

Mutual Exchange Policy



Directorate: Communities
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Document Information

Scope:

This policy will ensure that Salix Homes complies with current legislation, in particular 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.

Service Standards / Performance Measures / Corporate Strategy:

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

Risks:

Name of post responsible for risk management: Tenancy Specialist

Risk Factor 1 – Changes in government legislation

Mitigation – Remain up to date of government legislation and policy to ensure document reflects the current law

Risk Factor 2 – Illegal exchange

Mitigation – Throughout the process, the tenancy specialist team will ensure that the responsibilities and legal ramifications of any illegal activity are clearly set out. Staff are encouraged to remain vigilant when processing cases to identify potential fraudulent exchange application or activity.

Related Policy/Procedure & Documents:

Mutual exchange procedure

Tenancy fraud procedure

Allocations policy

Purchasing a property policy and procedure

Document Information

Related Legislation / Relevant Regulation:

Salix Homes will comply with current legislation, regulatory requirements and guidance. This policy has given consideration to, but not limited to, the following:

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

Retention & Legal Basis for Storage:

Tenancy records will be kept for the length of the tenancy plus 10 years after the tenancy has terminated.

Salix Homes processes mutual exchange applications under the following purposes:

- Consent: consent of the data subject
- Legal Obligation: Processing is necessary for compliance with a legal obligation.

Stakeholders:

Contacted managers from income management, community safety and neighbourhoods to ask if had any feedback to give on the current policy or were looking for any changes.

Data Protection Impact Assessment (DPIA)

The DPIA was completed by the tenancy specialist in January 2020

Equality Impact Assessment (EIA)

The EIA was completed by the tenancy specialist in January 2020

Introduction

1. 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. 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.
2. 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. Assured (non-shorthold) tenants are given a contractual right of exchange by Salix Homes in their tenancy agreement, subject to written consent.
4. 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, Willo Homes or Derive properties.

Tenancy rights, terms & conditions

5. An individual's rights will vary according to the type of tenancy held, and these tenancy conditions will be exchanged upon assignment. However, the right to request a mutual exchange with one or more other social housing tenant is given to all Salix Homes' social rent tenants through their tenancy agreement.
6. 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.
7. The tenancy that the incoming tenant receives will be compliant with the Localism Act 2011 s158 if applicable.
8. A starter (assured shorthold) tenant has no statutory or contractual right of exchange.
9. 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 a 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
10. 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.
 11. 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.
 12. 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.
 13. 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 the impact of doing so.

Timescales

14. 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.
15. If Salix Homes exceeds the 42 day deadline without a decision being made in writing, the exchange is automatically deemed to be authorised. The tenant can apply for a Court injunction to allow the exchange to take place.
16. Notification of any decision will be served in line with Salix Homes' tenancy agreement: service of notices.

Non-consensual exchange

16. 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.

Illegal exchange

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17. 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.
18. 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.
19. Where the landlord has proof of either of the aforementioned activities, proceedings for possession may be issued.

Refusal to move

20. A tenant has the right to withdraw their application at any point up to signing the deed of assignment.
20. 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".
22. Salix Homes will take every practicable step to ensure the matter is resolved as amicably and expediently as possible.
23. 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.
24. 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.
25. 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.

Consultation and customer involvement

26. Salix Homes will consult with and involve customers in any review of this policy, ensuring their views are considered within the limits of legislation.

Equality analysis

27. An equality analysis has been completed for this policy.

Mutual Exchange Policy



28. Salix Homes is committed to ensure exchange advice and information are readily available to increase awareness of the option to exchange.
29. 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 raise awareness of mutual exchanges with tenants enquiring about moving home.

Confidentiality

30. Any personal data provided to us regarding customers' personal or financial circumstances will be dealt with in the strictest confidence. All data held in respect of residents will be recorded and processed in accordance with the Data Protection Act 2018.