

HOUSING CORPORATION REGULATORY CIRCULAR



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Note: 'housing association' is used as a generic term for registered social landlords. 'Corporation' means Housing Corporation.

TITLE: **Entry of restriction at the Land Registry relating to Housing Corporation consent to vary shared ownership leases**

SUMMARY: **Instructions on the entry of an appropriate restriction on shared ownership leases, to require the Housing Corporation's consent to variations to the terms of the registered lease, and guidance on variations to the terms of existing shared ownership leases**

THIS CIRCULAR IS FOR THE ATTENTION OF:

(tick to indicate which)

- Registered Social Landlords; more than 250 properties
- Registered Social Landlords; less than 250 properties

Printed copies of this circular, and the information sheets which accompany it, are being sent to housing associations which own or manage shared ownership homes. The circular is available on the Corporation website, and is applicable to all registered social landlords.

1 Introduction

1.1 Circular 08/03, issued in October 2003, sets out the procedure for housing associations to enter a restriction at the Land Registry, to meet statutory requirements when disposing of land. As that circular explains, new arrangements have become necessary following implementation of the Land Registration Act 2002 and the Land Registration Rules 2003, which have made significant changes to the way that restrictions are entered on the title of property.

- 1.2 A further effect of the new legislation has been on the restriction which is entered when shared ownership leases are registered, to ensure that the Corporation's consent is sought to any variations to the terms of the registered lease. This restriction, which appears in the sample leases issued by the Corporation in 1989, is intended to protect public funds, in that its use alerts the Corporation to any attempt to vary the fundamental clauses of shared ownership leases (see Capital Funding Guide, section SALE-9) outside the terms of grant funding.
- 1.3 The Corporation has received advice that such a restriction can no longer be entered as part of the lease, but must be applied for separately. This circular sets out the suggested procedure, to ensure that the restriction is in place.

2 Entry of restriction on new shared ownership leases

- 2.1 For new shared ownership leases, the purchaser should apply for the restriction to be entered, as part of the completion process. Advice from the Land Registry suggests that no additional fee will be payable if application for the restriction is made at the same time as the lease is registered. Application should be made on Land Registry Form RX1. The wording to be applied for is:

‘Restriction: No deed varying the terms of the registered lease is to be completed by registration without the consent of the Housing Corporation, 149 Tottenham Court Road, London W1T 7BN.’
- 2.2 While it is possible for housing associations to apply for the restriction, legal advice suggests that, unless the purchaser's consent to the restriction in that form accompanies the application for its entry, this would be a notifiable application under the terms of the Land Registration Act 2002. This means that a notice would have to be issued to the purchaser, giving the opportunity to object to the entry of the restriction. While in practice, any such objection would probably render the lease unmortgageable, as the restriction protects the mortgagee protection clause, the sale process would be complicated and delayed by the question of notices. Accordingly, the Housing Corporation does not recommend this approach.
- 2.3 As entry of the restriction is now at one step removed from the lease, associations need to make sure that the restriction has been entered. The recommended route is that a clause be included in new shared ownership leases, requiring purchasers to

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enter the restriction as described above, and to provide proof that they have done so.

- 2.4 Clearly, it is important that associations ensure that the restriction has been entered. Proof of application will not be sufficient. Where conveyancing is handled by traditional means, the purchaser will be able to supply an office copy entry of the relevant part of the register. The Land Registry expects piloting of e-conveyancing to begin in 2006. Further guidance will be issued in due course about how the requirement to prove a restriction has been entered can be met through e-conveyancing.
- 2.5 These procedures apply only to sales of new shared ownership leases. For resales or assignment of existing leases, granted before 13 October 2003, the restriction registered at the time the lease was granted continues to have effect.

3 Variations to the terms of existing shared ownership leases

- 3.1 We are taking this opportunity to remind associations of the scope of the restriction on varying shared ownership leases. The Corporation receives a steady stream of requests for consent from purchasers' solicitors, and often these refer to matters outside the scope of the restriction for which no consent is required.
- 3.2 Variations to the terms of the lease itself will require the Corporation's consent, but the Corporation is not interested in matters which do not result in a variation of the terms of the lease. In practice, there are very few circumstances which require Corporation approval. This list is not exhaustive but, for example, **consent will be required to:**
- change 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.

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- 3.3 The Corporation's approval is **not** needed for purchasers to sell, staircase, or do any of those things which the lease allows them to do. Consent is not required for individual instances of downward staircasing, but associations should be aware of the Corporation's requirements around this, set out in the Capital Funding Guide.
- 3.4 There are two information sheets to accompany this circular. One is for purchasers, and should be included in sale information packs and with information provided on buying further shares. The other is for landlords, and should be shared with legal advisers. These sheets are also available on the Corporation website as attachments to this circular, and may be reproduced by associations in their own house format.

4 Assessing Compliance

- 4.1 The Corporation is not prescriptive about the form of lease used in shared ownership, but requires associations to include the fundamental clauses listed in the Capital Funding Guide, and expects associations to take adequate steps to ensure those clauses are protected from variation outside the terms of grant funding.
- 4.2 Associations should make sure that they have systems in place to monitor purchasers' compliance with any clause in the lease which requires purchasers to prove that they have had the restriction entered.

5 Enquiries about this circular

- 5.1 Enquiries about this circular should be directed to Regulation staff at the Corporation's field offices.