

Assignment (Including Mutual Exchanges) Policy

	Organisation Name Somers Community Housing Trust	Version: 2 (May 2010)
Policy	Assignment (including) Mutual Exchange Policy	
Ref	ANNEX A	
Staff affected	All staff	Effective Date: October 2010
Approved by		Approval Date:
Lead Officer/ Policy Owner	Director Customer Services (Housing and Support)	Review Date: October 2013

Policy Statement

This policy outlines Somers' approach to dealing with the different ways a tenant can assign their tenancy to another person.

Effective Date

October 2010

1. Scope

- In order to make best use of its housing stock and to satisfy the demands of tenants who wish to move to a different home, Somers will encourage tenants to participate in the national HOMESWAPPER scheme.
- Somers will permit tenants to assign their tenancies in specific circumstances other than by way of Mutual Exchange, depending on the rights given in their tenancy agreement.

2. Responsibilities

- It is the responsibility of the Neighbourhood Services Teams to ensure that assignments are carried out in line with the mutual exchange and assignment procedures.

- Neighbourhood Services staff are responsible for implementing this policy and accompanying procedures.

3. Definitions

- Assignment means the transfer of a tenancy to another person. It is only permitted in law for assured tenants if the landlord gives consent and/or if the tenancy agreement allows it.
- A mutual exchange is a tenancy swap between two or more housing association or Council tenants with the consent of all the landlords involved. A mutual exchange is completed by way of deed of assignment. The tenants “step into each others shoes” ie take over each others tenancy agreements.
- A potential qualifying successor is somebody who would be entitled to succeed ie take over the tenancy from you if you died. Some of Somer’s tenancy agreements allow assignment to a potential qualifying successor, but starter tenants both during and after their 12/18 month starter tenancy period do not have this right.

4. Principles

4.1 Assignment Generally

In some circumstances a tenant may assign their tenancy to another person who complies with certain criteria as laid out in the Tenancy Agreement and within this policy.

Somer will consider applications for assignment in the following circumstances:

- (i) by way of mutual exchange
- (ii) where a court has made an Order to transfer the tenancy under either:
 - Matrimonial Causes Act 1973, Section 24
 - Matrimonial and Family Proceedings Act 1984, Section 17(1)
 - Paragraph 1 of Schedule 1 to the Children Act 1989
 - Part 2 of Schedule 5 or Paragraph 9(2) or (3) of Schedule 7 to the Civil Partnership Act 2004
- (iii) to a potential qualifying successor if the tenancy agreement gives this right. A person who is a potential qualifying successor is identified in the succession clauses in the tenancy agreement and can be agreed in certain circumstances.

4.2 Assignment by way of Court Order

- In divorce or family proceedings, the Court can order one party to assign a tenancy to the other party.
- If the order is made under the Family Law Act 1996 then it is the Court Order that actually transfers the tenancy and no paperwork needs to be completed by the landlord or the tenants.

- If an order is made under the Matrimonial Causes Act 1973 the transfer only happens when the tenants enter into a Deed of Assignment. If they fail to do this the tenancy is not transferred but equally they would then be in contempt of Court for not complying with the Court Order. A deed of assignment should then be prepared and it may be that the Trust will be contacted by the Solicitors acting for either of the parties for a template deed of assignment to complete.
- The Childrens Act 1989 allows a Court to make orders for the assignment of tenancies for the benefit of children.
- When application to transfer a tenancy is made by one tenant in divorce or family proceedings, the Trust must be notified that such an application has been made. Generally Somer is unlikely to object or intervene and will let the Court decide. In some circumstances however, based on its knowledge of the circumstances of the tenant and the applicant, it may choose to object, in which case it should take legal advice. The Trust will probably be required to prepare a witness statement setting out the reasons for its objections and the Court will make directions.
- If the tenancy is transferred whether by a Court Order, the new tenant takes the tenancy subject to any limits or restrictions on the tenancy.
- If the tenant was a successor the new tenant would be treated as a successor, as well.
- The Court can also make orders setting out the liabilities of the parties eg: ordering one party to pay rent arrears pre-dating the transfer. If there are rent arrears or costs relating to damage to the property for example, then the Trust should promptly make the Court aware of this and provide relevant evidence.

4.3 Assignment to a Potential Qualifying Successor

- Starter tenants do not have this right either during their 12/18 month starter tenancy period or after their tenancy has converted to a assured periodic tenancy
- Protected tenancies and assured tenancies granted prior to starter tenancies being introduced, do contain this right (see paragraph 5.15 of the tenancy conditions).
- A person who is a potential qualifying successor is defined in paragraphs 4.10 and 4.11 of those tenancy agreement terms and conditions.
- Only if somebody qualifies under those terms and the tenant is not already a successor themselves, could an assignment to a potential qualifying successor take place.
- A deed of assignment needs to be completed. The template Deed of Assignment to use is attached at Appendix A.

4.4 Mutual Exchanges

- The Trust will participate in the national 'HOMESWAPPER' exchange scheme. Somer will pay the annual subscription to enable tenants to have free access to the service
- The Trust has set and publishes targets for processing applications to carry out a mutual exchange; we aim to make a decision within 28 days. However, our tenancy agreements allow us a 6 week period in which to agree or refuse an exchange application and advise applicants of the outcome. If we do not make a decision within 6 weeks then consent is automatically assumed to have been given and the mutual exchange proceed.
- If the exchange is refused the Trust will write to the tenant informing them of the reasons for refusal. The Trust may also give consent but make it conditional. The grounds and conditions available are set out in the Mutual Exchange Procedure.
- If a tenant wishes to challenge this decision they use the complaints process.

4.5 Tenants' Rights

- Information regarding mutual exchanges will be made available to tenants, outlining any effect on their rights (including their Right to Buy) if they were to undertake an exchange.
- The following examples explain what rights are lost and gained through a mutual exchange between tenants with different types of tenancy agreements.

- (i) 2 tenants both of whom transferred from and were former Bath and North East Somerset (B&NES) tenants exchange and both remain living in a property owned by Somer.

Each tenant takes over the other tenants tenancy agreement. As their terms and conditions are the same they do not change. Each tenant carries their preserved right to buy with them.

- (ii) Exchange between Tenant A, an Assured tenant of Somer who was not a transferring protected tenant and Tenant B, a B&NES 'Protected' tenant. Tenant B keeps the preserved right to buy at the new property because this is a right they have under statute. Otherwise the assured tenancy terms and conditions govern all their other rights.

Tenant A, the assured tenant, takes over the protected rights tenancy terms but does not gain the preserved right to buy.

- (iii) A Somer protected tenant, tenant E, exchanges with a tenant of a different housing association, tenant F. Tenant E takes over the

tenancy agreement terms and conditions of the new landlord. Tenant E will lose their preserved right to buy.

Tenant F does not gain the preserved right to buy, but otherwise takes over the protected Somer tenancy terms and conditions.

If Tenant E exchanged with a Council tenant then they lose their preserved right to buy but they would be able to exercise the right to buy available to local authority tenants.

- If therefore a Somer protected tenant exchanges with another housing association tenancy, they do lose their most significant right, the preserved right to buy.
- If a Somer tenant is a successor already ie they took over the tenancy as a result of a succession right (as set out in the tenancy agreements) then if they do a mutual exchange within Somer's properties they remain a successor. They do not gain fresh succession rights.

5. Procedures

- A comprehensive set of procedures accompanies this policy. They detail the processes Neighbourhood Services Officers and Managers follow in implementing this policy.
- The mutual exchange procedure covers the following information:
 - Assessing Applications
 - Safety Checks
 - Approving the exchange
 - Assigning the tenancies
 - Refusing mutual exchanges
 - Grounds – Conditions on consent

Equal Opportunities Assessment	EIA to be completed
Legal/Regulatory Framework	Housing Act 1988, Housing Act 1996, Homelessness Act 2002
Performance & Quality Framework	Allocations and Lettings KLOE 7
Associated Policies & Procedures	Assignment (including Mutual Exchange Policy, Allocations Policy, Transferring Existing Tenants Policy,
Policy Category	Housing Management
Responsibility	Director Customer Services (Housing & Support)