

SUCCESSION OF TENANCY POLICY



Purpose

Succession of tenancy is when Affordable Community Housing Limited (ACHL) agrees to transfer a tenant's right to live in an ACHL property to another member of their household. This may come about if a tenant dies, goes into care, is imprisoned, or moves away or otherwise leaves the household. ACHL will recognise the changing needs of tenants in relation to the property they occupy and will endeavour to meet their needs in the most appropriate way.

This document outlines ACHL's policy for assessing various prospective tenants, including general and specific criteria they are required to meet and circumstances where exceptions may be made.

Common assessment criteria

Unless otherwise stated, an applicant for succession of tenancy must:

- Be an approved additional occupant of the household
- Be included on existing and previous applications for rent subsidies
- Have had a satisfactory occupation within the tenancy for a period of:
 - (a) Two years prior to the request for succession, or
 - (b) The whole of the tenancy if it is less than two years oldA satisfactory history of occupation will occur where the applicant has:
 - Not caused nuisance and annoyance, or
 - Not caused damage to the property or neighbouring properties
 - Repay any debts from previous tenancies; ACHL will negotiate a repayment plan before approving succession.

Circumstances where ACHL will not approve succession

ACHL will not approve succession of tenancy if:

- The applicant has not been a declared household member, or not included on applications for rent subsidies
- The applicant does not have a satisfactory history of occupation (unless ACHL is satisfied the applicant will be able to sustain a tenancy)
- The applicant is a sponsored migrant and holds a temporary visa, or they are an asylum seeker holding a temporary protection visa
- Whilst an occupant of any ACHL property, the applicant committed acts of violence, for example, physical attacks or serious verbal threats directed at neighbours or ACHL staff
- Whilst an occupant of any ACHL property, the applicant was involved in illegal activities in that property
- The applicant has been convicted of arson or deliberate damage to any ACHL property.

Specific assessment criteria

If the applicant is the tenant's spouse (i.e. married) , ACHL will approve succession if:

- They meet the common eligibility criteria and,
- They are a citizen of Australia or permanent resident, and
- They demonstrate/document they are married to the tenant, and
- They are currently residing in the property.

A spouse will be entitled to succession even if they have temporarily moved away for reasons related to the illness of the tenant, care of an ill person or their own ill-health. The spouse must provide evidence that their temporary absence was due to these reasons.

Succession to a de facto partner

If ACHL accepts an applicant is the de facto partner of the tenant, they will have the same right to succession as a spouse. Where an applicant for succession claims to be the de facto partner of the tenant, ACHL must verify the relationship is de facto. This verification is based on the NSW (Relationships) Act 1984. This Act gives important rights to de facto partners when settling private property and other assets. The Act defines a de facto relationship as a relationship between two adult persons of the same or opposite sex, who:

- Live together as a couple, and
- Are not married to one another or related by family.

The Act gives additional property rights to adults who have been in a de facto relationship for two or more years.

To verify a de-facto relationship, ACHL will consider such information as Centrelink income statements, ACHL's records of when the applicant joined the tenancy and the local team's knowledge of the history of the tenancy.

When it is difficult to determine the nature of the relationship, an appropriate ACHL officer may ask to interview the applicant. If the information requested has been provided and there has been a reasonable amount of enquiry, yet staff are still in doubt as to the de facto status of the relationship, the decision will be made in favour of the applicant.

If ACHL does not accept that a de facto relationship exists, the applicant may re-apply for succession on the basis of being a household member other than the spouse or de facto partner of the tenant.

Succession to house hold members other than spouse or de facto partner

If the applicant is a household member other than the spouse or de facto partner, the applicant will be eligible for succession if:

- They meet the common eligibility criteria, and
- They meet the eligibility criteria for social housing, and
- They are currently residing in the dwelling, and
- They are not an unsatisfactory or ineligible former tenant.

Whilst two years is the standard minimum length of time the applicant must have belonged to the household (or the whole of the tenancy if it is less than two years old), there may be occasions when ACHL will consider a shorter period of time. If the applicant is a minor aged 16 or 17 years of age, they may be granted succession provided they demonstrate:

- They are able to care for themselves
- They can meet the terms of the tenancy agreement
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They have a support partner who will monitor their tenancy until they are 18 years old.

If the applicant is a carer, ACHL will not approve succession if

to that of the tenant's dwelling, regardless of whether it is in the public or private rental market. If the applicant has relinquished an ACHL tenancy to act as a carer to another person, then succession to that tenancy may be granted even if they have not been part of that household for the past two years.

Succession to the legal guardian or custodian of a minors

ACHL may approve succession if the applicant agrees in writing to live in the property and continue to provide care for the children. Should the applicant not meet the eligibility criteria for social housing, succession may be granted if:

- The applicant has been formally granted custody/guardianship of the children, and
- It is in the best interests of the children, and
- The applicant can demonstrate that no alternative accommodation is available that is suitable for the care of the children.

In such circumstances, it may be necessary for ACHL to liaise with the Department of Community Services to ensure that this is the best option for the children involved.

If the applicant has applied for custody, ACHL may approve succession on the condition the applicant agrees in writing to relinquish the tenancy if their custody application is not successful.

Succession to applicants recently released from prison

If the applicant was recently released from prison or institutionalised care and they used to live in the tenancy, they must meet the common eligibility criteria for succession and any other specific criteria that apply. ACHL will assess the application on its merits, but will not decline it on the basis that the applicant was not living with the tenant while in prison or institutionalised care.

Factors that ACHL will consider are the likelihood of the applicant living in the household had they not been in prison or institutionalised care, the tenancy history and their ability to otherwise meet their housing needs.

Succession to appointed agents

Tenants who intend being absent from their home must appoint an agent to care for the property while they are away.

ACHL will not approve succession to appointed agents unless they are already another household member or they are the tenant's spouse or de facto partner.

Succession to appointed agents

The type and length of lease offered to a spouse or partner succeeding a tenancy will be the same type of lease as that of the previous tenant. e.g. If the previous tenant had a continuous lease, the spouse or partner will be offered a continuous lease.

Type and length of lease after a succession of tenancy

If the previous tenant was on a fixed term lease, the spouse or partner will be offered the remainder of that fixed term lease unless the succession of tenancy occurs between the lease review date and the lease end date. In this case the spouse or partner will be offered a new fixed term lease based on an assessment of their current household circumstances.

Other household members who are approved for succession of tenancy will be offered a fixed term lease based on an assessment of their circumstances, regardless of the type and length of lease offered to the previous tenant.

Application and approval process

Applicants are required to complete the Application for Housing Assistance and Succession of Tenancy form. Where possible, the application should be submitted at least 21 days before the tenant leaves the property, or as soon as possible in circumstances such as the death, sudden illness or imprisonment of the tenant.

All applications will be dealt with promptly. As soon as possible after the application is lodged, ACHL will write to the client to acknowledge receipt and inform them of ACHL's intention to respond within 21 days. ACHL may also keep the client informed about the progress of their application during this period if necessary or advisable.

If the application is approved, ACHL will offer the tenancy to the applicant. In most cases, the tenancy will be for the property they are currently living in. However, a different property may be offered in cases where the property does not match the applicant's needs e.g. it is too large or has modifications that are not required.

If an application is not approved, ACHL will request the applicant vacates the property. ACHL will deal with this in a compassionate manner, taking into consideration the applicant's circumstances. The applicant has the right to appeal the decision through ACHL's appeals process. If the applicant does not vacate the property as requested, ACHL may take action in the Consumer, Trader and Tenancy Tribunal.