

Broadway Living RP Mutual Exchange Policy

1 Policy

1.1 Scope:

The term mutual exchange describes the ability of tenants in the social housing sector in the UK to move house by swapping their properties with other social housing tenants. This policy sets out to explain the rights, obligations and methods for doing a mutual exchange with a view to maximising mobility for residents.

1.2 Objectives:

- to make it clear who has the right to a mutual exchange
- to set out which type of tenancies we will grant following the exchange
- to state the method by which tenancies will be exchanged

2 Background

- 2.1 Tenants who qualify will be able to register with an internet based mutual exchange service at no cost to them. The service will allow them to find a match based on their existing home and one they wish to find.
- 2.2 Secure tenants have the statutory right to exchange tenancies with tenants of other housing associations and local authorities (under the Housing Act 1985).
- 2.3 Assured tenants do not have a statutory right to exchange. However, the standard Broadway Living RP assured tenancy agreement contains a contractual right to exchange which is similar to the provisions applicable to secure tenants. Broadway Living RP can withhold consent to the exchange as set out in this policy. In any event the following conditions must still be met:
- both tenants have the written consent of their respective landlords
 - the tenants have either secure or assured periodic tenancies whose landlord is either a local authority or a housing association

3 Probationary and assured shorthold tenants

- 3.1 Broadway Living RP's probationary tenants for instance tenants on a starter tenancy and any other tenants with an assured shorthold tenancy are not granted any contractual right to exchange.

4 Assured tenancies

- 4.1 Assured tenants of Broadway Living RP have a contractual right to mutual exchange and Broadway Living RP will not unreasonably withhold its consent and will apply the same grounds to Schedule 3 Housing Act 1985 and Schedule 14 of the Localism Act (as set out in appendix one) for refusing an exchange and in addition the following grounds will also be applied:
- the incoming tenant(s) being unable to adequately demonstrate they

can afford the property, an affordability assessment may be completed to determine this

- the property has been identified for disposal
- the property will become underoccupied or over-occupied by more than two bedspaces (according to our lettings policy), as a result of the exchange going ahead. Exceptions may be made where an incoming tenant is downsizing
- the property is designated for a specific client group for example older people, keyworkers, vulnerable adults etc. and the incoming resident does not meet the criteria
- where we have information about the incoming tenant or a member of their household causing anti-social behaviour or being involved in unlawful activity or other significant breach of tenancy but where no Court order or Notice of Seek Possession has been issued on that tenant/member of the household
- we have previously had to evict or obtain an injunction or similar against the proposed incoming tenant or a member of their household
- where required, the tenant and/or adult household members have not allowed a legal Right to Rent check to be completed or where that check has shown no Right to Rent exists
- where we have reason to believe that one of the exchange parties does not intend to reside permanently in the exchange property
- where the incoming tenant or a member of his/her household owns or holds a tenancy of a property other than the property they are exchanging from
- where we have reason to believe that any tenant has offered or sought a financial incentive as a condition of the exchange
- consent to a mutual exchange can be conditionally approved until rent arrears are cleared or a breach of tenancy has been remedied (for example damage to the property repaired).

4.2 Where our property has been adapted, the proposed incoming assured resident will be required to provide a report from an occupational therapist to confirm they require the adaptations.

4.3 Where the proposed incoming assured tenant has pets, permission must be sought prior to the exchange going ahead which will be granted in line with Broadway Living RP's tenancy agreement.

4.4 We will give notice of our decision to approve or decline an application to exchange within 42 calendar days of receiving a completed application. Our decision will be given in writing and will state the reasons for withholding consent where an application is declined.

5 Types of Exchange

5.1 The method by which the mutual exchange will take place varies according to the type of tenancies that the incoming tenant and outgoing tenant hold. The exchange will take place either by way of assignment or by way of a surrender and re-grant of tenancy.

5.2 Assignment

An assignment is where each tenant passes their tenancy onto their mutual exchange partner. By this process, no new tenancies are created.

Assignments take place where:

- both tenants have lifetime tenancies that started before 1 April 2012
- both tenants have fixed term tenancies. Each tenant takes on the remainder of the fixed term when they are assigned the tenancy

Secure tenants exchanging with an assured tenant are advised to seek independent legal advice about the loss of any statutory rights as a result of the exchange.

5.3 Surrender and re-grant

The Localism Act 2011 introduced rights for lifetime tenants and fixed term tenants to swap homes with each other whilst retaining their security of tenure. By this process, each tenant surrenders their original tenancy and is granted a new one of the same type. This means, for example, a secure tenant would not lose their secure tenancy if they were to exchange properties with a fixed term assured tenant.

In order for a mutual exchange to take place as a surrender and re-grant as opposed to an assignment, the following criteria must apply:

- one of the tenancies must be a lifetime tenancy (fully assured or secure)
- the other tenancy must be a flexible or assured shorthold tenancy with a fixed term of at least two years
- the lifetime tenancy must have been granted before 1 April 2012
- the fixed term tenancy must be at a social rent (for instance not let at an affordable or intermediate rent)

We will explain the terms and conditions of the tenancy that the incoming tenant takes on before the exchange but we will also advise tenants to seek legal advice about any loss or gain of tenancy rights.

The table below sets out the method by which an exchange is to place, namely by assignment or by surrender and re-grant.

Option	Status before exchange Household 1	Status before exchange Household 2	Status after exchange Household 1	Status after exchange Household 2	Method of exchange
1.	Protected lifetime tenancy	Protected lifetime tenancy	Protected lifetime tenancy	Protected lifetime tenancy	Deed of Assignment

Option	Status before exchange Household 1	Status before exchange Household 2	Status after exchange Household 1	Status after exchange Household 2	Method of exchange
2.	Protected lifetime tenancy which began before 1 April 2012	Fixed term social tenancy (more than 2 years)	Protected lifetime tenancy	Fixed term social tenancy	Surrender and re-grant
3.	Fixed term affordable tenancy	Fixed term affordable tenancy	Fixed term affordable tenancy	Fixed term affordable tenancy	Deed of Assignment
4.	Fixed term social tenancy	Fixed term social tenancy	Fixed term social tenancy with remaining tenancy length of household 2	Fixed term social tenancy with remaining tenancy length of household 1	Deed of Assignment
5.	Fixed term social tenancy	Fixed term affordable tenancy	Fixed term affordable rent tenancy with remaining length from household 2	Fixed term social tenancy with remaining length from household 1	Deed of Assignment
6.	Fixed term affordable tenancy	Fixed term affordable tenancy	Fixed term affordable rent tenancy with Remaining length from household 2	Fixed term affordable rent tenancy with remaining length from household 1	Deed of Assignment
7.	Protected lifetime tenancy	Fixed term affordable rent	Fixed term affordable rent	Protected lifetime tenancy	Deed of Assignment

6 Landlord and tenant requirements

- 6.1 The following conditions must be met before an exchange may proceed:
- rent must be fully paid by the date of the proposed exchange
 - any other obligation under the tenancy that has not been met, or a breach of the tenancy, must be remedied by the date of the proposed exchange
- 6.2 As far as possible Broadway Living RP will be open about any particular issues regarding the area that the income resident asks about and will not misrepresent the position.
- 6.3 We will require the outgoing tenant to repair any damage, neglect or alterations that they, their household or their visitors have made to the property and to complete any repairs that we consider to be their responsibility. These should be completed prior to the exchange.
- 6.4 Following the exchange, incoming tenants will assume responsibility for any damage or alterations made to the property by the outgoing tenant and for all repairs that we consider to be tenant repair obligations that were not completed by the outgoing tenant.
- 6.5 Tenants must not move until they have received written confirmation from each landlord and signed the necessary paperwork to complete the exchange. If tenants move without our consent and without signing the required legal documents, we will treat the occupants as unauthorised occupiers and may seek possession of the property.

7 Information sharing

- 7.1 All applications and tenants are subject to Data Protection Act 1998. At the point of interview applicants are asked to sign a S171 declaration within the terms of the Housing Act 1996. This declaration warns that it is an offence to knowingly withhold or provide false information. In addition, applicants are made aware that information can be shared with other housing providers or relevant agencies. This can include information sharing protocols with public bodies.
- 7.2 Where specific permissions are required to make enquiries with individual support workers, the applicants are required to sign a declaration giving their permission. Identification markers on our computer databases are also used with the tenant's permission to denote vulnerability or for regard to be given to special requirements.

8 Appeals procedure

- 8.1 Applicants may make an appeal with regard to their mutual exchange. The appeal should be in writing within five working days (weekdays not including public holidays) from the date of refusal, and additional information should be

provided in support of the appeal. A manager from Broadway Living RP's agents will investigate the reasonableness of the refusal and will advise the applicant in writing of the decision. This process will be concluded in ten working days unless a mutually agreed alternative timescale is agreed.

- 8.2 If the applicant disputes this decision there is a second right of appeal to a more senior member of staff from Broadway Living RP's agents. This must be made within five working days of the initial appeal outcome and will include the reasons for the appeal. We will give a written response based on a review of the initial appeal decision within ten working days. The decision will be final.
- 8.3 This appeal procedure does not interfere with an individual's right to make a complaint to the Housing Ombudsman or to request an agency or organisation to make the appeal on their behalf.

9 Review

- 9.1 This policy will be reviewed as necessary and formally on a ten yearly basis.

Check	Date completed	By whom
Risk map	25 March 2021	John Baldwin
Regulatory compliance	21 April 2021	Devonshires
Equalities impact assessment	25 March 2021	John Baldwin

Date policy approved: May 2021

Date policy due to be reviewed: May 2031

10 Appendix one

We may rely on grounds set out at either Schedule 3 of the Housing Act 1985 or Schedule 14 of the Localism Act 2011 to withhold our consent to an exchange. The grounds are broadly the same across both acts and are as follows:

Schedule 3 Housing Act 1985	Schedule 14 Localism Act 2011	Grounds
-	Ground 1	When any rent due from either tenant has not been paid.
-	Ground 2	When an obligation under one of the existing tenancies has been broken or not performed.
Ground 1	Ground 3	Either tenant has an outstanding possession order or suspended possession order against them.
Ground 2	Grounds 4 & 5	Either landlord has served a notice of seeking possession on their tenant and the notice is still in force, or possession proceedings have commenced.
Ground 3	Ground 7	The property is substantially larger than is reasonably needed by the proposed exchange partner.
Ground 4	Ground 8	The property is not reasonably suitable to the needs of the proposed exchange partner and their household.
Ground 5	Ground 9	The property is part of or close to a building that is held for non- housing purposes, or it is situated in a cemetery and was let in connection with employment with the landlord or with a local authority, a new town corporation, housing action trust, an urban development corporation, or the governors of a grant-aided school.
Ground 6	Ground 10	The landlord is a charity and the proposed exchange partner's occupation of the property would conflict with the objects of the charity.
Ground 7	Ground 11	The property has been substantially adapted for occupation by a physically disabled person, and if the exchange went ahead a physically disabled person would not be living there.
Ground 8	Ground 12	The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed exchange partner would not fulfil this criteria.
Ground 9	Ground 13	Our property is designated for people with special needs and a specialist facility or social service is provided to assist people with those needs. The proposed exchange partner (or anyone living in their household) does not have these special needs.

Schedule 3 Housing Act 1985	Schedule 14 Localism Act 2011	Grounds
Ground 10	Ground 14	Our property is the subject of a management agreement that means that at least half the people living in the homes are members of the association, and the proposed exchange partner is neither a member, nor willing to become a member, of the association.
Additional ground (Housing Act 2004)	Ground 6	Any of the following are in force, or an application is pending, against our tenant, the proposed exchange partner or a member of either of their households: - an injunction order under section 153 of the Housing Act 1996 - an anti-social behaviour order - a Demotion Order - a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies.