

What if my s106 needs to be changed?

Your s106 agreement can usually be updated. The process involves applying for a Deed of Modification

Applying for a s106 Deed of Modification

If you wish to proceed you need to email the Affordable Home ownership team affordablehomeownership@cornwall.gov.uk requesting a new agreement and confirming:

- Name and address of all owner(s)
- Full address of your property including postcode
- Name and contact details (including email address and phone/mobile number) of your solicitor
- Your own contact details

How much will it cost for a Deed of Modification?

You will need to meet the Council's legal costs in drawing up the document. This is currently £350 plus disbursements based on using the Council's template s106 agreement. Disbursements are the costs of obtaining title documents and registering with Land Charges and are normally a maximum of £24. Your own solicitor will also charge you a fee and in some cases your lender or any other party to the s106 agreement.

Other bitesize guides in this series:

- Providing your own affordable home, including Selfbuild
- Selling Your Affordable Home
- Renting-out your Affordable Home
- Affordable Housing - Guide for existing home owners
- Affordable Housing and How to apply

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This guide is intended to cover the main points that you need to consider regarding your s106 agreement. There is more detailed information available on the council's website at: www.cornwall.gov.uk/affordablehousing

Understanding Your s106 Agreement

Including
updating your s106 Agreement

A bitesize guide

What is a s106 Agreement?

They are also known as planning obligations, and are agreements made under Section 106 of the Town and Country Planning Act 1990. A s106 is a legally binding document which forms part of the planning permission for your home.

How does it affect me?

Your s106 agreement will usually specify who would qualify to buy, and at what price. So before you put your home on the market, it's important that you check the requirements in your s106 agreement

What do I need to look for?

Legal documents can be difficult to understand. The parts of the s106 that are most relevant to you involve **Local Connection**, explained later in this leaflet, **Occupancy**, meaning who is eligible to live in your home, and **Price** – how much you can sell your home for.

I have an ex-Council House

Rural properties bought under the Right To Buy contain similar occupancy conditions, but **no s106 agreement**. Instead there will be a restrictive covenant in the Deeds, so speak with your solicitor about this.

Information about Right To Buy is available on the Council's website at www.cornwall.gov.uk > **Housing** > **Council housing** > **Right to Buy**

Enquiries about selling your Right To Buy property should be made to the Council's Right To Buy Legal Officer:

becky.storf@cornwall.gov.uk

Where can I find my s106 agreement?

Your s106 agreement is usually kept with the Deeds of your home, alongside the documents provided when you bought your home. Check with the solicitor that you used, or with the Bank or Building Society who provided your mortgage. If you cannot find your s106 you can obtain a copy from the Council's Planning office. There is a fee for this. Contact 0300 1234 151 or email planning@cornwall.gov.uk

Local Connection

Most s106 agreements give priority to potential owners who have a Local Connection to a particular area. First priority is usually given to people who work or live in the same parish. After a set period of time, most agreements allow you to consider people from adjoining parishes, and after another period of time, people from other parts of Cornwall. Your s106 should specify those areas, the time limits, and how a person demonstrates that they have the correct local connection.

Price

Your s106 agreement will explain how ~~you~~ [calculate](#) the resale price [is calculated](#). In more up-to-date agreements, the price is usually specified as a percentage of open market value. In older agreements the price may be based on a person's income, and if this applies to you, your s106 may need updating so that it contains a percentage.

What is a Mortgagee in Possession clause?

This is a technical part of a s106 agreement which protects the bank or building society that provides a mortgage for an affordable home. If the worst happens, and the bank or building society has to repossess your home, they will want to be able to get back the mortgage that you owe them. To do this, they will want to be able to sell your home without complying with the same restrictions that apply to you. A 'Mortgagee in Possession' clause allows them to do that. All modern s106 agreements have this included, but some older s106 agreements do not, and so it is possible that a future lender will ask to have an older s106 changed to include this and/or other terms which make the agreement more lender-friendly.