

MOLENDINAR PARK HOUSING ASSOCIATION

MUTUAL EXCHANGE POLICY

Date of Adoption **18th October 2011**
Date of Next Review: **October 2016**

1. INTRODUCTION

- 1.1** This policy document outlines the rights of Association tenants to carry out a mutual exchange and aims to ensure that applications to exchange are dealt with effectively and equitably, in accordance with legal requirements, best practice and contractual terms with consistency in all areas.
- 1.2** The Association is committed to trying to meet the needs of its own tenants who wish to move to alternative accommodation.
- 1.3** A “mutual exchange” takes place when two tenants agree to exchange houses with each other. They need not have the same landlord but the exchange must have the approval of the landlord(s) involved.
- 1.4** The people wishing to exchange must be tenants of a “social housing” landlord ie. local authority, housing association or housing co-operative.
- 1.5** Molendinar Park Housing Association is an equal opportunities organisation. No person or group of persons applying for a mutual exchange will be treated less favourably than any other person or group of persons because of their sex, marital status, family circumstances, race or national origins, disability, age, religion, political orientation or sexual orientation.

2. LEGAL REQUIREMENTS

- 2.1** Section 33 of the Housing (Scotland) Act 2001 states that all Scottish Secure Tenants of local authorities and registered social landlords have the right to exchange their house for another house let under a Scottish Secure Tenancy, whether or not of the same landlord. However, that legal right is subject to the consent of both landlords. Consent may be refused only if the landlord(s) has/have reasonable grounds for refusal.
- 2.2** The Association must reply within one month to a written request for permission to carry out a mutual exchange. If it does not, permission is deemed to have been granted.

3. CONDITIONS FOR APPROVAL

The Association will permit mutual exchanges between its own tenants and tenants of other “social landlords”. Such exchanges will be considered for approval subject to the following conditions:

- a) the Association must be satisfied that a genuine exchange is taking place
- b) the written consent of the Association must be obtained before any mutual exchange can take place
- c) overcrowding must not occur as a result of the exchange
- d) under occupation by up to two bed spaces in certain circumstances may be allowed
- e) both tenants have been tenants of their homes for at least one year
- f) the exchange must not result in accommodation adapted for special needs being occupied by people with no such special needs
- g) tenants must have fulfilled all obligations of their tenancy in a satisfactory manner.

Each case will be assessed on its own merits.

4. IMPLEMENTATION

The Association will only grant approval for Mutual Exchanges on the basis of a genuine desire of both parties to exchange houses. The Association will therefore expect the following requirements to be adhered to:

- i) The decision to grant or refuse an application for a mutual exchange should be made in writing within 28 days of receipt of application.
- ii) Where an exchange is granted both parties will be required to assume responsibility for any fixtures/fittings damaged by the outgoing tenant. Tenants must accept the houses as they find them.
- iii) Both parties must take up permanent residence of the address to which they have agreed to transfer within one month from the date of the agreement to exchange.
- iv) Where an exchange is granted both tenants must remain in the flat to which they exchange for a minimum of one year. This is to enhance community stability and prevent the potential for fraudulent applications to exchange. Should either tenant terminate their tenancy within that period the mutual exchange will be cancelled and the other party will be asked to return to their original property (unless there are extenuating circumstances). Each case will be considered on its own merits.

The Association has a detailed Procedure Note covering all aspects of the implementation process to ensure that our procedures are demonstrably fair and equitable to all applicants.

5. SCOTTISH SECURE TENANCY

All mutual exchanges will be carried out on the basis of Scottish Secure Tenancy Agreements.

If a tenant presently has the “preserved” right to buy it will be clearly explained that an exchange of accommodation will result in him/her moving on to the “modernised” right to buy.

6. PROMOTION OF MUTUAL EXCHANGES

- 6.1** Given the restrictions on the turnover in our stock there are only a limited number of flats available for let through the transfer list. In order to try and increase the opportunities for tenants to move house the Association is promoting the use of mutual exchanges between tenants.
- 6.2** The Association will endeavour to match tenants currently on the transfer list with other tenants who are also seeking a move to more suitable accommodation within Molendinar Park.
- 6.3** The Association will also produce lists of addresses, excluding the name and close numbers of those tenants wishing to move house. It is hoped that through the increased awareness and use of mutual exchanges that many more tenants will be able to move to their desired property much more quickly.
- 6.4** In addition the Association will maintain lists of external tenants who are seeking a mutual exchange and will give advice and assistance on this matter.

7. APPEALS

- 7.1** The appeals procedure will apply to all applicants aggrieved by any decision made in the allocations process.
- 7.2** If any applicant is unhappy regarding any decision made in relation to mutual exchanges then the process of that appeal is:
 - a) Director
 - b) Management Committee
 - c) Appeals Committee
- 7.3** Applicants should note that the Appeals Committee consists exclusively of Management Committee members who were not involved in the original decision at management committee level.
- 7.4** Where the Association refuses consent the tenant has a right of appeal to the Sheriff Court within 21 days. If the Sheriff considers that the refusal is unreasonable then he/she must order the Association to consent to the application to carry out a mutual exchange.

8. COMPLAINTS

Any tenant who is unhappy about the way his/her application has been dealt with should notify the Housing Services Officer with whom they have been dealing with. If following this they still feel aggrieved they should follow the formal Complaints Policy, a copy of which is available from the Association's office.

9. REVIEW OF POLICY

- 9.1** This Mutual Exchange Policy will be reviewed by the Management Committee at least every five years.