Shared ownership: Joint guidance for England

Housing Corporation, Council of Mortgage Lenders and National Housing Federation

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Introduction

1. This guidance provides information for:

- mortgage lenders in England;
- registered social landlords in England (referred to in the guidance as housing associations (HAs)); and
- conveyancers in England

on a range of shared ownership issues that have been the subject of both discussion and consultation in recent years, and which are currently set out in a variety of different documents. The aim of this guidance is to consolidate all the information in one document, and to promote a more efficient working relationship between lenders and HAs that recognises the competing pressures and regulatory requirements they both face. The guidance begins to implement the recommendations of the Government's Low Cost Home Ownership Task Force to help shared ownership become more straightforward. The information 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 and subsequent sales of a shared ownership property. The Housing Corporation (HC) welcomes this guidance as an important contribution to meeting the Government's aspiration that partners involved in the delivery of shared ownership should work together to enhance the efficiency of this product and widen opportunities for home-ownership. As will be evident from the text that follows, this guidance does not cover equity loan schemes, ie, homebuy.
Content of the joint guidance

2. The guidance includes:

- an overview of the current shared ownership sector (paragraphs 3 to 7);
- the sample shared ownership leases and what clauses **must** be included in every lease (paragraphs 8 to 12);
- the mortgagee protection clause (the MPC) and the protection it provides lenders against loss on default (paragraph 12);
- how to deal with stamp duty land tax (SDLT) (paragraphs 13-15);
- the need to obtain the HA’s consent to a mortgage used to buy a shared ownership property (paragraphs 16 to 21);
- variations made to shared ownership leases and when the HC’s consent is required (paragraphs 22 to 31);
- Interim Charging Orders (paragraph 32)
- extending shared ownership leases (paragraphs 33 to 34);
- Key worker living programme (paragraph 35);
- rural repurchase schemes (paragraphs 36 to 38);
- flexible tenure/downward staircasing (paragraphs 39 to 51);
- taking possession of a shared ownership property and the joint approach agreed between HAs and lenders (paragraphs 52 to 57); and
- how the guidance will be updated (paragraph 58).
What is shared ownership?

3. Shared ownership was introduced in the early 1980s to help people who are in housing need and cannot afford to buy a home outright. Priority will normally be given to existing local authority or HA tenants; those on local authority or HA waiting lists; and/or key workers (for example, nurses and teachers). At present, there are approximately 63,000 shared ownership properties which together constitute the largest form of low cost home ownership after the Right-to-Buy. Government funding for the shared ownership development programme provides, on average, 2,500 homes each year.

4. Through shared ownership, the purchaser buys a share of the property from a HA and pays rent on the remaining share. Further shares can be bought until, in most cases, the property is owned outright. Although the property is not owned outright initially, the shared owner has the normal rights and responsibilities of a full owner-occupier. Shared ownership homes may be new or renovated flats or houses. The shared owner will be a leaseholder of the HA, which will retain the freehold of the property. The leaseholder will usually have a 99 year lease on the property.

5. The purchaser will generally buy a 25%, 50% or 75% share of the property (although some schemes offer greater flexibility in the amount of share purchased), and this is invariably done by taking out a mortgage. While the minimum share that can be bought initially may vary, the minimum initial share for schemes funded by the HC is 25%. The share owned by the leaseholder can be varied by 'staircasing'. Generally, staircasing will be upward, thereby increasing the share owned. In certain circumstances (normally as a result of financial difficulties) shared owners may staircase down, thereby reducing the share they own. Except in certain rural and shared ownership schemes for the elderly, all HC funded schemes must allow for the leaseholder to staircase to 100% and own the property outright.

6. Some rural shared ownership schemes might restrict the level of equity that can be purchased to 80%. Leases may also provide for the repurchase of the property by the HA once the maximum share has been purchased 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. There may be other circumstances where a HA exercises a right of first refusal to repurchase a property.
7. Shared ownership schemes for the elderly restrict the maximum share to 75% of open market value. Other conditions attached to these schemes include, for example, shared owners must be 55 years or over; there must be no rent provision where the maximum share of 75% has been acquired, and there must be provision for a warden service or access to a warden service.
Shared ownership leases

Source information:
Sample shared ownership house and flat leases
HC Circular HC26/86 (only available in hard copy)
HC Circular 12/03
HC Capital Funding Guide – July 2004 (updated quarterly)
HC Notes for conveyancers giving guidance on the Shared Ownership Leases (provided with the sample leases)

Sample leases
8. HAs providing 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 HAs, over the past 15 years, the HC has published a variety of sample shared ownership leases covering:

- flats;
- houses;
- schemes for the elderly; and
- rural schemes.

9. Plain English versions of these sample leases are also available.

10. These leases have been produced in consultation with the CML and copies (priced £50 each) can be obtained from:
Publications Department
The Housing Corporation
149 Tottenham Court Road
London W1T 7BN
Telephone: 0207 393 2228
Email: publications@housingcorp.gsx.gov.uk

11. HAs do not have to use the standard leases. However, where a HA chooses not to it, must certify that the leases contain the fundamental clauses specified by the HC. This certification is implied in acceptance of grant conditions.
**Fundamental clauses**

12. The following clauses are mandatory, and so **must** be included in all shared ownership leases:

- **Alienation provisions:** It is essential that all shared ownership leases contain provisions ensuring that the price payable for the lease is no greater than the appropriate percentage of the market value of the property. 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. (clause 3(15) sample flat lease and clause 3(14) sample house lease). It is understood that some HAs do allow sub-letting in exceptional cases (for example, relationship breakdown) and this is done in consultation with the lender.

- **Service charge provisions:** Where a shared owner buys a flat, a service charge will invariably be levied. The shared owner will have to pay a proportion of the total service charge costs, and the HA will need to consider the cash flow implications when setting the date on which the service charge becomes due.

- **Mortgagee protection clause:** The mortgagee protection clause (MPC) is designed to cover part of a lender's loss should the lender have to take possession of the property on default. The MPC only operates where the sale proceeds are insufficient to cover:

  a. the principal amount due under the mortgage;
  b. the reasonable cost of recovering or trying to recover any money due under the mortgage, and acquiring and selling the freehold (including a reasonable allowance for legal, valuation and estate agency work undertaken by the lender's employees);
  c. any mortgagee protection or endowment policy premiums payable by or recoverable from the leaseholder and secured by the mortgage; and
  d. not more than 12 months' unpaid interest due under the mortgage.

The lender is also able to claim back capitalised rent through the MPC. The inclusion of the MPC (protecting the lender) means that the purchaser does not need to take out mortgage indemnity guarantee (MIG) insurance. As the MPC provides similar protection to MIG, there should be no need for the purchaser to also obtain MIG, as the MPC is sufficient to meet lenders' requirements (clause 8 sample flat lease and clause 6 in the sample house lease). Certain conditions apply before a lender can use a MPC, and these are covered in paragraphs 16 to 21 below. The MPC also places liability on the defaulting leaseholder for any amounts paid out under it by the HA. The HA is expected to take all reasonable steps to recover the money due to
it, taking into account whether this can be done effectively without incurring any irrecoverable expenditure.

- **Rent review:** All shared ownership leases offered by HAs must include rent review provisions. These provisions allow the HA to repay its outstanding loan debt via the income stream from the rent payments received. HAs need to achieve a balance between setting affordable rents and ensuring that there is sufficient income to cover long-term loan repayments. The rent review schedule included in the sample leases is linked to increases in the Retail Price Index. But this approach may not be appropriate for all loans and, therefore, HAs must include the appropriate formula for the rent review (fourth schedule sample flat lease and third schedule sample house lease).

- **Staircasing provisions:** The shared owner is able to ‘staircase’ or purchase further shares of equity in the property until they own it outright. This can be in as little as 10% tranches/shares. Further shares are purchased at the market value at the prevailing time. HAs must use the staircasing provisions included in the sample leases, and they can vary the size of the equity shares to be purchased. However, the initial share must not be less than 25% of the equity in the dwelling, and the lease must provide that the leaseholder can staircase to 100%. The sample leases also provide an option that further shares cannot be purchased during the first year following initial purchase. In addition, 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 (fifth schedule sample flat lease and fourth schedule sample house lease). Limited staircasing provisions may be included in elderly or rural shared ownership schemes.

- There is an additional fundamental clause in respect of **Key worker living** shared ownership leases. Where a participant in a Key worker living scheme changes their employment, they are obliged to notify their landlord within seven days of that change. If they cease to be a qualifying key worker, they will be required within two years either to staircase to 100% or dispose of their shared ownership interest to a nominee of the landlord. The landlord will be able to advise as to the qualifying criteria for key worker eligibility and/or any prevailing exemptions prior to the key worker deciding to change employment.

**Stamp duty land tax**

13. Purchasers of 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 on the actual premium and rent paid and on future staircasing; or, for example, on the open market value plus minimum rent at the time of purchase (as set out in the SDLT statement).

14. In the 2004 Budget, changes were made to the application of SDLT where a shared owner buys additional shares in the property pursuant to a shared ownership lease granted after 17 March 2004. These changes now provide that, subject to certain conditions, and irrespective of whether or not the SDLT statement (see above) is included in the lease, when staircasing takes place, the shared owner will not be liable for SDLT on the staircasing. However, this is subject to the condition that, immediately after staircasing, the shared owner's share in the property must not be greater than 80%.

15. When using the HC's sample leases, HAs must ensure that the SDLT provisions reflect current legislation.
Obtaining the registered social landlord's consent to the mortgage

Source information:

16. Before a shared ownership sale can be completed, the HA must:

- be shown a copy of the mortgage terms being taken out by the purchaser, and
- consent to these terms in writing.

Why is consent necessary?
17. The HA’s consent is required because, under the MPC, the HA 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 HA is able to assess their overall risk. The HA 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 HA may also be partially liable under the provisions in the MPC. In addition, this procedure can act as an anti-fraud measure, allowing the HA to double-check that the borrower and purchaser are the same person.

Who obtains the consent?
18. In practice, it is very rare that HAs 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 HA's consent to the mortgage. This requirement on the conveyancer to obtain consent is included in the CML 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.

What happens if consent is not obtained?
19. Should the conveyancer fail to obtain the HA's written approval to the mortgage, the HA is not obliged to comply with the terms of the MPC. This has significant implications for mortgage lenders as their protection in the event of default is effectively lost. Where conveyancers have not obtained the HA's written approval to the mortgage, the lender would be
able to sue the conveyancer for negligence, as they have failed to comply with the lender's instructions.

20. Both HAs and mortgage lenders are keen to work positively and reach a workable solution in cases where consent has not been obtained. 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 HA.
- Provided that consent would have been granted if applied for at the proper time, HAs are expected to provide retrospective consent to the mortgage and honour the MPC 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.

21. This approach should identify cases where consent has not been secured, so lenders and HAs can deal promptly with outstanding cases in an efficient way.
Variation of shared ownership leases

Source information:

22. Where shared ownership homes have been developed with public funding, the HC requires that a restriction should be entered at the Land Registry to the effect that no deed varying the terms of the lease can be made without the HC's consent. This restriction works to protect the fundamental clauses, although all deeds to vary shared ownership leases require consent. The restriction originally appeared in the sample lease in clause 9 of the flat lease, and clause 7 of the house lease. Since the sample leases were drawn up, the rules around registration of lease restrictions have changed. HC circular 12/03 explains this more fully.

When is the Housing Corporation's consent required?

23. 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 HA becomes the leaseholder;
- update the lease to reflect new legislation or regulatory requirements;
- extend the term of the lease; and
- correct any mistakes in the lease.

24. The HC's approval is not needed for purchasers to sell, staircase or do any of the things that the lease allows them to do. Consent is not required for individual instances of downward staircasing, but HAs should be aware of the HC's requirements set out in the Capital Funding Guide.

25. 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 HAs and should be shared with legal advisers. These sheets can both be reproduced by HAs in their own house format.
New land registration requirements

26. The implementation of the Land Registration Act 2002 and the Land Registration Rules 2003 has resulted in significant changes to the way in which restrictions are entered on the title of property. The restriction on variation can no longer be entered as part of a lease but must be applied for separately.

New procedure

27. For new shared ownership leases, the purchaser (or their conveyancer) should apply for the restriction to be entered as part of the completion process. There should be no additional fee if the application for the restriction is made at the same time as the lease is registered. The application should be made on Land Registry Form RX1. The wording to be applied is:

"Restriction: No deed varying the terms of the registered lease is to be completed by registration without the consent of the Housing Corporation, 149 Tottenham Court Road, London W1T 7BN."

28. While it is also possible for the HA to apply for the restriction, legal advice suggests that, unless the purchaser's consent to the restriction in that form accompanies the application for entry, this would be a notifiable application under the Land Registration Act 2002. This means that a notice would have to be issued to the purchaser, giving the opportunity to object to the entry of the restriction. While any such objection would probably render the lease unmortgageable as the restriction protects the MPC, the sales process would be complicated and delayed by the question of notices. Accordingly, the HC does not recommend this approach.

29. As entry of the restriction is now one step removed from the lease, HAs need to make sure that the new restriction has been entered. The recommended route is that a clause be included in new shared ownership leases requiring purchasers (which would, in practice, be via their conveyancing conveyancer) to enter the restriction as described above, and to provide proof that they have done so. Lenders may also make reference to the need to register the condition in their instructions to conveyancers.

30. These procedures only apply to sales of new shared ownership leases. For resales or the assignment of existing leases granted before 13 October 2003, the restriction registered at the time the lease was granted continues to have effect.
31. In any event, where the property is a flat, landlords should ensure that the lease contains a provision that the restriction ceases to have effect on final staircasing.
32. If a shared owner defaults on mortgage payments, the commercial mortgage lender may apply to the court for an Interim Charging Order (ICO). This enables the mortgage lender to impose a charge on the interest in the property. As the terms of the lease cannot be varied without its consent, the HC’s details are entered on the Land Registry title document. Consequently, the HC sometimes receives copies of ICOs. Lenders and their conveyancers will wish to note that, as the HC has no legal interest in the property which is to be subject to the ICO, it cannot have a view on any proceedings, and so does not need to be informed of charging orders.

**Interim Charging Orders**
Extending shared ownership leases

33. Legal advice received by the HC suggests that shared owners have no statutory right to lease extension. This position is also reflected in the CIH/NHF Leasehold Management Good Practice Guide. The HC understands that many shared ownership leases (originally granted for 99 years) are now reducing to a level where lease extension becomes a consideration.

34. HAs should grant extensions to shared ownership leases, wherever possible. Where an extension is granted, this should be done by means of a variation to the lease, to which the HC’s consent will be required under the standard restriction.
35. There have been a number of traditional shared ownership schemes for key workers that have been funded through specific programmes. In April 2004, the Key worker living programme was launched which incorporated a 'clawback' provision. Where a participating key worker ceases to be a qualifying key worker, they will be required to staircase to 100% or sell their share to a nominated key worker within two years of leaving qualifying employment. The Key worker living shared ownership lease has specific terms and conditions to direct and regulate the application of clawback. A clawback provision applies to all types of tenure available through this programme, which is designed to assist the recruitment and retention of key workers in London and the South East.
Rural repurchase schemes

Source information:
HC's Capital Funding Guide (July 2004 and updated quarterly).

36. Shared ownership schemes built in qualifying rural areas (usually areas with a population of under 3,000) may be subject to repurchase arrangements. The repurchase arrangements allow a HA to buy a property back from an existing leaseholder to enable a resale to a local household in housing need. The aim of the programme is to retain low-cost housing in rural communities.

37. The repurchase scheme operates on the basis that when a shared owner wishes to sell the property, the HA is able to repurchase it using Social Housing Grant (SHG), and is then able to 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. HAs must advise the HC that they want the scheme to be included in the rural repurchase arrangements at the time that SHG is confirmed, and by inserting an option to repurchase in the shared ownership lease at the time the lease is first issued and whenever a new lease is issued. Clauses granting the HA the option to repurchase are contained in the HC’s sample rural shared ownership lease. HAs 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 shared ownership for the elderly. The equity level at which resale takes place will depend on the means of the new shared owner.

38. To qualify for repurchase, the following criteria must be satisfied:

- the option to repurchase has been included in the lease;
- a local purchaser has been identified who can purchase at the proposed level of equity;
- the HA 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; and
- the sum of surpluses made on any previous staircasing of the property must be less than the SHG calculated as due for the repurchase.
Flexible tenure: downward staircasing

Source information:
HC's Capital Funding Guide (July 2004 and updated quarterly)

39. Flexible tenure on the following terms is a permitted use of the Recycled Capital Grant Fund (RCGF). It is a 'safety-net' to enable a shared owner to remain in their home, despite the changes in their financial circumstances, and is a last resort option when the leaseholder has got or is about to get into mortgage arrears and potentially lose their home.

40. Flexible tenure is defined as:

- the repurchase of equity by a HA from a shared owner in difficulty, but not necessarily in arrears, with his/her mortgage repayments; or
- in the case of property specifically built as shared ownership for the elderly, the repurchase of equity to pay for essential repairs or maintenance if the leaseholder cannot afford to pay for the work. This option is not available to older people in other types of shared ownership scheme.

41. 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 HA. However, once the property has been taken into possession by the lender, flexible tenure ceases to be an option.

How will flexible tenure be funded?

42. Public funding of flexible tenure is confined to finance from the RCGF. Flexible tenure cannot be funded from SHG, the Disposal Proceeds Fund or the Rent Surplus Fund. It should be noted that where schemes are funded from other sources apart from the HC, different criteria might be applied to the way in which flexible tenure can operate.

Who is eligible to apply for flexible tenure?

43. The key principles are:
• **Shared owners do not have a right or entitlement to flexible tenure.** Any offer of flexible tenure remains at the discretion of the HA already owning part of the equity in the property. A HA may set its own procedures provided that they also comply with the requirements in the HC's Capital Funding Guide for flexible tenure. If a HA does offer flexible tenure, 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 HA 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 and moving to a cheaper property within a reasonable distance from work. 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 private lenders**

44. For any form of equity repurchase or mortgage rescue, the HA should ensure that any offer is acceptable to the shared owner's lender and the HA's own lender.

**Basis of valuation**

45. The same general rules apply to downward staircasing as to upward staircasing, ie, 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**

46. 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 HA'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**

47. Should the opportunity arise whereby the upward staircasing of the property occurs, the normal staircasing procedures apply. The RCGF funds used to support this transaction will be treated as RCGF again. Further flexible tenure 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. 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 flexible tenure transaction**

48. 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.

**Complete repurchase – tenancy considerations**

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

50. The ex-shared owner will not have the Right to Acquire because the repurchase will have been funded by the RCGF, and not SHG. As a tenant, he or she may be eligible (if their circumstances improve) for any discount or incentive scheme if offered by the RSL, such as Voluntary Purchase Grant Scheme with any eligibility period starting from the date of the new tenancy.

51. The change from shared ownership to a tenancy shifts the insurance, maintenance and repairing obligations from the ex-leaseholder to the HA. Therefore, it is recommended that the HA carries out a survey of the property before completion of the flexible tenure repurchase in order to assess any immediate and future liabilities.
Taking possession of a shared ownership property

Source information:

HC circular F2-04/02 Shared Ownership – Mortgage Lenders’ Requirements – March 2002
CML circular 1636 – April 2002

Possession of the assured tenancy under the Housing Act 1988

52. Mortgage lenders need to ensure that adequate security exists when they lend on shared ownership properties. While the mandatory clauses in the sample leases provide some comfort to lenders, for example, the MPC, there are circumstances in which a lender will view their security as being at risk. An example of this would be where a HA is considering taking possession proceedings using a mandatory ground for possession, such as, where the leaseholder is in rent arrears. The court has no power to adjourn or suspend the action to allow the arrears to be repaid. The end result is that the lender loses its security for the mortgage. This position has left all lenders with mortgages on shared ownership property potentially at risk.

Standard form of undertaking to provide notice of proceedings

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

54. 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 HA 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

55. There must also be a separate notice to the lender from the HA 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.
56. All new shared ownership leases granted by HAs must provide that a HA will give the leaseholder’s lender at least 28 days’ written notice of the landlord’s intention to commence possession proceedings under the Housing Act 1988.

57. HAs should provide a signed undertaking in the agreed format on every grant and assignment of a shared ownership lease. In addition, HAs 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 HA bringing proceedings under Schedule 2 if the breach cannot be resolved within the period agreed by the lender and the HA.
How the guidance will be updated

58 We hope that this guidance is helpful. Any comments should be sent to Jackie Bennett at the CML (Jackie.Bennett@cml.org.uk) or John Bryant at the NHF (JohnB@housing.org.uk). To ensure that this guidance is kept up-to-date, the CML and the NHF will review the content on a biennial basis in consultation with the HC.
Annex A

Consent to vary a shared ownership lease: information for 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. When you read through your lease, you will have seen a clause which said something like "Except under an order of the Registrar (at the Land Registry) no deed varying the terms of the registered lease is to be registered without the consent of the HC". Although the HC is not a party to your lease, it is the government organisation that provides most of the money for shared ownership housing and it has to make sure that leases are in the proper form to be eligible for public funding.

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. You do not need the permission of the HC 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; and
   - exercise any of those rights which the lease gives you.

4. Your conveyancer can proceed with these transactions without getting the HC's approval. Your conveyancer is likely to know this, but showing them this leaflet might be a helpful reminder. It could save you money and speed up your transaction.

5. Sometimes, there may be a need to change the terms of your lease, by making what is known as a Deed of Variation. The list below does not cover every possibility, but the HC's approval will be required to:

   - 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, that is, the length of time which the lease is for; and
- correct any mistakes in the lease.

6. You can see from this list that the HC's approval under the restriction registered at the Land Registry is needed for things that involve a change to the actual wording of the lease, or for adding or deleting clauses. Its approval is not needed for you to do the things that the lease allows you to do.

7. Once you staircase to 100%, the restriction is automatically lifted. 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 some of the terms of your lease may change.

8. There may be a situation where your landlord wishes to vary existing leases. 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. The HC's consent will usually be required for these variations.

9. 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. The HC publishes *A Charter for HA applicants and residents* that sets out what you can expect from the service that your HA provides. Your landlord can give you a copy of the Charter, or you can download it from the HC's website [www.housingcorp.gov.uk](http://www.housingcorp.gov.uk).

10. 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 Housing Ombudsman Service, known as 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.
Annex B

Consent to vary a shared ownership lease: information for landlords

1. This leaflet has been produced to provide information for legal advisers and HA staff regarding the consents needed when variations are required to shared ownership leases.

2. Most shared ownership leases used in the HA sector are based on the sample leases issued by the HC in the 1980s. However, since 1989, HAs have been free to develop their own shared ownership leases. In order to qualify for HC grant funding, it is a condition that certain key clauses, known as the fundamental clauses, must be included. These clauses relate to:

   - alienation provisions;
   - mortgagee protection;
   - staircasing provisions;
   - rent review; and
   - service charge provisions.

3. The HC has also required a restriction to be entered at the Land Registry, to the effect that, "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 HC". The intention of this restriction is to safeguard the fundamental clauses, so that leases keep their distinctive shared ownership character, and so that variations cannot be made outside the terms of grant funding.

4. The HC has identified a problem in respect of the interpretation of this restriction, which means that sales and other transactions do not always proceed as quickly as they should. This information sheet hopes to clarify the position so landlords can improve their service to customers.

5. The restriction requires the HC's consent to Deeds of Variation that would make a difference to the terms of the lease. Landlords and their conveyancers generally understand this, but a problem can arise where purchasers' conveyancers give the restriction a wider meaning than was originally intended.
6. The HC receives a great many requests for consent from conveyancers about such things as sale, staircasing or the transfer of equity from joint to sole names. **No consent is required for these transactions**, as they are clearly permitted by the lease. Nor is its consent required for individual instances of downward staircasing. The effect of seeking these consents is that purchasers can be involved in unnecessary legal correspondence and expense, and their transactions are delayed waiting for a response from the HC that is not required.

7. In practice, there are very few changes to leases that require HC approval. The following list is not exhaustive but, for example, consent will be required to:

- 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; and
- correct any mistakes in the lease.

8. The Regulatory Code requires landlords to provide high standards of customer care, and that includes working to ensure that sales, staircasing or assignments are not unduly delayed, so landlords should ensure that purchasers' transactions are as straightforward as possible.

9. If legal advisers are unclear as to whether a consent is required, they should contact the landlord in the first instance. It may not be possible to capture 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.

10. Occasionally, the HC receives requests from district Land Registry offices, asking for the restriction to be lifted on completion of staircasing. This should happen automatically. In the case of a freehold house, when a purchaser has staircased to 100% equity the freehold title is usually transferred and the lease falls away. In the case of a flat when a shared owner staircases to 100%, certain clauses will cease to have effect, this will include the restriction. Purchasers and their conveyancers need to be aware of this, to avoid unnecessary expense and delay.
11. If you have any queries in respect of the above, please contact Mark Wagstaff in the HC's Regulation Division (mark.wagstaff@housingcorp.gsx.gov.uk) or on 020 7393 2034.
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……………………………..