

Shared ownership requirements (England and Wales)

General

1. We understand that the Borrower wishes to acquire a share of a Property under a shared ownership lease. You are instructed to follow these shared ownership instructions in addition to the Society's Instructions to Solicitors and Licensed Conveyancers in the CML Lenders' Handbook Parts 1 and 2.
2. 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 remaining interest in the Property (which remains in the ownership of the Landlord). The lease should allow 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.
3. The initial share to be purchased by the Borrower must be at least 25% based on the market value of the whole Property.
4. Before completion, 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 and the Landlord must provide consent to the mortgage in writing. You must not complete without the Landlord's consent and evidence of the consent must be sent to us with the deeds.
5. 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 CML model undertaking, to provide us with not less than 28 days' written notice of intention to forfeit or commence proceedings.
6. The unexpired term of the lease must be for a period at least equivalent to the mortgage term plus 40 years. If the lease does not meet this requirement, you must obtain a deed of variation from the Landlord to grant an extension and you must obtain any requisite consent which may be required from the Homes and Communities Agency.
7. Shared ownership leases sometimes contain a provision for downward / reverse staircasing (i.e. where the Landlord buys back a share in the Property). Where this right exists, there must be a provision for the Landlord to ensure that the offer, made by the Landlord to "buy back" a share, is acceptable to the Society (as the tenant's mortgagee) and the Landlord's mortgagee and that the sale proceeds are paid direct to the Society (as the tenant's mortgagee) who has the first registered charge on the Property.

Specific requirements in respect of leases granted before 6 April 2010

1. Staircasing
 - 1.1 If the lease does not enable the Borrower to acquire a full 100% of the value of the Property then you should revert to us for further instructions. There should be no time limits in the lease with regard to staircasing.
 - 1.2 The lease must provide that a mortgagee in possession can either (a) assign the lease as it is, or (b) staircase to 100% and then assign.
2. Disposal of the Property
 - 2.1 If the lease provides that, in connection with a proposed disposal of the Property, the Borrower must assign the lease 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. Failing this, the Borrower must be able to dispose of the Property on the open market.

2.2 If the lease contains pre-emption rights in favour of the Landlord then reasonable time limits should also be included and the Landlord should pay the full market value for the shares it is acquiring.

3. Definition of market value

3.1 For staircasing purposes

If the Borrower acquires further shares in the Property, the price of the shares will be determined by the 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. We will not accept any prejudicial restrictions on the definition of market value. The market value will be assessed disregarding the following:-

3.1.1 Any improvements made by the tenant.

3.1.2 Any failure by the tenant to comply with the repairing obligations in the lease.

3.1.3 The rights of any third parties in the Property.

3.1.4 Any mortgage over the Property.

3.2 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.

3.3 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 the 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.

4. Mortgagee Protection Clause

4.1 The lease must 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.

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

4.2.1 the sum as calculated under the terms of the lease; or

4.2.2 the sale price less the sum total of the following: 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;

whichever is the less amount.

Specific requirements in respect of leases granted on or after 6 April 2010

1. The provisions of the lease dealing with:
 - 1.1 Alienation (including without limitation rights of pre-emption and, in respect of houses, the transfer of the freehold interest to the tenant);
 - 1.2 the Mortgagee Protection Clause;
 - 1.3 Rent Review;
 - 1.4 Staircasing;
 - 1.5 Forfeiture and the ability of the Landlord to commence proceedings under the Housing Act 1988;
 - 1.6 Termination in the event of damage or destruction; and
 - 1.7 Data protection;

(the “Specific Requirements”) must be in substantially the same form as those contained in the model shared ownership leases for flats, houses or Social HomeBuy houses or flats (as the case may be) published by the Homes and Communities Agency as at 6 April 2010 and available at the following link:

http://www.homesandcommunities.co.uk/cfg?page_id=6169&page=155

2. You should revert to us for further instructions in the event that the Specific Requirements materially depart from the relevant provisions contained in the Homes and Communities Agency’s model leases.
3. Please note that we do not lend in connection with “Protected Area” shared ownership leases or any other shared ownership lease which prevents staircasing to 100%.