



Homes &  
Communities  
Agency

# SHARED OWNERSHIP

## Joint guidance for England

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## Chapter 1: Introduction

1. The Homes and Communities Agency (the Agency) is responsible for grant-funded investment given to providers who in turn are responsible for the provision of grant-funded shared ownership in England outside of greater London<sup>1</sup>. This Shared Ownership Guidance has been updated to reflect changes to the administration of shared ownership and provides information for:
  - Mortgage lenders in England
  - Registered and other housing Providers offering grant-funded shared ownership: this includes housing associations and local authorities which provide shared ownership housing
  - Unregistered bodies offering grant-funded shared ownership
  - Conveyancers in England
2. This guidance – in conjunction with the Capital Funding Guide (which can be accessed through the Agency’s website at <https://www.gov.uk/guidance/capital-funding-guide>) – sets out the requirements and procedures that providers of grant-funded Help to Buy: Shared Ownership must conform to. This guidance is geared towards promoting an efficient working relationship between lenders and providers that recognises the competing pressures and regulatory requirements they both face, and will also be of interest to conveyancers who may be instructed to carry out some of the requirements set out below as part of the conveyancing process in first tranche and subsequent tranche sales of a shared ownership property. We see this guidance as an important contribution to enabling partners to work together to enhance the efficiency of the delivery of shared ownership and widen opportunities and choice for consumers to access home-ownership.
3. Please note that this guidance relates specifically to the Agency’s grant-funded Help to Buy: Shared Ownership product, but includes shared ownership, New Build HomeBuy and Social HomeBuy<sup>2</sup> (when sold on a shared ownership basis) stretching back over the last 30 years. It does not provide information on shared ownership not funded by Agency grant, although in many cases these will operate in similar ways. It also does not cover equity loan products such as the Help to Buy equity loan schemes, First Time Buyer’s Initiative, Open Market HomeBuy, HomeBuy Direct or FirstBuy. All purchasers of grant-funded Help to Buy grant-funded products, including

<sup>1</sup> From 1 April 2012 all housing and regeneration matters have transferred to the Greater London Authority (GLA). Readers of this guidance that have schemes that are being or have been developed with the benefit of grant in greater London should refer all queries concerning the operation of grant-funded shared ownership to the GLA.

<sup>2</sup> HomeBuy was a generic marketing brand that covered all the government funded low cost home ownership housing products during the 2000s. This has subsequently been replaced by Help to Buy.

Help to Buy: Shared Ownership, are subject to robust eligibility and affordability checks carried out by a network of Help to Buy Agents<sup>3</sup> (appointed by the Agency) – and in the case of Social HomeBuy, by their landlord – to ensure that they are eligible and can afford and sustain home ownership.

### **What is shared ownership?**

4. Shared ownership was introduced in the form that we know it today in the 1980s via the Housing Act 1980, which incorporated the right to staircase, to help people who were in housing need and could not afford to buy a home outright. In order to be eligible for Help to Buy: Shared Ownership, the purchaser(s) must have a combined household income of less than £80,000 per year outside of greater London and be unable to purchase without assistance.<sup>4</sup> Priority is only given to serving members of the British Armed Forces, those honourably discharged and bereaved partners both of whom are entitled to assistance up to two years from the date of discharge or bereavement, where there is a shortage of supply. Applicants must not own an existing home, but existing shared owners are able to apply for further assistance. There are details of providers who are offering schemes where shared ownership properties can be found on Help to Buy Agents' websites.

### **The Standard Model**

5. From January 2016, government has rebranded grant-funded shared ownership assistance as Help to Buy: Shared Ownership. Through Help to Buy: Shared Ownership, the purchaser buys a share of the property title on a leasehold basis and pays rent on the un-owned share. Further shares can be bought as and when the purchaser is willing and able to afford to – this process is known as 'staircasing'. The rent payable on the un-owned share will be reduced according to the total percentage of the shares, reducing to nil if 100% ownership is achieved (although service charges may continue to be payable). Although the property is not owned outright initially, the shared owner takes on the usual responsibilities of a full owner-occupier, such as sole responsibility for repairs and maintenance of the property. Shared ownership homes may be new or renovated flats or houses. In most instances the shared owner will be a leaseholder with a minimum term of a 99 year lease for a house and 125 years for a flat. Other periods can be used, although to qualify for Grant funding the term of the lease must be at least 25 years longer than the term of the provider's long term loan, and be acceptable for mortgage purposes.

<sup>3</sup> A list of the Help to Buy Agents can be sourced on the HCA website at <https://www.helptobuy.gov.uk/equity-loan/find-helptobuy-agent/>

<sup>4</sup> The eligibility criteria are different in London where the maximum household income is £90,000. For details please refer to the GLA's website here <https://www.london.gov.uk/what-we-do/housing-and-land/increasing-housing-supply/affordable-housing-capital-funding-guide>

6. The purchaser will buy an initial share of the property of between 25% and 75%, the size of shared is determined by the purchaser's ability to afford and sustain the purchase, and this is usually funded by taking out a mortgage, all providers must offer flexibility, based on the individual circumstances of the purchaser, within this range. Details of how affordability should be established can be found in the Capital Funding Guide, Help to Buy: Shared Ownership chapter, Affordability section 6 <https://www.gov.uk/guidance/capital-funding-guide>.
7. As well as the ability to 'staircase' mentioned above, in exceptional circumstances (as a result of mortgage difficulties, and where other alternatives to repossession have been explored), and at the discretion of the provider, shared owners may staircase down, thereby reducing the share they own. For further information please see the Downward Staircasing section (page 28). Except in certain rural schemes, schemes in Designated Protected Areas (as designated by the Secretary of State), and Older People's Shared Ownership (see below), which limit the maximum share that can be owned to 80% and 75% respectively, all Agency funded schemes must allow for the leaseholder to staircase to 100% and own the property outright.

### **Variants on the Standard Model**

8. Some rural shared ownership schemes might restrict the level of equity that can be purchased to 80% for developments on rural exception sites and schemes delivering in population settlements of 3,000 or less. Newer leases may, as an alternative, provide for the repurchase of the property by the provider once the share purchased exceeds 80% and the shared owner wishes to sell. Restrictions on both staircasing and the sale of shared ownership properties are aimed at retaining affordable housing in rural areas in perpetuity.
9. On some developments planning obligations as a result of section 106 agreements may place additional restrictions on purchasers both on initial purchase and subsequent sales. Some of the restrictions may limit the opportunity for accessing Agency funding and/or the willingness of lenders to make mortgages available. It is important that advice is sought on the mortgageability of properties intended for sale on a shared ownership basis at an early stage and before planning documentation and lease terms are finalised. [The Council of Mortgage Lenders has prepared a briefing on section 106 restrictions](#).
10. To complement this, the Agency, in conjunction with the Chartered Institute of Housing, has also produced a good practice guide [Promoting Mortgage Access for Affordable Housing](#).

11. In addition to the restrictions and mortgageability considerations outlined above, the Housing and Regeneration Act 2008 has given the Secretary of State for Communities the power to designate certain areas as “protected.” These are areas where shared ownership housing is hard to replace, for example in designated rural areas. Further, any grant-funded shared ownership housing must, by law, be retained in perpetuity. In order to achieve the retention of housing in these areas, the Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009 provide:

- a) For the lease to allow a tenant to acquire a maximum of 80% ownership of the property or
- b) That when a leaseholder is allowed to staircase to 100% ownership, an obligation is to be inserted into the lease that the provider must buy back the property when the shared owner decides to sell

Further information on Protected Areas can be found in the Protected Areas section on pages 23 to 25.

12. Older Persons Shared Ownership restricts the maximum share that can be purchased either outright or through staircasing to 75% of the available equity in the property. Other conditions attached to these schemes include, for example, shared owners must be 55 years or over; there must be no rent payable on the unsold share where the maximum share of 75% has been acquired, and the properties must be specifically marketed for older people.

## Chapter 2: Shared ownership leases

### Model leases

13. Providers developing grant-funded shared ownership homes have to ensure that the leases are acceptable to lenders so the purchaser is able to obtain a mortgage to buy an initial share. To assist providers, the Agency, in conjunction with the Department for Communities and Local Government, the Council of Mortgage Lenders, the National Housing Federation, solicitors and key lenders, have produced the standard model shared ownership leases. Please note that these leases are for use by various providers, including, commercial providers, charities and Community Land Trusts. There have been a number of versions of the lease over the years, but the current versions were published in April 2015 and are available to view in the Capital Funding Guide (<https://www.gov.uk/guidance/capital-funding-guide> see section 11 Leases. Precedent forms of the standard model lease dating back to 2006 are also published on the same page).
14. The Agency has also produced Key Information for Shared Owners (Houses) and Key Information for Shared Owners (Flats) documents, which provide plain English descriptions of the information contained in the model house and flat leases. These are also available to view in the Capital Funding Guide <https://www.gov.uk/guidance/capital-funding-guide> (see section 11 Leases).
15. Please note that providers developing grant-funded Help to Buy: Shared Ownership do not have to use the model leases in their entirety. However, where a provider chooses not to use them, they must ensure that the lease they do use contains, as a minimum, the fundamental clauses specified by the Agency, in unaltered form. Adoption of the fundamental clauses is a requirement of the Agency's grant agreements and the Capital Funding Guide. Providers are also required to provide the relevant Key Information for Shared Owners document to all purchasers.
16. Providers should note that lenders have expressed a strong preference for providers to use the standard model lease for all shared ownership properties.

### Fundamental clauses

17. The following clauses are mandatory (a condition of grant funding), and so **must** be included in all grant-funded shared ownership leases issued from 6 April 2010 (leases issued earlier may contain different provisions):

#### **a) Alienation provisions**

- It is essential that all shared ownership leases contain provisions ensuring that the shared owner cannot sell part or all of the property except through the specified sales procedure. In addition, these provisions prevent the shared owner from sub-letting or parting with possession of part of the property so as to protect public funds and ensure that applicants are not entering shared ownership for commercial gain (clauses 3.18 model shared ownership flat lease and clause 3.19 model shared ownership house lease). Providers may allow sub-letting in exceptional circumstances, as described in [section 5.3.21 of the Help to Buy: Shared Ownership chapter](#) of the Capital Funding Guide. In exceptional circumstances where subletting is allowed, the leaseholder must also obtain the agreement of their mortgage lender. Serving members of the British Armed Forces serving overseas or at a base further than 50 miles or 90 minutes travelling time automatically have the right to sub-let their shared ownership properties.

#### **b) Mortgagee Protection Clause**

- The Mortgagee Protection Clause is designed to cover the lender's loss (including from the Provider's share, where appropriate) should the lender have to take possession of the property on default. Under the most recent changes to the shared ownership lease, the amount that mortgagees can claim is now defined as the 'Mortgagee Protection Claim'. This is capped as the aggregate of the following four sums:
  - 1) All loans advanced by the Mortgagee to the leaseholder which are secured by a first-ranking mortgage over the property, provided the amount and other terms of each loan is approved in advance by the landlord
  - 2) Up to 18 months of interest on the fixed amount in (1) calculated at the standard variable rate in place at the time of default
  - 3) Amounts advanced by the mortgagee in protecting its security by discharging any arrears of rent and service charge under the lease
  - 4) Fees and costs incurred in enforcing the Mortgagee's security capped at an amount equal to 3% of the market value of the leasehold interest at the time of enforcement, so this will amount to 3% of the 100% staircased interest
- Within this total cap the Mortgagee will therefore be able to claim any sum due to it from the Leaseholder as borrower under the loan agreement. This will include capital, capitalised arrears, interest, administration fees, early redemption fees, other fees, costs

associated with repossession, capitalised rent and service charge arrears and any other amount that the Mortgagee is legally entitled to claim under the mortgage contract.

- The Mortgagee Protection Clause found at (clause 8 model Shared Ownership flat lease and clause 6 in the model Shared Ownership house lease) contains certain conditions which must be met before a lender can use a Mortgagee Protection Clause, these are covered in paragraphs 23 to 29 below. The Mortgagee Protection Clause also places liability on the defaulting leaseholder for any amounts paid out under it by the provider.
- N.B. – some older shared ownership leases do not have a Mortgagee Protection Clause. Lenders may request its inclusion as a condition of lending. Please see Annex A and B for details on Variation of Shared Ownership Leases.
- Registered providers with grant-funded properties that have older forms of the precedent lease which do not include the Agency’s Mortgagee Protection Clause are encouraged to agree with leaseholders, when requested to do so, to vary the lease and incorporate the fundamental clause. This will have the effect of ensuring that when a shared ownership property is resold that necessary safeguard for future lending is in place. For information regarding varying the Agency’s model leases please refer to paragraphs 32 to 38 below. Additional information can be found on in the leases section of the Help to Buy: Shared Ownership chapter in the Capital Funding Guide <https://www.gov.uk/guidance/capital-funding-guide>.
- N.B. It is not standard practice for the Agency to agree to variations to the fundamental clauses and each case will be treated on its individual merits, however, the addition of the Mortgagee Protection Clause to model leases where it is otherwise absent, there will be a presumption on the part of the Agency to agree to this variation.

### **c) Rent review**

- All shared ownership leases offered by providers must include rent review provisions. The following changes have been made to the Rent Review provisions:
  - With a view to limiting the scope for dispute, the rent review process is now undertaken by reference to a formula
  - Rent review is now ‘upward only’ (that is, a negative RPI will not result in a minus rent calculation)

- In determining rent levels, therefore, the initial rent for Shared Ownership developments must not exceed 3% of the capital value (and a maximum of 2.75% is encouraged) of the unsold equity and annual rent increases are limited to whichever is greater of the following:
  - The rent payable immediately before the rent review date or
  - The rent payable immediately prior to the rent review increased in line with RPI plus 0.5%<sup>5</sup>

#### **d) Staircasing provisions**

- The shared owner is able to 'staircase' or purchase further shares of equity in the property until they own it outright. In compliance with the staircasing schedule, this must be done in minimum 10% tranches/shares. Further shares are to be bought at the market value at the time of purchase. Providers must use the staircasing provisions included in the model leases. Providers can also vary the size of the equity shares to be purchased, although the initial share must not be less than 25% of the equity in the dwelling, the lease must provide that the leaseholder can staircase to 100%, and the final staircase to full ownership must be at least 10%. For houses in which the Provider owns the freehold, the leases imply that there should be a three-month delay from completion of final staircasing to the transfer of the freehold. In practice, most lenders insist that this happens simultaneously with completion of the transaction to protect their security, and no difficulties have arisen with this approach (sixth schedule model flat lease and fifth schedule part I model house lease). For leasehold flats, various clauses fall away when the leaseholder reaches 100% and the lease comes to resemble a standard long lease. The leases for schemes for older persons, in certain rural areas, and/or in Protected Areas may set an upper limit on the amount of equity that a leaseholder can acquire.

#### **e) Right of First Refusal (pre-emption right)**

- Until 30 April 2015, the Agency's model lease included a post final staircasing right of pre-emption as well as a pre-final staircasing right of pre-emption. This was a standard clause inserted into all conveyances so that, from the granting of the lease until 21 years after the date of staircasing to full ownership, the purchaser or any successor in title must make an offer of first refusal to the former landlord on resale. However, changes introduced on 30 April 2015 removed the requirement to include the post final staircasing right of pre-emption. The pre-final staircasing right of pre-emption remains as a fundamental clause.

<sup>5</sup> The rent review formula remains linked to RPI despite a change in April 2015 to link rent review for General Needs and Affordable Rent to CPI + 1%.

The originating landlord can choose to exercise the option to buy back, at the prevailing market value, or nominate another provider to do so, to secure the property for further affordable housing use. The originating landlord will have eight weeks to make the decision as to whether the option will be exercised. Providers are expected to have a published policy as to the circumstances and locations in which they would anticipate exercising this option, so that the vendor can have a speedy indication of the provider's intentions. If the provider does decide to exercise this option, they will be required to complete the transaction within a reasonable timescale, the duration of which should be specified in the lease.

### **Designated Protected Areas**

18. Where property in a Designated Protected Area is being grant-funded the Agency will require the shared ownership lease to contain its Protected Area fundamental clause. This provides that the maximum share that can be acquired through staircasing is 80% or, where the lease allows the tenant to purchase more than 80% of the property, the lease will also oblige the provider to repurchase the property when the shared owner chooses to sell.
19. From 1 April 2008 the former key worker clawback provision was no longer required to be included in new shared ownership leases for key workers. Where the clawback clause remains in place for existing leases, the Agency will not pursue clawback in the event that a beneficiary leaves their place of employment. The Agency provides a [pro forma variation](#) for use if it becomes necessary to remove the clawback clause from an existing lease, a prospective purchaser objects to the inclusion of the clawback provision in the leasehold agreement.
20. Where a shared owner buys a flat (and in some instances, a house), a service charge will be levied where appropriate. Prior to 22 October 2010, the Service Charge provision was a fundamental clause, but it is not for any leases issued after this date. Providers are therefore free to determine the scope of their service charge provisions. Providers must ensure that the service charge conforms to the requirements of the various Landlord and Tenant Acts as well as the Social Housing Regulator's standards. This change does not impact on lease agreements entered into prior to 22 October 2010. Providers should note that whilst no longer a fundamental clause, the inclusion of service charge provisions within lease agreements remains a condition of Agency grant funding where appropriate.

## Stamp Duty Land Tax

21. Purchasers of Help to Buy: Shared Ownership leases are responsible for the payment of Stamp Duty Land Tax (SDLT) on the lease. While not a fundamental clause, shared ownership leases should contain, for discussion with the purchaser, an appropriate SDLT statement which gives an option to the purchaser of paying SDLT in accordance with the following:

- Help to Buy: Shared Ownership purchasers can elect to pay SDLT at the outset on the market value of the property. In this case there will be no further SDLT charges at any stage
- If no election is made, SDLT will be charged on the initial purchase in the normal way – that is, on the premium (where this is above the SDLT threshold) and the net present value of the rent payable under the lease. (In practice it is very unlikely that any tax will be due on the rent.) There is then a special SDLT relief which means staircasing payments are not charged to SDLT until an 80% share of the property is reached. Any further staircasing payments which take the purchaser above this level (including the acquisition of the freehold) will attract SDLT

Further guidance on SDLT and shared ownership can be found on Her Majesty's Revenue and Customs website: <http://www.hmrc.gov.uk/sdlit/calculate/shared-ownership.htm>

22. When using the Agency's model leases, Providers must ensure that the SDLT provisions reflect current legislation.

### **Chapter 3: Obtaining the provider's consent to the mortgage**

23. Before a shared ownership sale can be completed, the provider must:

- Be shown a copy of the mortgage offer/ terms being taken out by the purchaser
- Consent to these terms in writing

#### **Why is consent necessary?**

24. The provider's consent is required because, under the Mortgagee Protection Clause, the provider will underwrite some of the lender's loss if the shared owner subsequently defaults on the mortgage repayments. By reviewing the mortgage terms (and this is often achieved by looking at the mortgage offer documentation), the provider is able to assess their overall risk. The provider can also check that the purchaser is borrowing only enough to buy the share and is not taking out any additional debt for which the provider could be partially liable under the provisions in the Mortgagee Protection Clause. In addition, this procedure can act as an anti-fraud measure, allowing the provider to double-check that the borrower and purchaser are the same person. Lenders should retain a copy of the provider's consent for later reference.

#### **Who obtains the consent?**

25. In practice, it is very rare that providers are unable to agree to the mortgage terms being offered and consent is withheld. The conveyancer acting for both the purchaser and their lender will usually obtain the provider's consent to the mortgage. This requirement on the conveyancer to obtain consent is included in the Council of Mortgage Lenders 'Lenders' Handbook', which sets out exactly what checks a conveyancer must undertake when dealing with the purchase of a property with mortgage finance. Conveyancers should check with the lender whether they do have separate conveyancing instructions for use when lending on a shared ownership property.

#### **Deemed consent**

26. Under the terms of the revised leases implemented from 30 April 2015, consent shall be deemed to be given in the event that the provider receives any amounts advanced by the lender which are applied in protecting, preserving or enforcing its security over the lease (including any amounts advanced by the lender and applied in discharging any arrears of rent and/or service charge under the lease).

## **What happens if consent is not obtained?**

27. Should the conveyancer fail to obtain the provider's consent to the mortgage, the provider is not obliged to comply with the terms of the Mortgagee Protection Clause. This has significant implications for mortgage lenders as their protection in the event of default is effectively lost. Where conveyancers have not obtained the provider's written approval to the mortgage, the lender may be able to sue the conveyancer for negligence.
28. Both providers and mortgage lenders want to work consistently and reach a workable solution in cases where consent has not been obtained, and in some cases, this has resulted in a joint approach:
- Lenders should check whether their shared ownership loans do have the necessary consents and, if not, seek consent retrospectively from the appropriate provider
  - Provided that consent would have been granted if applied for at the proper time, providers are expected to provide retrospective consent to the mortgage and honour the Mortgagee Protection Clause in all cases if the shared owner is complying with the terms of both the lease and their mortgage, for example, they are not in arrears with their repayments
29. This approach should identify cases where consent has not been secured, so lenders and providers can deal promptly with outstanding cases in an efficient way.

## **Additional Borrowing**

30. The Agency's model lease does not prevent a leaseholder from increasing their borrowing under their mortgage secured against the share owned by the leaseholder.
31. Further advances will only be covered by the Mortgagee Protection Clause, where they are approved by the provider. This approval will only be given in specific circumstances. The provider will only agree to further advances where they are made to enable the leaseholder to:
- Staircase
  - Buy out another leaseholder
  - Comply with their covenants under the lease

## **Chapter 4: Variation of shared ownership leases on grant-funded schemes**

32. The Agency has the power to attach conditions to the payment of grant. One such condition attached to shared ownership is that the leases must include the fundamental clauses described in previous sections. The Agency insists that these fundamental clauses must remain unaltered throughout the term of the lease, but in exceptional cases there may be good and practical reasons for agreeing to vary them.

### **Leases granted on or after 1 October 2008 and older leases no longer subject to a restriction on title**

33. It is a condition of grant that the fundamental clauses should remain. If a provider changes those fundamental clauses without the agreement of the Agency, it could face sanctions for not complying with conditions of grant, which could include repayment of the grant.

34. The 'Procedures for varying shared ownership leases' document sets out a process for obtaining Agency agreement to vary a fundamental clause. The Agency will consider requests, which should contain full details as set out in the above Procedures document above. Requests to vary the shared ownership lease should be sent to [enquiries@hca.gsi.gov.uk](mailto:enquiries@hca.gsi.gov.uk). Agency's consent is required for changes to fundamental clauses, or any other clause that may impact on them (for example, when changes are made to definitions contained in the Definitions and Interpretation section of the model lease which impact on the interpretation of the fundamental clauses). However, the Agency's consent is not required if a change(s) to the lease does not impact on the fundamental clauses.

### **Leases granted before 1 October 2008 which are still subject to a restriction on title**

35. Before 1 October 2008, the Housing Corporation, a predecessor body of the Homes and Communities Agency, through the lease and grant conditions, required a restriction to be entered at the Land Registry to the effect that no deed varying the terms of the lease could be registered without the Corporation's consent. Most of these restrictions have now been removed, but where they remain and it becomes necessary to vary a lease with a restriction remaining, the Agency will consider giving consent as before.

## When is the Agency's consent required on a lease still subject to a restriction?

36. This list is not exhaustive but, for example, consent will be required to:

- Change service charge calculations or apportionments
- Revise rent review clauses
- Provide a new right; for example, access over land
- Describe a new definition of the property or estate
- Transfer common parts or other property to the leaseholder
- Reflect new ownership arrangements; for example, if the freehold is sold to a third party and the provider becomes the leaseholder
- Update the lease to reflect new legislation or regulatory requirements
- Extend the term of the lease
- Correct any mistakes in the lease or to include absent fundamental clauses (N.B. in this case the Agency's starting presumption will be to agree)

37. The Agency's approval is **not needed** for purchasers to remortgage, sell, staircase or to do any of the things that the lease allows them to do. Consent is not required for individual instances of downward staircasing. Providers should comply with the Agency's requirements set out in the Capital Funding Guide. Please note that variations to leases may also require the consent of the mortgage lender.

38. Two information sheets on the variation of leases are attached to this guidance at Annexes A and B. The information sheet at Annex A is for purchasers and should be included in sale information packs. The information in Annex B is for providers and should be shared with legal advisers. These sheets can both be reproduced by providers in their own house style.

## **Chapter 5: Removing old restrictions**

39. As mentioned above, the Land Registry has removed as many old restrictions as it can trace, but a few remain. This section is for existing leases still subject to a restriction.

### **Upon staircasing to 100% ownership**

40. The lease contains a provision that the restriction ceases to have effect on final staircasing. When a flat owner has acquired full ownership, they should apply for the cancellation of the restriction on [Land Registry Form RX3](#). In panel 7 of the form, the Land Registry will expect to see reference to an enclosure of either (a) a certificate that the final staircasing has been completed or (b) confirmation that the tenant has purchased 100% of the equity. The Agency need not be involved in this process. If the restriction is not cancelled at the appropriate time, there can be delay and expense for subsequent purchasers.

### **Right of first refusal (pre-emption clause)**

41. For properties where a shared ownership lease was entered into prior to 30 April 2015 (or using the model form of lease applicable prior to 30 April 2015) a deed of variation is required to allow changes to be made to the lease in relation to both pre-final staircasing and post-final staircasing. Further details including the pro-forma can be found at 5.3.28 of the Shared Ownership chapter in the Capital Funding Guide <https://www.gov.uk/guidance/capital-funding-guide>.

### **In other circumstances**

42. If it is necessary to remove a restriction in other circumstances, Land Registry form RX3 may be used as above and the reference can be to the procedures for varying shared ownership leases document.

## **Chapter 6: Extending shared ownership leases**

43. Legal advice received by the Agency suggests that shared owners have no statutory right to a lease extension, as per the Leasehold Reform, Urban Development Act 1993 section 5 (2) and section 7 (1). The Agency understands that many shared ownership leases (originally granted for 99 years) have now elapsed to the point where a lease extension would improve the prospects for re-sale.
44. Providers should grant extensions to shared ownership leases, wherever possible and, where necessary, should take legal advice to ensure that any obligations under leasehold law are met. Where an extension is granted, this can often be done by means of a variation to the lease, the Agency's consent will be required only if a restriction remains on title (see para 34 above).
45. For providers that are private registered providers, consent from the Agency in its capacity as the Social Housing Regulator may also be a consideration. However, if the lease provides for an extension, or if the extension is by way of a new lease that is itself an assured tenancy, the extension will not need the consent of the Regulator under section 172 Housing and Regeneration Act 2008 (because assured tenancies are excepted by section 173 Housing and Regeneration Act 2008 from the need for consent). For those extensions that do not qualify as assured tenancies, the Regulator has given a general consent under section 172 Housing and Regeneration Act 2008. Refer to [category 13 of the General Consent 2015](#).

### **Lease extensions after staircasing to full ownership**

46. The Regulator has advised private registered providers about extending shared ownership leases on grant-funded dwellings.
- a. If the staircasing to 100% took place before 1 April 2010 the extension will require consent under section 172 Housing and Regeneration Act 2008, regardless of whether the extension is granted before or after 1 April 2010. However, the Regulator has given general consent to such extensions – category 14 of the General Consent.
  - b. If the staircasing takes place on or after 1 April 2010, the extension of the lease will require consent if the leaseholder requests a new, longer lease than is provided for under the terms of the shared ownership lease. It would not be needed if the lease provides for extension and is an assured tenancy. Again, category 14 of the Regulator's general consent covers it.

- c. The extension would not need the consent of Agency as funding body under the restriction on variation at the Land Registry, provided the restriction was cancelled as described above upon staircasing to 100%.

## **Chapter 7: Key worker sales**

47. In the past there were a number of shared ownership and other grant-funded schemes specifically targeting housing key workers in order to address recruitment and retention issues in high value areas. These were funded through the Key Worker Living Initiative.
48. Up until 31 March 2008 all key public sector workers accessing any of the 'HomeBuy<sup>6</sup>' products solely by virtue of their employment were subject to clawback (see paragraph 19). From 1 April 2008 clawback no longer applies to shared ownership and the standard model lease should be used.
49. Key workers who purchased prior to 1 April 2008, who have the clawback clause in their lease, will not now be subject to clawback should they leave their qualifying employment.

<sup>6</sup> HomeBuy was the brand name for government funded low cost home ownership assistance and has subsequently been replaced by Help to Buy.

## Chapter 8: Rural repurchase schemes

50. Shared ownership schemes bid for and built as part of the Agency's rural housing provision, in qualifying rural areas (population settlements of 3,000 or less), or on a rural exception site (usually coincidentally areas with a population settlement of under 3,000), may be subject to repurchase arrangements. The repurchase arrangements allow a provider to buy a property back from an existing leaseholder to enable a resale to a local household in housing need. The aim of the rural repurchase scheme is to retain low-cost housing in rural communities.
51. The repurchase scheme operates on the basis that when a shared owner wishes to sell the property, the provider is able to repurchase it using grant (when all other sources of funding available to the Registered Provider for buyback has been exhausted) and re-sell on a shared ownership basis. The price paid for the property will be the full market value where the freehold or full lease is being acquired or the proportion of the current shared owner's equity stake in the property. Providers must insert an option to repurchase in the shared ownership lease at the time the lease is first issued and whenever a new lease is issued. Providers must include the option to repurchase clause in leases that provide for restricted staircasing. The right to repurchase does not affect the shared owner's right to staircase and does not apply to Older People's Shared Ownership. The equity level at which resale takes place will depend on the means of the new shared owner.
52. To qualify for funding from the Agency for repurchase, the following criteria must be satisfied:
- The option to repurchase has been included in the lease
  - The provider has attempted to market the property and no local purchasers are available who can afford either the current level of equity or the original equity; but a local purchaser has been identified who can purchase at a lower level of equity
  - The provider has looked towards their existing recycled grant receipts or private finance to fund the repurchase and is unable to fund the re-purchase through these routes. They have invited another appropriate provider to use its recycled grant or private finance to purchase the property but they are also unable to fund the purchase
  - The sum of surpluses made on any previous staircasing of the property must be less than the grant calculated as due for the repurchase

## Chapter 9: Designated Protected Areas

53. Section 13 of the Housing and Regeneration Act 2008 enables the Secretary of State for Communities to make designation orders. In September 2009 two orders were enacted introducing the concept of Protected Areas. These Designated Protected Areas Regulations are designed to mitigate the risk of early enfranchisement<sup>7</sup>; and ensure the retention and sustainability of shared ownership housing stock in areas where affordable home ownership stock would be difficult to replace.
54. For further information on areas currently designated as Protected Areas see the [Housing \(Right to Enfranchise\) \(Designated Protected Areas\) \(England\) Order 2009 \(Statutory Instrument 2009/2098\)](#). Typically – although not exclusively – these Protected Areas are in rural areas characterised by a small scale housing market, limited land availability, justifiable planning controls in small settlements, and/or house price inflation created by demand from non-local purchasers.
55. The Order applies to England only. Designated Protected Areas that are subject to the Order are the areas that are already exempt from the Right to Acquire scheme.
56. The Order lists all those areas designated as ‘Protected Areas’ and there are no plans at this stage to expand upon those areas already accorded Designated Protected Area status. The Capital Funding Guide provides further information on how to find out whether a particular development (or proposed development) is in a Designated Protected Area (see section 1.4.19 Designated Protected Areas of the Help to Buy: Shared Ownership chapter <https://www.gov.uk/guidance/capital-funding-guide/11-shared-ownership>).

### How is sustainability/retention ensured?

57. The second Order, The Housing (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009 (Statutory Instrument 2009/2097) requires landlords to include in their shared ownership lease, for houses within a ‘Protected Area’ provisions to either:
- a) Restrict a tenant to acquire no more than 80% ownership of the property
- or

<sup>7</sup>Early enfranchisement means the tenant acquiring the freehold under statutory rights before acquiring 100% equity. The leasehold Reform Act 1967 makes provision for shared ownership leases being exempt from early enfranchisement if certain conditions are met. One such condition require that leaseholders must be able to ‘staircase’ up to 100%, thereby rendering any restriction open to leaving a landlord at risk of early enfranchisement.

b) Where the lease holder is allowed to acquire more than 80% ownership of the property, and wishes to assign, the provider must buy back the property or nominate another provider to do so.

58. The Regulations render such leases, with a specified 'staircasing' restriction, as exempt from the risk of early enfranchisement.

59. Although the regulations as written only apply to houses, the Agency has, as a matter of policy, extended the same requirements to grant-funded flats in Designated Protected Areas. N.B. Flats do not run the same risk of early enfranchisement because the lease is not considered to qualify as a long lease until the leaseholder owns 100%.

60. For full details of the Agency's Protected Areas policy please refer to section 9 of the Help to Buy: Shared Ownership Chapter of the Capital Funding Guide <https://www.gov.uk/guidance/capital-funding-guide>.

### **Applying for the removal of Designated Protected Area status**

61. The Agency has agreed that in specific circumstances the local authority may apply for removal of Designated Protected Area status (for example, where Urban extension areas are planned within Designated Protected Areas and, as a result, it is not necessary to retain affordable housing in perpetuity). All requests for the removal of Designated Protected Area status must be sent to the relevant Agency operating area. Further information on the removal of Designated Protected Area status may be obtained from the Agency's website at <https://www.gov.uk/government/publications/designated-protected-areas>.

### **Designated Protected Areas Repurchase**

62. Shared ownership schemes bid for and funded under the Agency's Designated Protected Area policy in areas designated by the Secretary of State as Protected Areas may be subject to repurchase arrangements. The repurchase arrangements enable a provider to meet its obligations under the terms of a Designated Protected Area lease to buy the property back from the existing leaseholder; thus enabling a resale on Designated Protected Area shared ownership terms to another eligible household. The aim of the programme is to retain low-cost shared ownership housing in Designated Protected Areas.

63. The Protected Area repurchase scheme operates on the basis that when a shared owner (whose lease enables them to purchase more than 80% of the shares) has purchased more than 80% of

the shares and wishes to sell the property, the provider is able to apply to the Agency for grant to assist with the repurchase, providing all other funding sources have been exhausted. There is a requirement for the Agency's Designated Protected Area Repurchase policy requirements to be met and that the property would be resold on shared ownership terms to another eligible household. The price paid for the property will be the full market value where the freehold or full lease is being acquired or the proportion of the current shared owner's equity stake in the property where this is over 80% but less than 100%. The equity level at which the resale takes place will depend on the means of the new shared owner.

64. To qualify for repurchase funding from the Agency, the following criteria must be satisfied:

- The property is subject to a Designated Protected Area lease which allowed the leaseholder to purchase in excess of 80% of the shares
- The lease contained the additional requirements as set out in 9.3.2 of the Agency's Capital Funding Guide, Help to Buy: Shared Ownership chapter
- The Registered Provider will sell the property to another eligible Shared Ownership applicant on the Agency's Protected Area policy terms
- The Registered Provider will have exhausted all other funding routes, including the use of its recycled grant, its own resources, or a private loan

65. For full details of the Agency's Protected Areas Repurchase policy please refer to section 9 of the Help to Buy: Shared Ownership chapter of the Capital Funding Guide

<https://www.gov.uk/guidance/capital-funding-guide>.

## Chapter 10: Social HomeBuy

66. The Social HomeBuy scheme was introduced in April 2006 and allows Private Registered Providers and local authorities to dispose of grant-funded rented housing at a discount, to their secure and assured tenants who occupy properties eligible for the scheme, where landlords choose to participate. Homes can be bought on a shared ownership basis with a minimum share of 25% and then in minimum 10% tranches up to 100%. The home can also be bought outright at the outset. Social HomeBuy is not available in areas which are exempt from the Right to Acquire.
67. Tenants are encouraged to buy as large an initial share as they can afford to sustainably purchase from the outset. Providers are required to carry out affordability checks to help ensure that tenants buy the size of share they can afford and sustain. The maximum discount will vary, depending on the location of the property as it reflects the originating local authority's Right to Acquire discount. The amount of discount payable will be in proportion to the initial share purchased, and additional discounts (i.e. a proportion of the total Right to Acquire discount for the property) are also available upon staircasing.
68. All leases/ conveyancing documentation must contain a repayment of discount clause, as the discount is repayable if the property is sold or the share is assigned within five years from the date of initial purchase or staircasing. The amount due to be repaid is calculated as a percentage of the resale value equivalent to the percentage of the discount when compared to the purchase price.
69. No repayment of discount is required if the property is sold after year five. Please note that separate five year periods apply to each discount received, and providers are therefore encouraged to keep sufficiently robust records detailing sales and the size of shares purchased, to allow for complex repayment calculations. If the purchaser comes to sell their home, the landlord will have the chance to buy the property back at market value or nominate another purchaser.

## Chapter 11: Rent Arrears

70. All providers should have their own policies in place to deal with rent arrears. For Registered Providers, the policy should be written down in detail, formally approved by the provider's Board and published as per the Tenancy Standard requirements. In dealing with rent arrears providers and lenders should have regard to the joint National Housing Federation/Council of Mortgage Lenders guidance – [Shared ownership: guidance for handling arrears and possession of shared ownership property](#).
71. Consideration should be given to ensuring that rent arrears are dealt with as quickly as possible and with a view to ensuring that, wherever possible, the leaseholder is assisted to avoid losing the property to repossession.
72. Communication between providers and lenders is essential to ensure the successful resolution of rent arrears. To this end, the Agency recommends that:
- If rent is in arrears by more than two months the provider should warn the leaseholder that it intends to inform the leaseholder's mortgagee of the position. If there is no subsequent reduction in the level of arrears the leaseholder's mortgagee should be informed
  - The provider should also try to come to an informal arrangement whereby the leaseholder's mortgagee will notify the provider when a leaseholder's mortgage repayments are in arrears by more than two months
  - The provider and the leaseholder's mortgagee agree the course of action to be taken in each case. The longer the problem is left the greater it becomes, normally to the detriment of all parties
73. The Mortgagee Protection Clause in the revised model lease should discourage providers from automatically recovering rent arrears from lenders. Providers should only seek to recover rent arrears from the lender as a last resort and prior to taking action should inform the leaseholder of the consequences of doing so (e.g. compounded interest being charged on the arrears by the lender).
74. Under the terms of the Mortgagee Protection Clause providers and lenders are authorised by the leaseholder to share information with each other in relation to arrears of rent, service charges or mortgage payments (under clause 6.6 of the house lease and 8.6 of the flat lease).

## Chapter 12: Downward staircasing

75. Downward staircasing on the following terms is a priority use of the Recycled Capital Grant Fund<sup>8</sup>.

It is a 'safety-net' to enable a shared owner to remain in their home, despite changes in their financial circumstances, and is an option of last resort where the leaseholder has got into or is about to get into mortgage arrears and is at risk of losing their home. "Downward" staircasing is not a right; it is offered solely at the discretion of the registered provider<sup>9</sup>. Downward staircasing should be to a level that the owner can afford and sustain, and may mean in some instances that they relinquish all ownership and become a tenant.

76. Please note that as there is no reference to downward staircasing in the Agency's model shared ownership lease, providers are able to provide for individual instances of downward staircasing without the need for any variation to be issued on the terms of the existing lease.

77. Downward staircasing is defined as:

- The repurchase of equity by a providers from a shared owner in difficulty, but not necessarily in arrears, with his/her mortgage repayments
- (In the case of property specifically built as Older Person's shared ownership) The repurchase of equity to pay for essential repairs or maintenance if the leaseholder cannot afford to pay for the work

78. Equity repurchase should be at a level at which the shared owner can afford the lower payments. This can include repurchasing sufficient equity to clear the mortgage, pay off the arrears of interest and principal on the mortgage, and reduce payments to nil. There is also an option of full repurchase under which the leaseholder becomes an assured tenant of the providers. However, once the property has staircased to 100% or been taken into possession by the lender, downward staircasing ceases to be an option.

### How will downward staircasing be funded?

79. Public funding of downward staircasing should be from the Recycled Capital Grant Fund (although new grant may be made available only in exceptional circumstances, and where providers can demonstrate that they have no existing recycled grant or access to other sources of funding.

<sup>8</sup> The recycled capital grant fund is a fund where recovered capital grant can be recycled by Registered Providers (only) for certain prescribed permitted and priority uses.

<sup>9</sup> Only Registered providers are able to operate a recycled capital grant fund. Therefore downward staircasing will not be available to leaseholders of unregistered bodies, unless their landlords choose to operate downward staircasing funded through their own resources.

Payment of any new grant would be made solely at the Agency's discretion). It should be noted that where schemes are funded from other sources apart from the Agency, different criteria might be applied to the way in which downward staircasing can operate.

### **Who is eligible to apply for downward staircasing?**

80. The key principles are:

- **Shared owners do not have a right or entitlement to downward staircasing**  
Any offer of downward staircasing remains at the discretion of the leaseholder's landlord. A provider may set its own procedures provided that they also comply with the requirements in the Agency's Capital Funding Guide for downward staircasing. If a Registered Provider does offer downward staircasing, then it must publish its policy to all shared owners in order to operate in an open and accountable way
- **The shared owner must currently own less than 100% of the property**
- **The provider must be satisfied that the shared owner has explored and exhausted all other options.** The shared owner must produce evidence to prove their difficulty with the mortgage repayments, although they need not be in arrears. They must be able to show that other short- and long-term options have been exhausted such as loan rescheduling or selling the property. The assessment would also include the ability of the shared owner to meet future repair and maintenance liabilities. This should be based on advice from an independent debt counselling agency and should include consideration of Housing Benefit eligibility

### **Involvement of lenders**

81. For any form of equity repurchase, the provider is required to ensure that any offer is acceptable to the shared owner's lender and the provider's own lender.

### **Basis of valuation**

82. The same general rules apply to downward staircasing as to upward staircasing, i.e. that the maximum amount payable will be the appropriate percentage of the current open market value determined by an independent, qualified valuer. The shared owner will pay for the valuation.

### **Proceeds of the transaction**

83. It will most likely be a condition of the shared owner's mortgage that the sale proceeds are paid direct to the lender who has the first charge over the property. The provider's conveyancer will advise on this, but it would avoid any risk of misuse of the money. The shared owner must pay for the valuation and his/her own legal fees. In practice, this may be a deduction from the payment to the shared owner or the lender.

### **Subsequent upward or downward staircasing**

84. Should the opportunity arise whereby the upward staircasing of the property occurs, the normal staircasing procedures apply. Recycled grant used to support this transaction will be treated as recycled grant again. Further downward staircasing transactions may be allowed should the shared owner's financial situation deteriorate further, even to the extent of a complete repurchase of the property and the property let as an assured tenancy on the same terms as those that the provider would normally offer to any new rental tenant. Where a shared owner staircases down to a lower level of equity, the terms of the lease will continue, including the right to staircase up again. The lease ceases in the case of complete repurchase.

### **Rents after a downward staircasing transaction**

85. Whenever the shared owner staircases up or down, the rent should be adjusted pro rata for the changed percentage rented, and comply with the rent review clauses in the lease. In situations where the purchaser staircases down to zero ownership, the leaseholder becomes an assured tenant, and the rent becomes a below market rent, rather than one calculated in accordance with the lease agreement.

### **Complete repurchase – tenancy considerations**

86. Where a shared owner becomes an outright tenant, the shared ownership lease must be formally terminated and a tenancy agreement entered into on the same terms as for any other new tenancy agreement for rented housing let by the provider. It would be at the discretion of the provider whether to offer a shared ownership lease to either the rescued tenant or a subsequent tenant in the future.

87. The former shared owner will not have the Right to Acquire that property if it was originally funded as a shared ownership property. This is because the provider would not have been notified by the

funding authority that the property could be treated as publicly funded for the purposes of Right to Acquire as a social letting. As an assured tenant, he or she may be eligible (if their circumstances improve) for any discount or incentive scheme if offered by the provider, such as Social HomeBuy with any eligibility period starting from the date of the new tenancy. The assured tenancy may qualify towards Right to Acquire eligibility if the tenant was to move to a Right to Acquire eligible property at a later date.

88. The change from shared ownership to a tenancy shifts the insurance, maintenance and repairing obligations from the ex-leaseholder to the provider. Therefore, it is recommended that the provider carry out a survey of the property before completion of the downward staircasing repurchase in order to assess any immediate and future liabilities.

## **Chapter 13: Shared ownership arrears and possessions**

89. This section provides information relevant to situations when a lender or provider is forced to instigate repossession proceedings. The information contained here is general, and **lenders and providers should seek independent legal advice before taking action against a defaulting leaseholder**. All parties (mortgagees, lenders and providers) are expected to work together to resolve default issues swiftly.

### **Possession by a lender**

90. If a shared-owner defaults on his/her mortgage, the retail mortgage lender may apply to the courts for a 'judgement' or 'order' seeking possession of the property.

91. The process for taking possession of a shared ownership property is the same as for any other residential property other than the fact that the rights and responsibilities of the lender in possession will be subject to the terms of the shared ownership lease.

### **Possession of the assured tenancy under the Housing Act 1988**

92. Mortgage lenders can also use undertakings and notices to ensure that adequate security exists when they lend on shared ownership properties. An example of this would be where a provider is considering taking possession proceedings using a mandatory ground for possession, such as where the leaseholder is in rent arrears (in this situation the court would have no power to adjourn or suspend the action to allow the arrears to be repaid). Paragraph's 93–98 below illustrate how the use of undertakings and notices can provide assurance to lenders in this situation. Please note that possession is a last resort, and one which is to be taken only when all alternative debt management actions have been exhausted.

### **Standard form of undertaking to provide notice of proceedings**

93. To ensure that lenders have a reasonable opportunity of remedying a breach of the lease (which could result in a provider taking legal action under the provisions in the 1988 Act), lenders will require providers to issue a written undertaking to give reasonable notice to the lender before legal proceedings are commenced.

94. Within the form of undertaking agreed by lenders, the notice period is intended to provide the lender with sufficient time to resolve the problem, so avoiding the need for the provider to take

legal action that could result in the loss of the mortgage security. The model form of undertaking is included in the Annex C to this guidance.

### **Notice to the lender of intention to take action**

95. There must also be a separate notice to the lender from the provider informing the lender about the possible possession proceedings under the Housing Act 1988, and the grounds on which the action will be based. This requirement will **not** be met by serving a copy of the Ground 8 notice on the lender.
96. All new shared ownership leases issued by providers must grant the leaseholder's lender at least 28 days' written notice of the landlord's intention to commence possession proceedings under the Housing Act 1988.
97. Providers should provide a signed undertaking in the agreed format on every grant and assignment of a shared ownership lease. In addition, providers are encouraged to adopt the standard undertaking and to work closely with lenders on this issue to maintain the favourable operating environment that has existed in the shared ownership sector. The undertaking is aimed simply at giving the lender time to remedy the breach. It does not prevent a provider bringing proceedings under Schedule 2 if the breach cannot be resolved within the period agreed by the lender and the provider. The potential for the provider to take legal action that removes the lender's security is a key risk and one which is taken into account by many lenders when considering whether to lend on the shared ownership product in the first instance.
98. The leaseholder and his/her mortgagee have a right to apply to the Court for relief against forfeiture (section 146 of the Law of Property Act 1925). If an application for relief is made it is most unlikely that the Court will grant the forfeiture order. It is more likely to make an order endorsing a settlement on agreed terms. It is therefore in the interests of both the association and the leaseholder's mortgagee to agree an appropriate course of action before any legal proceedings to forfeit are instituted by the provider.

### **Voluntary Sale**

99. The leaseholder may wish to sell voluntarily before arrears have built up to the extent that the leaseholder's mortgagee takes possession or the association applies for forfeiture of the lease. This is most likely to occur where the leaseholder has had a change in financial circumstances and realises that he/she will not be able to afford to keep the property on.

## **Voluntary Surrender**

100. A defaulting leaseholder may wish to voluntarily surrender the lease to their provider. If the leaseholder has mortgaged the lease it is not possible for surrender to take place with the consent of the mortgagee. As it is unlikely that this consent will be given the provider should liaise directly with the mortgagee and jointly agree the course of action to be taken.

101. If the leaseholder has not mortgaged the lease it can be surrendered to the provider. Normally, a deed will be drawn up whereby the leaseholder formally surrenders the lease to the provider. This may be for an agreed sum or for no consideration. If the leaseholder abandons the property without having completed such a deed the provider should obtain legal advice as to whether any further legal action is required.

## **Post-possession**

102. Having obtained vacant possession the lender will be free to dispose of the lease. It has three options:

- Sell the existing lease
- Staircase to an intermediate level and sell the lease or
- Staircase fully and sell at the full value of the property (in the case of houses this option may allow for the mortgagee to obtain the freehold)

In practice the third option is most likely to be utilised by the lender as it is only in this scenario that they can make a claim under the Mortgagee Protection Clause (see Mortgagee Protection Clause paragraph 17 b)).

## Chapter 14: Home Ownership for People with Long Term Disabilities

103. Home Ownership for People with Long Term Disabilities (HOLD) is a variant route to Help to Buy: Shared Ownership. In limited instances, where an individual's housing needs are not met through the Agency's standard Help to Buy: Shared Ownership, this option where available enables eligible applicants to select a home on the open market, which is then purchased by a provider and the lease is then sold to the applicant on Help to Buy: Shared Ownership terms. Applicants need to be able to sustain the cost of home ownership. This will require applicants to either have a lump sum sufficient to cover the initial purchase without the need for a mortgage, or an on-going source of income sufficient to secure mortgage finance. For further details of HOLD, please see the Capital Funding Guide, Help to Buy: Shared Ownership chapter, section 1.4 <https://www.gov.uk/guidance/capital-funding-guide>.
104. Please note that HOLD is not offered by all providers and participation is voluntary, but is at the discretion of specialist providers that have the resources/experience to assist potential HOLD purchases into affordable and sustainable home ownership. Prospective applicants should contact their Help to Buy Agent, who will be able to advise if any providers are offering HOLD in the area in which they want to live.

## Chapter 15: How the guidance will be updated

105. We hope that this guidance is helpful. Any comments should be sent to John Marr at the Council of Mortgage Lenders ([John.Marr@cml.org.uk](mailto:John.Marr@cml.org.uk)), Shahi Islam at the Homes and Communities Agency ([shahi.islam@hca.gsi.gov.uk](mailto:shahi.islam@hca.gsi.gov.uk)) or Adam Morton at the National Housing Federation ([Adam.Morton@housing.org.uk](mailto:Adam.Morton@housing.org.uk)). To ensure that this guidance is kept up-to-date, the Council of Mortgage Lenders and the National Housing Federation will review the content on a regular basis in consultation with the Agency and update when necessary.

## **Annex A - Varying a Shared Ownership Lease: Information for new Shared Owners**

1. This leaflet is about your shared ownership lease. You should keep it with the information and paperwork relating to your home as it could save you time and money if you ever need to make changes to your lease.
2. The Homes and Communities Agency is the government organisation that provides most of the money for shared ownership housing and it has to make sure that leases remain in the form agreed for shared ownership.
3. Your lease lets you to do a number of things, including buying more shares in your home or selling your share to somebody else, if you want to move, and tells you how to do it. It allows you to:
  - Staircase, that is to purchase more shares in the property
  - Sell your share of the property to someone else
  - Transfer ownership, for example from a joint to single name
  - Remortgage
  - Exercise any of those rights which the lease gives you
4. It is possible that your landlord may wish to vary the lease. The terms of leases can only be varied by agreement between you and your landlord or through an order made by a Leasehold Valuation Tribunal, or sometimes a county court. There are specific procedures that need to be followed in these instances and you will need to get legal advice.
5. If the change or correction to your lease involves one of the clauses that the Agency considers to be fundamental to shared ownership, your landlord will also need to obtain the Agency's agreement. The following list does not cover every possibility but your landlord would need the Agency's agreement to change:
  - The basis of service charge calculations or apportionments
  - Rent review clauses
  - The clause that protects your mortgage lender's interest in the property
  - Clauses affecting your right to staircase
  - Clauses setting out the procedure for selling
  - The clause that prevents sub-letting the property
  - Any other changes that have a knock on effect on the above

6. As a shared owner, your lease gives you a number of rights and responsibilities, and you should always seek appropriate advice if you have queries about your lease. If your landlord is registered with the Agency in its capacity as Regulator, it will be subject to certain standards of performance. The Regulator's standards may be downloaded from its web site:  
<https://www.gov.uk/government/collections/regulatory-framework-requirements>.
7. If you are buying a house, you usually become the freeholder when you staircase to 100%. Then the lease ceases to apply. If you are buying a flat, you continue to be a leaseholder after staircasing to 100%, but the terms of your lease usually change. The change is that the clauses to do with shared ownership drop out of the lease and it becomes like an ordinary private residential lease.
8. Should you have a dispute with your landlord, they will have a complaints procedure to help resolve the situation. If there are still problems even when you have exhausted your landlord's complaints procedure, you can complain to the Independent Housing Ombudsman. Your landlord can tell you how to do this. But if your dispute is over certain matters connected with your lease, for example the level of service charges or your liability to pay them, then there are other routes of complaint and you should seek appropriate legal advice.

**The Homes and Communities Agency, October 2016**

## **Annex B - Agreement to Vary Shared Ownership Leases**

### **Landlords' Information**

1. This leaflet advises housing association staff and their legal advisers about obtaining the Agency's agreement to vary a fundamental clause in a shared ownership lease, on a property that had grant funding.
  
2. Shared ownership leases used by providers are generally based on model leases issued by the Agency. Since 1989, however, providers have had the option of developing their own form of shared ownership leases. If they choose their own form of lease, it is nevertheless a condition of grant funding that the lease must contain certain fundamental clauses. They are described in the Agency's *Capital Funding Guide* found at: <https://www.gov.uk/guidance/capital-funding-guide> and deal with:
  - Alienation provisions
  - Mortgagee protection
  - Staircasing provisions
  - Rent review
  - Pre-emption - Right to repurchase prior to 100% staircasing
  
3. The clauses are designated as fundamental because they define Help to Buy: Shared Ownership. It is the Agency's policy, and a condition of grant, that these clauses should remain in the leases to preserve the shared ownership purpose for which grant was paid.

### **Varying fundamental clauses**

4. Exceptionally, providers may find it necessary to vary a fundamental clause. There is a process for obtaining the Agency's agreement to this. Until 2008, the Housing Corporation required the parties to apply to the Land Registry for a restriction to be placed on the leasehold title. It reads '(Except under an order of the Registrar) no deed varying the terms of the registered lease is to be registered without the consent of the Housing Corporation'. So the Land Registry would not register any variation of the lease unless it was accompanied by a letter of consent from the Housing Corporation. As shared ownership leases grew in number, the Corporation found this blanket control of all variations to be cumbersome. It had to consider and consent to minor and uncontentious variations which it would have been content for the parties to deal with themselves.

Also, the presence of the Corporation's name in a restriction on the Register involved it in much unnecessary correspondence about remortgages, transfers and debts.

5. The Homes and Communities Agency's Procedures for Varying Shared Ownership Leases document contains the latest procedures in respect varying leases. A Registered Provider wishing to vary one of the fundamental clauses of a lease should now first obtain the agreement from the Agency. Proposals to vary the shared ownership fundamental clauses should be submitted to the Agency for approval via [enquiries@hca.gsi.gov.uk](mailto:enquiries@hca.gsi.gov.uk). Note that Agency agreement is required for variations of **fundamental** clauses only. The nature of this agreement is that the Agency, if content with the proposal, would be agreeing to a breach, without penalty, of the Affordable Homes 2015-18 Grant Agreement and the Capital Funding Guide requirement that shared ownership leases should contain the fundamental clauses. For schemes funded under programmes prior to 2015, Funding Conditions also apply. Non-fundamental clauses may be varied without reference to the Agency but taking account of any requirements of other parties, such as lenders.

#### **Older leases with restrictions remaining on title**

6. The Housing Corporation introduced new model leases which omit the requirement to place a restriction on title. So there will be no new restrictions. The Agency and Land Registry have removed as many of the existing restrictions as they could find, but such is the accumulated volume of shared ownership leases in various forms, the process may not have identified and withdrawn them all.
7. Where restrictions remain on title, either because they have not yet been removed or have not been identified for withdrawal, the Agency will still need to give consent for all variations and will continue to do so by letter. Some common misinterpretations of this restriction prevent sales and other transactions from proceeding as quickly as they might. The following paragraphs clarify matters so landlords can provide a good service to the parties involved.
8. The old restriction requires the Agency's consent to variations that would make a difference to the terms of the lease. Providers and their solicitors generally understand this, but problems arise when other parties give the restriction a wider meaning than was intended. Thus the Agency receives many requests for consent for transactions that the lease permits, or that would not actually vary any of the terms of the lease. Examples are:
  - Assignments and sales

- Staircasing up
- Staircasing down under the Agency's flexible tenure scheme
- Transfer from joint to sole ownership, and vice versa
- Remortgaging
- Granting second charges

**No consent is required for the transactions above.** Seeking consent for them involves the parties in unnecessary correspondence and expense. It holds up completions while parties await a response from the Agency that is not required.

9. The following are examples of changes that **do require consent under the old restriction**:

- Insert a mortgagee protection clause where one did not previously exist
- Change the basis of service charge calculations or apportionments
- Revise rent review clauses
- Provide a new right, for example access rights over land
- Describe a new definition of the property or estate
- Transfer common parts or other property to the leaseholder
- Reflect new ownership arrangements, for example if the freehold is sold to a third party and the association itself becomes a leaseholder
- Update the lease to reflect new legislation or regulatory requirements
- Extend the term of the lease
- Rectify mistakes in the lease, such as incorrect cross references

In these cases, consent may be obtained from the relevant operating area teams.

10. The Regulator's standards expect Registered Providers to provide efficient and good quality services to tenants, which would include ensuring that sales, staircasing or assignments are not unduly delayed, so landlords should ensure that purchasers' transactions are as straightforward as possible.

11. If legal advisers are unclear as to whether consent is required, they should contact the landlord in the first instance. It may not be possible to forestall every unnecessary request for consent in this way but, to minimise the costs to purchasers in terms of time and money, landlords should make every effort to ensure that lease terms are understood and that comprehensive information is available for the purchaser's legal advisers.

12. The Agency occasionally receives requests to remove the restriction. Most leases contain a provision that, when the leaseholder staircases to full ownership, the clause requiring a restriction falls away. If the property is a flat, the restriction remains on the register until action is taken to cancel it. The former shared owner or their successors in title should ask the Land Registry to cancel the restriction. Land Registry advises that form RX3, which can be downloaded from [www.landregistry.gov.uk](http://www.landregistry.gov.uk), is the correct form for cancelling a restriction that is no longer required. In panel 7 of form RX3, the Land Registry will expect to see reference to an enclosure of either (a) a certificate that the final staircasing has been completed or (b) confirmation that the tenant has purchased 100% of the equity. It is not necessary for the Agency to initiate or approve form RX3 to cancel a restriction. If the shared ownership property is a house, the landlord will normally transfer the freehold and the lease, along with its restriction, will end.
13. If you have any questions about consent to vary terms of the lease, please contact the Agency's enquiries team on [enquiries@hca.gsi.gov.uk](mailto:enquiries@hca.gsi.gov.uk).

**The Homes and Communities Agency, October 2016**

## Annex C - Model form of undertaking

- Leaseholder
- Borrower
- Landlord
- Property
- Lease
- Lender
- Mortgage account number

In the consideration of the Lender granting the Borrower a mortgage on the property, the Landlord undertakes not to commence any proceedings for obtaining possession of the Property under any of the grounds in Schedule 2 of the Housing Act 1988 without:

- a) giving the lender not less than 28 days' notice in writing of their intention to commence proceedings; and
- b) if within such a period of 28 days (or within such other period specified in the notice period, if longer) the Lender indicates in writing to the Landlord that it wishes to remedy such breach, or is going to take such action as may be necessary to resolve the problem complained of by the Landlord, giving the Lender such time as may be reasonable (in view of the nature and extent of the breach/problem) to take such action.

Signed..... Dated.....

Address for subsequent service of any notice

.....

## **Annex D - References**

### **Chapter 2: Shared ownership leases**

- Capital Funding Guide <https://www.gov.uk/guidance/capital-funding-guide/11-shared-ownership>

### **Chapter 3: Obtaining the provider's consent to the mortgage**

- [The Council of Mortgage Lenders' Handbook for England & Wales](#)

### **Chapter 4: Variation of shared ownership leases on grant-funded schemes**

- **Procedures for varying shared ownership leases** – this document can be accessed through the model leases page of the Capital Funding Guide at <https://www.gov.uk/guidance/capital-funding-guide/11-shared-ownership>
- **Lease extensions after staircasing to full ownership** (The Regulator's publication "Disposing of Land", and the Regulator's General Consent 2010 under section 172 of the Housing and Regeneration Act 2008)

### **Chapter 7: Key worker sales**

- Capital Funding Guide <https://www.gov.uk/guidance/capital-funding-guide>

### **Chapter 8: Rural repurchase schemes**

- Capital Funding Guide <https://www.gov.uk/guidance/capital-funding-guide>

### **Chapter 11: Social HomeBuy**

- Capital Funding Guide <https://www.gov.uk/guidance/capital-funding-guide/13-social-homebuy>

### **Chapter 13: Downward staircasing**

- Capital Funding Guide <https://www.gov.uk/guidance/capital-funding-guide/11-shared-ownership>

### **Chapter 14: Shared ownership arrears and possessions**

- Joint National Housing Federation/Council of Mortgage Lenders guidance – [Shared ownership: guidance for handling arrears and possession of shared ownership property](#).

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The Homes and Communities Agency is committed to providing accessible information where possible and we will consider providing information in alternative formats such as large print, audio and Braille upon request.