



Irish Council for Social Housing

Guidance note: 10

Residential Tenancies Act (RTA) 2004-2015 and the Impact on Housing Associations Succession

- 1. What does the RTA say about succession of a part four tenancy upon the death of the tenant?**
Section 39 of the Residential Tenancies (Amendment) Act 2015 provides that a Part four tenancy will terminate on the death of a tenant unless the following two conditions are satisfied:

✓ **Condition 1**

At the time of the death of the tenant the dwelling was occupied by:

- i. A spouse or civil partner of the tenant [*civil partner as defined in the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*]
- ii. A person, not a spouse of the tenant, but who cohabited with the tenants as husband or wife and lived with the tenant in the dwelling for at least 6 months ending on the date of the tenant's death
- iii. A child, stepchild or foster child of the tenant, or a person adopted by the tenant under the Adoption Acts 1952 to 1998, being in each case 18 years or more, or
- iv. A parent of the tenant

And,

✓ **Condition 2**

One or more than one of those listed above elects in writing to become a tenant or tenants of the dwelling.

- 2. What is the definition of a tenant?**

The Residential Tenancies (Amendment) Act 2015 provides that tenant "means the person for the time being entitled to the occupation of a dwelling under a tenancy and, where the context so admits, includes a person who has ceased to be entitled to that occupation by reason of the termination of his or her tenancy".

- 3. Is a person who contributes to the rent in a dwelling but is not a member of the household (i.e. assessed for housing need) considered a tenant?**

There is an important distinction to be made between people who are **contributing** to the rent and the person actually **paying** the rent. A person who is **contributing** to the rent is considered an occupant of the dwelling and is not considered a tenant; it is the person(s) who has been assessed for housing need that is actually **paying** the rent and is considered the tenant(s).

- 4. Who can elect to become a tenant of an AHB dwelling?**

The person(s) referred to in Condition 1 above may only elect to become a tenant, and only if they are deemed to be a member of the household within the meaning of section 20 of the Housing (Miscellaneous Provisions) Act 2009 which states "*shall be read as including a reference*

to 2 or more persons who, in the opinion of the housing authority concerned, have a reasonable requirement to live together”.

5. Who is the housing authority?

The housing authority is the local authority or county council. Therefore, the onus is on the local authority to decide if the person electing to become a tenant is deemed to be a member of the household.

6. How does the local authority decide if a person can become a member of the household / a tenant?

The person must be eligible for social housing and included on the local authority’s housing waiting list.

7. When can a person (referred to in Condition 1 above) apply to the housing authority to succeed a tenancy?

Upon the tenant’s death, a person (referred to in Condition 1 above) can apply to the local authority to succeed the tenancy.

8. If a person referred to in Condition 1 is permitted to become a tenant / succeed a tenancy, do they need to be registered with the RTB?

Yes, all tenancies must be registered with the RTB. Housing associations have until 6th April 2017 to register all existing tenancies and thereafter all new tenancies must be registered within 30 days of their commencement.

9. How long will the tenancy last once it has been succeeded?

It is important to note that the tenancy will only continue to the end of the part four cycle that was running when the original tenant was alive. When this part four tenancy ends, a further part four tenancy can begin, unless a notice of termination is served. A landlord must give a reason for terminating a part four (after the first 6 months) or a further part four tenancy.

10. Should housing associations have a succession policy?

It is advised that every housing association has a succession policy setting out the process for a person to become a member of the household / a tenant and subsequent eligibility for succession.

Disclaimer note: The content in this guidance note is provided for general information purposes only. If you are unsure about any of the information contained in the Act, please seek legal advice.

Members with any additional queries can contact Keelin McCarthy, ICSH Tenancies Registration Support Officer, at keelin@icsh.ie or 01 6618334.

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