

Housing Assignment Policy

2009

If you would like to speak to someone about anything contained within this policy, please contact a Dartford Borough Council **Housing Officer**:

01322 343574/343380 – if you live in West Dartford

01322 343061/ 343363 – If you live in East Dartford

If you do not live in Dartford, you can contact a Housing Officer using any of the numbers above

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1. Introduction

An assignment is where a tenancy is transferred to another person. The incoming tenant (assignee) 'steps into the shoes' of the outgoing tenant (assignor) and occupies under the same terms¹, taking on the rights and responsibilities of the tenancy.

Section 91 of the 1985 Housing Act allows assignment under three main grounds, these are:

1. Assignment by way of exchange (mutual exchange)
2. Assignment to someone who would be qualified to succeed the tenant on the tenant's death.
3. Where a court makes a Property Transfer Order in connection with matrimonial proceedings or civil partnership proceedings, or proceedings under the Children's Act 1989.

This document outlines the Council's policy and approach towards statutory (as above) and non statutory assignments; in order that a fair and transparent service is provided for Dartford tenants.

¹ 'The Housing Manual' (checked April 2008) <http://members.cih.org/hm/default.aspx?i=42021&ht=assignment>

2. Mutual exchange

2.1 Introduction

A mutual exchange is the exchange of properties between tenants who are in mutual agreement. It may happen between two tenants who decide to swap properties, or between three or more tenants who decide to move round in a 'chain.' A mutual exchange allows one tenant to hand over their tenancy to another tenant, thus avoiding the creation of a new tenancy.

Mutual Exchange is a right laid out in legislation under the 1985 Housing Act for tenants of Local Authorities, Registered Social Landlords and Housing Trusts. It is beneficial for housing providers as it allows more efficient use of the housing stock by meeting the needs and preferences of tenants. Mutual exchange also empowers tenants, giving them a choice over where to live and when to move. It is particularly useful for those who do not qualify for a transfer because their home adequately meets their needs.

2.2 Eligibility

To participate in mutual exchange, persons must be social housing tenants either of a Local Authority, a Registered Social Landlord or a Housing Trust and must hold either a secure or assured tenancy.

There are a number of grounds for refusing an exchange contained within Schedule 3 of the Housing Act 1985, full details are provided in Appendix A to this policy. In addition, Dartford Borough Council (DBC) will only allow tenants to exchange where they have complied fully with the tenancy conditions and do not have any outstanding rent arrears.

2.3 Properties available for mutual exchange

Eligible tenants can exchange with other eligible tenants anywhere within the UK. Applicants for the scheme are only entitled to move to a property that has 1 bedroom above their needs (see table 1). Applicants are also restricted from moving to a property that would be too small to meet the needs of their household. However consideration may be given to granting a mutual exchange to a smaller property when the tenant is able to submit compelling grounds for the exchange.

Household size	Number of Living Rooms	Number of Bedrooms	Max Number of bedrooms allowed through Mutual Exchange
Single person	1 or combined living and bedroom	1 or combined living and bedroom	2
Couple or single parent with a child under 1 years old	1	1	2
Couple or single parent with a child over 1 year old	1	2	3
Couple or single parent with 2 children the same sex	1	2	3
Couple or single parent with 2 children of opposite sex	1	3	4
Couple or single parent with 3 or 4 children	2	3	4
Couple or single parent with 5 or more children	2	4	5

Table 1: Household and accommodation size information

2.4 Implications of mutual exchange

Secure and assured tenancies

All applicants are advised to check the type of tenancy they will be receiving. Most housing providers offer assured tenancies, whereas council tenancies offer secure tenancies. The type of tenancy may place restrictions on certain entitlements, such as the right to buy your home. Therefore the Council advises all tenants to check these details prior to exchange.

Succession rights

If a person receives a tenancy by succession, whether that be by the death of a tenant or assignment (see section 3 for more details), and later moves under mutual exchange, his status as a successor still stands and the tenancy cannot be passed on to another successor, since succession rights can only take place once.

Downsize for Cash Scheme, decorating vouchers, removal costs

Tenants moving by mutual exchange do not qualify for the Council's Downsize for Cash Scheme or the Council's Decorating Vouchers and all tenants that mutual exchange must pay their own removal costs and incidental expenses.

Compensation for improvements

Dartford Borough Council's secure tenants are eligible for compensation for improvements at the time of exchange. For more details, the Compensation for Improvements Policy can be found on the Council's Housing Policy and Strategy webpage:

<http://www.dartford.gov.uk/housing/HousingStrategiesandPolicies.htm> or requested from a Housing Officer.

2.5 Mutual exchange procedure

a) Those interested in Mutual Exchange should actively seek an appropriate exchange.

If they wish to remain in Dartford borough, they can:

- Join DBC's Mutual Exchange Register; which advertises properties eligible for mutual exchange. Applicants can join the register by filling out an application form, or by registering online at <http://www.dartford.gov.uk/mutualexchange/>. The register can be checked online (at the address above) or via the self service PCs in the council offices (a Housing Advisor can assist if help is needed).
- Advertise in local newspapers or shop windows
- Ask friends and relatives if they know of any tenants interested in an exchange.

If they wish to move outside of Dartford, they can:

- Register online at www.homeswapper.co.uk

b) When a suitable match is identified and a tenant wishes to further their interest in the property it will be their responsibility to contact the other tenant in order to determine if the exchange can progress.

The Council advises that all those taking part in a mutual exchange should visit the home before agreeing to the exchange. Tenants who exchange must accept the property in its present state and any damage caused by the outgoing tenant will become the responsibility of the incoming tenant and will need to be repaired at his/her own expense. The Council will only carry out normal repairs for which it is responsible; these repairs are specified in the Council's Repairs Policy, which can be requested from a Housing Officer or found on the Council's Housing Policy and Strategy webpage:

<http://www.dartford.gov.uk/housing/HousingStrategiesandPolicies.htm>

Please note that inducements cannot be made in order to exchange a property

- c) When an exchange has been agreed between the parties involved, they must contact their landlord for permission to carry out the exchange. DBC tenants are required to fill out and return a mutual exchange application form. Forms can be picked up from the council offices or sent by post by a Housing Officer (numbers supplied on page 1). Help completing the application form can be given.
- d) The tenant's landlord² has a maximum of 6 weeks (42 days) in which to agree or refuse the exchange. During that time the landlord will arrange an inspection of the property and will inform the tenant of repairs which are the tenant's responsibility.
- e) The landlord will then send a written notification to the tenants to confirm whether the exchange can take place. All parties involved in the exchange must receive permission from their landlord before the exchange can progress (or it may lead to the loss of the tenant's property).
- f) Once the exchange has been agreed, the parties receiving a tenancy from Dartford Borough Council (DBC) or giving up a DBC tenancy must come to the Civic Centre to sign the Deed of Assignment. After this the move can take place.

2.6 Refusals

If the request is refused for a mutual exchange, the Council will inform the outgoing and incoming tenant in writing. Only the tenant who has caused the refusal will be given the reasons behind the refusal.

A refusal will not in any way affect a tenant's right to apply for another mutual exchange at any time in the future.

3. Assignment to a succeeding tenant

Introduction

An assignment can be made by a tenant to a person who would be qualified to succeed if the tenant died. This type of assignment differs from 'Succession' since it occurs when the tenant is alive and able to assign his/her tenancy rather than 'Succession' which takes place on the death of a tenant.

Conditions to assignment

- Like all assignments, the incoming tenant (assignee)³ step into the shoes of the outgoing tenant (assignor)⁴ and take on all rights and responsibilities of the tenancy, this includes responsibility for rent arrears and any rights for compensation for improvements (which will take effect when the tenant leaves the property).
- The right of assignment to a succeeding tenant can only take place once. Therefore if a tenant is already a successor (has received a tenancy through succession or by an assignment) the tenancy cannot be passed on again.
- The tenancy cannot be assigned to joint tenants, there can only be one successor.

² Note: Landlord is the owner of the property such as a Housing Association or Dartford Borough Council

³ Assignee is defined as an individual to whom a title, claim, property, interest, or right **has been transferred**.

⁴ Assignor is defined as individual **who transfers a title**, claim, property, interest, or right to another person.

Eligibility to be a successor

The list below details those who are eligible to succeed to the tenancy. The ultimate decision as to who will succeed will be made by the outgoing tenant.

In some instances the Council may allow the tenancy to be passed to someone who is not legally eligible for assignment (please see section 5 - Non statutory assignment, for further details).

- **Spouse**

The tenants spouse or civil partner can succeed to a tenancy⁵ where he or she is living with the tenant in a relationship equivalent to wife and husband (this can include unmarried partners) or as if they were civil partners.

- **Family member – who has lived with tenant**

The right to succeed can also be given to a family member. The family member however must have lived with the tenant at least 12 months leading up to the date of assignment and be able to demonstrate that it is their principle home.⁶ The family member must be over 18 years old, or 16 or over with a guarantor.

Application procedure

The Council's Tenancy Agreement (section 1.11) provides that a tenant can apply to the Council for permission to pass the tenancy to a family member. A tenant can apply by completing an application form. Application forms are available in a number of different languages and can be requested from a Housing Officer, help completing an application form will be provided if necessary.

DBC will confirm the outcome of the application within 7 working days of receiving the application form and a letter will be sent to the parties involved indicating whether the assignment can take place.

Those involved in the assignment (the assignee and assignor) must come to the council offices on the date of their appointment (which is in the decision letter) and sign the Deed of Assignment which assigns the rights of the tenancy over to the assignee.

If a property assigned does not meet the needs of the assignee, they may be asked to consider moving to a property more suited to their needs. The Council will take into account the person's preferences and areas of choice when doing this.

If the person chooses to move to a smaller property, then they can benefit from 'The Downsize for Cash Scheme' which is a scheme which offers a cash incentive to tenants who move to a smaller property. Information on this scheme can be obtained from the Council's website <http://www.dartford.gov.uk/housing/bedroomreleasescheme.htm> or from a DBC Housing Officer.

4. Court ordered assignment

4.1 Introduction

The court can make Property Adjustment Orders,(PDOs) which allow tenancy rights to be assigned to someone else. A summary of when courts can issue PDOs is provided below:

The Matrimonial and Family Proceedings Act 1984⁷ and the Matrimonial Causes Act 1973⁸ both state that a property adjustment order can be made when the court:

⁵ 1985 Housing Act, Section 89(2)

⁶ 1985 Housing Act, Section 87b

⁷ The Matrimonial and Family Proceedings Act 1984 Section 17

⁸ Matrimonial Causes Act 1973 Section 23a +23b + 24.

- Makes a decree nullifying a marriage
- Makes a decree of judicial separation
- Makes a decree of divorce.

The courts can also make PDOs for cohabiting couples and civil partners.

Under the *Children Act 1989*, the court can make PDOs in favour of children under 18, and allows a property to be assigned from one parent to another.

4.2 Procedure for obtaining a court ordered assignment

When the court has granted a PDO for a DBC tenancy, the assignee and the assignor must contact their Housing Officer. They will be asked to supply evidence of the court order, and sign the Deed of Assignment.

Within 10 days the council will send out a letter to both parties involved in the assignment to confirm that the assignment has taken place.

The new tenant (assignee) then takes on the rights and responsibilities of the original tenant (assignor).

5. Non statutory assignment

There may be certain circumstances where non statutory assignments are granted. The decision whether to assign a tenancy will be made at the discretion of the Head of Housing. All decisions will be made on a case by case basis.

Non statutory assignments may be granted when:

- There is neither a spouse nor family member to succeed, but a friend or carer has lived in the home for at least 12 months leading up to the date of assignment and can demonstrate that it is their principle home.
- There are children under the age of 18 who wish to live with a guardian who has no alternative accommodation.
- The applicant is vulnerable, because of age or ill health.
- The right of succession has already been used but under certain circumstances the tenancy may be passed on again to a relative, such as the tenant's spouse.

6. Implications of assigning a property without permission

Mutual exchange

Because mutual exchange requires the written consent of the landlord (Housing Act 1985 c92:1), when an exchange takes place without permission then the parties involved will be asked to quit their properties and, should they then reapply to be re-housed by a local authority, may be considered as intentionally homeless.

Other assignments

The Council's Tenancy Agreement provides that a tenant can apply to the Council for permission to pass the tenancy of the property to a family member. However, some assignments do not need the Council's consent. If a tenancy is to be assigned following a court order or to a family member, the tenant should contact the Council to check whether the Council's consent is required. If the tenant does not obtain the Council's consent to an assignment where the Council's consent is required, possession proceedings might be taken by the Council.

7. Equality issues

Every effort will be made to make assignments accessible to a wide variety of people and people groups. Dartford Borough Council has adopted a Comprehensive Equalities Policy. Staff are required to respect cultural differences and carry out services which ensure equality of opportunity and without prejudice on the grounds of race, ethnic origin, nationality, religion, cultural background, gender, sexual orientation, domestic circumstances, disability, illness (such as HIV and AIDS) and age.

8. Complaints

If an applicant wishes to dispute a decision regarding an assignment, complaints are to be made through the Council's complaints procedure. Details of this procedure are available from Housing Officers, it can also be found at: <http://www.dartford.gov.uk/complaints/index.htm>.

9. Policy review

This policy will be reviewed regularly to ensure that it is in line with current legislation.

10. Appendix A

Reasons for refusal for mutual exchange from 1985 Housing Act section 92:

Ground 1: Either the incoming or outgoing tenant is or will be obliged by a court order to give up possession of the property

Ground 2: Either the incoming or outgoing tenant is the subject of a current notice of seeking possession, or possession proceedings have started, on one or more of the following grounds:

- a) Non payment of rent or non compliance with a tenancy condition
- b) Nuisance or annoyance to neighbour, or using the property for immoral or illegal purpose
- c) Neglect or "waste" of the property or common parts
- d) Ill treatment of landlord's furniture
- e) Obtaining the tenancy by a false statement
- f) Participating in an exchange which has involved the payment of a premium

Ground 2a: Either of the properties have a possession or demotion order in place. Or if tenant, proposed assignee or household member has a relevant order such as an Injunction or anti social behaviour order against them.

Ground 3: The home of the outgoing tenant is "substantially" more extensive than is reasonably required by the incoming tenant.

Ground 4: The "extent" of the outgoing tenant's home is not reasonably suitable to the needs of the incoming tenant.

Ground 5: The property forms part of a building which is held by the Landlord mainly for purposes other than housing purposes, is predominantly not used for housing or is situated in a

cemetery, and was let to the tenant or his/her predecessor in consequence of his/her employment with the landlord.

Ground 6: The landlord is a charity, and the assignment of the incoming tenant would conflict with the objects of the charity.

Ground 7: The outgoing tenant's home has features which are designed to make it suitable for occupation by a physically disabled person, and if the exchange proceeded there would be no one living there who needed these features.

Ground 8: The landlord is a housing association or housing trust which lets its property to people who experience difficulty in meeting their own housing needs. If the exchange were to proceed there would be no one living in the property with these needs.

Ground 9: The outgoing tenant's home is one of a group provided for people with special needs, with a social service or special needs facility nearby to meet those needs. If the exchange were to proceed there would be no one living there who had these special requirements.

Ground 10: The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association.