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## MUTUAL EXCHANGE POLICY

### Introduction

Sutton Housing Society (SHS) recognises that Mutual Exchanges encourage tenant mobility and contributes to a more sustainable community.

At SHS, tenants with an Assured tenancy can participate in a mutual exchange. Any tenant with an Assured Shorthold tenancy does not have the right to exchange.

This policy contributes to SHS' compliance with our Regulatory Standards and supports the Government's wish to enable greater mobility for tenants and a wider choice of where they wish to live.

### What is a Mutual Exchange?

A mutual exchange enables social housing tenants to, in effect, swap their homes with each other, once they have permission from their landlord(s). They exchange their tenancies by way of an assignment, which passes on their existing tenancy, without creating a new one. (This does not apply in the case of a succession; please see the SHS succession policy). There are exceptions to the use of Assignment; please see the information below regarding the Localism Act 2011.

An assignment is when a tenant gives their interest in their home to another person. The tenancy continues on the same basis and the new tenant takes on all rights and responsibilities of the tenancy being assigned. Assured tenants can only assign their tenants in certain circumstances – by way of a mutual exchange or under the terms of a court order.

### Localism Act 2011

With effect from 1 April 2012, the tenure provisions from the Localism Act 2011 were introduced. This enables Fixed Term tenancies for both housing associations and local authority landlords to be introduced. SHS does not offer Fixed Term tenancies, however many other landlords do and this affects how mutual exchanges are addressed.

The provisions of the Localism Act cover circumstances where one tenant has a Secure or Assured tenancy granted before 1 April 2012 and another tenant has a flexible tenancy or fixed term assured tenancy.

Exchanges involving flexible or fixed term tenancies are managed by surrender and re-grant of new tenancies. The landlord must grant the tenant who has a Secure or Assured tenancy pre-1 April 2012 a Secure tenancy if they are a local authority or an

Assured (not Assured Shorthold) tenancy if they are a housing association. Existing tenants therefore retain similar security of tenure to that of their original tenancy.

This protection only applies to their tenure, not to the level of rent they pay. If an existing tenant paying a social rent chooses to exchange with a tenant that pays an affordable rent, they will take on the higher level of rent.

### **The Right to Exchange**

All local authority and Housing Association Secure tenants have the qualified right to exchange by way of an assignment. At SHS, the vast majority of tenants have an Assured tenancy which does not give them this statutory right.

Assured tenants have a contractual right to exchange by way of assignment providing that:

- Consent is given by SHS and any other landlord concerned
- One or more of the grounds for refusal do not apply
- Any reasonable conditions attached to the consent are complied with.

Our Regulator, the Homes and Communities Agency (HCA) expects Housing Associations to take reasonable steps to publicise the availability of mutual exchange services that we subscribe to and that the mutual exchange service(s) should be internet based or for SHS to pay subscriptions for individual tenants who wish to exchange. At SHS we pay for the HomeSwapper service, a nationally recognised, internet based mutual exchange service. This service is advertised on our website at [www.suttonhousingsociety.org.uk](http://www.suttonhousingsociety.org.uk)

### **Who can you Exchange with?**

If you have a Secure of Assured tenancy with SHS, you are eligible to exchange your property with one of the following:

- Another SHS tenant
- A tenant from another Housing Association
- A local authority tenant

Permission must be given by all landlords before an exchange date can be agreed.

### **Grounds for Refusing a Mutual Exchange**

Please note that it is illegal for you or the other tenant(s) to charge a fee as part of the mutual exchange; this includes paying arrears for the other party involved.

SHS will not unreasonably withhold permission to exchange. The most common reasons for refusal include:

- The property has too many or too few bedrooms
- Legal action has commenced (including service of a Notice)
- The property is designed or substantially adapted for a specific purpose (e.g. is housing for a person with a physical disability or is independent housing for older people, formally known as Sheltered housing)

Reasons for withholding consent must be given in writing, within 42 days of the application to exchange being received.

If an SHS tenant has broken any terms of the tenancy including non-payment of rent or other housing related debt, has an unsatisfactory property condition or alterations have been carried out to the property without consent, then SHS may, at its discretion, grant consent to the exchange on condition that the tenant pays the outstanding debt and/or remedies any other breaches of the tenancy obligations.

In exceptional circumstances, SHS may consent to a mutual exchange to a tenant in rent arrears. Examples of exceptional circumstances may include:

- The tenant has made all reasonable efforts to clear their debt by making and abiding by an agreement to clear the debt.
- The tenant has been a victim of domestic abuse and the move should assist with protecting the tenant from further instances of abuse.
- The tenant needs to downsize to avoid the debt increasing.

### **Property Condition**

It is important for tenants undertaking a mutual exchange to understand that the incoming tenant takes responsibility for the property in its existing condition. This includes cleanliness, decorative state, improvements, alterations and any repairs that are tenants' responsibility.

The outgoing tenant is not eligible for compensation for qualifying improvements they have made to the property, as the tenancy is not coming to an end.

SHS will carry out an inspection of the property being considered for mutual exchange. We will:

- Order any repairs that are SHS' responsibility
- Require the outgoing tenant to remedy any issues raised in the pre-assignment inspection

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- Agree with the outgoing tenant any other repairs or reinstatements that must be carried out before the exchange takes place.
  - Advise the incoming tenant of any works required and alert them to the fact that they will become their responsibility following the mutual exchange if they have not been completed
  - Carry out a gas and electrical check on the property
  - Advise the incoming tenant that they take on the property in its existing condition and that they are legally responsible for maintaining any improvements made by the outgoing tenant and for carrying out any repairs or reinstatements identified as the tenant's responsibility, which were not carried out by the outgoing tenant.
  - Advise the incoming tenant of any material changes to their rights and obligations under their incoming tenancy compared to their outgoing tenancy e.g. not having the right to buy, affordable rent levels apply.

For clarity, SHS retains the legal responsibility to maintain and repair installations that supply heating, water, gas, electricity including:

- Wash hand basins, baths, toilets, flushing system and waste pipes
- Electrical wiring, gas and water pipes
- Water heaters, fireplaces, fitted fires and central heating.

### **How does a Mutual Exchange Work?**

A mutual exchange would usually take place through the assignment of an existing tenancy, unless one or more of the tenants involved has a flexible tenancy or a fixed term assured tenancy of more than 2 years.

When notification is received from you that you wish to exchange your home, SHS must respond to you formally within 42 days of your application. If we don't do this, consent is deemed to have been given.

The Community Housing Services team at SHS is responsible for administering mutual exchanges and an application form can be obtained from them, or downloaded from our website.

You will receive an acknowledgement following the receipt of your mutual exchange application.

We will review how you have conducted your tenancy and an inspection of your home will be made to assess the property condition; a reference request will also be made to the other landlord, if applicable. SHS will identify and improvements or alterations made to the property and whether consent was obtained.

You will be advised of any changes in your rights and terms of tenancy resulting from an exchange.

A decision will be made and you will be advised of the outcome within the statutory 42-day period. Consent can be withheld if one or more grounds outlined in the "Grounds for Refusing a Mutual Exchange" above apply.

SHS will give consent to the mutual exchange taking place when the consent from all other landlords (if applicable) has been obtained and if all the following requirements have been met:

- A satisfactory landlord's reference has been received in respect of the prospective SHS tenant on how they have conducted their tenancy and confirmation of their right to reside in the UK. This includes information about their rent payments, anti-social behaviour and condition of their home.
- Agreement has been reached between landlords (where applicable) for the exchange to go ahead.
- A pre-assignment inspection has been carried out on the SHS property and relevant works carried out/agreed.

SHS will insist on any of the following having been rectified before the exchange can go ahead:

- Any works carried out by the tenant that is considered to be a breach of tenancy
- Any works carried out by the tenant that are illegal or that breach planning and/or building consents
- Any works carried out by the tenant that pose a risk to the health and safety of anyone living in or around the property
- Any negligence or damage to the property that would be the tenants' responsibility to repair, as per their tenancy agreement.

The mutual exchange may be delayed if:

- There are rent arrears from any of the tenants involved in the mutual exchange
- If there are other debts owed by any of the tenants involved in the mutual exchange such as rechargeable repairs or court costs.

Within 42 days of the application to exchange being received, all parties will be advised in writing of whether permission to exchange is given. If consent is not given, the grounds for withholding consent will not be disclosed to all parties involved.

Formal consent to the mutual exchange will be given with the completion of the Deed of Assignment, signed to formalise the handover of the tenancy.

### **Exchanging Without Consent**

If a mutual exchange goes ahead without the consent of both landlords involved, tenants put their tenancy at risk. There are three options available should this situation occur:

- The landlords involved remedy the position by completing the exchange retrospectively
- The tenants are required to return to their original homes
- The tenancies are terminated by serving a Notice to Quit on the original homes and seeking repossession.

### **Monitoring of Mutual Exchanges**

The Community Housing Services Manager (CHSM) is responsible for ensuring the mutual exchange process is applied appropriately.

The CHSM will ensure via the relevant community Housing Services officer that relevant teams are notified of the new tenant and that tenancy records are updated accordingly.

The CHSM will record all mutual exchanges taking place to enable this to be reported at the end of each financial year.

### **Equality & Diversity**

SHS continually seeks to be a genuinely inclusive organisation, integrating equality, diversity and inclusion in to all aspects of our day to day work.

We treat all of our tenants with dignity and respect, tailoring our services to meet the needs of individuals. We provide a supportive environment for our staff, tenants and visitors.

Our staff are regularly trained on issues relating to equality, diversity and inclusion. They are sensitive to tenants' individual needs and will tailor services accordingly.

**NB: Please refer to <H:\OFFICE PROCEDURES\04. Housing Management\4.03 Mutual Exchange Procedure flowchart.docx>**