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City of Lincoln Council

Mutual Exchange, Assignment and Sub-Letting Policy

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housing

Document Control

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Sponsor Approval	Name	Date
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Introduction

City of Lincoln Council is committed to providing a high-quality service to existing tenants and prospective tenants in relation to their rights to assign their tenancies to others (including assignments by way of exchange) and to ensure they are aware of their rights of Exchange and Assignment as set out in the Tenancy Agreement.

Scope

This policy applies to Secure tenants (only). Introductory tenants do not have the right to exchange or assign tenancies during the introductory period; this period is usually 12 months but may be extended to 18 months if breaches of tenancy conditions have occurred. Once the tenancy has converted to a secure tenancy, the right to exchange or assign tenancies with the council's consent is gained.

This policy sets out criteria for dealing with:

- Mutual Exchanges
- Assignments by the Court or with the council's consent e.g. Joint Tenancy to a Sole Tenancy
- Lodgers and Subletting

Policy Aims

The key aims of this policy are:

- To provide a framework to ensure that exchanges and assignments are carried out fairly in full compliance with legislation and the tenancy agreement.
- To be fair and transparent in our decision making.
- To minimise costs to the council through a comprehensive inspection and approval process prior to and upon exchange taking place.

Legal and Regulatory Framework - the key relevant legislation is:

- Housing Act 1985
- Localism Act 2011
- Prevention of Social Housing Fraud Act 2013

The policy is aligned with the Regulatory Standards set by the Regulator of Social Housing, specifically:

The Regulator's Tenancy Standard requires the council as a registered provider of social housing to "enable their tenants to gain access to opportunities to exchange their tenancy with that of another tenant, by way of internet-based mutual exchange services". The council currently subscribes to Homeswapper, therefore providing a free national service to tenants.

The council recognises that its tenants and staff come from diverse backgrounds, with varying experiences and needs. The council is committed to promoting equality and fairness and combating discrimination. This applies to everyone, regardless of gender,

racial or ethnic background, disability, religion or belief, sexual orientation gender reassignment, age, marital or parental status.

Definitions

For this policy and accompanying procedure the following definitions apply:

- Mutual Exchange is the mechanism that allows tenants of social landlords to exchange their tenancies by assignment. When an exchange is carried out by assignment no new tenancy has been created; the original tenancies are still in existence but have changed hands.
- Assignment is when a tenant gives their interest to another living person. The tenancy of the property then continues on the same basis, and the new tenant takes on all the rights and responsibilities of the original tenancy. Secure tenants can only assign their tenancy in certain circumstances; by mutual exchange (see above) or under the terms of a court order following the ending of a relationship or with the council's consent, i.e., joint to sole tenancy.
- A lodger lives in the tenant's home and shares living accommodation but does not have exclusive occupation. A lodger is an "excluded occupier" and has very limited housing rights.
- Subletting is where a subtenant (lodger) has exclusive use of their room, and the tenant landlord needs permission before entering the sub-tenant's room.
- Additional Household Member is someone who lives with the tenant as part of their family who has previously not lived in the household. It is unlikely that their terms of occupation would be subject to any legal formalities.

Mutual Exchange

Right to Exchange

Council secure tenants have a contractual right to exchange their homes and tenancies with another secure tenant of the council, with the tenant of another, Local Authority or with the assured (non-shorthold) tenant of another Registered Provider of Social Housing, such as a Housing Association.

Secure tenants have the right to assign the tenancy by way of exchange providing that:

- prior consent of the council is obtained
- none of the grounds for refusal apply
- any reasonable conditions attached to the consent are complied with

The council and any other landlord who may be involved in a proposed mutual exchange must first give their consent to the tenants exchanging before any move takes place.

The council will not unreasonably withhold consent unless it considers it proper and lawful to do so.

A decision on an application for a mutual exchange will be made within 42 days of receiving the complete applications from all involved parties.

Grounds for refusing a Mutual Exchange

Whether or not consent can be withheld will depend on the terms of the tenancy agreement(s) in question.

In many cases, the tenancy agreement may provide that consent can only be withheld if one or more of the grounds for “Withholding consent to Assignment By way of Exchange”, as set out in Schedule 3 of the Housing Act 1985 (as amended) is / are applicable.

The grounds for refusal are not exhaustive but include:

- Where possession proceedings have started, a notice seeking possession has been served, or a possession order is in force (including suspended orders) for anti-social behaviour, rent arrears, property condition or unacceptable behaviour
- Where the exchange would result in under or over-occupation
- Where the accommodation is reserved for people with special needs, such as housing for the elderly or an adapted property designed for a physically disabled person, and the tenant does not have these needs

Reasons for withholding consent will be given in writing, within 42 days of the application.

If the tenant has broken any term of the tenancy, including, but not limited to, non-payment of rent or other housing related debt, unsatisfactory property condition or alterations carried out to the property without consent, the council may, at its absolute discretion, grant consent on condition that the tenant pays the outstanding debt and/or remedies any other breaches of the tenancy obligations.

In exceptional circumstances, consent may be granted to allow a tenant to exchange with rent arrears or another housing related debt. Examples may include but are not limited to:

- The tenant needs to downsize to avoid the debt increasing
- The tenant’s wellbeing will be a risk and detrimental to their health if they do not move to more suitable accommodation.
- The tenant has been the victim of or threatened with abuse or violence (including domestic violence) and the move shall assist in protecting the tenant from future violence or abuse.

Where a mutual exchange is refused, tenants can make an appeal of the decision to the Housing Appeals Panel.

Property & tenancy conditions

There are implications involved with mutual exchanges because, in most cases, each tenant takes on the terms and conditions of the other parties’ tenancy. In particular, the exchange may result in a change of tenancy type, for example from secure to assured and vice versa. This can consequently alter the tenants’ rights, in particular the Right to Buy and the Right to Acquire.

Where one of the properties involved in the exchange has an affordable rent, the tenant moving into that property will be expected to pay the higher rent level and will not retain their previous social rent level.

The incoming tenant accepts and takes responsibility for the property in its existing condition, including cleanliness, internal decoration, improvements and alterations and any repairs that are the tenant's responsibility.

The outgoing tenant is not eligible for any compensation for qualifying improvements they have made to the property as the tenancy is not actually ending, which is a requirement of the Remedies Policy.

Although the incoming tenant legally takes on responsibility for the condition of the property and tenancy conditions, after the property has been inspected but prior to the exchange taking place, the council will generally adopt the following procedure to reduce the risk of litigated disputes:

1. Order any repairs that are the council's responsibility as Landlord.
2. Require the outgoing tenant to remedy defects, pests or repairs identified as their responsibility.
3. Advise the incoming tenant of any such works required and warn them that they will become responsible for them following the exchange if the works have not been carried out.
4. Carry out gas and electrical checks on the property.
5. The tenant will take on the property in its existing condition and are legally responsible for maintaining any improvements made by the outgoing tenant and carrying out any repairs or reinstatements identified as the tenant's responsibility to carry out, which were not carried out by the outgoing tenant prior to the exchange taking place.
6. Upon assignment, require the incoming tenant to sign to the effect that they accept the property in its existing condition and are legally responsible for maintaining any improvements made by the outgoing tenant and carrying out any repairs or reinstatements identified as the tenant's responsibility to carry out and not carried out by the outgoing tenant prior to the exchange taking place.
7. Advise the incoming tenant as to any material changes to their rights and obligations under their incoming tenancy compared to their outgoing tenancy e.g. an incoming tenant does not necessarily obtain the preserved right to buy by simply taking an assignment of a "preserved rights" tenancy as the right is personal to the tenant and not the property; also a tenant incoming from another organisation where they had right to acquire or preserved right to acquire will lose it if they leave their current landlord. Preserved right to buy allows former council tenants to buy their home at a discount, even if the property was transferred by the council to a private registered provider (such as a housing association) while they lived there.

Whilst the incoming tenant takes on responsibility for maintaining any improvements and alterations made to the property with the council's consent, the council still has a legal responsibility to maintain and repair any installations that supply heating, water heating, gas, water, and electricity including:

- Basins, sinks, baths, toilets, flushing system and waste pipes.
- The electric wiring, gas, and water pipes.
- Water heaters, fireplaces, and central heating.

Once the Deed of Assignment by way of Exchange has been signed by both parties it is legally binding and both parties must move. If either party refuses to leave one of the

properties, they will be dealt with as an illegal occupier and legal action will be taken to remove them.

Exchange without Consent

If a tenant exchanges property with another tenant without first gaining the consent of both landlords, then we will:

- Insist that the tenants return to their original houses; or
- Terminate the tenancies by serving Notice and seeking possession.

Assignments

Secure tenants of the council are given a contractual right, under the terms of their tenancy agreement to request to assign their tenancy to another person in specific circumstances.

Secure tenants have the right to assign the tenancy in the following circumstances:

- By order of the Court
- Following relationship breakdown (joint to sole tenancy)

Although we reserve the right to object on housing management grounds (e.g. ASB, rent arrears, under-occupation, not suitable for housing need etc.) the council will normally accept the assignment of tenancy if it is a result of a court order and there are no breaches of tenancy. This could occur because of:

- a Property Adjustment Order from matrimonial or other family proceedings (where a tenancy is granted to one of the partners in a marriage or civil partnership following a divorce, dissolution, or separation), or
- where a court orders the transfer of a tenancy for the benefit of a child or children, or
- where a joint tenant has been barred from residing at a property due to threatening or inappropriate behaviour.

In most cases a Deed of Assignment must be executed to assign the tenancy into the other party's name – the existence of a court order alone is normally insufficient. The only exception to this is a tenancy transfer order under the Family Law Act 1996 – if this is correctly worded then it will automatically transfer the tenancy in accordance with the order.

This is not the same as an “occupation order” or an order granting “home rights”. If there is any doubt or if one of the parties to the relationship breakdown will not co- operate, then the parties should be told to obtain their own independent legal advice. The council should also obtain specialist legal advice.

The council will also consider a request to assign the tenancy where there has been an irretrievable breakdown in the relationship and relinquishment has been agreed by both parties. It is a necessary criterion that the person to whom the tenancy is to be assigned is either one of the two existing joint tenants or otherwise would have been statutorily

qualified to succeed upon the death of the tenant. A Deed of Assignment must be executed to assign the tenancy into the sole tenant's name.

The council may refuse consent or make the assignment conditional if there has been a breach of tenancy in any way, this could include remedying the breach, for example clearing any rent arrears owed before the assignment can go ahead or assigning the rent arrears to the incoming tenant.

Where a joint tenant has left the property and cannot be traced, the council may accept a termination of the tenancy from the remaining joint tenant and issue a new sole tenancy to the remaining tenant. This action will not be completed if the tenancy has any rent arrears or outstanding breaches.

For one of two joint tenants to validly terminate the tenancy, the tenant must fill out and validly complete and sign a tenancy termination form giving at least 4 weeks' notice. The council has no discretion to accept a lesser notice period, and any notice should be carefully checked for errors. This is to be considered as a last resort where contact cannot be made with a joint tenant who has left the property. Approval must be sought from the Tenancy Services Manager, and the tenant should be reminded of their right to seek independent legal advice.

Where a request for a sole tenancy is received from a joint tenant who is the victim of domestic abuse, the council will make every effort to investigate their case and obtain evidence. It may be necessary to end the joint tenancy and issue a sole tenancy to the tenant subjected to domestic abuse.

In these circumstances' approval must be sought from the Tenancy Services Manager. Decisions will be made on a case-by-case basis.

All requests for assignments should be made in writing. A decision on an assignment will be made within 28 days of receipt of the request.

Lodgers & Subletting (including Additional Household Members)

Secure tenants of the council are generally given a contractual right, under the terms of their tenancy agreement to take in lodgers or sub-tenants of part of their property. Secure tenants remain responsible for sub-tenants and the council has no legal relationship with the sub-tenant.

There is no right nor provision for the sub-letting of any property in its entirety, and this will be considered Tenancy Fraud which may result in eviction proceedings against the Secure tenant and/or criminal prosecution.

Tenants may, however, take in an additional household member, a lodger or sublet part of their home if they comply with the terms of the tenancy agreement and they:

- Write to the council giving full details of the additional household member, lodger or subtenant and the part of the home they will occupy.

- Do not create an assured tenancy (whether shorthold or non-shorthold tenancy) in favour of an additional household member, a lodger or sub-tenant of any part of their home.
- Ensure that the prospective additional household member, lodger or sub-tenant has the Right to Rent (this relates to nationality and immigration status, and more information can be found at www.gov.uk).
- Ensure any prospective additional household member, lodger or sub-tenant meets any eligibility criteria for the property, such as age restrictions in independent living schemes.
- Obtain the council's written permission, which will not be unreasonably withheld, before any sub-letting or lodging takes place.
- Make sure that the home does not become overcrowded.
- Ensure all members of the household and visitors keep to the tenancy conditions.

Additional household members are classed as:

- Partner
- Carer
- Friend
- Other relative

All requests for lodgers and subletting should be made in writing. A decision will be made within 28 days of receipt of the request, and the tenant will be written to explaining the decision.

Tenants are responsible for checking if taking in a lodger affects their Benefits entitlement.

Monitoring

Performance data for mutual exchanges will be produced each month.

- The number of mutual exchanges and assignments requests within the year
- The number of mutual exchange and assignment requests dealt with within the target times
- The number of approvals, refusals, withdrawals and appeals
- The number of Assignments completed