



Places to live. Space to grow.

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## Mutual Exchange Policy

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## **1 Introduction: the purpose of this policy**

- 1.1 Mutual exchange refers to the legal right of secure and assured tenants to swap their tenancies. Mutual Exchange is a statutory service – this means that unless someone is restricted via the grounds set out below, the right the Mutual Exchange cannot be withheld.
- 1.2 A Mutual Exchange is self-managed by the customers involved, and the involvement of the Housing Association is limited to the granting of permission.
- 1.3 The purpose of our Mutual Exchange Policy is to promote choice and mobility for tenants and make the best use of our stock in meeting housing need.
- 1.4 This policy sets out:
  - Our approach to mutual exchange
  - Which tenancies have the right to a mutual exchange
  - The type of tenancies we will grant to tenants following an exchange
  - How we will manage applications
  - The circumstances under which we will give or withhold consent to an exchange.

West Kent recognises that promoting mutual exchanges encourages tenant mobility and helps create sustainable communities with better use of our 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.

## **2 Policy Statement**

- 2.1 We will ensure that Mutual Exchanges are conducted in accordance with the statutory requirements, Homes & Communities regulatory standards and in line with this policy and accompanying procedure.
- 2.2 We will make sure that tenants are aware of their rights in respect of Right to Buy and Right of Succession which could be lost when the exchange takes place.

## **3 Responsibilities**

### **Our responsibilities**

- 3.1 West Kent will notify tenants of our decision to approve or decline the exchange within 42 calendar days of all applications involved in the exchange being received.
- 3.2 West Kents decision to approve or decline the exchange will be made in writing and if the decision is to decline, we will outline the reasons for the refusal – which will only be in line with statutory refusal conditions.
- 3.3 West Kent will conduct an inspection of the property prior to the exchange taking place, this may be completed in person or via a virtual inspection. We will provide a written report of the property condition and clearly outline the tenant's responsibilities.

- 3.4 West Kent will remain responsible for any Landlord repair obligations, but it is the outgoing tenant's responsibility to ensure the property is left in a good condition, and as it was when they first moved in.

#### **Tenant responsibilities**

- 3.5 Tenants are responsible for finding an exchange partner and completing an online application when they have found someone they wish to exchange with.
- 3.6 Tenants are responsible for conducting their own inspection of the property prior to the exchange completing and for making any agreements or arrangements regarding the condition of the property with the outgoing tenants.
- 3.7 Incoming Tenants agree to accept the condition of the property they are exchanging into. There is no compulsion to accept a Mutual Exchange, as these homes are self-selected and not allocated. Either party may choose to not go ahead with a Mutual Exchange at any time before the tenancy swap occurs.
- 3.8 Tenants must not move until they have signed the required paperwork to complete the exchange.

### **4 Applying for a Mutual Exchange**

- 4.1 Secure tenants have the statutory right to assign their tenancy by way of mutual exchange. Assured tenants and Fixed Term Tenant also have the right to mutual exchange.
- 4.2 The following tenancy types are not eligible to mutual exchange:
- Introductory or Starter Tenancies
  - Assured Shorthold Tenancies
  - Use and Occupation or any other Temporary Tenancies
  - Licensees
  - Intermediate Market Rent Tenancies
  - Leaseholders / Shared Owners
- 4.3 Mutual exchanges between two or more parties can be UK wide. Tenants who are eligible to exchange can do so with another eligible West Kent tenant, a tenant of another registered social housing provider, or a local authority tenant.
- 4.4 Once a tenant has found another tenant, they wish to exchange properties with, each tenant involved in the swap will need to complete and submit a Mutual Exchange Application Form via SwapTracker. Once all applications are received, we will consider each application and provide a written decision within 42 days of receipt. During these 42 days, West Kent will carry out the required checks to ensure all parties are eligible and do not meet any of the grounds for refusal.

## **5 Property condition and home improvements**

- 5.1 Tenants are responsible for carrying out their own inspection of the property prior to the exchange and for making any agreements or arrangements regarding the condition of the property with the outgoing tenant.
- 5.2 Incoming tenants agree to accept the condition of the property they are exchanging into.
- 5.3 We will only carry out repairs to improvements carried out by the former resident made in line with our Maintaining your Home Policy. For example repairs to our standard fixtures and fitted parts in bathrooms and kitchens.
- 5.4 For any other improvements made by the former resident, the resident moving in will take on repair responsibility as well as for any gifted items. For example garden sheds, floor coverings and fencing.
- 5.5 Any structural alterations made to the property will require our permission before approval for exchange can be given.
- 5.6 Incoming tenants will take responsibility for all repairs that we consider to be tenant repair obligations that were not completed by the outgoing tenant.
- 5.7 We will assess any requests for repairs or replacements to any previous tenant improvements on a case-by-case basis.
- 5.8 Any structural alterations made to the property will require permission from West Kent before approval for the exchange can be given.
- 5.9 A proposed Mutual Exchange that is due to take place in a property which displays upon inspection "neglect or damage to the property or communal areas", but for which no current Notice of Seeking Possession (NOSP) is in place, would be referred promptly to the Neighbourhood Housing Team, to consider whether a NOSP is required.

## **6 Decision**

- 6.1 Tenants will be notified whether approval has been granted within 42 calendar days of all applications involved in the exchange being received.
- 6.2 Consent to a mutual exchange can be conditionally approved until rent arrears are cleared or a breach of tenancy has been remedied (like damage to the property repaired).
- 6.3 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. Schedule 14 of the Localism Act 2011

D. Section 106

E. Other situations stipulated by West Kent, please see Appendix A

## **7 Types of Mutual Exchange**

- 7.1 The Head of Voids & Lettings will monitor monthly compliance with the statutory 42-day deadline for decisions on mutual exchange.
- 7.2 The Head of Voids & lettings will monitor compliance with all legislative requirements of the mutual exchange process.

## **8 Grounds for refusing a Mutual Exchange:**

- 8.1 Mutual Exchange is a statutory right, which people have an assured or secure tenancy are entitled to exercise. A Mutual Exchange can only be refused in the following circumstances:
  - 8.2 Schedule 3 of the Housing Act 1985:
    - 8.2.1 The outgoing tenant or the incoming tenant is subject to a possession order or a suspended possession order.
    - 8.2.2 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 landlord's furniture.
      - E. Obtaining the tenancy by a false statement.
      - F. Participating in an exchange, which has involved the payment of a premium.
    - 8.2.3 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.
    - 8.2.4 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 Local Authority Housing Register.
    - 8.2.5 The extent of your accommodation is not reasonably suitable for the needs of the incoming tenant or vice versa.

- 8.2.6 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.
- 8.2.7 The landlord of one of the tenants is a charity and assignment of the tenancy would conflict with the objectives of the charity.
- 8.2.8 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.
- 8.2.9 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.
- 8.2.10 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.
- 8.2.11 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**

- 8.3.1 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.
- 8.3.2 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.

#### **Localism Act 2011**

- 8.4.1 Schedule 14 Localism Act 2011 lists the grounds on which a landlord may refuse to surrender and re-grant tenancies under section 158.
- 8.4.2 These include all grounds as set out in Schedule 3 of the Housing Act 1985, in addition to the following:
- The tenant is in rent arrears

- The tenant is otherwise in breach of a term in the tenancy agreement.

## **Section 106**

- 8.5.1 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.

## **8.4 Other**

- 8.4.1 If one of the tenants holds a Starter or other non-qualifying tenancy
- 8.4.2 If the incoming tenant has been excluded for housing by West Kent
- 8.4.3 If there is an ongoing breach of Tenancy Conditions, we may refuse the exchange or approve subject to conditions being met.
- 8.4.4 If a property is found to be unaffordable by either party.
- 8.4.5 If an exchange would result in our property becoming under occupied or over-occupied.
- 8.4.6 If we have reason to believe that any tenant has offered or sought a financial incentive as a condition of the exchange.

## **9 Under Occupancy and Over Occupancy**

- 9.1 As discussed above in Section 11.2.3 Schedule 3 of Housing Act 1985 states a Mutual Exchange may be refused if: The property is 'substantially larger' than is required by the incoming tenant.
- 9.2 West Kent will class a property as being substantially over occupied if it would be over occupied by one or more bedspaces as recognised by the Local Authority Housing Register.
- 9.3 West Kent will class a property as being substantially under occupied if there will be 1 or more bedrooms that will not be occupied by a permanent named occupant of the property, cohabiting couples will be expected to share a bedroom unless there is a proven medical need for separate bedrooms.

## **10 Complaints and Appeals**

- 10.1 Any complaints relating to this policy, its implementation or its operation will be managed in line with either our complaints policy or procedures, as appropriate. There is no appeals process, as Mutual Exchange is a statutory service.

## **11 Regulation**

- 11.1 The following legislation applies to the management of Mutual Exchanges:
- Schedule 3 of the Housing Act 1985



- Section 106
- Housing Act 2004
- Localism Act 2011

## **12 Reporting**

- 12.1 The Head of Voids & Lettings will monitor monthly compliance with the statutory 42-day deadline for decisions on mutual exchange.
- 12.2 The Head of Voids & lettings will monitor compliance with all legislative requirements of the mutual exchange process.

## **13 Consultation**

- 13.1 We will carry out a resident's consultation exercise for any significant review and/or amendment to the Mutual Exchange Policy and, where appropriate will seek comments and views from interested parties and affected parties. All appropriate and relevant comments and views formally expressed and submitted to us as part of the consultation exercise will be considered by the appropriate teams.