



Gravesend Churches Housing Association

Mutual Exchange Policy

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Responsible Officer:	Felicity Dunmall, Housing Services Manager
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Signed off by:	Name: Eileen Martin, Board member Date: 1 st September 2020

INTRODUCTION

GCHA understand tenants wishing to move to a new home with or without a housing need, may find another tenant of GCHA or any other social housing provider (either another Housing Association tenant or Council tenant), to exchange homes with. Tenants can only do this with GCHA permission. A tenant could be evicted if they try to exchange their tenancy without permission.

A mutual exchange is an option available to any qualifying tenant to 'swap' their home with another tenant within the social housing sector. The tenancy of the previous tenant is 'assigned' to the incoming tenant. We have a legal duty to grant or refuse an exchange within a maximum period of 42 days. We'll calculate the 42 days from the date we receive **all** the relevant application forms and supporting documents.

We comply with the legislative requirements set out in schedule 14, Localism Act (2011), and schedule 3 of the Housing Act 1985 and the relevant provisions in the tenancy agreement.

1. Tenants Responsibility

It is the tenants' responsibility to identify a suitable mutual exchange. They can do this by registering with a tenancy exchange website such as Homeswapper. There are other websites and social media platforms offering a similar service e.g. House Exchange and Exchange Locata. It's free to register with some sites but others charge a fee.

GCHA will not get involved with finding a suitable exchange. It's the tenant's responsibility to follow up any homes they may be interested in or matched with. They should view each other's homes and verbally agree to an exchange before completing any documentation.

They must apply to GCHA to enable a mutual exchange to be considered or for the process to begin. Failure to provide all information required within the timeframes given will result in the mutual exchange process being cancelled.

It is illegal for a tenant to charge/accept payment as part of the exchange process. A tenant could be evicted if this happens. Neither should a tenant use coercion to bring about an exchange.

The mutual exchange is unlawful if tenants go ahead without GCHA permission, or after refusal. They will lose security of tenure, as they will not be occupying their main and principal home.

2. Who Can or Can't Exchange?

GCHA tenants, subject to certain conditions in their tenancy agreement include:

- assured (non-shorthold) tenants; and
- fixed Term tenants.

Assured shorthold tenancies and starter tenancies do **NOT** have the right of exchange.

Other Local Authority or Housing Association tenants with the following tenancies:

- Secure tenants - have the right to assign their tenancy by way of exchange under Section 92 of the Housing Act 1985 as amended.
- Assured (non-shorthold) tenants - have no statutory right to exchange but usually have the right to assign by way of exchange as a contractual right in the tenancy agreement.

- Protected Assured tenants - have the right to assign their tenancy by way of exchange as outlined in their tenancy agreement and the transfer agreement.
- Fixed term Assured Shorthold tenants – as long as the probationary period has been successfully completed.

Where a tenancy has been demoted a tenant will not qualify for an exchange during the demotion period.

A tenant can withdraw from a mutual exchange process at any point until they have signed the legal documents.

For any tenants stating they are related to a GCHA Board member, Director or Employee, the Company Secretariat must be notified.

3. 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 anti-social behaviour and tenancy breaches.

The application form will include a relevant consent to disclosure statement to this effect.

4. Grounds for withholding consent /refusal

GCHA will not unreasonably withhold consent for an exchange. Council's and Housing Association's can only refuse permission for a mutual exchange on certain legal grounds, including if:

- rent lawfully due has not been paid;
- a Notice Seeking Possession has been served within the last 12 months for breach of tenancy.;
- possession proceeding has commenced;
- a court order for possession exists;
- proceedings for an injunction have commenced;
- the property that the outgoing tenant wants to move into is larger than reasonably required or not large enough for the needs of the outgoing tenant and their family;
- the property has been significantly adapted to make it suitable for occupation by a physically disabled person and if the assignment goes ahead the property will no longer be occupied by a physically disabled person; or
- the occupation of the property by the new tenant would conflict with the objectives of GCHA.

We will refuse or withdraw permission if, at any point either party has:

- coerced another to move;
- paid another to move e.g. paid off rent arrears for another party or offered additional money to encourage the move; or
- given false or misleading information, or withheld information which would have an impact on our decision.

To withhold consent, we must write to the tenant giving them notice, within 42 days of receiving the tenant's fully completed application and documentation, specifying the ground or grounds and giving clear reasons why consent is withheld.

The letter given its importance to the process should be delivered by hand or acknowledgement of receipt be obtained for its delivery.

5. Status of Tenancy

It is important to consider the tenancy when considering a mutual exchange as there could be changes to your rights as a result of the exchange. Changes could include but are not limited to:

- loss of security or tenure;
- loss of social rent;
- reduced succession rights;
- better succession rights;
- greater security of tenure or a larger fixed term; or
- gaining social rent.

Assured and secure tenancies which began before 1 April 2012 are protected in the exchange process as they cannot be given a less secure tenancy than they currently have, except for the rent clause. However, they will only be able to retain this security once.

6. Condition of Property

GCHA will undertake a property inspection (including garden) to record any nonstandard items, to check fixtures and fittings, identify any alterations and to list any items to be gifted to the incoming tenant.

If there is damage to the property, the outgoing tenant will be given an agreed period to repair the damage and advised of possible recharges. A further inspection will be undertaken to check if the work is completed within the 42 days of the original application. If it is not completed either we will:

- decline the mutual exchange; or
- make the incoming tenant aware of the damage. If they are prepared to accept the property with the damage, this must be documented and they must sign to accept the property in its current state, with no recourse to GCHA to make good.

We will advise the incoming tenant they need to be happy with the property condition as GCHA will not be liable for any repairs outside of its maintenance policy. They will need to sign documentation to this effect.

7. Deed of Assignment and Licence to Assign

All tenancy rights and responsibilities pass from the original tenant/s to the new tenant/s. The tenancy is transferred using a legal document that has been signed 'as a deed'. The deed must give the names and addresses of the:

- original tenant/s;
- new tenant/s; and
- landlord.

An independent person must witness the signatures of the original and the new tenant.

The tenant/s should keep the deed of assignment, in case they ever need to prove the assignment has taken place.

GCHA will also keep a copy.

8. Appeals

Tenants who are not satisfied with a decision can appeal using GCHA's Complaints Procedure.