

Assignment and Mutual Exchange Policy (Version 2, March 2022)

1.0 Purpose of policy

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

2.0 Objectives

- To manage mutual exchange and assignment process effectively
- To ensure that customers understand their rights and responsibilities
- To meet all regulatory requirements

3.0 Policy detail

- 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 and contractual 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 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.
- 3.4 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.
- 3.5 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.
- 3.6 Karbon Homes will promote tenant mobility through membership of Choice Based Lettings schemes and/or by participating in nationwide schemes such as Homeswapper.
- 3.7 No mutual exchange can take place without the written consent and approval of Karbon Homes.

- 3.8 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.
- 3.9 Karbon Homes will acknowledge all applications for mutual exchange received within 10 working days.
- 3.10 Karbon Homes must notify the proposed exchange partners of the decision within 42 days of receiving the written request as required by Section 92 of the Housing Act 1985.. 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.
- 3.11 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.
- 3.12 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.
- 3.13 Karbon Homes will always request a written reference from any other landlord involved.
- 3.14 Where mutual exchanges have been agreed in principle 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 and alterations (whether or not Karbon Homes has consented to the alteration) must be seen and accepted by the incoming exchange tenant.
- 3.15 Assignment by way of mutual exchange does not count as a statutory succession.

4.0 Assured Tenancies

- 4.1 There is no right to assign an assured tenancy without the consent of the landlord. The Housing Act 1988 does however specify 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 the Housing Act 1988 implies a right to assign, however a tenant would need the landlord's permission to carry out an assignment. The landlord is entitled to refuse an assignment and does not need a reasonable basis for withholding consent.
- 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. Where the tenancy agreement allows a mutual exchange to occur Karbon Homes will not unreasonably withhold permission to a mutual exchange by way of an assignment except on the grounds listed in appendix one. Karbon Homes will not unreasonably withhold permission to a mutual exchange by way of a surrender and regrant except on the grounds listed in appendix two.

- 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.

- 5.3 The tenant must apply to their own landlord for permission to exchange.

- 5.4 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 in Schedule 3, 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.

- 5.5 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.

- 5.6 If the landlord refuses consent for reasons other than those grounds contained within the legislation, then consent is treated as having been given.

- 5.7 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.

6.0 Starter Tenancies

- 6.1 A starter tenant cannot carry out a mutual exchange as there is no right of assignment in a starter tenancy. Such a right only arises once the tenant has completed the probationary period and the tenancy has become an assured 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 use a Deed of Assignment to facilitate the exchange.

9.0 Mutual Transfers (Life Time Tenancy)

- 9.1 Mutual exchanges may only take place via a deed of assignment to prevent the creation of a new tenancy. The Localism Act 2011 does however provide that if a tenant under a secure or assured tenancy commencing before 1st April 2012 wishes to exchange their property with a tenant holding a flexible or fixed term assured shorthold tenancy, the exchange will be effected 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, and so they will be granted a new tenancy of the same status as their previous tenancy. Surrender and re-grant does not apply where a secure or assured tenant exchanges with a:
- Another tenant with an assured or secure tenancy
 - 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 Preserved Right to Buy

- 10.1 Section 171B(6) of the Housing Act 1985 (as amended) confirms 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, or mutually exchange with the tenant of another landlord. No PRTB can be gained in the mutual exchange process.

11.0 Conditional Consent

- 11.1 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.
- 11.2 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.
- 11.3 Karbon Homes cannot impose any other conditions other than for breach of tenancy or arrears of rent or other monies due under the tenancy agreement.
- 11.4 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.

12.0 A tenancy that has been exchanged without consent.

- 12.1 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.

13.0 Monitoring and Review

- 13.1 This policy will be reviewed every 3 years or if there are changes in legislation regulation or good practice.

14.0 Equality and Diversity

- 14.1 This policy is applied in line with Karbon's Equality and Diversity Policy and the associated legislation including the Public Sector Equality Duty and Equality Act 2010. At Karbon we aim to eliminate discrimination, promote equality of opportunity, foster good relations and define the nine protected characteristics of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, or sexual orientation.
- 14.2 However, we like to go even further. Beyond these protected characteristics we also take into consideration additional factors such as socio-economic status and language barriers which may also play a part. Our vision is for everyone to be treated fairly, have equality of opportunities, freedom, respect and access to our services.
- 14.3 To help us achieve this, we will work to improve accessibility for all, offering reasonable adjustments, adaptations and discussing ways that we can work to remove any barriers. A reasonable adjustment involves making a change to the way that we usually do things.
- 14.4 All of our customer policies and key information are made available on the Karbon Homes website. Reasonable adjustments that can help for example to make our information and services more accessible are sign language and language interpreters. We will work to improve accessibility for everybody that we deal with offering reasonable adjustments, adaptations and discussing ways that we can work to remove barriers that you may experience. A reasonable adjustment involves making a change to the way that we usually do things.
- 14.5 We work together to look at options and agree what adjustments would be reasonable in your individual circumstances. If you would like to find out more please get in touch with the team.

15.0 Data Protection and Privacy

- 15.1 We have a clear policy on data protection and sharing data with other partners/third parties under the requirements of the UK General Data Protection Regulation, the Data Protection Act 2018 and other associated legislation. This is clearly set out in the Data Protection Policy for the Karbon Homes Group which, along with its associated procedures, must be followed throughout the operation of this policy.

APPENDIX ONE

Set out below are the grounds upon which Karbon Homes can reasonably withhold consent to a request for an assignment by way of a mutual exchange. Any references to Sections, Schedules or Grounds for possession refer to the Housing Act 1985 and in relying upon any of these grounds for withholding consent, Karbon Homes should apply the analogous Section, Schedule or Grounds for possession within the Housing Act 1988. Similarly, any references to secure tenant should be read as relating to an assured tenant

Ground 1

The tenant or the proposed assignee is subject to an order of the court for the possession of the dwelling-house of which he is the secure tenant.

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 I of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 [or 83ZA] (notice of proceedings for possession) which specifies one or more of those grounds and is still in force.

Ground 2ZA

Proceedings have been begun for possession of the dwelling-house, of which the tenant or the proposed assignee is the secure tenant, under section 84A (absolute ground for possession for anti-social behaviour), or there has been served on the tenant or the proposed assignee a notice under section 83ZA (notice requirements in relation to proceedings for possession on absolute ground for anti-social behaviour) which is still in force.

Ground 2A

Either—

(a) a relevant order, a suspended anti-social behaviour possession order or a suspended riot-related possession order is in force, or

(b) an application is pending before any court for a relevant order, a demotion order, an anti-social behaviour possession order or a riot-related possession order to be made,

in respect of the tenant or the proposed assignee or a person who is residing with either of them.

A “relevant order” means—

an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour);

an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour);

an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords);

an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998;

...

an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003 or section 27 of the Police and Justice Act 2006;

an injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014;

a criminal behaviour order within the meaning given by section 330 of the Sentencing Code.

An “anti-social behaviour possession order” means an order for possession under Ground 2 in Schedule 2 to this Act or Ground 14 in Schedule 2 to the Housing Act 1988.

A “demotion order” means a demotion order under section 82A of this Act or section 6A of the Housing Act 1988.

A “riot-related possession order” means an order for possession under Ground 2ZA in Schedule 2 to this Act or Ground 14ZA in Schedule 2 to the Housing Act 1988. Where the tenancy of the tenant or the proposed assignee is a joint tenancy, any reference to that person includes (where the context permits) a reference to any of the joint tenants.

Ground 2B

The dwelling-house is subject to a closure notice or closure order under Chapter 3 of Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.

Ground 3

The accommodation afforded by the dwelling-house is substantially more extensive than is reasonably required by the proposed assignee.

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.

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 in consequence of the tenant or predecessor being in the employment of—

the landlord,

a local authority,

a development corporation,

a housing action trust

a Mayoral development corporation,

an urban development corporation, or
the governors of an aided school.

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.

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.

Ground 8

The landlord is a housing association or housing trust which lets 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.

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.

Ground 10

The dwelling-house is the subject of a management agreement under which the manager is a housing association of which at least half the members are tenants of dwelling-houses subject to the agreement, at least half the tenants of the dwelling-houses are members of the association and the proposed assignee is not, and is not willing to become, a member of the association. [Reference to a management agreement includes a section 247 or 249 arrangement, as defined by section 250A(6) of the Housing and Regeneration Act 2008.]

APPENDIX TWO

Set out below are the grounds upon which Karbon Homes can reasonably withhold consent to a request for an assignment by way of a surrender and regrant of tenancy.

Ground 1

This ground is that any rent lawfully due from a tenant under one of the existing tenancies has not been paid.

Ground 2

This ground is that an obligation under one of the existing tenancies has been broken or not performed.

Ground 3

This ground is that any of the relevant tenants is subject to an order of the court for possession of the dwelling-house let on that tenant's existing tenancy.

Ground 4

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that—
 - (a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is a secure tenancy, and
 - (b) possession is sought on one or more of grounds 1 to 6 in Part 1 of Schedule 2 to the Housing Act 1985 (grounds on which possession may be ordered despite absence of suitable accommodation).
- (3) The second condition is that—
 - (a) a notice has been served on a relevant tenant under section 83 of that Act (notice of proceedings for possession), and
 - (b) the notice specifies one or more of those grounds and is still in force.

Ground 4A

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that—
 - (a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is a secure tenancy, and
 - (b) possession is sought under section 84A of the Housing Act 1985 (absolute ground for possession for anti-social behaviour).
- (3) The second condition is that—
 - (a) a notice has been served on a relevant tenant under section 83ZA of that Act (notice requirements in relation to proceedings for possession on absolute ground for anti-social behaviour), and
 - (b) the notice is still in force.

Ground 5

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that—
 - (a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is an assured tenancy, and
 - (b) possession is sought on one or more of the grounds in Part 2 of Schedule 2 to the Housing Act 1988 (grounds on which the court may order possession)
- (3) The second condition is that—
 - (a) a notice has been served on a relevant tenant under section 8 of that Act (notice of proceedings for possession), and
 - (b) the notice specifies one or more of those grounds and is still in force.

Ground 5A

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that—
 - (a) proceedings have begun for possession of a dwelling-house let on an existing tenancy which is an assured tenancy, and
 - (b) possession is sought on ground 7A in Part 1 of Schedule 2 to the Housing Act 1988 (absolute ground for possession for anti-social behaviour).
- (3) The second condition is that—
 - (a) a notice has been served on a relevant tenant under section 8 of that Act (notice of proceedings for possession), and
 - (b) the notice specifies ground 7A and is still in force.

Ground 6

- (1) This ground is that either of the following conditions is met.
- (2) The first condition is that a relevant order, a suspended anti-social behaviour possession order or a suspended riot-related possession order is in force in respect of a relevant tenant or a person residing with a relevant tenant.
- (3) The second condition is that an application is pending before any court for a relevant order, a demotion order, an anti-social behaviour possession order or a riot-related possession order to be made in respect of a relevant tenant or a person residing with a relevant tenant.
- (4) In this paragraph—

a “relevant order” means—

 - (a) an injunction under section 152 of the Housing Act 1996 (injunctions against anti-social behaviour),
 - (b) an injunction to which a power of arrest is attached by virtue of section 153 of that Act (other injunctions against anti-social behaviour),
 - (c) an injunction under section 153A, 153B or 153D of that Act (injunctions against anti-social behaviour on application of certain social landlords),

- (d) an anti-social behaviour order under section 1 of the Crime and Disorder Act 1998, or
- (e) an injunction to which a power of arrest is attached by virtue of section 91 of the Anti-social Behaviour Act 2003 or section 27 of the Police and Justice Act 2006,
- (f) an injunction under section 1 of the Anti-social Behaviour, Crime and Policing Act 2014, or
- (g) a criminal behaviour order within the meaning given by section 330 of the Sentencing Code;

An “anti-social behaviour possession order” means an order for possession under Ground 2 in Schedule 2 to the Housing Act 1985 or Ground 14 in Schedule 2 to the Housing Act 1988;

a “demotion order” means a demotion order under section 82A of the Housing Act 1985 or section 6A of the Housing Act 1988;

A “riot-related possession order” means an order for possession under Ground 2ZA in Schedule 2 to the Housing Act 1985 or Ground 14ZA in Schedule 2 to the Housing Act 1988;

Ground 6A

This ground is that a dwelling-house let on an existing tenancy is subject to a closure notice or closure order under Chapter 3 of Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.

Ground 7

This ground is that the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is substantially more extensive than is reasonably required by the existing tenant or tenants to whom the tenancy is proposed to be granted.

Ground 8

This ground is that the extent of the accommodation afforded by the dwelling-house proposed to be let on the new tenancy is not reasonably suitable to the needs of—

- (a) the existing tenant or tenants to whom the tenancy is proposed to be granted, and
- (b) the family of that tenant or those tenants.

Ground 9

(1) This ground is that the dwelling house proposed to be let on the new tenancy meets both of the following conditions.

(2) The first condition is that the dwelling-house—

- (a) forms part of or is within the curtilage of a building that, or so much of it as is held by the landlord—
 - (i) is held mainly for purposes other than housing purposes, and
 - (ii) consists mainly of accommodation other than housing accommodation, or
- (b) is situated in a cemetery.

(3) The second condition is that the dwelling-house was let to any tenant under the existing tenancy of that dwelling-house, or a predecessor in title of the tenant, in consequence of the tenant or the predecessor being in the employment of—

- (a) the landlord under the tenancy,
- (b) a local authority,
- (c) a development corporation,
- (d) a housing action trust,
- (e) an urban development corporation, or
- (f) the governors of an aided school.

Ground 10

This ground is that the landlord is a charity and the occupation of the dwelling-house proposed to be let on the new tenancy by the relevant tenant or tenants to whom the new tenancy is proposed to be granted would conflict with the objects of the charity.

Ground 11

- (1) This ground is that both of the following conditions are met.
- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy has features that—
 - (a) are substantially different from those of ordinary dwelling-houses, and
 - (b) are designed to make it suitable for occupation by a physically disabled person who requires accommodation of the kind provided by the dwelling-house.
- (3) The second condition is that if the new tenancy were granted there would no longer be such a person residing in the dwelling-house.

Ground 12

- (1) This ground is that both of the following conditions are met.
- (2) The first condition is that the landlord is a housing association or housing trust which lets 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 meet their need for housing.
- (3) The second condition is that, if the new tenancy were granted, there would no longer be such a person residing in the dwelling-house proposed to be let on the new tenancy.

Ground 13

- (1) This ground is that all of the following conditions are met.
- (2) The first condition is that the dwelling-house proposed to be let on the new tenancy 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.
- (3) The second condition is that a social service or special facility is provided in close proximity to the group of dwelling-houses to assist persons with those special needs.

(4) The third condition is that if the new tenancy were granted there would no longer be a person with those special needs residing in the dwelling-house.

Ground 14

(1) This ground is that all of the following conditions are met.

(2) The first condition is that—

(a) the dwelling-house proposed to be let on the new tenancy is the subject of a management agreement under which the manager is a housing association, and

(b) at least half the members of the association are tenants of dwelling-houses subject to the agreement.

(3) The second condition is that at least half the tenants of the dwelling-houses are members of the association.

(4) The third condition is that no relevant tenant to whom the new tenancy is proposed to be granted is, or is willing to become, a member of the association.

(5) References in this paragraph to a management agreement include a section 247 or 249 arrangement as defined by 250A(6) of the Housing and Regeneration Act 2008.