

# Mutual Exchange Policy



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## 1. Introduction

- 1.1. An assignment by way of mutual exchange offers two or more tenants in the social housing sector the option to move to a more suitable property or location, by exchanging their tenancy with tenants of another local authority or registered social housing provider.
- 1.2. Salix Homes recognises the benefits of mutual exchange for those tenants who may wish to move to a different part of the country or have little or no priority for transfer. It also allows other tenants who are classed as adequately housed to find alternative accommodation.
- 1.3. The overall aim of the Mutual Exchange Policy is to assist tenants in resolving housing needs, encourage mobility, and contribute towards the efficient and effective management of housing stock. It will assist in providing a service that is flexible in trying to support individual needs and aspirations.

## 2. Policy Statement

- 2.1. This policy will ensure that Salix Homes complies with current legislation, under the Housing Act 1985 and Housing Act 1988, as well as its contractual obligations set out in each tenancy agreement when processing mutual exchange applications. This policy will ensure that Salix Homes encourages tenants to move by way of a mutual exchange if they need or would like a move.
- 2.2. Salix Homes will do this by providing tenants with the information and support they need to exchange their property in accordance with their tenancy agreement rights, encouraging mutual exchange in addition to and as an alternative to an internal transfer, and facilitating access to an online mutual exchange register and schemes.
- 2.3. We will advise tenants of any effect on their legal rights and provide clear information on the implications of such a change.
- 2.4. We will advise tenants on the implications of the move upon any welfare benefit entitlement, rent, and service charges.

- 2.5. Salix Homes is committed to ensuring that the option for a mutual exchange is available to as many as possible by promoting it through the website and raising awareness of mutual exchanges with tenants enquiring about moving home.

### 3. Right to Exchange

- 3.1. Applicants can exchange with tenants of any private registered providers of social housing anywhere in the country, including:
- Other Local Authorities;
  - Arm's Length Management Organisations (ALMO);
  - Housing Associations; and
  - Housing Trust which is a charity.
- 3.2. A starter (assured shorthold) tenant has no statutory or contractual right of exchange.
- 3.3. A statutory right of exchange is retained by Salix Homes assured (protected rights) tenants, and Salix Homes agrees to apply the Housing Act 1985 to such applications.
- 3.4. Assured (non-shorthold) tenants are given a contractual right of exchange by Salix Homes in their tenancy agreement, subject to written consent.
- 3.5. This policy applies to the social and affordable rented homes owned and managed by Salix Homes. It does not apply to the private sector leasing properties or Willo Homes properties.

### 4. Tenancy rights, terms & conditions

- 4.1 An individual's rights will vary according to the type of tenancy held, and these tenancy conditions will be exchanged upon assignment.
- 4.2 The mutual exchange is carried out by way of an assignment. There can be two or more tenants who apply to exchange; each exchanging tenant takes over the tenancy of the other party including all the terms and conditions detailed within their tenancy agreement except for the Preserved Right to Buy. This right does not pass to another tenant exchanging into the property. The Preserved Right to Buy is a personal benefit that the tenant with that right retains if they exchange within Salix Homes stock. They lose the preserved Right to Buy if they exchange to a property owned by another social landlord. The original tenancy commencement date stands.
- 4.3 The tenancy that the incoming tenant receives will be compliant with the Localism Act 2011 s158 if applicable.

- 4.4 An exchange will only be refused in accordance with the terms set out in the tenancy agreement, the grounds set out in Schedule 3 of the Housing Act 1985, or Schedule 14 of the Localism Act 2011 (as appropriate), and a limited number of additional grounds in compliance with related policies. These are:
- If the incoming tenant fails the affordability check.
  - Where the incoming tenant or household member holds a tenancy at another property.
  - Where the Salix Homes tenant has already exchanged property within the last six months (unless the tenant pays reasonable costs to include the required gas and electrical checks for the subsequent exchange).
  - The property is not suitable for the incoming tenant(s), including where they do not meet the requirements of a local lettings policy or Salix Homes allocation policy.
- 4.5 If Salix Homes withholds consent due to any of the above grounds, we will give written notice of refusal for the mutual exchange within 42 days of the tenant's application. The refusal notice will explain the ground(s) as the reason permission has not been granted for the mutual exchange.
- 4.6 Salix Homes will conduct a property inspection of the tenants who have existing tenancies. The incoming tenant is encouraged to attend these inspections. We will ensure that the property complies with health and safety requirements, including gas and electrical certification, and ensure there have been no adaptations to the property that cause a health and safety risk. The inspection will assess maintenance, property condition, and cleanliness. These checks are carried out prior to the exchange paperwork being signed to ensure the property meets the relevant health and safety requirements and is maintained to an expected standard.
- 4.7 Written consent from the landlord prior to exchange is required in all cases. Salix Homes exercises its right not to approve an exchange to a demoted tenant. The only exception is where a Court Judge has made a Property Adjustment Order during matrimonial proceedings or in cases involving access to children.
- 4.8 Assignment by way of exchange does not count as a succession. If a tenant is a current successor, they will continue to be treated as a successor in the new property.
- 4.9 Tenants who request a mutual exchange will be advised of any changes in their rights and terms of tenancy relating to an exchange with a tenant of another landlord, as far as is practicable.

- 4.10 When the assignment is signed, the officer will explain the terms of the tenancy and assignment and the implications and expectations of signing the document. This is to ensure all parties understand what they are doing and its impact.

## 5. Timescales

- 5.1 Salix Homes will meet the legal deadline of 42 calendar days by which to either grant full consent, conditional consent or refuse an application to exchange. The 42-day deadline starts once a complete mutual exchange application and required supporting documents to assess the application have been received from the applicants, including completed and signed forms from all parties involved or all the required details submitted on CRM.
- 5.2 If Salix Homes exceeds the 42 day deadline without a decision in writing, the exchange is automatically deemed authorised. The tenant can apply for a Court injunction to allow the exchange to take place.
- 5.3 Notification of any decision will be served in line with Salix Homes' tenancy agreement: service of notices.

## 6. Non-consensual exchange

- 6.1. If an unauthorised exchange takes place, or where no application has been made, all tenants will be in breach of their respective tenancy agreements. If Salix Homes is not agreeable to the exchange, legal proceedings will commence on any Salix Homes property, where it is reasonable and proportionate to do so. This could include applications for possession of all properties.

## 7. Illegal Exchange

- 7.1. It is illegal for one tenant to pay another or do anything that may amount to the payment of money (such as clearing arrears), to encourage them to exchange. Possession proceedings can be issued if a premium was paid in relation to the assignment.
- 7.2. It is illegal for a tenant to assign their tenancy by way of an exchange with no intention to subsequently occupy the property. Where the tenant does not move into the property, possession can be obtained by serving a Notice to Quit due to non-occupation and applying to court for a possession order.
- 7.3. Where the landlord has proof of either of the activities, proceedings for possession may be issued.

## 8. Refusal to move

- 8.1. A tenant has the right to withdraw their application at any point up to signing the deed of assignment.
- 8.2. From the moment the deed of assignment has been signed and witnessed, the assignment is deemed to be complete by law. If either or both parties subsequently refuse to move, they are in effect illegally occupying or “holding over”.
- 8.3. Salix Homes will take every practicable step to ensure the matter is resolved as amicably and expediently as possible.
- 8.4. Either party may seek an injunction to require the other party to move out of the property as well as compensation for loss and inconvenience. Breach of an injunction could result in contempt of court proceedings.
- 8.5. In the event of either party still refusing to move, legal proceedings may commence to recover the property. Salix Homes will commence possession proceedings as the current tenant no longer has any right to occupy the property.
- 8.6. When applying to the court the landlord can request that the proceedings are listed as expediently as possible due to the inconvenience caused to either tenant.

## 9. Monitoring / Performance / Targets

- 9.1. 100% of mutual exchange decisions to be made within 42 days.

## 10. Roles / Responsibility

- 10.1. The Housing Management Team is responsible for the day-to-day operational delivery of the service and for providing customers with support and advice around the practical application of the policy. Specific responsibilities are outlined below:

Housing Managers - Ensure operational implementation of this policy and that there are robust performance management arrangements in place. They are responsible for reviewing the policy and amending it accordingly.

Senior Housing Officers - Are responsible for ensuring compliance with this policy, the management of the Housing Management Team in processing mutual exchange applications, and for approving applications.

Housing Officers and Housing Assistants - Are responsible for receiving, assessing, and processing requests for a mutual exchange. As well as promoting

and raising awareness of mutual exchanges with tenants enquiring about moving home.

Customer Contact Centre - Responsible for receiving and dealing with general enquiries about requests regarding mutual exchange, completing the applications on CRM where possible, and transferring residents to the relevant housing officer for further information and support.

Repairs and Maintenance – Responsible for the property inspection, ECIR and gas checks and any repairs.

## 11. Legal / Regulatory Links

- Housing Act 1985
- Housing Act 1988
- Housing Act 1996
- Matrimonial Causes Act 1973
- Family Law Act 1996
- Localism Act 2011
- Welfare Reform Act 2012
- Housing and Regeneration Act 2008
- Regulator of Social Housing - Tenancy Standard

## 12. Equality, Diversity and Inclusion

12.1. Salix Homes is committed to promoting and embedding a culture of equality, diversity and inclusion (EDI) within our workplaces and the communities we serve.

- Equality is about ensuring that every individual has an opportunity to make the most of their lives and talents;
- Diversity is recognising difference and responding positively to those differences;
- Inclusion is about creating an environment where our services and employment opportunities are accessible to all.

12.2. We are committed to meeting our obligations and duties under the Equality Act 2010 and to promoting equal opportunities both in the provision of services and in our employment practices. We will consider all the protected characteristics of the Act which are:

- Age
- Disability
- Gender reassignment

- Marriage and civil partnership
- Race
- Religion or belief
- Sex
- Sexual orientation
- Pregnancy and maternity

12.3. We also recognise that socio-economic background is an area where inequalities exist and commit to addressing this disadvantage and inequality in our communities where able to do so.

12.4. We are also mindful of our duties under the Public Sector Equality Duty, which is to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

12.5. Where reasonable to do so, Salix Homes will make any reasonable adjustment to ensure compliance with the Act.

## 13. Related Documents

- Mutual exchange procedure
- Tenancy fraud procedure
- Allocations policy
- Purchasing a property policy and procedure