

Related SBHA Policies are the Allocations Policy.

1.0 OBJECTIVE OF POLICY

- 1.1 Scottish Borders Housing Association (SBHA) wishes to facilitate mutual exchanges between Scottish Secure Tenants. Tenants can also apply for a transfer within SBHA's stock. This covered by SBHA's Allocations Policy.
- 1.2 To support this objective, SBHA provides facilities for free advertising of properties for mutual exchanges using a web-based facility.

2.0 INTRODUCTION

- 2.1 The Housing (Scotland) Act 2001 provides every Scottish secure tenant with the right to exchange their home with another Scottish secure tenant (whether or not the landlord is the same), with the landlord(s) prior written consent. Landlords may only refuse such requests if there are reasonable grounds for refusal.
- 2.2 Mutual Exchanges take place when two (or more) tenants agree to exchange houses with each other. Tenants wishing to exchange must be tenants of a social housing landlord i.e., a local authority, housing association co-op or fully mutually co-ops. Tenants do not need to have the same landlord, but exchanges require the approval of all landlords.
- 2.3 This policy describes the activities and responsibilities involved in facilitating the exchange of properties between tenants on a mutual agreement.

3.0 ELIGIBILITY FOR MUTUAL EXCHANGE

- 3.1 Any SBHA Tenant can apply for an exchange, but SBHA will only consider exchange requests from complete Tenant households. (See Para 4.1, first bullet point below).
- 3.2 Scottish Secure tenants of other landlords may also apply to exchange with an SBHA Tenant. In these cases, permission will only be granted by SBHA on receipt of written consent from the other involved landlord.
- 3.3 Scottish Secure Tenants are not eligible to exchange with non-Scottish Secure Tenants, including Tenants of private sector landlords or tenants of properties situated outwith Scotland.
- 3.4 Whilst mutual exchanges will normally only be permitted with other Scottish Secure tenants, SBHA may permit a mutual exchange with a non-Scottish Secure tenant where they have a tenancy with a Registered Housing Provider or Local Authority elsewhere in the UK, deemed equivalent to an SST.

4.0 REFUSAL OF A MUTUAL EXCHANGE REQUEST

4.1 SBHA will not normally give permission for a mutual exchange to proceed if:

- SBHA has not received the written consent of **all** tenants involved in the exchange. This includes joint tenants and any person who has occupancy rights under the Matrimonial Homes (Family Protection) (Scotland) Act 1981
- The exchange applicant has lived at their current address for less than 12 months
- Rent arrears. To be considered for a Mutual Exchange, Tenants must have a clear rent account
- If there is evidence that either party to the Exchange has seriously breached their Tenancy Agreement in the previous 12 months, or is the subject of current legal action by their landlord for a breach of the Tenancy Agreement
- When the condition of the current property (including any garden area) occupied by either party to the Exchange is not of an acceptable standard
- If the Mutual Exchange will result in the under-occupation or overcrowding of any SBHA property
- If either of the parties to the Exchange do not need the adaptations or additional services provided to the property
- If SBHA receives an unsatisfactory landlord reference for the proposed Exchange Tenant
- If in SBHA's opinion the Exchange will affect the balance of the existing community to the detriment of other residents
- If the other landlord has not agreed in writing to the Exchange taking place
- If any of the grounds for refusal set out in section 33(3) of the Housing (Scotland) Act 2001 (the 2001 Act) are met. In particular, if
 - a notice of proceedings for possession has been served on the Tenant specifying at least one of Grounds 1 to 7 specified in Schedule 2 to the 2001 Act
 - an order for recovery of possession of the property which is the subject of the current tenancy has been made against the Tenant under section 16(2) of the 2001 Act
 - that property was provided by SBHA in connection with the Tenant's employment with it
 - that property has been designed or adapted for occupation by a person whose special needs require accommodation of the kind provided by the property and, if the Mutual Exchange took place, there would no longer be a person with such special needs occupying the property
 - the accommodation in the other property –
 - is substantially larger than that required by the Tenant and the Tenant's family, or
 - is not suitable to the needs of the Tenant and the Tenant's family, or

- the Mutual Exchange would lead to overcrowding of the property in such circumstances as to render the occupier guilty of an offence under section 139 of the 1987 Act.
- If SBHA would not otherwise allocate the property to the Exchange Tenant in terms of its Allocations Policy.

4.2 With the prior approval of the Director of Customer Services, SBHA may relax certain eligibility criteria if there are urgent health, social or financial grounds for an exchange.

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5.0 DOCUMENTATION TO BE COMPLETED BY APPLICANTS.

5.1 Tenants must complete a SBHA Mutual Exchange Form. The information provided on the form will be used to determine whether the SBHA eligibility criteria for a Mutual Exchange have been met.

6.0 TIMESCALE FOR RESPONSE TO A REQUEST FOR A MUTUAL EXCHANGE

6.1 On receipt of the form, SBHA will make a written response within one month indicating whether permission for the Mutual Exchange has been granted or refused. If a refusal is given, SBHA will provide the reason(s) for refusal. If SBHA fails to respond within this time period, then SBHA will be deemed to have consented to the request.

6.2 SBHA reserves the right to withdraw permission for a Mutual Exchange if new or additional information that adversely affects the application comes to light after permission has previously been granted in writing. Notification of this will be in writing to the last known contact address of the Exchange applicant.

7.0 UNLAWFUL EXCHANGES

7.1 In the event that a Tenant/s fails to obtain SBHA's written permission to exchange or when permission has been refused, and the Tenant proceeds with the Mutual Exchange, then both parties will:

- have no legal interest in the property they have moved into
- be liable for the rent and any other obligations relating to their original tenancy
- be in breach of their Tenancy Agreement

7.2 In such instances SBHA will insist that the Tenants return to their original home and will then consider legal action to terminate the tenancy/ies.

8.0 REPAIRS

8.1 Mutual exchange applicants will view the property that they are applying to transfer to and will be satisfied that they are accepting the property in the condition at viewing including cleanliness, internal decoration, improvements and alterations and any repairs that are the tenant's responsibility.

8.2 A property inspection will be undertaken by SBHA before the exchange takes place.

8.3 Gas and electric safety checks and an up-to-date EPC (if appropriate) will be carried out before the new Tenant moves in.

9.0 RIGHT OF APPEAL

- 9.1 Tenants have the right to appeal against any decision made by SBHA in relation to Mutual Exchanges. This should be done by using SBHA's Appeals Procedure.

10.0 EQUAL OPPORTUNITIES

- 10.1 SBHA aims to treat all customers with respect and professionalism and will ensure that this service is fair and accessible to all. SBHA will publish information that is easy to read and understand in a range of appropriate languages and formats. Where Tenants have any particular needs or requirements, SBHA will do all that it can to ensure that its services are tailored to these needs.
- 10.2 This Policy will not be used to discriminate against any individual or household on grounds of race, religion, marital status, disability, age, sexual orientation, gender reassignment, political opinion, pregnancy, or maternity. SBHA aims to promote equal opportunities and comply with the requirements of the Equality Act 2010.

11.0 MONITORING, PERFORMANCE, MEASUREMENT AND REPORTING

- 11.1 SBHA will continually monitor the level of mutual exchange applications received and monitor and report the level of mutual exchanges lets completed on a monthly and quarterly basis.

12.0 POLICY REVIEW

- 12.1 This Policy will be reviewed within 3 years from the date of approval by the SBHA Board, or earlier if legislative or other changes necessitate this.