

	<b>Title</b>	EST03 Mutual Exchange Policy		
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## 1. Purpose and scope

- 1.1 To ensure that all NCHA customers with assured or secure tenancy agreements have the right to exchange their property with other secure or assured customers including the customers of other landlords subject to certain conditions.

## 2. Responsibilities and risk

Head of Communities  
Estates Service Manager  
Income Service Manager  
Estates Officers  
**Maintenance Team**

**Following this policy will reduce the risk of failure to meet legal and regulatory requirements and customers being treated unfairly or inconsistently.**

## 3. Policy details and guidance

### 3.1 NCHA will:

- Encourage customers who need to move to seek a mutual exchange
- Make application forms, advice and assistance available to customers requesting a mutual exchange
- Ensure mutual exchanges are carried out by way of assignment (or by deed of surrender and granting new tenancies for tenancy types governed by the Localism Act 2011) and to comply with the law; and
- Reinforce the express terms of the tenancy agreement relating to the right to exchange properties
- Confirm refusal, consent or conditional consent of a mutual exchange within a period of 42 days (6 weeks)
- Ensure all mutual exchange documents have been completed prior to any consent being granted

### 3.2 Eligibility

3.2.1 A fixed-term assured shorthold tenancy with more than two years remaining or a local authority flexible tenancy will contain the option to apply for an exchange. The Localism Act 2011, section 158 and section 159 introduced a new process for mutual exchanges for certain types of tenancies including surrender of tenancy and grant of a new tenancy using deeds of assignment. The regulations set out which types of tenancy the new process applies to as follows:

- Fixed term assured shorthold tenancies of more than two years at a social rent granted after 1 April 2012
- Flexible tenancies of a term not less than two years and granted by local authorities after 1 April 2012 in accordance with section 154 of the Localism Act 2011 inserting section 107A into the Housing Act 1985.

3.2.2 **In 2019 NCHA informed all tenants on a fixed term tenancy that their tenancy was converted to a periodic assured tenancy and would continue to be so at the end of the fixed term period.**

3.2.3 The Localism Act mutual exchange provisions do not therefore apply to assured shorthold tenancies of the kinds set out below (as set out in the Transfer and Rights to Acquire (exclusion) Regulations 2012 no.696):

- Fixed term assured shorthold tenancy for less than 2 years
- Periodic assured shorthold tenancy
- Assured shorthold tenancy (fixed term or periodic) where the rent payable under the tenancy is:
  - I. An affordable rent
  - II. An intermediate rent
  - III. A mortgage rescue rent
  - IV. A shared ownership rent

3.2.4 If any customer excluded from the Localism Act provisions listed above has a right to exchange in their tenancy agreements then those exchanges would still be done by deeds of assignment.

3.2.5 NCHA assured shorthold, starter tenancy customers cannot exchange until they have lived in their property for more than 12 months and their starter tenancy has been converted into a fully assured tenancy. However, where an exchange involving a starter tenancy would strongly be in the interests of NCHA, the **Head of Communities** has discretion to give permissions to move the exchanging parties by simultaneous transfer.

3.2.6 References for both parties to the exchange will be considered prior to granting permission to assign. In considering references, particular attention will be given to issues of ASB and breach of tenancy conditions.

### 3.3 **Security of Tenure**

3.3.1 An assured or secure customer will attain the security of tenure status of the departing customer at the dwelling they exchange into if the exchange is by assignment.

3.3.2 If the assured or secure customer is exchanging with a social rent fixed term of more than two years commencing after 1 April 2012 or flexible tenancy of a term not less than two years there is no assignment process - both tenancies are terminated.

3.3.3 The new tenancy given to an assured or secure customer exchanging with a social rent fixed term or flexible customer **must** protect their current security of tenure and will be either an assured or secure tenancy appropriate to the type of landlord granting the tenancy.

3.3.4 It is important that this is clearly explained and understood by all parties to the mutual exchange prior to commencing the process. Both customers will receive this explanation in written form and sign to confirm that they have read and understood the implications.

### 3.4 **Reasonable Refusal**

3.4.1 Requests for mutual exchanges for assured and secure customers may only be reasonably refused on the 9 specified grounds contained in section 92 Housing Act 1985 (Schedule 3). If a ground for refusal does not apply, consent can be given but subject to a condition – see conditional consent below.

- 3.4.2 Requests for mutual exchanges where one party has a 2 year plus fixed term assured shorthold tenancy at a social rent or a flexible tenancy may only be reasonably refused on the specified grounds contained in Schedule 14 of the Localism Act 2011. The Localism Act does not allow for any conditions to be imposed to consent. However, rent arrears, damage to property or anti-social behaviour/breach of tenancy, are grounds for refusal. If rent arrears exist, the request for a mutual exchange can simply be refused on the basis of the ground in Schedule 14 of the Localism Act 2011. This ground for refusal may be used if a Debt Relief Order (DRO – see S6) is in place as no conditions relating to the clearance of the debt are imposed by the refusal and as such the DRO is not breached.
- 3.4.3 Written authorisation must be given by both landlords before approval can be given to the exchanging customers.
- 3.5 **Conditional Consent – Non Payment of Rent, ASB or Damage to Property: for assured/secure/affordable rent fixed term customers not covered by the Localism Act 2011**
- 3.5.1 Whilst it is not possible to refuse consent to a mutual exchange on the grounds of non-payment of rent or anti-social behaviour (except where a Notice Seeking Possession has been served), it is possible (under Part IV, S92 (5) of the Housing Act 1985 (Assignment in General)), to give consent to an exchange conditional on any breaches being remedied or obligations performed. (5) Where rent lawfully due from the customer 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 customer to pay the outstanding rent, remedy the breach or perform the obligation.
- 3.5.2 NCHA should ensure that any arrears outstanding are cleared or other breaches of tenancy including rechargeable repairs to the property, are rectified before the exchange takes place. Where a Debt Relief Order is in force NCHA cannot withhold consent conditional upon clearance of any outstanding charges covered by the terms of that Order. In this case voluntary agreement should be sought to arrange clearance of the subsequent former customer debt. Where an exception is made to this rule, by agreement of the Estates Service Manager in consultation with the **Head of Communities** or the Income Service Manager, it may be necessary for the arrears to be written off.
- 3.6 **Tenancy Types**
- 3.6.1 A mutual exchange for an assured (including fixed term affordable rent customers) or secure customer takes place by way of deed of assignment. No new tenancy is created and each customer takes on their exchange partners' tenancy.
- 3.6.2 A mutual exchange for a fixed-term (social rent) or flexible customer under the Localism Act 2011 (see 3.2.3 above which includes guidance on excluded tenancies) takes place by way of deed of surrender and granting a new tenancy. The deeds of surrender should be completed on the same day and at the same time as the new tenancies are granted, if possible. This is because surrender takes effect immediately. If the 2 different landlords cannot sign new tenancies on the same day, then they should also complete an agreement to surrender which allows surrender to take place on a date in the future.

3.6.3 In all cases of mutual exchange, whatever the legal mechanism, NCHA should ensure that customers are aware of the legal implications, including (where applicable) any change in secure or assured status, and any gain or loss of fair rent entitlement or the right to buy, preserved right to buy, family member succession rights or right to acquire. This will also include any change in rent level between social and affordable rent.

### 3.7 Administration

3.7.1 A tenancy is a legal interest in a property and for a mutual exchange to take place, the interest must be legally transferred to the exchange partner in each case.

3.7.2 Details of the completed documents required are in the mutual exchange procedure (Appendix A).

### 3.8 Property Services

3.8.1 NCHA will meet all applicable statutory requirements that provide for the health and safety of customers in their homes including mutual exchanges with requirements to:

- Ensure gas fittings and flues are maintained in a safe condition and that appliances are serviced in accordance with the manufacturer instructions or at least annually (unless otherwise advised by a Gas Safety registered engineer)
- Ensure an annual safety check is carried out on each gas appliance/flue and carry out these checks within 12 months of a tenancy commencement date, unless the appliances in the property have been installed for less than 12 months (in which case they should be checked within 12 months of their installation date)
- Have all installation, maintenance and safety checks carried out by a Gas Safe registered engineer (with LPG, HETAS and Commercial Gas specialisms for solid and LGP fuels as required)
- Keep a record of each safety check for at least two years
- Issue a copy of the latest Landlords Gas Safety Record (safety check) record to NCHA tenants within 28 days of the check being completed or to any new tenant before they move in
- Maintain a Landlords Gas Safety Record for each property under NCHAs control and amend the register in accordance with any changes made to the property (ie installation of or removal of gas supply or appliances)

## 4. Supporting documentation and key legislation

### 4.1 Forms

Mutual Exchange request form  
Receipt of application letter – incoming customer  
Receipt of application letter – our customer  
Mutual Exchange approval letter  
Consent for exchange letter  
Mutual Exchange landlord report request  
Reason for Refusal letter  
Deed of Assignment  
Disclosure Form – incoming customer  
Disclosure Form – outgoing customer  
Exchanging your home letter  
Gifting Form  
Impact of Tenure Changes letter

- 4.2 Guidance  
None
- 4.3 Legislation  
[Localism Act 2011](#)  
[Housing Act 1985](#)  
[Local Government \(Miscellaneous Provisions\) Act 1982](#)  
[Housing Act 1996 \(Part 6\).](#)  
[Gas Safety \(Installation and Use\) Regulations 1998 \(GSIUR\) as amended 2018. Approved Code of Practice and guidance](#)  
[British Standard 7671 as Amended \(Electrical Installations\)](#)  
[Data Protection Act 2018 and GDPR](#)  
[Equalities Act 2010](#)  
[Regulatory Framework for Social Housing in England](#)
- 4.4. Related policies  
 Anti-social Behaviour and Hate Crimes Policy  
 Recharge Policy  
 ALC09 Voids and Relet Policy – Appendix 3 NCHA Vacation Standard
5. **Monitoring and reporting**  
N/A
6. **Definitions**  
 MX Mutual Exchange  
 DRO Debt Relief Order - a low cost alternative to bankruptcy. A **DRO** is only available if you owe less than **£20,000** and have less than £1000 in assets. You don't pay anything towards your **debts** for 12 months and after that they will be written off.
7. **Equality and diversity**  
 7.1 This procedure has been written in line with NCHAs Equality, Diversity and Inclusion Policy and Equality Statement which is supported by an Equality Impact Assessment.
8. **Appendices**  
N/A
9. **Policy approval**  
 9.1 This policy/procedure has been approved prior to issue by the Director of Homes and Wellbeing or if applicable by NCHAs Board, Customer or Care Committees.