

MUTUAL EXCHANGES/ASSIGNMENT POLICY AND PROCEDURE

Mutual Exchange Policy

Aim

Westfield Housing Association recognises that promoting mutual exchanges encourages tenant mobility and creates sustainable communities through best use of housing stock.

The Association will assist tenants to move by way of exchanges wherever possible and encourage tenants to register exchanges with Homeswapper, other Registered Providers or Local Authorities and in our Mutual exchange file in reception.

The Association will abide by the statutory requirements relating to Mutual Exchanges outlined in S92 of the Housing Act 1985. Whereby, Social landlords have a duty to inform the tenant within the maximum of 42 days of receipt of the application, whether they have been granted, conditionally granted or refused a Mutual Exchange.

Objectives

The key objectives of the Mutual Exchange Policy are:

- To encourage tenants who need to move to seek a mutual exchange.
- To provide advice and assistance to tenants requesting a mutual exchange.
- To ensure mutual exchanges are carried out by way of assignment and to comply with legislation.
- To reinforce the express terms of the tenancy agreement relating to the right to exchange properties.

1. All tenants of the Association have the right to exchange their home with another tenant of the Association, local authority or other housing association, providing the Association agrees in writing.
2. Such mutual exchanges are carried out by 'Assignment by Mutual Exchange' in which no new tenancy is actually created. Rather, the incoming tenant in each case assumes the tenancy terms and any rent arrears that may have accrued on the rent account which applied to their exchange partner.
3. It is important to recognise that each person takes on the other's property, as seen, with no cost to the Association. From 2012, when a mutual exchange takes place, each tenant takes their original tenancy (with RTB) and secure tenants will keep the statutory rights.
4. Before a mutual exchange can take place, an application form must be completed in respect of those moving into an Association property and those moving out of an Association property. (Appendix 1)

In addition, both partners to the exchange will be visited by the Association and a report will be obtained from the incoming tenant's landlord where appropriate.

5. No exchange can take place without the approval of the Association in writing. Such approval will clearly advise the incoming tenant that they are, in effect, taking over the outgoing tenant's responsibilities in respect of any breaches of the tenancy agreement. In particular, the Association will accept no responsibility to repair damage caused by the outgoing tenant's misuse or neglect. It is therefore, the responsibility of the incoming tenant to ensure that the property is in good repair before accepting the tenancy. However, a Gas Safe and Electrical Test must be completed at the time of the exchange.
6. The Association may withhold consent to an exchange until the Association's tenant has fulfilled an obligation or requirement of the tenancy (for example, to keep all internal fittings in good repair).

7. The Association may refuse consent to an exchange on the grounds set out in Schedule 3 of the 1985 Housing Act and the Localism Act 2011 and in, for example, the following circumstances:
- a) the tenant or proposed exchange partner has a possession order outstanding against them or a notice of seeking possession still in force;
 - b) the incoming tenant would substantially under-occupy the property (i.e. by two or more bedrooms);
 - c) the property is not suitable to the needs of the incoming tenant, including overcrowding;
 - d) the accommodation is provided for disabled people or people with special needs and the incoming tenant does not meet the established criteria.
8. Before Mutual Exchange is agreed the Property Services Officer or Maintenance Services Officer must inspect the property to ensure it is safe.

Stages in Mutual Exchange Procedure

Obtain application forms from both the incoming and outgoing tenant(s) (including from two current tenants of Westfield Housing Association exchanging with each other). (Appendix 1)

Carry out home visits to both exchange partners where possible, completing the checklist in respect of the Association's tenant(s). (Appendix 2)

The Property Services Officer or Maintenance Services Officer to carry out an inspection to ensure the property is safe.

It is important to note that the Association may withhold consent to an exchange until the Association's tenant has fulfilled a requirement of the tenancy agreement (e.g. regarding decorations or internal repairs).

Obtain a reference from the incoming tenant's landlord covering the general conduct of the tenancy, in particular, note if a Possession Order or NSP is currently in force.

Send out letters to each exchange partner agreeing to the mutual exchange. (Appendix 3)

It is important to note that the Association may refuse consent as if, for example, a) there are rent arrears or there is an NSP or Possession Order against either exchange partner; b) the incoming tenant would substantially under-occupy the property (i.e. by two or more bedrooms); c) the property is not suited to the needs of the incoming tenant (including accommodation size); or d) the accommodation is for a person with special needs and the incoming tenant does not meet the established criteria.

Ensure a Gas Safe and Electric test is completed.

Ensure the following documents are completed upon exchange:

‘ASSIGNMENT BY MUTUAL EXCHANGE’

This form is signed by both parties to the exchange, i.e. both incoming and outgoing tenants. Each signature must be witnessed by an adult who is unrelated to the persons signing.

The witness may be an officer of the Association but it is suggested that the same person does not witness both signatures. Again, certain details should be copied from the current tenancy agreement.

The **'Tenant' is the existing** (i.e. outgoing) tenant and the **'Assignee' is the new** (i.e. incoming) tenant.

All the original documents should be placed on the house file. The incoming tenant should be given copies of the following documents:

- the original tenancy agreement (do not issue a new agreement);
- the Assignment by Mutual Exchange document

ADDITIONAL INFORMATION

Assignment by way of mutual exchange does not count as succession, however if the tenant was a successor before the mutual exchange took place, s/he will remain a successor in her/his new property

Where one of two joint tenants die, the remaining tenant becomes a sole tenant by “survivorship”, not succession

Joint tenants are jointly liable for arrears, they will be liable for arrears still owing on the rent account.

If a tenant makes an assignment, the deed should make it clear who is responsible for arrears owing.

A Suspended Possession Order will bind any successor or assignee. Where there is an existing Suspended Possession Order on the grounds of rent arrears, the successor/assignee will be obliged to keep to the terms of the order or potentially lose their home.