

Assignment and Mutual Exchange Policy

1.0 Purpose of policy

1.1 This policy outlines Karbon Homes approach to assignment and mutual exchange.

2.0 Policy Scope

2.1 The policy applies to all property owned by Karbon Homes.

3.0 What is an Assignment?

3.1 It is legally possible for a tenant to pass their tenancy on to another person by effecting a Deed of Assignment. This does not create a new tenancy, it passes on the existing tenancy to the assignee, who acquires all of the rights and responsibilities of the tenancy.

3.2 There are statutory restrictions on the ability to assign a tenancy. The forms of assignment are generally by means of mutual exchange, a court order and general assignment which is usually assignment to a potential successor. The restrictions on assignment differ for secure and assured tenancies. Karbon Homes will not use assignment as a means of adding people or removing people from a tenancy.

3.3 All prospective assignees will be subject to Right to Rent verification checks as an assignment is the transfer of the legal rights and obligations under a tenancy. As part of the Immigration Act 2016 landlords are required to verify the residential status of all prospective tenants and their household member's aged over 18 therefore this would also apply to prospective assignees.

4.0 Assured Tenancies

4.1 There is no right to assign an assured tenancy. The Housing Act 1988 does specify however certain conditions on assignment, dependent on what is written in the tenancy agreement.

4.2 If the tenancy agreement makes no mention of assignment, then a tenant needs the landlord's permission to carry out an assignment. The landlord is entitled to refuse an assignment and is not obliged to give any reason for refusing.

- 4.3 If the tenancy agreement specifies that assignment is possible only with the landlord's permission, the tenant will need such permission but the landlord cannot unreasonably withhold their permission.
- 4.4 If an assured tenant carries out an assignment without obtaining permission from their landlord, the assignment will take effect, but it will be a breach of the terms of the tenancy and the landlord will have grounds for possession against the assignee.

5.0 Secure tenancies

- 5.1 Assignment is only possible for secure tenancies in the following circumstances (set out in s91 Housing Act 1985):
- As a mutual exchange
 - Where a court orders it as part of divorce or judicial separation proceedings or on termination of a civil partnership
 - Where a court orders it under the Children Act 1989
 - To a potential successor - i.e. someone who would have had the right to succeed to the tenancy on the death of the tenant. This is only possible if there has been no previous assignment or succession of the tenancy.
- 5.2 Assignment of a secure tenancy is not possible in any other circumstances.

6.0 Starter Tenancies

- 6.1 The same provisions apply to assignment of starter tenancies as apply to secure tenancies, with one exception – a starter tenancy cannot carry out a mutual exchange as there is no right to exchange on a starter tenancy.

7.0 Deed of Assignment

- 7.1 For an assignment to be effective there must be a written deed of assignment, signed by both parties and witnessed. If a tenant gives the keys to another party and tells them they can have the tenancy this does not affect an assignment in law.

8.0 Right to Exchange (Mutual Exchange)

- 8.1 Mutual exchange is the term used when two or more tenants decide to exchange tenancies. Exchanges can only take place between tenants in social housing and all require written consent from the landlord(s).
- 8.2 An exchange will normally take place when the parties involved agree and have permission from the landlord(s) to assign their respective tenancies to each other. Karbon Homes will generally use a Deed of Assignment to facilitate the exchange.

9.0 Mutual Transfers (Life Time Tenancy)

- 9.1 Mutual exchanges generally take place via a deed of assignment to prevent the creation of a new tenancy. The Localism Act provides that if a secure or assured tenancy commenced before 01st April 2012 wishes to exchange their property with a tenant holding a flexible or fixed term tenancy, the exchange will be achieved by surrender and re-grant of new tenancies.
- 9.2 All existing tenants retain the security of tenure enjoyed under the original tenancy before the exchange. Surrender and re-grant does not apply where a secure or assured tenant exchanges with a:
- Tenant with a fixed term tenancy of less than two years
 - A periodic assured shorthold tenancy
 - An assured shorthold tenancy where the rent payable under the tenancy is:
 - Affordable rent
 - Intermediate rent
 - Mortgage rescue, or
 - Shared ownership rent.

10.0 Assured tenants

- 10.1 There is no statutory mechanism governing exchange for assured tenants but assured tenants are granted the right through their tenancy agreement. However, because an exchange involves an assignment of the tenancy, tenants would need to seek permission from their landlord before carrying out an exchange. Where the tenancy agreement allows a mutual exchange to occur Karbon Homes will not unreasonably withhold permission except for the grounds listed in appendix one.

11.0 Secure tenants

- The tenant must apply to their own landlord for permission to exchange.
- The landlord's consent or refusal must be in writing.
- The landlord may only refuse consent on specific grounds which are set out in Schedule 3 of the Housing Act 1985 (see below appendix one).
- If the landlord wishes to refuse consent on any of these grounds, then a notice must be served on the tenant specifying the ground and the reasons for refusal - this must be undertaken within 42 days of receiving the tenant's application.
- If the landlord fails to respond within the time limit the tenant cannot assume consent to have been given and must not proceed with the exchange. The tenant's legal remedy is to seek an injunction or a declaration in the County Court to force a reply from the landlord.
- If the landlord refuses consent for reasons other than those grounds contained within the legislation, then consent is treated as having been given.

- If the tenant has broken a term of the tenancy or owes rent then the landlord may grant consent on condition that the tenant pays the outstanding rent and remedies any breaches of tenancy obligations. The landlord is not permitted to impose any other form of condition and if this is attempted, the conditions can be disregarded. The mutual exchange must not proceed until the breach is deemed rectified by the landlord.

12.0 Starter Tenancies

- 12.1 Starter tenants do not have the right to exchange their property within the first 12 months of their tenancy, or during any extension period typically for further 6 months. They will gain the right to apply for a mutual exchange once they are granted a full assured tenancy status.

13.0 Preserved Right to Buy

- 13.1 Schedule 2 of the Housing Regulations 1993 states that any tenant(s) will be able to retain their existing Preserved Right to Buy (PRTB) as long as they remain with the same landlord. This will apply to all Karbon Homes tenants with a PRTB when they either transfer or exchange within Karbon housing stock. However tenants will lose their PRTB if they transfer to another landlord. No PRTB can be gained in the mutual exchange process.

14.0 Conditional Consent

- 14.1 If a tenant is in breach of tenancy but possession proceedings have not begun, conditional consent will be given requiring the breach to be remedied. The exchange cannot proceed until full consent is given in writing by Karbon Homes.

This could apply to rent arrears below NOSP level, outstanding rechargeable repairs or other minor breaches such as an untidy garden etc. It is the responsibility of the applicant to notify Karbon Homes when the breach has been remedied, so that the application can be reconsidered. The reconsidered decision should be given within 42 days of the applicant advising that the breach has been remedied.

- 14.2 Karbon Homes cannot impose any other conditions other than for breach of tenancy.
- 14.3 If a secure tenant in England and Wales received a payment or other premium as an inducement to assign their tenancy this is a ground for possession.

15.0 A tenancy that has been exchanged without consent.

- 15.1 Where Karbon Homes discovers that an exchange has taken place without permission being obtained, Karbon Homes may:

- Allow the exchange and regulate the position by giving permission and completing procedures retrospectively.
- Insist that the tenants return to their original homes
- Terminate the tenancies by serving a Notice to Quit on the original homes and seeking repossession.

16.0 Timescales

- 16.1 Karbon Homes will acknowledge all applications for mutual exchange received within 10 working days.
- 16.2 Karbon Homes will notify tenants of the outcome of their application within 42 days of receipt as required by Section 92 of the Housing Act 1985.

17.0 Policy Detail

- 17.1 Karbon Homes will adopt clear effective policies and procedures to ensure that tenants' rights are upheld and that there is an open, effective and fair system for considering requests to mutually exchange.
- 17.2 Karbon Homes will provide assistance and support to tenants wanting to carry out a mutual exchange but the tenant is responsible for finding the exchange partner and for viewing the property they wish to exchange to.
- 17.3 Karbon Homes will promote tenant mobility through membership of Choice Based Lettings schemes and/or by participating in nationwide schemes such as Homeswapper.
- 17.4 No mutual exchange can take place without the written consent and approval of Karbon Homes.
- 17.5 Karbon Homes will not withhold consent unreasonably but will consider all applications in accordance with the legal requirements as set out in Section 92 of the Housing Act 1985 and Section 158 of the Localism Act 2011.
- 17.6 Karbon Homes must notify the proposed exchange partners of the decision within 42 days of receiving the written request. The notice must state the reasons for withholding consent. If Karbon Homes does not respond within 42 days, Karbon Homes cannot rely on any grounds for withholding consent.
- 17.7 Karbon Homes will only allow mutual exchange by assignment and/or by surrender and re-grant of a new tenancy but will take legal action where appropriate in cases where residents have exchanged tenancies without written consent.

- 17.8 Karbon Homes will encourage any person considering mutual exchange to seek independent legal advice to ensure that they are aware of different tenancy types and of any legal implications when assigning one type of tenancy to another.
- 17.9 Karbon Homes will always request a written reference from any other landlord involved.
- 17.10 Where mutual exchanges have been agreed in principal the exchanging tenants will accept the condition of the property as seen. Karbon Homes remains responsible for all landlord obligations but tenant responsibilities such as internal decoration must be seen and accepted by the incoming exchange tenant.
- 17.11 Assignment by way of mutual exchange does not count as a statutory succession.

18.0 Monitoring and Review

- 18.1 This policy will be reviewed at least every 3 years. The review will be brought forward if there are significant changes to good practice, regulatory or legislative requirements.

19.0 Equality and Diversity

- 19.1 This policy is implemented in line with the Group's Equality and Diversity Policy and associated legislation. Consideration will be given to all protected characteristics under the Equality Act 2010 to eliminate discrimination, advance equality of opportunity and foster good relations.

This policy and associated documents are available in different languages and alternative formats where necessary.

20.0 Data Protection and Privacy

- 20.1 We have a clear policy on data protection and sharing data with other partners/third parties under the requirements of the General Data Protection Regulation. This is clearly set out in the Data Protection Policy for the Karbon Homes Group which in association with the Data Protection Procedures must be followed throughout the operation of this policy.

Appendix One

The table below sets out the grounds where a mutual exchange can be refused as listed in Schedule 3 of the Housing Act 1985 and Section 158 of the Localism Act 2011.

Schedule 3 of the Housing Act 1985 (Secure & Assured tenancies)	Schedule 14 of the Localism Act 2011 (fixed term tenancies 2 years+)	Grounds for refusing consent to the exchange
-	Ground 1	When any rent lawfully due from a tenant under one of the existing tenancies has not been paid.
-	Ground 2	When an obligation under one of the existing tenancies has been broken or not performed
Ground 1	Ground 3	A court order for possession or a suspended possession order has been made for wither property
Ground 2	Grounds 4 & 5	The landlord has served a notice of seeking possession and the notice is still in force, or possession proceedings have commenced.
Additional Ground 2A (Housing Act 2004)	Ground 6	An injunction order under section 153 of the Housing Act 1996 or an anti-social behavior order or a Demotion Order or a possession order under Ground 2 for secure tenancies or Ground 14 for assured tenancies is in force or an application for one of those is pending either against the tenant, the proposed assignee or a person who resides with either of them.
Ground 3	Ground 7	The property is substantially larger than is reasonably needed by the proposed assignee and their household
Ground 4	Ground 8	The property is not reasonably suitable to the needs of the proposed assignee and their household.
Ground 5	Ground 9	The property is part of or close to a building that is held for non-housing purposes, or it is situated in a cemetery and was let in connection with employment with the landlord or with a local authority, a new town corporation, housing

		action trust, an urban development corporation, or the governors of grant-aided school.
Ground 6	Ground 10	The landlord is a charity and the proposed assignees occupation of the property would conflict with the objects of the charity.
Ground 7	Ground 11	The property has been substantially adapted for occupation by physically disabled person and if the assignment went ahead a physically disabled person would not be living there.
Ground 8	Ground 12	The landlord lets properties to people in difficult circumstances (other than merely financial circumstances) and the proposed assignee would not fulfil this criteria.
Ground 9	Ground 13	The property is let to people with special needs and there is a social service or special facility nearby to the properties to assist people with those special needs and if the assignment was to go ahead no person with those special needs would be living there.
Ground 10	Ground 14	The dwelling is the subject of a management agreement where the manager is a housing association of which at least half the members are tenants subject to the agreement and at least half of the tenants of the dwellings are members of the association and also that the proposed assignee is not such a member nor is willing to become one.

Appendix Two

The table below sets out the current tenure status of each tenant and what the tenure status of each tenant would become after an exchange has taken place. It also shows by what method the exchange should take place such as Assignment or Surrender and re-grant.

Status before exchange		Status after exchange		Exchange takes place by
Tenant 1	Tenant 2	Tenant 1	Tenant 2	
Secure (fair rent)	Secure (fair rent)	Secure (fair rent)	Secure (fair rent)	Assignment
Assured (social rent)	Assured (social rent)	Assured (social rent)	(Assured (social rent)	Assignment
Assured (social rent)	Secure (fair rent)	Secure (fair rent)	Assured (social rent)	Assignment
Assured (affordable rent)	Secure (fair rent)	Secure (fair rent)	Assured (affordable rent)	Assignment
Assured (affordable rent)	Assured (affordable rent)	Assured (affordable rent)	Assured (affordable rent)	Assignment
Assured (social rent)	Assured (affordable rent)	Assured (affordable rent)	Assured (social rent)	Assignment
Fixed term (affordable rent)	Fixed term (affordable rent)	Fixed term (affordable rent)	Fixed term (affordable rent)	Assignment
Fixed term (affordable rent)	Fixed term (social rent)	Fixed term (social rent)	Fixed term (affordable rent)	Assignment
Assured (social rent)	Fixed term (affordable rent)	Assured (affordable rent)	Fixed term (social rent)	Surrender and new tenancy (mutual transfer)
Assured (affordable rent)	Fixed term (affordable rent)	Assured (affordable rent)	Fixed term (affordable rent)	Surrender and new tenancy (mutual transfer)
Assured (affordable rent)	Fixed term (social rent)	Assured (social rent)	Fixed term (affordable rent)	Surrender and new tenancy (mutual transfer)
Secure (fair rent)	Fixed term (affordable rent)	Secure with fair rent (if internal) or assured with affordable rent (if external)	Fixed term (affordable rent)	Surrender and new tenancy (mutual transfer)

Secure (fair rent)	Fixed term (social rent)	Secure with fair rent (if internal) or assured with social rent (if external)	Fixed term (social rent)	Surrender and new tenancy (mutual transfer)
Assured (social rent)	Fixed term (social rent)	Assured (social rent)	Fixed term (social rent)	Surrender and new tenancy (mutual transfer)