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REPORT TO:	HOUSING AND COMMUNITY SERVICES	AGENDA ITEM:	10.
DATE OF MEETING:	AUGUST 31 <sup>ST</sup> 2006	CATEGORY:	DELEGATED
REPORT FROM:	MARK ALFLAT DIRECTOR OF COMMUNITY SERVICES	OPEN	
MEMBERS' CONTACT POINT:	KAREN TALBOT – HOUSING OPERATIONS MANAGER X5797	DOC:	
SUBJECT:	MUTUAL EXCHANGE	REF:	
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE:	HCSO1

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### 1.0 Recommendations

1.1 Members receive and accept information provided about mutual exchanges as legislated by the Housing Acts 1985 and 2004.

### 2.0 Purpose of Report

2.1 This report has been produced at the request of members following a discussion at the Committee meeting held on the 20<sup>th</sup> July regarding exchanges of property. The aim of the report is to provide clarity to members in relation to legislation and procedure.

2.2 A secure tenancy can be assigned to another person(s) within the provisions of section 92 of the Housing Act 1985. Assignments are permitted in three circumstances.

2.3 Firstly in accordance with property adjustment orders in connection with matrimonial proceedings. For example where there is a joint tenancy and neither party will leave the property amicably, the court usually grants the sole tenancy to the party who takes on the main care responsibility for dependent children.

2.4 Secondly a secure tenancy can be assigned to a person who would be qualified to succeed to the tenancy in the event of the tenant's death immediately before the assignment taking place. For example, a sole tenant may assign their secure tenancy to the spouse as they would be qualified to succeed to the tenancy if the sole tenant were to die.

2.5 Thirdly a secure tenancy may be assigned by way of exchange with the written consent of the landlord. This is the area of assignment that this report will define for Members.

### 3.0 Detail

3.1 It is a term of every secure tenancy that the tenant may, with the consent of their landlord, assign their secure tenancy to another secure tenant who has the written consent of his / her landlord.

- 3.2 Section 92 (2) of the Housing Act 1985 states that consent cannot be withheld for reasons other than specified in Schedule 3 of the Housing Act 1985.
- 3.3 Schedule 3: Ground for withholding consent to assignment by way of exchange reads as follows;

Ground 1 – ‘The tenant or the proposed assignee is obliged to give up possession of the dwelling-house of which he is the secure tenant in pursuance of an order of the court, or will be so obliged at a date specified in such an order’

*In summary, if the landlord of either party has been granted a Suspended Possession Order, Postponed Possession Order or Possession Order by the County Court, the mutual exchange may not proceed as the secure tenancy no longer exists in law.*

Ground 2 – ‘Proceedings have been begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of grounds 1 to 6 in Part 1 of Schedule 2 (grounds on which possession may be ordered despite absence of suitable accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.’

*In summary, if the landlord has served a Notice of Intention to Seek Possession within the preceding twelve months or has made an application to the court for a possession hearing the mutual exchange may be refused.*

Ground 2A – The Housing Act 2004 extended Ground 2 to include refusal on the ground on anti social behaviour of the tenant, proposed assignee or person living with either of them, which has led to the landlord applying for possession because of anti social behaviour, for a demotion order, anti-social behaviour injunction or an anti social behaviour order (ASBO).

Ground 3 – ‘The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.’

*For example, the landlord may refuse to allow a tenant to assign the tenancy of a four-bedroom property to a proposed assignee who is only in need of a two-bedroom property.*

Ground 4 – ‘The extent of the accommodation afforded by the dwelling-house is not reasonably suitable to the needs of the proposed assignee and his family.’

*The landlord must refuse to allow a proposed assignee to move into accommodation that would cause that family to be overcrowded.*

Ground 5 – ‘The dwelling-house-

- (a) forms part of or is within the curtilage of a building which, or so much of it as is held by the landlord, is held mainly for purposes other than housing purposes and consists mainly of accommodation other than housing accommodation, or is situated in a cemetery, and
- (b) was let to the tenant or a predecessor in title of his consequence of the tenant or predecessor being in the employment of-
  - the landlord
  - a local authority

a new town corporation  
the Development Board for Rural Wales  
an urban development corporation, or  
the governors of an aided school.'

*Housing Services holds no properties with tenancies granted within this provision.*

Ground 6 – 'The landlord is a charity and the proposed assignee's occupation of the dwelling-house would conflict with the objects of the charity.'

*Housing Services is not a charitable organisation but this may qualify as a ground for refusal by another landlord if one of South Derbyshire District Council's secure tenants wants to exchange with a secure tenant afforded a tenancy by a charity.*

Ground 7 – 'The dwelling-house has features which are substantially different from those of ordinary dwelling-houses and which are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house and if the assignment were made there would no longer be such a person residing in the dwelling-house.'

*Housing Services can refuse a mutual exchange if the proposed assignee did not need physical adaptations that had been installed to the property to make it more suitable to a person with a physical disability.*

Ground 8 – 'The landlord is a housing association or housing trust which lets the dwelling-houses only for occupation (alone or with others) by persons whose circumstances (other than merely financial circumstances) make it especially difficult for them to satisfy their need for housing and if the assignment were made there would no longer be such a person residing in the dwelling-house.'

*This applies, for example, where housing associations provide housing for a specific group within society rather than as general purpose properties.*

Ground 9 – The dwelling-house is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by persons with special needs and a social service or special facility is provided in close proximity to the group of dwelling-houses in order to assist persons with those special needs and if the assignment were made there would no longer be a person with those special needs residing in the dwelling-house.

*In summary, South Derbyshire District Council may refuse to allow an exchange into a sheltered housing property if the proposed assignee did not need or qualify for supported housing for older people. Although where there is no special facility, such as a communal room, this would be challengeable in law.*

### 3.4 Procedure

- 3.4.1 Any refusal for a mutual exchange must be made in writing to the secure tenant and the proposed assignee within 42 days of the tenant's application. The refusal notice must specify the ground for refusal and provide particulars of it.
- 3.4.2 To facilitate completion of the process within 42 days, upon receipt both applicants' details are considered in relation to over-crowding, under-occupation, etc. If there are no obvious grounds for refusal identified on the application forms, the Tenant Liaison Officer writes to the proposed assignee's landlord for a reference.

- 3.4.3 The reference requests information about family composition, any Notices that have been served for any breach of tenancy, commencement of proceedings within County Court, Court orders already granted, actions in response to anti social behaviour and any rent arrears.
- 3.4.4 If none of the grounds for withholding consent are satisfied the mutual exchange will take place.
- 3.4.5 As each secure tenant is proposing to assign their existing tenancy to another person, the incoming tenant receives the same security of tenure that the outgoing tenant held. Introductory tenants are not entitled to enter into a mutual exchange.

#### **4.0 Financial Implications**

4.1 None

#### **5.0 Corporate Implications**

5.1 None

#### **6.0 Community Implications**

6.1 None

#### **7.0 Conclusions**

7.1 None as this report is presented for information purposes only.