

Instructions to Conveyancers

For Intermediary Use Only

SKIPTON BUILDING SOCIETY REQUIREMENTS IN RESPECT OF SHARED OWNERSHIP LEASES

(England and Wales only)

If the property is owned or being purchased under a Shared Ownership scheme, you are instructed to follow these instructions in addition to The Society's Instructions to Solicitors and Licensed Conveyancers in the UK Finance Mortgage Lenders' Handbook (UK Finance Handbook) and the mortgage offer. For the avoidance of doubt, these instructions do not affect any responsibilities you have to us under the general law or any practice rule, the Solicitors' Code of Conduct or any guidance issued by your professional body from time to time.

Solicitors/licensed conveyancers must ensure that any property dealt with pursuant to these instructions meets the Society's requirements. The Society will not review any leases or provide any advice as to whether a property or lease meets these requirements.

If a property or lease does not meet The Society's requirements, The Society will not lend. The solicitor/licensed conveyancer acting should inform The Society immediately in writing to confirm that these requirements are not met.

These instructions are split into three sections:

SECTION A: requirements that must be complied with for ALL shared ownership leases

SECTION B: additional requirements that must be complied with for all shared ownership leases granted on or before 6 April 2010

SECTION C: additional requirements that must be complied with for all shared ownership leases granted after 6 April 2010

SECTION A: Requirements for ALL Shared Ownership leases

Landlord

You must ensure that the landlord is either a registered Housing Association or Registered Social Landlord.

Purchase price – initial purchase or staircasing

The purchase price must be a defined percentage of the full open market value and the borrower(s) should not be paying any additional costs connected with that purchase.

Percentage share

If the percentage of the property to be purchased on initial purchase or staircasing (or currently owned by the borrower) is different from that set out in our mortgage offer, you must inform The Society's Completions Team and await further instructions before contracts are exchanged (or before proceeding further on any other type of transaction).

Valuation

Where a valuation is required under the terms of the lease, the lease should allow for the valuation of the property to be undertaken by an independent expert in the event of any disagreement between the landlord and the borrower. The independent expert should be one agreed by the landlord and the borrower 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.

For staircasing purposes the lease should provide that, if the borrower acquires further shares in the property, the price of the shares will be determined by the open market value of the property as at the date of the borrower's notice to the landlord setting out the borrower's intention to acquire such further shares. The market value will be assessed disregarding:

- any improvements made by the borrower
- any failure by the borrower to comply with the borrower's obligations in the lease
- the rights of any third parties in the property
- any mortgage over the property.

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.

For the avoidance of doubt, this section does not relate to the Mortgage Valuation undertaken by us to assess the value of the security for mortgage purposes.

Consent to mortgage

Before exchange of contracts on a purchase or before proceeding further on any other transaction, you must ensure that the landlord is shown a copy of the mortgage offer / terms of the mortgage to be taken out by the borrower(s) and all other documents issued to the borrower with the mortgage offer and the landlord must provide written consent to the mortgage and (if appropriate) written consent to the assignment of the lease.

You must not complete without the landlord's written consent to the mortgage and evidence of the consent must be sent to us following completion.

In the case of additional borrowing for staircasing, the landlord's own staircasing offer must still be valid when the additional borrowing completes.

Notice of Proceedings

You must ensure that the lease granted by the landlord provides that the landlord will give us at least 28 days' written notice of the landlord's intention to forfeit the lease or commence proceedings under the Housing Act 1988.

If the lease does not make provision for this, you must obtain a written undertaking from the landlord in the form of the enclosed Form of Undertaking, to provide us with not less than 28 days' written notice of intention to forfeit the lease or commence proceedings.

You must not complete without the landlord's undertaking and a copy of the undertaking must be sent to us following completion.

Term

The remaining term of the lease must comply with The Society's lending policy as per 5.14.1 of the UK Finance Mortgage Lenders' Handbook at the outset of the mortgage. If the lease does not meet this requirement, you must obtain a deed of variation from the landlord to grant an extension to the lease and the landlord will be required to obtain any requisite consent which may be required from the HCA.

Ownership

The lease must be granted to the borrower(s) alone. All borrowers named on the mortgage must also be parties to the lease.

The property must be wholly owned by the borrower(s) and not held on trust for others.

Staircasing

Staircasing allows the borrower(s) to purchase additional shares in the property. The lease must allow the borrower to acquire further shares in the property up to 100% of its total value.

Where the lease does not allow staircasing up to 100% of the value of the property, The Society will not lend. Where a lease is a Protected Area Shared Ownership Lease and has restricted staircasing, The Society will not lend.

The procedures and any time limits setting out how the borrower(s) can staircase must be adequate and reasonable.

The lease must provide that if a mortgagee in possession wishes to sell the property it has the choice of:

- assigning the lease to the buyer as it is; or
- staircasing to 100% and selling the increased percentage.

Downward/Reverse Staircasing

Shared Ownership leases sometimes contain a provision for downward/reverse staircasing (i.e. where the landlord is permitted to buy back a share in the property). Where this right exists, there must be a provision for the landlord to ensure that the landlord's offer is subject to approval in writing by The Society and the landlord's mortgagee (if any) in order to proceed and that the entire sale proceeds must be paid direct to The Society.

Nomination rights

Nomination rights may be provided for in the lease allowing the landlord to nominate a purchaser if the borrower(s) or The Society wish to sell the property.

If nomination rights apply or restrictions on marketing the property exist, the owner must have the right to assign the lease on the open market free of the nomination right or marketing restriction, with no restriction on who can purchase or occupy the property if either the landlord fails to nominate or the nominee fails to exchange contracts within 6 months (26 weeks) from the date of the borrower's notice of an intention to sell.

Pre-emption rights

Pre-emption rights provide the landlord with a right of first refusal upon a sale of the property, and may apply even where the borrower has purchased a 100% share in the property through staircasing.

If the lease includes a pre-emption right applicable on resale the owner must be permitted to sell free of the pre-emption right if the sale under pre-emption is not completed within 3 months of the date the owner gave notice of intention to sell or the date when the pre-emption/marketing procedure became operative.

The price for the sale under a pre-emption right must be the full open market value of the relevant share in the property.

The Society will not lend on shared ownership properties where the pre-emption right survives 100% staircasing.

Restrictions on the disposal of the property

You must provide The Society with written notice of any restriction on the disposal of the property that may have an impact on the property's value/marketability.

We may refer such matters to the valuer for consideration with regards to the marketability of the property taking into account the restriction identified.

Payment on assignment / surrender

There must not be any requirement to make payment on assignment / surrender other than a reasonable amount (maximum 2% of sale price) in respect of valuation, legal and administrative costs. There must be no payment on surrender or assignment to a sinking fund.

If such a clause will also apply to a mortgagee in possession, this charge/deduction will only be acceptable if it ranks after The Society's first charge security and will only be payable by The Society if there are sufficient proceeds remaining after repayment of the mortgage debt.

Other requirements

In addition to the above (and any applicable requirements in the following sections), The Society requires that you are satisfied there is nothing in the lease that would prevent The Society from exercising its rights under the terms and conditions of the mortgage or would diminish the resale value of the property.

SECTION B – Additional requirements for Shared Ownership leases granted on or before 6 April 2010

Mortgage Protection Clause

The lease must contain a Mortgagee Protection Clause which will protect The Society against any losses The Society may sustain should we have to take the property into possession, exercise our right to complete the final staircasing and assign the lease.

The Mortgagee Protection Clause should provide that the amount payable by The Society to complete the final staircasing shall be whichever is the lesser amount of either:

- the sum as calculated under the terms of the lease; or
- the sale price less the total principal and interest (which shall not exceed 12 months) due under the terms of the mortgage; estate agents, legal fees and other costs and disbursements incurred by us in completing the final staircasing and assigning the lease; and rent, service charge or other sums due to the landlord or due under an endowment or mortgage protection policy.

Rent review

Rent reviews should not allow for increases of more than 2% above either the Retail Prices Index or the Average Earnings Index or by 5%, whichever is greater. It is acceptable for the rent to increase in line with Local Authority rent increases.

SECTION C – Additional requirements for Shared Ownership leases granted after 6 April 2010

Alienation, Mortgagee Protection Clause, rent review, staircasing & termination in the event of damage or destruction

Clauses relating to Alienation, Mortgagee Protection, Rent Review and Staircasing are fundamental clauses of the HCA model shared ownership leases and must be in the same form as those contained in the current HCA model shared ownership leases

for flats and houses which can be found on the government website below:

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

The lease must contain a Mortgagee Protection Clause in the prescribed form.

The lease must also include the termination in the event of damage or destruction (Frustration) clauses as contained in the HCA model leases.