



## INNISFREE HOUSING ASSOCIATION

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Succession Policy

# SUCCESSION POLICY

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# SUCCESSION POLICY

## 1. INTRODUCTION

- 1.1 Innisfree Housing Association (Innisfree) recognises that following the death of tenant, their family members will be grieving their loss and that any requests for succession need to be handled sensitively.
- 1.2 This policy is designed to help potential successors understand and navigate a succession request with the support of their Housing Officer.

## 2. OUR APPROACH

- 2.1. This policy applies to all Secure, Assured, and Assured Shorthold Innisfree tenants. It excludes tenants of our shared houses, supported accommodation, sheltered scheme, Shared Owners or Leaseholders.
- 2.2. This policy does not cover the assignment of a joint tenancy to a sole tenancy – this is outlined in our Assignment Policy.
- 2.3. This policy does not supersede what is stated in tenancy agreements. The succession rights of a tenancy depend on the type of agreement and the date it was issued.
- 2.4. We use this policy to ensure a consistent approach to succession applications and any decision making around this.

## 3. POLICY AIMS

- 3.1. The aim of this policy is to outline the circumstance where a tenant may assign their tenancy to someone else, and the circumstances in which a person may succeed a tenancy when the tenant dies.
- 3.2. We aim to ensure that successions and assignments take place in accordance with the relevant legislation, that the contractual rights and obligations of tenancy agreements are adhered to, and that remaining joint tenants and family members have the opportunity to remain on a tenancy that suits their needs and circumstances.

## 4. LEGISLATIVE AND REGULATORY REQUIREMENTS

### 4.1 Legislative Requirements include:

- Rent Act 1977
- Housing Act 1985 (section 113)
- Housing Act 1985 (section 17 and Schedule 14)
- Civil Partnerships Act 2004 – amended the Housing Act 1985 to extend statutory succession rights to same sex couples
- Localism Act 2011
- Marriage (Same Sex Couples) Act 2013
- Housing & Planning Act 2016

### 4.2 Regulatory Requirements include:

- Regulator Social Housing (RSH) Regulatory Framework - Tenancy Standard (April 2012) – Specific Expectations (1.2.1, 1.2.1 & 2.2.1)
- Statutory Requirements: Innisfree must grant successions in accordance with Section 17 of the Housing Act 1988 and the Localism Act 2011, as a registered housing provider.
- Contractual Requirements: Innisfree must act in accordance with the tenancy they have granted as there may be permission to succeed as stated in the tenancy agreement. This type of succession will be granted on a case-by-case basis after review of the specific tenancy agreement.

## 5. DEFINITIONS

- 5.1 Assignment - The legal transfer of a tenancy to an eligible person by a living tenant. The person will become the tenant and acquire the benefits, terms, and obligations of the original tenant.
- 5.2 Successor - A person who succeeds a tenancy following the death of a spouse, partner, parent, or close family member.
- 5.3 Survivorship - Where one tenant that is part of a joint tenancy passes away; the tenancy continues in the surviving tenant's name providing there has been no previous Statutory Succession.

- 5.4 Statutory Succession - The legislated right for a successor to inherit an existing tenancy, rather than the property. A statutory succession of the tenancy will occur automatically by law and does not require Innisfree's consent as landlord. As the successor is inheriting the tenancy and not the specific property, Innisfree will encourage the tenant to move to an appropriately sized property. Where they do not voluntarily do so Innisfree may take legal action that could result in the tenant being evicted.
- 5.5 Contractual Succession – A succession that takes place through an additional right to succession granted through their tenancy agreement, as opposed to a legal right. In this event a tenancy will end, and a new tenancy will be granted in the name of the successor.
- 5.6 Discretionary Succession – Granted to those with a contractual right as outlined in their Tenancy Agreement for a successor to inherit an existing tenancy, rather than the property. Who can succeed the tenancy will depend on the specific wording in their Tenancy Agreement, and this must be checked in all cases.
- 5.7 Family Member – Defined by Section 113 of the Housing Act 1985 as: a spouse or civil partner, a parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, or niece. This includes family relationships through marriage or civil partnerships, relationships by half-blood, and stepchildren.

## 6. WHAT IS A SUCCESSION?

- 6.1 A succession is a legal term used when a person takes over a tenancy when the tenant dies. You may be able to inherit their tenancy if you are their partner or close relative.

## 7. WHO IS ELIGIBLE TO SUCCEED A TENANCY?

- 7.1 Following a tenant's death, the right to succession depends on:
- Type of Tenancy Agreement; the terms of the relevant Tenancy Agreement should be checked in all succession cases
  - Evidence of the existing tenant's death
  - Evidence that the successor has lived at the property for at least the preceding 12 months
  - Proof of the relationship between the deceased tenant and the successor
  - Proof that the successor has no other principal home
- 7.2 Cohabiting partners who are not married or in a civil partnership may only succeed if they have lived at the property for at least 12 months prior to the tenant's death.

- 7.3 There cannot be more than one succession to a tenancy unless specifically outlined in their tenancy agreement.
- 7.4 If a tenant loses their security of tenure before they die or wish to assign there will be no right to succession or assignment. For example, if they abandon the property or sublet the whole property.

## 8. SUCCEEDING AS A MINOR

- 8.1 In the event that the eligible successor is a minor over the age of 16, Innisfree will use our discretion to grant an 'Agreement for Tenancy'. The agreement will reflect whichever standard tenancy they would be granted if they were over the age of 18.
- 8.2 We will not grant an Agreement for Tenancy to a minor if they do not have a suitable guarantor – this guarantor will be responsible for helping the minor sustain their tenancy and will be liable for rent charges and any arrears while the tenant is a minor. A guarantor can be a private individual, Local Authority or Social Services Department.
- 8.3 By signing the Agreement for Tenancy, the minor agrees to comply with the conditions of the tenancy agreement until they become 18. They should adhere to the terms and conditions as failing to do so will mean that Innisfree take steps to end the Agreement.
- 8.4 An Agreement for Tenancy is not a tenancy itself and therefore many of the rights included with a tenancy agreement such as mutual exchange, assignment and succession will not apply until the tenant reaches 18 and a tenancy is formally granted.
- 8.5 Any rent arrears or credit on a tenancy that has been succeeded to a minor by way of statutory or contractual succession become a debt owed by the deceased tenant's estate and cannot be claimed by or from the successor.
- 8.6 The full tenancy will be granted to the minor on the first Monday after their 18th birthday.

## 9. HOW DO I APPLY TO SUCCEED A TENANCY?

- 9.1 When a tenant sadly passes away and the Housing Association are notified, the Housing Officer will liaise with the family to support them through the difficult time.
- 9.2 The Housing Officer will speak to the household or next of kin to determine whether there are any eligible successors at the property. If a person wishes to apply to succeed the tenancy the Housing Officer will support them to complete a Succession Application Form and gather the necessary evidence within one calendar month of the tenant's death.

- 9.3 In cases of survivorship, where a joint tenant has died and their joint tenant remains at the home, the Housing Officer will take a copy of the death certificate and complete paperwork to leave the tenancy in the survivor's name.
- 9.4 In some cases, the tenant may request that the tenancy be succeeded by someone, as mentioned in their Will. If this is the case, the Housing Officer will review this request and take appropriate action.

## 10. PROOF OF RELATIONSHIP

- 10.1 We require evidence for all succession applications to help confirm the identity of the person claiming succession. We require:
- Photographic identification
  - Evidence that the successor can rent in the UK, if they are a non-EU citizen
  - Proof of their relationship with the deceased tenant – i.e., a marriage certificate, birth certificate etc.
  - Evidence that the successor has been residing at the property for at least the preceding 12 months – i.e., bank statements, utility bills, electoral register letters.

## 11. MULTIPLE SUCCESSORS

- 11.1 If more than one person requests to succeed the tenancy a spouse or partner will take precedence over other relatives. If there are more than one family member applying to succeed, and the family cannot agree who will succeed the tenancy, Innisfree will seek advice and determine who is most appropriate to take the tenancy on.

## 12. DISCRETIONARY SUCCESSION

- 12.1 Where an individual seeking succession does not meet the criteria to succeed, but they or a member of their household are vulnerable, the Housing Officer can request a discretionary succession be granted. The decision to grant a discretionary succession will be made by the Operations Director.
- 12.2 Discretionary succession may be considered where the applicant has resided at the property for a significant period, contributed to the household, or where eviction would cause undue hardship due to age, disability, or caring responsibilities.

### 13. ASSIGNMENT TO A POTENTIAL SUCCESSOR

- 13.1 Secure tenants have the right to Assign their tenancy to a person who would be eligible to succeed the tenancy upon their death. For further information see our Assignment Policy.

### 14. UNDER-OCCUPATION

- 14.1 A property is considered to be under-occupied if the property size exceeds the household size by one bedroom or more.
- 14.2 Where a partner or spouse is succeeding the tenancy and property through survivorship, they will be able to remain in the same property regardless of whether they are under-occupying. However, if they would like to move to a more suitably sized property, they can be considered for an internal transfer to another Innisfree property. For more information see our Transfer Policy.
- 14.3 Where a successor is to succeed the tenancy and not the property, they may be required to move to a smaller home if they are under-occupying. The successor would be placed on the transfer waiting list as a Management Transfer and made one offer of suitable accommodation – if they refused this offer a possession notice will be served. Ground 15A of the Housing Act 1985 allows a landlord to seek possession of a property that is being under-occupied by a successor.

### 15. ADAPTED PROPERTIES

- 15.1 In cases where the successor is succeeding the tenancy and not the property and there are substantial adaptations made to accommodate the deceased tenant that are not necessary for the successor, they will be encouraged to transfer to a more suitable home. Adaptations which could benefit a future tenant will not be removed. If the successor is unwilling to move, Innisfree will consider taking possession action.

### 16. RENT LIABILITY AND ARREARS

- 16.1 An eligible successor will be required to pay for the use and occupation of the property from the date of the tenant's death while their succession application is being considered. This charge will be applied weekly.

- 16.2 Where a discretionary succession is being considered, Innisfree may reject the succession application if there are outstanding charges on the use and occupation account.
- 16.3 The successor will be liable for the rent, service charges and other charges payable under the tenancy at the date they succeed.
- 16.4 Through survivorship, a joint tenant will be liable for any arrears owed jointly under the tenancy at the time of death of the other joint tenant.
- 16.5 Any rent arrears owed by a sole tenant will form part of their estate, although the successor may be willing to settle the arrears when taking on the tenancy.
- 16.6 If a tenancy is subject to any possession orders, the successor will be responsible for these also.

## 17. RIGHT TO BUY AND RIGHT TO ACQUIRE

- 17.1 Where the deceased tenant had a preserved Right to Buy or Right to Acquire, a Statutory Successor may inherit this preserved right. In all cases the original tenancy agreement will be checked to confirm. The successor can count their full period of occupation before they succeeded the tenancy when calculating the minimum period for the exercise of the right, and the appropriate discount.

## 18. WHAT HAPPENS WHEN NO ONE QUALIFIES TO SUCCEED

- 18.1 There cannot be more than one succession to a tenancy unless specifically outlined in their tenancy agreement. If the tenancy has already been succeeded, the tenancy will need to be ended. A Notice to Quit will be served on the deceased, addressed to their personal representatives. The Notice gives 28 days warning that the tenancy will be ending; at the expiry of the Notice the property should be cleared, and the keys returned to the Housing Officer. The estate will be liable for payments or rent until the tenancy is ended.
- 18.2 Where no one qualifies to succeed the tenancy, Innisfree will serve a Notice to Quit ending the tenancy in 28 days. The personal representatives of the deceased will be notified and can liaise with the Housing Officer to clear the home and return the keys. The estate will be liable for payments or rent until the tenancy is ended.
- 18.3 If the deceased tenant leaves no Will and there is no lawful succession to be granted, the tenancy must be ended through the Public Trustee. They are a government body that will investigate whether there are any other suitable successors or executors of a Will. To terminate the tenancy and evict any occupiers who are not entitled to succeed, Innisfree will serve a Notice to Quit on the Public Trustee. Innisfree can then take possession proceedings against the occupiers.

## 19. SUCCEEDING THE TENANCY

- 19.1 If a succession application is approved, the successor will be written to by the Housing Officer to confirm what is happening. The successor will be invited to sign paperwork to transfer the tenancy to their name.
- 19.2 If a succession application is not suitable, the case will be discussed between the Housing Officer and the Operations Director to determine what steps will be taken next. In cases where the person cannot succeed the tenancy, possession action may be taken to end any remaining tenancy and repossess the home.

## 20. DECISION-MAKING AND APPEAL PROCESS

- 20.1 If a succession applicant is unhappy with the decision they have received or the way that their application, selection or offer of accommodation has been handled, they can appeal by contacting the Operations Director within five working days of receiving their decision.
- 20.2 An applicant can make a complaint through the Complaints Policy if they are dissatisfied with a service received or a service failure by us.

## 21. DATA SHARING

- 21.1 All information will be stored in our Housing Management systems. All case notes, case files, and personal information will be kept confidential in line with the Data Protection Act 2018. We will adhere to the Data Protection Act and comply with General Data Protection Regulation for Sharing Personal Information to ensure that we maintain confidentiality of all parties.
- 21.2 We will share information with third parties where we have an information sharing protocol in place, if there are safeguarding concerns, or we have a duty to do so for the purpose of crime prevention under the provisions of the Crime and Disorder Act 1998, and the provisions of the Data Protection Act 2018 (and any other relevant legislation) justify it.

## 22. EQUALITY, DIVERSITY, AND INCLUSION

- 22.1 Social housing is a valuable resource and allocations must be made in a fair and transparent way. We are committed to embedding the 2010 Equality Act into our Policies and Procedures. As part of this commitment, staff should facilitate reasonable adjustments and adapt our standard policies and procedures wherever possible.

- 22.2 To make an adjustment means to change work practices to avoid or correct the disadvantage to a person with a disability. This may include:
- Allowing more time than we would usually for someone to provide information that we needed.
  - Providing specialist equipment or additional support such as a sign language interpreter.
- 22.3 The Succession Policy will ensure that all tenants and succession applicants are treated in a fair and non-discriminatory way.

## 23. REVIEWING THIS POLICY

- 23.1 Innisfree will review this policy every 3 years.
- 23.2 We will publish our policy on our website.



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