



L E A S E

THE LEASEHOLD
ADVISORY SERVICE

SHARED OWNERSHIP LEASES

*What is shared ownership leasehold
and how does it work?*



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Purpose of this advice note

The purpose of this advice note is to provide a brief overview of shared ownership lease for owners/purchasers and property professionals. The Department for Communities and Local Government maintain detailed information on shared ownership leases on their website. Housing associations will also maintain useful information for purchasers and owners of shared ownership leasehold properties.

What is leasehold?

Leasehold ownership of a flat or house is simply a long tenancy, the right to occupation and use of the flat or house for a long period – the ‘term’ of the lease. This will usually be for 99 or 125 years and the flat or house can be bought and sold during that term. The term is fixed at the beginning and so decreases in length year by year. Thus, if it were not for inflation, the value of the flat or house would diminish over time until the eventual expiry of the lease, when the flat returns to the landlord (although an assured tenancy would then become a possibility).

The leasehold ownership of a flat usually relates to everything within the four walls of the flat, including floorboards and plaster to walls and ceiling, but does not usually include the external or structural walls. The structure and common parts of the building and the land it stands on are usually owned by the freeholder, who is also the landlord.

The freeholder is responsible for the maintenance and repair of the building. The costs for doing so are recoverable through the service charges and billed to the leaseholders. A leasehold ownership of a house usually relates to the whole building both internal and external and possibly a garden and driveway. Typically a leaseholder of a house would be responsible for the repair and maintenance of the whole building.

The landlord can be a person or a company, including a local authority or a housing association.

What is a shared ownership lease?

In addition to the usual leasehold property there is a form of leasehold property referred to as a shared ownership lease where the leaseholder can purchase a share of a property (house or flat) and pay rent on that part of the property retained by the landlord. The leaseholder will have a right to purchase additional shares in the property until they own 100% of the equity. At this point the property is no longer a shared ownership property.

Most shared ownership leasehold properties are granted by housing associations as part of their home ownership programme. Such leases are almost always in a format approved by the Homes and Communities Agency (HCA, formerly the Housing Corporation). The intention is to provide a first step into home ownership for those who are currently renting and cannot afford to purchase a home at the full market value. The purchaser will generally be either an existing housing association tenant, on a housing or local authority housing list, or a key public sector worker. Until recently only housing associations granted shared ownership leases and local authorities granted a form of shared ownership lease referred to as a rent to mortgage property. Private developers are now able to grant shared ownership leases. We are aware of private developers selling what they refer to as shared equity leases. These are more like the key worker home buy schemes administered by the HCA, which is actually a form of second mortgage secured against the property where no repayments are made until the property is sold.

Local authorities no longer offer rent to mortgage properties, although there are still a number of such properties. We will deal with rent to mortgage properties at the end of this guidance as there is an important difference between them and the HCA approved shared ownership leases.

What are the differences between a shared ownership lease and an ordinary long residential lease?

There are a number of important differences between a shared ownership lease and other residential leases; the most important are listed below:

1. A shared ownership lease is not regarded as a long residential lease for the purposes of exercising a statutory collective right to purchase the freehold of a building containing flats (*see Section 7(1) (d) Leasehold Reform Housing and Urban Development Act 1993*).
2. A shared ownership lease is not regarded as a long residential lease for the purposes of exercising a statutory collective right to manage a building containing flats (*see Section 76 (2) (e) Commonhold and Leasehold Reform Act 2002*).
3. A shared ownership lease of a house does not qualify for the right to purchase the freehold under the provisions of the Leasehold Reform Act 1967 if there is a provision in the lease for the freehold to be transferred on the purchase by the leaseholder of the remaining share in the property (referred to as the final staircasing). Other exemptions apply if the leasehold house was provided for the elderly or within a designated area referred to as a protected area. (*see Schedule 4A Leasehold Reform Act 1967*).
4. As rent is paid on that part of the equity not owned by the leaseholder, a landlord can take action to repossess the property for rent arrears in the county court in the same way that a landlord of an assured shorthold tenancy can under the provisions of the Housing Act 1988. If the property is repossessed in these circumstances no compensation is payable to the leaseholder to take into account the balance, between the leaseholder's debt and the market value of the leaseholder's share in the property.
5. HCA approved shared ownership leases must contain eight core clauses. They are listed below:

a) Restrictions on Sales and Prohibition on Subletting (Alienation Clauses):

- HCA approved shared ownership leases do not allow subletting in any circumstances.
- Under a shared ownership lease the landlord nominates a purchaser and the purchase price is determined by an independent surveyor appointed by the landlord.
- Some versions of shared ownership leases provide that the landlord has a right of pre-emption (right of first refusal) if the property is sold, even though the leaseholder may have purchased 100% of the property under the staircasing provisions of the lease.

b) Rent Review Clause:

- In buying a proportion of the equity in a property the owner of a shared ownership lease must pay rent on that share of the property retained by the landlord. The lease will have an initial rent, usually based on a sum equivalent to 3% of the outstanding equity retained by the landlord. The rent increases annually in line with increases to the Retail Price Index (RPI), plus an amount, typically ranging between 0.5% and 2%.

Example:

<i>Market value of the property on first purchase</i>	= £250,000
<i>Initial share purchased by leaseholder 25%</i>	= £62,500
<i>Share retained by the landlord 75%</i>	= £187,500
<i>Market rent @3% of market value of property</i>	= £7,500 per year
	= £625 per month
<i>Initial rent @ 3% of outstanding equity</i>	= £5,625 per year
	= £468.75 per month

Assuming the RPI increases in the following year by 3.5% and the lease allows for an increase by reference to the upward movement of the RPI plus 2%, then the rent paid by the leaseholder will increase by 5.5% to £5,934.38 per annum (£494.54 per month).

If the leaseholder purchases additional shares in the property, the rent paid will reduce proportionally until 100% is acquired and no rent is payable.

c) Service Charge Clause:

- All shared ownership leases must contain a clause providing for the payment of a service charge. In the case of shared ownership flats this will be in the same terms as any other lease of a flat. The shared ownership leaseholder needs to be aware that they will pay the full service charge and not a proportion in accordance with their equity share. Where there is a shared ownership lease of a house, the leaseholder will be responsible for maintaining and repairing the property and the only service charge payable will be in respect of buildings insurance.

There is an exception to this general rule where a leasehold house is located on a private estate; in this case a service charge may be payable for the maintenance of the common parts of the estate such as pathways, private roads and other amenity areas.

An obligation to pay towards these costs would typically continue if the leaseholder acquired the freehold of the house.

d) Mortgage Protection Clause:

- This clause is designed to protect a mortgage lender's security and to encourage mortgage lenders to advance loans on shared ownership leasehold properties. A lender under the mortgage protection clause is entitled to acquire and dispose of 100% of the equity in the property and must be informed by the landlord if they intend to take possession or initiate forfeiture proceedings. If the lease does not contain a mortgage protection clause, a borrower will find it extremely difficult to obtain a mortgage. The conveyancing solicitor acting on behalf of the buyer is required to forward a copy of the mortgage to the landlord for approval and must obtain and deposit with the title deeds after completion of the purchase an undertaking from the landlord to the mortgage lender confirming that they will notify the mortgage lender if they intend to repossess the property or forfeit the lease. Because of this requirement, earlier shared ownership leases, typically granted by local authorities, which do not contain a mortgage protection clause, are difficult to sell. This is because mortgage lenders appear reluctant to lend in the absence of a mortgage protection clause. If you own such a property you should consider asking the landlord to provide a deed of variation to include a mortgage protection clause in the lease. If they refuse, a leaseholder should consider contacting the HCA who may bring pressure to bear on the social sector landlord to provide the deed of variation.

e) Purchasing Additional Shares (Staircasing Clause):

- The majority of shared ownership leases must contain a clause allowing the leaseholder to purchase additional shares in the property until they own 100% of the equity. This is known as staircasing. In the majority of shared ownership leases the leaseholder is allowed to make 3 such applications and the last application must result in the purchase of the remaining shares. Since September 2011 there is no restriction on the number of staircasing applications that can be made. There are some shared ownership leases that restrict the right of the leaseholder to purchase shares to 80% for shared ownership leasehold houses in protected rural areas or where the leaseholder is allowed to staircase to 100% of the equity/he is under an obligation to sell the property back to the landlord or nominated purchaser, which may be another housing association. (see *Paragraph 8 (Shared Ownership Leases) (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009(SI 2009/2097)* at <http://www.legislation.gov.uk/ukSI/2009/2097/contents/made> In addition to the rural area exception a shared ownership leasehold property for older persons can limit the equity share to 75%. .

f) Right of First Refusal (Right of Pre-emption):

- Some versions of shared ownership leases provide that the landlord has a right of pre-emption (right of first refusal) if the property is sold, even though the leaseholder may have purchased 100% of the property under the staircasing provisions of the lease.

g) Clawback for Key Worker Shared Ownership Clauses:

- Some shared ownership properties are exclusively provided for public sector workers. If the owner ceases to be a public sector worker the lease requires that they relinquish their ownership within a specified time. However since 1 April 2008 such clauses are no longer allowed and this clause will no longer be enforced in earlier leases.

h) Stamp Duty Clause

- The payment of stamp duty land tax (SDLT) is somewhat unusual for brand new shared ownership leasehold properties. On a resale of an existing lease, SDLT is paid on the premium (sale price). However, on the grant of a new lease, SDLT is paid on a formula based on the premium and the annual rent if the annual rent exceeds £600. Therefore SDLT may be payable even though the threshold for paying SDLT is above the initial sale price. Because of this the shared ownership lease must provide a clause giving the leaseholder an option to pay SDLT on either the initial sale price and the rent or on the full market value of the property. The thresholds for payment of SDLT change on a regular basis and any prospective purchaser of a new shared ownership property should take advice from their conveyancer or use the HM Revenue and Customs SDLT online calculator at <http://www.bit.ly/sdltdcalc> Please be aware the Leasehold Advisory Service does not provide advice on tax issues.

Useful links

Department for Communities and Local Government (DCLG)

<http://www.communities.gov.uk/corporate/>

Joint Guidance on Shared Ownership for England

produced by DCLG, the Council of Mortgage Lenders and the National House Building Federation.

<http://bit.ly/nhfshared>

Useful addresses

Leasehold Valuation Tribunals

London

10 Alfred Place, London WC1E 7LR
Tel: 020 7446 7700 Fax: 020 7637 1250
Email: london.rap@communities.gsi.gov.uk

Northern

1st Floor, 5 New York Street, Manchester M1 4JB
Tel: 0845 100 2614 or 0161 237 9491 Fax: 0161 237 3656
Email: northern.rap@communities.gsi.gov.uk

Southern

1st Floor, Midland House, 1 Market Avenue, Chichester PO19 1JU
Tel: 0845 100 2617 or 01243 779394 Fax: 01243 779389
Email: southern.rap@communities.gsi.gov.uk

Midlands

2nd Floor, Louisa House, 92-93 Edward Street, Birmingham B1 2RA
Tel: 0845 100 2615 or 0121 236 7837 Fax: 0121 236 9337
Email: midland.rap@communities.gsi.gov.uk

Eastern

Unit 4C, Quern House, Mill Court, Great Shelford, Cambridge,
CB22 5LD,
Tel: 0845 100 2616 or 01223 841 524 Fax: 01223 843 224
Email: eastern.rap@communities.gsi.gov.uk

Wales

1st Floor, West Wing, Southgate House, Wood Street, Cardiff CF10 1EW
Tel: 029 2023 1687 Fax: 029 2023 6146
Email: sjr.enquiries@wales.gsi.gov.uk

Other useful addresses

The Stationery Office

Printed copies of all legislation and other official publications
are obtainable from:
The Stationery Office Ltd (TSO), PO Box 29, St Crispins, Duke St
London NR3 1GN
Tel: 0870 600 5522 Fax: 0870 600 5533
Email: book.orders@tso.co.uk
Online ordering: www.tso.co.uk/bookshop

Association of Residential Managing Agents (ARMA)

178 Battersea Park Road, SW11 4ND
Tel: 020 7978 2607 Fax: 0207 498 6153
Email: info@arma.org.uk Website: www.arma.org.uk

Association of Retirement Housing Managers (ARHM)

Southbank House, Black Prince Road, London SE1 7SJ
Tel: 020 7463 0660 Fax: 020 7463 0661
Email: enquirers@arhm.org Website: www.arhm.org

The Royal Institution of Chartered Surveyors (RICS)

12 Great George Street, Parliament Square, London SW1P 3AD
Tel: 020 7222 7000

The Federation of Private Residents' Associations

PO Box 10271, Epping CM16 9DB
Tel: 0871 200 3324 Email: www.fpra.org.uk

Residential Property Tribunal Service (RPTS) National Helpline:

Tel: 0845 600 3178

The Leasehold Advisory Service (LEASE)

Maple House, 149 Tottenham Court Road, London W1T 7BN
Telephone: 020 7383 9800 Fax: 020 7383 9849
Email: info@lease-advice.org Website: www.lease-advice.org



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