

# Shared Ownership Requirements (England & Wales)

## 1. General

- 1.1 We understand that the Borrower wishes to acquire a share of a property under an equity sharing lease. You are instructed to follow these additional instructions in addition to the general Instructions to Solicitors and Licensed Conveyancers already provided.
- 1.2 The Borrower must be acquiring a percentage of the market value of the property and will be paying a rent to the landlord in respect of the further interest in the property. The lease should provide for the Borrower to acquire further interests in the property up to 100% of its total value. This is known as staircasing. The Borrower must not hold his share upon trust with the landlord. The Lease must be granted to the Borrower alone.
- 1.3 The initial share to be purchased by the Borrower must be at least 25% based on the market value of the whole property.
- 1.4 The correct form of restriction on variation must be registered at the Land Registry at the same time as a new lease is registered, and proof of registration provided to us upon request.
- 1.5 A written undertaking, in the form of the CML model undertaking, to provide us with not less than 28 days notice of intention to commence possession proceedings, must be obtained from the landlord.

## 2. Staircasing

- 2.1 If the lease does not enable the Borrower to acquire a full 100% of the value of the property then you should revert to us for further instructions. There should be no time limits in the lease with regard to staircasing.
- 2.2 The lease must provide for a mortgagee in possession to either assign the lease or to staircase up to a full 100% of the value of the property.
- 2.3 Where the lease makes provision for the sale of a share back to the landlord, it should also provide that our consent is obtained prior to such sale.

## 3. Disposal of the Property

- 3.1 If the lease provides that, upon his disposal of property, the Borrower must assign his share to a person nominated by the landlord, then the lease must also provide that any such person must be nominated and contracts exchanged within a reasonable time. Failing this, the Borrower must be able to dispose of the property on the open market.
- 3.2 If the lease contains pre-emption rights in favour of the landlord then reasonable time limits should also be included and the landlord should pay the full market value of the shares it is acquiring.
- 3.3 There must be no obligation in the lease for the lender to release its security upon payment of anything less than the full amount of the outstanding mortgage.

## 4. Definition of Market Value

### 4.1 For Staircasing Purposes

If the Borrower acquires further shares in the property, the price of such shares will be determined by the open market value of the property at the time of the acquisition of such further shares. We will not accept any prejudicial restrictions on the definition of market value. The open market value will be assessed disregarding the following:-

- 4.1.1 Any improvements made by the tenant.
- 4.1.2 Any failure by the tenant to comply with the terms of the lease.
- 4.1.3 The rights of any third parties in the property.
- 4.1.4 Any mortgage over the property.

### 4.2 For Surrender or Assignment Purposes

There should be no onerous restrictions in respect of the market value in the event of the interest of the Borrower being assigned or surrendered. The value of any improvements should be taken into account. After surrender, the landlord should be allowed to deduct any sums due under the lease and also the cost of putting the property into good repair so long as it has been valued on the basis that the tenant has complied with the terms of the lease.

### 4.3 In the event of a Dispute

The lease should provide for a valuation by an independent expert in the event of any disagreement between the landlord and the tenant. The independent expert should be one agreed by the landlord and the tenant or one appointed by the President for the time being of the Royal Institution of Chartered Surveyors or, where the landlord is the Local Authority, the District Valuer.

## 5. Mortgagee Protection Clause

- 5.1 The Lease must contain a mortgagee protection clause which will protect us against any losses we may sustain should we have to take the property into possession, exercise our right to complete the final staircasing and assign the lease.

- 5.2 The clause should provide that the amount payable by us to complete the final staircasing shall be either:

5.2.1. the sum as calculated under the terms of the lease or

5.2.2. the sale price less the sum total of the following:  
the total principal and interest (which shall not exceed 12 months) due under the terms of the mortgage; estate agents, legal fees and other costs and disbursements incurred by us in completing the final staircasing and assigning the lease; and rent, service charge or other sums due to the Landlord or due under an endowment or mortgage protection policy

whichever is the less amount.