



## **SUCCESSION TO TENANCY POLICY**

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**CASSILTOUN HOUSING ASSOCIATION LIMITED  
59 Machrie Road, Castlemilk, Glasgow G45 0AZ**

**CASSILTOUN HOUSING ASSOCIATION IS A REGISTERED SOCIAL LANDLORD (84)  
AND A REGISTERED SCOTTISH CHARITY (SC035544) & Property Factor Registration  
No. PF000154**

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## **1. INTRODUCTION**

Cassiltoun Housing Association Limited is a Registered Social Landlord (RSL) with the Housing Regulator, and was registered with its forerunner, Communities Scotland and the Housing Corporation in Scotland, in 1985.

The Association is committed to providing high quality, affordable and accessible social rented housing to those in greatest housing need, contributing to the physical, social and economic regeneration of the area, the provision of housing for people with specialised needs and to provide a safe environment for our residents to enjoy. To facilitate this and to give guidance and clarification to both staff and members of the public, the Association has a suite of policies including the Allocation Policy, which incorporates separate and stand alone Succession to Tenancy, Joint Tenancy, Assignation, sub-letting and mutual exchange and have been approved by the Board of Management.

## **2. DEFINITION**

Succession describes the process that takes place when a tenant (the principal tenant) dies and the rights and responsibilities of their tenancy pass to a 'qualifying person' under the terms of Schedule 3 of the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014.

This Policy outlines Cassiltoun's requirement to accept and consider any application for Succession to Tenancy as set out in the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014.

## **3. GENERAL PRINCIPLES**

On the death of a tenant the tenancy may pass to a qualified person as described in the Housing (Scotland) Act 2001 as amended in the Housing (Scotland) Act 2014 and in the Scottish Secure Tenancy Agreement. (Succession can only take place on the death of a tenant).

Consent to succeed a tenancy will only be given by the Association after consideration of the circumstances of qualified person(s). If there is no qualifying person or the qualifying person does not wish to succeed to the tenancy, the tenancy will be terminated.

It is the responsibility of the successor to advise the statutory authorities, including Council Tax, Housing Benefit, Department of Works and Pensions (Universal Credit), gas, electricity and telephone suppliers of the death of the tenant and the date of their succession. The Association will provide advice and assistance with this.

## **4. ELIGIBILITY CRITERIA**

The terms under which a Succession to tenancy can occur are set out in Section 7 of the Association's Scottish Secure Tenancy Agreement. The terms are as follows:-

### **Level One Successors**

The highest level of priority to succeed a tenancy attaches to any person who is the:

- Late tenant's spouse, civil partner, or cohabitee, but only if the house was their only or principal home at the time of the tenant's death;
- Any surviving joint tenant, if the house was their only or principal home at the time of the tenant's death.

***There is no qualifying period for the tenant's spouse, civil partner or joint tenant.***

In the case of a cohabitee, they must have occupied the house as their only or principal home for at least 12 months immediately prior to the death of the tenant.

A cohabitee is a person living with the tenant as a husband or wife of different or same sex.

The 12-month period cannot begin unless the Association has been informed in writing that the individual is living in the property as their only or principal home and the Association must have given consent to the proposed successors residency in the property, (Permission to Reside). The Association must have been informed by the tenant, a joint tenant, or the person who wishes to succeed to the tenancy. The length of time they have been living in the property starts from the date we are notified in writing that the person is living in the property as their only or principal home.

If more than one person qualifies for the tenancy under Level One, they must decide among themselves who should get the tenancy. If they cannot agree, the Association will decide.

### **Level Two Successors**

If no-one qualifies at Level One, or a qualified person does not want the tenancy, it may be inherited by a member of the tenant's family as long as:

- he, she or they are aged at least 16 at the date of death;
- the house was his, her or their only or principal home at the date of death and for a period of at least 12 months prior to the date of death of the tenant
- The Association had been notified in writing of, and given consent to the proposed successor's residency in the property.

The family member must have occupied the house as his/her/their only or principal home for at least 12 months immediately prior to the death of the tenant to qualify to succeed to the tenancy. The 12-month period cannot begin unless the Association had been informed in writing that the tenant's family member is living in the property as their only or principal home. The Association must have been informed by the tenant, a joint tenant, or the person who wishes to succeed to the tenancy. The length of time they have been living in the property starts from the date we are notified that the person is living in the property as their only or principal home.

If more than one person qualifies for the tenancy under Level Two, they must decide among themselves who should get the tenancy. If they cannot agree, the Association will decide.

### **Level Three Successors**

If no-one qualifies at Level One or Level Two, or a qualified person does not want the tenancy, it will be inherited by a carer as long as:

- he, she or they are aged at least 16 at the date of death;
- the house was his, her or their only or principal home at the date of death and for a period of at least 12 months prior to the date of death of the tenant
- he, she or they gave up another only or principal home before the death of the tenant;
- he, she or they are providing, or have provided care for the tenant or a member of the tenant's family.
- The Association had been notified in writing and had given consent to the proposed successor's residency in the property.

The carer must have occupied the house as his/her/their only or principal home for at least 12 months immediately prior to the death of the tenant to qualify to succeed to the tenancy. The 12-month period cannot begin unless the Association has been informed in writing that the carer is living in the property as their only or principal home. The Association must have been informed by the tenant, a joint tenant, or the carer who wishes to succeed to the tenancy.

If more than one person qualifies for the tenancy under Level Three, they must decide among themselves who should get the tenancy. If they cannot agree, the Association will decide.

### **Adapted or Specially Designed Properties**

If the house was designed or substantially adapted for a person with special needs, no person(s) will qualify under level two or three above unless that person has special needs requiring the type of accommodation in the house. If a person would have qualified, but for this paragraph, the tenancy will be terminated and we will make other suitable accommodation available.

Until suitable alternative accommodation is available, we will allow the remaining residents to remain in the property on a Short Scottish Secure Tenancy.

## **5.0 PERSONS WHO ARE ENTITLED TO SUCCEED BUT DO NOT WISH TO DO SO**

If someone qualifies for the tenancy but does not want it, they should tell us in writing within four weeks of the death and leave the house within three months. Rent will be charged only for the actual period of occupation.

## **6.0 LIMITS ON SUCCESSION**

Under the terms of the Housing (Scotland) Act 2001 as amended by the Housing (Scotland) Act 2014 and the Scottish Secure Tenancy Agreement, the tenancy can only be inherited twice under the provisions noted in this policy. If the tenancy has already been inherited twice, the third death will normally end the tenancy. This will not happen if there is a surviving joint tenant whose Scottish Secure Tenancy will continue.

However, if there is still a person in the house who would otherwise qualify to inherit the tenancy under the tenancy agreement if it had not previously been 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, but a Short Scottish Secure Tenancy will be granted while alternative accommodation is secured.

## **7.0 EXCEPTIONAL CIRCUMSTANCES**

When considering all applications for succession, at what will be a difficult time for applicants coping with bereavement, the Association will ensure that we do so sensitively and quickly. We will consider all the circumstances of the individual case and ensure that appropriate checks are made to determine whether the applicant meets the succession criteria.

Where an applicant does not have the right to succeed, The Association has no discretion to grant a succession of tenancy. Whilst there is no statutory period of time that a person can remain in the home where there is nobody qualified to succeed, the Association will show sensitivity in these situations.

Depending on the individual circumstance there will sometimes be cases where the Association may consider it appropriate to allocate a tenancy to the applicant, for example the existing tenancy or the tenancy of another property. In these cases a new tenancy will be granted and it will **not** be a succession.

## **8.0 CONFIRMATION OF CIRCUMSTANCES RELATED TO SUCCESSION**

To have the right to succeed to a tenancy after living in a house, the tenant or any one of the joint tenants, or the person who has moved in must have notified the Association that the person has moved in and that the property is the “qualifying person’s” only or principal home. The qualifying period (as set out in this policy) does not commence until the Association has been notified.

The Association anticipates that the majority of issues related to succession will be straightforward and confirmation of a successor’s rights will be achieved by reference to our existing tenancy records to confirm the entitlement of the person(s) claiming to be entitled to succeed. The tenant is required to inform us of any changes in the household within the requirements of the Tenancy Agreement. The Association will accept 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 long term and principal home, no further notification is required.

On notification, the Association will consider whether it is appropriate for that person to reside in the property. We will refuse consent if it is not reasonable that they do so. Consent will not be given in the case where a property is overcrowded as a result of their residency, and the person may not remain. Any period following refusal of consent to reside will not count towards any qualifying period for succession.

There may be other reasons why the Association does not consent to residency and the unsuccessful applicant will be notified of the reason at the time. Where a person claims to be entitled to succeed through a relationship to the deceased tenant they must produce birth, marriage or civil partnership certificates to prove a relationship that would entitle them to succeed to the tenancy.

Level three successors must provide evidence to confirm that:-

- they gave up another only or principal home prior to the date of death of the tenant and
- they provided care for the (deceased) tenant or that they continue to provide care for a surviving member of the tenant's family.

## **9. GROUNDS FOR SELECTING A SUCCESSOR WHERE QUALIFYING SUCCESSORS CANNOT AGREE**

The Association will consider carefully the respective needs and circumstances of all qualifying successors prior to reaching a decision. This will include interviews with all those involved.

## **10. DEFINITION OF CARE**

The Association recognises the rights of genuine carers to succeed to a tenancy where qualifying conditions are met. The Association recognises "care" as comprising "Personal Care" as defined within Section 2 (28) of the Regulation of Care (Scotland) Act 2001 or Social Care as defined within Schedule 1 of the Community Care and Health (Scotland) Act 2002.

## **11. SUITABLE ALTERNATIVE ACCOMMODATION**

Where an applicant does not have the right to succeed to a tenancy, the Association does not have any discretion to grant a succession to tenancy. The Association will consider whether it is appropriate, in all circumstances to offer a tenancy to the applicant at that property or another property in order to prevent homelessness and in line with the Association's Allocation Policy.

The definition of suitable accommodation can be found in Schedule 2 Part 2 of the Housing (Scotland) Act 2001.

## **12. TIMESCALES**

On receipt of an application for Succession to Tenancy, the Association will deal with the application sensitively and quickly. The Association will make a written response advising whether the Succession to Tenancy Application has been granted or refused within 21 days of receipt of the Application.

## **13. APPEALS AND COMPLAINTS**

Any applicant unhappy about a decision relating to an assignation request must submit a written appeal to the Housing Manager within 28 days of receiving the decision.

The Housing Manager will review the appeal and provide the applicant with the result of their decision in writing.

If the applicant is still dissatisfied, recourse can be sought through the Association's Complaints Policy and Procedure copies of which are available on the Association's Website or on request for the Association's offices.

## **14. EQUAL OPPORTUNITIES AND HUMAN RIGHTS STATEMENT**

We recognise our pro-active role in valuing and promoting human rights, diversity, fairness, social justice and equality of opportunity by adopting and promoting fair policies and procedures. We will check this policy and associated procedures regularly for their equal opportunity implications, taking appropriate action to address inequalities likely to result or resulting from implementation of the policy and procedures. We are committed to providing fair and equal treatment to all applicants and tenants and will not discriminate against any on the grounds of race, colour, ethnic or national origin, religion, age, gender sex, sexual orientation, marital status, family circumstances, employment status or physical ability. This policy take into consideration the rights under Article 8 of the ECHR.

## **15. PROCESSING INFORMATION – GENERAL DATA PROTECTION REGULATIONS**

Cassiltoun Housing Association will process information and data contained within the Housing Applications in accordance with its Policies and Procedures relating to the General Data Protection Regulations and all applicants will be issued with a Fair Processing Notice.

All staff members will be made aware of their responsibilities in relation to the General Data Protection Regulations and will be trained in the process that the Association has introduced to ensure compliance with GDPR.

## **16. POLICY REVIEW**

This Policy will be reviewed on a 3 yearly basis or earlier if the legislation changes to ensure that its aims are being met.