:** If notification of the death of the tenant is not received until several years after it has occurred then **DO NOT BACKDATE THE TENANCY CHANGE IN SDM**. Change the tenancy from the date you are notified of the death and enter notes onto the notepad and tenancy files to record this fact. (remember changing tenancy dates and details in SDM affect other operational areas, e.g., Housing Benefit Interface, among others).

### 3.5

#### **Challenging a person's right to succeed**

Cassiltoun Housing Association cannot prevent a qualified person from succeeding to the tenancy unless the house has been adapted for special needs and the person does not qualify as per section 2.4 above. This means that if the person has a right to succeed Cassiltoun Housing Association cannot prevent them succeeding, even if they have been evicted for anti-social behaviour or have been convicted of, supplying drugs from or in the vicinity of the tenancy in question, or for any other reason. It is, therefore, important to seek to reduce the security of tenure of tenants when it becomes apparent that a person subject to such an order is residing in the tenancy and if it is reasonable to do so.

However, although the qualified person succeeds to a Scottish Secure Tenancy, Cassiltoun Housing Association may take steps thereafter to reduce their security of tenure if they are subject to an Anti-social Behaviour Order.

If the security of tenure of the deceased tenant has been reduced to that of a Short Scottish Secure Tenancy prior to their death, the successor would be offered only a Short Scottish Secure Tenancy unless it would be inequitable to do so. Advice should always be sought from Cassiltoun Housing Association's Solicitor under such circumstances. There are statutory procedures which require to be followed when setting up Short Scottish Secure Tenancies and failure to observe these will result in a Scottish Secure Tenancy being created.

Cassiltoun Housing Association can decide to offer a Short Scottish Secure Tenancy Agreement to a non-statutory successor who is subject to an Anti-social Behaviour Order or who has previously been evicted (within the last three years) for anti-social behaviour of various kinds.

**If someone claims to have succeeded to a tenancy they will require to show that they have were residing in the tenancy prior to the death of the tenant, that the tenancy was their only principal home and that they were registered as a member of the household prior to the tenant's death. A person who is in receipt of benefits should be able to demonstrate that they claimed benefit from that address before the date of death of the tenants part of the household and that either they or the deceased tenant had notified all of the relevant agencies, particularly Cassiltoun Housing Association, that they were living there.**

**Housing Officers should be aware that applicants for benefits can ask the DWP to backdate changes of address retrospectively on the DWP system.**

**A person who is not on benefits will require to provide evidence that they were resident in the deceased tenant's household by supplying Income Tax details, correspondence to them from their employer, bank, building society, and so forth.**

If the housing officer suspects that the prospective tenant is not a qualifying occupier, a careful and tactful investigation of the situation should be undertaken, within the relevant timescale. Cassiltoun Housing Association's Solicitor can offer advice as to the prospects of successfully refusing succession in such cases. In practice the first step for investigating a

suspicious claim for succession should be to ask the neighbours of the tenancy if the prospective tenant lived there.

Their evidence would be very important in any court case arising from such a claim. Steps should be taken to make enquiries of neighbours as soon as possible after notification of the death of the tenant ie if there is no supporting evidence of residency.

### **3.6**

#### **Tenancy refused by Qualifying Person**

If the qualified person refuses the tenancy and there are no other qualified person/s in the house, the Association must write to the person informing them that:

- They have a right to succeed but have refused the tenancy.
- They will be charged for the period that they occupy the house from the date of death of the tenant until they vacate the house.
- The 2001 Act states that they are required to vacate the house within 3 months of the date that they gave notice that they were declining the tenancy.
- The Association should offer assistance and support, with the relevant tasks/forms etc that require to be completed, as dealing with a death can be a very traumatic time for friends and relatives.

### **3.7**

#### **No qualified person/s resident in the property**

If there are no qualified person/s identified then the Association must take steps to recover possession of the property by:

- Contacting the next of kin/trustee/designated person/s responsible for the estate of the deceased.
- Notifying them in writing of any outstanding debts owed to the Association in respect of the tenancy.
- Requesting that they clear the property and return the keys to Cassiltoun Housing Association as soon as possible (normally within 28days).
- The Association should offer assistance and support, with the relevant tasks/forms etc that require to be completed, as dealing with a death can be a very traumatic time for friends and relatives.
- They will be charged for the period that they occupy the house from the date of death of the tenant till they vacate the house. If this exceeds 2 weeks refer to guidance notes for guidance about how to create a violent profits account.

## 3.8

### Non-qualifying person/s left resident in the property

If there are non-qualifying person/s in residence the Association must write to them informing them:

- That they have no right to succeed to the tenancy and that they must leave the property. Give them 28 days maximum to vacate the property and return vacant possession to Cassiltoun Housing Association.
- Inform them of their current status in terms of their housing application if they have one (e.g. points, areas, likelihood of an offer etc). Staff should also check if the occupant would qualify for the tenancy as a waiting list applicant. Cassiltoun Housing Association would not insist that they leave tenancy if this is the case unless we have evidence of anti-social behaviour.
- If they have no live application for housing the Association should make every effort to encourage the person/s to apply for housing, and if applicable such person/s should be offered accommodation in line with the points awarded.
- Inform them that the 2001 Act states that the tenancy will be terminated from the date the death of the tenant occurred.
- Inform them that they do not have a Scottish Secure Tenancy but that while they are resident £XX will be charged for the period that they remain resident. They should be advised in writing about the amount of the Occupancy Charge and that it is not a rent charge and that payment of the occupancy charge does not mean that they have a tenancy agreement or an offer of housing.
- The Association should offer assistance and support, with the relevant tasks/forms etc that require to be completed, as dealing with a death can be a very traumatic time for friends and relatives.

## 3.9

### How to charge the person/s left in residence

#### 3.9.1

As highlighted above in **3.6, 3.7 & 3.8 above** there will be 4 occasions where a person(s) may be left resident and charge may be applicable in the property after the death of the tenant:

- Where the person is a qualified successor but has refused the tenancy.
- Where the person does not qualify to succeed to the tenancy.
- Where the property is adapted for special needs and the person is not entitled to succeed to that property but is entitled to alternative accommodation.
- Where the tenant's next of kin/trustee/designated person/s responsible for the estate of the deceased wish time to clear the property.

#### 3.9.2

As soon as it is known that a person(s) will be left in the property after the date of termination of the tenancy, then a letter must be sent to them outlining their individual circumstances (see sections **2.4, 3.6, 3.7 & 3.8 above for guidance and Appendix 1 for letters**):

In addition to the above the letter must state that in accordance with paragraph 11(3) (b) of Schedule 3 to the Housing (Scotland) Act 2001, Cassiltoun Housing Association are charging for the period that they remain resident within the property. Their occupancy within the property does not constitute a new Scottish Secure Tenancy and they will be invoiced for the charge on a weekly basis. The weekly charge should be equivalent to and no greater than the amount of rent that Cassiltoun Housing Association would have received if the property had been let.

### **3.9.3**

Reference should also be made to the maximum period that they are allowed to remain resident in the property e.g. as per sections **3.6,3.7 & 3.8 above**.

### **3.9.4**

To raise the charge a Violent Profit account should be created on SDM. Do not under any circumstances refer to the charge as rent. Recovery of the debt should take place as per the Debtors Procedures and the debt treated as an 'other debt' as specified within the procedures. See paragraph 3.8 above.

### **3.9.5**

If after the prescribed period of (3 month/28 days as detailed above) the person/s are still in residence then the Association should pass the case to their Solicitor with instructions to recover possession of the house. The Solicitor will require the following information:

- Date of death of the tenant and termination date of the tenancy.
- The Scottish Secure Tenancy Agreement between Cassiltoun Housing Association and the deceased tenant and/or the Tenancy Agreement between The Glasgow Housing Association and the deceased tenant.
- Details of the occupants (name, dates of birth etc).
- Reasons why the occupants are being requested to vacate the property (e.g. they are not entitled to succeed).
- Copies of any correspondence sent/received in relation the case.
- Copies of any invoices raised and payments received (report/screen print from SDM)
- Any other information available that is relevant to the case.

## 4 Right to Review

Where a decision is made on succession including who is/is not a qualifying person(s) entitled to succeed to the tenancy, there is a right to review which the aggrieved party may invoke. An application for review must be submitted within 28 days of the original decision being notified to the relevant person(s).

### 4.1 CASSILTOUN HOUSING ASSOCIATION Reviewers

If the original decision on the succession was made by a Housing Officer then the Head of Operations should act as the Reviewer.

If the Head of Operations was involved in the original decision then the case should be referred to the Director of Operations, who will then take on the role of Reviewer.

### 4.2 Review Process

As soon as a succession decision is challenged the review process should be initiated. The person(s) asking for the review should be given the opportunity to submit their reasons for review in writing, along with any new evidence that they wish to include, in support of their review application.

All requests for review must be dealt with by a designated Reviewer in line with the timeframes below:

- Acknowledge receipt of the request for review within 2 working days of receipt.
- Make a decision on the review and notify the person(s) of the outcome within 5 working days of receipt of the request.
- Where new evidence is submitted this must be verified and if necessary interviews with the relevant person/s conducted to ensure accuracy of information. (NB if interviews are required and timeframes are overrun then above target of 5 days is extended to be 5 days from the interview date).
- Update the appropriate files and records with details of the outcome of the review.
- Complete the Succession Review Proforma (See **Appendix 2**)

## **5. Actions Required When Processing A Succession To Tenancy**

### **Succession To Joint Tenant**

If the successor is a Joint tenant the tenancy should not be ended and there is no need for a new tenancy agreement (see joint tenancy procedures for more detailed guidance). A copy of the death certificate must be attached to the existing tenancy agreement and the tenancy updated on SDM (Appendix 1).

### **Succession To Non Joint Tenant**

If the successor is not a joint tenant the relevant checks should be done. The successor must complete a new tenancy agreement (as per new tenant sign up procedures). The deceased tenant's tenancy must be closed off and a new tenancy created on SDM as detailed in the attachment below. In the case of succession to a non statutory successor it should be made clear to them that their rights will be the same as those of a new tenant in respect of the Right to Buy process, Rent Guarantees and that the award of points or priority in respect of future applications for re-housing will be those afforded to new tenants under the terms of Cassiltoun Housing Association's allocation process. (Appendix 2)

### **Housing Benefit**

In addition to the actions required by the successor(s) if s/he intends to claim housing benefit (Appendix 3) the Association must notify the local Revenues and Benefits Centre of the change of circumstance to prevent any overpayment being created.