

Mutual exchange: guidance note for tenants

Mutual exchange is essentially a permanent house swap between two social housing tenants. It occurs where two or more qualifying social housing tenants exchange tenancies, and move permanently into each other's homes.

Many tenants who are looking for a mutual exchange, register with one of the online mutual exchange services (such as HomeSwapper, <https://www.homeswapper.co.uk/>). These services allow qualifying tenants to add their home to the service's website so that other registered users can view the property details. Interested tenants can then search the website and view other advertised properties, in order to find a suitable new home.

It is not a requirement to use one of the online mutual exchange services – it is just that many tenants find them convenient. It is also possible to agree an exchange via friends, family or neighbours for example – so long as the proper processes are followed.

Some of the key facts and requirements around mutual exchange are summarised below:

Do you qualify for a mutual exchange?

Here are some simple questions which, if you answer yes, could mean you qualify for a mutual exchange:

- 1 Is your landlord a public sector landlord? These include private registered providers (often called 'housing associations'), and local authorities. South Hams and West Devon do not own any housing stock, so if you live here and are a public sector tenant, you are likely to be a tenant of a housing association. Ask your landlord if you are unsure.
- 2 Do you have a secure tenancy, an assured non-shorthold tenancy or fixed-term tenancy, and have you successfully completed any probationary period? If you have an assured non-shorthold tenancy or fixed-term tenancy, does the tenancy document include a right to exchange? Again, your landlord will be able to confirm this for you if you are unsure.
- 3 Are you up to date with payment of your rent, and are you complying with all of your tenancy obligations?

A mutual exchange can take place even if the people wishing to swap houses have different landlords. So for example, a local authority secure tenant could mutually exchange with:

- Another secure tenant of that same local authority
- A secure tenant of another local authority
- A tenant of a private registered provider.

In contrast, a tenant could not mutually exchange with a tenant renting through a private landlord, and there is no right to exchange to a vacant property.

Most mutual exchanges are between two tenants, but they can be between more than two, as long as all of the involved tenants are exchanging their tenancy, and are receiving an exchange in return.

Getting permission to exchange

Once a tenant has found a willing mutual exchange partner, permission must be given by all affected landlords before an exchange date can be agreed. You will need to approach your landlord to request an application form to complete.

Public sector landlords generally have policies which state that they will not unreasonably withhold permission to an application to exchange. For some tenants (for example secure tenants), the reasons why an exchange might be refused are limited, and set out in law, whereas for others the reasons a landlord can give for refusal can be much broader. You can check with your landlord, what reasons for refusal they use. Some of the most common reasons include:

- The property would have too many or too few bedrooms for your housing needs
- Legal action is in progress to obtain possession of the property or to demote the tenancy
- The property has been designed or substantially adapted for a specific purpose (eg for a person with a physical disability, or as sheltered accommodation for older people) or benefits from special services/facilities.

Where a landlord is limited by law in its ability to refuse applications to exchange, it may not be entitled to refuse consent to applicants who lack a "local connection" – even though a local connection with the area might otherwise be required by a 'planning agreement' on the relevant property (see the text box for details on 'planning agreements').

If a landlord was to refuse consent to an exchange on the basis that the incoming tenant has no local connection and it was not permitted to do so, this reason would be invalid at law, and could be challenged.

This applies to both landlords of secure tenants and most landlords of assured non-secure tenants. Your landlord will be able to give you further information on this.

Planning agreements (sometimes referred to as Section 106 Agreements) are legal contracts that, amongst other things, can require particular houses to be allocated with designated procedures – and at times this means only to people with a "local connection". Where tenancy legislation restricts a landlord's reasons for refusing an exchange however, this legislation overrides the procedures set out in a planning agreement.

Legal action may be taken against tenants who swap homes without all of the required landlord permissions, and this could result in eviction. It is important that all tenants involved in an exchange get their landlord's consent before the mutual exchange takes place,

Legal process

Once a tenant has found a suitable exchange partner, and landlord consents are obtained, the exchange needs to be undertaken in accordance with a legal process.

Mutual exchanges are undertaken in one of two ways:

- 1 Assignment (most mutual exchanges are undertaken in this way)
- 2 Surrender and regrant (this only applies if the exchanging tenants meet certain statutory qualifications set out in the law).

Assignment

In a mutual exchange by assignment, no new tenancies are created and no new tenancy agreements are issued. Each tenant signs a document called a 'deed of assignment' and this document effectively swaps the tenancies over – so each tenant steps into the other tenant's tenancy. This even happens if the tenants have different types of tenancy, so for example:

Betty has a secure tenancy of property 1 and Tony has an assured tenancy of property 2. Following the mutual exchange by assignment:

- *Betty will have an assured tenancy of property 2 (even though she was previously a secure tenant); and*
- *Tony will have a secure tenancy of property 1 (even though he was previously an assured tenant).*

The exception to the rule that the new tenant stands in the shoes of the previous tenant is in respect of succession (where a tenant has either inherited their tenancy or had it legally transferred to them, usually from a family member). Succession rights and status follow the tenant and do not stay with tenancy – so for example a tenant who is a successor under the original tenancy remains a successor following the mutual exchange under their 'new' tenancy.

Surrender and regrant

The surrender and regrant method is not available for all mutual exchanges – it is only used in very specific circumstances where an mutual exchange application involves at least one social housing tenant with a tenancy that was granted before 1 April 2012, and one tenant who's tenancy was granted on or after 1 April 2012. It was introduced in order to protect the security of tenure of existing lifetime tenants prior to the introduction of the more common use of fixed term tenancies.

Unlike an assignment, where each party steps into the other's shoes, surrender and regrant requires each tenant to surrender (a legal term meaning 'give up') their original tenancy agreements entirely, and the landlords are obliged to issue new tenancy agreements to each of the swapped tenants for their new properties. The type of tenancy granted will differ, depending on the status of the tenant.

Practicalities

Before agreeing to a mutual exchange, tenants should ensure that they are comfortable with the condition and decoration of the home they are looking to move into. While some tenancy breaches might be required to put right by the original tenant as a condition of the permission to exchange (and tenants should check whether this is the case), the general rule is that the properties are taken as seen – in which case the incoming tenant takes over any outstanding breaches and liability for repairs. Some things to look out for include:

- Are there any damage or outstanding repairs that will become the 'new' tenant's responsibility
- Agree on any items that will be taken or left behind – not all fixtures and fittings are provided by the landlord and so the outgoing tenant may take them away
- Check that the council tax and other costs/utilities at the chosen property are affordable

- Find out if the landlord is planning any work to the property and/or local area in the near future.

Tenants should also satisfy themselves that the terms of their 'new' tenancy are acceptable. For secure tenants, in particular note that if you have the right to buy your home:

- By exchanging to another local authority secure property, you could lose your right to buy your home, depending on the property you choose.
- By moving into a property owned by a private registered provider, you will lose your right to buy (although you may qualify for the right to acquire).

Before committing to a mutual exchange, we would recommend that you seek independent legal advice.

Please note that it is illegal to offer any incentive to make an exchange happen. It could cause both tenants to lose their homes