



April 2020

National Rental Affordability Scheme

Investor request to transfer an allocation to another approved participant

When to use this form

This is the approved form under section 29 of the National Rental Affordability Scheme Regulations 2020 (the Regulations). The legal or beneficial owner (investor) of an National Rental Affordability Scheme (NRAS) dwelling must use this form to request a transfer to a different approved participant on the basis that the current approved participant has committed, or allegedly committed, a breach of the Regulations.

Part 2 of this form sets out details of what constitutes a breach of the Regulations. In completing this form, details of the alleged breach must be provided. An investor does not need to state whether there has been an 'individual breach', 'serious breach' or 'disqualifying breach' but should set out supporting evidence where possible setting out the circumstances of the alleged breach.

IMPORTANT: Unless a request is being made on the basis of an 'insolvency event' or where a breach has already been determined by the Department of Social Services (the department) and a notice of that breach published on the department's website, an investor can only request a transfer if they have already given the approved participant for their dwelling written notice of the alleged breach and the approved participant has not taken appropriate action within 90 days. In order to satisfy this requirement, evidence of this notice must be provided when lodging this form. An example of a notice to an approved participant is provided at Appendix A to this form.

This form may be used to request the transfer of multiple allocations associated with multiple dwellings owned by the investor if the investor relies upon the same circumstances and the same evidence as the basis for all transfer requests. In this case, the information required by this form must be provided for all of the rental dwellings.

Under subsection 29(5) of the Regulations, an investor may withdraw a request made in this form by giving written notice to the Secretary of the Department of Social Services.

Who fills out this form

All persons that are legal or beneficial owners of the dwelling must sign this form. For example, if a couple own the dwelling, both investors must sign the form. Investors can use this form to appoint a representative to receive all communications from the department about this transfer request on their behalf.

If the investor is a company, the company may sign this form under section 127 of the *Corporations Act 2001* and must use this form to appoint a representative to receive communications from the department in relation to this request.

If an investor that is a company cannot sign the form under section 127 of the *Corporations Act 2001*, or the investor is another form of corporation to which section 127 of the *Corporations Act 2001* does not apply, the form must be signed on behalf of the investor by a director or another senior manager of the company with authority to bind the company. If this is the case, appropriate evidence of the director or senior manager's current authority to act must be provided along with this form.

Documents that must be lodged with this form

The following documents must be attached to this form when it is lodged:

- Proof of identity for each individual investor:
 - this must include a photo and signature, e.g. driver licence, state/territory issued proof of age card or passport;
- Proof of ownership of the rental property covered by the allocation to be transferred:
 - this must show the owner's name and the address of the rental dwelling on the same document, e.g. a copy of a government issued rates or water notice;
- Documentary evidence that the investor provided the approved participant with written notice of the alleged breach, and that 90 days have passed since the notice was given
 - this is not required if the request is made on the basis of an insolvency event;
- Any other supporting material that evidences the breach alleged by the investor:
 - this could be additional evidence of communications between the approved participant and the investor, e.g. copies of emails or tax offset certificates.

Consideration of request

Once the form with all required attachments has been lodged with the department, the Secretary will consider the request. Under the Regulations, in order to make a decision about a transfer request, the Secretary must first make a decision on whether a breach has occurred and must give the approved participant 14 days to make submissions about any proposed breach determination. The relevant investor(s) will also be notified and invited to make submissions at this time. The Secretary must then consider any submissions made before making a final breach determination.

Before the Secretary can approve the investor's transfer request, the approved participant may request a review of the breach determination by the Administrative Appeals Tribunal (AAT). The Secretary cannot make a transfer decision until after the 28-day appeal period has expired (if no review application has been filed) or if there has been a request for review then after the AAT has confirmed the Secretary's decision, whichever occurs sooner.

An investor should not assume that lodgement of this form will necessarily result in the requested transfer being approved by the Secretary.

Nomination of gaining approved participant

Prior to the Secretary making a decision to transfer an allocation, you may wish to contact another approved participant to find out if they would be willing to accept the NRAS allocation if the transfer is approved. This will also provide you with an opportunity to familiarise yourself with any specific terms and conditions that the gaining approved participant may require you to agree to before they accept a transferred allocation.

Alternatively, once the Secretary has made a final breach determination and agrees to transfer the allocation, the department is able to provide you with a list of potential approved participants that operate in the jurisdiction where the dwelling covered by the allocation is located.

Date of effect of transfer

If the Secretary decides to transfer an allocation as a result of an investor's transfer request, the date the Secretary approves the transfer will be the date of effect of the transfer. However, if requested the department may give a different date of effect of the transfer, for example the date of application or a later date following the date of approval. If you require the transfer to occur from the date of this application or a later date (for example the date a contract with the new approved participant commences) please provide your reason in this form.

Submission and attachments

Once completed, please submit your application and all supporting evidence identified in this form to nras@dss.gov.au.

Part 1 – Details of request

Investor details

Individual investors

Family name

Given names

Postal address

Telephone number

Email address

Family name

Given names

Postal address

Telephone number

Email address

Corporate investor

Name

ABN

Postal address

Rental property details

(Note: if the request to transfer relates to more than one rental property, include the details below for each rental property in a schedule, and attach the schedule to this form).

NRAS Dwelling ID

Address

Current approved participant

Property manager details
(e.g. real estate agent)

Appointment of representative

(Note: individual investors may optionally complete this section. Corporate investors must complete this section)

Family name of representative

Telephone number of representative

Given names of representative

Email address of representative

Postal address
of representative

Part 2 – Basis of Transfer

(Note: Proof that one or more of the following breaches have been committed may be grounds for a transfer. Investors must attach evidence and provide a description of the alleged breach.)

If you are making this application because the department has published a notice on its website advising that the approved participant has been the subject of a serious or disqualifying breach determination, please tick the box below and proceed to Part 3.

Tick the box(es) that best describes the alleged breach	Regulation reference	Description of the type of breach Note, the full text of the Regulations is available at https://www.legislation.gov.au/Details/F2020L00282
	Paragraph 24(1)(a)	The approved participant is the subject of an insolvency event. <i>Note: Provide evidence of insolvency if available (e.g. notice published on Australian Competition and Investment Commission website or other information that indicates the approved participant may be insolvent)</i>
	Paragraph 24(1)(b)	The approved participant breached the approved participants code of conduct (the code of conduct) as listed in Appendix B to this form. <i>Note: Please list which section of the code of conduct the approved participant has allegedly breached.</i>
	Paragraph 24(1)(c)	The approved participant has failed to comply with the conditions of allocation in relation to the dwelling (as listed in Appendix C to this form) and/or failed to comply with a part of the Regulations other than the code of conduct. <i>Note: Please list which condition of allocation or which section of the Regulations the approved participant has allegedly breached.</i>
	Paragraph 25(b)	The approved participant has committed a compliance breach that involves <u>one or more</u> of the following: <ul style="list-style-type: none"> (i) providing false or misleading information to the department in relation to the Scheme; (ii) failing to comply with the law of the Commonwealth or a State or Territory in relation to the dwelling or any other aspect of the Scheme; (iii) claiming a tax offset that the approved participant is not entitled to claim; or (iv) passing on a tax offset to a person who is not entitled to claim the tax offset.
	Sections 25 and 26	A serious or disqualifying breach determination has been made against the approved participant.

Provide details of the alleged breach here:

Has the investor provided notice to the approved participant of the alleged breach?

Yes If yes, include a copy of the investor’s notice to the approved participant when lodging this form with the department. *Go to next question.*

No *Proceed to Part 3*

*Please note: it is a requirement of lodging this transfer request form that an investor for the dwelling must notify the approved participant of the alleged breach and provide the approved participant with 90 days to address the alleged breach. An example notice to an approved participant is provided at **Appendix A** to this form. **This notice is not required if the basis of this request is an insolvency event.***

On what date did the investor provide the notice to the approved participant?

Has the approved participant responded to the investor's notice?

Yes If yes, include a copy of the approved participant's response to the investor's notice when lodging this form with the department. *Go to next question*

No *Proceed to Part 3*

On what date did the approved participant respond to the investor's notice?

Is the investor satisfied with the approved participant's response?

Yes The investor cannot request a transfer of their allocation if they are satisfied with the approved participant's response to their notice of alleged breach. *This request cannot continue.*

No Provide details below of the reason that the investor is not satisfied with the steps taken by the approved participant, then *proceed to Part 3*

Part 3 - Declaration and execution

Declaration

By signing this form, the investor requests that the Secretary transfer the NRAS allocation(s) covering the investor's rental dwelling(s) as identified in this form to another approved participant under section 29 of the National Rental Affordability Scheme Regulations 2020 and confirms the following:

- prior to completing this form they have contacted the approved participant who holds the allocation covering their dwelling to provide notice of the alleged breach and confirms that they are not satisfied that the approved participant has taken appropriate action within 90 days of the investor's notice;
- the information in this form is true and correct to the best of the investor's knowledge;
- if documents are required to be attached to this form, the documents are attached;
- if a representative is appointed in this form, the representative is authorised to represent the investor in dealings with the department in relation to this transfer request, bind the investor in relation to all matters associated with the transfer request and receive all correspondence from the department in relation to the transfer request; and
- the information included in this form, and other information held by the department relating to the investor, may be disclosed to the approved participant in relation to this transfer request.

Execution by individual investor(s)

Investor signature

Investor name

Date of execution

Investor signature

Investor name

Date of execution

Execution by corporate investor

Executed by the investor under section 127 of *Corporations Act 2001 (Cth)*.

Note: If the investor is a proprietary company, a sole director may sign this form.

Signature

Position

Date of execution

Signature

Position

Alternative execution for corporate investors

Signed for and on behalf of the investor

Signature

Name

Position

Date of execution

By signing this form, I certify I have authority to bind the investor.

Example notice alleging breach to approved participant

// DELETE BEFORE SENDING Please note that this example notice is provided for illustrative purposes only. The department recommends seeking independent legal advice if you are unsure about how to meet the requirements of notifying your approved participant of an alleged breach. //

Dear <approved participant name>

I am writing to you in connection with the approved National Rental Affordability Scheme (NRAS) rental dwelling located at <dwelling address>, for which I am the legal owner (investor), and <approved participant name> is the NRAS approved participant.

Please take this letter as formal notice that I believe <approved participant name> has committed a breach of the NRAS Regulations, by <insert details of alleged breach> *for example: by not providing me with a copy of the code of conduct within 28 days of me becoming an investor under the Scheme // or by breaching the code of conduct by not passing on to me the NRAS incentive for the previous NRAS year that the approved participant had a legal obligation to pass on // or by failing to pass on to me rent payments for the dwelling even though there is an arrangement in place for the rent payments to be passed on to me // or by not responding to my email within 30 days without a reasonable excuse (give details).*

I request that <approved participant name> take appropriate action to remedy this breach.

Please be advised that if I am not satisfied that <approved participant name> has taken appropriate action in relation to this breach within 90 days of the date of this notice, it will be open to me to request that the Secretary of the Department of Social Services transfers the allocation covering my NRAS rental dwelling to another approved participant.

Regards

<Investor name>

dd/mm/yyyy

Approved participants code of conduct

The approved participant for a rental dwelling:

- (a) must comply with legal obligations relating to investors in a timely manner; and
- (b) must comply with the Scheme, and with any other law of the Commonwealth or of a state or territory that relates to dealings with investors and tenants; and
- (c) must lodge an annual Statement of Compliance in relation to the dwelling; and
- (d) must respond to a communication from an investor within 30 days, unless the approved participant has a reasonable excuse; and
- (e) must have an internal or external dispute resolution mechanism for use by investors; and
- (f) must not enforce, seek to enforce, or threaten to enforce, an unfair arrangement; and
- (g) must not make a misrepresentation to an investor; and
- (h) must not engage in misleading or deceptive conduct in relation to an investor; and
- (i) must not threaten or coerce an investor to take an action the investor is not required to take under an arrangement; and
- (j) must not prevent an investor from entering into an arrangement with a suitably qualified and experienced person in relation to the dwelling; and
- (k) must not threaten to take action that would result in an investor not receiving incentive to which the investor is entitled under law; and
- (l) must not require an investor to enter into an arrangement with another person in relation to the dwelling, unless the arrangement relates to a property management service provider and the approved participant is able to ensure that the provider:
 - (i) complies with the arrangement between the provider and the investor; and
 - (ii) complies with legal obligations relating to the investor in a timely manner; and
 - (iii) complies with the laws of the Commonwealth and the States and Territories in relation to dealings with investors and tenants; and
 - (iv) does not enforce, seek to enforce, or threaten to enforce, an unfair arrangement with an investor; and
 - (v) does not make a misrepresentation to an investor; and
 - (vi) does not engage in misleading or deceptive conduct in relation to an investor; and
 - (vii) does not threaten or coerce an investor to take action the investor is not required to take under contract; and
- (m) if the approved participant requires the investor to enter into an arrangement as mentioned in paragraph (l)—must ensure that the property management service provider acts in accordance with subparagraphs (l)(i) to (vii).

Conditions of allocation for a rental dwelling

The following conditions apply to all NRAS allocations covering an approved rental dwelling:

- (a) the dwelling must be rented to one or more eligible tenants;
- (b) each charge of rent for the dwelling during the year must be at least 20 per cent less than market value rent for the dwelling;
- (c) the dwelling must not be vacant for a period of more than 26 weeks during the NRAS year (whether that vacancy period is continuous or not);
- (d) the approved participant has lodged a statement of compliance for the dwelling with the department that complies with the requirements of section 43 of the National Rental Affordability Scheme Regulations 2020 (the Regulations);
- (e) the approved participant has ensured that the dwelling has complied at all times with consumer laws and with landlord, tenancy, building, health and safety laws of the State or Territory and local government area where the dwelling is located;
- (f) the approved participant has submitted market rent valuations when required by the Regulations (or as determined by the Secretary);
- (g) the approved participant has provided contact details of any investor for the dwelling (if relevant); and
- (h) any other special conditions associated with the dwelling.