

# Shared Ownership Instructions

## (England & Wales)



### 1. General

- 1.1 We understand that the Borrower wishes to acquire a share of a property under an equity sharing lease from a Housing Association. You are required to follow these instructions in addition to the general instructions to Solicitors and Licensed Conveyancers referred to in the mortgage offer. Please satisfy yourself that the property to be purchased meets these requirements. If any of the conditions are not met please advise us at the earliest opportunity and supply a copy of the whole of the lease together with any other documents containing the provisions.
- 1.2 You must ensure that the Housing Association has been shown a copy of the mortgage offer and terms being taken out by the Borrower, and consented to these terms in writing.
- 1.3 The borrower must be acquiring a percentage of the market value of the property and will be paying a rent to the landlord in respect of the further interest in the property. The lease should provide for the Borrower to acquire further interests in the property up to 100% of its total value. This is known as staircasing. The Borrower must not hold his share upon trust with the landlord. The Lease must be granted to the Borrower alone.
- 1.4 The initial share to be purchased by the Borrower must be at least 25% based on the market value of the whole property. The percentage being purchased is stated in the mortgage offer. If this is not the percentage being purchased you must confirm the percentage being purchased and you should not exchange contracts until we have confirmed it is acceptable.
- 1.5 The rent, when reviewed, should not be capable of being increased each year by more than 2% above the Retail Prices Index. The lease must not link the rent to the landlord's mortgage over the freehold.
- 1.6 The correct form of restriction on variation must be registered at the Land Registry at the same time as a new lease is registered, and proof of registration provided to us upon request.
- 1.7 A written undertaking, in the form of the CML model undertaking, to provide us with not less than 28 days notice of intention to commence possession proceedings must be obtained from the landlord.

### 2. Staircasing

- 2.2 If the lease does not enable the Borrower to acquire a full 100% of the value of the property you should revert to us for further instructions. There should be no time limits in the lease with regard to staircasing.

## Shared Ownership Instructions (England & Wales) (Continued)



- 2.2 The lease must provide for a mortgagee in possession to either assign the lease or to staircase up to a full 100% of the value of the property.
- 2.3 Where the lease makes provision for the sale of a share back to the landlord, it should also provide that our consent is obtained prior to such sale.

### 3. Disposal of the Property

- 3.1 If the lease provides that, upon disposal of the property, the Borrower must assign his share to a person nominated by the landlord, then the lease must also provide that any such person must be nominated and contracts exchanged within a reasonable time i.e. within a maximum 4 months from the date the Borrower gave notice to the landlord of intention to sell. Failing this, the Borrower must be able to dispose of the property on the open market.
- 3.2 If the lease contains pre-emption rights in favour of the landlord then the reasonable time limits should also be included and the landlord should pay the full market value of the shares it is acquiring.
- 3.3 The lease must not refer to the Borrower having to satisfy provisions contained in any other document such as S106 Planning Agreement.
- 3.4 There must be no obligation in the lease for the lender to release its security upon payment of anything less than the full amount of the outstanding mortgage.

### 4. Definition of Market Value

#### 4.1 For Staircasing Purposes

If the Borrower acquires further shares in the property, the price of such shares will be determined by the open market value of the property at the time of acquisition of such further shares, but the market value will be assessed disregarding the following:-

- 4.1.1 Any improvements made by the tenant.
- 4.1.2 Any failure by the tenant to comply with the terms of the lease.
- 4.1.3 The rights of any third parties in the property.

**4.2 For Surrender or Assignment Purposes**

There should be no onerous restrictions in respect of the market value in the event of the interest of the Borrower being assigned or surrendered. The value of any improvements should be taken into account. After surrender, the landlord should be allowed to deduct any sums due under the lease and also the cost of putting the property into good repair so long as it has been valued on the basis that the tenant has complied with the terms of the lease.

**4.3 In the event of a Dispute**

The lease should provide for a valuation by an independent expert in the event of any disagreement between the landlord and the tenant. The independent expert should be one agreed by the landlord and tenant or one appointed by the President for the time being of the Royal Institution of Chartered Surveyors or, where the landlord is the Local Authority, the District Valuer.

**5. Mortgagee Protection Clause**

5.1 The lease should contain a mortgagee protection clause which will protect us against any losses we may sustain should we have to take the property into possession, exercise our right to complete the final staircasing and assign the lease.

5.2 The clause should provide that the amount payable by us to complete the final staircasing shall be either:

5.2.1 The sum calculated under the terms of the lease

or

5.2.2 The sale price less the sum total of the following:

The total principal and interest (which shall not exceed 12 months or 18 months if the lease is dated on or after 6 April 2010) due under the terms of the mortgage; the reasonable cost of recovering or trying to recover any money due under the mortgage; the reasonable cost incurred by us in acquiring and selling the freehold or completing the final staircasing and assigning the lease (including a reasonable allowance for legal fees, valuation, estate agents and other costs and disbursements); and rent, service charge or other sums capitalised or due to the landlord, whichever is the less amount.