

Shared Ownership Leases

Additional Instructions to Conveyancers

These instructions are in addition to, and should be read in conjunction with, the Society's instructions to Conveyancers enclosed.

From the Society's Mortgage Offer you will see that the applicant intends to acquire a share in the property under shared ownership arrangements. In a shared ownership scheme, the property is sold by way of a long lease with the borrower acquiring a share in the property and paying rent on the remaining share. Further shares can be bought by the borrower until, in most cases, the property is owned outright. The process of acquiring further shares is known as 'staircasing'. The Society assumes that its Conveyancers are familiar with the Shared Ownership process, and that only those with suitable experience will undertake this legal work on behalf of the Society.

Many recent Shared Ownership Leases follow the latest model leases issued by the Homes and Communities Agency. You should obtain copies of these and familiarise yourselves with the contents.

The attached form of approval and undertaking must be obtained from the Landlord before completion. This must be sent to us with, or prior to your sending us, your certificate of title.

Our requirements as to shared ownership leases are set out below. You must ensure that all of them are satisfied in this case. If they are not, or you have any questions, please contact us immediately on 01623 676300.

1. The Landlord must be a Housing Association, a Local Authority or other Registered Social Landlord.
2. The initial share to be purchased by the borrower must be at least 25% based on the market value of the whole property and there must be the right to buy further shares in the property up to 100% of its total value. If the lease does not enable the borrower to acquire the full 100%, you must refer to us for further instructions.
3. There should be no time limits in the lease with regards to staircasing, nor must it be compulsory for the borrower to purchase additional shares.
4. The minimum rent payable under the Lease (in respect of a house) should always be greater than such rent as would render the Lease within Part 1 of the Leasehold Reform Act 1967 or within Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993.

We will accept rent review provisions which are in accordance with the Shared Ownership : Joint Guidance for England booklet (November 2010 issued by the Home and Communities Agency, the C.M.L. and the N.H.F. – available for inspection on the Home and Communities Agency website. This booklet gives detailed guidance on shared ownerships generally, including stamp duty land tax.

Where the Landlord is a Local Authority the rent review clause may make reference to rent increases for comparable housing in the local area and this will also be acceptable.

5. The borrower must not hold his/her/their share in the property in trust with the landlord.
6. The lease must be granted to the borrower(s) alone.
7. The lease must have at least 99 years to run at the start of the mortgage and at least 70 years left to run at the end.
8. The lease must provide for a mortgage in possession to either assign the lease or to staircase up to a full 100% of the value of the property.
9. There must be no obligation in the lease for a mortgagee to release its security upon payment of anything less than the full amount of the outstanding mortgage.
10. If the lease makes provision for the sale of a share back to the landlord, it must also provide that the mortgagee's consent is obtained prior to such sale.
11. If the property is to be valued for the borrower to acquire an additional share or to purchase the superior interest, this must be open market value disregarding improvements to the property or deterioration attributable to the borrower for the purposes of valuation.
12. If the lease provides that, upon disposal of property, the borrower must assign his share to a person nominated by the landlord, then the lease must also provide that any such person must be nominated and contracts exchanged within a reasonable time. We consider a total period not exceeding 6 months as reasonable. Failing this, the borrower must be able to dispose of the property on the open market.
13. If the lease contains pre-emption rights in favour of the landlord then reasonable time limits should also be included and the landlord should pay the full market value of the shares it is acquiring.
14. The lease should provide for a valuation by an independent expert in the event of any disagreement between the landlord and the borrower/lender.
15. Insurance proceeds must be apportioned between the landlord and the borrower if repair, rebuilding or reinstatement of the property is not possible. The borrower's share of the proceeds must be paid to the mortgagee.
16. If the lease gives the landlord the right to take a surrender or an assignment of the lease:
 - a) the borrower must be permitted to assign free of the pre-emption rights if the landlord fails to take a surrender/assignment within three months of the date the borrower gave notice to the landlord of intention to sell;
 - b) if it is an existing lease, the pre-emption procedure must be complied with;
 - c) the consideration for the surrender/assignment must be payable on completion; and
 - d) the only deductions which may be made from the consideration for the surrender/assignment are sums due under the lease. The lease must not permit the landlord to deduct other sums due to it from the borrower.

17. The lease must not require the borrower to make a payment to the landlord on assignment or surrender other than arrears of rent/service charge and valuation and legal costs, and in the case of an assignment of the lease to a third party nominated by the landlord, a reasonable administration fee not exceeding 1.5% of the consideration for the assignment. Such a fee must NOT be payable by a mortgagee going into possession or exercising its power of sale. Any other payments (i.e. a contribution to a sinking fund) must always be referred for approval by the Society.
18. The lease must not limit its assignment to persons who satisfy certain criteria (i.e. persons over 55 years). We will need to consider any such provisions very carefully and specific referral to us will always be necessary, unless we instruct you otherwise in writing.
19. Forfeiture Clause
This must contain a proviso that the landlord will give us reasonable prior notice if it intends to forfeit the Lease. If the Lease does not contain such an express clause and a Deed of Variation cannot be obtained, then the Landlord should be required to provide written confirmation that it will give us such notice and this written confirmation should be placed with the title deeds on completion.

In any event, notice of our charge (and any transfer of the property to the Borrower, if appropriate) should be served on the Landlord on completion of the advance.
20. Possession Proceedings under the Housing Act 1988
When dealing with a new shared ownership Lease, you must ensure that the Lease contains a clause which provides that the Landlord will give us at least 28 days written notice of any intention to commence possession proceedings under the Housing Act 1988.
21. The lease must contain a mortgagee protection clause as set out below.

Mortgagee Protection Clause

The lease must contain a mortgagee protection clause which will protect us against losses we may sustain should we have to take the property into possession, exercise our right to complete the final staircasing and sell the property. These clauses must follow the guidance in the Joint Guidance Booklet. In particular, they must provide lender protection for:-

- the principal sum(s) (excluding capitalised interest) due under the mortgage;
- any amounts paid by the mortgage on account of arrears of rent or service charges;
- fees and costs incurred in enforcing the mortgage, capped at 3% of the market value of the leasehold interest at the time of enforcement i.e. 3% of the 100% staircased interest;
- a maximum of 18 months arrears of interest;

(If a non-standard form has been used, (i.e. such provisions as reverse staircasing) or the clause fails to give at least the level of protection to a lender as shown above, then you must refer the matter to us immediately for approval. You must give an explanation of the problem or issue involved, and your recommendation to the Society, acting as its panel Conveyancer).