



# Death of a Tenant Policy

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## **Notes**

New Gorbals housing association is generally referred to as “we” throughout this document.

## **Section 1: Context**

### **Death of a tenant policy**

This policy describes New Gorbals Housing Association's and New Gorbals Property Management's approach to dealing with situations involving the death of our tenant in one of our properties. By having a written detailed death of a tenant policy we are able to ensure that a uniform and professional approach is adopted throughout our organisations and the service delivered is compliant with law, best practice and internal policy. In addition this policy will help minimise rent loss.

## **Section 2: Equality**

We are committed to providing fairness and equality of opportunity in order to prevent discrimination. Our death of a tenant policy will try to ensure that no person is discriminated on the grounds outlined in the Equality Act 2010. This includes the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex and sexual orientation.

Our policy and procedure will be flexible and where possible, take into account the individual needs of our tenants and their households. We will ensure that the relevant arrangements are made for communicating with our tenants with particular needs. This may include those with sight, hearing or learning difficulties, or those who find it difficult speaking or understanding English.

## **Section 3: Legal and regulatory requirements**

Our approach to managing the death of a tenant is determined by our statutory and contractual obligations.

The Housing (Scotland) Act 2001 is the main Act that sets out the main requirements of our policy. The specific parts of this legislation that are most relevant to the death of a tenant are:

- Part 2, section 12 of the Housing (Scotland) Act 2001 sets out the restrictions on terminating a tenancy.
- Part 2, section 22 of the Housing (Scotland) Act 2001 sets out the rights and requirements to succeed to a Scottish secure tenancy due to the death of a tenant.

The other legislation influencing this policy are the National Assistance Act 1948 and the Data Protection Act 1998.

Our tenancy agreement also confirms the contractual responsibilities and rights in the case of a death of a tenant. The relevant sections are:

- Section 6: Ending the tenancy
- Section 7: After the tenant's death

Our policy and general approach to dealing with situations involving deceased tenants is based on good practice and the practical advice booklet 'What to do after a death in Scotland' by the Scottish Government.

Our policy also complies with the Scottish Social Housing Charter:

- **Outcome 1: Equalities**  
Social landlords perform all aspects of their housing services so that:  
"every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services".
- **Outcome 2 – Communication**  
Social landlords manage their businesses so that:  
"tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides".

#### **Section 4: Policy aims and objectives**

It is our aim of to deal with cases of death in a sympathetic and professional manner. Whilst taking account of the bereaved family's loss, the Association must remain vigilant of its business needs, and ensure the most effective use of stock and that rent loss is minimised.

The objective of this policy is to clarify our approach and to give staff guidance when dealing with situations involving deceased tenants.

## **Section 5: Death of a tenant**

Where the tenant dies and there is an executor, they will be responsible for funeral arrangements. The funeral must be the first thing paid out of the estate. The executor should be advised to check the cost before proceeding, as the local authority will not cover money already spent.

Where the tenant dies in hospital and there is no next of kin, the hospital social worker will arrange the funeral. In any other circumstances if there is no next of kin, the funeral is arranged by an officer of the council, often from social services or environmental health department.

## **Section 6: Tenancy end date**

When we receive notification of the death of a tenant, where no person qualifies to succeed the tenancy, a period of up to two weeks should be allowed for the house to be cleared. We recognise the difficulties and sensitivities associated with clearing belongings of a deceased person, therefore the Area Housing Manager has the discretion to extend this period.

In the event of the death of a tenant when there is no qualified person to succeed to the tenancy, the tenancy is terminated on notification of the tenant's death, by using the date of death as the tenancy end date.

Rights to housing benefit and, or the housing element of universal credit normally end on the death of the tenant. We have the discretion to claim our tenant's estate for any rent accrued after their death if applicable.

## **Section 7: Terminating the tenancy and succession to tenancy**

In the event of the death of a tenant when there is no qualified person to succeed the tenancy, the tenancy is terminated.

### **Qualified person to succession**

If there is a qualified person then new tenancy arrangements should be made passing the existing tenancy to a qualified person, recording that a succession has taken place (refer to Succession Policy). Persons claiming the right to succeed a tenancy, should inform us within 28 days of the tenant's death.

Succession to a tenancy may only occur twice. A tenancy that has passed twice may be terminated on the death of the second succeeding tenant.

### **Non-qualified person to succession**

Persons who fail to provide adequate proof of residency to succeed the tenancy within 28 days of notification of succession claim will be informed that they have no legal entitlement to the tenancy. They will be told that failure to vacate the property and remove their belongings will result in summary court action being taken to recover the property and reclaim loss of rental income.

### **Section 8: Next of kin and closest relatives**

In the vast majority of deaths, we are contacted by the next of kin or relatives of the deceased who take control of all the furniture and personal effects left in the property.

A death certificate is paramount to end the tenancy and must be obtained from the next of kin or relatives at the earliest convenience. This will also act as proof to the identity of the next of kin and or relatives. If there is any doubt as to the identity of the person claiming to be the next of kin or relative, further checks must be carried out (for example, identification and proof of address must be provided).

If the next of kin does not contact the office, efforts must be made to find a next of kin so that the legal situation can be established. This can be done in the following ways:

- Refer to the house file (especially the original application form).
- Write to social services and/or General Practitioner.
- Ask neighbours.
- Look through personal effects.

If the next of kin agrees to take responsibility for the estate and there is no will, they must apply to be appointed executor. They have the power to deal with any property left behind by the deceased tenant. The next of kin or relatives should be asked to clear the property as quickly as possible. This is normally a maximum of two weeks, although the Area Housing Manager has overall discretion on this.

If the next of kin or relatives are unwilling or unable to take responsibility for clearing the property, they should be asked to sign a mandate allowing us to clear and dispose of any items left in the property.

If the next of kin is unwilling or unable to take responsibility for the estate they should be advised to take legal advice. They should be informed that the Queen's and Lords Treasurer's Remembrancer will be contacted, and any personal effects disposed of on the instructions received and no further reference will be made to the next of kin.

## **Section 9: Next of kin and closest relatives not known**

If there is no next of kin the estate legally becomes the ownership of the Crown.

In cases of suspicious death or where no next of kin or relatives are involved, the Police will normally be dealing with this situation. However, if they are not, they must be contacted immediately.

The Police thereafter will be responsible for contacting one or both of the agencies responsible for funeral arrangements and executing the estate. The agencies referred to are the local authority and the local Procurator Fiscal.

Local authorities have a legal obligation to organise and pay for the funeral of a person who has no next of kin. If no next of kin has been established, the Police will contact the local Procurator Fiscal and pass all details to them. The Procurator Fiscal will investigate and liaise with both ourselves, and if necessary the 'Queen's and Lord's Treasurer's and Rememberancer'

Once the Procurator Fiscal has concluded their investigations they will contact us with their findings. If a next of kin has been established, we should encourage them to empty the property as soon as possible within two weeks, although this can be discretionary. If no next of kin has been established the Procurator Fiscal will inform us what should happen to the furniture and personal effects that have been left in the property.

We will compile a full inventory of furniture and personal effects. These cannot be removed until authorised by the Local Fiscal, who in most cases will have already consulted with the Queen's and Lord's Treasurer's and Rememberancer.

## **Section 10: Entering the premises**

If we receive information about a suspected death in a property, the Police will deal with this situation. They will force access if required and investigate the circumstances of the tenant's death. They will contact any next of kin or relatives and pass the details to us. If there is no next of kin or relatives the Police will contact the Local Procurator Fiscal who will carry out their own investigations.

On request from the Police if there are no keys to access the property, the locks to the premises should be changed with two members of staff present. The keys will then be kept securely in our office.

## **Section 11: Searching the premises and taking an inventory**

When the Police and Procurator Fiscal have concluded their investigations, the two members of staff who enter the property will complete a full inventory of each room and where possible, take digital photographs of any goods found in the property.

Once the inventory has been completed it must be signed by both staff members. Our empty homes management policy and procedure will begin at this point.

If there is a small amount of cash (less than £50) it should be recorded and witnessed by the two members of staff. It should be kept securely in our office, pending a decision as to what should be done with it.

If the amount exceeds £50, the Procurator Fiscal should be informed and they will notify the Queen's and Lords Treasurer's Rememberancer. They will probably advise that a separate bank account be set up, or that the amounts be paid into any accounts of the deceased tenant.

Any items removed will be noted and receipted by both members of staff present.

## **Section 12: Policy reporting**

We will register all deaths using the termination of tenancy form and record it on our computer system. We will report end of tenancy statistics and other void figures quarterly to the Property Management Sub Committee (Housing Management).

## **Section 13: Links to other policies**

Our death of a tenant policy links to the following policies:

- Empty homes management policy
- Succession policy
- Disposal of tenants' personal belongings policy
- Complaints handling policy

## **Section 14: Consultation**

We promote consultation with our tenants and other service users. We do this through a wide range of methods, including consultation in writing, meetings, forums and working groups.

## **Section 15: Complaints handling procedure**

We use a complaints handling procedure that was developed for housing associations throughout Scotland. This complaint system was developed by the Scottish Public Services Ombudsman.

In line with housing law, we provide all tenants with detailed information about our complaint policy when they become tenants. We also advise all service users about their right to complain.

A complaint is defined as being:

“An expression of dissatisfaction by one or more members of the public about the housing association’s action or lack of action, or about the standard of service provided by or on behalf of the housing association.”

Our complaint handling procedure, including advice on how to make a complaint, is available from our offices or via our website

[www.newgorbalsha.org.uk](http://www.newgorbalsha.org.uk)

## **Section 16: Policy Review**

We review our organisational policies every five years, or earlier if required. For example, we may review sooner to reflect changes in law or, if guidance changes occur. We may also decide to make changes requested by our tenants.