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## 4. Housing for Sale

### 4.1 Flexible home ownership

- 4.1.1. There are three low cost home ownership products funded through the GLA's 2015-18 programme: Shared Ownership (SO), Equity Loans and Rent to Save. These products are the three options collectively known as "flexible home ownership" (FHO). Shared ownership does not include rented property sold on shared ownership terms such as Social Home Buy (see section 4.3 below).
- 4.1.2. In London, FHO seeks to ensure that the tenure and financial product is separated from the property. The principle underpinning FHO is that the purchaser selects their home and then selects the product type most suitable to the individual. IPs with funding for FHO will be expected to offer a mix of the available options.
- 4.1.3. Flexible home ownership must be available and affordable to households up to the maximum incomes as set out in the London Plan; £71,000 per annum for a 1 or 2 bedroom property or up to £85,000 for families with dependents and for properties of 3 bedrooms or more as at March 2015, and updated in line with the Monitoring Report.
- 4.1.4. Some Boroughs operate different maximum income levels. IPs should check with the relevant Borough to confirm the levels that apply in each area. Properties can be offered at the maximum local income level for the first three months of marketing, after which point the London Plan incomes apply.
- 4.1.5. The three month marketing period based on local eligibility criteria should not start earlier than 6 months before practical completion, and the cascade to widen the eligibility cannot be triggered until 3 months before practical completion.
- 4.1.6. All properties (including re-sales) must be offered for sale through the First Steps website, operated by Share to Buy. IPs are expected to offer homes which are affordable to Londoners on a range of incomes not just the maximums, and home owners should be encouraged to purchase the maximum share possible.
- 4.1.7. Properties funded as Social Rent under previous programmes may be converted to Shared Ownership as part of a MHC15-18 Offer, in such cases all of the following requirements and guidance apply.
- 4.1.8. IPs may also offer Affordable Rent properties to existing tenants on Shared Ownership terms at the end of their tenancy. IPs must notify the GLA of any such sales on shared ownership terms. When disposing of Affordable Rent property IPs are reminded that they will be subject to the [Regulator's Consents to dispose regime](#).
- 4.1.9. Existing intermediate housing occupants can be assisted to access further FHO products, subject to the following conditions:
  - That they meet the general eligibility criteria for the scheme, that is that the annual household income is no more than £71,000 when seeking to

- purchase 1 or 2 bedroom properties, or £85,000 when seeking to purchase 3 or more bedroom properties for larger families; and
  - They are otherwise unable to afford to purchase a property that is suitable for their needs without assistance.
- 4.1.10. Owner Occupiers, in exceptional cases, can access FHO products subject to the following conditions:
- That they meet the general eligibility criteria for the scheme, that is that the annual household income is no more than £71,000 when seeking to purchase 1 or 2 bedroom properties or £85,000 when seeking to purchase 3 or more bedroom properties for larger families;
  - They are otherwise unable to afford to purchase a property that is suitable for their needs without assistance.
- 4.1.11. Each application from an existing intermediate housing occupant or owner occupier will be assessed on its individual merits by the IP;
- They must have written support from the relevant local authority that the applicant has a housing need before accessing the scheme. It is for local authorities to determine how best to make such assessments of housing need and determine their own processes which are likely to be most responsive to their local housing markets; and
  - The IP must retain a record of the local authority's written support.
- 4.1.12. The following routes and products are also available under the FHO product and may be provided using grant: Home Ownership for people with Long-term Disabilities (HOLD); Older Persons Shared Ownership (OPSO); Self-build; and discounted market sale (which featured in the previous *Building the pipeline* programme)

## **Flexible home ownership options**

### **Shared Ownership**

- 4.1.13. Shared ownership products are appropriate for those on low to moderate incomes to support purchase of between 25% and 75% of the value of the property and a 10% deposit of the share.
- 4.1.14. Key features of shared ownership are as follows:
- Shared ownership is aimed at helping people in housing need who are unable to afford to purchase a property in the open market. Shared ownership is therefore subject to applicant eligibility and affordability requirements (see below).
  - Shared ownership is available to households up to the maximum incomes as set out in the London Plan; £71,000 per annum or less for a 1 or 2 bedroom property, or £85,000 per annum or less for a 3 or more bedroom property
  - The minimum initial equity share that can be purchased is 25%; the maximum initial share is 75%. Further shares can be purchased at a later date; some restrictions might apply - see below.
  - Purchasers should buy the maximum share they can afford and sustain.
  - It is expected that purchasers will take out a mortgage to purchase their share. Approval to purchase without a mortgage will only be given in

exceptional circumstances. Approval will not be given due to poor credit history.

- IPs will undertake a headline affordability assessment at application stage to ascertain the maximum share that an applicant could afford and sustain. .
  - IPs must ensure a further rigorous affordability check is carried out taking into account savings and outgoings, to assess the sustainability of the purchase, and the share sold should reflect both of these two affordability assessments.
  - Initial sales are based on the market value of the property and IPs must obtain a valuation from a RICS qualified independent valuer at the initial stages and staircasing.
  - Rents on the unsold equity are capped at 2.75%. It is not expected that rents will be set significantly below this level as this requires considerable levels of subsidy.
  - Rent increases are to be limited by RPI plus 0.5% using the RPI figures for a specified month, published annually (when the RPI figure for the specified month is nil or negative, rent increase should be limited to a maximum of 0.5%).
  - The leaseholder can staircase to 100% in minimum tranches of 10%, unless the maximum staircase has been restricted by the Local Planning Authority as a condition of the planning permission.
  - Purchasers are responsible for payment of their own legal fees and Stamp Duty Land Tax
  - Standard form leases are available on the [HCA website](#)
  - Shared ownership leases must prohibit sub-letting.
- 4.1.15. Following a national consultation on the pre-emption right, the standard model lease has been updated to remove the requirement for leaseholders who have staircased to 100% and / or their assignees ('Former Shared Owners') to offer their former shared ownership homes back to the originating landlord prior to sale on the open market within the first 21 years following the final staircasing event.
- 4.1.16. Where either former shared owners or current shared owners have the post final staircasing right of pre-emption contained either within their existing form of lease or registered against the freehold of the title, this guidance makes it clear that providers of shared ownership are released from the funding requirement to impose a post final staircasing right of pre-emption and acknowledges that it may be removed from the lease or title of the property.
- 4.1.17. In circumstances where a shared owner has not staircased to 100% the obligation to offer their home back to their land lord (either for them to put forward a nominee purchaser or take surrender of the lease) before the shared owner is free to sell their property on the open market (the pre-final staircasing right of pre-emption) will continue to apply. As before, as a result of the different statutory regimes applying to different property types, the mechanism to impose the Pre-Final Staircasing Right of Pre-emption is slightly different in the house and flat leases.

- 4.1.18. It is anticipated that eligible applicants purchasing under the shared ownership route will purchase a share in a property through savings (if any) and a mortgage obtained through a Qualifying Lending Institution (please see **Glossary** entry).
- 4.1.19. Where an applicant is seeking to purchase their share without a mortgage, the IP must seek approval from the GLA and approval will only be given in exceptional circumstances, and will not be given for poor credit history.
- 4.1.20. For guidance, please refer to sections below on applicant eligibility and affordability.
- 4.1.21. A self-build option can allow some of the equity to be based on the self-builder's notional labour cost during the construction period. For details on self-build, please see section on self-build below and the **Glossary** entry.

### **Home Ownership for People with a long-term disability (HOLD)**

- 4.1.22. HOLD is shared ownership, except that it is designed to assist people with a long term disability, to purchase a home more suitable for their needs, where such properties are not being developed by IPs. In the case of HOLD, applicants should seek a more suitable property being offered for sale on the open market.
- 4.1.23. There is also additional guidance on the [HCA's website](#).

### **Older Persons Shared Ownership (OPSO)**

- 4.1.24. OPSO operates on shared ownership principles but with some differences from the GLA's regular SO product:
- It is only available for people aged 55 or over;
  - The maximum level of equity that can be purchased is 75%; and
  - At 75% ownership the leaseholder does NOT have to pay rent on the remaining 25% share of the property.
- 4.1.25. IPs must give priority to people who are unable to afford the full costs of purchasing sheltered accommodation.
- 4.1.26. IPs must not consider any sale to a person younger than 55. The Housing Ombudsman Service has ruled that sales to someone not meeting the age restriction could be a breach of the terms of the lease.

### **Self-build**

- 4.1.27. This is shared ownership, except in respect of the manner in which the property is constructed. Please note that "self-build" in this context is different from "Self Build" property that was previously funded by the Housing Corporation and developed for outright sale by a mutual co-operative Self Build Group. Please see the **Glossary** entry for details of the distinction between the two.
- 4.1.28. Self-build schemes developed for shared ownership must be financially viable and must look to demonstrate a maximum scheme cost/value relationship of 80% i.e. the costs of the scheme must be at least 20% less than the value of the completed properties. Any schemes that fall short of this criterion will be subject to technical assessment by the GLA.
- 4.1.29. IPs must also ensure that:



- The self-build group is registered with the Registrar of Friendly Societies on NHF model rules;
- The self-build group works with an IP which can claim grant;
- The IP signs an appropriate Development Agreement with the self-build group; and
- The rules and working regulations of the self-build group provide adequate management structures and procedures for the IP.

## Equity Loan

- 4.1.30. The equity loan product is suitable for those on moderate incomes able to raise a mortgage for 75% of the value of the home, and able to secure a deposit of 5% of their share.
- Equity loans may be made available to households on moderate incomes sufficient to raise a mortgage for 75% of the value of the property and a deposit of five per cent of the property value
  - The equity loan provided is for a maximum of 20% of the value of the property and an interest fee of 1.75% is charged from year six
  - The GLA does not take a charge on individual properties and the relationship with the customer is managed by the IP
- 4.1.31. Due to the fact that a charge will be taken over the title of a residential property the loan will potentially be regulated by the Financial Conduct Authority. Organisations wishing to provide equity loans should seek specialist advice as to the regulatory status of their proposed loans. Where the activity of providing the equity loan would be a regulated activity, providers will need to ensure that they hold the appropriate level of authorisation from the Financial Conduct Authority prior to marketing or entering into any loan. Failure to do so does risk criminal liability and/or the equity loan being unenforceable.
- 4.1.32. If the original Equity Loan tenants buy jointly, but later wish to transfer the equity to one party this can be done within the Equity Loan charge without triggering redemption provisions. Similarly if a single buyer later wishes to add a new co-buyer then this is also permissible without triggering the redemption provisions. In both instances, the IP should document this appropriately to ensure that the IP maintains an enforceable charge.
- 4.1.33. The Equity Loan charge documentation includes an obligation on the Borrower to insure the property. If the property in question is a flat and the IP or landlord carries out the insurance under the lease it is permissible to amend the insurance covenant in the charge so that it relates to the buyer's obligations to comply with its insurance covenants in the lease.
- 4.1.34. [Click here to open an illustration for buyers of how equity loans work.](#)
- 4.1.35. [Click here for the form of charge which providers are required to use.](#)

## Rent to Save

- 4.1.36. Rent to save is designed to enable aspiring home owners to move into a home that they have chosen even if they have not yet been able to save a sufficient mortgage deposit. Rent is paid at up to 80% of the equivalent

market rent for the property and a savings plan is put in place to help tenants save for a deposit.

- Let at up to 80% of the equivalent market rent for that property, with a fixed rate of inflation.
- A savings plan is put in place for the tenant to raise a sufficient deposit to purchase (on shared ownership or equity loan terms) within five years.
- The household could purchase (on shared ownership or equity loan terms) at any point in the tenancy.
- The property would be let on an assured shorthold tenancy with a fixed term linked to (but not necessarily the same as) the required savings period.
- The provider would be required to put in place regular reviews to check the progress of the household in saving for a deposit.
- The five year period could be extended if the tenant still wishes to move into home ownership but is not quite ready.
- The tenancy could be ended (subject to proper legal process) at any point (after the initial fixed term) if the tenant is not saving appropriately or no longer wishes to purchase.
- If the tenant moves out at any stage the property would be re-marketed as a FHO product (including rent to save).
- If the tenant's household income went over the maximum income cap they should be offered the opportunity to buy the home outright (with the landlord having discretion to offer a discount to reflect fees/costs that they would otherwise incur), in which case grant would be recoverable or rolled over into additional new supply.

## Rent to HomeBuy

4.1.37. Rent to HomeBuy is a historic product, piloted in 2008/9 where homes were offered to prospective shared ownership applicants on an intermediate rent basis for a limited and defined period. It was anticipated that this would be 3 years post completion but up to a maximum of 5 years where there were sound reasons for doing so. After (or during) this time the expectation was that the property would be purchased on shared ownership terms by the applicant. Given properties developed through this initiative will now have reached or be close to the end of the intermediate rent period, RPs are advised as follows:

- Towards the end of the defined intermediate rent period where tenants have not already purchased their initial share, landlords should ask those tenants to confirm the amount of share that they wish to purchase. It is suggested that a reasonable timescale be adopted to enable the required shared ownership assessment, checks and legal processes to be undertaken. Whilst not prescriptive, landlords may consider six months to be suitable. It is expected that most tenants will still be in a position to purchase the property.
- Tenants, who are assessed as not being in a position to buy at the end of the defined period due to a change in circumstances, will have their position reviewed by their landlord. Landlords will be expected to discuss alternative

housing options with these tenants and provide advice in order to prevent the tenant becoming homeless.

- Where it is assessed the tenant could be in a position to purchase within 12 months' time, an extension to the intermediate tenancy can be agreed on a once only basis at the discretion of the RP.
- If the tenant's household income has gone over the maximum income cap they should be offered the opportunity to buy the home outright (with the landlord having discretion to offer a discount to reflect fees/costs that they would otherwise incur), in which case grant would be recoverable.
- Where a property under this initiative becomes void and the RP is able to demonstrate it cannot be sold to a shared ownership applicant, the GLA is prepared to consider conversion to affordable rent.

## Porting

- 4.1.38. Porting is the transfer of an equity loan from one property to another; porting does not apply to shared ownership. The GLA will permit IPs to take local decisions when considering porting loans in London (both properties must be in London). Porting will no longer be restricted to loans granted to key workers that have retained their key worker status; porting can also be extended to all eligible intermediate housing occupants in London, subject to the following conditions:
- That they meet the general eligibility criteria for the scheme, that is that the annual household income is no more than £71,000 when seeking to purchase 1 or 2 bedroom properties, or £85,000 when seeking to purchase 3 or more bedroom properties for larger families; and
  - They are otherwise unable to afford to purchase a property that is suitable for their needs without assistance.
- 4.1.39. Please note that porting is not and never has been available for the following products, whether the owner is a key worker or not:
- Expanded Open Market HomeBuy;
  - Government Loan Only;
  - First Time Buyers' Initiative;
  - HomeBuy Direct; and
  - FirstBuy.
- 4.1.40. For the avoidance of doubt, the Equity Loan Provider's equity loan must be repaid, unless agreement to port is provided:
- on sale of the property or
  - on transfer of the property
- 4.1.41. The Equity Loan Provider will be responsible for considering applications, deciding whether or not to support the application, managing the porting process, producing any supporting documentation and recycling monies. If the original equity loan had been advanced by an IP that is not currently an Equity Loan Provider then the responsibility for the loan must pass to the appropriate Equity Loan Provider when the beneficiary buys the new property. The original loan will remain a second charge and the amount transferred from one property to another. The originating IP would relinquish responsibility for the property and the loan by assigning the second charge and the management responsibility to the Equity Loan

Provider at the time of the purchase of the new property. Equity Loan Providers should seek their own legal advice as required.

- 4.1.42. If the decision to move is taken, the home owner must either have completed the sale of their existing property, or be in the process of completing the sale of their existing property at the same time as buying for the second time through First Steps. This is to avoid a situation in which an owner ends up holding two equity loans simultaneously.

### **Discounted market sale**

- 4.1.43. Discounted market sale featured in the *Building the pipeline* programme. The discounted market sale (DMS) product uses a re-sales covenant to maintain in perpetuity the affordability of the property purchased. There is not a prescribed form of resales covenant: the GLA would need to approve the wording of this covenant before approving a scheme for funding in IMS.
- 4.1.44. At present there is no minimum discount but the GLA would expect to have approved the proposed discount percentage when assessing the original grant bid. DMS schemes are subject to the same valuation requirements as other schemes (see paragraph 7.2 in the [compliance audit chapter](#) of this guide).
- 4.1.45. DMS homes must be affordable and sustainable to households up to the maximum London Plan Incomes, as updated periodically in this chapter (current details in paragraph 4.1.14 above). As with shared ownership, providers are expected to offer DMS homes which would be affordable to Londoners on a range of incomes, not just these maximum levels.

## **Funding Principles**

### **General**

- 4.1.46. The total public subsidy (new grant, RCGF and DPF where allowable) eligible for a home ownership scheme is set out in the partner's original offer as agreed by the GLA. Where there are changes to the number or cost of units, or where delivery is otherwise altered from the original offer, any agreed changes to subsidy will be addressed through the programme change mechanism in the FDA.
- 4.1.47. No member, employee, agent or consultant of a GLA investment partner or RP should have an interest in the proposed vendor, contractor or the land or property to be acquired. This includes properties purchased by individuals under Flexible Home Ownership or other such schemes. This also includes any firm, partnership or organisation in which they or their families are involved

### **Financial Viability**

- 4.1.48. It is expected that the proposed initial sale and rent income will have been considered and that, in the long term operational costs including the repayment of loan principal and interest can be met. Any initial revenue deficits must be within IPs' general capacity. The Regulator will monitor the impact of development on the IP's general financial status.

## Sales Valuations

- 4.1.49. IPs must obtain valuations from a Royal Institute of Chartered Surveyors (RICS) qualified independent valuer at the initial sales stage and on staircasing.
- 4.1.50. Initial sales must be based on the full Market Value of the property which shall be assessed as the price the leasehold interest in the property would fetch if sold on the open market by a willing seller upon the terms and conditions contained in the shared ownership lease on the assumption that the leaseholder would acquire a 100% interest in the lease.
- 4.1.51. The following additional conditions apply to staircasing valuations:
- Tenant's improvements and failure of the tenant to keep the property in good repair will be disregarded;
  - Any service charges or improvement contributions payable will not be less than the estimates contained in the landlord's offer (if such an offer was made);
  - For freehold property, the landlord is selling a freehold interest with vacant possession; and
  - For leasehold property, the landlord is selling with vacant possession for the appropriate term, i.e. not less than 125 years (where applicable) or a term expiring 5 days before the term of the landlord's lease is to expire.
- 4.1.52. Where, in exceptional circumstances, IPs set sale prices above the valuation, they must seek the approval of their GLA Area Manager before proceeding, providing a robust business case for selling above the valuation. The reasons for selling at a price above the valuation should be documented and kept on file for audit purposes and the IP should satisfy themselves that the price remains within the means of the intended client group.
- 4.1.53. If, in exceptional circumstances, IPs wish to reduce prices below the valuation they must have the prior agreement of the GLA (agreement will NOT be given where the discounted price is below the cost of providing the homes). IPs should also demonstrate how any discount provided would benefit subsequent purchasers.

## Validity Period for a Valuation

- 4.1.54. Where no validity period is given for the valuation it will be assumed that the valuation is valid for 3 months. When an offer is made on a property, the valuation current at the time of the offer will be assumed valid for three months from the date of the offer.

## Rents and Service Charges

- 4.1.55. IPs are required to provide rents and service charge information for flexible home ownership properties and must keep details of rents, including service charges, on file for Compliance Audit purposes. Rents for Shared Ownership properties are not subject to the Regulator's Rent Standards and Rent Influencing Regime.

- 4.1.56. IPs are expected to propose rent levels that are considered affordable to potential client groups.
- 4.1.57. An IP's proposed rent as a percentage of unsold equity is set at programme offer stage. IPs are then required to maintain the same percentage through to completion.

### **Consents**

- 4.1.58. Shared ownership leases, and staircasing under those leases, are generally exempt from the need for the Regulator's consent under section 172 HRA 2008, as they are regarded as being assured tenancies. Shared Ownership leases that cannot be classed as assured tenancies (e.g. because of low rent) would need consent but are covered by category 13(a) of Regulator's General Consent 2010.

### **Grant**

- 4.1.59. IPs may use grant and RCGF funds for shared ownership schemes, on condition that the scheme is consistent with RCGF Permitted Uses – see Grant Recovery chapter.
- 4.1.60. For details of how to claim grant, and payment arrangements, please refer to the Finance section of the General chapter.

### **Applicant Eligibility**

- 4.1.61. Flexible home ownership is aimed at helping people in housing need who are unable to purchase a property on the open market.
- 4.1.62. In order to be eligible to purchase a property through FHO, applicants must have a maximum household income of £71,000 for a one or two bed property and £85,000 for a three bedroom or more property, and be unable to purchase a property suitable to meet their needs on the open market.
- 4.1.63. Applicants must be able to afford their purchase, and sustain their housing costs. IPs must undertake appropriate checks on the applicant to ensure that they are able to do this. For more details, please see below.
- 4.1.64. As part of this process, investment partners will need to check the applicant's immigration status (see below).
- Applicants are primarily expected to be first time buyers, though some applicants who own or have previously owned a home may be eligible, including existing shared owners - please see below for further details.
  - An applicant who is an IP tenant must not be in rent arrears or in breach of their current tenancy agreement at the time of their application.
  - In the case of private sector tenants, the investment partner must be satisfied that the tenant has not had a history of rent arrears.
  - Where there is an application from an IP tenant, the rented property must be able to be re-let to a local authority nominee.
  - An IP tenant whose property has to be vacated for repairs or demolition and who needs to be re-housed in alternative IP accommodation may also be accepted onto the programme providing they meet the other eligibility criteria.

- Tenants of mutual co-operatives are also eligible to participate if they meet all the other eligibility requirements.
  - In the case of joint tenants where only one tenant qualifies for the programme, the purchase can proceed in the name of the qualifying tenant provided both tenants surrender the joint tenancy and vacate the tenanted property on completion of the sale.
- 4.1.65. It is required that IPs conduct their own assessment of individual applicants to ensure that they meet all eligibility criteria. Where there are long delays between initial application and exchange of contracts, IPs must ensure that applicants continue to meet the eligibility criteria, as their circumstances may have changed (for example, an applicant may have changed jobs or formed a partnership).
- 4.1.66. Priority must go to the following groups, set in priority order:
- Existing social tenants and serving military personnel;
  - Those that will address housing problems in local and regional housing markets as defined by the local authority
  - Other first time buyers; and
  - Existing shared owners
- 4.1.67. Joint applications can only proceed on the condition that all joint applicants become joint owners. An IP tenant qualifying for the programme may have a partner who does not want to join in the application. The application can proceed in the sole name of the qualifying applicant provided the current landlord gains vacant possession of their current property *and* there is no obligation to re-house the partner.
- 4.1.68. Capital, access to that capital and any income generated by it will be taken into account when assessing their eligibility for flexible home ownership products. However, any lump sums paid to eligible members of the armed forces as a result of illness or injury are to be disregarded when assessing eligibility and sustainability. Please note that the above applies to one off lump sums only and not to other payments, such as pensions, which are still classed as income.
- 4.1.69. Capital assets include savings, bonds, shares and any other financial investments.
- 4.1.70. It is the applicant's responsibility to notify the investment partner of any changes to their circumstances after the application details have been checked by the investment partner.
- 4.1.71. Since April 2011, where applicants may have received, or are eligible for, cash incentives from local authorities and intend to use them as a contribution towards a purchase through affordable home ownership, this may class as double subsidy. Such incentives will not make applicants ineligible provided that the relevant local authority has approved its value-for-money test. The GLA will not ask to see a copy of the local authority assessment but IPs must retain confirmation that the local authority test has been completed.
- 4.1.72. The structure of such incentive schemes is a matter for the local authority but IPs must satisfy themselves that their legal interests are not

jeopardised. For the avoidance of doubt the GLA will not allow any incentive schemes which involve a legal charge on the property where the GLA already holds a legal charge (e.g. FirstBuy). IPs can allow a legal charge to be applied on other forms of affordable home ownership but such charges will not affect the amount of grant due to be repaid/recycled. For further information on calculating recoverable grant, please refer to the Grant Recovery chapter.

### **Applicant affordability**

- 4.1.73. Applicants should purchase the maximum share that they can afford and sustain. It is assumed that all applicants will take out a mortgage to enable them to purchase the maximum sustainable share. Approval will only be given by the GLA to cash purchases in exceptional circumstances.
- 4.1.74. IPs should undertake their own affordability assessments for all applicants and must determine whether the purchase price and share purchased is sustainable and can be maintained by the applicant.
- 4.1.75. It is recommended that applicants discuss levels of affordability with their lender and /or mortgage broker at an early stage in the application process, and where IPs do not have expertise in house that they also draw on professional advice. IPs may wish to use the HCA affordability calculator as a guide but levels of affordability must be confirmed with the lender.
- 4.1.76. Applicants should not be borrowing amounts deemed as unsustainable by either the IP or mortgage lender.
- 4.1.77. In instances of a joint application where both parties wish to have a share in the property both incomes must be assessed. Where there is only a single applicant, but their partner wishes to live with them, only the applicant's income can be assessed. If the applicant is married or in a civil partnership both partners' incomes should be assessed.

### **Existing Owners**

- 4.1.78. Existing shared owners who meet the applicant eligibility requirements outlined above are able to access shared ownership.
- 4.1.79. Owner occupiers can, in exceptional cases, have access to the scheme subject to the following conditions:
- That they meet the general eligibility criteria for the scheme, including maximum income caps;
  - Each application will be assessed on its individual merits by the IP;
  - Existing home owners must have written support from the relevant local authority that the applicant has a housing need before being accepted onto the scheme; and
  - The IP must retain a record of the local authority's written support.
- 4.1.80. Existing owners who are deemed eligible are required to have already sold their property or sell their property at the same time as buying through flexible home ownership. In exceptional cases where an applicant is *prevented* from accessing or selling their existing home an application may be considered, but only with the GLA's prior written agreement.



- 4.1.81. If having considered the above requirements and guidance an IP is still of the opinion that an application should proceed the IP must forward a detailed request to their GLA Area Manager setting out the following:
- The applicant's reasons why the application should be allowed to proceed;
  - Details of how the applicant has demonstrated that the existing property could not be sold;
  - Why the applicant could not borrow against the existing property to fund a purchase without government assistance; and
  - The IP's own reasons for supporting the application.
- 4.1.82. The fact that the GLA is prepared to consider exceptional cases is not an indication that there will be a positive outcome.
- 4.1.83. Applicants with existing property which may be considered commercial in nature may be excused from selling such property provided the GLA has given its prior approval.

### **Immigration Act Status**

- 4.1.84. People accessing grant funded FHO properties are required to demonstrate that they can afford and sustain home ownership in the longer term (see applicant eligibility information above).
- 4.1.85. Those applicants who are subject to immigration control (i.e. who require leave to enter or remain in the United Kingdom under the Immigration Act 1971) are less likely to be able to satisfy this requirement unless they have indefinite leave to remain in the UK.
- 4.1.86. However, there is nothing which legally prevents individuals subject to immigration control but without indefinite leave to remain from accessing FHO properties provided that they fulfil the IP's usual requirements. If such an applicant can demonstrate their ability to sustain their home ownership obligations, it is likely to be discriminatory to deny them access to the product.
- 4.1.87. IPs may wish to take the view that if a qualifying lending institution is willing to provide finance for the purchase then the individual is considered good security and therefore should be allowed access to the scheme.
- 4.1.88. IPs must adopt a case by case approach and are responsible for the decision as to whether the individual in question qualifies for FHO.

### **Specialist Eligibility Criteria**

- 4.1.89. There are additional considerations regarding eligibility for Home Ownership for people with Long Term Disabilities (HOLD) and Older People's Shared Ownership (OPSO).
- 4.1.90. There are no specific HOLD applicant eligibility criteria and people with long term or other disabilities would normally be expected to apply for Shared Ownership without accessing the HOLD programme where IPs are developing properties that meet their individual needs.
- 4.1.91. If there are no Shared Ownership or Equity Loan properties available in a particular area or the existing properties are unsuitable, purchase of a

property on the open market may be considered. In these cases applications to purchase via HOLD will also require a letter of support from the applicant's local authority, stating that the applicant has a specific need that means that standard new build properties are unsuitable, or that an applicant needs to live in a particular area where no suitable FHO properties are available.

- 4.1.92. As with all other Affordable Home Ownership products applicants need to be able to sustain the cost of home ownership. This will require applicants to either have a lump sum sufficient to cover the initial purchase without the need for a mortgage, or an on-going source of income sufficient to secure mortgage finance.
- 4.1.93. IPs intending to offer HOLD should therefore ensure that applicants are strongly advised to get independent financial advice on what assistance may be available to them, and their ability to afford Shared Ownership.

### **Older Persons Shared Ownership (OPSO)**

- 4.1.94. Applicants must meet the GLA's standard eligibility criteria (see applicant eligibility information above). However the following exceptions and additions should be followed:
- OPSO is only available for people aged 55 or over;
  - OPSO applicants who are currently homeowners will need to sell their existing property before buying using OPSO, though they *will not* require a local authority nomination in order to be approved as eligible,
  - The IP will not carry out the usual affordability assessment, but in determining eligibility must take into account the level of equity available from the sale of any existing property along with any additional savings. Applicants with sufficient equity to be able to purchase a suitable property on the open market should not be assessed as eligible;
  - OPSO applicants may need to retain a higher level of savings or investments than other applicants to provide ongoing income (in which case it should be taken account of in the headline eligibility check) to cover ongoing living and care costs. The IP should make a judgement on this on a case-by-case basis, according to the individual circumstances of the applicant, but the overall expectation remains that OPSO applicants will use the majority of their capital to fund the purchase of the property; and
  - For extra care schemes IPs can use an additional degree of flexibility when making this assessment, to take into account the higher ongoing costs of the care being provided.

### **Rents and service charges**

- 4.1.95. Rents and service charges must be reasonable and consistent with those agreed at bidding stage and in compliance with [the regulator's standards](#).
- 4.1.96. For Shared Ownership the initial rent for Shared Ownership properties must not exceed 2.75% of the value of the unsold equity at the point of initial sale. It is not expected that rents will be set significantly below this level as this requires considerable levels of subsidy.

- 4.1.97. In setting rents IPs must have regard to the affordability of the total housing expenditure of the residents i.e.:
- Mortgage costs;
  - Rent; and
  - Service charges (including the cost of management and insurance)

### **Service charge increases**

- 4.1.98. In increasing service charges, IPs must have due regard to the affordability of an increases in service charge and impact on shared owners.
- 4.1.99. Any increases in service charges must be communicated to residents in a transparent and timely way.
- 4.1.100. The GLA does not set maximum thresholds for the allowable increase in service charges however each IP should satisfy themselves that any increase in service charges is reasonable and that homes remain affordable to residents.

### **Rent Increases**

- 4.1.101. Once the method of setting increases has been decided on and written into the lease, then the provisions of the lease will be binding.
- 4.1.102. Annual rent increases are to be limited to RPI plus 0.5%, using the RPI figure, for a specified month, published annually.
- 4.1.103. When the RPI figure for the specified month is nil or negative, the GLA requires any rent increase to be limited to a maximum of 0.5% ( increases may be set below this figure, a rent increase not applied, or where considered appropriate by the landlord a rent reduction applied).
- 4.1.104. This is a matter for landlords to decide but in doing so landlords should consider whether or not the terms of the lease would be breached.
- 4.1.105. IPs should note that regardless of the change introduced from April 2015 for calculating target rent incorporating CPI that this does not apply to the annual rent increases for shared ownership.
- 4.1.106. Although the wording in the GLA's Shared Ownership fundamental Rent Review clause defines "New Gross Rent" as the "Gross Rent increased..." when the RPI figure for the specified month is nil or negative and landlords choose not to apply an increase, the GLA will not consider this a breach of that fundamental clause and will not consider grant recovery on these grounds. Neither would the GLA anticipate a formal variation to Shared Ownership lease for this purpose.
- 4.1.107. IPs can choose whether to increase rents on the anniversary date of each lease, or whether to increase all of their home ownership rents on the same date each year e.g. 1st April.
- 4.1.108. Notice of any rent increase must be given in writing to the leaseholder according to the manner and time stated in the lease.
- 4.1.109. Unacceptable increases could lead to grant being withheld until the rents including Housing Benefit (HB) eligible service charges are brought in line.

## **Level & Quality of Management & Maintenance Services & Service Charges**

- 4.1.110. All leases must include a service charge clause where appropriate.
- 4.1.111. Where IPs are selling flats and maisonettes on a leasehold basis they will continue to be responsible for the repair and maintenance of the building and the provision of services such as lighting in communal areas. IPs will need to apportion these costs to the individual unit and recover the costs from the leaseholders by way of the service charges.
- 4.1.112. IPs must comply with the Regulator's Standards and Landlord and Tenants Acts in respect of setting service charges. The level of service charge must be affordable for the intended client group and not vary from the proposed service charge at bid stage.
- 4.1.113. IPs should provide clarity at the point of initial purchase on what is and is not covered by the service charge and the process for amending the amount to be charged.
- 4.1.114. Where a service charge may be reduced or discounted for an initial period this should be communicated clearly to the leaseholder. Any subsequent increase or change should be considered, in terms of affordability, to ensure that costs will be sustainable.
- 4.1.115. The IP must ensure, in consultation with the leaseholder, that its building insurance policy provides adequate/appropriate cover particularly in respect of alternative accommodation for the leaseholder should the property become uninhabitable.
- 4.1.116. IPs must set up and maintain sinking funds for the long term upkeep of flats. It may also be appropriate, in some instances, to levy an estate rent charge for houses on estates with communal facilities. However, the contribution to a sinking fund for freeholders is a contractual obligation, as a condition of conveyance, rather than statutory one. IPs will need to consider the most appropriate mechanism for the recovery of this money bearing in mind the client group involved.
- 4.1.117. Where there are additional costs to be incurred (above the service charge) IPs should advise the leaseholder in reasonable time on the proposed works to be carried out and the expected cost of such works.

## **Leases**

### **General**

- 4.1.118. Due to a previous anomaly in the law (Statutory Instrument 1987/1940) relating to leasehold enfranchisement and Shared Ownership leases of houses, the [Housing \(Shared Ownership Leases \(Exclusion from Leasehold Reform Act 1967\) \(England\) Regulations 2009 \(Statutory Instrument 2009/2097\)](#) were enacted with effect from 7th September 2009. The Regulations set out the criteria that a Shared Ownership lease must fulfil so that even if the tenant cannot acquire 100% of the property, the tenant cannot exercise their right to enfranchise under the Leasehold Reform Act 1967.

- 4.1.119. Under the GLA's Shared Ownership product, the Shared Ownership lease sets out the rights and obligations of both the landlord (i.e. the IP) and tenant (i.e. the shared owner). The IP has a contractual right to ensure that the shared owner complies with the terms of the lease. IPs providing grant funded homes on Shared Ownership terms must ensure that their Shared Ownership leases are mortgageable and contain provisions (including Fundamental Clauses – see **section on Repayment of Right to Acquire Discount**) that qualify the scheme for grant (see **section on Waiving Repayment of Right to Acquire Discount** below). In all cases, IPs must consult their solicitors on the form of lease to be used in particular in relation to the scheme type for which the Shared Ownership lease is required.
- 4.1.120. The GLA's model leases are the HCA's suite of [model leases for use from 30 April 2015](#), which are current.
- 4.1.121. To qualify for grant IPs must ensure that leases contain the Fundamental Clauses detailed in the model lease (see **section on Repayment of Right to Acquire Discount** below).
- 4.1.122. Where IPs are not using the GLA's model leases, they must ensure that that leases will comply with the GLA's scheme/grant criteria and contain the Fundamental Clauses as worded in the GLA's model leases.
- 4.1.123. IPs must retain a copy of the form of lease granted for each scheme (i.e. one example pro forma for the scheme) as well as retaining the original counterpart lease signed by each leaseholder (i.e. for each individual property) at their registered office or solicitor's office.

### Fundamental Clauses

- 4.1.124. The [model leases](#) which are for use by IPs for grant funded Shared Ownership properties completed on or after 30 April 2015, contain the following fundamental clauses:
- Alienation provisions (refer to clause 3.18, in the model flat lease and 3.19 in the model house lease);
  - Mortgagee protection (refer to clause 8 in the model flat lease and clause 6 in the model house lease);
  - Staircasing provisions (refer to the sixth schedule of the model flat lease and part 1 of the fifth schedule in the model house lease);
  - Rent review (refer to the fifth schedule of the model flat lease - fourth schedule in the model house lease);
  - Pre-Emption provisions (refer to clause 3.19 and seventh and eighth schedules in the model flat lease - and clause 3.20 and part two of the fifth schedule in the model house lease)
- 4.1.125. For enquiries relating to proposed changes to existing leases already granted, please contact the GLA.
- 4.1.126. In addition to the Fundamental Clauses, where one of them is referred to in the Defined Terms in the lease, that Defined Term cannot be altered without the consent of the GLA.
- 4.1.127. In addition to these Fundamental Clauses all leases granted on or after 30 April 2015 must include an appendix setting out key information to shared

owners (please see the document on the leases page entitled "[Key Information for Shared Owners](#)"). The information contained in this document explains in plain English to the shared owner their rights and responsibilities under the lease. IPs can add further information to this but must not change any of the existing wording.

### **Varying Shared Ownership leases**

- 4.1.128. Where IPs seek to vary a lease, they will need to seek their own legal guidance on whether the proposed variation affects a fundamental clause, either by directly changing it or by introducing other changes that affect the application of the clause. Where it is the case that a variation affects a Fundamental Clause, IPs must seek the approval of their GLA Area Manager for the variation. **It is anticipated that approval will only be given to correct errors or in exceptional circumstances.**
- 4.1.129. Variation of a Fundamental Clause without the GLA's approval may result in grant recovery.

### **General Features**

#### **Term**

- 4.1.130. To qualify for grant funding the term of the lease must be at least 25 years longer than the term of the IP's long term loan and be acceptable for mortgage purposes.
- 4.1.131. Where IPs themselves only have a short term leasehold interest i.e. fewer than 55 years, the scheme is ineligible for grant.
- 4.1.132. Where the IP's interest (the landlord's interest) is leasehold and that interest is 99 years or fewer, the term of the lease granted on the initial sale must be for a period which terminates 5 days prior to the termination of the landlord's interest.
- 4.1.133. IPs can grant leases for a period of more than 99 years.

#### **Initial Share**

- 4.1.134. The shared owner's initial share of the property must be a minimum of 25% and a maximum of 75%.

#### **Premium**

- 4.1.135. The premium payable (sale price of the lease) on the grant of the lease must be equal to the relevant percentage of the Market Value of the property as assessed by an independent RICS qualified valuer e.g., if 25% is sold, the premium will be 25% of the Market Value.
- 4.1.136. IPs must instruct the valuer to assume that:
- The sale is for the freehold interest, or where the IP's interest is leasehold, a 99 year lease or such lesser term of years as the IP holds;
  - The sale is an open market sale;
  - A Shared Ownership lease has not been granted; and
  - The sale is to be with vacant possession.
- 4.1.137. All proposals to sell at a discount must be agreed by the GLA. Proposals to sell at a discount will only be considered where the IP provides evidence

that prospective buyers cannot afford to purchase at least 25% on the basis of Market Value.

- 4.1.138. Discounts cannot be considered:
- Where the price would be reduced to below the cost of provision; or
  - Where the value of the discount would exceed the maximum allowed for the statutory Right to Buy or Right to Acquire for the area, whichever is the higher.
- 4.1.139. Where a discount is being offered, IPs must ensure (in consultation with their legal advisors) the benefit of the discount is passed on to all future purchasers. Discounts must NOT be given where only the first purchasers would benefit.

### **Staircasing provisions**

- 4.1.140. Leases containing restrictive staircasing provisions (other than in programmes mentioned above) will render a scheme ineligible for grant funding.
- 4.1.141. The lease must provide that the leaseholder can staircase to 100% in minimum tranches/shares of 10% (including the last tranche). In the event that the Local Planning Authority has restricted this through the planning permission, the buyer should be made aware of this at the point of sale.
- 4.1.142. All leases granted in respect of houses and bungalows must be excluded from the enfranchisement provisions of the Leasehold Reform Act 1967, Leasehold Reform (Housing and Urban Development Act) 1993 and The Commonhold and Leasehold Reform Act 2002 in order to qualify for grant. Since 7 September 2009 changes to the above legislation by means of the Housing ([Shared Ownership Leases \(Exclusion from Leasehold Reform Act 1967\) \(England\) Regulations 2009](#)) are designed to further protect landlords from early enfranchisement. Landlords must take their own legal advice as appropriate.

### **Rent**

- 4.1.143. IPs must ensure that there are appropriate rent provisions and a means of reviewing rent increases.

### **Stamp Duty and legal fees**

- 4.1.144. Purchasers of Shared Ownership properties are responsible for the payment of their own legal fees and Stamp Duty Land Tax (SDLT).
- 4.1.145. As of March 2008 the rules around the payment of Stamp duty on Shared Ownership changed. The Shared Ownership leases must contain an appropriate SDLT statement which gives an option of paying either:
- On a market basis as if the property had been purchased outright from the beginning: or
  - In stages, paying the amount due on the initial share, and then only paying further amounts when the shares purchased exceed 80% of the value of the property
- 4.1.146. IPs should recommend purchasers seek advice from their solicitor over the best option for them.

### **Sub-Letting**

- 4.1.147. Shared Ownership leases must prohibit sub-letting by the leaseholder to protect public funds and ensure applicants are not entering Shared Ownership for commercial gain. The model lease stops the leaseholder having the right to sub-let, but allows the IP to agree to sub-letting arrangements if they choose to do so in exceptional circumstances.
- 4.1.148. Where an IP has any doubt as to whether or not to allow a subletting request, they should contact their GLA Area Manager in the first instance.
- 4.1.149. If a request is from a serving member of the Armed Forces whose tour of duty requires them to serve away from the area in which they live (a distance of at least 50 miles or 90 minutes travelling time) for a fixed period, and the general criteria above are also met, the shared owner may sublet subject to the IP being satisfied that all of their additional criteria (if any) are met.
- 4.1.150. In all cases IPs must seek their own legal advice before agreeing to sub-letting.
- 4.1.151. For the avoidance of doubt, sub-letting does not include the taking in of lodgers where the owner occupier is the resident landlord.

### **Right of First Refusal (Pre-emption right)**

- 4.1.152. The Pre-emption Right is a fundamental clause of the shared ownership lease. Until 30 April 2015, the GLA's model lease included a Post Final Staircasing Right of Pre-emption as well as a Pre-Final Staircasing Right of Pre-emption.
- 4.1.153. Changes introduced on 30 April 2015 removed the requirement to include the Post Final Staircasing Right of Pre-emption. The Pre-Final Staircasing Right of Pre-emption remains as a fundamental clause.
- 4.1.154. A revised form of model lease has been published on the GLA's website for registered providers to use for new shared ownership properties from 30 April 2015. The revised model lease is published [here](#).



- 4.1.155. For properties where a shared ownership lease has been entered into prior to 30 April 2015 (or using the model form of lease applicable prior 30 April 2015) there are a number of different scenarios which may apply:**Flats**
- 4.1.156. **Existing leases pre-Final Staircasing** – the GLA recommends that the pro forma [Deed of Variation](#) should be entered into prior to or on Final Staircasing at the option of the leaseholder. The Deed of Variation is intended to remove the lease provisions relating to the Post-Final Staircasing Right of Pre-emption. Once amended by the Variation, the form of lease will allow the leaseholder to apply to remove the restriction from the title on Final Staircasing.
- 4.1.157. **Existing leases post-Final Staircasing** – the same form of [Deed of Variation](#) will apply. The amended form of lease will enable to leaseholder to apply to remove the restriction as it will no longer be required by the lease.

## Houses

- 4.1.158. **Existing leases pre-Final Staircasing** – although a similar Deed of Variation could be used for the House lease, the only provisions which need to be changed are contained in the form of draft transfer which is appended to the lease. In our view it therefore very difficult to provide a useful pro forma Deed of Variation as each transfer will be specific to the property in question. As the draft form of transfer contained in the house lease is subject to further amendment in any case upon Final Staircasing, a more pragmatic approach would be to remove the Right of Pre-emption from the transfer at this stage. We confirm that the inclusion of the Post Final Staircasing Right of Pre-emption is no longer a funding condition. Removal of the pre-emption provisions from the transfer on Final Staircasing will mean that a title restriction is no longer required for this purpose.
- 4.1.159. **Freehold houses post-Final Staircasing** – Shared ownership providers who have the benefit of restrictions on title protecting Post Final Staircasing Rights of Pre-emption in relation to houses (Former Landlords) and Former Shared Owners should note that the title restriction protecting the Post Final Staircasing Right of Pre-emption is no longer a funding condition and should be dealt with, either through withdrawal or cancellation, prior to any onward sale on the open market. Once achieved the Former Shared Owner would be free to sell on the open market without first having to offer back their property to the Former landlord. Where the Former Shared Owner intends to apply to remove the restriction on title, they may choose to make an individual application to cancel restriction in Land Registry Form 'RX3' supported by evidence that the restriction is no longer required. Former landlords should provide reasonable assistance to Former Shared Owners in providing confirmation of their support of such applications. Where the Former Landlord intends to withdraw the restriction on title themselves this can be achieved through Land Registry form 'RX4.'
- 4.1.160. **For flats** once the Deed of Variation has been entered into the restriction will only be required to stay on the property title prior to Final Staircasing.

- 4.1.161. Once the Deed of Variation has been registered against the title to the property, upon Final Staircasing the memorandum of Final Staircasing can be provided to the Land Registry as confirmation that the Former Shared Owner has purchased 100% of the equity in support of the leaseholder's application to remove the restriction.
- 4.1.162. For existing leases post Final Staircasing, the Former Shared Owner will need to apply to the Land Registry to remove the existing Form M restriction at the same time as applying to register the Deed of Variation against the title to the property.
- 4.1.163. We have agreed with the Land Registry that the executed form of Deed of Variation together with a copy of the memorandum of Final Staircasing will be sufficient supporting information to enable the leaseholder to apply for the removal of the restriction using Land Registry form RX3. Ordinarily the Land Registry provides specific notification to parties with the benefit of a restriction confirming that an application to remove a restriction has been submitted. In these circumstances we have agreed with the Land Registry that specific notification to the landlord will not be required as they will have entered into the Deed of Variation and executed the memorandum of Final Staircasing.
- 4.1.164. **In the case of a house pre Final Staircasing**, the restriction protecting the right of pre-emption is only registered against the title to the property after Final Staircasing and the transfer of the freehold to the former leaseholder. There will therefore be no requirement to remove a restriction from the title relating to the Landlord's rights of pre-emption where the leaseholder has not acquired a 100% interest in the property
- 4.1.165. **In the case of a house post Final Staircasing**, the Former Shared Owner's Form RX3 would need to be supported by the Former Landlord in providing evidence of their support to the application.
- Or
- 4.1.166. An individual application by the Former Landlord (or their successor) could be made to withdraw the restriction. This application would be made on Form RX4 (section 47, Land Registration Act 2002 and rule 98, Land Registration Rules 2003.)
- 4.1.167. Currently no Land Registry fee would be payable in either case.

### **Leasehold Repurchase**

- 4.1.168. NB – this is not the same as Flexible Tenure or the Right of First Refusal as above.
- 4.1.169. In the case of flats only, the landlord may offer to repurchase the lease where the following conditions are satisfied:
- The property was grant funded;
  - The Shared Ownership lease was issued post April 2006 and contains a clause giving the landlord an option to indicate whether or not it will consider buying back the property – clause 3(16) b ii in the GLA model Shared Ownership lease;
  - The leaseholder has not staircased to 100%; and

- The leaseholder is required to move, for example the property is no longer suitable for the leaseholder's needs, or the leaseholder's employment requires a change in location.
- 4.1.170. However the GLA would only expect the IP to exercise the repurchase option as above where the value of the property means that it has not been possible to find a suitable nominee able to afford to purchase the existing share, and the leaseholder has been unable to find a purchaser on the open market.
- 4.1.171. Where an IP considers repurchasing flats under the above conditions they can use their own resources or RCGF receipts. The usual RCGF rules will apply to the subsequent sales receipts.
- 4.1.172. IPs will then be required to sell the lease on current Shared Ownership terms at a lower percentage to make the property more widely affordable. For example, the original leaseholder held a 60% share but the IP nominee could only afford to purchase a 40% share.

### **Resale Nominations**

- 4.1.173. Where a shared owner is looking to sell their share, the terms of the lease require them to offer the property (initially) to qualifying applicants nominated by the IP.
- 4.1.174. If the IP is unable to nominate a suitable purchaser within eight weeks, under the terms of the lease the owner will be able to sell the property on the open market. In practice, this will usually mean that the shared owner will perform a "back-to-back" sale i.e. they will need to staircase to 100% ownership and sell the property outright simultaneously. If the proposed purchaser only wants to buy a share of the property they will need the IP's permission, which should only be given where the proposed purchaser meets the GLA's SO eligibility criteria current at the time of purchase.
- 4.1.175. However, it will be for IPs to satisfy themselves that resales have been conducted in accordance with the terms of the lease.

### **Service Charge**

- 4.1.176. The GLA recognises that the form of wording used in the current model lease will not be appropriate in all circumstances, and whilst the GLA will no longer require the service charge as worded to be a Fundamental Clause, the inclusion of a service charge will still be a condition of grant. In light of this, for leases issued on or after 22 October 2010, the IP is permitted to make such amendments to the model clause (and the related definitions) as are required to reflect the requirements of the individual development. It will be for IPs to ensure that the form of service charge clause included in the relevant lease is compliant with the relevant statutory and regulatory requirements and provides an appropriate mechanism to enable the landlord to recover its service charge costs.
- 4.1.177. If an IP wishes to alter the service charge clause in a lease granted before 22 October 2010, then they are able to do so. However the IP should be mindful that the lease remains compliant with the relevant statutory and regulatory requirements, and must seek their own legal advice about

changing leases retrospectively. The IP should also keep on file a record of when the change is made and the reason for the change.

- 4.1.178. The GLA requires IPs to use the Affordability good practice guide and model Affordability calculator or a methodology of comparable standard to determine applicants' ability to afford and sustain home ownership when accessing FHO. This can be adapted to suit individual circumstance, whilst ensuring that long term sustainable home ownership remains the primary objective.
- 4.1.179. Capital sums held by applicants will be taken into account when assessing long term sustainability, but should allow sums to be retained for costs associated with buying and moving home.
- 4.1.180. This does not include lump sums paid to medically discharged ex-members of the armed forces.
- 4.1.181. The FSA's rules require lenders to take into account a borrower's ability to repay a loan and the sustainability of the particular loan being considered.
- 4.1.182. Further guidance is available to lenders and mortgage intermediaries when assessing a borrower's ability to repay a loan, and can be found by accessing the [FCA's website](#).
- 4.1.183. Applicants in receipt of benefits such as Housing Benefit are not precluded from applying for Affordable Home Ownership products, subject to affordability and sustainability assessments.
- 4.1.184. Applicants must note that the GLA would expect that assessment of income would not wholly rely on self-certification.

### **Staircasing**

- 4.1.185. Shared owners may increase their percentage share of the equity at any time during the term of the Shared Ownership lease. This is known as staircasing. Staircasing requirements are a fundamental clause and must be set out in the shared owner's lease.
- 4.1.186. The price paid for further shares is based on the full open market value of the property in accordance with the requirements set out above. The lease makes provision for the resolution of disagreement or dispute that may arise, between the landlord and the leaseholder, in respect of choosing a valuer.
- 4.1.187. Under the terms of the sample lease, leaseholders have three months to complete their staircasing purchase from the date IPs receive the valuation from the valuer.
- 4.1.188. IPs have discretion to extend the three month period to six months where there has been a delay which is outside the control of the leaseholder and the IP, for example if documents were lost in the post or there were legal delays.
- 4.1.189. Where IPs apply discretion, they must retain on file documentary evidence explaining the reasons for waiving the three-month validity period.
- 4.1.190. Except on:
- Older Persons Shared Ownership schemes; and

- Rural Restricted Staircasing schemes;
  - the staircasing provisions must allow staircasing to 100% where the properties have been grant funded.
- 4.1.191. Details of the staircasing requirements are set out in the shared owner's lease. The lease makes provision for the resolution of disagreement or dispute that may arise, between the landlord and the leaseholder, in respect of choosing a valuer.
- 4.1.192. Since the NAHP 2008-11, IPs are required to record details of all staircasing transactions in the GLA's Investment Management system (IMS). The required details are as follows:
- Event Date (the completion date of the staircasing sale);
  - Percentage of equity share purchased (the tranche purchased in that individual transaction); and
  - Full sale price (of the whole property; the system then calculates the value of the tranche automatically)

### **Mortgage Difficulties**

- 4.1.193. As a last resort option when a shared owner has got, or is about to get, into mortgage arrears and potentially lose their home, including the likelihood of repossession by the main mortgage provider, IPs may use their Recycled Capital Grant Fund (RCGF) to act as a 'safety net' and offer flexible tenure. Flexible tenure is designed to enable a shared owner to remain in their home either by selling some of their shares back to their landlord in order to reduce their mortgage to a more affordable and sustainable level, or by selling all their shares back to the landlord and becoming a tenant at an Affordable Rent. This is also known as reverse staircasing or Leasehold Repurchase. For further information and requirements see **Grant Recovery chapter**.

### **Leasehold Repurchase**

- 4.1.194. In exceptional circumstances, where IPs have exhausted all other funding options, new grant may be available as a contribution to Leasehold Repurchase costs. As with funding Leasehold Repurchase with RCGF (under flexible tenure arrangements), new grant will only be available for up to 70% of the market value of the share to be purchased. While there should be no presumption of grant funding being made available, the GLA will, on a case by case basis, consider funding applications for Leasehold Repurchase in circumstances where the IP can demonstrate:
- That the shared owner is about to or is likely to lose their home;
  - That the shared owner meets all relevant criteria outlined in the **Grant Recovery chapter**;
  - That the IP meets all other relevant criteria as outlined in the **Grant Recovery chapter**;
  - That all other funding options have been exhausted including:
    - The use of the IP's own reserves;
    - The use of its own RCGF;
    - The transfer of RCGF between IPs as per the **Grant Recovery chapter**; and
  - Other private funding;

That the property was previously grant funded and  
A justifiable case for new grant.

- 4.1.195. Copies of relevant documents supporting these requirements should be retained by the IP for audit purposes.
- 4.1.196. IPs who consider they meet the above requirements must contact their GLA Area Manager prior to submitting a bid for new grant in the GLA's IMS to ascertain whether an application would be supported. IPs should note that, unlike Flexible Tenure, Leasehold Repurchase is only available for Shared Ownership properties that were previously grant funded by the GLA.
- 4.1.197. Following Flexible Tenure and Leasehold Repurchase, any subsequent upward staircasing will lead to grant recovery.

### **Mortgage Default**

- 4.1.198. Where a shared owner defaults, IPs must seek their own legal advice before replying to the lender's solicitor, or before taking any action against a defaulting leaseholder. It is advised that struggling shared owners approach their lender in the first instance.

### **Additional Borrowing**

- 4.1.199. While the model Shared Ownership lease does not prohibit additional borrowing, it is subject to conditions contained in the Shared Ownership lease and in particular the Mortgagee Protection Clause (MPC). The MPC is a fundamental clause of grant funded Shared Ownership leases. Leaseholders should be aware that even if the value of their share has increased lenders may not be prepared to provide additional borrowing if they cannot rely on the MPC to protect those additional sums loaned.
- 4.1.200. In all cases, the IP's written approval is required regarding the lender and the terms of the mortgage before the mortgage is entered into. If the IP's approval is not obtained, the lender does not have the benefit of the MPC, and so is unlikely to advance any borrowings.
- 4.1.201. In addition to the requirement for IP approval, only certain loans are protected under the MPC, these include:
- The premium lent to purchase the initial share;
  - Further borrowing to enable the purchase of additional shares (staircasing);
  - Further borrowings to comply with the leaseholder's covenants in the Shared Ownership lease, such as essential repairs; and
  - Further borrowing to allow one leaseholder to buy out another leaseholder's interest (in the same property).
- 4.1.202. However, additional borrowing can only be permitted if the premium and any further borrowing do not exceed the market value of the leaseholder's share in the property.
- 4.1.203. Leaseholders wishing to borrow additional funds are advised to contact their IP and lender to discuss the options and implications. Please follow the link for further guidance.

### **Lease Extensions for Property still in Shared Ownership**

- 4.1.204. Leases with less than 70 years remaining are not an attractive option to some mortgage providers. This can make it difficult for prospective purchasers to obtain a mortgage. Also it may have the effect of reducing the value of the lease.
- 4.1.205. While Shared Ownership leaseholders have no statutory right to a lease extension, the GLA recommends IPs consider granting extensions to Shared Ownership leases wherever possible. However in doing so the GLA requires IPs to seek their own legal advice to ensure any obligations under current Leasehold Legislation are met.
- 4.1.206. As lease extension is not subject to a fundamental clause, there is no requirement for IPs to seek the GLA's consent to extend a lease. Also as the Shared Ownership lease is a form of assured tenancy any extension of the lease, and therefore an extension of the assured tenancy, will not require s172 consent from the Regulator.
- 4.1.207. Extending leases will have implications for both IPs and leaseholders and the GLA recommends IPs take various issues into account when discussing extension with Shared Ownership leaseholders.

### **Landlord Repurchase**

- 4.1.208. In certain circumstances landlords may opt to, or be encouraged to repurchase property previously sold on Shared Ownership terms. These would include:
- Right of first refusal
  - Flexible tenure
  - Repurchase of equity
- 4.1.209. The repurchase scheme operates on the basis that when a shared owner (or the owner in the 21 years after the property has been staircased to 100%) wishes to dispose of the property, IPs are able to repurchase it and resell it on a Shared Ownership basis. The equity level at which resales take place will depend on the means of local residents.
- 4.1.210. IPs must fund the re-purchase from the following sources if possible:
- RCGF;
  - Their own resources;
  - A private loan; or
  - Any combination of the above
- 4.1.211. If the IP is unable to fund the re-purchase through this route they are expected to invite another appropriate IP to use its RCGF, own resources, or private finance to purchase the property instead.
- 4.1.212. If it is not possible to fund the re-purchase through these routes then the IP can seek grant funding from the GLA. The GLA will assess such applications on a case by case basis.
- 4.1.213. The price to be paid for the property will be the Market Value of the whole of the property, where the freehold or full lease is being acquired, or the proportion of the Market Value equivalent to the current shared owner's equity stake in the property.

4.1.214. IPs may use their Right of First Refusal/Buy-Back Option (see **section above**).



## 4.2 Right to acquire

### RTA - Overview

#### Purpose

- 4.2.1. This chapter sets out the characteristics and the GLA's funding requirements in respect of the Right to Acquire.

#### Context

- 4.2.2. The Right to Acquire (RTA) is a Statutory scheme which offers eligible tenants in eligible properties the opportunity to purchase the home they currently rent at a discount. The discount is a fixed sum of money which varies geographically, and is set out in Statutory Instrument 2002 no. 1091.
- 4.2.3. Eligible tenants can obtain the full discount if they have never received any form of public subsidy to help them purchase a property before. Tenants who have previously received some form of public subsidy remain entitled to their RTA discount, but it will be reduced by the amount of subsidy that they previously received.
- 4.2.4. The key provisions governing the tenant's rights are set out in Sections 180-185 of the Housing and Regeneration Act 2008 (as amended by 165 of the Localism Act 2011) and sections 16 and 17 of the Housing Act 1996. The statutory procedures, discount entitlement and other requirements are governed by Part V of the Housing Act 1985, as amended by s180-189 and 192-193 of the Housing Act 2004 and s304-310 of the Housing and Regeneration Act 2008, and as modified in relation to RTA by the Housing (Right to Acquire) Regulations 1997 (made under Section 17 of the 1996 Act). Schedule 2 to the Regulations sets out Part V of the Housing Act 1985 as modified. A more comprehensive list of statutory provisions is listed below:
- 2008 Housing and Regeneration Act sections 180-185 (as amended by 165 of the Localism Act 2011) and 304-310;
  - 2004 Housing Act Sections 180-189 and 192-193;
  - 1996 Housing Act Sections 16 and 17, and 20, 21, 24, 25 and 26;
  - 1985 Housing Act Part V;
  - The Housing (Right to Acquire) Regulations 1997 (Statutory Instrument No. 619);
  - The Housing (Right to Acquire) (Discount) (Amended) Order 2002 - SI 1091;
  - The Housing (Right to Acquire or Enfranchisement) (Designated Rural Areas) Orders 1997 Nos. 620-625; and
  - The Housing (Right to Acquire or Enfranchise) (Designated Rural Areas) Order 1999. (No 1307).
- 4.2.5. RTA is a matter for tenants to discuss with their landlords. Both parties should take their own legal advice about questions such as eligibility. The GLA is not able to intervene, resolve disputes or provide legal advice.
- 4.2.6. RPs must publish and provide to tenants certain information relating to RTA. For more details see below.

## Main Features of the Scheme

- 4.2.7. RTA only applies to Secure and Assured Tenants (or Assured Shorthold Tenants whose tenancies began on or after 1 April 2012 and are for a fixed term of at least two years) occupying self-contained accommodation for rent where the costs of procuring or developing those properties was part-paid for by Social Housing Grant (SHG), Social Housing Assistance (SHA), the Disposal Proceeds Fund (DPF) or any combination of these, on or after 1 April 1997.
- 4.2.8. Assured Shorthold Tenants whose tenancies began before 1 April 2012 or are for less than two years, those who hold long leases or tenants of shared accommodation are not eligible (see below on eligibility).
- 4.2.9. Schedule 5 of the Housing Act 1985, as modified by RTA Regulations, sets out the categories of cases where there is no Right to Acquire – more details below.
- 4.2.10. RPs should note that properties developed for rent with recycled grant from their Recycled Capital Grants Fund are not subject to the RTA, unless combined with SHG, SHA or DPF.
- 4.2.11. Schemes that received grant confirmation before 1 April 1997 are excluded from RTA. Allocations received before 1 April 1997 but where grant confirmation was on or after 1 April 1997 are not excluded – more details below.
- 4.2.12. Discounts available under RTA are fixed cash amounts determined by the Secretary of State, based on the geographical location of the tenanted property. Full details are published in a Statutory Instrument, known as The Housing (Right to Acquire) (Discount) Order.
- 4.2.13. Where a tenant has previously received a government funded discount to purchase a property, the RTA discount entitlement will be reduced by the amount previously received. Unless the RP has reason to believe otherwise, the tenant's written certification (for example on form RTA1) is sufficient confirmation that a previous discount has not been received.
- 4.2.14. For RTA applications submitted on or after 2 December 1999 the amount of discount is restricted to no more than 50% of the value of the property.
- 4.2.15. RPs must claim grant to cover the discount from the GLA within 6 months of the date of sale.
- 4.2.16. Net receipts from RTA sales are required by statute to be retained by RPs in a ring-fenced fund within their accounts to be known as a Disposal Proceeds Fund. Sums held in the DPF can only be used for defined purposes set out by the Regulator (please see DPF guidance: <http://webarchive.nationalarchives.gov.uk/20120514075635/http://www.tenantservicesauthority.org/server/show/nav.14481>).

## RTA - Applicant Eligibility

### General

- 4.2.17. RTA does not apply to all Secure, Assured and Assured Shorthold Tenants or to all property provided by the RP. Although the scheme shares some of the features of the Right to Buy scheme (Part V Housing Act 1985) there are important differences in how the scheme operates for RP tenants.
- 4.2.18. The following paragraphs summarise the RTA legislative provisions, to enable RPs to establish a tenant's eligibility; but they are not exhaustive and cannot be taken as an authoritative interpretation of the law. RPs should consult the relevant RTA statutory provisions and seek legal advice where appropriate.
- 4.2.19. RTA does not provide for any application of a preserved Right to Buy; Rent to Mortgage option; Right to a Loan for payment of service charges; or delay procedure.
- 4.2.20. RPs should ensure that all tenants living in qualifying properties after 1 April 1997 are given information on RTA (see property eligibility below)
- 4.2.21. RTA only applies where the RP's tenant:
- Occupies an eligible property (see **below**).
  - Is a secure or assured tenant of the RP. This includes those who hold Assured Shorthold Tenancies with a fixed term of at least two years beginning on or after 1 April 2012, but does not include:
    1. Tenants who hold Assured Shorthold Tenancies beginning before 1 April 2012;
    2. Tenants who hold Assured Shorthold Tenancies with a fixed term of less than two years;
    3. Tenants who hold long leases; and
    4. Tenants of shared accommodation.
  - Has been a public sector tenant for the required minimum time (see section 2.2 below).
- 4.2.22. Schedule 5 of the Housing Act 1985, as modified by RTA Regulations, sets out the categories of cases where there is no Right to Acquire.

### Qualifying Period for Right to Acquire

- 4.2.23. The RTA can only be exercised where the tenant has been a tenant of a public sector landlord for a qualifying period of five complete years. See section 2.3 below for details of public sector landlords.
- 4.2.24. Previous public sector tenancies can count towards the qualifying period and need not be continuous.
- 4.2.25. The one exception to this ability to count non-continuous periods of residence is where RPs acquired property under a mortgage rescue arrangement and the previous owner is now the tenant. In these cases the tenant must have been a tenant in their current home for 5 complete years.
- 4.2.26. The duration of an Assured Shorthold Tenancy counts towards the qualifying period for RTA.

## Public Sector Landlords

- 4.2.27. To be eligible for RTA on the grounds of residence the applicant must have accrued the minimum period of time as a tenant of a public sector landlord or landlords. For a list of public sector landlords, please refer to the [GOV.UK](#) website. The list is currently located on pages 14-15 of the PDF accessed through the heading, "Download the Right to Buy application form (RTB1)". However, users should be aware that this is an external website and any information could be subject to change.
- 4.2.28. For the purposes of establishing a qualifying public sector tenancy, time spent in accommodation provided by the Armed Services qualifies. Please see [Schedule 4 paragraphs 6 – 8 of the Housing \(Right To Acquire\) Regulations 1997](#).

## Detailed Eligibility Criteria

- 4.2.29. Subject to holding a Secure or Assured Tenancy (or an Assured Shorthold Tenancy with a fixed term of at least two years which began on or after 1 April 2012) and occupying a qualifying property (see below on property eligibility) where the landlord is an RP, a tenant has the right to purchase the freehold of a house or a lease of a flat (or a house, if the landlord does not own the freehold). RTA does not apply where the freehold interest is owned by a non-public sector body.
- 4.2.30. Where a tenancy is held in joint names not all the tenants need to exercise their RTA. Provided agreement is reached with other joint tenants, the purchase can proceed in the name of one of them, provided it is that joint tenant's only or principal home. In the event of other joint tenants not agreeing to the purchase, RTA cannot be exercised. Where a joint tenant objects to the application proceeding they should do so in writing to the RP.
- 4.2.31. Tenants may jointly purchase with up to 3 members of their family who live with them in the RP property at the time that the application is made, providing the family members have lived in the property for the previous 12 months.
- 4.2.32. If the tenant is purchasing the property with a mortgage, the mortgage has to be provided by a qualifying lending institution (more on these below).
- 4.2.33. The following categories of tenants are not RTA eligible:
- Tenants occupying property on an assured shorthold tenancy (where this commenced prior to 1 April 2012 and/or is for less than two years), licence or a long lease;
  - Tenants of Abbeyfields or Almshouses;
  - Tenants of fully mutual co-operatives;
  - Tenants of co-ownership societies;
  - Undischarged bankrupts or tenants who have a bankruptcy petition pending against him/her or has an arrangement with creditors, the terms of which remain to be fulfilled;
  - Tenants subject to a court order for possession of the property; and
  - Tenants who are the subject of a 'suspension order' or 'suspension status.'

- 4.2.34. Tenants meeting the applicant eligibility criteria at the date of their application must continue to do so up to the exchange of contracts.

### **Suspensions for Anti-Social Behaviour**

- 4.2.35. Applications for RTA can be suspended on the grounds of anti-social behaviour. Sections 192 -193 of the Housing Act 2004 (effective from June 6<sup>th</sup> 2005) allow for Right to Buy/Acquire applications to be suspended on the grounds of anti-social behaviour.
- 4.2.36. Following an application from an RP, the courts may make a 'suspension' order in respect of a tenancy. A suspension order may be granted only if the court is satisfied that the tenant or a person living in the property, or visiting the property, has engaged or threatened to engage in anti-social behaviour (which includes using the premises for unlawful purposes), and that it is reasonable for an order to be made.
- 4.2.37. Once issued, a suspension order will have the effect of suspending existing RTA applications and/or preventing new applications being made during the period the order covers. An RP may also apply to the courts for an existing suspension order to be extended.
- 4.2.38. RPs must clearly set out their policy stating the circumstances under which 'suspension status' will be applied to relevant tenancies. The RP's policies should state that 'suspension status' will be applied only in the circumstances outlined above.
- 4.2.39. Where RPs decide to apply 'suspension status' to a tenancy, the reasons and evidence for the decision should be fully documented and the existing tenants notified that it has been applied to their tenancy for RTA purposes.
- 4.2.40. Once applied, 'suspension status' will have the effect of suspending an existing RTA application and/or preventing new applications and claims being made during the period of suspension.
- 4.2.41. Application of 'suspension status' will also remove RPs' obligations to complete RTA sales (e.g. convey the freehold or grant a lease) during the period of suspension.
- 4.2.42. The existence of a 'suspension order' or 'suspension status' does not affect the accumulation of a tenant's qualifying period.

### **RTA - Property Eligibility**

#### **General**

- 4.2.43. Not all rental properties owned by RPs are eligible for RTA. Eligible, ineligible and excluded properties are set out below.

#### **Eligible, Ineligible & Excluded Properties**

- 4.2.44. Specific terms are used to describe the status of properties under the RTA. They are:
- Eligible: Properties part funded with Social Housing Assistance (SHA), Social Housing Grant (SHG) or Disposal Proceeds Fund (DPF).
  - Ineligible: RTA does not apply to properties funded before 1 April 1997, as they were not developed with SHG or SHA, but with HAG or some other form of subsidy.

- Excluded: Some properties that were part funded with SHG or SHA are nevertheless ineligible for the RTA by virtue of their location, design etc. For details see section on property eligibility above.
- 4.2.45. Only properties provided through grant funding on or after 1 April 1997, including properties provided with the receipts from the DPF and property transferred from public sector landlords on or after that date will be eligible. Please follow the link for additional guidance on how this will work.
- 4.2.46. Properties that were subject to grant confirmation before 1 April 1997 are ineligible from RTA. Schemes for which bids were received before 1 April 1997 are not exempt from RTA where grant confirmation was on or after 1 April 1997.
- 4.2.47. RTA does not apply where a non-public sector body owns the freehold interest (subject to the exception noted in 4.2.28 below).
- 4.2.48. RTA legislation requires that the freehold interest in the dwelling must at all times have been held by an RP (ex-RSL) or public sector landlord. However, under provisions of the Leasehold Reform, Housing and Urban Development Act 1993 qualifying tenants of flats (i.e. those with long leaseholds) were given rights to collective enfranchisement, which meant that if exercised they became the new freeholder. As the freehold interest would no longer be held by an RP or other public sector landlord, the RTA eligible assured tenants in the block would be unable to exercise their RTA in respect of the flats they rented from the RP. This was an unintended consequence of that legislation. This was remedied in the Housing Act 2004; and since 18 January 2005, Section 202 of that Act no longer denies Assured Tenants their RTA in respect of the flats they rent.

### **Excluded Properties**

- 4.2.49. As per section 3.2.2 above dwellings provided with the benefit of SHG/SHA, from the Disposals Proceeds Fund (in whole or in part) or transferred from a public sector landlord since 1 April 1997 are subject to RTA unless they are excluded by legislation.
- 4.2.50. Below is a list of property types that the GLA believes legislation excludes from the RTA.
- 4.2.51. Exclusion from RTA is outlined in the following legislation:
- Schedule V of the Housing Act 1985 as amended by The Housing Act 2004
  - The Housing (Right to Acquire) Regulations 1997
  - The Housing (Right to Acquire or Enfranchisement) (Designated Rural Areas) Orders 1997
- 4.2.52. Properties excluded from RTA include the following:
- Properties where the landlord has insufficient legal interest i.e. where the property is a house, a lease with a term under 21 years and for a flat, a lease with a term under 50 years;
  - Properties where the landlord is a co-operative housing association;
  - Properties situated in a rural area designated by order of the Secretary of State under Section 17(1)(b) (Right to Acquire: Supplementary Provisions) of the Housing Act 1996;

- Properties let in connection with employment;
- Properties designed with special features for letting to people with physical disabilities. To gain exemption the property should be one of a group of properties normally let to people with physical disabilities and a social service or special facility is provided close by wholly or partly to assist the tenants;
- Properties with special facilities let to tenants who are suffering or have suffered from a mental disorder. As above the property must be one of a group of properties and a social service or special facility must be provided close by wholly or partly to assist the tenants;
- Properties which are one of a group of properties which it is the practice of the landlord to keep for occupation by persons who have special needs and require intensive housing assistance and such intensive housing assistance is provided either directly or indirectly by the landlord;
- Properties let to persons of pensionable age. Such properties must be one of a group of properties let to the elderly and have special facilities consisting of or including a resident warden or non-resident warden with a calling facility and/or a common room close by;
- Properties held on Crown tenancies;
- Properties where the attributable loan debt is equal to or greater than its current market value; and
- Properties that are due to be demolished within 24 months of an RP serving a final demolition notice, and having followed the prescribed notification process as contained in s182 of the Housing Act 2004.

4.2.53. However, RPs are advised to take their own legal advice in determining the full extent of the legislation and whether a property is excluded from the provisions of RTA.

### **Properties to be Demolished**

4.2.54. When RPs decide to demolish a property within seven years an initial demolition notice must be sent to tenants. When RPs subsequently decide not to demolish the property a revocation notice must be served as soon as is reasonably practical.

4.2.55. **Important:** If an initial demolition notice expires and demolition has not taken place, no further demolition notice can be served on that property for a period of five years.

### **RTA - Application Processing**

#### **General**

4.2.56. For the purposes of this section of the guide, the term landlord will be used instead of the term RP, and applicants will be referred to as tenants. This is to avoid any confusion over which part of the process applies to which party.

4.2.57. All landlord applications for confirmation of grant and claims for payment of grant must be submitted via the internet using the GLA's Investment Management System (IMS).

- 4.2.58. Scheme submissions must comply with the Funding Conditions as accepted by the RP and confirmed on line by the landlord's Systems Administrator at the beginning of the financial year, plus any further conditions issued by the GLA in the year.
- 4.2.59. As explained above, receipts from RTA sales are required to be credited to the landlord's Disposal Proceeds Fund. In the event that a tenant's application for RTA does not complete, landlords are advised that the cost of abortive valuation, legal and survey fees may be deducted from the sale proceeds of a subsequent sale which does go ahead, provided this does not result in a negative balance for the Fund. If deductions would lead to a negative amount, the balance of abortive costs must be deferred until the next sale that proceeds.

### **Letters and Application Forms**

- 4.2.60. There are standard forms including tenant's applications and landlord notifications to assist processing applications. These forms can be downloaded from the HCA's website ([http://cfg.homesandcommunities.co.uk/cfg?page\\_id=5877&page=178](http://cfg.homesandcommunities.co.uk/cfg?page_id=5877&page=178)). These are not statutory forms and RPs may produce their own, but in doing so must satisfy themselves that they meet any legal requirements.
- 4.2.61. Landlords must draft their own standard letters for seeking the tenant's confirmation to proceed with RTA, and for notifying their lenders of a sale.

### **Publicity**

- 4.2.62. Landlords must ensure that all tenants living in RTA eligible properties are given information on RTA.
- 4.2.63. Landlords must ensure that the requirements of Statutory Instrument 2005/1735 to provide tenants with information on the RTA are met. Landlords should note that they will not comply with this obligation by simply issuing the GLA's information booklet, but will need to address all the information requirements set out in the Statutory Instrument. These include:
- An outline of RTA;
  - Notification that initial costs are likely to be incurred upon exercising RTA;
  - The likely regular payments to be incurred by a homeowner;
  - The risk of repossession; and
  - The requirement for, and likely level of, expenditure in relation to good repair and maintenance of a property, which may include the payment of a service charge.

### **Exercising Right to Acquire: Action by the Tenant**

- 4.2.64. To exercise their RTA the tenant must serve a written notice on the landlord, claiming their Right. The effective date of the notice is taken to be its date, rather than when it is received by the landlord. This is important for calculating qualifying periods of residency, valuation periods etc.
- 4.2.65. Landlords must obtain certain information from tenants. It will assist landlords in their processing if, where tenants have not provided all of the



required information in their initial written claim for RTA, Form RTA-1: Tenant's notice of intention to claim the Right to Acquire is used or one of their own design. However, tenants are not obliged to use a form, and can serve a notice on the landlord by writing to them. Where the tenant has already made an application in writing, the landlord should ask the tenant to complete the form, but should accept the date of the original letter for the purposes of valuation and establishing the qualifying period (defined above).

- 4.2.66. The notice may be withdrawn at any time by the tenant by serving a written notice to this effect on the landlord.
- 4.2.67. A tenant who has already claimed the Right to Buy or Preserved Right to Buy will not be able to apply for RTA until such time as the Right to Buy/Preserved Right to Buy application is withdrawn or the landlord responds denying the RTA. The tenant may withdraw an existing Right to Buy application and submit an application for RTA at any time.
- 4.2.68. A tenant claiming RTA may include up to 3 members of the family, who are not joint tenants but who occupy the dwelling as their only or main residence, in the purchase. This is provided that:
- The family member is the spouse of or has been residing with the tenant for 12 months prior to the application; or
  - The landlord consents.
- 4.2.69. Whether to allow family members to be included in the purchase where they have not been residing with the tenant for the requisite period is at the landlord's discretion.

### **Action by the Landlord**

- 4.2.70. On receipt of the tenant's application the landlord must check:
- That the tenant(s) is/are Secure, Assured or Assured Shorthold (where the tenancy began on or after 1 April 2012);
  - Whether it is a joint tenancy;
  - That the application has been correctly completed and signed by the tenant and others joining in the application;
  - That each tenant has been a public sector tenant for the appropriate qualifying period;
  - Whether any tenant is an undischarged bankrupt or has made a compromise or an arrangement with his/her creditors;
  - Whether there is an effective possession order;
  - Whether there is an effective suspension order (on the grounds of anti-social behaviour);
  - That the property is not excluded from the scheme; and
  - Whether the tenant or co-purchasers have previously received a discount to purchase a property from a public sector landlord. This is not applicable to cases where the tenant repaid the whole of the discount on disposal within a repayment period.
  - Whether it must consult with its own lender in accordance with the arrangements stated in The Housing (Right to Acquire) Regulations 1997. See section 4.14.2.

- 4.2.71. Landlords must respond in writing to the tenant's claim to exercise RTA, either admitting or denying the right. If the landlord does not consider the tenant has RTA it must state the reasons in the notice (please see Form RTA2: Notice in Reply to the Tenant's Right to Acquire Application).
- 4.2.72. Landlords must respond to tenants' applications within 4 weeks if they have been the tenant's landlord for the qualifying period (please see section 2.2), or 8 weeks in any other case e.g. if landlords are still seeking clarification over the tenant's records from a previous landlord.
- 4.2.73. At this stage, when responding to the tenant landlords may offer the tenant an alternative property to purchase under the scheme. Where this is the case, landlords must make clear that there is no obligation placed on the tenant to accept the alternative property. This option is only applicable in cases where the tenant is eligible.
- 4.2.74. If an alternative property is offered the tenant will not be eligible for a higher discount. The level of discount applicable to the alternative property is established by reference to the Local Authority area in which it is located, except where the discount would be greater than the amount the tenant would receive by purchasing their current home, in which case the maximum discount would be the amount applicable to the property where the tenant lives.
- 4.2.75. Only naturally occurring voids can be offered as alternative properties; landlords must not keep homes vacant for this purpose nor offer newly developed properties for rent or sale that have been grant funded.
- 4.2.76. Landlords must commission a valuation of the property from a suitably qualified independent valuer. The valuation must take into account:
- The nature of the title being sold (for example the terms of a lease);
  - Any improvements to the property carried out by the tenant (which must be disregarded in the valuation);
  - The provisions which, in the opinion of the landlord, should be contained in the conveyance or grant
  - Service charge estimates and repair and improvement costs (where they are payable) - see above for details of these requirements; and
  - Details of any known structural defects.

#### **Offer Notice**

- 4.2.77. After notifying the tenant of their eligibility, landlords can prepare the formal offer notice, detailing the terms of sale and confirming the purchase price.
- 4.2.78. The GLA has produced a standard offer for landlords' use based on the provisions of section 125 (as amended) of the Housing Act 1985 (please see Form RTA 3 Offer Notice/Revised Offer Notice following a redetermination by the District Valuer).
- 4.2.79. Landlords must serve an offer notice on the tenant within 8 weeks (where the tenant is acquiring the freehold) or 12 weeks (where the tenant is acquiring the property on a leasehold basis).

- 4.2.80. The offer notice must contain the following information:
- A description of the property to enable the tenant to identify the property and land to be sold;
  - The sale price and how it was calculated;
  - The value of the property at the date of the tenant's application;
  - Details of any improvements to the property carried out by the tenant which have been disregarded in the valuation;
  - The tenant's discount entitlement. Where the discount has been reduced to take account of previous discount paid the landlord should provide details;
  - The provisions which, in the opinion of the landlord, should be contained in the conveyance or grant;
  - Comprehensive service charge estimates and improvement costs (where they are payable);
  - Details of any known structural defects; and
  - Advice for the tenant on the effect of sections of RTA Regulations 1997.
- 4.2.81. Landlords must ensure that they understand the effect of the RTA Regulations 1997. Tenants will have 12 weeks in which to respond to the offer notice, or the offer will be withdrawn (more on this below).

### **Purchase Price**

- 4.2.82. To establish the purchase price of a property under RTA, landlords must first determine the Market Value of the property at the date of the tenant's application, and then deduct the appropriate discount.
- 4.2.83. Discounts, and the areas they apply to, may be subject to review and revised orders may be made from time to time. Currently they are set out in Statutory Instrument 2002 No. 1091.
- 4.2.84. The value of the dwelling must be based on its Market Value at the time of the tenant's claim. Landlords may use the services of a qualified independent valuer for this purpose. The following assumptions should be used.
- 4.2.85. Where the RTA discount represents more than 50% of the value of the property the maximum amount of discount is to be capped at 50% of the value of the property.
- 4.2.86. Landlords' valuation fees must not be charged to the tenant, but should be deducted from the gross proceeds of sale when calculating the net receipt to transfer to the Disposal Proceeds Fund (please see the Regulator's DPF guidance).

### **Service Charges**

- 4.2.87. Where landlords are selling flats and maisonettes on a leasehold basis they will continue to be responsible for the repair and maintenance of the building and the provision of services such as lighting in communal areas. Landlords will need to apportion these costs to the individual unit and recover the costs from the leaseholders by way of the service charges.

- 4.2.88. In summary, legislation requires landlords to provide accurate estimates of service charges for tenants wishing to purchase. In particular:
- 4.2.89. Estimates of the predicted repairs and improvements for the first five years of the lease; and
- 4.2.90. Details of any known structural defects affecting the building - landlords must ensure that if they are to be repaired in the first five years they are included in the service charge estimates for repairs.
- 4.2.91. Any service charges or improvement contributions payable must not be less than the estimates contained in the landlord's offer notice.
- 4.2.92. The annual service charge for repairs and improvements can only be increased to take account of inflation according to a set formula (not inaccurate predictions) within the first five years of the lease. The formula for calculating the inflation cost is to be the same as it is for the Right to Buy. The formula is set out in the Right to Buy Statutory Instrument (The Housing Right to Buy) (Service Charges) Order 1986.
- 4.2.93. Estimates of other service charges, apart from repairs and improvements, such as amounts to be charged for caretaking or communal lighting, must also be provided but are not binding.

### **Tenant's Response**

- 4.2.94. After the landlord has served a formal offer notice, the tenant must respond in writing within 12 weeks, confirming either that he/she will pursue their application or that he/she wishes to withdraw it.
- 4.2.95. Tenants may appeal against their landlord's proposed purchase price within 3 months of receipt of the formal offer notice. Landlords must refer any appeal to the District Valuer for a determination.
- 4.2.96. Where tenants have applied for a determination of the value of the property, landlords are required to serve an updated offer notice to the tenant when the new valuation has been obtained. Tenants have a further 12 week acceptance period from the date of the updated offer (please see Form RTA 3: Offer Notice/Revised Offer Notice following a redetermination by the District Valuer).
- 4.2.97. Following a determination by the District Valuer tenants, landlords have 28 days to lodge a request in writing for that determination to be reviewed. This is known as a re-determination. A re-determination can only be requested and carried out where the facts used to decide the determination of the value of the property were incorrect. The District Valuer must reply within 14 days to both the tenant and the landlord with either:
  - A review notice; or
  - A notice stating that the District Valuer has decided not to comply with the request, giving reasons accordingly.

### **No response from tenant**

- 4.2.98. Should tenants not respond to the formal offer notice within the acceptance period, landlords must serve a further written notice giving tenants a further 28 days to state in writing whether he/she wishes to pursue the claim.

- 4.2.99. The notice served on tenants should explain that failure to respond within 28 days will lead to landlords treating the application as withdrawn.
- 4.2.100. Before the 28 day period expires, landlords may use their discretion to extend this period rather than treat applications as being withdrawn if tenants do not reply within the 28 days stated in the formal offer notice. Where landlords choose to allow a longer period to elapse they must send a further written notice to tenants explaining the extension, including details of the revised deadline and deemed application withdrawal.

## **Completion**

### **Delays to completion**

- 4.2.101. Where tenants have confirmed their intention to pursue an application but fail to progress their purchase within a reasonable time, landlords must try to maintain progress by serving tenants with 'notices to complete'. (see Form RTA 4: Prior Notice).
- 4.2.102. Landlords may serve a first 'notice to complete' at any time once the 12 week acceptance period has expired. The first notice to complete must be in writing and:
- Include a request for tenants to specify any matters that may be outstanding;
  - Give tenants a reasonable period in which to complete (at least 56 calendar days); and
  - Inform tenants of the effect of Sections 140 and 141 of the Housing Act 1985 that is the likelihood of a second notice to complete.
- 4.2.103. If tenants fail to comply with a first notice to complete, landlords may serve a second notice to complete (see Form RTA 5: Notice to Complete) in writing:
- Giving tenants a further reasonable period to complete (at least 56 days);
  - Repeating the effect of Sections 140 and 141 of the Housing Act 1985; and
  - Highlighting that failure to comply with the second notice to complete allows landlords to deem applications to be withdrawn.

### **Action Following an Appropriate Response from the Tenant**

- 4.2.104. Once tenants have issued appropriate instructions to their authorised mortgage lender and legal representative, landlords will be in a position to dispose of the property. Landlords should check the following before completion takes place:
- That tenants are not more than 4 weeks in arrears with rent;
  - That a possession or suspension order has not been obtained during the period of processing a tenant's application;
  - That tenants' mortgage offers are from authorised mortgage lenders, entitled to register tenants' mortgages as a first charge; and
  - That they have consulted their own lender in accordance with the arrangements stated in The Housing (Right to Acquire) Regulations 1997 unless otherwise agreed in writing with the lender.

## Grant Claim

- 4.2.105. After the sale of the property, landlords will be in a position to submit a claim grant to cover the RTA discount from the GLA. The claim must be submitted within 6 months of the date of sale. The amount of grant claimed must correspond to the relevant cash discount published in the current Right to Acquire Discount Order. Less any reductions for previous discounts received. The discount should be that current at the date of the service of the formal offer notice – see sections Exercising Right to Acquire: Action by the Tenant and Offer Notice.
- 4.2.106. Landlords' claims must be submitted to the GLA via the internet using the GLA's Investment Management System (IMS).
- 4.2.107. The scheme submission must comply with the GLA's Funding Conditions which must be accepted by the landlord's Committee, and confirmed online by the landlord's IMS System Administrator.
- 4.2.108. Landlords must also be able to confirm acceptance of the four certifications that appear within the RTA certification screen of IMS .
- 4.2.109. This application for grant confirmation confirms with the Funding Conditions as accepted by the landlord at allocation stage plus any other conditions issued in year;
- 4.2.110. The contents of the application are correct;
- 4.2.111. The property is subject to Right to Acquire under Sections 180-185 of the Housing and Regeneration Act 2008 and Section 16 of the Housing Act 1996 and has been sold in accordance with the current Right to Acquire regulations as amended; and
- 4.2.112. The sale of the property has been completed.
- 4.2.113. Payment will be made in accordance with Finance section 3.12.

## Restrictions on Resale and Covenants

- 4.2.114. Landlords must ensure that their conveyances include an appropriate repayment of discount covenant. The HCA has produced a model repayment of discount clause.
- 4.2.115. However, if using the model repayment of discount clause, landlords must satisfy themselves by taking their own legal advice that the model clause is adequate for their purposes.
- 4.2.116. The requirement to repay the discount is a charge that will rank immediately after that of the tenant's authorised mortgage lender. If, in the future, the new owner wishes to extend their mortgage to fund works to the property, landlords may postpone their repayment of discount charge in favour of the lender; however the charge should not be postponed for any other reason.
- 4.2.117. Landlords must retain the right of first refusal if/when the new owner sells the property. Under section 156A of the Housing Act 1985 (as amended by section 188 of the Housing Act 2004) landlords must set a covenant requiring that, during the period of 10 years from the date of conveyance the tenant (purchaser) or any successor in title must make an offer of first refusal to the former landlord.

- 4.2.118. The right of first refusal covenant must be registered by the landlord's solicitor as a local land charge and must be entered into the property's register of title by the Chief Land Registrar. This will prevent the covenant from being overlooked at the point of resale.

### **Conveyance of Freehold and Grant of Lease**

- 4.2.119. Landlords must refer to The Housing (Right to Acquire) Regulations 1997 which contain the statutory requirements for conveying the freehold or granting a leasehold.

### **Legal Charges**

- 4.2.120. Landlords must dispose of their property to tenants free of any legal charges e.g. a secured mortgage.
- 4.2.121. Landlords must therefore agree with their own lenders whether they will redeem their mortgages or provide alternative security for their loan. This process is a requirement of The Housing (Right to Acquire) Regulations 1997; the notification process is summarised below.
- 4.2.122. When tenants notify their landlord of their intention to proceed with the purchase, landlords must, within 7 days of receipt of the tenant's notification, give written notice to their lender. The notice should contain information about the purchase price and value and set out whether the loan applicable to the property is to be redeemed. If it is not to be redeemed, the notice should give the lender the option of either taking alternative security or being paid the market value of the property. Any property offered as alternative security must have sufficient equity to cover the market value of the property being sold. Where the landlord's notice states that the landlord does not intend to redeem the charge and gives the lender the options referred to above, the lender has 14 days to respond setting out which option is acceptable.

### **Authorised Mortgage Lenders for Right to Acquire Purposes**

- 4.2.123. Section 156 of the Housing Act 1985 enables lenders to social tenants exercising their Right to Acquire to secure the first charge on a property ahead of the landlord. Under the Housing and Regeneration Act 2008, high street banks and building societies have automatic approved lending institution status and, since 22 September 2008, all authorised mortgage lenders, as defined in section 622(1) of the Housing Act 1985, also have automatic approved lending institution status.
- 4.2.124. An authorised mortgage lender means a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to enter into a regulated mortgage contract as a lender. For further information refer to the Financial Conduct Authority's website.

## RTA - Post Sales Procedures

### General

- 4.2.125. RPs must claim grant to cover the RTA discount from the GLA within 6 months of the date of sale.
- 4.2.126. Net proceeds from sales must be retained by the RP in a ring-fenced Disposal Proceeds Fund as required by s177 of the Housing and Regeneration Act 2008.
- 4.2.127. For details of how to calculate the net sales proceeds, together with the rules and administration of a Disposal Proceeds Fund please refer to [the Regulator's DPF guidance](#)

### Repayment of Right to Acquire Discount

- 4.2.128. The RTA discount becomes repayable if the property is sold within five years from the date of purchase. The amount to be repaid reduces according to the year in which the property is sold.
- 4.2.129. Following the original purchase the discount is treated as an equity investment – a share in the property. The amount to be repaid is based on a percentage of the resale value equal to the percentage of the discount received by the tenant on purchasing the property. Repayment is as follows;
- Sale with year 1: an amount equal to the % value as above;
  - Sale within year 2: 80% of the amount calculated above;
  - Sale within year 3: 60% of the amount calculated above;
  - Sale within year 4: 40% of the amount calculated above;
  - Sale within year 5: 20% of the amount calculated above;
  - No repayment is required after year 5.
- 4.2.130. Exempted Disposals
- Not all sales trigger the repayment of discount. Exempted disposals are detailed in the Housing (Right to Acquire) Regulations 1997. RPs should seek legal guidance to ascertain whether or not a disposal can be treated as exempt for repayment purposes. The following is a brief summary of what disposals the Agency considers would be exempt from the repayment provisions:
  - Disposal to any member of the family who joined in the original application or who has resided in the property 12 months immediately before the date of disposal;
  - Disposal to a spouse;
  - Disposal to a person under the terms of a will or on an intestacy;
  - Disposal arising from compulsory purchase by a public body; and
  - Disposal of the whole of the property in pursuance of an order under Section 24 of the Matrimonial Causes Act 1973.
- 4.2.131. The above is for guidance only, and RPs should consider seeking a legal opinion as and when required.



## Waiving Repayment of Right to Acquire Discount

- 4.2.132. RPs have discretion to waive repayment of some or all of the discount, regardless of when the landlord originally acquired the property, as per section 185 of the Housing Act 2004.
- 4.2.133. Such discretion must only be used in exceptional circumstances. It is for RPs to decide whether the circumstances of individual cases would justify the exercise of discretion. RPs will be expected to establish and maintain procedures for:
- Considering cases;
  - Making decisions; and
  - Ensuring their process is open, fair and transparent.
  - RPs should bear in mind the possibility of a judicial review or Independent Housing Ombudsman scrutiny.
- 4.2.134. When considering waivers landlords should bear in mind the net cost to the public purse, and clear decisions with their auditors
- 4.2.135. Use of discretion is most likely to be justified in circumstances where demonstrable personal hardship would otherwise result. In each case it will normally be necessary to establish both the facts justifying a move, and that such a move could not take place unless part or all of the discount repayment were to be waived.

## Disregarding Improvements for Right to Acquire Discount Repayment Purposes

- 4.2.136. Any increase in a property's value solely attributable to improvements made by the owner after acquiring it, is to be disregarded for the purpose of calculating any discount repayment if the property is then sold within the five-year repayment period. This allows owners to obtain full value for the improvements and not be penalised for improving the property. RPs must brief the valuer accordingly when instructing them to undertake valuations.
- 4.2.137. Where the value of any improvements is disputed, RPs must refer the matter to a qualified independent valuer to arbitrate, where it is reasonably practicable to do so. Any costs associated with reference to the Valuer are to be borne by the person disposing the property. If the arbitrating Valuer does not make a determination, **no disregard** for the value of improvements is allowed.

## RTA - Reporting and Audit Requirements

### General

- 4.2.138. It is a condition of grant that RPs:
- Complete and maintain accurate records;
  - Report regularly on activity; and
  - Make records available for audit (please see the [compliance audit checklist](#) for details).

### Reporting On Annual Outputs

4.2.139. RPs are required to provide the Agency and Local Authorities with monitoring information on RTA transactions. Please see section 4 of the [Regulator's DPF guidance](#).

## 4.3 Social homebuy

### Purpose

- 4.3.1. This section sets out the characteristics of Social HomeBuy (SHB) and the GLA's requirements to be followed by RPs.
- 4.3.2. It is a Funding Condition that RPs comply with these procedures and any subsequent requirements.

### Context

- 4.3.3. SHB allows RPs who are either ex-RSLs or Local Authorities to dispose of their Social and Affordable rented housing at a discount either outright or on shared ownership terms (i.e. part buy/part rent – please see shared ownership eligibility rules above), to eligible tenants who occupy eligible properties.
- 4.3.4. SHB discounts are funded under section 19 of the Housing and Regeneration Act 2008.
- 4.3.5. Historic grant paid to develop or acquire property sold to tenants under the SHB programme, and grant paid to cover SHB discounts will be subject to the Disposal Proceeds Fund (DPF) regime as required by section 177 of the Housing and Regeneration Act 2008. DPF is the remit of the Regulator - please see [DPF requirements and guidance](#) for more information, including the requirements for calculating contributions to the Fund following outright and shared ownership sales.
- 4.3.6. In respect of RP-owned property SHB discounts can only be paid by the Agency. An RP (ex-RSL) SHB initiative cannot be funded by Local Authority RPs.

### Main Features of the Initiative

- 4.3.7. RPs may only include self-contained property for rent. There are eligibility criteria for both properties (these are similar to those for Right to Buy/Right to Acquire – more on the latter above) and tenants.
- 4.3.8. Where an RP has decided to offer SHB, purchasers are allowed to buy their rented home outright at the outset or on shared ownership terms. The cost of any share will be based on a percentage of the full market value.
- 4.3.9. If buying on shared ownership terms the range of shares can be any amount between 25% (minimum purchase) and 90% This is because the final staircasing share must be a minimum of 10% (see below).
- 4.3.10. All SHB leases must allow the purchaser to buy further shares and staircase to full ownership.
- 4.3.11. The purchaser is entitled to a discount; and if buying on shared ownership terms a discount is available on both the initial and subsequent shares purchased. The discount limits are the same as those applying to properties bought on Right to Acquire (RTA) terms in that locality. Discounts are pro-rated for shared ownership purchases according to the size of the initial and any subsequent share purchased.

- 4.3.12. The discount is repayable if the purchaser sells the property within 5 years, on the same basis as the RTA/RTB.
- 4.3.13. The current Right to Acquire discounts are set out in the [Housing \(Right to Acquire\)\(Discount\) Order 2002 \(SI 2002 No 1091\)](#) and rural designated areas SIs 1997 numbers 620-625 and 1999 number 1307.
- 4.3.14. Landlords may offer their tenants an alternative property to purchase in certain circumstances – see section on The Landlord’s Response.
- 4.3.15. The SHB initiative gives RPs the opportunity to:
- Sell their permanent Social and Affordable rented housing stock to secure or assured tenants at a discount;
  - Include non grant funded property;
  - Offer home ownership to tenants who do not have the Right to Buy/Acquire or cannot afford to purchase outright;
  - Provide replacement affordable homes for rent by using the disposal proceeds receipts from sales together with private finance;
  - Develop mixed, balanced and sustainable communities
  - Use sums in their DPF to convert existing tenanted property to provide large family homes where required as per [the Regulator's DPF guidance paragraph 3.2.1](#).
- 4.3.16. SHB gives eligible tenants the opportunity to:
- Purchase their current home which may not qualify for RTB or RTA because it was provided without grant funding or grant funded prior to 1 April 1997 (some exclusions apply – see RTA section 3;
  - Purchase their current home on shared ownership terms, making the purchase affordable and sustainable; and
  - Benefit from a pro-rata purchase discount regardless of whether they buy outright or on shared ownership terms.
- 4.3.17. Scheme submissions must comply with the Funding Conditions as accepted and confirmed on line by the RP's System Administrator at the beginning of the financial year, plus any further conditions that may be issued by the Agency in year. See **finance section of General chapter**.

### **Consent to Disposal**

- 4.3.18. Most disposals to tenants on shared ownership terms will be assured tenancies and therefore exempted by section 173 HRA 2008 from the need for consent to the grant of the lease. Outright sales and shared ownership that is not exempt (because the rent is below the thresholds that would define it as an assured tenancy) may be covered by categories 17 and 13a respectively of the [Regulator's General Consent 2010](#).
- 4.3.19. When an RP uses the Regulator's General Consent, it must make sure that it is able to make the certifications on form RPCON 5, which is derived from conditions in the General Consent. After completing form RPCON 5, RPs should keep the original on its disposals register and pass a certified true copy to the purchaser's solicitors to assist registration of the change of ownership.

## Targeting and Publicity

- 4.3.20. RPs providing SHB are responsible for distributing publicity material to their tenants and are required to publish their policy. The HCA has produced publicity information which is available on the HCA's website. RPs can download this information to provide to tenants in its entirety as a supplement to its own publicity/promotional material.

## Funding Arrangements

- 4.3.21. RPs wishing to provide SHB should claim grant from the GLA in line with the GLA's Affordable Homes Framework as the need arises; in a similar way to claiming grant for RTA purposes.
- 4.3.22. The approach for the 2011/15 and 2015/18 programmes differ from the 2008/11 National Affordable Housing Programme when bids were invited in anticipation of SHB sales.
- 4.3.23. Grant should be claimed to cover the discount following completion of the sale. Where tenants are purchasing on shared ownership terms grant should be claimed on completion of the initial sale, and balances claimed as appropriate on completion of any subsequent shares, pro rata to the share that is purchased.
- 4.3.24. Following any SHB sales RPs are required to credit the net sales proceeds to their Disposal Proceeds Fund. For details on this topic see the [Regulator's DPF guidance](#).
- 4.3.25. RPs must consult their private lenders prior to deciding to offer SHB to ensure properties can be released from the lender's security.

## SHB - Funding Principles

### General

- 4.3.26. Social HomeBuy is funded under section 19(3) of the Housing and Regeneration Act 2008 as Financial Assistance (FA). This is distinct from Social Housing Assistance (SHA) granted to develop schemes.
- 4.3.27. Where the SHB purchaser purchases on shared ownership terms, a similar approach as used for Shared Ownership should be taken.
- 4.3.28. SHB sales must be based on the Market Value of the property as determined by a RICS qualified independent valuer.
- 4.3.29. Sales on shared ownership terms are based on a percentage of the full market value of the property. Valuations are required both at the initial sale and on any subsequent staircasing. The cost of the valuation for an initial sale is met by RPs from the proceeds of sale. The cost of valuation for staircasing sales is to be met by the purchaser under the terms of the staircasing provisions in the SHB shared ownership lease.

## Rents and Service Charges

- 4.3.30. The requirements regarding the rent and service charges for SHB are the same as for Shared Ownership (see shared ownership section above).

- 4.3.31. The level of the service charge should not vary from the proposed service charge notified at the formal offer stage.
- 4.3.32. Unacceptable levels of rent could lead to grant being denied or withheld until the rents including HB eligible service charges are brought into line.

### **Financial Viability**

- 4.3.33. The requirements regarding the applicant's financial capacity for SHB are the same as for HomeBuy. In considering whether to provide SHB RPs are expected to have taken into account the proposed SHB receipt and rent income, together with long term operational costs, including the repayment of loan principal and interest, can be met. Any initial revenue deficits should be within RPs' general capacity. The Regulator will monitor the effect of development and RP's general financial status. RPs need to be mindful of the permitted uses under DPF rules (please see [DPF guidance](#)) in regards to the proposed application of these receipts.

### **SHB - Scheme Administration**

#### **General**

- 4.3.34. RPs providing SHB should claim grant from the GLA via IMS. Claims must not be made in advance of need and should be made following completion of either:
- Outright sale; or
  - Initial share sold; and
  - Any subsequent shares sold.

### **SHB - Applicant Eligibility**

#### **General**

- 4.3.35. This section sets out the applicant criteria, details of Public Sector Landlords, and grounds for rejection or suspension of eligibility.

#### **Eligibility Criteria**

- 4.3.36. Applicant eligibility criteria for SHB are the same as for RTA, (please see above ) except that, where tenants are purchasing on Shared Ownership terms, RPs will be required to carry out affordability checks to establish whether the applicant can afford and sustain SHB. However, RPs will need to consider the discount available to the purchaser when assessing affordability.
- 4.3.37. RPs may offer SHB to tenants who have the Right to Buy (RTB), Right to Acquire (RTA) or Preserved Right to Buy (PRTB), but tenants must opt for one product or another. Discounts cannot be combined, nor can an RP claim grant other than for funding discounts due in respect of either SHB or RTA.
- 4.3.38. Tenants with RTA, RTB or PRTB whose landlords have chosen to include their properties within their SHB programme, will have the additional option to purchase on shared ownership terms under SHB if they cannot afford to buy outright under the statutory schemes. Those tenants whose homes

qualify for a higher RTB discount than the local RTA discount will be limited to the RTA discount limits if purchasing through SHB.

### **Public Sector Landlords**

4.3.39. A tenancy with any of the public bodies listed in the RTA section above will count as an eligible residency for SHB purposes.

### **Anti-Social Behaviour**

4.3.40. Applications can be rejected or suspended on the grounds of anti-social behaviour (see RTA section above).

4.3.41. Some tenants may be eligible to apply for SHB whilst also having the Right to Buy or Acquire (see section 4.2 above). Tenants cannot apply to buy under both statutory and voluntary schemes, but when processing SHB applications RPs will need to take into account which of the following categories (if any) an applicant falls into:

- SHB applicants who may be entitled to RTB/RTA and who are already subject to a 'suspension order';
- SHB applicants who could be subject to an application for an RTB/RTA 'suspension order' during their SHB claim and sales process;
- SHB applicants who don't currently have the Right to Buy/Acquire but are in the process of meeting the five year tenancy qualification period and could not be the subject of a 'suspension order' until they qualify for RTB/RTA but where RPs may wish to apply a 'suspension status'; and
- SHB applicants who don't have the Right to Buy/Acquire and will therefore never be the subject of a 'suspension order' but where RPs may wish to apply a 'suspension status'.

4.3.42. As advised above (section Exercising Right to Acquire: Action by the Tenant) where a RTB/RTA 'suspension order' already exists RPs should apply a 'suspension status' in respect of SHB applications. Where RPs are in the process of applying for a RTB/RTA 'suspension order' they should simultaneously consider applying a 'suspension status' to any SHB applications.

### **SHB - Property Eligibility**

#### **General**

4.3.43. Not all properties owned by RPs are subject to Social HomeBuy. Eligible, Excluded and Exempt properties are set out below.

#### **Eligible Properties**

4.3.44. RPs may offer SHB across all their Social and Affordable rented stock (subject to mandatory exclusions below) or target properties for sale in particular locations, for example, where they wish to introduce tenure mix on an estate. Stock that was not previously grant funded may be included.

4.3.45. The GLA's policy position is that some properties that would be ineligible for RTA/RTB may be eligible for SHB. For examples of properties funded by grant prior to 1997 that are ineligible for RTA but could be eligible for SHB, please refer to SHB section 1.3.

### Excluded Properties

- 4.3.46. Properties excluded from the RTA are excluded from SHB - for example properties in designated rural areas, in designated protected areas or those let in connection with employment.
- 4.3.47. For details on ineligible and excluded properties see the RTA section above.

### Exempt Properties

- 4.3.48. In addition to the mandatory exclusions outlined in section **Waiving Repayment of Right to Acquire Discount** above (that is properties excluded from RTA), RPs may consider it appropriate to exempt other categories of properties. Examples are:
- Homes which, because of their type or location, would be difficult to replace;
  - Homes where the current value is below the cost of provision, including the costs of rehabilitation or conversion but not repair;
  - Homes subject to restrictive covenants or agreements regarding their continued use and/or use of any sales proceeds, excluding nomination agreements which are not part of a Section 106 agreement or similar covenant;
  - Homes where the RP is carrying out major works improvement or can demonstrate that the contract will be let within the next three years.
- 4.3.49. RPs must remember that they have the opportunity to exercise the right of first refusal in respect of future re-sales and therefore should limit the exercise of this exemption as far as possible.

### Policy Requirements

- 4.3.50. RPs that chose to participate in the SHB initiative must draw up a published policy, (which must be in place prior to any sales and marketing of the product) specifying a list of properties, or types of properties, that are excluded or exempted from their programme.
- 4.3.51. When drawing up their policy, RPs should consult those local authorities in which they are proposing to offer SHB to tenants. If no policy is in place prior to sales and marketing, it will be assumed that all properties in that local authority will be included in the programme, other than those covered by the mandatory exemptions.
- 4.3.52. This policy must be easily and readily available to tenants and RPs must be seen to be operating it on a fair and consistent basis. It would not be acceptable, for example, for an RP to decide whether to sell on a case-by-case basis in response to demand from individual tenants.
- 4.3.53. Once published, the policy must apply to the whole of the RP's programme. However, RPs can vary the list of properties exempt from the programme during the programme period subject to the agreement of the GLA.
- 4.3.54. Where a tenant has received a formal offer, and provided that the tenant responds within 8 weeks, and complies with the requirements of the product, they must be allowed to complete the purchase - even if the policy has changed and that property is now in an exempt category.



## SHB - Shared Ownership Leases

### General

- 4.3.55. The GLAs Standard Requirements relating to shared ownership leases are set out in the Shared Ownership section above. These Requirements all apply to SHB schemes.
- 4.3.56. Additional Requirements that are specific to SHB are set out in this section. To assist RPs, the GLA has published model SHB shared ownership house and flat leases. Copies of both can be located on the [Model Leases page](#).

### The Premium

- 4.3.57. The premium payable by the tenant (price of the SHB lease) upon the grant of a lease plus the available discount must be equal to the relevant percentage of the full market value of the property as assessed by an independent RICS qualified valuer. (Please see Sales Variation section below) The initial share purchased must be at least 25%. Tenants should buy the largest initial share that they can afford and sustain, to the nearest percentage point. Shares are not restricted to the nearest 5% e.g. they can be 26%, 27% etc. However the minimum additional share that can be purchased is 10% which also applies when buying the final share. For example, if a shared owner already owns 85% or 87%, in order to buy the property outright they would need to purchase the remaining 15% or 13% accordingly.

### Rent Waiver

- 4.3.58. As with Shared Ownership, rent will be payable on the unsold equity share. For more information, please see below.
- 4.3.59. RPs who wish to waive rent for SHB purchasers may do so from within their own resources. Rent may be waived for a specified period e.g. the first few years or for longer.

### Nomination and Right of First Refusal

- 4.3.60. RPs have the right to nominate the next purchaser/s when the current SHB leaseholder wishes to sell their share. Additionally RPs have the Right of First Refusal in respect of both houses and flats where owners originally purchased outright or purchased on shared ownership terms and have subsequently staircased to 100%.

### Repayment of SHB Discount

- 4.3.61. If a shared owner sells their initial or subsequent share within five years of benefiting from the SHB discount, the discount is repayable (see RTA Repayment of Discount section above).
- 4.3.62. Repayment of the SHB discount for a 5 year period is required to be protected by a restriction that must be entered on the Land Registry documents. The covenant for repayment must be inserted in conveyances and SHB shared ownership leases.

- 4.3.63. RPs' solicitors must insert the SHB discount % figure in the particulars of the Lease. This figure must equate to the percentage value of the discount given to the buyer compared to the property's sale price.
- 4.3.64. SHB discounts payable in respect of subsequent staircasing sales will also be subject to a five year repayment period. Individual five year repayment periods must be applied to each subsequent staircasing and should run from the date the further shares are purchased. RPs will need to keep accurate records.
- 4.3.65. The requirement to repay the discount consists of a charge that must rank immediately after that of the purchaser's lender. If, in the future, the new owner wishes to extend their mortgage to fund works to the property the RP may postpone its charge in favour of the lender. The charge should not be postponed for any other reason.

### **SHB - Rents and Service Charges**

#### **General**

- 4.3.66. The requirements in relation to the setting of rents and service charges in SHB shared ownership leases are the same as for Shared Ownership (see above).
- 4.3.67. The SO Requirements regarding Quality of Management & Maintenance Services & Service Charges apply to SHB, but there are also additional requirements which are set out in the RTA section above.

#### **Quality of Management & Maintenance Services & Service Charges**

- 4.3.68. See SO section above for the shared ownership Requirements. Although SHB is not subject to the statutory provisions of the RTB/RTA, RPs are required to give SHB shared ownership leaseholders similar protection as RTB/RTA purchasers with regard to service charge and improvement contribution estimates. Provisions concerning service charge estimates and sinking fund contributions must be set out in the shared ownership lease.
- 4.3.69. Please see RTA section on Service Charges for the additional requirements.
- 4.3.70. RPs may use their discretion should they wish to make a contribution towards any maintenance costs for tenants purchasing SHB on a shared ownership basis. Such contributions will not be eligible for grant funding nor is this a permitted use of the Recycled Capital Grant Fund or Disposal Proceeds Fund.

### **SHB - Processing the Sale**

#### **General**

- 4.3.71. For the purposes of this section of the guide, the term landlord will be used instead of the term RP, and applicants will be referred to as tenants. This is to avoid any confusion over which part of the process applies to which party.

- 4.3.72. Receipts from SHB sales are required to be credited to the landlord's [Disposal Proceeds Fund \(DPF\)](#). In the event that a tenant's application for SHB does not complete, landlords are advised that the cost of abortive valuation, legal and survey fees may be deducted from the sale proceeds of a subsequent sale which does go ahead, provided this does not result in a negative balance for the Fund. If deductions would lead to a negative amount, the balance of abortive costs must be deferred until the next sale that proceeds.
- 4.3.73. It is not the GLA's intention to be prescriptive as to the sales process and administration. However, in the interests of efficiency the GLA would encourage landlords to take steps to identify serious purchasers and minimise unnecessary administration. The GLA therefore recommends a two stage sales process to determine:
- Eligibility (of both the tenant and the property); and
  - The calculation of the sale price and the discount available.
- 4.3.74. The first stage, following inquiries from tenants, is to provide 'broad brush' information to enable tenants to make an informed choice as to whether to proceed or not with a formal application taking into account affordability and sustainability criteria (Stage 1A). For further information please see section The Landlord's Response below.
- 4.3.75. If tenants wish to proceed and respond with a formal written application landlords will be required to check the following:
- Whether the property is eligible to be bought; and
  - Whether the tenant(s) is eligible for SHB (Stage 1B).
- 4.3.76. Having ascertained whether or not the main criteria has been met it is at this point that landlords must notify tenants accordingly (Stage 1B) and if eligible, ask tenants to confirm their interest in proceeding with their application. For further information please see section The Landlord's Response below.
- 4.3.77. The second stage involves confirmation of:
- The sale price (following a formal valuation);
  - The equity to be purchased;
  - The discount entitlement;
  - The formal mortgage offer; and
  - The associated costs and provisions.
- 4.3.78. The above details will form the basis of the formal offer and must appear in the contract documentation. For further information please see Tenant's Response Agreeing to Proceed section below.
- 4.3.79. The criteria on which applications might be prioritised, which might reflect local circumstances, must be included in the landlords' published policy statements.

## Discounts

- 4.3.80. A discount is available when purchasing eligible SHB property, based on the percentage of the property being bought (please see above).

Purchasers are not entitled to more than the maximum discount available for the locality in which they are purchasing.

- 4.3.81. Should the SHB discount represent more than 50% of the value of the property (unlikely but theoretically possible) the maximum amount of discount available shall be 50% of the value of the property. This will apply to situations where the tenant is looking to purchase the property outright.

### **The Tenant's Application**

- 4.3.82. Prior to submitting a formal written application tenants would normally make an initial expression of interest in purchasing their home. Landlords are required to respond to an expression of interest as per section **The Landlord's Response** below (Stage 1A).
- 4.3.83. For the process to proceed beyond stage 1A, a formal written application to purchase under SHB must be made by the tenant and sent to the landlord. On receipt of the written application, the landlord must respond confirming (or not) the tenant's eligibility as per section The Landlord's Response below (Stage 1B).

### **The Landlord's Response**

#### Response to an Initial Enquiry

- 4.3.86. When discussing applications to purchase with tenants landlords must encourage them to buy the maximum share they can afford AND sustain.
- 4.3.87. Landlords must formally respond to all expressions of interest
- 4.3.88. Eligibility checks are not required at this stage (Stage 1A) and the landlord is only required to provide indicative cost and discount information based on the assumption that the tenant is eligible. The information that must be provided at this stage is:
- An indication of the market value of the property to be sold. At this stage a formal valuation is not required but can be based on comparative house price details from appropriate commercial real estate or local estate agents' particulars. By using a web based assessment tool to determine the actual, or an approximate, house price valuation, costs can be confirmed or minimised at this point for both the landlord and the tenant should they decided not to proceed.
  - The total cost of purchasing outright or a share and how it is calculated. The total amount of discount applicable if purchased outright at that time in that location, (it is recommended that landlords also provide an example of how much discount might be available if purchasing on shared ownership terms);
  - The total amount of discount applicable if purchased outright at that time in that location, (it is recommended that landlords also provide an example of how much discount might be available if purchasing on shared ownership terms); and
  - If purchasing on shared ownership terms the total rent and possible service charges payable on the property;
  - This response must advise the tenant that if s/he wishes to proceed based on the indicative information that a formal written application must then be made.

## Response to a Formal Application

- 4.3.89. In response to a formal written application (on an application form if applicable), landlords must now determine both the tenant's and the property's eligibility by checking:
- That any application form has been correctly completed and signed and dated by the tenant(s);
  - That the tenant(s) are secure or assured (NB: assured shorthold or long leaseholders are excluded from the SHB initiative);
  - The property is not in an excluded or exempt category;
  - The tenant(s) has been a public sector tenant for five years;
  - Where the property is charged to a private lender the lender is willing to release their charge;
  - Whether there is an effective possession order;
  - Whether the tenant is the subject of a suspension order (see Anti-Social Behaviour section);
  - The tenant has certified in the application that he/she is not an undischarged bankrupt; and
  - Whether the tenant or co-purchasers have previously received a discount to purchase a property from a public sector landlord.
- 4.3.90. Examples of previous discounts include Cash Incentive Schemes from a local authority, and, discounts under the Right to Buy/Preserved Right to Buy, Right to Acquire or Voluntary Purchase Grant. Where a tenant has previously received a discount to purchase a property from a public sector landlord, the amount of discount due under SHB is reduced by the amount previously received. This is not applicable to cases where the tenant repaid the whole of the discount on disposal within a repayment period.

## Offer of an Alternative Property

- 4.3.91. It is anticipated that tenants will normally look to purchase the home that they are currently renting. There is no requirement for landlords to offer an alternative property, but they may choose to do so. The landlord should only consider offering an alternative property if the property is a naturally occurring void; the landlord is not permitted to deliberately keep properties vacant for sale under SHB or offer new grant aided properties built under any other programmes.
- 4.3.92. On completion of the checks detailed in section The Landlord's Response the landlord must respond to the tenant either confirming or denying eligibility.
- 4.3.93. Where eligibility is not confirmed a detailed explanation must be given.
- 4.3.94. Where eligibility is confirmed the tenant must be asked if they still wish to proceed with their application, and to arrange an appointment to discuss in detail how the product works.
- 4.3.95. A standard response based on the Stage 1B letter, should be sent. This letter and information must be sent to the tenant within 4 weeks from receipt of their written application.

### **Tenant's Response Agreeing to Proceed**

- 4.3.96. Following confirmation from their landlord that they are eligible to proceed the tenant must notify the landlord in writing within 4 weeks that they wish to proceed to stage 2 of the purchase process.
- 4.3.97. Landlords have discretion to extend the period for responding if there are reasonable grounds for doing so.
- 4.3.98. During this period the tenant will also be required to meet with the landlord or the landlord's advisor to discuss the product in more detail and undergo a formal affordability and sustainability assessment.

### **Landlord's Formal Offer**

- 4.3.99. Having received the tenant's written application, met with the tenant and undertaken affordability and sustainability assessments, the landlord should now be in a position to make a formal offer to the tenant. Please see below.
- 4.3.100. It is at this point that a formal valuation of the property should be obtained (please see Sales Variation section below). If landlords wish to obtain the formal valuation before this point to prevent any undue delay in the process they may do so, at their own discretion and risk.
- 4.3.101. The formal offer must include the following information:
- The value of the property to be sold;
  - The total cost of purchasing outright or a share and how it is calculated;
  - The total amount of discount applicable for the purchase at that time in that location;
  - The total rent payable on the property;
  - An estimate of the annual service charge/including sinking fund contributions (see RTA section Service Charges); and
  - A requirement that the tenant formally respond to the offer within 4 weeks if they wish to proceed.
- 4.3.102. Landlords must ensure that the formal offer and acceptance are subject to contract, are in writing and that the terms of the sale are agreed by both parties.

### **Sales Valuations**

- 4.3.103. Most of the valuation requirements for SHB are the same as those set out in SO section above; however additional requirements for SHB are detailed in the following paragraphs.
- 4.3.104. Landlords must not set SHB sales prices above the market valuation.

- 4.3.105. The value of the property must be based on its open market value at the time of the application, and founded on the following assumptions:
- Any improvements undertaken by the tenant will be disregarded;
  - Any failure of the tenant to keep the property in good repair will be disregarded;
  - Any service charges or improvement contributions payable will not be less than the estimates contained in the landlord's offer;
  - For freehold property, the landlord is selling a freehold interest with vacant possession; and
  - For leasehold property, the landlord is selling with vacant possession for the appropriate term, i.e. not less than 125 years (where applicable) or a term expiring 5 days before the term of the landlord's lease is to expire.
- 4.3.106. The valuation on initial sale should be carried out by an independent, RICS qualified valuer on behalf of the landlord.
- 4.3.107. Where a tenant disputes the valuation the tenant must make a written representation to the landlord who may use discretion whether or not to refer the property back to the independent valuer for review. Should the tenant then dispute the findings of the review, the landlord can apply for a new valuation from the District Valuer, whose decision will be final. The district valuer's costs will be met by the Department of Communities and Local Government. The role and powers of the District Valuer are set out in the Housing Act 1985, however it should be remembered that SHB is not a Statutory Scheme. These arrangements will only apply to the initial sales valuation - valuation arrangements in connection with the purchase of further shares should be contained within the shared owners' lease.

### **Completing the Sale**

- 4.3.108. Once the applicant has returned the 'Intention to Proceed' notice it is advisable for the landlord to issue an 'Offer Confirmation' letter. This would ensure that both the landlord and the tenant are proceeding on the same basis with regard to the equity share percentage and other issues pertinent to the sale; and that both parties have an understanding of the agreed position.
- 4.3.109. As the tenant is required to exchange contracts within 3 months of the date of the property valuation, see section Completion of the Sale below, the landlord should not delay sending the 'Offer Confirmation' letter. The 'Offer Confirmation' letter should include:
- A formal valuation of the property to be sold, on a Market Value basis;
  - Where applicable, the total rent payable on the property;
  - An estimate of the annual service charges/sinking fund contributions;
  - Details of any known structural defects;
  - The provisions which, in the opinion of the landlord should be contained in the conveyance or shared ownership lease;
  - A suitable identification plan showing the boundaries of the property including the land to be sold; and
  - Details of any discounts received by the tenants in respect of a previous purchase.

- 4.3.110. Landlords may at their discretion decide to undertake a survey to determine the future need for repairs and improvements.
- 4.3.111. On receipt of the tenant's mortgage offer or other evidence of the means to purchase, landlords will be in a position to instruct their solicitors and confirm both the discount to be made available and total share the tenant is purchasing (if doing so on shared ownership terms), so that a formal offer of exchange can be made.
- 4.3.112. Landlords must check the following without undue delay before exchanging contracts:
- The tenant is not in rent arrears;
  - A possession order has not been served during the period the tenant's application has been processed;
  - The tenant is not the subject of an Anti-Social Behavioural suspension order/status, (please see Anti-Social Behaviour section);
  - The mortgage offer is from a Qualifying Lending Institution (please see **Glossary chapter**);
  - Where a mortgage is not required by the tenant, that evidence of funds to finance the purchase has been provided; and
  - The landlord's private lender is prepared to release the property from its security.
- 4.3.113. The tenant has 3 months from the date of the formal valuation (or longer if the valuation is given for a longer period) to exchange contracts and a further month in which to complete the purchase. Where the tenant fails to exchange contracts on the property within this prescribed period the application may be deemed to be withdrawn (except in circumstances where the delay is as a result of the landlord's inaction).
- 4.3.114. Landlords must keep in regular contact with the tenant throughout the process to try to ensure that contracts are exchanged before the valuation expires.
- 4.3.115. In exceptional circumstances the landlord may use its discretion to extend the valuation period, for example where the delays have been wholly outside the control of the applicant or landlord.
- 4.3.116. Landlords' instructions to their solicitor must include the requirement to secure the repayment of discount if sold within 5 years (and repayment of any subsequent discount within 5 years) by way of a covenant in the conveyance/transfer.
- 4.3.117. Subject to landlords being satisfied with the details provided by the tenant and their solicitors, they will then be in a position to complete the sale.

### **Qualifying Lending Institutions**

- 4.3.118. Under current arrangements a mortgage can only be secured as a first charge, that is ahead of any charge the landlord may have, if it is provided by a "Qualifying Lending Institution"(please see **Glossary**).
- 4.3.119. Landlords must therefore ensure that any mortgage taken out by the tenant comes from a Qualifying Lending Institution.



## Submission Requirements

- 4.3.120. Following legal completion landlords must submit the following data using the GLA's Information Management System (IMS) system when claiming grant.
- 4.3.121. Property details;
- Cost and grant calculations including discount and percentage share to be purchased, if relevant;
  - Where applicable rent and Housing Benefit eligible service charge data; and
  - Date of legal completion of sale.
- 4.3.122. Landlords must be able to confirm acceptance of the on screen certifications that appear at payment stage.
- 4.3.123. At the point of claiming grant landlords must confirm that the application for grant payment is correct and conforms to the GLA's Funding Conditions.

## SHB - Post Sales Procedures

### General

- 4.3.124. The Post Sales issues for SHB are similar to or the same as those for RTA and SO. This section provides further details and refers to the above chapters as appropriate.

### Staircasing

- 4.3.125. For shared owners wishing to purchase further shares the issues are as for shared ownership (see above). However, the staircasing sales proceeds should be credited to the RP's Disposal Proceeds Fund and not recycled via its RCGF. For details on the requirements of what sales proceeds should be credited to the Disposal Proceed Fund please refer to the [Regulator's DPF policy](#).
- 4.3.126. Further SHB discounts are available when staircasing. The available discount must be calculated on a pro rata basis based on the percentage of share being purchased and RTA discount available for that location.
- 4.3.127. Where a shared owner may have benefited from flexible tenure and reduced their share holding, upon any subsequent staircasing the shared owner will still only be entitled to the maximum discount for that location and any previous discount will be taken into account.

### Repayment of Discount

- 4.3.128. If an SHB purchaser sells their property within 5 years, please see RTA section **Repayment of Right to Acquire Discount**.
- 4.3.129. RPs must remember that prior to April 2008 for those purchasing on shared ownership terms a pro rata discount was only available on the initial share purchased. Therefore if further shares were purchased prior to April 2008 the repayment provisions only apply to the initial discount.

- 4.3.130. From April 2008 discounts became available in respect of further shares purchased after that date. These discounts are also subject to the repayment provisions when the property is sold.
- 4.3.131. The principles on how to calculate the amount repayable will be the same as those for RTA Repayment of Right to Acquire Discount section, that is a link to the property value. RPs will therefore need to consider whether what discounts were available e.g.:
- Full discount upon 100% purchase;
  - Initial discount on shared ownership sales prior to April 2008; and
  - Initial and any staircasing sales post April 2008.
  - Each discount will be subject to its own 5 year repayment period.

#### **Disregard of improvements value**

- 4.3.132. When selling a SHB purchased property, any increased value resulting from improvements undertaken by the owner will be disregarded. For detailed requirements see RTA section **Waiving Repayment of Right to Acquire Discount**.

#### **Deferred resale agreements**

- 4.3.133. Please see see [the HCA's website](#) for a model repayment of discount clause.
- 4.3.134. RPs must ensure that a conveyance or lease has an appropriate discount repayment covenant included. This covenant will rank immediately after the qualifying lending institution that has provided the tenant's mortgage). Where further lending is needed to fund essential works to the property RPs may postpone this charge in favour of the lender. The charge should not be postponed for any other reason.

#### **Exempted disposals**

- 4.3.135. Please see RTA section **Waiving Repayment of Right to Acquire Discount** for details of circumstances in which RPs may consider waiving discount repayment.

#### **Mortgage Difficulties Flexible Tenure and Leasehold Repurchase**

- 4.3.136. Lenders may take action to repossess property if mortgage payments are not maintained ("being in default"). RPs must refer to the GLA's requirements as set out in the **SO section above**.
- 4.3.137. Where a SHB shared owner reduces, but still retains part of, their equity in the property no repayment of the discount is required. However, should the shared owner revert to being a tenant within the designated repayment period, the discount is repayable.
- 4.3.138. The requirements and opportunities for offering Flexible Tenure and Leasehold Repurchase to leaseholders who are struggling financially are set out in the **Grant Recovery chapter** and the **SO section above** respectively.

## SHB - Reporting and Audit Requirements

### General

- 4.3.139. RPs must maintain accurate and complete records of SHB transactions, both for reporting and audit purposes. This sections sets out the requirements.
- 4.3.140. The RP must retain on file the following for Compliance Audit purposes (see also the Programme Management section of the General chapter):
- Solicitors' letter confirming that the purchase has been completed and setting out the sum paid and date of completion; and
  - A property schedule showing addresses, floor areas, and valuations for the completed properties, together with actual rents and HB eligible service charges.

### Monitoring

- 4.3.141. Following completion of the purchase, RPs must input SHB sales data into [IMS](#), in order to draw down grant. This must be repeated for staircasing sales.
- 4.3.142. Grant will not be payable where Social HomeBuy records are incomplete or incorrect.

### Certifications

- 4.3.143. The information provided by RPs within IMS and on their annual DPF return is the means by which SHB outputs will be monitored. Therefore the GLA requires RPs to certify compliance with the SHB procedural requirements and ensure a print off of their annual DPF return is shown to their external qualified auditor as signed by the RP's authorised signatory.

### CORE

- 4.3.144. RPs are required to complete CORE sales logs in respect of all homes sold through Social HomeBuy.