

Assignment of Tenancy and Mutual Exchange Policy



1. PURPOSE

- 1.1. The purpose of this policy is to set out how Cartrefi Cymunedol Gwynedd (CCG) deals with Assignments of Tenancy and Mutual Exchanges.

2. SCOPE

- 2.1. This policy applies to all tenants and prospective tenants of properties owned by CCG.

3. POLICY DETAIL

- 3.1. This policy will explain how a tenancy can pass from one person to another without a new tenancy being created.
- 3.2. An assignment is the process of legal transfer of a tenancy where one tenant passes on a tenancy during his/her lifetime.
- 3.3. An assignment must be carried out formally by 'Deed of Assignment' in order to be legally binding.
- 3.4. The right to assign a tenancy is written into the Tenancy Agreement of CCG tenants.
- 3.5. CCG tenants may not assign their tenancy except:
 - by a Court Order, or
 - with our consent when exercising the right to a mutual exchange, or
 - by assigning the tenancy to a person who would have been qualified to succeed to the tenancy on the tenant's death.
- 3.6. All tenants must receive their landlord's consent in all cases before their tenancy can be assigned
- 3.7. **Mutual Exchange** - a mutual exchange occurs when two or more tenants agree to 'swap' or exchange their tenancies with the consent of the landlord.
- 3.8. Tenants who have an Assured Shorthold (Starter) tenancy do not have the right to exchange until the tenancy becomes an Assured (non-shorthold) tenancy – normally after 12 months of the start of the tenancy.
- 3.9. CCG tenants have the right to request a mutual exchange by way of an assignment with:
 - an existing assured tenant of CCG
 - an assured tenant of another Registered Social Landlord (RSL)
 - a secure tenant of a Local Authority

- 3.10. Tenants can either exchange with one other tenant – this is known as a direct exchange or with a three- way exchange or more.
- 3.11. There is no limit to how many tenants may be involved in an exchange request. However, CCG would advise tenants that the more tenants that are involved in the request the more complicated the process is and the likelihood of some of the tenants changing their minds.
- 3.12. Tenants must not charge any premium in relation to an exchange of tenancy.
- 3.13. CCG will promote its Mutual Exchange policy to empower CCG tenants to move to an area or property that is more suitable to their needs and to make the best use of our housing stock.
- 3.14. CCG is registered as part of a national exchange scheme (HomeSwapper), and will participate in other exchange registers as appropriate in order to facilitate and assist CCG tenants to find suitable tenants to exchange with.
- 3.15. CCG will work in partnership with other RSL's to assist our tenants to move to suitable property.
- 3.16. Where an exchange request involves a tenant of another landlord, that landlord must also give its consent to their tenant for the exchange.
- 3.17. **Mutual Exchange Process** - CCG tenants must apply for consent to Exchange by completing the relevant application form (TSf13)
- 3.18. CCG will provide tenants with a Mutual Exchange Fact Sheet (TSI06) when dealing with enquiries on mutual exchanges and/or responding to applications
- 3.19. Tenants applying for an exchange will be advised that the exchange should not take place before written consent for the exchange is given by CCG and relevant landlord.
- 3.20. CCG will thoroughly assess all requests for a mutual exchange. This will include eligibility checks with its Rents and Income Service and Neighbourhood Services. CCG may also need to enquire with other Registered Social Landlords or Local Authority landlord to assess eligibility.
- 3.21. Where a CCG property has been adapted, the incoming tenant will require an assessment from an OT to confirm that they require the adaptations and that the property is suitable to their needs
- 3.22. A property condition inspection will be carried out on applicant's homes in order to assess the state of repair and decorative condition of CCG property.
- 3.23. CCG will give a written reply of the decision regarding the request to exchange within 42 days of the application.
- 3.24. The incoming tenant must accept their new home 'as seen' and any damage caused or rechargeable costs by the outgoing tenant will become the responsibility of the incoming tenant and will need to be repaired/paid at his/her expense.
- 3.25. The incoming tenant(s) are required to sign a 'Condition of Property Record' form (TSf14) stating that they accept the property 'as seen'.
- 3.26. Any alterations carried out to CCG property by the outgoing tenant become the responsibility of the incoming tenant.

- 3.27. If consent is given it will be granted on the condition that the exchange is at no cost to CCG and that the tenant accepts the property in its present condition.
- 3.28. Consent may also be given for a mutual exchange subject to further conditions for example, that any outstanding rent arrears or other monies owed to CCG are cleared or a breach of tenancy remedied.
- 3.29. CCG will carry out gas and electrical safety checks on CCG properties involved in mutual exchanges during the exchange of tenancy process. Tenants are required to allow access for the safety inspections.
- 3.30. CCG will ensure that all mutual exchanges are processed in accordance with best practice and comply with relevant policy and legislation
- 3.31. A Deed of Assignment is a legal document and must be signed by the exchanging tenants and witnessed. Copies should be kept by all parties including CCG
- 3.32. **Withholding Consent** – CCG will not normally refuse an application for exchange unless a ground under Schedule 3 of the Housing Act 1985 exists. These include:
- a tenant is under a Notice Seeking Possession or possession proceedings have begun
 - where the exchange would result in the property being overcrowded or under-occupied
 - where the property has special features, for example extensive adaptations or is suitable for persons with special needs and the new tenant (assignee) does not need those features
 - the new tenant (assignee) would conflict with the objectives of CCG's charitable status.
 - the property is linked to the tenants' job
- 3.33. CCG will not unreasonably withhold consent but will consider the grounds under Schedule 3 Housing Act 1985 and ensure effective use of CCG stock when considering applications for exchange.
- 3.34. In rare and exceptional circumstances there may be additional reasons why CCG may need to refuse a mutual exchange, these include:
- Where CCG has reason to believe that one of the exchange parties does not intend to reside permanently in the exchange property
 - The property has been identified for disposal once current tenancy has ended
- 3.35. If a mutual exchange is refused CCG will inform the tenant within 42 days (in accordance with Housing Act 1985) of the application giving the grounds for the refusal.
- 3.36. Should an exchange take place without CCG's consent CCG would seek to ensure that tenants return to their authorised tenancy.
- 3.37. **Assignment** – an assignment is when a tenant gives their interest in a tenancy to another person by mutual exchange as detailed above, court order or to a person who would have qualified to succeed to the tenancy.

- 3.38. An assignee (new tenant) takes over the tenancy and the tenancy continues on the same basis with the same rights and responsibilities of the original tenant.
- 3.39. An assignment to a potential successor means that the person taking over the tenancy (assignee) will be treated as a successor. (CCG's Succession of Tenancy Policy gives details of persons qualified to succeed a tenancy).
- 3.40. An assignment to a person by court order or mutual exchange will not be treated as a successor unless the tenant they took the assignment from was a successor.
- 3.41. An application for consent to assign a tenancy must be made in writing and if consent is given a Deed of Assignment must be signed and witnessed.
- 3.42. The Deed must give the name(s) and address of original tenant(s), the new tenant(s) (assignee) and CCG. Copies should be kept by all the parties including CCG.
- 3.43. CCG consent for an assignment may not be given in some circumstances, for example where:
- possession proceedings have begun against the tenant
 - where the assignment would result in the property being under-occupied / overcrowded
 - where the property has special features, for example extensive adaptations or is suitable for persons with special needs and the new tenant (assignee) does not need those features
 - the new tenant (assignee) would conflict with the objectives of CCG's charitable status.
 - the new tenant (assignee) is guilty of anti-social or unacceptable behaviour
 - the new tenant (assignee) is not a potential successor as specified in CCG's Succession of Tenancies Policy
- 3.44. Consent for an assignment may be given subject to the condition that any outstanding rent arrears are re-paid or a breach of tenancy remedied.

4. RESPONSIBILITIES AND ARRANGEMENTS

- 4.1. It will be the responsibility of the Director of Customers and Communities to ensure that this policy is applied effectively and that staff are trained appropriately in the procedures associated with this policy.
- 4.2. Specific responsibilities and risk management arrangements are set out as a matrix in Appendix A.

5. REVIEW OF DECISION

- 5.1. CCG recognises the right to request a review of any decision relating to this policy. Any such review will be dealt with as a complaint under the CCpol01 – Complaints and Concerns Policy.
- 5.2. CCG will ensure that any decisions relevant to this policy are reasonable and comply with relevant policy and legislation

6. EQUALITY AND DIVERSITY

- 6.1. In applying this policy, CCG will be committed to treating all enquiries fairly and with regard to its Equality and Diversity policy.
- 6.2. CCG will ensure that this service is fully accessible to everyone who is eligible or has a legitimate interest in an assignment of tenancy

7. REFERENCES

- 7.1. The following publications and legislation have been referenced during the drafting of this policy:
 - Matrimonial Causes Act 1973
 - Family Law Act 1996
 - Civil Partnership Act 2004
 - Housing Act 1985
 - Housing Act 1988
 - Housing Act 1996

8. RELATED DOCUMENTS/RECORDS

- 8.1. CCpol01 – Complaints and Concerns Policy.
- 8.2. CCG Tenancy Agreement
- 8.3. TSI06 – Mutual Exchange Fact Sheet
- 8.4. TSf13 – Application for a Mutual Exchange
- 8.5. TSf14 – Condition of Property Record
- 8.6. TSpol05 - Succession of Tenancy Policy
- 8.7. WHQSpol03 -Adaptations Policy
- 8.8. ALLpol02- Underoccupancy Policy

9. REVIEW

- 9.1. This policy will be reviewed every 3 years or sooner if changes to legislation, best practice or other relevant CCG policies make it necessary.

APPENDIX A - RESPONSIBILITIES AND ARRANGEMENTS

Key:

R	= Responsible: Persons who carry a responsibility to ensure risk management arrangements as detailed below are actioned within their teams
A	= Accountable: Accountable person for all actions detailed within the matrix
C	= Consulted: Individuals /Teams that are consulted on the risk management arrangements as detailed below
I	= Informed: Individuals /Teams informed via training, briefings, toolbox talks or by familiarizing themselves with processes, procedures & guidance available on Clic

RISK MANAGEMENT ARRANGEMENTS	Chief Executive / SLT	Director of Customers and Communities	Neighbourhood Services Manager	Tenancy Services Coordinator	Customer Services Coordinator	Repairs and maintenance	Occupational Therapist	CCG Tenants	Tenants of other RSL or Local authority landlord	All staff
Ensure our commitment to achieving our HSQE assurance strategy and requirements, by ensuring that documents and processes are developed to address assignment of tenancy and mutual exchange	A	R	C	C	C	C	C	I	I	I
Ensure that this policy is applied effectively and that staff are trained appropriately in the procedures associated with this policy.	I	R	C	C	C	C	C	I	I	I
A review of any decision relating to this policy will be dealt with as a complaint under the CCpol01 – Complaints and Concerns Policy	I	I	C	C	R	C	C	I	I	I

RISK MANAGEMENT ARRANGEMENTS	Chief Executive / SLT	Director of Customers and Communities	Neighbourhood Services Manager	Tenancy Services Coordinator	Customer Services Coordinator	Repairs and maintenance	Occupational Therapist	CCG Tenants	Tenants of other RSL or Local authority landlord	All staff
Provide tenants with information on mutual exchange process when dealing with enquiries and/or responding to applications	I	C	R	R	C	C	C	I	I	I
Signpost tenants to information on mutual exchange	I	R	R	R	R	R	R	I	I	R
Apply for consent for a mutual exchange by completing the relevant application form (TSf??)	I	I	I	I	I	I	I	R	R	I
Ensure that the landlords written consent is given before the tenancy is assigned	I	C	C	C	I	I	I	R	R	I
Assess all requests for a mutual exchange including eligibility checks with Neighbourhood Service, Rents and Income Service and other landlords as required	I	C	C	R	I	C	C	I	I	I
Ensure that a property condition inspection on applicant's home is carried out	I	I	I	R	I	I	I	C	C	I
Assess suitability of adapted property for incoming tenant	I	I	C	C	I	I	R	I	I	I
Give a written reply of decision regarding a mutual exchange	I	C	C	R	I	I	I	I	I	I

RISK MANAGEMENT ARRANGEMENTS	Chief Executive / SLT	Director of Customers and Communities	Neighbourhood Services Manager	Tenancy Services Coordinator	Customer Services Coordinator	Repairs and maintenance	Occupational Therapist	CCG Tenants	Tenants of other RSL or Local authority landlord	All staff
request within 42 days of the application										
Only refuse consent for a mutual exchange in accordance with grounds and conditions set out in the policy	I	C	C	R	I	I	I	I	I	I
Ensure that a gas and electrical safety check is arranged	I	I	I	R	I	R	I	C	C	I
Allow access for gas and electrical safety checks	I	I	I	C	I	C	I	R	R	I
Accept new home 'as seen' – any damage or rechargeable costs by outgoing tenant becomes incoming tenants' responsibility	I	I	I	I	I	I	I	R	R	I
Sign a 'Record of Condition of Property' form accepting property 'as seen'	I	I	I	I	I	I	I	R	R	I
Apply in writing for consent to assign the tenancy	I	I	I	I	I	I	I	R	R	I
Sign a 'Deed of Assignment' and keep a copy	I	C	C	R	I	I	I	R	R	I
Consider requests for assignment in accordance with policy	I	C	C	R	I	I	I	I	I	I
Assignee to take over the tenancy and continue on the same basis	I	I	I	I	I	I	I	R	R	I

RISK MANAGEMENT ARRANGEMENTS	Chief Executive / SLT	Director of Customers and Communities	Neighbourhood Services Manager	Tenancy Services Coordinator	Customer Services Coordinator	Repairs and maintenance	Occupational Therapist	CCG Tenants	Tenants of other RSL or Local authority landlord	All staff
with the same rights and responsibilities of the original tenant										