

Mutual Exchange Advice for Tenants

1. Introduction

- 1.1 A mutual exchange is basically a home swap with another tenant. It could be a council house exchange, flat exchange, bungalow, maisonette or any other property type. Tenants can swap homes with any council tenant or Housing Association tenant in the UK providing they have the right to mutual exchange and want to swap homes with you.
- 1.2 This guidance provides advice our employees to support those moving home in accordance with the national lockdown announced on 4 January 2021.
- 1.3 The Government has advised that people looking to move home will be able to both continue with planned moves and view new properties to move into in the future and that we will be able to continue working
- 1.4 This guidance provides important public health information to ensure that moving home and related activities, such as viewing property, can happen safely.
- 1.5 We encourage all parties involved to be as flexible as possible and to be prepared to delay moves, for example if one of those involved becomes ill with COVID-19 during the moving process or has to self-isolate. The Government has stated that it may become necessary to pause all home moves locally or nationally for a short period of time to manage the spread of coronavirus, and they will advise us if this needs to happen.

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2. The Legal Framework

- 2.1 Section 92 of the Housing Act 1985 states that:

- (1) It is a term of every secure tenancy that the tenant may, with the written consent of the landlord, assign the tenancy to another secure tenant who satisfies the condition in subsection (2) or to an assured tenant who satisfies the conditions in subsection (2A).

- (2) The condition is that the other secure tenant has the written consent of his landlord to an assignment of his tenancy either to the first-mentioned tenant or to another secure tenant who satisfies the condition in this subsection.
- (2A) The conditions to be satisfied with respect to an assured tenant are—
 - (a) that the landlord under his assured tenancy is either the regulator of social housing, a private registered provider of social housing, a registered social landlord or a housing trust which is a charity; and
 - (b) that he intends to assign his assured tenancy to the secure tenant referred to in subsection (1) or to another secure tenant who satisfies the condition in subsection (2).
- (3) The consent required by virtue of this section shall not be withheld except on one or more of the grounds set out in Schedule 3, and if withheld otherwise than on one of those grounds shall be treated as given.
- (4) The landlord may not rely on any of the grounds set out in Schedule 3 unless he has, within 42 days of the tenant's application for the consent, served on the tenant a notice specifying the ground and giving particulars of it.
- (5) Where rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed, the consent required by virtue of this section may be given subject to a condition requiring the tenant to pay the outstanding rent, remedy the breach or perform the obligation.
- (6) Except as provided by subsection (5), a consent required by virtue of this section cannot be given subject to a condition, and a condition imposed otherwise than as so provided shall be disregarded.

2.2 This means that the Council cannot legally withhold its consent unreasonably but may give approval subject to certain conditions being met. The request may only be refused in certain cases which are listed in Section 5 of this procedure.

All requests to move through Mutual Exchange must be approved by the Assistant Director of Housing or the Tenancy Services Manager

In contradiction to 2.2, whilst we will not withhold consent unreasonably or refuse a move, we may defer any requests where the move is not essential

3. The City Councils Policies and Practices

3.1 The tenancy agreement sets out the condition for mutual exchanges. This is a right for Secure Tenants only.

3.2 4.4 Right to exchange your tenancy

4.4.1 You have the right to exchange your tenancy with another or our tenants, a tenant of another council or a tenant of another registered provider of social housing, such as a housing association, provided that you have our written permission and the other tenant has the written permission of their landlord. Your right to exchange is governed by schedule 3 of the Housing Act 1985 (as amended), which states the grounds on which we can refuse to agree a mutual

exchange. **While you are an introductory tenant you do not have this right.**

4.4.2 You must pay any rent arrears or put right any other breach of your tenancy before we give permission for the exchange to take place.

4.4.3 You must not ask another person to make a payment to you in connection with a tenancy exchange or make such a payment yourself.

4.5 Right to transfer by exchange

You may also have the right to give up your tenancy and transfer to another property held by certain other assured shorthold or flexible tenants of a private registered provider of social housing or a local authority subject to the agreement of the other tenant and their landlord and our prior written consent. We can only withhold our consent on the grounds specified in Schedule 14 to the Localism Act 2011. **While you are an introductory tenant you do not have this right.**

6.20 Sub-letting your property

6.20.1 **While you are an introductory tenant you are not entitled to sublet any part of your property.** You must not, when you are a secure tenant, sub-let or hand over any part of your home:

- without first obtaining our written permission, which will not be withheld unreasonably;
- at any time when you are not occupying another part of your home as your only or principal home.

6.20.2 You must not sub-let or hand over your entire property in any circumstances. If you do, you will no longer have a secure or introductory tenancy.

6.20.3 You must not give away or sell the keys to your property to another person.

6.21 Assignment

6.21.1 You must not assign (legally “pass on”) your tenancy unless we have first given you our written permission and:

- you wish to assign it to someone who would have been able to succeed to your tenancy immediately after your death as explained in sections 4.6.1, 4.6.2 or 4.6.4 above;
- this tenancy has become a secure tenancy and you are assigning it under the right to exchange;
- the assignment is made in accordance with an order of the court under one of a number of family law provisions governing both partners and children.

6.21.2 We will not unreasonably withhold our permission. We will ask you to complete a deed of assignment document before assigning your tenancy. You may contact us for more information on this.

6.21.3 If we give you our written permission to assign your tenancy you must not demand or receive any money for the purpose of encouraging the assignment to take place. If evidence comes to light that money has been exchanged for this purpose we may take legal action against you.

4. Receipt of Application

- 4.1 Applications to advertise for an exchange can only be made by submitting an application via the Home Swapper website at www.homeswapper.co.uk. The applicant must be the legal tenant and have their Landlord's approval for the exchange.

All applications received by the Housing Assistant on Homeswapper will be approved unless the applicant is subject to any of the grounds whereby a mutual exchange would be refused (**see section 5 - Grounds for refusing a mutual exchange**).

If a request to advertise is received in any other way the Housing Assistant will send the **Advertise Advice** letter informing the applicant how and where to submit their application. If the tenant does not have access to the internet, they should contact the Housing Assistant to arrange a convenient appointment time to attend at City Hall, where the Housing Assistant will assist them.

- 4.2 If an applicant has already found a tenant with whom they would like to exchange, both applications must be received to process the mutual exchange. Use the most recent application date for monitoring purposes.

4.3 **PLEASE NOTE:**

All letters relating to the mutual exchange process can be found in *workflow/DIPS/WFM located in TEN-MX ad-hoc letters list*.

The Mutual Exchange Property Inspection Form is located in *O:\Tenancy Support\MUTUAL EXCHANGES*

4.4 **The Housing Assistant will:**

- Check applications received from both parties. If not then cancel the mutual exchange with the tenant that has applied using letter **MX Cancelled No Contact**.
- Fill in details on **New mutual exchange spreadsheet - Jan 2014 DO NOT USE ANY OTHER** located in *O:\Tenancy Support\MUTUAL EXCHANGES*
- Check tenant is secure. If tenant is not secure, refuse using **MX Refused Intro** and **TS43A Mutual Exchange Denied** letters.
- Check that:
 - The applicant(s) is (are) the legal tenants.
 - The properties being assigned fit the needs of the assignees (exchanges should be refused if it leads to properties being statutorily overcrowded or under-occupied, or where applicant is moving to accommodation that is specialised or adapted in a way that is not needed, e.g. warden accommodation, alarm systems or with minor adaptations).
 - rent account is clear. If money owing, write on form **Mutual Exchange Property Inspection Form** and state rent account needs to be cleared.
 - There are no breaches of tenancy. If ongoing situation, talk to Housing Officer.

If the tenants are not the legal tenants or the property does not fit the needs of the incoming tenant or there is a live NOSP on the tenancy for any breach, then the exchange must be refused using **TS43 Mutual Exchange Refused** and **TS43A Mutual Exchange Denied**.

- If external exchange send **MX Other Authority Initial Request** letter with a pre-paid envelope (write the Housing Assistant name on the return envelope) to the housing association or council.
- Check all joint tenants are included on the application. If an application is received from a joint tenant, with the other joint tenant not included on the application, the applicant should be given three options:
 1. to arrange for the existing tenancy to be signed over to the applicant's name only (normal rules for transfer of tenancy to apply);
 2. to include the other joint tenant on the application;
 3. to withdraw from the exchange and be advised to arrange for the tenancy to be transferred into the applicant's name only (normal rules for transfer of tenancy to apply).
- Check the application is date stamped for proof of receipt. If not, check to see if any proof of receipt into office and apply date stamp.
- If exchange agreed at this stage, refer to Housing Officer to assess whether the exchange is required.

The Housing Officer will:

- Assess whether it is essential that the exchange occurs immediately due to health conditions or vulnerabilities.
- If the exchange is essential, complete the Mutual Exchange Covid-19 Essential Move Request Form and send to Assistant Director for Housing and the Tenancy Services Manager for approval.
- If approval is granted, the Housing Officer will refer back to the Housing Assistant to contact the applicants to go through the **Mutual Exchange Advice for Tenants**.

The Housing Assistant will (IF NOT APPROVED):

- **Due to Covid-19**, contact the applicants to advise that we are unable to allow them to move at this time and that their application is on hold. Advise the applicants we will contact them again when the moves can take place

The Housing Assistant will (IF APPROVED):

- Complete **Mutual Exchange Property Inspection Form** with Housing Officer name on, which addresses are mutual exchanging and the date that the form needs completing by (15 working days)
- Contact the applicants to go through the **Mutual Exchange Advice for Tenants**
- Arrange an appointment for the virtual Property inspection to be completed by the Housing Officer
- Book appointment in the Housing Officers calendar for the virtual viewings and advise the Housing Officer by email. If the tenant is not able to carry out a virtual

viewing, then the Housing Assistant will inform the tenant that they will need to send photos for all rooms to include walls, doors, cupboards, fittings, garden, fences, etc. to tenancyandlordservices@lincoln.gov.uk or the Housing Assistant dealing with your exchange. These will be needed prior to any decision being made.

- 4.5 A tenant must receive the written consent of the Council before exchanging. The Council has 42 days from the date of the application within which to grant or refuse consent.

4.6 **PLEASE NOTE:**

Where an applicant's rent account is in arrears, or any other breach of tenancy exists, then unless there are grounds for refusal, permission should be granted on the condition that the arrears are cleared and/or the breach remedied before the exchange takes place and **MX Conditions Letter** sent. The letter should clearly indicate the Council's requirements. A reasonable period of time (providing it falls within the 42 days from date of application and allows time to check breach has been remedied) would be granted to remedy the breach.

Where the breach has not been remedied, the Housing Officer must serve a NOSP to allow the breach to be refused. If no NOSP has been served and the incoming tenant accepts the breaches, except rent, as their own to remedy, then the exchange must be granted.

- 4.7 Where an exchange is taking place to resolve issues relating to under occupancy charges consent should be granted if:
- no NOSP has been served,
 - the tenant is making payments regularly even if failing to reduce through lack of income
 - an exchange to smaller property to minimise under-occupancy charge is requested
 - the tenant agrees to a payment plan through direct debit, standing order, or credit union rent account.

Any such request should be referred to the area housing manager for approval.

- 4.8 **An exchange cannot be given subject to conditions being imposed (with the exception of 4.5 above) and if one is imposed it shall be disregarded.**

5. Grounds for Refusing a Mutual Exchange

- 5.1 The relevant provision for assignments by way of exchange is section 92 Housing Act 1985 and the specified grounds under which consent to the exchange may be withheld are contained in Schedule 3 of that Act.
- 5.2 Consent required by the Council will not be withheld except on one or more of the following grounds, which are stipulated by law:-"

Ground 1

The tenant or the proposed assignee is subject to an order of the court for the possession of the dwelling-house of which he is the secure tenant.

Ground 2

Proceedings have been begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of grounds 1 to 6 in Part I of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.

Ground 2A

Either—

- a) a relevant order or a suspended anti-social behaviour possession order, or a suspended riot related possession order is in force, or
- b) an application is pending before any court for a relevant order, a demotion order or anti-social behaviour possession order, or a suspended riot related possession order to be made,

in respect of the tenant or the proposed assignee or a person who is residing with either of them.

A “relevant order” means—

- an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour);
- an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour);
- an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords);
- an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998; or
- an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003.

An “anti-social behaviour possession order” means an order for possession under Ground 2 in Schedule 2 to the Housing Act 1985 or Ground 14 in Schedule 2 to the Housing Act 1988.

A “demotion order” means a demotion order under section 82A to the Housing Act 1985 or section 6A of the Housing Act 1988.

A “riot-related order” means an order for possession under Ground 2 in Schedule 2 to the Housing Act 1985 or Ground 14 2A in Schedule 2 to the Housing Act 1988.

Where the tenancy of the tenant or the proposed assignee is a joint tenancy, any reference to that person includes (where the context permits) a reference to any of the joint tenants.

Ground 3

The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.

Ground 4

The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and his family.

Ground 5

The dwelling-house—

- a) forms part of or is within the curtilage of a building which, or so much of it as is held by the landlord, is held mainly for purposes other than housing purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery, and
- b) was let to the tenant or a predecessor in title of his in consequence of the tenant or predecessor being in the employment of—
 - the landlord,
 - a local authority,
 - a development corporation,
 - a housing action trust – a mayoral development corporation
 - an urban development corporation, or
 - the governors of an aided school.

Ground 6

The landlord is a charity and the proposed assignee's occupation of the dwelling-house would conflict with the objects of the charity.

Ground 7

The dwelling-house has features which are substantially different from those of ordinary dwelling-houses and which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house and if the assignment were made there would no longer be such a person residing in the dwelling-house.

Ground 8

The landlord is a housing association or housing trust which lets dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to satisfy their need for housing and if the assignment were made there would no longer be such a person residing in the dwelling-house.

Ground 9

The dwelling-house is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs and a social service or special facility is provided in close proximity to the group of dwelling-houses in order to assist persons with those special needs and if the assignment were made there would no longer be a person with those special needs residing in the dwelling-house.

Ground 10

The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-

houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association.

5.3 The Council can only rely on any of these grounds if it has within 42 days of the tenant's application for consent served on the tenant a notice specifying the ground and giving particulars of it.

6. Virtual Visits / Photographic Evidence

6.1 Virtual visits or photographic evidence should always be carried out/acquired to the homes of city council tenants who have applied for a mutual exchange, whether it is with another housing authority tenant or not, and should be carried out by the appropriate Housing Officer. The purposes of the visit are as follows:

- To check that both tenants have inspected each other's property and agree to accept the tenancy with the dwelling in its present condition. With a mutual exchange, tenants will be asked to accept the property in the condition it has been left by the last tenant. The Council will carry out routine repairs in accordance with the tenancy agreement, but it will be the incoming tenant's responsibility to repair any damage caused by the previous tenant.
- To check that the situation at the tenant's home accords with the information given on the application form in terms of the people living there.
- To carry out an inspection of the property to identify whether the property has been damaged by the tenant in any way that may suggest that the council would charge the tenant for any repairs. The **Mutual Exchange Property Inspection Form** should be completed during the inspection with a list being made of all rechargeable repairs.
- The Housing Officer should make the tenant aware of any rechargeable repairs at the time of inspection, as this would be incorporated into a condition for agreeing the exchange.
- To check if the accommodation is designed or adapted for handicapped or elderly use it will still be used for this purpose if the exchange is approved.
- Where special tenancy regulations apply to certain types of dwelling, e.g. animals in multi-storey flats, enquiries should be made as to whether these would be violated if the exchange was approved.

PLEASE NOTE:

The Housing Officer will be required to investigate whether there has been any ASB experienced at the property where the tenant is proposing to move to and, if so, they must inform their tenant so that the tenant can make a judgment on whether to proceed with the exchange based on the fullest amount of information as possible.

6.2 The Housing Officer will return completed ***Mutual Exchange Property Inspection Form*** to the Housing Assistant.

6.3 **The Housing Assistant will:**

- Complete date received on ***New mutual exchange spreadsheet - Jan 2014 DO NOT USE ANY OTHER***
- Contact the applicants and complete the Mutual Exchange Covid-19 Screening Script with both parties.
- Arrange for a virtual viewing for the exchange applicant or, if unable to do this, provide photos to the exchange applicant.
- A face-to-face viewing, also to be arranged by the Housing Assistant, should only take place if both parties are still seriously considering an exchange after the virtual viewing has taken place. Every precaution, as detailing in Section 3 of the ***Mutual Exchange Advice for Tenants*** document.
- Book electrical test with Aaron and tenant
- If external exchange send ***TS53B MX Exchange Tenancy Report*** to the external council or housing association and wait for their report and decision.
- Check electrical test certificate is received and test passed by telephoning Aaron on. Tel Ext. 3682

7. Approving and Arranging the Date for Exchange

- 7.1 Where both rent accounts are clear and there are no other breaches of tenancy conditions, an exchange can be approved quite quickly. However, if problems occur it may take the full period allowed.
- 7.2 When the mutual exchange is agreed, the Housing Assistant will telephone/contact both tenants and arrange a date for them both to come in and sign paperwork at different times. If rent still owing, explain the account needs to be clear at time of sign up.
- 7.3 All parties to the exchange should be requested to attend the office to complete the assignment.

The Housing Assistant must complete the Mutual Exchange Covid-19 Screening Script with both parties on:

- **the day before they attend City Hall to carry out the assignment paperwork**
- **the day before the move takes place**
- **the day of the move**

Appointment needs to be no less than 1 week before they move to allow for an appointment for gas safety inspection, capping and uncapping of gas supplies, and no

more than 2 weeks after the decision is made and the start date will be the Monday after they move

N.B: (In the case of exchange involving tenants outside the City boundary, this may not be possible and the arrangement for the date of this exchange should be made via the other tenant's Authority - this includes private tenants and tenants of any Housing Associations.

7.4 During the interview the Housing Assistant will:

- Ensure tenants understand that, as inspections cannot be carried out as normal, they are accepting the condition of the property when they agree to move and they are happy with the property they are taking on
- Check that rent account is clear
- Tenants sign the **Deed of Assignment**. (located in O:\Tenancy\3. Policy and procedure\Assignments (If External exchange, both tenants sign)
- Sign and date the deed of assignment as a witness.
- Tenants read, agree and sign the **Mutual Exchange Property Inspection Form** (If external exchange, only incoming tenant need this).
- Give any incoming tenants a tenancy pack.
- Give both tenants a **Mutual Exchange Satisfaction Survey with a self-addressed envelope**.
- Remind tenants to inform benefits and council tax of their new address
- Remind tenants to read meters
- Book a gas safety test, gas cap and uncap and advise Maintenance and Investment Team and Customers Services of date, location, time and contact details of tenants
- Update all relevant IT systems accordingly
- Update **New mutual exchange spreadsheet - Jan 2014 DO NOT USE ANY OTHER**

7.5 The date for the exchange should be set for a time not exceeding two weeks from the time of the interview and the agreed date should be entered on the Assignment Notices. All parties to the exchange must also sign the assignment documents.

7.6 **YOU MUST REMEMBER THAT APPLICANTS ARE ASSIGNING THEIR TENANCY AND NOT THE PROPERTY AND, AS SUCH, EACH PARTY IS UNDERTAKING TO TAKE ALL THE OBLIGATIONS OF THAT TENANCY WHICH INCLUDES ANY REPAIRING OBLIGATIONS, RENT OBLIGATIONS ETC.**

The applicant's attention should be drawn to the section of the application forms where they have signed a declaration regarding the accuracy of the information they have provided on the application form and the fact that they are accepting each other's dwellings in the condition as seen.

- 7.7 After the mutual exchange interview the Housing Assistant will send **TS50 Mutual Exchange Letter** to our new tenants

8. Procedure for Exchanges Involving a Tenant of Another Organisation

- 8.1 The procedure is similar to that already outlined with some slight alterations.
- 8.2 It is necessary to obtain a home visit report from the other Landlord Authority in respect of their tenant. It is usually the case that the other Authority would make a similar demand for a report on the Council's tenant so send one at the same time.

An exchange would be approved if both Council's concerned found the contents of each other's reports satisfactory. Agreement for the exchange to go ahead would normally be made by telephone to enable negotiation to go ahead and save time, but in all other respects the same procedure should apply as outlined in Section 7.

- 8.3 If a City Council tenant is exchanging with a tenant of a Housing Association, you should point out that they are likely to be taking on an Assured Tenancy which does not have the same rights e.g. Right to Buy.

9 Failure to Execute the Exchange

- 9.1 If for some reason the exchange does not take place as intended, the Housing Assistant should seek to clarify the situation i.e.:
- has the exchange been deferred to another date? In which case the paperwork and tenancy records are amended accordingly and the Gas Safety test must be rescheduled for the appropriate date;
 - has, for whatever reason, the exchange fallen through? This can happen by one or both parties changing their minds; in either case the facts should be established immediately, and correspondence should be sent to other affected parties to clarify the position, (letters **TS55 Mutual Exchange LA Ten Withdrawn** and/or **TS56 MX Withdrawn**). The Gas Safety checks should be cancelled immediately.
 - If only one party refuses to complete the move (see 23 Redbourne Drive, 5 Thurlby Crescent). It is imperative that Withdrawal Notices are sought and under no circumstances should a new application be considered until existing exchanges are resolved. The Gas Safety checks should be cancelled immediately.
- 9.2 N.B: The Council's primary role should be only to consent on exchange and not to get involved in disputes, but we must be aware of any future litigation in such cases.

10 Mutual Exchanges Without Permission

- 10.1 Under the Housing Act 1985 tenants have the right to exchange; however all mutual exchanges have to have the consent of the Council in writing.

The Council can only refuse to allow a mutual exchange to proceed under certain specified grounds (see section 5).

- 10.2 Once information has been received that two tenants have carried out an exchange without permission, a Housing Officer should visit both parties to investigate the background.
- 10.3 If there are no reasons why the exchange would have been refused, then the Housing Officer should get both parties to complete a mutual exchange application form immediately and permission should be granted retrospectively. A letter should then be sent to both parties advising them that they had acted without permission and that in this instance permission has been approved. However, in future, should they wish to carry out another mutual exchange they must apply properly.

Arrangements should be made for Gas Safety checks to be carried out at our properties as soon as possible.

- 10.4 If there are grounds which would have prevented the tenants from exchanging, then they must be sent a letter advising them that they have acted without permission and we require them to return to their original properties within 14 days.

If the tenants do not return to their original properties within the 14 days then a Notice to Quit should be served on both parties.

Once the Notices have become effective and the tenants have still not returned to their original tenancies, a brief should be prepared for the area housing manager and if Court action is approved then an application for a Court Order has to be made.

11 Mutual Exchange Customer Satisfaction Survey

- 11.1 The mutual exchange survey is carried out to gain information about the reasons why tenants carry out a mutual exchange and how satisfied they were with the service they received from us.
- 11.2 It is important that we collect information about the satisfaction levels of our tenants in order to improve our service.
- 11.3 A mutual exchange satisfaction survey should be handed to the new tenant on sign up by the Housing Assistant and returned in the self-addressed envelope provided.
- 11.4 Completed forms should be returned to the Resident Involvement Team.