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1 INTRODUCTION

- 1.1 Homebuy is a scheme that helps someone to buy a property outright on the open market. They will need to contribute 75% of the purchase price of a home through a mortgage and/or savings and the RSL will provide the remaining 25% of the purchase price in the form of an equity loan. The equity loan must be secured as a mortgage on the property. This loan has to be repaid when the property is sold, or when the applicant purchases the remaining 25% share of the property, and the applicant will only have to make one repayment which is 25% of the market value of the home at the date of repayment.
- 1.2 It is a condition of Social Housing Grant (SHG) payment under s18 (3) of the Housing Act 1996 that the registered social landlord operating the scheme complies with these procedures. The Housing Corporation has no discretion to pay SHG in cases that do not comply with these procedures.
- 1.3 All RSL applications for Grant Confirmation and claims for payment of SHG must be submitted via the internet using the Corporation's Investment Management System (IMS). *See www.housingcorp-online.org*
- 1.4 The scheme submission must comply with the Funding Conditions as accepted by the RSL's Committee and confirmed on line by the RSL's Security Administrator, plus any further conditions issued by the Housing Corporation in year. The RSL will not be able to make a submission of any kind into IMS until this confirmation has been made. The RSL must retain a minute of the Committee decision on file for Compliance Audit purposes. *See GENERAL-1.*
- 1.5 This section of the Guide sets out the conditions under which RSLs are required to administer the Homebuy scheme and is the basis on which the Housing Corporation will assess applications for SHG.
- 1.6 RSLs' permissible purposes, specified in section 2(4) of the Housing Act 1996, have been extended to enable them to provide loans through the Homebuy scheme. The Social Landlords (Additional Purposes or Objects) Order (S.I. no. 985) 1999 refers.
- 1.7 The **New Build Homebuy** programme encompasses homes constructed within the ADP and KWL, through the partnering and traditional routes. Both RSL's and non-RSL's are able to bid for New Build Homebuy via S18 and S27a of the Housing Act 1996 respectively. The maximum grant available is 25%. This is based on the total qualifying scheme costs including on-costs, (currently 5% for 04/06). Where properties are developed through traditional/specialist providers, the total schemes costs cannot exceed 110% of TCI to be eligible for grant. The grant application will be processed through SALE within the IMS system (*See SALE chapters and IMS Functional guidance for Sales schemes*).

- 1.8 Please refer to the Challenge Fund section of the January 2006 version of the guide for New Build Homebuy schemes sponsored by the Corporation through the Challenge fund.
- 1.9 The contents of this section are still subject to ongoing discussion and revision to cater for the new **Open Market Homebuy** product. Those RSLs who have been appointed as **Homebuy Agents** should initially direct any questions to their Regional Investment Officer.

2 CONSUMER CREDIT ACT

- 2.1 The RSL must obtain a Consumer Credit Licence and a Direction from the Director General of Fair Trading under s60(3) of the Consumer Credit Act 1974 in order to be able to participate in the scheme. Detailed guidance on obtaining a licence is set out in HOMEBUY-8. *See paragraph 4.1 below regarding publicity material requirements.*

3 OUTLINE OF THE SCHEME AND POLICY OBJECTIVES

- 3.1 Homebuy is a means of helping a qualifying person (*see HOMEBUY-2*) to buy a home outright on the open market anywhere in England. Someone eligible to take part in the scheme will be provided with a loan (secured by a mortgage) by the RSL. The loan will be a sum which is equal to 25% of the purchase price of a qualifying home (*see HOMEBUY-3*) and will be paid by the RSL on the purchase completion date. The balance of the purchase price (75%) will be funded by the applicant through a conventional mortgage obtained through a qualifying lender (*see paragraph 5*) and/or savings. The applicant is responsible for his/her own costs associated with the purchase, for example legal fees and removal costs.
- 3.2 The loan from the RSL is funded by SHG, and will be secured on the property, and subject to repayment. No rent or interest is paid on the loan. The buyer can either repay the loan during occupation, when the loan repayment sum will be 25% of the market value of the home at the date of repayment or when he/she sells the home. The buyer must repay the loan on selling the home, when 25% of the sale price will be repaid.
- 3.3 This repayment will cancel the loan, even if the repayment is less than the original loan caused by a fall in property prices.
- 3.4 The loan repayment is recycled through the RSL's Recycled Capital Grant Fund (RCGF), up to the amount of the original grant paid, (*REC-3, para 8.1*). If the repayment is greater than the grant paid, the surplus may be retained by the RSL.
- 3.5 The aims of the scheme are:

- to assist tenants of RSLs, local authorities, and those nominated from waiting lists (who would otherwise have priority for social rented housing), to buy a home of their own;
 - to help meet the demand for social housing in areas of housing shortage by creating vacancies in social housing stock, reducing waiting lists and rehousing those in priority need in vacated units.
- 3.6 The scheme is not intended for those who would in any case be buying a home and wish to buy a higher quality home or one in a more expensive location. The RSL will need to exercise its discretion to determine whether the applicant could afford to purchase a suitable property for their needs without help through the Homebuy scheme. In making a decision, the RSL should take account of whether it is possible for the applicant to buy in a cheaper location within a reasonable travel to work area, also having regard to the applicant's circumstances such as child care arrangements, the location of schools and other social services.
- 3.7 RSLs will have bid to provide a specific number of homes with their Homebuy allocation. Accordingly it is expected that they will exercise judgement as to the size and type of homes purchased through the scheme to achieve their target by applying a test of reasonableness as to the price and balance of properties based on the prevailing conditions in the local market.
- 3.8 An applicant has no statutory right to assistance through Homebuy and not everyone who is eligible can be accepted. Acceptance will depend on funds being available in a particular area and the suitability of any home vacated for those in housing need, as identified by the participating RSL in consultation with local authorities.

4 TRANSITIONAL ARRANGEMENTS FROM JANUARY TO MARCH 2006

- 4.1 The previous Homebuy scheme has been replaced by Open Market Homebuy from 1st April 2006. Under previous arrangements RSLs were able to set a time limit of up to six months as a deadline for Homebuy applicants to reach exchange of contracts. For the period from 1st January to 31st March 2006 transitional guidance was produced.

Applicants assessed before 31st December 2005

- 4.2 Where RSLs had already assessed and agreed applications before 31st December 2005, as being eligible and had issued written confirmation as per HOMEBUY-4, section 2, paragraph 2.3, the time limit of up to 6 months to exchange contracts still applied.

Applicants assessed from 1st January 2006

- 4.3 Where RSLs assessed applicants after 1st January 2006 as being eligible the time limit was reduced, with exchange being required by 31st March 2006. RSLs should have ensured that any written confirmation of eligibility and other documentation was amended to reflect the new time limit. Applicants who had identified a property but not able to exchange by 31st March, were advised that their original application would be transferred to the Zone Agent to be processed as a Open Market Homebuy product. The Zone Agent should not treat transferred applications as a new application. It is anticipated that Zone Agents will be required to follow the same procedures and processes as exist currently for Homebuy. Proposed details of Open Market Homebuy are available on the Corporation's website document *The National Affordable Housing Programme 2006-08 Prospectus*

5 TARGETING AND PUBLICITY

- 5.1 The participating RSL, in consultation with local authorities, is responsible for targeting and publicising the scheme to eligible client groups. To assist the RSL, the Corporation has produced a publicity booklet for Homebuy which is available from its local offices. The RSL may produce its own publicity material for the scheme based on the current Corporation procedures, but it must contain the information required by the Consumer Credit Act 1974. See *HOMEBUY-8*.

6 QUALIFYING LENDERS

- 6.1 Under current arrangements a mortgage can only be secured as a first charge if it is provided by a "qualifying lending institution".
- 6.2 With effect from 5th November 2005 a qualifying lending institution for the purpose of Homebuy is defined by the Social Landlords (Additional Purposes or Objects) (Amendment) (England) Order 2005 (SI No.2005/2863).
- 6.3. Qualifying lending institutions include the Housing Corporation as well as mortgage lenders who are authorised under the Financial Services and Markets Act 2000, and who have permission to enter into regulated mortgage contracts. This is likely to include most banks and building societies. The Financial Services Authority keeps a register of authorised persons on its website. The register can be found at www.fsa.gov.uk/register.
- 6.4 Qualifying lending institution is a complex definition. If there is any doubt as to whether a lender falls within this definition, RSLs should ask the lender to confirm what permissions they have been granted by the FSA, alternatively independent legal advice should be sought.

1 APPLICANT ELIGIBILITY

1.1 The RSL must carry out a financial assessment of every applicant and ensure they meet the qualifying criteria for the scheme (*see section 2 below*). Every applicant must be able to demonstrate that they are:

- unable to buy a suitable home outright without the RSL contributing 25% of the purchase price;
- able to fund a conventional mortgage for 75% of the purchase price (or meet all or part of the 75% from savings) and have sufficient savings to pay for their own associated legal and disbursements costs including other costs associated with the purchase such as removal costs;
- not applying for a mortgage in excess of 75% of the purchase price. Only a sum up to or to equal to 75% of the purchase price should be shown as a first charge on the land registry documents. If a qualified lender wishes to lend in excess of 75% of the purchase price the excess amount is not to be included as part of the first charge.

1.2 This financial assessment must be applied to anyone joining in the purchase. The RSL can exercise discretion in making assessments, but in deciding whether an applicant or joint applicant has sufficient funds to buy through Homebuy, the RSL must take account of:

- local circumstances, e.g. the affordability of homes in the area the applicant intends to buy in;
- the applicant's household income (to consider the mortgage the applicant could support);
- savings and other capital assets of the applicant(s).

The applicant must qualify for a mortgage from a qualifying lender, (*see HOMEBUY-1, paragraph 6*) or have sufficient savings if no mortgage is required. If the funds are borrowed from another source, e.g. a family member, then the RSL must secure the equity loan as a first charge on the property.

2 QUALIFYING CRITERIA FOR APPLICANTS

2.1 As well as demonstrating financial suitability for the scheme, the applicant must be able to comply with certain other criteria. It is the applicant's responsibility to notify the RSL of any changes to his/her circumstances after the application details have been checked by the RSL. The criteria are:

- the applicant must be either a tenant of an RSL or Local Authority whose home is suitable for reletting to a Local Authority nominee or have been nominated from the Local Authority waiting list. Applicants

who have been given a temporary tenancy, e.g. assured shorthold or licence would not qualify for the scheme unless nominated by the Local Authority as being in housing need.

- an applicant who demonstrates a need for a suitable alternative property but already owns or part owns a residential property may only be considered for the scheme if nominated by the Local Authority. In these circumstances the applicant must sell their interest i.e. have exchanged contracts or completed the sale of the existing property at the same time as buying through Homebuy. In exceptional cases where an applicant is prevented from accessing or selling their existing property an application may be considered, but only with the specific agreement of the Corporation. An example might be an applicant who is prevented from returning to the country where the property is located. RSLs should contact the Corporation's local Investment Officer and provide full details of why it considers an application should be allowed to proceed. However see HOMEBUY-3, para 1.2, bullet point 3 where a spouse/partner wishes to buy out the other's share in a formerly shared home following a relationship breakdown.
- tenants who have benefited from a mortgage rescue scheme, (where the home they now rent from an RSL or Local Authority was previously in their ownership) must have been a tenant for two complete years before becoming eligible for Homebuy.
- with effect from July 2003 applicants in receipt of Housing Benefit are no longer excluded from Homebuy.
- in the case of joint tenants where only one tenant qualifies for the scheme, 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. In these circumstances the RSL should satisfy itself that the non-qualifying tenant is either intending to live with the qualifying tenant or has identified alternative private living accommodation suitable for their housing needs.
- an applicant who is an RSL or Local Authority tenant must not be in rent arrears or in breach of their current tenancy agreement at the time of the application. Where a tenant is or has been in arrears for a short period due to a sudden change in circumstances or an administrative delay or error in recording the rent paid in the RSL or Local Authority's rent accounts, the RSL may use their discretion to allow the case to proceed where it is satisfied the rent is being paid and the applicant has sufficient income to support a mortgage. In the case of private sector tenants, the RSL must be satisfied that the tenant has not had a history of rent arrears.

- for an application from an RSL or Local Authority tenant, the rented property must be able to be re-let to a Local Authority nominee. However, if the RSL has instructed the applicant to proceed and the Local Authority subsequently fails to nominate someone from its waiting list, the application can proceed on the basis the RSL will nominate a household from its own waiting list.
- An RSL or Local Authority tenant whose property is required to be vacated for repairs or demolition and who needs to be re-housed in alternative RSL or Local Authority accommodation may also be accepted onto the scheme providing he/she meets the other eligibility criteria.
- Tenants of mutual co-operatives are also eligible to participate if they meet all the Homebuy requirements.

Joint purchases

- 2.2 An eligible applicant i.e. an RSL or Local Authority tenant or a Local Authority nominee, who wish to buy a home with someone else can only proceed on the condition that all joint applicants become joint owners. Although joint applicants need not be an RSL or Local Authority tenant or on the waiting list, the person(s) must have their financial status assessed by the RSL. Anyone joining in the application who already owns or part owns a home, must sell it at the time of jointly buying through Homebuy. The maximum number of people able to jointly buy a home is four.
- 2.3 A sole qualifying applicant wishing to purchase jointly may only proceed on the condition that he/she is to be a joint legal owner of the property. A deed of trust providing rights of occupation for a qualifying applicant is unacceptable as an alternative to becoming a joint legal owner.
- 2.4 An RSL or local authority tenant qualifying for the scheme 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 RSL gains vacant possession of their current property and there is no obligation to re-house the partner.

1 PROPERTY ELIGIBILITY

1.1 The home selected for purchase must be in England and meet the following criteria:

- the size of the home must be suitable for the applicant's current housing needs as determined by the RSL. Although purchase of a property one bedroom larger than the household's current need is permitted.
- the home selected has a wholly residential use. A home where the planning use is part commercial is not eligible;
- the home selected must be bought with vacant possession and immediately habitable. A new home under construction may be considered, provided the purchase price is fixed and exchange of contracts can be achieved within 6 months of the applicant being instructed to select a home;
- the home is acceptable to the RSL (*see paragraph 1.2 below*), and for mortgage purposes, and is in a reasonable state of repair as evidenced by a homebuyer's survey and valuation report or equivalent. A full structural survey is not required by the RSL. The applicant is responsible for the cost of the survey;
- a new property must have a National House Building Council (NHBC) guarantee or a similar warranty by a reputable insurance company as agreed by the RSL;
- new developments must be on freehold land or have a lease length of at least 60 years;
- open market leasehold property must provide the RSL with adequate security for its loan, only properties which offer a leasehold interest of more than 55 years will be considered for the scheme;
- a home where the qualifying lender (*see HOMEBUY- 1, paragraph 6*) requires a retention of more than £5,000 on the mortgage offer will not be eligible for the scheme.

1.2 The following types of property can be purchased, subject to the additional conditions outlined in paragraphs 1.3 to 1.5 below:

- a home the applicant is currently renting from a private landlord provided it is self-contained and the landlord is not resident;

- a property owned or part-owned by a family member (excluding spouse/partner) or business associate, provided that an independent valuation is obtained from a RICS surveyor appointed by the RSL;
- an estranged spouse or partner's share in a formerly shared home can be bought out following a relationship breakdown where the disposal is required/supported by
 - a court order;
 - a legal settlement after a court order;
 - an order sanctioned by a court (e.g. a consent order); or
 - a formal written 'separation agreement' signed by both parties, such an agreement can be legally enforced or varied by reference to a court.
- a 'second' property can be purchased even though the applicant has an on-going interest in a 'marital home' but only in circumstances where the property cannot be sold because the estranged spouse/partner is allowed by the court to remain there whilst bringing up dependent children;

1.3 In order to minimise any opportunities for collusion or fraud the purchase of the properties above will be subject to an independent valuation for mortgage or survey purpose; and/or proof of a court decision. All properties must have an independent valuation undertaken by a RICS surveyor.

1.4 Where the applicant intends buying an estranged partner or spouse' share of the formerly shared home the RSL must require the independent qualified valuer to provide a valuation based on an open market sale with vacant possession. The equity loan will be a sum equal to 25% of the valuation, and not the price of the share being bought. When the applicant wishes to redeem the loan or sell the property the loan repayment sum will be 25% of the market value of the home at the date of repayment or sale.

1.5 The RSL may reject a home it considers is in poor condition, based on the information provided in the survey. Where the vendor has agreed to carry out works before completion, the RSL may approve the home on condition that the applicant provides the RSL with evidence that the works have been completed to a satisfactory standard, and are acceptable to the applicant's private lender. Where the applicant is funding the purchase without a private mortgage, the RSL may require such evidence as it deems reasonable to establish the works have been completed to a satisfactory standard.

2 PROPERTIES EXCLUDED FROM THE SCHEME

2.1 The following type of property cannot be purchased:

- a commercial property;

- a home on sale at auction;
- a mobile home (including fixed homes covered by the Mobile Homes Act 1983) a caravan and a houseboat;
- a home offered at a discount or on shared ownership terms by an RSL or Local Authority or other public body;
- a plot of land on which to build;
- a home which is to be built by the applicant or a Self Build group;
- a property occupied by sitting tenants;

3 DISCOUNTS ON PURCHASE PRICE

- 3.1 Where a vendor offers a discount or incentive as part of the sale e.g. the buyer is offered cash back or their legal fees paid, the RSL must establish the actual sale price of the home. For example if a home is advertised at £80,000 and the vendor offers to give £5,000 back to the buyer on completion, then the price for Homebuy purposes is £75,000.
- 3.2 Some mortgage lenders also offer 'cashback' or a similar incentive for arranging a mortgage with its organisation. Providing the lender is a qualified lender (see HOMEBUY-1 paragraph 6) and the sale price of the property is not affected, the Corporation is not concerned.

4 VALUATIONS

- 4.1 In some cases market conditions may make it difficult for a Homebuy applicant to obtain a mortgage valuation endorsing the purchase price. Sales prices are being set on an assumption of a rising market and therefore are sometimes above the valuation provided by the mortgage lender.
- 4.2 The purchaser must agree the purchase price with the vendor and obtain a mortgage for up to 75% of the price. The RSL can approve the property provided the price paid is not above the open market valuation shown either in the mortgage offer or survey and valuation report. SHG will be paid on the basis of 25% of the agreed purchase price.
- 4.3 The Corporation will allow the purchase of qualifying properties above the mortgage valuation, provided that:
- SHG is calculated on the lower of the actual price and the valuation of the property (*see paragraph 4.4 below*);
 - the purchaser intends to meet the difference between value and price without resorting to further secured borrowing;

- 4.4 Where the purchase price is higher than the mortgage valuation, the RSL must claim SHG on the basis of the valuation. The application for SHG must be submitted to the Corporation's local Investment Officer with a covering letter setting out the circumstances and confirming the above conditions have been met.

New Build Homebuy Sales

- 4.5 The open market value determined by an independent valuer will establish the sales price. It will be assumed that the valuation will have 3 months validity from the date of offer. The purchaser will buy a 100% interest in the property based on a 25% equity loan. Initial Sales will be at OMV, if this is at or below the cost floor, the provider will be required to bear the difference. There will be no further grant available to make up any shortfalls.

5 FIXTURES AND FITTINGS

- 5.1 Where fixtures are included as part of the purchase price, e.g. a fitted kitchen, the RSL's loan is based on the price paid for the home. Where the price includes moveable items, such as carpets and curtains, a separate agreement must be entered into by the applicant and the RSL's loan will be based on the purchase price excluding the cost of such moveable items.
- 5.2 The RSL must inform all applicants of the need to report the actual purchase price to be paid. The purchase price at exchange of contracts should be the same price at completion. The RSL should investigate any purchase where this will not be the case.

1 ACTION BY THE RSL - SETTING UP THE SCHEME

- 1.1 Once the RSL has received an allocation of funds from the Corporation, it can invite applications for the scheme.
- 1.2 The RSL must have obtained a Consumer Credit Licence and a Direction from the Director General of Fair Trading under Section 60 (3) of the Consumer Credit Act 1974. Further details can be found at *Chapter HOMEBUY-8*.
- 1.3 In responding to enquiries about the scheme, the RSL should provide applicants with:
 - an explanation of how the scheme works, including the need to obtain a mortgage from a qualified lender (*see HOMEBUY-, 1 paragraph 5*)
 - an application form (HBY1)
 - guidance notes for solicitors/licensed conveyancers and mortgage lenders (*see HOMEBUY-7*).
- 1.4 Application forms and the Corporation's explanatory booklet are available from the Corporation's publication team. The RSL must ensure that the requirements of the Consumer Credit Act 1974 are complied with (*see HOMEBUY-8*).
- 1.5 In cases where the purchaser is vacating a local authority or RSL property the landlord will need to consider what procedures they need to adopt to ensure that they achieve vacant possession of the tenanted property and consider the most effective means of avoiding problems of rent arrears and damage to the property in the period between exchange of contract and the vacating of the property. RSLs are not authorised to deduct sums of money owed by the outgoing tenant from the SHG payment for the Homebuy purchase.

2 ACTION BY THE RSL - THE APPLICATION

- 2.1 On receipt of an application the RSL must:
 - check the application form has been completed and signed by the applicant(s) and that the relevant certifications have been made;
 - check with the local authority that where a home is being vacated by an RSL or local authority tenant they can nominate, from its housing waiting list, to the vacancy created. Where the RSL is accepting several nominations from one local authority, a single undertaking to nominate sufficient households to the vacancies created is acceptable;
 - check the applicant meets the eligibility criteria (*see HOMEBUY-2*). The RSL may wish to interview the applicant or see evidence of income when checking that the applicant meets the requirements of the scheme.

- 2.2 The RSL must check it has sufficient allocation to allow the application to proceed. The RSL cannot exceed its allocation agreed for the year with the Corporation. Additional funding needed to meet demand must be agreed with the Corporation's local office.
- 2.3 An applicant meeting the eligibility criteria must be informed in writing and provided with information on how to proceed. The applicant will require the following information:
- confirmation of eligibility and approval to select a home in accordance with the RSL's instructions;
 - the need for the applicant to confirm to the RSL whether or not the applicant is obtaining a mortgage and if they are, the need to obtain it from a qualified lender (*see HOMEBUY-1 paragraph 6*) and provide a copy of the mortgage offer to the RSL;
 - the need to provide details of the applicant's legal representative who will be:
 - ⇒ confirming the purchase details (including confirmation of the agreed price) to the RSL of the home selected and
 - ⇒ providing an undertaking to the RSL to secure the Homebuy loan;
 - the need for a survey report (where a second-hand home is selected) to be given to the RSL which should be in the form of a homebuyer's survey and valuation report or equivalent. A full structural report is not required by the RSL;
 - the need to provide a valuation of the home - this can either be the mortgage valuation where a mortgage is being provided or the valuation given in the survey report - to the RSL;
 - the need to provide the mortgage lender and the legal representative with guidance notes explaining how Homebuy operates.
- 2.4 The RSL must send a standard response to the applicant together with guidance notes for lenders and legal representatives (*see HOMEBUY-7*).
- 2.5 Tenants of local authorities and RSLs must be told that on completion of their Homebuy purchase they must surrender their tenancy and provide vacant possession.
- 2.6 The documents mentioned above must be retained on file by the RSL for external audit purposes.

3 TIME LIMIT FOR APPLICANTS TO SELECT A PROPERTY AND EXCHANGE CONTRACTS

- 3.1 In order to manage the Homebuy programme and achieve expenditure targets, the RSL will need to ensure applicants are progressing with the selection and purchase of a property. A reasonable timetable for an applicant to reach exchange of contracts should be set for the applicant. The RSL may set up to six months as a deadline with discretion to extend the period by one month where there is evidence that exchange of contracts is imminent. If the RSL wishes to set a deadline of less than six months it must be for a period that is reasonable. A period of less than two months will be deemed unreasonable for the purposes of the scheme. The applicant must be told that their application will be treated as withdrawn if they do not reach exchange of contracts within the deadline set.
- 3.2 If an applicant fails to meet the deadline and wishes to continue with the scheme, they must re-apply.

4 ACTION BY THE RSL - PRIOR TO EXCHANGE OF CONTRACTS

- 4.1 Once the RSL has approved the property details and has checked that the applicant's legal representative has certified he/she will secure the RSL's mortgage, it will need to check:
- it has sufficient allocation to provide the SHG payment;
 - the applicant intends to proceed with the purchase;
 - the applicant has a valid mortgage offer from a qualified lender (*see HOMEBUY-1 paragraph 6*), if applicable;
 - the valuation of the home provides adequate security for the RSL's loan;
 - the survey report (for second-hand homes);
 - the proposed timetable for exchange of contracts and completion;
 - applicants who are tenants of RSLs and local authorities have agreed to surrender their tenancies on completion of the sale.
- 4.2 Following the above checks the RSL will:
- tell the applicant to proceed with the purchase;
 - tell the applicant's legal representative he/she may exchange contracts and provide the legal representative with instructions for securing the RSL's loan as a charge.
- 4.3 A standard set of instructions for solicitors is reproduced in Chapter HOMEBUY-7. This guidance takes into account changes to the Solicitors Practice Rules that took place in October 1999 and includes:

- a standard letter for the applicant's legal representatives;
- a standard Legal Charge.

1 ACTION BY THE RSL

- 1.1 All RSL applications for confirmation of grant and claims for payment of SHG must be submitted via the internet using the Corporation's Investment Management System (IMS).
- 1.2 Once exchange of contracts has been achieved the RSL should make a submission for combined confirmation of grant and payment of SHG as soon as possible but not later than five working days after the exchange of contracts has taken place.
- 1.3 At the point of claiming SHG the RSL must confirm that the submission is accurate and complies with the Funding Conditions, as accepted by the RSL's Committee and confirmed on line by the RSL's Security Administrator at the beginning of the financial year, plus any further conditions issued by the Housing Corporation in year. If the RSL is not able to make this confirmation on screen the submission will not be able to proceed.
- 1.4 The RSL must be able to confirm acceptance of the certifications that appear on screen when the scheme has been submitted.
- 1.5 Market Purchase Homebuy payments will be made direct to the RSL on the day of completion where there are at least eight working days between receipt of the application and the completion date. Where the Corporation receives the submission less than eight working days before completion, SHG will not be paid on completion but will be paid eight working days after receipt of the combined submission for confirmation of grant and payment. The Corporation will not pay simple interest to compensate for late payments where the combined submission for confirmation of grant and payment is not received within the above timetable.

New Build Homebuy

- 1.6 For New Build Homebuy developed by an RSL through PPA, the grant will be paid in 2 tranches 50% each – at start on site and point of sale. For those developed by the traditional/specialist route. The grant will be paid in 3 tranches – 40:40:20% - acquisition, start on site and point of sale. Those schemes developed through S27a funding will received the grant as a single payment at point of sale.

Off the shelf schemes

Where homes are purchased for New Build Homebuy as a package deal/off-the-shelf, it is expected that the RSL will aim to acquire properties at no more than 90% of the open market value. The on-costs associated with acquisition will not exceed 1.5% of the scheme costs and grant will be paid as one payment on practical completion.

S106 schemes

It is not expected that properties developed/acquired for New Build Homebuy though planning gain, will be eligible for either S18 or S27a grant.

- 1.7 Interest to cover delays in processing the combined grant confirmation and payment by the Corporation will only be paid in exceptional circumstances and where the RSL can demonstrate that it has suffered a direct financial loss as a result of the delay. Any interest claim submission must be fully substantiated with appropriate documentation, e.g. the calculation and evidence of the interest rate.

2 ACTION BY THE CORPORATION

- 2.1 Where the Corporation is satisfied with the scheme submission payment of the SHG will be made direct to the RSL's bank account on the date of completion.
- 2.2 If the application fails to meet any of the procedures and requirements set out in this procedure guide then the Corporation will not pay SHG or accept any responsibility for any costs the RSL or applicant has incurred.

3 ACTION BY RSL FOLLOWING COMPLETION OF PURCHASE

- 3.1 The RSL must retain on file confirmation from the local authority that a household nominated from the local authority's waiting list has been housed in the vacated property or that the local authority was unable to nominate and the RSL has rehoused someone from its waiting list.

4 NEW BUILD HOMEBUY

Treatment and Re-Payment of Grant

- 4.1 Receipts generated on initial sale are to be used to repay/ service the development costs in the first instance with the balance of the receipt to repay grant, via the RCGF for RSLs and direct to the Corporation for non-RSLs. If insufficient monies are received at the point of sale, the outstanding balance of grant is to be repaid at the subsequent redemption of the equity loan. There is an expectation that where the cost of provision exceeds the open market value at practical completion, the provider will refer the scheme to the Corporation's local Investment Officer with a view to discuss the need for a variance of the tenure type in light of the prevailing market conditions.
- 4.2 If the receipt covers both the commercial lending and grant repayment liability at the point of sale, there is the capacity for the provider to vary the % equity loan to make it more affordable. In a falling market where the receipt at final sale is insufficient to repay the outstanding grant on redemption, we would

require 25% of net proceeds less the administrative cost to be paid into the RCGF.

4.3 The following examples of are for illustrative purposes only.

Example 1

Deferred Receipt Equity Loan Model

Cost of Provision (including on-costs) £100k

Funding

Commercial borrowing/development costs	£75k
Social Housing Grant	£25k

Sale at Open Market Value £120k

Receipt from purchaser - 75%	£90k
Equity Loan of 25% (held by RSL)	£30k

Use of Receipt (£90k)

Repay commercial Borrowings	£75k
To RCGF	£15k

On Redemption of Equity Loan

Current Market Value £160k

75% of receipt to purchaser	£120k
25% to provider/ RSL	£40k

Apportionment of Equity Loan (£40k)

To RCGF	£10k
Surplus to provider/RSL	£30k

Example 2

Deficit Equity Loan Model

Cost of Provision (including on-costs)		£100k
--	--	-------

Funding

Commercial borrowing/development costs	£75k	
Social Housing Grant	£25k	

Sale at Open Market Value		£80k
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Receipt from purchaser - 75%	£60k	
Equity Loan of 25% (held by RSL)	£20k	

Use of Receipt (£60k)

Repay Commercial Borrowings	£60k	
(Shortfall of £15k)		
To RCGF	£0k	

On Redemption of Equity Loan

Current Market Value		£100k
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75% of receipt to purchaser	£75k	
25% to provider/ RSL	£25k	

Apportionment of Equity Loan (£25k)

Repay Commercial Borrowings Shortfall	£15k	
To RCGF	£10k	

Shortfall to RCGF written off	(£15k)	
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5 COMPLIANCE AUDIT

5.1 The Homebuy specialist programme (non Partner Programme Route) remains part of the Corporation's Compliance Audit programme.

5.2 Homebuy schemes completed during or after programme year 2006/07 will follow the Compliance Audit Route. For more information on Compliance Audit refer to chapter GENERAL-9 of this Guide.

- 5.3 RSLs should therefore expect Homebuy schemes developed under the specialist funding route to be audited alongside any other qualifying scheme developed. Schemes funded through the Partner Programme (PP) route form part of the Self-Assessment PP route, *see GENERAL-2*.

1 THE ROLE OF THE RSL AFTER PURCHASE HAS BEEN COMPLETED

1.1 Following the purchase of the property the RSL will be required to give its consent (not to be unreasonably withheld) to a number of events under the terms of the mortgage deed that secures the equity mortgage. The terms and conditions of the RSL's mortgage are set out in *HOMEBUY-7*. The following events require the RSL's consent

- re-mortgaging;
- where the owner wishes to secure additional borrowing;
- undertaking works.

For each of the above events the RSL must ensure that its Homebuy loan remains secure against the property.

Re-mortgaging

1.2 In today's competitive mortgage market the RSL may receive a request for consent to transfer the original mortgage to another lender. Such a request may be approved provided the alternative mortgage lender is a qualifying lending institution (*see HOMEBUY-1, para 6*) and the total amount borrowed excluding the Homebuy loan, does not exceed the limits as set out in section 1.4. The RSL will need to satisfy itself that the new mortgage provider is aware that the property involved a Homebuy loan and agrees to all the conditions that apply. The new lender will need a new deed of postponement from the RSL.

Additional Borrowing

1.3 If the owner is not increasing their borrowing above their contribution to the initial purchase price (ie. the initial full value less the HB/KWL equity loan) as a result, for example, of paying off some of their mortgage capital, this section is not relevant.

1.4 Where an owner wishes to take advantage of an increase in the value of their home to secure additional borrowing, from their current lender or another qualifying lending institution, this may be approved subject to the following conditions and limits.

- Consent to additional borrowing can only be given if the additional borrowing is required to finance repairs or improvements.
- Any increased borrowing must be limited to a maximum of 75% of the owner's share of the headroom. Headroom is the increase in value between the original market value and the current open market value of the property. The owner's share will be determined by applying the same percentage that the owner originally purchased, to the total headroom, (see examples below).

- 1.5 Total borrowings must not normally exceed the equivalent percentage of the current valuation represented by the purchaser's contribution to the initial purchase price e.g. 75% or 68% as in the examples below nor be provided by a non-qualifying lending institution. If either event occurs, the loan cannot be registered as a priority charge over the RSL's loan. However, if essential repairs are required to the property, the RSL has discretion to agree further secured borrowing (from a qualifying lending institution) above this limit where it is satisfied that the repairs are urgently required to protect all parties' interest in the property.

Example 1:

**Open Market Homebuy that required a 25% equity loan
– Borrowings for Repair /Improvements**

Original Valuation at Purchase	£100,000	(75% = £75k)
Current valuation	£120,000	(75% = £90k)
Owner's headroom	£15,000	(£90k less £75k)
Maximum additional borrowings	£11,250	(£15k x 75%)
Total Borrowings not to exceed	£86,250	(75k plus £11,250)
		= 71.85 % of current market value.

Example 2:

**KWL Open Market Homebuy that required a 32% equity loan
– Borrowings for Repair /Improvements**

Original Valuation at Purchase	£150,000	(68% = £102k)
Current valuation	£200,000	(68% = £136k)
Owner's Headroom	£34,000	(£136k less £102k)
Maximum additional borrowings	£25,500	(£34k x 75%)
Total Borrowings not to exceed	£127,500	(£102k plus £25.5k)
		= 63.75% of current market value.

Undertaking Works

- 1.6 The agreement of the RSL must be obtained before the commencement of any works. This is to ensure that the works are completed to a satisfactory standard and where additional monies are required sufficient is available to complete the project. The owner of the property is responsible for obtaining all necessary statutory consents

2 LOAN REDEMPTION ON RESALE OF PROPERTY - ACTION BY RSL

- 2.1 When someone wishes to sell their property on the open market, or redeem their equity loan, they need to notify the RSL. The RSL should arrange for the property to be valued by an independent qualified valuer, assuming a sale on the open market with vacant possession.
- 2.2 Where appropriate the RSL will need to provide the valuer with details of any additions or improvements to the property it had given the owner written permission to undertake. In such cases the RSL needs to request the valuer to provide both a current open market value, and one had the additions/improvements not been made.
- 2.3 The disposal price will be the current market value. However where there are previously agreed additions/improvements, the valuation will be based on the current market value of the property assuming those works had not been undertaken.

Example 1

The RSL instructs an independent qualified valuer to provide a current open market valuation based on vacant possession. The valuation report gives a figure of £240,000, and the owner would be required to repay £240,000 x 25% to the RSL.

Example 2

Having previously sought and received written consent from the RSL to add a conservatory, the owner arranged and paid for it to be built. On receipt of this notification to redeem the loan, the RSL instructs an independent qualified valuer to provide both a current open market valuation based on vacant possession, and having provided details of the improvements it consented to, a current open market valuation based on vacant possession without the agreed improvements. The valuation report gives 2 figures, a) £240,000 with the conservatory and b) £200,000 without the conservatory. The owner would be required to repay £200,000 x 25% to the RSL.

- 2.4 There are likely to be circumstances where the cost of undertaking improvements may not be reflected in the valuation. RSLs should point this out to owners when they seek consent to undertake works.

- 2.5 In cases where the owner and RSL cannot agree the valuation/sale price, the RSL should arrange a further independent valuation nominated in accordance with the mortgage deed, *see HOMEBUY-7 which provides details of the mortgage deed and in the solicitor's guidance notes an explanation of the terms used in the mortgage deed.*
- 2.6 All valuation fees are payable by the owner.

3 MORTGAGE DEFAULT

- 3.1 In the event of a property becoming repossessed by the qualifying lender (which has a first charge on the property), it will have first call on the sales receipt to repay any outstanding mortgage debt. If any balance is insufficient to repay the RSL's loan any grant to be recovered will be written off in these circumstances.

INTRODUCTION

This chapter contains a standard letter that RSLs can use to advise applicants to proceed to select a property. It also contains guidance notes for solicitors and mortgage lenders and guidance notes for RSLs on the Consumer Credit Act.

LETTER TO BE SENT BY THE RSL TO ADVISE THE APPLICANT TO PROCEED TO SELECT A PROPERTY

Dear [name of applicant]

Homebuy scheme — Approval to select a property

Your application to take part in the Homebuy scheme has been approved by [name of RSL] and you are now able to select a home you wish to buy subject to the terms and conditions of this letter. This letter tells you what to do next.

Do not enter any legal agreement to buy a home at this stage, as we need to approve the home you select.

If you wish to proceed with the scheme, you will need to give the enclosed guidance notes to your mortgage provider (who must be a qualifying lender as outlined below) and legal representative (see the instructions given under step 2 of this letter).

Step 1

You may select a home on the open market on condition that:

- it meets the requirements set out in the Corporation's Homebuy booklet;
- you select a home with no more than [bedroom limit] bedrooms.

Please note that if you wish to look for a home in another area, check with the RSL which price limit applies.

Step 2

When you have found a home you would like to buy, you should:

- agree the purchase price with the person selling the home (or estate agent acting on their behalf);
- apply for a mortgage from a qualifying lender (see below) for your share of the purchase price (this will be up to 75% of the price when buying through the Homebuy scheme); if you intend making private arrangements for a mortgage you will need the approval of [name of RSL];

- employ a solicitor or licensed conveyancer to act for you in the purchase.

You **must** give this **letter** and the **enclosed guidance notes for lenders and legal representatives** to your mortgage provider and legal representative.

If you are not sure how to proceed please contact [name] at [contact address/telephone number].

Applicants should **under no circumstances** incur any costs in obtaining a mortgage (e.g. for a property valuation) until the lender offering to provide the mortgage has confirmed that it is a “qualifying lending institution”.

A qualifying lending institution for the purposes of Homebuy is defined by the Social Landlords (Additional Purposes or Objects) (Amendment) (England) Order 2005.

A qualifying lending institution will have been authorised under the Financial Services and Markets Act 2000 to enter into a regulated mortgage contract. The Financial Services Authority maintains a register of authorised persons, which is likely to include most banks and building societies. However you may wish to seek the advice of an independent financial advisor for clarification.

Step 3

When you have received your mortgage offer and engaged a legal representative, you will need to send the details to [name of RSL]. The information you will need to send us is as follows:

- a copy of your mortgage offer if applicable;
- a letter from your legal representative confirming the purchase price agreed and an undertaking to secure the Homebuy loan;
- a copy of a Homebuyer’s Survey and Valuation Report or similar, if the home is not new (this does not have to be a full structural report);
- confirmation (in the case of buying a new property from a developer) that a NHBC or equivalent guarantee will be available — your legal representative will be able to confirm this.

Please note that you will be responsible for your own costs relating to the purchase, e.g. legal fees, mortgage costs, survey and valuation costs.

Your legal representative will advise you on the progress of the sale.

Step 4

Once [name of RSL] has approved the home you have selected you will be in a position to enter a legal agreement to buy the home. When all the legal work has been completed [name of RSL] will send the Homebuy loan (equal to 25% of the purchase price) to your legal representative so that all the money needed to buy the home is available.

Please note that the deadline for the exchange of contracts is [date].

Your application will be treated as withdrawn if you do not proceed to exchange of contracts within the deadline given. If you are unsure of how to proceed please contact [name] at [contact address/telephone number].

Before you proceed, make sure you have read the Homebuy booklet that explains how the scheme operates. If you are unsure on how to proceed, please contact us for help. Remember, do not enter a legal agreement to buy a home until approval has been give by us.

GUIDANCE NOTES FOR SOLICITORS/LEGAL REPRESENTATIVES**HOMEBUY scheme operated by RSLs****Introduction**

From April 1999 Registered Social Landlords (RSLs), such as housing associations, may provide an equity loan (equal to 25% of the purchase price of a qualifying property) to qualifying applicants to buy a property on the open market. The loan provided has to be secured on the property and will rank immediately behind the qualifying lending institution (such as a building society, bank or insurance company) who will be providing a conventional mortgage for a sum up to 75% of the purchase price.

RSLs are able to provide loans under Homebuy arrangements by the Social Landlords (Additional Purposes or Objects) Order 1999, which extends the permissible purposes of RSLs under section 2(4) of the Housing Act 1996.

The loan is repaid when the qualifying applicant wishes to repay the loan or when they sell the property. The amount of the repayment is 25% of the value of the property at the date of repayment.

The Housing Corporation (the government agency responsible for regulating RSLs) provides the government funding for the scheme.

Qualifying applicants are drawn from social housing tenants (Local Authority or RSL) and those on social housing waiting lists.

How the scheme works

The scheme is administered by RSLs (selected by the Corporation) whose role it is to ensure that:

- applicants meet the requirements of the scheme;
- the property selected provides adequate security for the Homebuy loan;
- the purchaser's legal representative secures the loan provided by the RSL (see attached legal charge);
- the property selected is eligible for purchase.

RSLs operate the scheme within rules published by the Corporation.

Events before exchange of contracts

Once an applicant has been approved (in writing) by the RSL, he/she will select a property to purchase. The applicant will need then to raise 75% of the purchase price from a qualifying lender (such as a building society, bank or insurance company) or their own funds (the 25% balance being provided as an equity loan by the RSL). The

applicant has to appoint a legal representative who must either be a solicitor or licensed conveyancer to act on their behalf.

Applicants should under no circumstances incur any costs in obtaining a mortgage (e.g. for a property valuation) until the lender offering to provide the mortgage has confirmed that it is a “qualifying lending institution”.

A qualifying lending institution for the purposes of Homebuy is defined by the Social Landlords (Additional Purposes or Objects) (Amendment) (England) Order 2005

A qualifying lending institution will have been authorised under the Financial Services and Markets Act 2000 to enter into a regulated mortgage contract. The Financial Services Authority maintains a register of authorised persons, which is likely to include most banks and building societies.

After selecting the property and obtaining a mortgage offer, the applicant must submit details of the purchase to the RSL for approval. The details required are:

- **a copy of the mortgage offer where applicable;**
- **a letter from the applicant’s legal representative confirming the purchase price and providing an undertaking to secure the RSL’s loan;**
- **a survey report (Homebuyer’s Survey and Valuation Report or equivalent) if the property is second-hand, for new property confirmation that an NHBC certificate or equivalent will be available on completion.**

Exchange of contracts stage

Once the RSL has approved the property it will instruct the applicant to proceed and exchange contracts. As soon as contracts have been exchanged, the legal representative will confirm to the RSL:

- exchange has taken place;
- the completion date.

The RSL will claim grant from the Corporation.

Purchase completion stage

The RSL will pay to the applicant’s legal representative a sum equal to 25% of the agreed purchase price on the agreed date of completion.

Legal representative’s undertakings

The applicant’s legal representative will need to comply with the undertakings set out in the enclosed draft undertaking which must be returned to the RSL duly signed and dated.

In order to comply Rule 6(3) of the Solicitors Practice Rules (version issued on 31.10.2004) the RSL must certify to the applicant's legal representative that the undertakings comply as follows:-

[insert name of RSL Lender] certifies that:

- (1) the following standard undertakings, (numbered 1-6 and described as a draft undertaking from Homebuy purchaser's solicitor or licensed conveyancer to RSL) comply with the limitations contained in paragraph 6(3)(c) and 6(3)(e) of the Solicitors Practice Rules (31.10.2004) as amended by the Solicitors Practice (Lender and Borrower) Amendment Rules 1998 and 1999 and;
- (2) a Certificate of Title is not required to be completed as part of the above instructions.

The RSL must also specify in writing to the applicant's legal representative that one of the documents from list A or two of the documents from list B must be produced by the applicant and checked as proof of their identity:

LIST A

- a valid full passport;
- a valid HM Forces Identity Card with the signatory's photograph, or
- a valid Driving Licence that incorporates both a photograph and signature

LIST B

- a cheque guarantee card, credit card (bearing the master card or visa logo), American Express/Diners Club Card, debit or multi function card (bearing the switch or delta logo) issued in the United Kingdom with an original accounts statement less than 3 months old; or
- a fire arm or shotgun certificate; or
- a receipted utility bill less than 3 months old; or
- a Council tax bill less than 3 months old; or
- a Council rent book showing the rent paid for the last 3 months; or
- a Mortgage Statement from another lender for the mortgage accounting year just ended
- a driving licence that contains the applicants's current address.

**DRAFT UNDERTAKING FROM HOMEBUY PURCHASER'S SOLICITOR
OR LICENSED CONVEYANCER TO RSL**

Dear []

We act on behalf of [] (the "Borrower") in relation to the purchase of [] ("the Property").

We confirm the agreed purchase price of the Property is [].

In consideration of your agreeing to provide a loan of 25% of the agreed purchase price to assist the Borrower to purchase the Property we undertake as follows:

1. To advise you in writing within (one) working day of contracts having been exchanged for the purchase of the Property of the completion date which will be at least [] working days after exchange of contracts.
2. To apply any sums received from you only towards the purchase of the Property.
3. In the event of completion of the purchase being delayed by more than fourteen days from the agreed date for completion to return to you any sums received from you forthwith.
4. To ensure that the form of "Homebuy" mortgage you have supplied and which has been executed by you is properly executed by the person whose identity has been checked by reference to the document or documents precisely specified in writing by you as that of the Borrower and dated contemporaneously with the purchase of the Property.
5. To provide you with a certified copy of the "Homebuy" mortgage within (two) working days of completion of the purchase.
6. To register the "Homebuy" mortgage at HM Land Registry as a (Second) Charge (ranking immediately after the first mortgage to be granted by the Borrower in favour of []) and to send to you the Charge Certificate in relation to the "Homebuy" mortgage as soon as practicable following receipt from HM Land Registry.

Signed (Partner/Licensed Conveyancer):

Date:[]

**SAMPLE LEGAL CHARGE TO SECURE THE RSL'S INTEREST IN
PROPERTY PURCHASED THROUGH THE HOMEBUY SCHEME**

“Credit agreement regulated by the Consumer Credit Act 1974”

Important - you should read this carefully

Your rights

The Consumer Credit Act 1974 covers this agreement and lays down certain requirements for your protection which must be satisfied when the agreement is made. If they are not, the Lender cannot enforce the agreement against you without a Court Order.

The Act also gives you a number of rights. You have a right to settle this agreement at any time by giving notice in writing and paying off all amounts payable under the agreement. If you would like to know more about the protection and remedies provided under the Act, you should contact either your Local Trading Standards Department or your nearest Citizens Advice Bureau.

THIS LEGAL CHARGE made as a Deed the [] day of []

BETWEEN DEBTOR

‘the Debtor’ which expression shall where the context admits include persons deriving title under the Debtor or entitled to redeem this security of [address]

of the one part and [REGISTERED SOCIAL LANDLORD] of [ADDRESS]

(‘the Lender’ which expression shall where the context admits include persons deriving title under the lender) of the other part

WITNESSES AS FOLLOWS:

- 1 In this Deed the following words have the following meanings:
 - 1.1 “Disposal” means a transfer to a third party of the Debtor’s interest in the Property or any part thereof or the grant of a lease whether periodic or for a fixed term other than an Exempt Disposal
 - 1.2 “Exempt Disposal” means (a) a disposal that is the vesting of the whole of the Debtor’s interest in the Property in a person taking under a will or on an Intestacy where such person is a member of the family of the Debtor who has resided with the Debtor throughout the period of 12 months ending with the death of the Debtor and for the purposes of this Deed, a “member of the family” has the same meaning as that contained in section 62 of the Housing Act 1996 (as amended or replaced from time to time); (b) a disposal of the whole of the Debtor’s interest in the Property in pursuance of an Order made under section 24 or 24A of the Matrimonial Causes Act 1973 (as amended or

replaced from time to time) or section 17 of the Matrimonial and Family Proceedings Act 1984 (as amended or replaced from time to time)

- 1.3 “Interest Rate” means 4 percentage points above the base rate for the time being of Barclays Bank PLC
- 1.4 “Property” means the property described in the schedule
- 1.5 “Repayment Date” means the date ascertained in accordance with the provisions of clause 7 of this Deed.
2. Unless the Debtor is one person all covenants and warranties by the Debtor shall be construed and take effect as joint and several covenants and warranties by the persons hereinbefore defined as the Debtor and all references to the Debtor shall include any one or more of the said persons.
3. In consideration of the Lender making the Advance the Debtor COVENANTS with the Lender to pay to the Lender:
 - 3.1 the Repayment Sum upon the Repayment Date and
 - 3.2 interest thereon on demand at the Interest Rate from the Repayment Date until actual payment in full of the Repayment Sum and upon all other monies for the time being remaining due on this security or on any order or judgement which may be made or recovered hereunder.
- 4 The advance is £ [] which the parties agree represents 25% of the value of the Property at the Date of this Deed (“the Advance”).
- 5 The repayment sum will be 25% of the Disposal Value (“the Repayment Sum”).
- 6 The disposal value is the value of the Debtor’s interest in the Property on the Repayment Date assuming a sale in the open market with vacant possession by a willing seller to a willing purchaser and that the Debtor has performed the covenants contained in this Deed but disregarding the value of any additions or improvements carried out by the Debtor with the written consent of the Lender after the date of this Deed (“the Disposal Value”).

This shall be ascertained by agreement between the parties or failing agreement at the expense of the Debtor by an independent qualified valuer appointed by agreement between the parties or failing agreement by or on behalf of the president for the time being of the Royal Institution of Chartered Surveyors on the applications of either party and the decision of such valuer shall be final.
- 7 The Repayment Date shall be the date of the earliest of the following events to occur:

- 7.1 a Disposal by the Debtor
- 7.2 upon the expiry of a default notice served by the lender under section 87(1) of the Consumer Credit Act 1974 following the Debtor being in breach of the Debtor's covenants and obligations hereunder.

Notice to debtor

Important - you should read this carefully

Repayment of credit

Under this agreement there are no interest or other credit charges so the loan has no annual percentage rate (APR). But the amount you are required to repay when the loan comes to an end is linked to the value of your home at that time. You may have to repay less than you borrowed, or the same amount, but it is likely that you will have to repay more.

If you have to repay more than you borrowed, the effect will be similar to a loan under which you pay credit charges at the rate at which your home has increased in value.

For illustrative purposes, if your home increases in value by 4 percent or 8 percent a year, the sum you will repay will be equivalent to borrowing under a loan with an APR OF 4.0 OR AN APR OF 8.0

8. The Debtor CHARGES with full title guarantee the Property BY WAY OF LEGAL MORTGAGE with the payment to the Lender of the Repayment Sum interest and all other money covenanted to be paid by the Debtor or other wise secured by this Deed.
9. The debtor COVENANTS with the Lender at all times during the continuance of this security:
- 9.1 to keep the Property and all additions thereto in good and substantial repair (allowing the Lender to enter and view the state of repair of the same at all reasonable times without becoming liable to account as mortgagee in possession) and insured against all usual comprehensive risks to the full reinstatement value thereof with a quoted insurance company and with the interests of the Lender noted on the policy and duly and punctually to pay all premiums and other monies necessary for effecting and keeping up such insurance immediately on the same becoming due or within one week thereafter and on demand to produce to the Lender the policy of such insurance or a copy of the same and the receipt for every such payment
- 9.2 to apply all monies received in respect of such insurance in reinstating the Property or (at the option of the Lender) or in or towards the discharge of the Repayment Sum

- 9.3 to observe and perform all restrictive and other covenants conditions and stipulation (if any) for the time being affecting the Property or the use or enjoyment of the same or any part thereof
- 9.4 to pay and discharge all rents and service charges (if any) which now are or at any time during the continuance of this security may become payable in respect of the Property or any part thereof
- 9.5 to execute and do at the expense of the Debtor all such works and things whatever as may now or at any time during the continuance of this security be directed or required by any national or local or other public authority to be executed or done upon or in respect of the Property or any part thereof or by the owner or occupier thereof
- 9.6 to obtain all necessary licences permissions and consents and execute and do all works and things and bear and pay all expenses required or imposed by any existing or future legislation in respect of any works carried out by the Debtor on the Property or any part thereof or of any user thereof during the continuance of this security
- 9.7 not to make or cause or permit to be made any alteration in or addition to the Property nor carry out any development or change of user on the Property within the meaning of any legislation for the time being relating to Town and Country Planning without the previous consent in writing of the Lender
- 9.8 within seven days of the receipt thereof to deliver to the Lender full particulars of any notice or order or proposal therefore served or made by a planning authority affecting the Property or any part thereof of which the Debtor has notice and take all necessary steps to comply therewith and in default of such compliance permit the Lender to enter on the Property for the purpose of taking such steps
- 9.9 at the request of the Lender to make or join with the Lender in making such representations or objections or appeals in respect of any such notice order or proposal as aforesaid as the Lender may reasonably require and to indemnify the Lender against all costs charges and expenses incurred by the Lender in respect of such representations objections and appeals
- 9.10 to occupy the Property as the Debtor's only or main residence.
10. If default shall at any time be made by the Debtor in the performance of any of the covenants contained in the preceding clause it shall be lawful for but not obligatory upon the Lender to perform the same and to pay all costs and damages occasioned by such default and with power in the case of any failure to repair in accordance with the covenants hereinbefore contained to enter upon the Property without becoming liable to account as mortgagee in possession and all monies expended by the Lender for any such purpose and all costs charges and expenses properly incurred by the Lender in relation to the protection or enforcement of this security whether involving litigation or

not and on a complete unlimited and unqualified indemnity basis with interest thereon at the Interest Rate from the time of the same having been expended or incurred shall on demand be repaid to the Lender by the Debtor and until such repayment shall be a charge on the Property PROVIDED that the charge hereby conferred shall be in addition and without prejudice to any and every other remedy lien or security which the Lender may or but for the said charge would have for the recovery of monies thereby secured or any part thereof.

11. The Debtor will not without prior consent in writing of the Lender exercise the power of leasing or agreeing to lease or accepting surrenders of leases conferred on a mortgagee in possession by the Law of Property Act 1925 nor otherwise grant or agree to grant any lease or tenancy of the Property or any part thereof nor confer upon any person any contractual right or interest to occupy the Property or any part thereof.
12. The statutory power of sale and of appointing a receiver shall arise on the date of this Deed and shall be exercisable at any time after this date and Section 103 of the Law of Property Act 1925 (which restricts the exercise of the said power of sale) shall not apply to this security.
13. If the Lender shall enter into possession of the Property or any part thereof of the Lender may from time to time go out of such possession and shall not be liable to account as mortgagee in possession while in fact out of such possession Provided that notice of such fact shall within seven days after its happening be served on the Debtor.

IN WITNESS whereof the Debtor has executed this Deed

THE SCHEDULE

Description of the property [ADDRESS]; [TITLE NUMBER]

This is a Credit Agreement regulated by the Consumer Credit Act 1974. Sign it only if you want to be legally bound by its terms.

Signed and delivered as a deed by the Debtor:

in the presence of:

Date of signature: []

Common seal of Lender

GUIDANCE NOTES FOR MORTGAGE LENDERS**1. INTRODUCTION**

- 1.1 From April 1999 Registered Social Landlords (RSLs), such as housing associations, may offer financial help to social housing tenants or those on waiting lists who wish to buy a home of their own on the open market. Under a new scheme called Homebuy, an RSL can provide an equity loan to fund 25% of the purchase price. The scheme is grant funded and is administered by selected RSLs. There is only one repayment under the loan which can either be made voluntarily by the individual or when they sell their home.
- 1.2 Under current arrangements mortgage lenders can only secure their mortgage as a first charge if they are a “qualifying lender”. A “Qualifying lending institution” for the purpose of Homebuy is defined by the Social Landlords (Additional Purposes or Objects) (Amendment) (England) Order 2005.
- 1.3 The Homebuy loans are regulated by the Consumer Credit Act 1974 and the RSL must be duly licenced to make Homebuy loans.
- 1.4 The government housing agency, the Corporation, together with local authorities, provides the funding for the scheme.
- 1.5 The Council of Mortgage Lenders has been consulted about the introduction of the scheme.

2. QUALIFYING LENDER

- 2.1 A qualifying lending institution for the purposes of the Homebuy scheme is a person who has been given permission under the Finance Services and Markets Act 2000 to enter into a regulated mortgage contract. This is likely to include most banks and building societies.

3. THE ROLE OF THE RSL

- 3.1 Applicants who qualify for this scheme are first approved by a RSL.
- 3.2 The role of the RSL is to ensure applicants meet the eligibility criteria for the scheme and are buying a property within the rules for the scheme published by the Housing Corporation.
- 3.3 The rules are summarised in the enclosed publicity booklet (to be provided by the RSL). Subject to a mortgage offer being provided, the RSL will be responsible for checking whether the property qualifies for the scheme and instructing the purchaser to proceed to exchange contracts. The RSL will provide the applicant’s legal representative with a sum equal to 25% of the purchase price on the date agreed for the purchase completion.

- 3.4 The loan provided by the RSL has to be secured on the property (a copy of the mortgage document can be obtained from the RSL dealing with the applicant's case) and will rank immediately behind the private sector loan from a qualifying lender, as stated above in paragraph 2. Further advances provided by the qualifying lender will need to be approved by the RSL who may allow the further advance to be secured as a first charge provided the loan is for improvements to the property. Further advances that are not for improvements will be secured behind the Homebuy loan provided by the RSL.

4. DOCUMENTS REQUIRED BY THE RSL

- 4.1 Before the RSL can accept a property for inclusion in the scheme, the applicant must provide the RSL with:
- a copy of the mortgage offer and valuation;
 - a copy of a NHBC or equivalent insurance (in cases of newly built properties) or evidence that it will be provided on completion;
 - a homebuyer's survey and valuation report or equivalent (where the property is not new).

The RSL does not require a full structural survey.

Where a mortgage lender is unable to provide details of the mortgage offer and valuation to the RSL the application cannot be processed through the Homebuy scheme.

1 GUIDANCE FOR RSLs - APPLYING FOR A CONSUMER CREDIT LICENCE

1.1 The RSL will need a Consumer Credit Licence in order to be able to make Homebuy loans. To apply for this the RSL should contact the Office of Fair Trading, Consumer Credit Licensing Bureau (see below) for the appropriate application form.

1.2 The RSL must submit this application form (together with a cheque made payable to the Office of Fair Trading,) to:

Office of Fair Trading
Consumer Credit Licensing Bureau
Craven House
40 Uxbridge Road
Ealing
London W5 2BS
Tel 020 7211 8608

It normally takes 20 working days for the application to be processed and the licence to be issued

1.3 The RSL will also need to apply to the Director General of Fair Trading for a Direction under Section 60(3) of the Consumer Credit Act. This is because certain requirements of the Consumer Credit Act cannot be complied with due to the nature of the Homebuy Scheme. The RSL will need to fill out forms CCD 30/83 and CCD 31/83. The RSL needs to send these forms to:

The Office of Fair Trading
Consumer Affairs Division
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX

1.4 The form of the Direction to be issued has been agreed with the Office of Fair Trading.

1.5 The RSL can apply for the Direction at the same time as it applies for its Consumer Credit Licence. By accepting the Funding Conditions at the beginning of the financial year, the RSL is confirming that it has received its Consumer Credit Licence and the Direction under Section 60(3).

1.6 The RSL must not enter into any of the activities set out in the following paragraphs before it has been granted a Licence. The Licence will be valid for 5 years from the starting date shown on it, and the RSL should ensure procedures are in place to renew the licence as necessary. If the RSL wishes to vary the Licence or any details on the Licence are no longer correct, for example the RSL changes its trading name or address, the Office of Fair

Trading must be notified in writing within 21 working days of the change taking place. Failure to do so may invalidate the Licence and lead to penalties.

- 1.7 Further information is available on the Office of Fair Trading's website at www.offt.gov.uk.

2 PROMOTIONAL MATERIAL

- 2.1 Any promotional material produced by the RSL in relation to the Homebuy Scheme is subject to the Consumer Credit Act. There is certain information that must be included, such as the RSL's name and address. The information must be clear and easily legible and shown together in the same part of the promotional material (except for the RSL's name and address). An example of what should be included in the promotional material to satisfy this requirement is set out at paragraph 9.1 below.
- 2.2 The RSL must not state anywhere that the loan is "interest free" or use any similar expression.
- 2.3 The RSL are advised to consult the local Trading Standards Department before issuing any advertising material.

3 FORM AND CONTENT OF MORTGAGE

- 3.1 This is prescribed by the Consumer Credit Act. The form of legal charge contained in chapter HOMEBUY-7 incorporates all the requirements of the Consumer Credit Act as modified by the agreed form of Section 60(3) Direction.

4 DUTY TO SUPPLY COPY OF THE MORTGAGE

- 4.1 The RSL must provide the individual with a copy of the mortgage at the same time as it gives it to the individual to sign. The RSL only need to do this if the mortgage has not yet been signed by the RSL.
- 4.2 The RSL must provide the individual with a copy of the mortgage within seven days of the mortgage being dated.

5 DUTY TO GIVE INFORMATION DURING THE PERIOD OF THE MORTGAGE

- 5.1 If the individual sends the RSL a written request together with a fee of £1, the RSL is under a duty to give the individual the following information within 12 working days of receiving the request:
- a copy of the executed mortgage, and

- a statement signed by the RSL which gives the basis on which, under the mortgage, the sum to be repaid and the date for repayment are ascertained.

6 EARLY SETTLEMENT BY THE INDIVIDUAL

- 6.1 The individual may serve a written request on the RSL for a settlement statement. The RSL must give the individual this statement within 12 working days of receiving the request.
- 6.2 The settlement statement must be in the prescribed form and contain the prescribed information as shown in paragraph 10 below.

7 TERMINATION STATEMENTS

- 7.1 The individual may serve a notice on the RSL asking it to confirm that:
- the individual was the debtor and the RSL was the creditor under the mortgage.
 - the individual has discharged the loan to the RSL under the mortgage; and
 - the mortgage has ceased to have any operation.
- 7.2 The RSL must reply to this within 12 working days of receiving it. The RSL will need either to confirm the statements are correct, or, serve on the individual a counter notice saying that it disputes the correctness of the notice and the reasons why, or, state the individual is not indebted to the RSL under the mortgage.

8 BREACH OF THE MORTGAGE BY THE INDIVIDUAL

- 8.1 If as a result of a breach the RSL wishes to:
- end the mortgage;
 - demand earlier payment of any sum;
 - recover possession of the land;
 - treat any rights conferred on the individual by the mortgage as terminated, restricted or deferred; or
 - enforce any security;

the RSL must serve a “default notice” on the individual. This notice must be in the prescribed form and contain prescribed information, details of which can be found in paragraph 11 below.

- 8.2 The RSL will not be able to take any action before the date specified in this notice.
- 8.3 If the individual complies with the notice before the date specified in it, the breach is taken not to have occurred. Therefore, the RSL will not be able to carry out any of the steps stated above.

9 EXAMPLE OF STATEMENT TO BE INCLUDED IN PROMOTIONAL MATERIAL

9.1 Financial information on Homebuy

The loan provided by [name of RSL] is available only to a restricted group of people that consists of existing tenants of [name of RSL] and local authorities or those on housing waiting lists. You may write or telephone [name of RSL] for a written quotation about the loan.

This loan must be secured by a mortgage over the home you buy. **YOUR HOME IS AT RISK IF YOU DO NOT KEEP UP REPAYMENTS ON A MORTGAGE OR OTHER LOANS SECURED ON IT.**

You may repay the loan at any time but it must be repaid if you sell your home. You only have to make one repayment which is 25% of the market value of your home at the date of repayment.

The amount you repay will depend on the state of the house market where you live at the date of repayment. This means you may pay more or less than the amount you were originally lent by [name of RSL]. If you have to repay more than you borrowed from [name of RSL], the effect will be similar to a loan under which you pay credit charges at the rate at which your home has increased in value. For example, if your home increases in value by 4 percent or 8 percent a year, the sum you will repay will be equivalent to borrowing under a loan with an APR of 4.0 or an APR of 8.0.

The examples below are *for illustrative purposes* and show how much the loan repayment and APR equivalent would be in various situations.

[Insert examples based on different purchase prices, periods of ownership and rates of property inflation.]

[RSLs are required to provide applicants with an example of what the equivalent APR would be on the equity loan; assuming property values had risen during a given period. RSLs are required to be mindful of the current housing market price increases when producing the examples. An example of what information should be given to the applicant is set out in the example below, together with the formula for calculating an equivalent APR.]

Example

Assume you buy a home in London for £100,000 and [name of RSL] provides you with £25,000 a quarter of the purchase price). In seven years time you want to sell your home and house values have risen. Assume house prices have increased by about 6% a year, so that your home would be worth £150,363. In this example you would repay a quarter of the value when you sell the home, which is £37,591. As you are repaying more than you borrowed from [name of RSL] the amount you repay would be equivalent to borrowing the money at an APR of approximately 6%.

9.2 Formula for calculating an APR equivalent

The APR equivalent rate, which illustrates the increase in the sum repayable on the sale of the property as an effective rate, is given by the following formula:

$$100 \left[\left(\frac{R}{P} \right)^{\frac{1}{t}} - 1 \right]$$

- R is the amount of the repayment due on the sale of the property;
 P is the amount of credit advanced under the agreement; and
 t is the period beginning with the relevant date and ending with the date of repayment, expressed in years

The result of the calculation being rounded to two decimal places, see below for the worked example:

$$\begin{aligned} R &= \text{£}37,591 \\ P &= \text{£}25,000 \\ t &= 7 \text{ years} \end{aligned}$$

$$100 \left[\left(\frac{37,591}{25,000} \right)^{\frac{1}{7}} - 1 \right]$$

$$= 100 \left[(1.5)^{0.14286} - 1 \right]$$

$$= 100 \left[1.05963 - 1 \right]$$

$$= 5.96$$

The APR equivalent is therefore 5.96%

10 SETTLEMENT STATEMENT

The Settlement Statement must be in writing, and contain the following information:

- Sufficient description of the mortgage in order to identify it;
- The RSL's name and address;
- The individual's name and address;
- The total amount the individual needs to pay to discharge the loan;
- A statement that the individual is not entitled to any rebate;
- The settlement date, and that this has been calculated in accordance with Regulation 3 of the Consumer Credit (Settlement Information) Regulations 1983. This requires the settlement date to be 28 days after you receive the request for the statement, unless the individual asks for a later date.

11 DEFAULT NOTICE

This notice must contain the following information:

- Statement that the notice is a default notice served under Section 87 (1) of the Consumer Credit Act 1974;
- Sufficient description of the mortgage in order to identify it;
- The RSL's name and address;
- Details of the term that is alleged to be breached;
- The nature of the alleged breach;
- If the breach is capable of remedy, what action you require to remedy it and the date by which you require this to be done. Or, if it is not capable of remedy, the sum (if any) you require to compensate for the breach and the date by which it is to be paid. Both of these dates must be at least 7 clear days from the date you serve the notice;
- A clear and unambiguous statement of the action you will take if the individual does not remedy the breach/pay compensation (if any) by the specified date;
- A statement of the date on or after which you will take specified action;
- If you require a sum of money to be paid under the notice, the amount of this sum.

The following statements must be included in the notice. These cannot be altered at all:

- **“If the action required by this notice is taken BEFORE THE DATE SHOWN no further enforcement action will be taken in respect of the breach”.**
- **“If you do not take the action required by this notice BEFORE THE DATE SHOWN then the further action set out below may be taken against you”.**

- **“If you have difficulty in paying any sum owing under the agreement or taking any other action required by this notice, you can apply to the court which may make an order allowing you or any surety more time”.**
- **“If you are not sure what to do, you should get help as soon as possible. For example you should contact a solicitor, your local trading standards department or your nearest citizens advice bureau”.**
- **“Important - you should read this carefully”**

These statements must be given more prominence than any other lettering in the notice. The words shown in block capitals and underlined must be given more prominence.

Finally, the lettering in the notice must be easily legible and of a colour that is easily distinguished from the colour of the paper.