

Mutual Exchange Policy

Introduction

West Kent recognises that by promoting mutual exchanges it will encourage tenant mobility and help create sustainable communities with better use of its housing stock.

Mutual Exchange can offer a quick and efficient way for tenants to move, enabling them to choose where they live and avoid long waits on the housing register. It enables us to ensure tenants are maintaining their homes to an acceptable standard prior to moving, and avoids the costs of works and loss of rent, which would normally occur when tenants move via the housing register. In addition to this it helps ease the demands on the Housing Register.

Policy Statement

We will ensure mutual exchanges are carried out in accordance with statutory requirements, Homes and Communities regulatory standards and in line with this policy and accompanying procedures. This includes:

- Tenants who want to mutually exchange can register their details with Xchange Locata on Kent Homechoice.
- Tenants check that they can afford to exchange properties.
- Tenants take responsibility for their properties and ensure they are an acceptable standard prior to exchange approval being given, and after the exchange has taken place.
- Tenants are aware of their rights in respect to Right to Buy and Right of Succession, which could be lost when the exchange takes place. Tenants who were formally tenants of Sevenoaks District Council Assured (Protected) tenants and retained the right to buy may lose this right should they exchange with a full assured tenant. This right to buy does not exist for Assured (protected) tenancies when:
 - (i) They live in a property built after 1989, which cannot be purchased under the right to buy provisions.
 - (ii) West Kent has bought-back the property using grant funding.

This must be explained to the tenants exchanging.

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Tenant Improvements

When a tenant has mutually exchanged they take responsibility for any improvements made by the previous former tenant and any other improvements by previous former tenants that were the responsibility of the tenant they mutually exchange with.

Where we have not identified these improvements and gifted them to the tenant we will take responsibility for the ongoing repairs, maintenance and subsequent replacements.

We will assess any requests for repairs or replacements to any previous tenant improvements on a case by case basis.

Definitions

For the purpose of this policy following definitions apply:

An **Assignment** is when a tenant signs over their interest in a tenancy to another person. The tenancy of the property then continues on the same basis and the new tenant takes on all the rights and responsibilities of the original tenancy.

Assured (Protected) Tenants of West Kent, i.e. those who were former tenants of Sevenoaks District Council have a legal right to apply to exchange (same as secure tenants in accordance with Section 92 of Housing Act 1985). They can exchange with another secure tenant, or with tenants of a housing association or a housing trust with the written consent of the landlord. N.B. The right to buy 'stays with the tenancy and property.'

Assured (Fully) Tenants – West Kent tenants whose tenancy was granted after 1st April 1989 are given contractual rights to exchange contained within their tenancy agreements. The Tenant Services Authority requires a contractual right to exchange to be given to housing association tenants on similar terms to secure tenants.

Secure Tenants – This tenancy type is issued by local councils. They have additional rights by virtue of Housing Act 1985 and Housing Act 1989. This includes right to buy and right to assign their tenancy by way of exchange.

Starter Tenants do not have the right to exchange until after the Starter period ends and an assured tenancy is created.

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Decision

Tenants will be notified whether approval or not has been granted within 42 calendar days of the application to exchange being received. An exchange may be approved conditionally – for example the incoming tenant completes decoration within two month's of the exchange. If work is not completed and the property standard is not acceptable action will be taken to enforce the tenancy conditions.

Consent to a request for a mutual exchange can only be refused if one or more of the grounds contained in the following apply:

- a) Schedule 3 of the Housing Act 1985
- b) Additional ground inserted by the Housing Act 2004
- c) Section 106
- d) Other situations stipulated by West Kent, which will affect Fully Assured Tenants only.

Please see full list at Appendix A.

Right to Buy and Right to Succession

We will advise applicants of any changes in their rights and terms of tenancy resulting from an exchange with a West Kent tenant, before an exchange takes place. We will also do this if they are aware of any changes with a tenant of another landlord. This includes their Right to Buy, and any remaining rights to succession.

Tenants of West Kent are **not** affected by the Housing (Preservation of Right to Buy) Regulations 1989, which effectively make the Right to Buy a 'personal' right which cannot be assigned. This is because the regulations came into force on 5 April 1989 **after** the creation of West Kent and the stock transfer. This means the Right to Buy remains with the tenancy and does not move with the person.

Tenants exchanging will be required to sign and agree all paper work including a Deed of Assignment and property condition acceptance, before an exchange can take place.

Appeals

A tenant can appeal a decision to refuse their application within 14 days of the decision.

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Monitoring

Each application to mutually exchange will be checked and authorised by the Neighbourhood Housing Manager before going ahead. Key points of check are:

- Property Condition
- Property and Tenant Suitability
- Action on tenancy
- Length of time to process
- Affordability check – Universal Credit/Affordable rent/under occupation.

Review

We will review this policy in line with any legislative changes as and when they occur

APPENDIX A

GROUNDINGS FOR REFUSING A MUTUAL EXCHANGE

Schedule 3 of the Housing Act 1985

1. The outgoing tenant or the incoming tenant is subject to a possession order or a suspended possession order.
2. Either the outgoing tenant or the incoming tenant is subject to a current Notice of Seeking Possession or possession proceedings have started.

This only applies where possession is being sought on one or more of the following grounds:

- a) Non payment of rent or non compliance with a tenancy condition.
 - b) Nuisance or annoyance to neighbours, or using the dwelling for immoral or illegal purposes.
 - c) Neglect or damage of the dwelling or common parts.
 - d) Ill treatment of landlords furniture.
 - e) Obtaining the tenancy by a false statement.
 - f) Participating in an exchange, which has involved the payment of a premium.
3. The property is 'substantially larger' than is required by the incoming tenant. i.e not more than 1 bed in excess of the incoming tenants current needs.
 4. The property is 'substantially too small' for the incoming tenant and their family. i.e the tenants would be overcrowding the property as recognised by the Sevenoaks District Housing Register.
 5. The extent of your accommodation is not reasonably suitable for the needs of the incoming tenant or vice versa.

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6. One of the properties is in a cemetery, or within the curtilage of a building, which is mainly of non-housing accommodation and was let to the tenant or his or her predecessor through his or her employment by the landlord or other similar body. For example warden or caretaker accommodation.
7. The landlord of one of the tenants is a charity and assignment of the tenancy would conflict with the objectives of the charity.
8. One of the properties is specially adapted or designed for a person with a disability and the incoming tenant or their family does not require that adaptation.
9. One of the landlords is a Housing Association or Housing Trust which lets its properties to persons who face special difficulties (not merely financial) and the incoming tenant does not fall within this category.
10. One of the properties is one of a group provided for people with special needs, with a social service or special needs facility in close proximity to help meet those needs and this is not required by the incoming tenant or their family. For example Emerald Accommodation.
11. One of the properties is subject of a management agreement where the manager is a housing association of which at least half the members are tenants subject to the agreement, and at least half the tenants of the properties are members of the association and also that the proposed assignee is not such a member nor is willing to become one.

Housing Act 2004

1. An injunction order under **s.1 PART 1** Anti-social Behaviour Crime and Policing Act 2014 or a Criminal Behaviour Order under **s.22 PART 2** Anti-social Behaviour Crime and Policing Act 2014 or a Demotion Order or a Possession Order under Section 84A Housing Act 1985, Ground 2 or 2ZA in Part 1 Schedule 2 to the Housing Act 1985 and Section 94, 98 and 99 Anti-social Behaviour Crime and Policing Act 2014 for secure tenancies. Ground 7A in Part 1 of Schedule 2 to the Housing Act 1988 and Section 97 of the Anti-social Behaviour Act 2014. Ground 14 in Part 2 of Schedule 2 to the Housing Act 1988 or Ground 14ZA in Part 2 of Schedule 2 to the Housing Act 1988 for assured tenancies is in force or an application for one of these is pending either against the tenant, the proposed assignee or a person who resides with or visiting the dwelling house.

Section 106

1. One of the properties falls within a Section 106 planning restriction, where there is a local lettings policy in force, and the incoming tenant does not meet the policy criteria.

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Other

1. One of the tenants holds a starter assured shorthold tenancy.
2. The incoming tenant has been **excluded** for housing by West Kent, and the outgoing tenant has a Fully Assured Tenancy, which commenced on or after 1 September 2003. If the outgoing tenant has a Protected Assured Tenancy or a Fully Assured Tenancy which commenced before 1 September 2003 permission to exchange with an excluded tenant can not be refused but conditions can be made on the incoming (excluded) tenant. This is because our exclusion policy was not in force at the time the tenancy was taken on.
3. Both tenants are West Kent Fully Assured and there are arrears on the account, or there is another breach of tenancy including items of repair under HHSRS (Health, Housing Safety Ratings), which must be resolved before approval is given. Alternatively approval can be given subject to conditions being met.
4. If a property is found to be unaffordable by either party, permission may be refused.