



Mutual Exchange Policy

Target Audience	Customers / Staff
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1. Introduction

This policy outlines our responsibilities and our customers obligation during the mutual exchange process.

2. Purpose

This policy aims to:

- provide clear information on the requirements for a mutual exchange of properties.
- set out the circumstances for assigning or surrendering a tenancy.
- set out the grounds for refusing an exchange.

3. Scope

This policy applies to Secure, Assured and Fixed Term (both social rent and affordable rent) customers with permanent, self-contained accommodation.

4. Definitions

The term 'we', 'our' and 'us' mean Moat Homes Ltd.

Customer: within this procedure, refers to a tenant holding a Secure, Assured or Fixed term tenancy.

Parties: refers to both current customers and incoming customers involved in the exchange.

Tenant: The person who has the right to occupy residential premises under a residential tenancy agreement. Due to the references to legislation, it is at points within the policy appropriate to use the term.

Joint Tenancy: Two people are given an identical and equal trust in the property. They are jointly and severally liable for all obligations of the tenancy. A mutual exchange involving a joint tenancy cannot be approved unless both parties have given consent by signing the application form.

Mutual Exchange: is the exchange of properties by two or more exchanging customers. Mutual exchanges can take place between customers of the same or different landlords, but can only be carried out where both landlords give written consent to the exchange.

Assignment: is the transferral of a tenancy from one person to another. When a tenancy is assigned the rights and responsibilities of the tenancy are transferred from the original tenant to the new tenant.

Surrender and Regrant: often referred to as mutual transfer is another method of exchanging tenancies, where both tenants surrender their current tenancies and are awarded new tenancies, not necessarily on the same conditions.

5. Roles and Responsibilities

Customer	Responsible for finding an exchange partner and making an application to request permission. To provide access to all rooms within the home for a property inspection. To fulfil the obligations in the tenancy.
Customer Services Advisors	Provide initial advice and assistance on the process of mutual exchange. Answer queries that may arise throughout the process.
Central Services Administrators	Create the CRM MEXCH case on receipt of a completed application. Preparation of paperwork for assignment. Authorise and verify home swapper applications.
Neighbourhood Housing Assistant (NHA)	Carry out initial checks on the case to confirm eligibility for exchange. Provide assistance to NSMs and customers on queries that may arise throughout the process.
Neighbourhood Services Manager (NSM)	Manage the mutual exchange process, carry out relevant checks, liaise with other landlords. Answer queries that may arise throughout the process and keep all parties updated on progress. Carry out the welcome visit and ensure the correct mechanism of exchange is carried out and new customers receive relevant information.
Neighbourhood Operations Manager (NOM)	Ensure compliance with the policy and procedure, approve the mutual exchange application at the relevant stage.
Head of Neighbourhoods	Oversee compliance with the policy and procedure and relevant legislation. As well as report any exceptions to approvals outside of 42 days.

Director of Neighbourhoods	Ensure overall compliance with the relevant legislation and Regulatory standards. Holds the budget for the web based mutual exchange service.
Gas Team	Confirm a valid gas safety certificate and arrange for contractors to attend to cap and uncap on an exchange.
Electrical team	Provide a valid electrical safety certificate.

6. Mutual Exchange Process

6.1 Application

Customers who are eligible to exchange can do so only with another moat customer, a customer of another registered non-profit social housing provider (housing association), or a tenant of a local authority or Arms-Length management organisation (ALMO). Customers cannot exchange with tenants in the private rented sector.

It is the customer's responsibility to find a suitable exchange customer, we will assist customers to do this by subscribing to and promoting national mutual exchange services, such as home-swapper (www.homeswapper.co.uk). We will support customers to access these services.

A customer can request an application form once they have found an exchange partner.

- By emailing customer@moat.co.uk.
- Calling our customer services centre on 0300 323 0011.
- Writing to us to request an application form.

6.2 Checks and References

We will carry out a number of checks to confirm eligibility to exchange. This includes a property inspection to identify any repairs that may be required and any damage or alterations that have been made. We will notify both the outgoing and incoming customers of any repairs that they will be responsible for or to be carried out after the exchange takes place.

We will request and provide a tenancy reference for the customers involved in the exchange. We will only give approval for exchange once a satisfactory reference has been received.

We will provide an electrical safety certificate for our property and a valid gas safety certificate. The process for obtaining these will be explained to all customers involved in the exchange.

We will ensure that customers are aware of the type of tenancy and rent level they will have, as well as their status in terms of succession or right to buy/acquire if the exchange is successful. These are detailed fully in appendix 3.

Some customers may be impacted by reductions in benefit levels that help with housing costs. We recognise that for tenancy agreements where Schedule 3 of the

Housing Act 1985 or Schedule 14 of the Localism Act 2011 apply we are only able to refuse a mutual exchange on set grounds and affordability is not one of these grounds. In these cases, we will discuss affordability with the applicant and what will happen if they are unable to pay the rent so they can make an informed decision on whether to proceed with the mutual exchange.

6.3 Right to Exchange

The tenancy agreement sets out the statutory or contractual right to exchange. The following tenures qualify for exchange, however, in every case, we will check the agreement in place for any variances.

- Secure Tenancy.
- Assured tenancy.
- Fixed term tenancy of 2 years or more (social rent).
- Fixed term tenancy of 2 years or more (affordable rent).

The following Tenancies **do not** have the right to exchange.

- Starter Tenancy and any extension period of the starter.
- Assured Shorthold Tenancies (periodic).
- Discounted rent tenancies (sometimes known as intermediate market rent).
- Fixed term assured shorthold tenancies where the initial fixed term was less than 2 years.
- Demoted Tenancies.
- Non assured /contractual tenancies.
- Licences.

6.4 Granting and refusing permission to exchange

We will not unreasonably withhold permission to exchange. Consent to a mutual exchange can be conditionally approved until rent arrears are cleared or a breach of tenancy has been remedied.

We will rely on any of the statutory grounds stated in schedule 3 of the Housing Act 1985 to refuse an exchange for customers who hold a periodic secure tenancy.

We will rely on any of the statutory ground stated in schedule 14 of the Localism Act 2011 to refuse an exchange in cases where either customer holds an assured tenancy or an assured shorthold fixed term tenancy of 2 years or more(social or affordable rent). A full list of these grounds can be found in Appendix 1.

We will refuse an exchange where we have reason to believe that any party has offered or sought a financial incentive as a condition of the exchange.

We may rely on any other reasonable grounds to withhold our consent. Where agreeing the exchange would put us in breach of any covenant, restriction or planning obligation. These reasonable grounds would apply in cases where the exchange would conflict with any relevant planning restrictions or the purpose for which the tenancy was initially granted. These include, but are not limited to, instances where:

- the property is in a rural exception site.
- a local connection is required.
- the incoming customer must meet the necessary criteria for example for age designated schemes.
- customers must have specific support needs in order to meet the intended purpose of the housing.

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- The property has significant adaptations/ purpose built for a disability and the incoming household does not require such adaptations.

We understand that prospective customers may require minor aids and adaptations in their new home, however, any requests for major adaptations by new customers via mutual exchange will need to be considered on an exceptional case by case basis as we would expect a property to be suitable for the household's needs at the time of letting the property.

We reserve the right to withdraw any approval granted where grounds permit us to, up to the time the assignment contract is completed, particularly where additional information becomes available that could impact the original decision. We will not be responsible for any of the costs incurred where false or incorrect information has been given that lead to the refusal or delay of the exchange.

6.5 Decision

We will make a decision within 42 days of receiving the fully completed exchange application. The decision will be in writing and will either:

- refuse the exchange.
- approve the exchange.
- approve the exchange with conditions.

If we fail to provide a written decision within 42 days, the customer cannot assume consent has been given and must not proceed with the exchange. They can raise a formal complaint about our failure to decide.

The actual exchange date when all customers can move home will be by agreement between us, the current customer, the other landlord and the incoming customer. The physical relocation into the respective exchanged homes must have taken place by the start date on the assignment contract/tenancy agreement.

6.6 Unauthorised Mutual Exchange

In the event of a mutual exchange taking place without our knowledge or written consent, we will treat the occupants as unauthorised occupiers and advise them to return to their own property within 7 days to avoid a Notice to Quit being served on both. Failure to do so will result in legal action to seek possession of the property.

6.7 Right to Repairs

Incoming tenants have the same right to repairs that are the landlord's responsibility as other customers of the same tenancy type.

Responsibility for any nonstandard fittings/customer repairs that were the responsibility of the outgoing customers will pass to the incoming customer.

We will conduct a gas safety check on occupation of the new customer in the property, this is generally conducted on the first working day after the exchange has occurred.

7. Disclosure of information

In providing a reference to other landlords we will disclose all known criminal activity related to the property or neighbourhood, any known child protection issues and all

complaints of ASB and tenancy breaches. The application form will include a relevant consent to disclosure statement to this effect.

Any information exchange will be compliant with the Human Rights Act 1998. More information about how we process data can be found within our Privacy Statement which is available on our website at www.moat.co.uk/privacy-statement

8. Training

Line managers must ensure employees are aware of this policy and ensure regular training on aspects critical to their role as well changes in legislation or process.

9. Impact Assessments

This policy is in line with our commitment to Equality and Diversity and in line with current legislation. An Equality Impact assessment has been carried out in respect of this policy to ensure our actions have not disadvantaged a protected characteristic group.

We will process your data only for the purpose it has been provided and in compliance with Data Protection Law. All information will be held securely and in accordance with our Privacy Statement which is available at www.moat.co.uk/privacy-statement

10. Review

This policy will be reviewed every three years. As part of our review, we will consult our customers and staff where necessary.

11. References

Related Documents

Anti-Social Behaviour / Domestic Abuse Policies.
Change of Circumstances Policy.
Customer Accounts Rent Arrears Policy.
Aids and Adaptations Policy.
Fraud Policy.
Gas Management Process
Lettings Policy.
Recharges Policy.
Tenure Policy.

Legislative and Regulatory Framework

- Equality & Diversity Act 2010.
- Housing Act 1985 (section 3).
- Housing Act 1988.
- Housing Act 2004.
- Localism Act 2011 (S158 and schedule 14).

RSH Regulatory Framework: Tenancy Standard

12. Appendices

Appendix 1 :Grounds for Refusal of Mutual Exchange by way of assignment under Schedule 3 of the Housing Act 1985.

Appendix 2 : Grounds for refusal of a mutual exchange by way of surrender and granting of tenancies under Section 158, Schedule 14 of the Localism Act 2011.

Appendix 3 Summary of Mutual exchange vs transfer regulations.

Appendix 1

Grounds for Refusal of Mutual Exchange by way of assignment under Schedule 3 of the Housing Act 1985

- **Ground 1 – Possession Order outstanding.**

The tenant or other person applying for the exchange is under a court order for possession.

- **Ground 2 – Possession proceedings outstanding or NSP in force.**

Possession proceedings have started, or a Notice of Seeking Possession has been served on any grounds for possession which require only that it is reasonable to make the order.

- **Ground 2A – In respect of the tenant or the proposed assignee or a person who is residing with either of them.**

Where a court order is in force against a tenant or proposed tenant which is based on anti-social behaviour, e.g., a suspended possession order, an anti-social behaviour order.

- **Ground 2B – Closure Notice or Order.**

If the property is subject to a closure notice or closure order under the Anti-social Behaviour, Crime and Policing Act 2014.

- **Ground 3 – Under-occupation.**

The accommodation would be too large for the prospective tenant, or otherwise not reasonably suitable to their needs.

We will not permit an exchange to go ahead where there would be under occupation of the property unless the customer is downsizing. Unless medical evidence can be provided in support, we will not permit an exchange where the move would be on a like for like basis if your housing needs no longer required this at the time of the exchange

- **Ground 4 – Suitability.**

The size of the accommodation is not reasonably suitable for the needs of the assignee.

- **Ground 5 – Non-housing accommodation or employment.**

The premises were let in consequence of employment and form part of, or in the grounds of, a non-housing building or a cemetery.

- **Ground 6 – Conflict with charitable aim.**

The landlord is a charity, and the proposed tenant(s) occupation will conflict with its objectives.

- **Ground 7 – Accommodation designed for the disabled.**

The property is designed for a physically disabled person, and if the proposed tenant moved in, there would be no such person in occupation.

- **Ground 8 – Landlord is a specialist housing provider.**

The landlord is a special needs housing association or trust, and if the proposed tenant moved in, there would be no one with the relevant need in occupation.

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- **Ground 9 – Accommodation in group designated for special needs e.g., sheltered or supported housing.**

The accommodation is sheltered and as above, if the proposed tenant moved in, there would be no one with the relevant need in occupation.

- **Ground 10 – Management Agreement.**

The dwelling is the 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, at least half the tenants of the dwellings are members of the association, and also that the proposed assignee is not such a member nor is willing to become one.

Appendix 2

Grounds for refusal of a mutual exchange by way of surrender and granting of tenancies under Section 158, Schedule 14 of the Localism Act 2011:

Unless otherwise stated, the grounds for refusal are the same as those under Schedule 3 of the 1985 Act set out in Appendix 1 above.

Ground 1

Any rent lawfully due from a tenant under one of the existing tenancies has not been paid.

Ground 2

An obligation under one of the existing tenancies has been broken or not performed.

Ground 3 – Same as Schedule 3, ground 1

Ground 4 – same as Schedule 3, ground 2 for Secure tenants

Ground 5 – same as Schedule 3, ground 2 for Assured tenants

Ground 6 – same as Schedule 3, ground 2A

Ground 7 – same as Schedule 3, ground 3

Ground 8 – same as Schedule 3, ground 4

Ground 9 – same as Schedule 3, ground 5, except employment may also be with a development corporation or an urban development corporation.

Ground 10 – same as Schedule 3, ground 6

Ground 11 – same as Schedule 3, ground 7

Ground 12 – same as Schedule 3, ground 8

Ground 13 – same as Schedule 3, ground 9

Ground 14 – same as Schedule 3, ground 10

Appendix 3 Summary of Mutual exchange vs transfer regulations.

Status before exchange		Status after exchange		Mechanism
Tenant 1	Tenant 2	Tenant 1	Tenant 2	Exchange takes place by
Secure (fair rent)	Secure (fair rent)	Secure (fair rent)	Secure (fair rent)	Assignment
Assured(social Rent)	Assured (social rent)	Assured (social rent)	Assured (social rent)	Assignment
Assured (social rent)	Secure (fair rent)	Secure (fair rent)	Assured (social rent)	Assignment
Assured (affordable rent)	Assured(affordable rent)	Assured (affordable rent)	Assured (affordable rent)	Assignment
Assured(social rent)	Assured (affordable rent)	Assured (affordable rent)	Assured (social rent)	Assignment
Fixed Term (affordable rent)	Fixed Term (affordable rent)	Assured (affordable rent)	Assured (affordable rent)	Surrender and regrant
Fixed term (affordable rent)	Fixed term (social rent)	Assured (social Rent)	Assured (affordable rent)	Surrender and regrant
Assured (social rent)	Fixed Term (affordable rent)	Assured (affordable rent)	Assured (social rent)	Surrender and regrant (pre April 2012) or assignment post (April 2012)
Assured (affordable rent)	Fixed term (affordable rent)	Assured (affordable rent)	Assured (affordable rent)	Surrender and regrant (pre-April 2012) or assignment post (April 2012)
Assured (affordable rent)	Fixed term (social rent)	Assured (social rent)	Assured (affordable rent)	Surrender and regrant (pre April 2012) or assignment post (April 2012)
Secure (fair rent)	Fixed Term (affordable rent)	Secure with fair rent (if internal swap) or an assured with affordable rent (if external)	Assured (affordable rent)	Surrender and regrant
Secure (fair rent)	Fixed term(social rent)	Secure with fair rent(if internal swap) or assured with social rent (if external)	Assured (social rent)	Surrender and regrant

Assured (social rent)	Fixed term (social rent)	Assured (social rent)	Assured (social rent)	Surrender and regrant (pre April 2012) or assignment post (April 2012)
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- **Localism Act Exchanges – protection for “lifetime” tenants**

Mutual exchanges generally take place via a deed of assignment, such that new tenancies aren't signed. In certain circumstances, exchanges will need to be done by surrender and then granting of new tenancies. This is also known as mutual transfer and applies in the following circumstances.

Customers who hold a secure or assured tenancy which began before 1 April 2012 and swap homes with a fixed term council or housing association customer are afforded protection under section 158 of the Localism Act 2011. This means that their security of tenure will be protected should they transfer to another social rented home, in these cases an exchange is completed by Surrender and regrant (sometimes called a mutual transfer)

Customers who hold a secure or assured tenancy that began after the 1 April 2012 and swap homes with a fixed term council or housing association customer may lose their tenure status. However, as we no longer grant fixed term tenancys, in these cases the same tenancy type will be granted. This is facilitated by the surrender and regrant process.