



Restriction on varying the terms of a shared ownership lease

When shared ownership properties have been assisted by social housing grant, the shared owner's leasehold title at the Land Registry will be subject to a restriction worded like this:

“...no deed varying the terms of the registered lease is to be registered without the consent of the Housing Corporation of 149 Tottenham Court Road...”

Its purpose is to protect those clauses in the lease which are fundamental to shared ownership.

However, the Corporation regularly receives unnecessary applications for consent to changes that actually involve no variation of the terms of the lease. Also, the presence of this restriction on the register means that the Corporation is sometimes thought to be a landlord and so receives numerous misdirected requests for information. The following are examples of unnecessary approaches:

Re-mortgage and second charge by a shared owner

This does not need consent because a remortgage or a second charge will not actually vary any of the terms of the lease. The Corporation does not need to approve or consent to the terms of mortgage offers.

Transfer of title, including from joint to single ownership

This does not need consent because it does not actually vary any of the terms of the lease.

Request for information that a landlord or freeholder would know

The Corporation regulates housing associations but does not actually own or manage any housing itself. Therefore it cannot provide information about service charges, ground rents, staircasing shares, the current value of the property, arrears or stamp duty elections. The housing association landlord will be known to the leaseholder and will often appear as the first party to the lease in the Property Register on the extract of title. The addresses of housing associations currently registered with the Corporation are available at <http://www.housingcorp.gov.uk/server/show/nav.489>

Removing a redundant restriction

Shared ownership leases contain a provision that the clause requiring a restriction to be entered shall cease to apply upon final staircasing. This provision usually appears in the schedule on staircasing. When the shared owner staircases to full ownership, the clause falls away but the restriction remains on the register until action is taken to cancel it.

The former shared owner or their successors in title should ask the Land Registry to cancel the restriction. Land Registry advise that RX3 is the correct form for cancelling a restriction that is no longer required (not form RX4, application to withdraw a restriction). In panel 5 of form RX3, the Land Registry will expect to see reference to an enclosure of either (a) a certificate that the final staircasing has been completed or (b) confirmation that the tenant has purchased 100% of the equity.

It is not necessary for the Corporation to initiate or approve form RX3 to cancel a restriction. As the Corporation neither seeks nor receives independent notification of final staircasing sales it could not, in any case, produce the documents (a) or (b) from the paragraph above to support an application.

NB Even while the restriction exists it applies only to variations of the terms of the lease and does not prevent a remortgage (see above).

Interim and final charging orders

As its name appears in the restriction, the Corporation is served with copies of charging orders from creditors of shared owners who may ask for details of any outstanding debt.

As the Housing Corporation is not a party to the shared ownership lease, it will have no interest in or charge over the property and no debt. The restriction registered at the Land Registry exists solely to require that landlords and shared owners seek the Corporation's consent to material variations of the registered lease. Therefore the Corporation will normally have no view on proceedings to do with charging orders and would advise the creditors to pursue their enquiries with the housing association landlord.

When a consent really is needed

If a clause in the lease is to be changed, or the lease is to be extended, or the lease or plan needs to be rectified, we give consent by letter with no fee. Please write either to the Consents Section at Leicester or the Regulation Policy section at 149 Tottenham Court Road, London W1T 7BN.

Circular 12/03

Gives more information.