
Disposing of land (Section 9 of the Housing Act 1996)

Guidance and criteria for registered social landlords and other housing associations for all disposals of land or interest in land, including charges to private lenders to secure funding, and the General Consent 2008

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1 Summary

1.1 This guide:

- informs Registered Social Landlords (RSLs) of the requirements of Section 9 of the Housing Act 1996 (“the Act”) and offers guidance on applying for consent for disposals covered by Section 9 and other legislation. The guide is addressed mainly to RSLs. The special circumstances of unregistered and de-registered housing associations are described in paragraph 8;
- introduces the General Consent 2008 which revokes the General Consent 2003 with effect from 1 February 2008;
- advises of the Land Registry’s requirements;
- announces new versions of forms HACON 2, HACON 5 and HACON 6; and
- appends a glossary of terms associated with disposals.

2 Purpose of Section 9 consent

- 2.1 Section 9 of the Act gives the Housing Corporation an opportunity to review proposals to dispose of property. We interpret this as Parliament’s method of protecting tenants, maintaining the availability of sustainable housing lets, protecting public investment and preventing improper disposal of property. An application can also alert the Corporation to potential regulatory problems. The Corporation’s consent informs other

parties that the disposal is effective and valid within the legislation.

- 2.2 A third party contracting with an RSL or a lender taking security from an RSL must make its own assessment of whether the RSL can, or will be able to, fulfil any payments and other obligations to that third party or lender.
- 2.3 When making disposals, RSLs must ensure they are acting prudently and within their governing instrument. An RSL should be aware of and comply with the rules of other regulatory bodies on making disposals and registering charges. Charitable RSLs and charities are also subject to general charity law. We expect any RSL, when making a disposal, to obtain the best return it can. This normally means at or above the open market value as assessed by a qualified valuer.

3 Categories of consent, definitions and further enquiries

- 3.1 Any disposal of land by an RSL will be:
- an exempt disposal, i.e. one not requiring consent (see paragraph 4 below); or
 - a disposal requiring our prior, individual, sealed consent under Section 9 of the Act; or

- a disposal covered by the sealed General Consent 2008 or other general consents that we issue from time to time under Section 9 of the Act.

Individual consents

- 3.2 We may give individual consent, upon application, for a particular disposal or group of disposals. An individual consent is a sealed, legal document. Consent is not automatic but given at our discretion. Paragraphs 6 and 7 below indicate how the Corporation would normally exercise that discretion.

General Consent

- 3.3 From time to time, we publish general sealed consents for routine or uncontentious classes of disposal. General consents allow all RSLs to proceed with such disposals without needing to apply for an individual consent. Occasionally, we may give a general consent that applies only to the disposals of a particular RSL.

Housing associations not registered with the Corporation

- 3.4 Most housing associations formerly registered with the Corporation continue to be covered by Section 9. Housing associations that have never been registered with the Corporation sometimes need to obtain

consent. Both these categories are covered in more detail in paragraph 8 below.

Definition of a disposal

- 3.5 Section 9 of the Act defines a disposal very widely as a “sale, lease, mortgage, charge, or other disposition”. This includes:

- sale or transfer of land;
- mortgage or legal charge, including fixed and floating charges;
- any grant of an option, easement, right of way or other right; or
- any other interest in land.

Definition of land

- 3.6 Land includes any kind of property, land or buildings and covers freehold and leasehold. The General Consent 2008 gives specific interpretations of terms that it uses.

Enquiries

- 3.7 The Corporation does not provide legal advice. If RSLs are unsure, after reading this guide, whether they have a legal obligation to obtain consent, they should seek advice from their solicitors. Our Consents Section can offer advice on administration and the Corporation’s policy. Its address is Attenborough House, 109/119 Charles Street, Leicester LE1 1FQ, tel 0845 230 7000, fax 0116 242 4801 or email to section9query@

housingcorp.gsx.gov.uk. Enquiries specifically about private finance consent, however, should be directed to the RSL's nominated financial analyst at the Corporation field office.

4 Exempt disposals and “non-disposals”

4.1 The following categories are exempt from, so do not require, our consent under Section 9 of the Act:

- sales to tenants who exercise a statutory Right to Buy or Right to Acquire. This exemption includes Preserved Right to Buy (i.e. where a tenant already had the Right to Buy with an earlier landlord and had that right preserved when their home was transferred to a new landlord). The Corporation believes that deeds to rectify errors in the original Right to Buy or Right to Acquire sale are similarly exempt. Sales made voluntarily to tenants are not exempt.
- lettings to tenants under a secure tenancy or what would be a secure tenancy but for any of the paragraphs 2–12 of Schedule 1 of the Housing Act 1985;
- lettings to tenants under an assured tenancy or an assured agricultural occupancy, or what would be an assured tenancy or assured agricultural occupancy but for any of paragraphs 4–8 or 12 (l)(h) of Schedule 1 to the Housing Act 1988 (including lettings to

members of co-ownership societies and fully mutual co-operatives).

Note that shared ownership leases, and any intermediate or final staircasing permitted under those leases, are generally exempt from the need for consent because they are assured tenancies. When a low rent is charged (currently under £1,000 a year in Greater London or £250 a year outside London) a shared ownership lease may fail to qualify as an assured tenancy. In such cases, check whether it is covered instead by category 1a of Part I of the General Consent; sales following the service of a Compulsory Purchase Order (CPO) which has been confirmed in writing by the Secretary of State for Communities and Local Government or any successor body. When land or empty property is transferred to the local authority by agreement in advance of a CPO, it is covered by category 4b of the General Consent;

- disposals that are part of a transfer of engagements between, or result from an amalgamation of, industrial and provident societies (I&P Act societies); also disposals of land that result from the conversion of an I&P Act society to a company (or vice versa), or result from an amalgamation with or transfer of engagements to a company;
- Consent for these transfers of engagements or amalgamations is required under Paragraph 12(2) of Schedule 1 to the Housing Act 1996. Contact Registry and Consents at**

Leicester for advice (see page 42 for contact details);

- disposals in the form of a transfer of property or transfer of responsibility for property, which will enable a company to be reconstructed, amalgamated or converted to an I&P Act society;
Consent for these transfers is required under Paragraphs 13 (3) and (4) respectively of Schedule 1 to the Housing Act 1996. Contact Registry and Consents at Leicester for advice (see page 42 for contact details);
- disposals by an unregistered housing association that is a registered charity, if the disposal requires an order of the Court or the Charity Commission;
- disposals of non-grant aided land (see also paragraph 8 below) made by unregistered housing associations;
- a leaseholder acquiring the freehold of their property under the Leasehold Reform Act 1967. Also leaseholders acquiring collectively their freehold under the Leasehold Reform, Housing and Urban Development Act 1993 (s.37 and Schedule 10, paragraphs 1(1) and 1(2)(b) of that Act refer);
- adoption of sewers under Section 104 of the Water Industry Act 1991 and adoption of roads under Section 38 of the Highways Act 1980;

- disposal of land to which Sections 81, 105 or 133 of the Housing Act 1988 apply. Certain disposals require the consent of the Secretary of State rather than the Housing Corporation. In those cases, please contact Communities and Local Government, tel 020 7944 6476, fax 020 7944 6256.

- 4.2 Some exempt disposals may nevertheless be 'relevant events', enabling the Corporation to recover or redirect Housing Association Grant (HAG) or Social Housing Grant (SHG). Associations should refer to our guidance on recovery of grant in the Capital Funding Guide.

Not classed as disposals

- 4.3 The following do not require section 9 consent because they are not classed as disposals:

- licences (see glossary);
- management agreements, because they do not entail any lease or tenancy being created;
- demolition of buildings; and
- a change of use of land.

- 4.4 For demolition and change of use of grant funded land, refer to the grant recovery section of the Corporation's Capital Funding Guide on our website.

5 Disposals under the General Consent 2008 - policy and procedure

5.1 The General Consent 2008 takes effect on 1 February 2008 and replaces the General Consent 2003. It is at Appendix B.

5.2 The objective of the General Consent 2008 is to reduce administration further for RSLs disposing of land, especially when disposals are routine and uncontentious. Provided they can satisfy the conditions in Part II of the General Consent, RSLs may make disposals in the categories in Part I without applying to the Corporation for an individual consent. Instead, they certify themselves that their disposal complies with the requirements of Section 9. Thus they are responsible for the legitimacy of disposals.

5.3 The General Consent does not apply to Co-ownership Societies, unregistered housing associations and housing associations which are no longer on the Corporation's register.

New categories of the General Consent 2008

5.4 The Corporation has widened the scope of the General Consent to include categories of disposal for which RSLs previously needed an individual consent. The main extensions are

summarised as follows. Check the detailed wording in the consent itself.

- Transfer of untenanted housing stock to another RSL, a local authority or an ALMO, provided none of the RSLs are under supervision (categories 3a, 4a and 5a). Note that when grant funded stock is transferred between RSLs, the transferring RSL must send form TOP 1 (R) to the Corporation. Refer to the Capital Funding Guide, General, Procurement and Scheme Issues, Property Title, paragraph 5.4;
- Disposal of houses built specifically for outright sale at market value without grant assistance, either to individual purchasers or to a body appointed to sell. It can include disposals in which the part exchange of the purchaser's old home forms all or part of the consideration. (cats. 2a & 2c);
- Disposal of houses provided under the terms of a section 106 agreement, including sales at a transferable discount (category 2b & 2c);
- Extensions of housing leases when the original lease was either exempt or permitted by the General Consent, e.g. the leases of former shared owners and RTB leaseholders (cats. 1c, 1d, 7h, 7i & 7j);
- Granting a rentcharge solely to secure payment of a service charge (cat. 6c);

- When an open market or auction sale of an individual house/flat obtains an individual consent but falls through, the ability to proceed with a new purchaser and/or at a new price, provided the price is still supported by an up to date valuation; also more scope to correct errors of fact (cats. 13 and 14);
- Deeds merging freehold and leasehold titles (cat. 7g);
- Grant of easements and disposals of small parcels of land up to a value of £10,000, previously £5,000. Relinquishing rights to light added (cat. 8);
- The exercise of an option as well as the initial grant of the option (cat. 9);
- More circumstances in which an RSL can sell the freehold of a building occupied by private leaseholders, but not on schemes for over 55s (cats. 7e and 7f);
- Granting charges to developers or sellers for the duration of the development or sales period or to a registered charity with a financial interest (cat. 6a);
- Granting non-residential leases of up to 25 years; and
- Disposals under a policy of voluntary sales to tenants that has been approved in advance by the Corporation (cat 1g). Information on drawing up such a policy is available on request from Regulation Policy section at Maple House, Tottenham Court Road, London W1T 7BN.

Withdrawal and replacement

- Under category 3d of the General Consent 2003 it was possible for an RSL to lease premises, including housing, to any person for a period of up to ten years. This category has been withdrawn, meaning that in future RSLs will need to obtain individual consent to grant leases of housing, except when covered elsewhere in the General Consent (e.g. categories 3a, 4a, 5a and 12). Category 7d allows granting of leases for up to 25 years on non-residential property, which can include parts of residential property that are not for living in, e.g. garages and outbuildings.

Procedure for recording use of the General Consent

- 5.5 Part II of the General Consent 2008 requires RSLs to record on form HACON 5 each disposal made under the General Consent. The correct version of HACON 5 should be used. RSLs should keep these records in a register.
- 5.6 In order to register a purchaser's title, the Land Registry needs evidence of our consent to an RSL under Section 9 for a disposal of land. This is dealt with in paragraph 9 below.

6 Disposals requiring an individual consent (excluding private finance charges)

6.1 Any disposal not covered by the General Consent and not otherwise exempt requires an individual consent under our seal.

Policy

6.2 We will consider each application on its merits and will not unreasonably withhold consent. However, our normal policy is to withhold consent in the following circumstances:

- disposal of tenanted social housing property (unless the disposal is to another RSL or a voluntary sale to the tenant);
- disposal at less than the full open market value (unless to another RSL where a price up to open-market value can be negotiated). Special valuation rules apply to co-ownership sales to members - refer to Corporation Circular 15/99;
- disposal that is contrary to an RSL's objects and/or permissible purposes; and
- disposal that raises issues of financial concern or impropriety.

6.3 As well as withholding an individual consent, we can withdraw use of the General Consent under certain circumstances.

Consultation with tenants

6.4 If the disposal is a transfer of tenanted stock to another RSL, the transferring RSL must have undertaken adequate and appropriate consultation with its tenants before applying for section 9 consent.

Consultation with the local authority

6.5 For disposals of:

- social housing for rent; and
- non-social housing which has received financial assistance from a local authority

even when the housing is vacant at the time of sale, we now expect RSLs to confirm that they have consulted the local authority and to state that the local authority has raised no objections or, if it raised objections, to explain the circumstances. Co-ownership societies which have never received any financial assistance from the local authority would not be expected to consult.

Procedure for application for an individual consent

6.6 RSLs should read the guidance notes before completing application form HACON 2. The RSL should keep a copy and send the original to Consents Section, Attenborough House, 109/119 Charles Street, Leicester LE1 1FQ.

6.7 The Corporation will need sufficient information to identify each individual transaction requiring consent, the type of deed, the parties, the land and the consideration. If we have to ask for more information, this is likely to delay the process. In complex cases, the Corporation may ask an RSL to comment on the proposed wording of a consent. When an application is in order and all information requested has been provided, we aim to give consent within 15 working days. An incomplete application, including one in which the local authority has not been consulted or has raised an unresolved objection, may take longer.

7 Disposals by way of charge or mortgage to a private lender

- 7.1 In order to include more complex ways of securing finance, the application form HACON 6 adopts new terms:
- “Security Interest” includes, for example, a charge or mortgage;
 - “Private Finance Facilities” includes, for example, loans; and
 - “Private Finance Provider” includes, for example, banks and building societies and also a security trustee.

These terms are defined in the Glossary at Appendix C.

7.2 An RSL wishing to grant a Security Interest to a Private Finance Provider in order to obtain Private Finance Facilities should apply for an individual sealed consent.

7.3 We will consider each application on its merits and will not unreasonably withhold consent. Depending on the circumstances, we may for example withhold consent from an RSL under supervision or if the terms of the private finance facilities threaten the association’s financial viability or would lead to a breach of the Regulatory Code or other regulatory policy. We would normally expect an RSL to provide any additional supporting information requested and to satisfy the following conditions.

On-lending

- 7.4 The Private Finance Facilities will be used by the RSL itself or will be on-lent by it to:
- (a) an RSL or RSLs within the RSL’s own group structure or to an RSL or RSLs outside the group structure; or
 - (b) a body within the RSL’s own group structure that is not an RSL, at arm’s length and on normal commercial terms.

In all cases within (a) or (b) the on-lending must be in accordance with the RSL’s constitution and the funding agreement must specifically allow for the proposed on-lending.

Governing body consideration and approval

7.5 The governing body of the RSL must have considered the financial impact of obtaining the Private Finance Facilities and of the associated loan servicing, repayment and covenant terms. A governing body minute must exist approving the entry of the RSL into the funding agreement. The duties of the governing body may be exercised by a sub-committee to which the governing body has delegated suitable powers according to an appropriate scheme of delegation. If the Private Finance Facilities are provided to an RSL group finance vehicle, i.e. a legal entity that raises and on-lends finance for a group, the governing body (or relevant sub-committee to which suitable power has been delegated) of each RSL within the group which is either using the Private Finance Facilities or granting Security Interests in relation to it must have considered cross-default and other liabilities in respect of the other participating RSLs and non-RSLs.

Social housing used as security for non-social housing activity

7.6 Private Finance Facilities secured by Security Interests on social housing assets will be used for non-social housing activity only when the RSL's governing body has approved that use after having considered the expectations and requirements published in Circular 04/04 (or

any subsequent circular from the Corporation that updates this) and having decided that the RSL is able to comply with them.

Schedule 1 compliance

7.7 The Private Finance Facilities must not be made available by any person/business specified in Part I of Schedule 1 to the Act and, if relevant, must not contravene general charitable law or the Companies Acts.

Procedure for application for an individual consent

7.8 Obtain application form HACON 6 and read the guidance notes on completing it. Upon completion, the form should be certified by an officer or employee specifically authorised by the RSL's governing body. The RSL should keep a copy and send the original to the RSL's nominated Financial Analyst at the Corporation's field office. Co-ownership societies, however, should apply to the Corporation's co-ownership advisor, whose details can be obtained from Regulation Policy section on 0845 230 7000.

7.9 If the list of properties subject to the security interest is too long to fit the box on HACON 6, please send a schedule of addresses on paper or electronic file. If, however, the properties make up the entire stock to be transferred from a local authority, a schedule need not be sent – the application may instead refer

to “the properties identified in the transfer agreement”.

Revised consent

7.10 If the RSL intends to:

- add or substitute (but not just to remove) properties in the schedule of properties to be charged;
- increase the amount of the Private Finance facility; or
- voluntarily convert a floating charge into a fixed charge with the agreement of the Private Finance Provider;

it should first apply on HACON 6 for a revised consent. Please tick the relevant box (‘Is this application for a revised consent?’). It is not normally necessary to obtain a revised consent when one Private Finance Provider transfers to another Private Finance Provider the Private Finance Facilities it has secured on an RSL’s land or for drawing down all or any part of the facility stated in the original consent. Nor would it normally be necessary to apply for revised consent to change the terms and conditions of the facilities as set out in the annex to form HACON 6, unless it meant that the RSL would no longer be able to satisfy the Corporation’s conditions above.

Registering the sealed consent

7.11 Form HACON 6 is designed to serve as both application form and sealed consent. When consent is given, we will sign and seal the original application and return it to the RSL.

7.12 When an individual consent is given under seal on HACON 6, an RSL will need to provide either a certificate or a true copy of the consent to enable registration of the charge at the Land Registry (see paragraphs 9.9 and 9.10 below).

8 Disposals by unregistered and de-registered housing associations

Unregistered associations

- 8.1 An unregistered association is one which satisfies the criteria in section 1 of the Housing Associations Act 1985 but has either never been registered with the Housing Corporation or ceased to be so registered before 1 October 1996.
- 8.2 Under section 9(1A) of the Housing Associations Act 1985, an unregistered association that is not a registered charity requires our consent to dispose of ‘grant aided land’. This is land that has been subject to public loan or subsidy at any time since 24 January 1974. Public loan or subsidy is defined

in Schedule 1 to the Housing Associations Act 1985. Applications, on form HACON 2, should be sent to Consents Section in Leicester.

- 8.3 For the purpose of Section 9(1A) consent, lottery funds are deemed not to be public funds.

De-registered associations

- 8.4 A de-registered association is one that ceased to be registered with the Corporation on or after 1 October 1996.
- 8.5 Consent under s.9 of the Housing Act 1996 is required for the disposal of any land, whether grant aided or not, which a de-registered association held at the point of deregistration. Applications, on form HACON 2, should be sent to the Consents Section in Leicester.

9 Land registration

- 9.1 HM Land Registry has a statutory duty in relation to registered land. All registered land owned by an RSL and acquired after the enactment of the Housing Act 1974 should have, entered on the Land Register, a restriction stating that Section 9 consent must be obtained for any disposal except those that are exempt.

Registering the Section 9 restriction

- 9.2 Upon registrations up to 12 October 2003, an RSL's solicitors certified that their client was an RSL and Land Registry would add a restriction (the "1974 restriction") worded as follows:

"Except under an order of the registrar no disposition by the proprietor of the land is to be registered and none shall take effect unless made with the consent of the Housing Corporation when such consent is required under the provisions of Section 9 of the Housing Act 1996."

- 9.3 For registrations on or after 13 October 2003, an individual application is needed to place a restriction on each title. Corporation Circular 08/03 instructed RSLs to enter into an arrangement with the Land Registry to enter the following restriction ("the 2003 restriction") upon all new registrations:

"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a certificate signed on behalf of the proprietor by its Secretary (or by two trustees, if a charitable trust) or its solicitor or licensed conveyancer that the provisions of Section 9 of the Housing Act 1996 have been complied with."

Any RSL that has not yet entered into the arrangement described in Circular 08/03 must now do so.

9.4 The requirements of the 2003 restriction differ from those of the 1974 restriction. The 2003 restriction requires the RSL to certify upon disposal that the provisions of Section 9 of the Act have been complied with. In providing this certificate, the RSL is saying that it has obtained the prior sealed consent of the Corporation or that the disposal is covered by a specified category of the General Consent. It is not necessary to provide such a certificate when a disposal is exempt from the need for consent under Section 9.

Registering land before an arrangement is agreed

9.5 RSLs should enter into an arrangement with Land Registry for registration of a restriction on land, as described in Circular 08/03. If land needs to be registered in the meantime, the RSL's Secretary or its solicitors must give the following information when it applies to register its ownership of land so that the status of the association can be ascertained and the correct restriction(s) entered in the Land Register:

- Status: state that the RSL is:

- a registered social landlord within the meaning of the Housing Act 1996;
 - an industrial and provident society within the meaning of the Industrial & Provident Societies Act 1965; or
 - a company registered under the Companies Act 1985; and/or
 - a charity registered with the Charity Commission;
- Enclose if appropriate a certified copy of the RSL's governing instrument. If the Land Registry has already been supplied with a copy of that document, the RSL should certify this to the Land Registry, quoting Land Registry HQ's reference.
 - If an instrument, such as a transfer to an RSL that is a charity or an exempt charity is lodged with the Land Registry for registration, a statement taken from Section 37(5) of the Charities Act 1993 must be inserted into the instrument in the form indicated by Rule 179 of the Land Registration Rules 2003. Note that in the absence of that statement, the Land Registry may assume that the receiving association is not a charity;
 - Similarly, if an instrument such as a transfer by an RSL that is a charity or an exempt charity is lodged with the Land Registry for registration, a statement taken from Section 37(1) of the Charities Act 1993 must be inserted into the instrument in the form indicated by Rule 180 of the Land Registration Rules 2003.

Land Registry requirements for an RSL disposing of land subject to the “2003 restriction”

- 9.6 If an RSL’s land is registered subject to the “2003 restriction” described in 9.3 above, the Land Registry will require the certificate by the RSL described in 9.4. (However, the Land Registry will not require such a certificate or any alternative document when it is an exempt disposal, a shared ownership lease, a mortgage not affecting any houses or flats or the grant or release of an easement.)
- 9.7 For a disposal made under the General Consent, the Land Registry will accept a certified true copy of version 6 of form HACON 5, which now includes an additional certification in a form acceptable to the Land Registry. An RSL should therefore give the purchaser’s solicitors a copy of form HACON 5 certified as a true copy by the RSL’s authorised officer, solicitor or licensed conveyancer.
- 9.8 For a disposal which requires an individual sealed consent, Land Registry will require a certificate. RSLs should give the purchaser’s solicitors or licensed conveyancers a copy of the original certificate (not HACON 5 or any individual consent) certified by the RSL’s authorised officer, solicitor or licensed conveyancer. The purchaser or transferee will need to lodge this certificate at the Land Registry with their application to register

their new title. The Land Registry does not need other supporting papers. If applying to register a charge, the RSL should supply the original certificate (not HACON 5 or HACON 6) direct to the Land Registry.

Land Registry requirements for an RSL disposing of land subject to the “1974 restriction”

- 9.9 If an RSL’s land is registered subject to the “1974 restriction” described in 9.2 above, the Land Registry will require certified true copies of a form HACON 5, HACON 6 or of the individual consent from the Corporation. (However, the Land Registry will not require such documents or any alternative documents from an RSL when it is an exempt disposal, a shared ownership lease, a mortgage not affecting any houses or flats or the grant or release of an easement.) RSLs should therefore give the purchaser’s solicitors or licensed conveyancers a certified true copy (certified by the RSL’s authorised officer, solicitor or licensed conveyancer) of the completed and signed HACON 5, the sealed HACON 6 or the individual sealed Section 9 consent. For HACON 5, the Land Registry does not need supporting papers, which should be kept with the original HACON 5 on the register maintained by the RSL.

Certified true copies

9.10 Paragraphs above refer to providing certified true copies. Land Registry advise that, for their purposes, plain copies such as photocopies will normally suffice, though they remain entitled to call for a certified true copy in a particular case. In practice, however, purchasers' solicitors may still insist on RSLs providing certified true copies. RSLs may consider that if this custom is entrenched they may as well provide certified true copies as a matter of course.

Part completion of form HACON 5

9.11 RSLs need not complete the 'Date of completion of sale, charge etc.' and 'RSL register entry number' boxes before copying HACON 5 for Land Registry use. However, RSLs must do this before filing the form on the register.

Retaining form HACON 5 and supporting documents

9.12 Anyone may make a claim under a disposal by deed within 12 years of the date of disposal. The Corporation therefore recommends that an RSL retains form HACON 5 and supporting documents for 12 years from the date of disposal. This will enable it to demonstrate, if necessary, that the disposal was validly made.

An RSL disposing of land not subject to either restriction

9.13 If an RSL's land happens to be registered without any restriction on title, the Land Registry will not need to see any consent or certificate. Note that Section 9 of the Act applies even when there is no restriction on the register.

RSLs creating restrictions upon disposal

9.14 RSLs sometimes require purchasers to apply for other types of restriction. When devising such restrictions, RSLs should bear in mind that Land Registry has a statutory power to reject restrictions. It will not generally accept a restriction that calls for Land Registry staff to make a judgement such as whether a provision in a deed has been complied with. Further information is contained in the Land Registry's latest Practice Guide No. 19, Notices, Restrictions and the Protection of Third Party Interests in the Register, published under Forms and Publications and accessed through Leaflets on www.landregistry.gov.uk.

Registrations by unregistered housing associations

9.15 Upon application to register proprietorship, if a company is an unregistered housing association within the meaning of the Housing Associations Act 1985 and the

application relates to grant-aided land as defined in schedule 1 to that Act, the application must contain or be accompanied by a certificate to that effect. If, in connection with the registration of trustees as proprietor, the registered estate or charge to which the application relates is held on trust for an unregistered housing association within the meaning of the Housing Associations Act 1985 and is grant-aided land as defined in schedule 1 to that Act, the application must contain or be accompanied by a certificate to that effect (Land Registration Rules 2003, rules 181(3) and 182 (3)).

Disposals by unregistered and de-registered housing associations

9.16 Some disposals by unregistered associations are exempt from the need for consent (refer to paragraphs 4.1 bullet point 7 and 8.2 above). For disposals that do require consent, an unregistered association must supply the purchaser with a certified true copy of our consent under Section 9(1A) of the Housing Associations Act 1985.

9.17 A de-registered association making a disposal of stock held before its deregistration must supply the purchaser with a certified true copy of our consent under Section 9 of the Housing Act 1996 or, if subject to the “2003 restriction” a certificate as in 9.4 above.

10 Consent under Section 133 of the Housing Act 1988

10.1 In certain circumstances an RSL may require the consent of the Secretary of State for Communities and Local Government under Section 133 of the Housing Act 1988.

10.2 This is required for housing and land transferred from a local authority, typically for stock transfer associations who register with the Housing Corporation. However, some RSLs which are not transfer RSLs will require Section 133 consent from time to time. After stock is transferred with Section 133 consent from one RSL to another, any further disposal will require consent under Section 9.

10.3 RSLs must check which consent is required and should note that Section 133 and Section 9 consents are not required for the same disposal unless the land in question falls part under Section 133 and part under Section 9. If this is the case, then they must apply to each body for each part of the land falling under the legislation in question. Where only Section 133 consent is required for a disposal of land then Section 9 consent is not required.

10.4 Transfer RSLs should note the general rule that housing and land which came across at the point of transfer requires Section 133 consent whereas housing and land acquired after the transfer requires Section 9 consent.

10.5 Please address enquiries about Section 133 consents to Communities and Local Government, 2/D2 Eland House, Bressenden Place, London SW1E 5DU, tel 020 7944 6476, fax 020 7944 6256.

11 Consent under Section 81 of the Housing Act 1988

11.1 RSLs need this consent to dispose of property formerly owned by a New Town Development Corporation, a Housing Action Trust or an Urban Development Corporation. When a disposal requires Section 81 consent, a Section 9 consent is not required.

11.2 Apply to the Regeneration, Land and Property Division of Communities and Local Government, Zone 1/D1 Eland House, Bressenden Place, London SW1E 5DU, tel 020 7944 3777.

12 Consent under Section 156a of the Housing Act 1985

12.1 An RSL that owns housing in a National Park, an Area of Outstanding Natural Beauty or an area designated by the Secretary of State as a Rural Area may, if properties are sold under Right to Buy or Right to Acquire, wish to invoke an option to impose a covenant on those particular sales. The covenant would oblige the purchaser to offer the RSL first

refusal in the event of a re-sale within the first ten years. It would replace the default covenant which, unless the RSL specifically permits the owner to offer the property more widely, restricts re-sale to someone who has lived or worked locally for at least three years.

12.2 An RSL wishing to replace the locality covenant with the buyback covenant needs Corporation consent under Section 156A of the Housing Act 1985 (as amended).

12.3 Application may be made by a letter to Consents Section in Leicester, explaining the circumstances and attaching a plan of the area, a list of addresses or reference to a statutory order defining the area. The Corporation may consult the local authority. Consent will be given by letter and the Corporation will expect an RSL to act consistently across its stock in the application of this consent.

Appendix A

Section 9 of the Housing Act 1996

(Note: The “Relevant Authority” in England is the Housing Corporation)

Control by Relevant Authority of land transactions

9. (1) The consent of the Relevant Authority is required for any disposal of land by a registered social landlord under section 8.

(1A) The consent:

- (a) if given by the Housing Corporation, shall be given by order under its seal; and
- (b) if given by the Secretary of State, shall be given by order in writing.

(2) The consent of the Relevant Authority may be so given:

- (a) generally to all registered social landlords or to a particular landlord or description of landlords;
- (b) in relation to particular land or in relation to a particular description of land

and may be given subject to conditions.

(3) Before giving any consent other than a consent in relation to a particular landlord or particular land, the Relevant Authority shall consult such bodies representative of registered social landlords as it thinks fit.

(4) A disposal of a house by a registered social landlord made without the consent required by this section is void unless:

- (a) the disposal is to an individual (or to two or more individuals);
- (b) the disposal does not extend to any other house; and
- (c) the landlord reasonably believes that the individual or individuals intend to use the house as their principal dwelling.

(5) Any other disposal by a registered social landlord which requires consent under this section is valid in favour of a person claiming under the landlord notwithstanding that that consent has not been given; and a person dealing with a registered social landlord, or with a person claiming under such a landlord, shall not be concerned to see or inquire whether any such consent has been given.

(6) Where at the time of its removal from the register of social landlords a body owns land, this section continues to apply to that land after the removal as if the body concerned continued to be a registered social landlord.

(7) For the purposes of this section “disposal” means sale, lease, mortgage, charge or any other disposition.

(8) This section has effect subject to section 10 (lettings and other disposals not requiring consent of Relevant Authority).

Appendix B

The General Consent 2008

The Housing Corporation
Housing Act 1996

Order

The Housing Corporation (“the Corporation”), exercising its powers under Section 9 of the Housing Act 1996 (“the Act”) consents to the disposal of Land or the disposal of any interest in Land by a housing association registered with the Corporation under Sections 1(2) or 3(1) of the Act under the categories of disposal listed at Part I on the following pages subject to criteria listed at Part II on the following pages. This Consent supersedes and revokes the General Consent sealed on 11 February 2003 and numbered C38913, and will come into effect on 1 February 2008.

Part I

Registered Social Landlords (RSLs) that are not Co-ownership Societies or Co-ownership Associations may make disposals of Land described in the categories below subject to (a) the specific conditions described within each of the following categories and (b) the general conditions set out in Part II.

1. Home ownership initiatives

a. The RSL grants a Shared Ownership Lease that is not an Assured Tenancy.

b. The RSL grants a new long lease of a House or transfers its freehold or superior leasehold interest in a House to a person who has exercised their right under a Shared Ownership Lease to staircase to a 100% leasehold interest in the House.

c. The RSL grants or extends a lease of a House to a person aged 55 or over in a scheme designed for people in that age range.

d. The RSL disposes of its remaining interest in a House that was rehabilitated under a Rehabilitation for Outright Sale scheme or grants an extension of the term of the lease.

e. The RSL disposes of its remaining interest in a House let on a Shared Ownership Lease after a shared owner has failed to repay a loan as agreed and the lender has used its enforcement rights under its mortgage over the House.

f. The RSL disposes of a House to a tenant under the Social HomeBuy Scheme (or any successor scheme which the Corporation states is substantially the same) by outright sale or by the grant of a Shared Ownership Lease that is not an Assured Tenancy. Sections 11, 11A, 11B, 12, 12A and 12B of the Act shall not apply to disposals in this category.

g. The RSL disposes of a House by transfer or lease to a tenant under the terms of

a voluntary sales policy which has been authorised by the Corporation.

- h. The RSL disposes of a House by transfer or lease to a key worker, where that House was funded through the Starter Home Initiative or the Key Worker Living Programme. The RSL must believe that the purchaser intends to use the House as his/her main residence and must include in the transfer deed or lease a statement of this belief.

2. Provision for sale on the open market

- a. The RSL disposes by transfer or lease with vacant possession of a House that it has provided or acquired, without any public grant or subsidy, specifically for disposal on the open market and which has never formed part of the RSL's rental stock. Disposal may be direct to individual purchasers or to a body in the RSL's own group structure that is engaged to market and dispose of the Houses. Such provision for open market disposal must be within the objects adopted by the governing body of the RSL - refer to condition 1 in Part II below. This consent does not allow for sales at a discount or at any less than best price as defined in condition 3 of Part II below.
- b. The RSL disposes of a House by transfer or lease to a person under the terms of an agreement under section 106 of the Town and Country Planning Act 1990 and the

consideration is not less than the maximum amount agreed with the local authority under the section 106 agreement. When such a House is disposed of at a discount permanently transferable from one purchaser to the next, the deed of disposal shall not contain the covenant binding on the purchaser described in sections 11, 11A and 11B of the Act for repayment of discount upon any subsequent disposal.

- c. The RSL subsequently extends the term of a lease granted under categories 2 (a) and (b) immediately above.

3. Transfer of an untenanted House between RSLs

- a. The RSL disposes by transfer or lease to another RSL of an untenanted House or untenanted Hostel together with their communal areas and any non-housing land that is integral to the estate or building. This category is not available when either RSL has been notified by the Corporation as being under Supervision. This category excludes a disposal which, on its own or forming part of a larger transaction, reduces the stock of an RSL by more than 50%. Condition number 3 in Part II of this consent applies to this consent but modified in that the consideration may be less than but may not exceed the best price that, in the opinion of the valuer, might reasonably be obtained.

4. Disposal of an untenanted House to a local authority

- a. The RSL disposes by transfer or lease to a local authority of an untenanted House or untenanted Hostel together with their communal areas and any non-housing land that is integral to the estate or building. This category is not available when the RSL has received notification from the Corporation that it is under Supervision.
- b. The RSL disposes by transfer or lease to a local authority of vacant Land lying within an area which is to be compulsorily purchased but for which the compulsory purchase order has not yet been served on the RSL.

5. Disposal of an untenanted House to an Arm's Length Management Organisation (ALMO)

- a. The RSL disposes by transfer or lease to an Arm's Length Management Organisation of an untenanted House or untenanted Hostel together with their communal areas and any non-housing land that is integral to the estate or building. This category is not available when the RSL has received notification from the Corporation that it is under Supervision.

6. Granting charges, mortgages and other security interests

- a. The RSL grants a Security Interest over Land to:
 - a developer or seller taking the Security Interest solely for the duration of the development or sales period;
 - a registered charity with a financial interest in the development.
- b. When, to enable the provision of social housing on Land, an RSL grants a Security Interest over that Land in favour of:
 - a local authority;
 - a public health authority or trust;
 - a government department or agency;
 - English Partnerships or any successor body;
 - a public regional or local agency for development or regeneration;
 - the Housing Corporation or any successor body;
 - the Big Lottery Fund;
 - Communities Scotland when financing schemes in England.
- c. The RSL grants a rentcharge over Land in order to secure payment of a service charge to the body providing services.

7. Leases and surrenders

- a. The RSL surrenders its remaining leasehold interest in Land to the freeholder or head leaseholder, if this is necessary to either take the freehold or enter into a new longer lease on the same Land.
- b. The RSL surrenders a lease of a single House or hostel (originally leased for use as social housing) to the freeholder provided there is no cost to the RSL, the lease has less than six months to run and the House or hostel no longer houses social housing tenants.
- c. The RSL grants a lease of Land to a public health authority or trust at no premium and no rental if that authority or trust provided 100% funding for development of the Land or the RSL extends such a lease.
- d. The RSL grants a lease of 25 years or less on non-residential Land.
- e. Where the RSL is one of a number of leaseholders of Houses who jointly own the freehold (or superior leasehold) interest and transfers the joint freehold (or superior leasehold) title when one of the other leaseholders has changed.
- f. The RSL transfers the freehold (or superior leasehold) interest in a House consisting entirely of:
 - (i) private leaseholders; or
 - (ii) former shared ownership Houses in which all the leaseholders have staircased to 100% ownership or their successors in title; or
 - (iii) leaseholders who bought their leasehold interest under the Right (or Preserved Right) to Buy or the Right to Acquire or their successors in title; or
 - (iv) a combination of (i) to (iii) above;
 to the leaseholders direct, to one of the leaseholders or to a company made up of all the leaseholders. This consent does not extend to schemes designed for people aged 55 or over.
- g. Where the RSL owns both leasehold and freehold (or superior leasehold) titles in the same Land, the surrender or transfer of the leasehold title if this is necessary to merge the titles.
- h. The RSL extends the term of the leasehold interest of a person (or their successor in title) who has exercised their right under a Shared Ownership Lease to staircase to a 100% leasehold interest in the House.
- i. The RSL extends the term of the lease of a former tenant (or their successor in title) who exercised their statutory right to buy a long leasehold interest in a House.
- j. The RSL extends the term of the lease of any lessee exercising a statutory right to extend it.

8. Easements, Rights of Way, Wayleaves and Covenants

- a. The RSL grants rights of way or another type of easement over Land to a company or person responsible for supplying gas, water, electricity, drainage, telephone and other communication services at nil or a nominal consideration if the supply is to the RSL's Land or adjacent Land owned by another RSL.
- b. The RSL grants rights of way or another type of easement over Land at nil or a nominal consideration to other RSLs on adjacent Land where that Land is owned by such RSLs or to other persons with whom the RSL has a joint development agreement on adjacent or jointly owned Land.
- c. The RSL grants rights of way or another type of easement over Land to parties other than RSLs when the right or easement is valued by an independent qualified valuer at £10,000 or less. For the definition of an Independent Qualified Valuer that applies to this and other categories, refer to condition 3 in Part II below.
- d. An RSL surrenders a right to light at nil or a nominal consideration to another RSL that owns adjacent Land or, when the surrender is valued by an Independent Qualified Valuer at £10,000 or less, to a party other than an RSL at no less than best consideration.

- e. The RSL releases or surrenders a right of way, easement or covenant over Land that the RSL does not own, provided that the action will not adversely affect its stock or its tenants and that the disposal is for no less than best consideration.

9. Options

- a. The RSL grants an option to allow a local authority, a public health authority or trust, a government department, an agency of central government or another RSL to buy back Land originally given or sold by those bodies to the RSL if a project on the Land does not keep to the terms of any agreement with those bodies and the subsequent disposal upon exercise of that option.
- b. The RSL grants an option to allow a private company to buy back the Land sold to the RSL if the RSL does not keep to the terms of any agreement with the private company or cannot obtain the necessary planning permission and the subsequent disposal upon exercise of that option.

10. Small areas of Land

- a. The RSL transfers or leases Land to a company or person responsible for the supply of gas, water, electricity, drainage, telephone or other communication services at nil or

- nominal consideration if the supply is to the RSL's Land or to another RSL developing jointly owned or adjacent Land.
- b. The RSL transfers or leases Land at nil or below best consideration to a highways authority or local authority for the provision of estate roads, road widening, visibility splays or the provision of a recycling collection point serving the RSL's Land either exclusively or jointly with adjacent Land.
 - c. The RSL transfers or leases either grant-funded or non-grant funded Land that it considers surplus to requirements and does not have a residential tenant when the Land is valued by an Independent Qualified Valuer at £10,000 or less. It is a condition of this Consent that a disposal should be for a single transaction only, and not be linked with any other disposal made under the General Consent.
 - d. The RSL transfers or leases to a local authority or county/district/town/parish council, at nil consideration, land specifically identified under Section 106 of the Town and Country Planning Act 1990 as an open space that is to be returned or transferred to that local authority/council or land specifically identified as amenity land by the local authority when it first transferred the land to the RSL.
 - e. The RSL transfers or leases subsoil, with all costs paid by the purchaser, to railway companies or their development companies who are building new tunnels.
 - f. The RSL exchanges with an adjacent owner small areas of land (no larger than a total of 36 square metres to/from each party) to ensure that the dividing boundary to both parties' land matches the Land Registry's title plan.
- ## 11. Disposal of non-residential Land by registered charities
- a. The RSL is a registered charity (but not an exempt charity) and sells or leases non-residential Land acquired under its investment powers - that is, Land not endowed to the charity and never used to house tenants or licensees of the charity.
- ## 12. Disposals of vacant land and buildings
- a. The RSL disposes by sale or lease of vacant Land that was provided without the aid of public grant or subsidy, and its valuation by an Independent Qualified Valuer is £50,000 or less, or £100,000 or less in Greater London. It is a condition of this consent that a disposal should be for a single transaction only, and

not be linked with any other disposal made under the General Consent.

13. Amendments after the Corporation has given an individual consent

a. The RSL self-certifies an amendment to an individual consent to a disposal by transfer or lease because of:

- (i) an error or omission in a purchaser's name (not a change of purchaser) given on the consent; or
- (ii) an error or omission in the RSL's name (not a change of identity) or registered address given on the consent. This does not permit the substitution of another RSL, even within the same group structure; or
- (iii) inclusion or deletion of the name of a spouse, partner or another family member purchasing with the original purchaser named on the consent;

Except when category 14 immediately below also applies, the payment or other legal consideration must not have altered.

14. Disposals when an original sealed consent has already been granted

a. An RSL can dispose of an individual vacant House to a private individual in reliance upon the original consent referred to in paragraph (i) below provided:

- (i) there is already an original consent under section 9 of the Act in place for the disposal of the House to a private individual; and
- (ii) no more than six months have elapsed between the date of the original consent and exchange of contracts; and
- (iii) the valuation remains valid as at the date of exchange of contracts, or the original valuer has stated that the original valuation remains valid for a further period extending beyond the date of exchange of contracts, or the original valuer has given a revised valuation that remains valid as at the date of exchange of contracts, where in each case valuer and validity are as described in condition 3 of Part II; and
- (iv) the conditions attached to the original consent would not be breached by the proposed disposal; and
- (v) the House is not transferred together with any other properties;

notwithstanding that the original consent may be in favour of another individual or at a different price no less than the amount of the valid valuation.

- b. An RSL can dispose of an individual vacant House at public auction in reliance upon the original consent referred to in paragraph (i) below provided:
- (i) there is already an original consent under section 9 of the Act in place for the disposal of the House by way of sale at public auction; and
 - (ii) no more than six months have elapsed between the date of the original consent and exchange of contracts; and
 - (iii) the reserve price recommended by an independent qualified valuer remains valid as at the date of exchange of contracts, or the original valuer has stated that the original reserve price remains valid for a further period extending beyond the date of exchange of contracts, or the original valuer has given a revised reserve price that remains valid as at the date of exchange of contracts, where in each case valuer and validity are as described in condition 3 of Part II; and
 - (iv) the conditions attached to the original consent would not be breached by the proposed disposal; and
 - (v) the House is not transferred together with any other properties;

notwithstanding that the reserve price at auction may be less than that stated in the original consent.

Part II

An RSL may make a disposal under Part I of this General Consent if all the relevant conditions below are met. Before any disposal takes place the Secretary and one other officer or employee of the RSL must certify that the disposal accords with the General Consent. Disposals that breach these conditions will be invalid. Each disposal should be considered individually.

Conditions

1. The disposal must be within the RSL's governing instrument (and charity law where applicable).
2. If the disposal is of Land subject to a legal charge or mortgage, the consent of the mortgagee to the disposal should be obtained before exchanging contracts.
3. An independent and qualified valuer must confirm that the consideration for the disposal or, in the case of an auction, the reserve price is, in their opinion, the best that can reasonably be obtained. This confirmation needs to be dated three months or less before the contract is exchanged - or any other period as the Corporation may specify. An Independent and Qualified Valuer means a District or Borough Valuer or a professional member or fellow of the Royal Institution of Chartered Surveyors or any successor body or bodies thereof, who

is not employed by, or acting on behalf of, or a member of the family of, the person or organisation selling or transferring or purchasing the Land being valued.

4. Disposals must have board authority and decisions must be properly minuted. Subject to the RSL's constitution, governing bodies may delegate authority to sub-committees or employees for any of the categories in Part I of this General Consent, according to an appropriate scheme of delegation.
5. A disposal made under this General Consent must be recorded on form HACON 5 and kept on the RSL's General Consent Register. The register must be kept at the RSL's head office and be available for Corporation inspection at all times. Attached to each HACON 5 should be supporting papers sufficient to identify the disposal and justify use of the General Consent. These would include (as necessary) the valuation, other consents, legal documents and a site plan. Each HACON 5 on the register must be consecutively numbered and in chronological order, and should be signed by the RSL's Secretary and one other authorised officer or employee. A copy of the HACON 5 (without attachments) for any transaction must be sent to the other party's solicitors.
6. If the disposal is of HAG/SHG funded Land, the RSL should consult the Corporation's "Capital Funding Guide" to see whether

the disposal is a "relevant event", that is to say one that calls for the repayment or recycling of grant. If so, the RSL must follow the timetables for reporting and recording published in the Guide. When the disposal is to another RSL, note that the capital grant transfers with the property to the other RSL.

7. If the RSL is receiving a Revenue Subsidy on the relevant land, it must get advance clearance of the disposal from the authority giving the subsidy.
8. The disposal must not, in the opinion of the RSL's governing body, materially affect the RSL's assets that are available as security for its existing financial commitments. All RSLs have a duty of prudence and should consider whether a disposal affects their asset cover in relation to development and/or long-term risks.
9. Disposals must not be made to a person or organisation listed in Part I of Schedule I to the Act. This includes the RSL's officers, employees, and their relatives, and businesses trading for profit in which those parties have an interest. Registered charities are covered by general charity law but are expected to follow the spirit of Schedule I.

PART III

Withholding access to the General Consent

We have the general power to withdraw our consent to an RSL making a specific disposal or class of disposal under the General Consent. We will use this power if we consider we must do so to protect the RSL's assets and/or tenants, or following disposals that breach this or previous General Consents. If we withdraw or restrict the use of the General Consent, we will inform the RSL in writing. For every further disposal, until told otherwise, the RSL will have to obtain prior consent by applying on form HACON 2 to our Consents Section.

PART IV

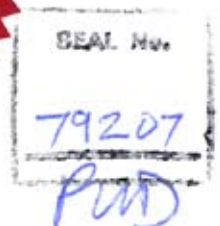
Validity of Consent

Our General Consent is effective from the date of the sealed certification shown below in favour of any person lawfully claiming on behalf of the RSL or dealing with the RSL, even if there is any inaccuracy or omission in the certificate on HACON 5 when it is completed in accordance with Part I of the General Consent.

BY ORDER OF THE HOUSING CORPORATION. The Corporation's SEAL No. 79207 was affixed on 1 February 2008 and authenticated by



Peter Driver



Definition of capitalised words and terms used within the General Consent 2008 unless otherwise stated are as set out below. In this consent references to a particular statute or statutory instrument or part of either of them are to that statutory reference as it may have been extended modified amended re-enacted or replaced at the date upon which its construction is relevant for the purposes of this Consent and not as originally enacted or as at the date of this Consent.

“The Act” means The Housing Act 1996, as stated in the preamble.

An **Arm’s Length Management Organisation or ALMO** is a company set up by a local authority under Section 2 of the Local Government Act 2000 to manage and improve all or part of its housing stock. The company is owned by the local authority and operates under the terms of a management agreement between the authority and the ALMO, approved under section 27 of the Housing Act 1985 by the Secretary of State for Communities and Local Government. It may not trade for profit.

Assured Tenancy has the meaning given by Section 1 of the Housing Act 1988.

A **Co-ownership Society or Co-ownership Association** is a fully mutual housing co-operative where there is exclusive identity between tenants and members and where those members are eligible for equity participation (in the form of a cash payment) when they terminate their tenancy

after the minimum qualifying period and leave the society or association.

Hostel has the meaning given by Section 63 of the Act.

House has the meaning given by Section 63 of the Act. “House” includes houses, part of houses, individual flats, blocks of flats and any land or buildings associated with them; in effect, any residential property.

HAG/SHG means:

- grant paid by the Secretary of State under Section 29 of the Housing Act 1974 as subsequently amended and re-enacted;
- grant paid by the Corporation under Section 50 of the Housing Act 1988; and
- grant paid by the Corporation under Section 18 of the Act

Land has the meaning given by Section 205 (1) of the Law of Property Act 1925. “Land” includes all land, buildings, individual flats, blocks of flats and interests in land. Where uncapitalised it just means land and non-residential buildings.

Registered Social Landlord or RSL means a body registered with the Housing Corporation under sections 1(2) or 3 of the Housing Act 1996.

Revenue Subsidy means any revenue grant or subsidy relating to the Land from a central government department or agency, a local authority or a public authority.

Right to Acquire has the meaning given in Section 16 of the Act.

Right to Buy has the meaning given by Part V of the Housing Act 1985 as subsequently amended.

Security Interest means any mortgage, pledge, lien, charge, security assignment, hypothecation or other legal or equitable security interest or any other agreement or arrangement having the effect of conferring security (including, for the avoidance of doubt, a floating charge) or any other type of preferential arrangement having a similar effect.

Shared Ownership Lease means a lease of the type described in section 2(6) of the Act;

Social HomeBuy Scheme is a scheme approved by the Corporation and described in the Corporation's Capital Funding Guide under which RSLs approved by the Corporation may dispose of Houses to their tenants at a discount funded by purchase grant under section 21 of the Act.

Starter Home Initiative and the Key Worker Living Programme mean programmes described in the Corporation's Capital Funding Guide to help workers find housing, particularly workers in health, education and community safety, who are essential to local communities and need to live near their work. The initiative is directed at areas where the cost of housing makes it hard to recruit and retain staff.

Supervision means the process described in the Corporation's publication **How We Regulate, 9: Supervision**, or any subsequent publication from the Corporation that updates this.

Appendix C

Glossary of useful terms used in transferring, selling or disposing of land

Charge A form of security for the payment of a debt or obligation. For example, a building society or bank takes a charge (or mortgage) over a property if it lends money for the purchase, and it will keep the charge in place until the debt is fully repaid.

Completion The point when the seller transfers legal ownership (or creates a new legal interest such as a lease or a charge) in the property to the buyer. The buyer accepts the property and pays the agreed price.

Compulsory purchase order An order from a local authority which requires that land or a building be sold to it at a price it has set. When a CPO has been served, Section 9 consent is not required.

Contracts “Subject to contract” means that a deal remains in negotiation until the contract is exchanged. “Exchange of contracts” – two contracts relating to the sale/purchase of property are prepared and, at the point when the seller’s solicitor posts the seller’s copy to the purchaser’s solicitor and vice versa, contracts are exchanged and the buyer can go forward to completion. Exchange of contracts by phone is now more common than by post.

Covenant An agreement that creates an obligation. Covenants may be positive or negative (e.g. an adjacent landowner may be obliged to maintain a fence or be prevented from keeping animals).

Covenants sometimes stay in place when ownership of land changes.

Conveyancing How ownership of a property is transferred from one person to another, or a new legal interest (such as a lease or charge) is created in a property. It is a legal process usually carried out by a solicitor or licensed conveyancer.

Deed A signed (or in the case of some corporate bodies a sealed) and witnessed document. Examples of deeds are: Deed of Transfer; Deed of release from a charge; Section 106 Agreement; Deed of Easement.

Easements Rights over other people’s land, such as allowing service pipes for water, gas, electricity, sewerage across or under land owned by another. (See also rights of way.)

Enfranchisement Where a leaseholder opts to acquire the freehold or a new long lease or an extension to a lease under one of the Leasehold Reform Acts.

Exemptions Some disposals are exempt from Section 9 of the Act. This means that Corporation consent is not necessary. Exemptions are listed in paragraph 4 of this booklet.

Freehold Complete ownership of land/buildings (unlike leasehold where the duration of ownership is known).

General Consent From time to time, we issue to all RSLs a form of General Consent which means they may dispose of any land or interest in land described in that General Consent without needing an Individual Consent.

Individual Consent If the disposal to be made does not fall within any of the categories of the General Consent, then an individual consent must be applied for. We may then issue our consent under seal for that particular disposal.

Land registration The system of registering title or ownership to land. Registration of land is now compulsory at the Land Registry, which holds a register in three parts:

“**A**” **Property Register**, which describes and identifies the land and any right which benefits it;

“**B**” **Proprietorship Register**, which states whether the title is absolute or otherwise and identifies the owner. It may refer to restrictions on title;

“**C**” **Charges Register**, which tells of any charges, mortgages, restrictive covenants etc.

Leasehold The ownership of land/buildings for a known duration. For example, you may buy a flat for a term of 99 years.

Licence The authority to do something by consent of the owner without disposing of an interest in land; for example, the licence to allow contractors

to build on your land or a licence for someone to occupy your land.

Mortgage See Charge

Nominal consideration. One where the intention is not primarily to seek a payment but, for technical or contract reasons, an amount needs to be stated, such as one pound or a peppercorn.

Private Finance Facilities means arrangements for any of (i) lending money, including term loan, standby loan, revolving loan or any other lending facilities and including facilities which may be conditionally unsecured facilities; and (ii) entering into interest rate hedging arrangements, including those embedded within loan agreements or those documented separately; and (iii) the provision of ancillary or corporate or other loan facilities, including loan notes, loan stock, performance bonds, guarantees and overdraft facilities.

Private Finance Provider means each person or persons (and any transferee or assignee of any such person) providing Private Finance Facilities, to the RSL or to members of the RSL group to which the RSL is also a member, whether directly or indirectly by way of lending to another member of the RSL’s group or any special purpose or treasury vehicle constituted for such purpose, and any arranger, agent, trustee, security agent or security trustee acting on behalf of such person or persons (and any replacement or successor arranger, agent, trustee, security agent or security trustee).

Rentals Apart from the usual meaning of rental to a tenant of a social housing unit, there are some other rentals to note:

- Rack rent: rent at which property is let by the year on the open market (usually for commercial premises);
- Ground rent: when land was originally leased to a person on condition that certain buildings were erected; a small rent for the ground below them was charged and called the ground rent; and
- Rentcharge: an obligation secured against land — not to be confused with rent payable under a lease. A legal rentcharge must be created by deed.

Right of way A right granted to enable passage over land owned by someone else (e.g. often granted to utilities to allow them access to substations, pumping stations etc.). Everyone has a right of way over any public highway.

Right to Buy/Right to Acquire Some tenants have the statutory right to purchase their homes under various forms of legislation. Such disposals are exempt from the need for Section 9 consent.

Security Interest means any mortgage, pledge, lien, charge, security assignment, hypothecation or other legal or equitable security interest or any other agreement or arrangement having the effect of conferring security (including, for the avoidance of doubt, a floating charge) or any other type of preferential arrangement having a similar effect.

Staircasing The buying of further shares of equity in a shared ownership property after buying the first share.

Transfer of engagements Total transfer of stock, liability and assets between Industrial & Provident Societies. Our consent is required for this transfer under Paragraph 12(2) of the Schedule I to the Housing Act 1996 and not Section 9.

Valuation The value of land/property may be decided only by a qualified valuer. As an estate agent does not have to be qualified to set up business, an RSL should instead ask a qualified valuer to prepare and sign the valuation. The only acceptable qualifications are MRICS, FRICS or Borough Valuer. For most individual consents a current (three months old or less at the exchange of contracts) valuation is required. We will accept a 'best value certificate' instead of a full valuation, provided it is prepared and signed by a qualified valuer.

Wayleave A right of way over or through land for the carriage of such things as minerals from quarries; electricity in cables or on pylons; or gas, water or sewage in pipes.

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