

# SHARED OWNERSHIP LEASES

## INSTRUCTIONS TO SOLICITORS AND CONVEYANCERS

These instructions should be read in conjunction with your instructions in the Lenders' Handbook.

**If any of the requirements set out below cannot be met, the Lease may not be acceptable to us and please advise Mortgage Department as soon as possible.**

Under shared ownership schemes, the property is sold by way of a long lease and the customer acquires usually a share in the leasehold interest by paying a proportion of the market value.

Usually the lease gives the tenant the right to acquire additional shares and the superior interest in the property. A standard form of lease has been developed by the Housing Corporation.

Please ensure that the following are present:

- 1 The landlord is a Registered Provider (RP)
- 2 The minimum percentage of the interest being purchased is at least 25% and there must be the right to buy further tranches.
- 3 If the lease requires a valuation to be carried out, it must provide for reference to an independent Valuer or the District Valuer.
- 4 The lease must not prohibit the acquisition of 100% of the shares.
- 5 The procedures and time limits for the lessee to acquire further shares in the property must be reasonable in all circumstances.
- 6 If the property is to be valued for the tenant to acquire an additional share or to purchase the superior interest, this must be open market value disregarding improvements to the property or deterioration attributable to the tenant for the purposes of valuation.

Where, however, the property is to be valued to determine the sum to be paid on surrender or assignment, any improvements or deterioration attributable to the tenant must be taken into account.

- 7 The lease must incorporate a "mortgagee protection clause". The operation of the clause may be conditional on the landlord approving the mortgagee and the terms of the mortgage before completion. **The Form of Approval and Undertaking to be used is attached.** This approval **MUST** be obtained with/prior to sending in the Certificate of Title, and a copy sent to the Society. **FUNDS WILL NOT BE RELEASED UNTIL THE SOCIETY HAS SIGHT OF AN ACCEPTABLE SIGNED FORM OF UNDERTAKING & CONSENT. A copy of the Form must be placed with the Title Deeds.**
- 8 The lease must be granted to the purchaser(s) alone.
- 9 The lease must provide that any mortgagee must be given written notice before forfeiture or determination proceedings are begun. 28 days or reasonable notice is acceptable.
- 10 Insurance proceeds must be apportioned between the landlord and the tenant in the event of repair, rebuilding or reinstatement being frustrated and for the tenant's share of the proceeds to be paid to the mortgagee of whom notice has been given to the landlord.
- 11 The lease must not require the compulsory purchase of additional shares.
- 12 Where the superior interest can only be acquired after all the shares have been purchased, the tenant must be entitled to a simultaneous acquisition of the additional shares and superior interest.
- 13 On an acquisition of the superior interest, the tenant must be entitled to require the landlord to transfer the superior interest to whomsoever the tenant shall direct. Where the lease gives the landlord nomination rights, the tenant must be allowed to assign to someone who is not a nominee, if the landlord fails to make a nomination, or the nominee fails to exchange within a reasonable period eg 3 months from the date the tenant gave notice to the landlord of the intention to sell, within 12 weeks from receipt of the draft contract by Solicitors or other persons acting for the nominee.

- If an existing lease is being assigned, the nomination procedure must be complied with.
- 14 If the lease gives a landlord the right to take a surrender or an assignment of the lease:
- (a) The tenant must be permitted to assign free of the pre-emption rights if the landlord fails to take a surrender/assignment within 3 months of the date the tenant gave notice to the landlord of intention to sell;
  - (b) If it is an existing lease, the pre-emption procedure must be complied with;
  - (c) The consideration for the surrender/assignment must be payable on completion;
  - (d) The only deductions which may be made from the consideration for the surrender/assignment are sums due under the lease. The lease must not permit the landlord to deduct other sums due to it from the leaseholder (for example, under a mortgage or charge even if our mortgage has priority).
- 15 If the lease sets out the form of transfer of the superior interest and the transfer contains pre-emption rights in favour of the landlord, requirements 2, 3, 6 and 14 above apply to the transfer.
- 16 There must be provision that in the event of the mortgagee in possession wishing to sell the property it has the choice of either assigning the lease to the purchaser or staircasing and selling a 100% interest.
- 17 The lease must not require the tenant to make a payment to the landlord on assignment/surrender other than arrears of rent/service charge/valuation and legal costs, and in the case of an assignment of the lease to a third party nominated by the landlord, a reasonable administration fee not exceeding 1% of the consideration for the assignment. Provided that such fee is NOT payable by the mortgagee going into possession.
- 18 If the lease requires the landlord to insure, please refer to Section C.26 of the Lenders' Handbook.
- 19 The lease must not limit its assignment to persons who satisfy certain criteria.
- 20 If the lease contains any unusual provisions such as reverse staircasing these must be referred to the Society for approval.

**March 2012**