

Registered Social Landlords Fact Sheet 8

Mutual Exchange and Deeds of Assignment

Introduction

Section 92 Housing Act 1985 introduced the right to exchange for secure tenants.

It is a term of every secure tenancy that the tenant may, with the written consent of the landlord, assign the tenancy to another secure tenant who satisfies the condition in section 2 or to an assured tenant who satisfies the condition in section 2A.

Section 2 condition: other secure tenant has written consent of his landlord

Section 2A condition : other assured tenant has landlord who is either the Housing Corporation, Housing for Wales, a registered Housing Association or a housing trust which is a charity.

Can the Landlord withhold consent?

Only if a ground from Schedule 3 Housing Act exists – otherwise, consent will be treated as having been given. (S92(3))

Ground for withholding consent

1. The tenant or assignee is obliged to give up possession due to a Court Order.
2. Proceedings have been commenced or Notice Seeking Possession has been served for possession under Schedule 2 Grounds 1 – 6
3. The accommodation substantially more extensive than reasonably required by assignee
4. The extent of accommodation not reasonably suitable to needs of assignee and family
5. Accommodation let to tenant in consequence of employment, related to non housing purposes
6. Conflict with purposes of charity landlord
7. Property has been adapted for a disabled person
8. Conflict with purposes of specialist housing association or trust
9. Sheltered Accommodation
10. Refusal by the assignee to become a member of tenant's housing association which is managing the property.

How does the Landlord withhold consent?

The Landlord must serve Notice within 42 days of application for consent, specifying ground and giving particulars of it.

Conditions on Consent

Under S92(5), the Landlord may attach conditions if tenancy obligations not performed, e.g. that rent arrears must be paid off in full/waste made good. – but no other condition may be imposed.

Mutual Exchanges Premiums

Schedule 2 Ground 6: a mandatory possession order will be made against any tenant who charges a premium for the Right to Exchange.

Mutual Exchanges and Fraud

Sanctuary Housing Association –v- Baker (1997): Landlord's consent to assignment obtained by fraud – the subsequent assignment was nevertheless held to be valid. The Court did point out that the fraud would have been grounds for possession for breach of tenancy agreement, as consent invalidated by fraud).

Sanctuary Housing Association –v- Baker (No. 2) (1998) Sanctuary tried to apply for possession for breach of tenancy agreement, but failed again; the legal principle of “Res Judicata” applied – as the matter had already been tried by the Court, the issue should have been raised in the first trial.

Deed of Assignment

It is a requirement of Section 40 of the Law of Property Act that land can be transferred only by Deed.

The Deed operates as “consideration” required to make the agreement binding. No money need change hands to make the contract.

Requirements for a Deed to be valid

No longer a requirement for a Seal to be attached:

- must state “Signed as a Deed”
- each signature must be witnessed, and witness must sign the document and insert details of their name address and occupation
- need not be same witness to each signature

No other assignment of secure or assured tenancies possible, save to persons qualified to succeed, contractually entitled, or pursuant to an Order for the transfer of a tenancy made by a Court within matrimonial proceedings.