

Consent to Vary Shared Ownership Leases Landlords' Information

1 This leaflet has been produced to provide information for legal advisers and Housing Association staff regarding the consents needed when variations are required to Shared Ownership leases.

2 Most shared ownership leases used in the housing association sector are based on the sample leases issued by the Housing Corporation in the 1980s. However, since 1989, housing associations have been free to develop their own shared ownership leases. In order to qualify for Housing Corporation grant funding it is a condition that certain key clauses, known as the fundamental clauses, must be included. These clauses relate to:

- Alienation provisions;
- Mortgagee protection;
- Staircasing provisions;
- Rent review;
- Service charge provisions.

3 The Corporation has also required a restriction to be entered at the Land Registry, to the effect that 'Except under an order of the Registrar no deed varying the terms of the registered lease is to be registered without the consent of the Housing Corporation'. The intention of this restriction is to safeguard the fundamental clauses, so that leases keep their distinctive shared ownership character, and so that variations cannot be made outside the terms of grant funding.

4 The Corporation has identified a problem in respect of the interpretation of this restriction, which means that sales and other transactions do not always proceed as quickly as they should. This information sheet hopes to clarify the position so landlords can improve their service to customers.

5 The restriction requires the Corporation's consent to Deeds of Variation that would make a difference to the terms of the lease. Landlords and their solicitors generally understand this, but a problem can arise where purchasers' solicitors give the restriction a wider meaning than was originally intended.

6 The Corporation receives a great many requests for consent from solicitors about such things as sale, staircasing or the transfer of equity from joint to sole names. **No consent is required for these transactions**, as they are clearly permitted by the lease. Nor is its consent required for individual instances of downward staircasing. The effect of seeking these consents is that purchasers can be involved in unnecessary legal correspondence and expense, and their transactions are delayed waiting for a response from the Corporation that is not required.

7 In practice, there are very few changes to leases that require Corporation approval. The following list is not exhaustive but, for example, consent will be required to:

- change the basis of service charge calculations or apportionments;
- revise rent review clauses;
- provide a new right, for example access rights over land;
- describe a new definition of the property or estate;
- transfer common parts or other property to the leaseholder;
- reflect new ownership arrangements, for example if the freehold is sold to a third party and the association itself becomes a leaseholder;
- update the lease to reflect new legislation or regulatory requirements;
- extend the term of the lease;
- correct any mistakes in the lease.

8 The Regulatory Code requires landlords to provide high standards of customer care, and that includes working to ensure that sales, staircasing or assignments are not unduly delayed, so landlords should ensure that purchasers' transactions are as straightforward as possible.

9 If legal advisers are unclear as to whether a consent is required they should contact the landlord in the first instance. It may not be possible to capture every unnecessary request for consent in this way but to minimise the costs to purchasers in terms of time and money, landlords should make every effort to ensure that lease terms are understood and that comprehensive information is available for the purchaser's legal advisers.

10 Occasionally, the Corporation receives requests from district Land Registry offices, asking for the restriction to be lifted on completion of staircasing. This should happen automatically. In the case of a freehold house, when a purchaser has staircased to 100% equity the freehold title is usually transferred and the lease falls away. In the case of a flat, when a shared owner staircases to 100% certain clauses will cease to have effect, this will include the restriction. Purchasers and their solicitors need to be aware of this, to avoid unnecessary expense and delay.

11 If you have any queries in respect of the above, please contact Mark Wagstaff in the Corporation's Regulation Division (Mark.wagstaff@housingcorp.gsx.gov.uk) or on 020 7393 2034.