

AFFORDABLE HOUSING SCHEMES

GUIDANCE NOTES TO MEMBERS OF THE CONVEYANCING PANEL

INTRODUCTION

Bank of Scotland plc, Halifax Division supports Affordable Housing Schemes and our requirements for each type of scheme are set out below. As our policies are reviewed from time to time, acceptance of cases in the past is no guarantee of future acceptability and you should advise your clients accordingly.

These notes only apply if your mortgage instructions are received from **Bank of Scotland plc, Halifax Division** and do not apply if your instructions come from any other member of the Lloyds Banking Group (LBG).

Please note that conveyancers acting for **Bank of Scotland plc, Halifax Division** accept the usual responsibilities of conveyancers acting for mortgagees, including the requirements of the CML Lenders' Handbook. These notes do not detract from those responsibilities. In relation to shared ownership cases in England, these notes should be read in conjunction with the Shared Ownership: Joint Guidance compiled between the Council of Mortgage Lenders (CML), Homes & Communities Agency (HCA) and National Housing Federation (NHF), available on the CML website under "Guidance Notes" (www.cml.org.uk).

The processing unit dealing with the application will be documented in the mortgage offer. Where the nature of the affordable housing scheme differs from that detailed in the mortgage offer, you must notify the processing unit as this may affect the terms under which we are prepared to lend and require a revised mortgage offer.

All enquiries about a scheme must be in writing and include your recommendations, but do not send documents to us for approval on your behalf.

1. RE-SALE RESTRICTIONS

Restrictions on disposal or sale of a property may apply to any affordable housing scheme. For example, eligible buyers may have to live or work within a specific area and/or meet certain 'housing need' criteria. Such restrictions may have an impact on the value and/or marketability of a property, particularly for a mortgagee selling in possession. You must therefore notify your instructing processing unit of any such restrictions and ask that they are referred to the valuer, to ensure the resale restrictions have been taken into account in the valuation.

If nomination rights exist or there are any restrictions as to whom a property can be sold to, there must be strict time limits for the period within which an eligible buyer can exchange contracts / conclude missives.

The total time period within which an eligible buyer must have exchanged contracts / concluded missives must not exceed **20 weeks** from receipt of the notice indicating the customers' or (mortgagee in possession) intention to sell. The only exception to this is if it's a rural exception site (as classified in the planning conditions), an elderly person's scheme or the lease is a shared ownership lease dated before 1st January 2005. In these circumstances it is acceptable for the total time period for exchange of contracts to be extended, providing it does not exceed **24 weeks**.

If such time limits are not specified or they are outside our requirements they will only be acceptable if the provisions:-

- Do not apply to a mortgagee exercising its power of sale; OR
- Are such that, after the eligibility period has elapsed (i.e. max 20 weeks) and no buyer has exchanged/concluded missives, a mortgagee in possession can market the property, free from these restrictions.

NB: Where the lease is surrendered, the repayment sum must be received from the landlord within 24 weeks of the notice of surrender being served.

Explanation of these requirements – These requirements ensure that consideration is given to the impact these restrictions will have on the value of a property sold in possession. This enables us to obtain the best price within a reasonable time period and minimise any potential losses for both the borrower(s) and ourselves. Therefore, whilst it is acceptable for the full terms of the resale restrictions to apply to your purchaser (subject to the valuers comments), as a mortgagee selling in possession we must have the opportunity to sell free from the eligibility restrictions once our prescribed time limit has lapsed.

NB: Whilst the mortgagee selling in possession will not be bound by the resale restrictions (once the eligibility period has elapsed), any new purchaser will become subject to these restrictions on future resale, so there is no intention within our requirements to remove a property from the affordable housing eligibility criteria indefinitely.

2. RE-SALE PRICE COVENANT SCHEMES

A re-sale price covenant scheme is as follows:

- The borrower acquires a 100% ownership/legal interest in the property but pays a reduced amount (discounted purchase price) to the seller. The seller does not retain any percentage or own a share of the property.
- The discounted purchase price is provided by way of the property being subject to a "covenant", contained in both the Section 106/75 planning agreement and the transfer/lease documentation. Effectively this is a pricing restriction to ensure that the "discount" is always passed on to future buyers. (e.g. if the purchase price the borrower pays represents 75% of the market value, he will only be able to sell for 75% of the market value at the time of any future sale. This "discounted" price is the maximum any mortgagee selling in possession can obtain on resale too).
- We will only accept a scheme where the resale price is based upon a certain percentage of market value. We will not accept schemes where the resale price is based upon retail price/house prices or income index (e.g. 3 times average earnings).
- The valuation detailed in the mortgage offer documentation should be the net value (e.g. 75% of the market value) and not the full market value, as this is the maximum value the property will realise on resale. If this is not the case, you must inform the processing unit dealing with the application before the case can proceed.

The borrower may be permitted to "buy off" the restriction to enable them to sell free from the Re-sale Price Covenant. We do not require this right as part of the scheme.

2.1 Restrictions on Disposal

The same requirements will apply as detailed in section 1 and it will be acceptable for a mortgagee selling in possession to remain bound by the resale price restriction.

2.2 Definition of Market Value

2.2.1 Sale

On a sale or disposal of a property, the definition of "market value" must be the market value of the percentage the re-sale restriction allows the borrower to sell for. Unless a borrower has "bought off" the restriction, it is unlikely to give them full credit for the value of improvements. Therefore, you must ensure the borrower understands the consequences of this provision.

We will not accept any scheme which stipulates that the market value, at the time of disposal by a borrower, or at the time a borrower "buys off" the restriction, cannot be less than the initial price paid by the first buyer. Nor will we accept any scheme where the market value of a property is based on a house price index and/or an income index.

2.2.2 Purchase of Outstanding Percentage of Equity

If a borrower is "buying off" the re-sale restriction, the definition of market value must be the market value, disregarding improvements that a borrower has made to the property.

3 SHARED OWNERSHIP SCHEMES

3.1 STANDARD SHARED OWNERSHIP SCHEME

A standard shared ownership lease/occupancy agreement is where a lessee/occupant:

- purchases an initial percentage share of the property (with the landlord owning the remaining share);
- has the right to purchase/acquire additional shares in the future up to 100% ownership; and
- pays rent to the landlord in respect of the retained percentage.

NB: With the exception of Scotland and Northern Ireland a shared ownership lease MUST include a Mortgagee Protection Clause. Bank of Scotland plc, Halifax Division must have the benefit of this clause which means that you must obtain in writing, before completion, the landlord's written approval to Bank of Scotland plc, Halifax Division as lender and the terms of the mortgage. This written approval must be placed with the title documents to be sent to us after completion. See paragraph 3.4.9 for details.

3.2 FIXED SHARED OWNERSHIP SCHEME

A fixed shared ownership lease/occupancy agreement is where the lessee/occupant:

- purchases an initial percentage share of the property (with the landlord owning the remaining share);
- has **no** right to acquire additional shares in the future or may staircase only to a set level which is **less** than 100% ownership; and
- pays rent to the landlord in respect of the retained percentage.

These schemes are acceptable providing the level the lessee/occupant can staircase to does not exceed 85%.

NB: With the exception of Scotland and Northern Ireland, the Mortgagee Protection Clause required in a shared ownership lease MUST operate on an assignment of the lease even though Bank of Scotland plc, Halifax Division do not have the ability to staircase to 100% under the terms of the lease. See paragraph 3.4.9.1 for details.

3.3 SHARED OWNERSHIP SCHEME REQUIREMENTS – SCOTLAND ONLY

The following requirements apply to standard shared ownership and fixed shared ownership and must be complied with:

In Scotland, shared ownership is usually available in relation to schemes run by Registered Social Landlords (RSL). If a landlord under the shared ownership lease is not a RSL or a local authority, the bank will not agree to proceed. You must advise the processing unit if the landlord does not comply with this restriction.

In terms of these schemes the purchaser acquires ownership of a percentage share of the property concerned (25%, 50% or 75%) and is granted a right of occupancy in respect of the share remaining in the ownership of the RSL.

The purchaser grants to **Bank of Scotland plc, Halifax Division** a Standard Security over the percentage share acquired outright and enters into an occupancy agreement with the RSL. The Occupancy Agreement should provide that if the borrower defaults on the mortgage (security) then that is also a default in terms of the occupancy agreement to ensure that **Bank of Scotland plc, Halifax Division** can recover vacant possession in the event of default.

In many cases the purchaser will be entitled to increase ("staircase") their share in the property up to 100% ownership (albeit that where it is a fixed shared ownership scheme there will be a limit on the percentage that the purchaser can staircase to).

We, together with most of the RSLs operating in Scotland, have entered into arrangements whereby there is an overarching Co-operation Agreement entered into between us and the particular RSL in respect of individual developments managed by the RSL. You should check with your instructing processing unit that there is such a Co-operation Agreement in place in respect of the property in which the purchaser is acquiring a share. If a Co-operation Agreement does not exist the bank will not agree to proceed with the lending until such time as you have arranged for one to be drawn up and formally put in place.

This Co-operation Agreement is not a form of "mortgagee protection" so the lending must be limited to 75% or less of the value of the share being acquired by the applicant. If the lending required is more than 75% of the value of the share, the bank will not agree to proceed. In this scenario, you must notify your instructing processing unit and not progress any further until you receive instructions.

3.4 SHARED OWNERSHIP SCHEME REQUIREMENTS (EXCLUDING SCOTLAND)

The following requirements apply to standard shared ownership and fixed shared ownership schemes and must be complied with:

3.4.1 Status Of The Landlord

Unless the landlord under the shared ownership lease is a Registered Social Landlord/Registered Provider (RSL/RP) or a local authority, the bank will not agree to proceed. You must advise the processing unit if the landlord does not comply with this requirement.

3.4.2 Restrictions On Assignment And Surrender

There must not be any unduly onerous restrictions upon assignment or surrender of the lease.

It is common for the lease to provide that a lessee must assign to a nominee of the landlord and, in some cases, for surrender of the lease to the landlord. If nomination/surrender rights exist, the time limits set out in section 1 must be complied with.

If a scheme charges a certain percentage on surrender/assignment of the lease (e.g. 1% of the value of the property + VAT), this will be only acceptable if you make the lessee's fully aware of the implications of the clause. However, where such a clause will also apply to a lender in possession (particularly in the case of a fixed shared ownership lease, where the bank is not able to staircase to 100%), this charge/deduction will only be acceptable if it ranks after our first charge security and will only be paid by the Bank if there is sufficient proceeds remaining after repayment of the mortgage debt.

3.4.3 Staircasing (Acquiring Further Tranches In The Property)

The lease must contain satisfactory provisions to enable a lessee to acquire further shares in the property (referred to as "staircasing"). Please notify your instructing processing unit of any restriction on staircasing, in particular, the maximum percentage that the borrower may acquire under the terms of the lease. **Please refer to Fixed Shared Ownership schemes at paragraph 3.2.**

The procedures and time limits, setting out how a lessee can staircase, must be adequate and reasonable in all circumstances.

Unless the lease is a fixed shared ownership lease with no ability to staircase, the lease must provide that if a mortgagee in possession wishes to sell the property it has the choice of either assigning the lease to the buyer or staircasing to the maximum percentage and selling the increased percentage. Please note that a mortgagee in possession will derive title from the borrower and so if the lessee has the choice, the mortgagee will also have the ability to do so unless there is an express prohibition against doing so.

The borrower must assign any option to staircase under the lease to **Bank of Scotland plc, Halifax Division**. You will receive our standard form of assignment (**form L30 (plc)**) with your mortgage instructions, which must be executed before completion. It does not require registration at the Land Registry. (**NB:** the bank will only exercise these rights should we take possession of the property).

3.4.4 Reverse Staircasing

If there is the option for downward/reverse staircasing (i.e. where the landlord buys back a share in the property), there must be provision for the landlord to ensure that the offer, made by the landlord to "buy back" a share, is acceptable to the lessee's mortgagee and the landlord's mortgagee. The sale proceeds **MUST** be paid direct to the bank as the lessee's mortgagee.

3.4.5 Definition Of Market Value

3.4.5.1 Staircasing

The definition of "market value" for staircasing purposes should be the market value of the property disregarding any increase in value as a direct result of improvements made by the lessee (this is to ensure that the lessee will not be prejudiced by improving his home) and any failure of the lessee to comply with his obligations under the lease.

Where the definition of "market value" does not disregard the value of improvements made by the lessee and the RSL/RP is not willing to amend the terms of the lease/scheme to accommodate our requirements, this will only be acceptable on the understanding that you make the lessee's fully aware of the consequences of this clause, should they make any home improvements in the future.

We will not accept any further prejudicial restrictions on the definition of "market value". For example, we will not accept a lease that provides that the market value at the time of staircasing cannot be less than the initial price paid by the first buyer.

We accept that the definition of market value can disregard any mortgage of the lessee's interest; or any interest in, or right over, the property created by the lessee or any predecessor in title.

3.4.5.2 Surrender & Disposal

We do not require the lease to incorporate surrender provisions. If surrender provisions are included there must be a clear definition of market value. This definition must be assessed on the basis of a new lease for the same term with vacant possession and the value of any improvements carried out to the property by a lessee must be taken into account.

In respect of a disposal the definition must be based on the market value of the property.

If a right of pre-emption exists then the price payable must be the market value of the share the borrower owns. Please note that the mortgagee must have the right to staircase to 100% and sell at the increased percentage.

3.4.6 Notice of Mortgage to be given to the Landlord

The lease may provide that notice of a mortgage is given to the landlord within a reasonable time after completion of the mortgage, for example 28 days. You must give notice of our mortgage whether or not the lease contains such a provision.

3.4.7 Notice of Forfeiture Proceedings

Leases must provide that before a landlord can commence forfeiture proceedings, written notice must be given to the mortgagee of the lessee - 28 days' or "reasonable" notice is acceptable.

3.4.8 Possession Proceedings Under the Housing Act 1988 (England & Wales only)

If the lease is a new lease and the landlord is a housing association, it must provide that before the landlord can commence possession proceedings on the grounds set out in Schedule 2 to the Housing Act 1988 (as amended), the landlord will give the lessee's mortgagee at least 28 days' written notice of the landlord's intention to commence possession proceedings under the Housing Act 1988. **(NB:** There is no requirement for the wording in the lease to contain any reference to the Housing Act 1988).

When dealing with an existing lease which does not include the above provision, on or before completion of the mortgage, you must obtain a completed undertaking from the landlord to give **Bank of Scotland plc, Halifax Division** reasonable notice (at least 28 days) before the landlord commences legal proceedings for possession of the property under the provisions of Schedule 2 to the Housing Act 1988 (as amended). The CML has agreed with the Homes and Communities Agency a model form of undertaking to be used in these circumstances. This is attached as Appendix 1 to these notes.

3.4.9 Mortgage Protection Clause (MPC)

If the landlord is a RSL/RP, the lease should incorporate what is commonly known as the "mortgagee protection clause". See Appendix 2 for the different forms of MPC wording which is acceptable to us. Please note that we will accept slight variations to the form of wording in Appendix 2 provided that it has the same effect (equally, if it is the Homes and Communities Agency model shared ownership lease that is being used, there is no need to refer this unless the wording has been significantly varied).

The MPC provides a lender with a form of additional security in case of losses on repossession. A MPC, providing the same form of security, will be required for all schemes irrespective of whether the landlord is a RSL/RP or not.

The operation of this clause is conditional upon the landlord approving the mortgagee and the terms of the mortgage, in writing, before completion. It is your responsibility, as our conveyancer, to ensure that this approval is obtained before you use the mortgage advance. A specimen form of consent is attached as Appendix 3 for you to use. You must ensure that this written consent is placed with the title documents to the property (to be sent to us after completion).

If you fail to obtain these approvals we may be unable to rely on the MPC should we have to sell the property as mortgagee in possession. In such circumstances we may have to pursue a claim against you to recover any loss we suffer as a result of being unable to rely on the MPC.

3.4.9.1 MPC - Fixed Shared Ownership

Please note that in the case of a fixed shared ownership lease, we must be able to rely on the MPC should we have to take possession and sell the property. The MPC must, therefore, operate on an assignment of the lease even though we do not have the ability to staircase under the terms of the lease. **Please refer to Fixed Shared Ownership schemes at paragraph 3.2.**

3.4.9.2 MPC - Surrender & Pre-emption

In the case of both surrender and pre-emption provisions, **Bank of Scotland plc, Halifax Division** must be able to rely on the Mortgagee Protection Clause. It must operate on surrender/assignment of the share the borrower owns.

3.4.10 Section 442 Agreements (England & Wales only)

If the landlord is a local authority a MPC will not be included in the lease. In such cases, we require you to obtain a guarantee from the local authority under section 442 Housing Act 1985. There are occasions where the landlord was originally a local authority and is now a RSL/RP and no MPC is contained in the lease. In such a case a deed of variation will be required to incorporate a MPC (subject to paragraph 3.4.9) before you can proceed to completion.

3.4.11 Side Agreement (Northern Ireland only)

Whilst a MPC or Section 442 Guarantee will not be available in Northern Ireland, the Northern Ireland Co-ownership Housing Association (NICHCHA) will provide a Side Agreement which indemnifies **Bank of Scotland plc, Halifax division** against loss.

This side letter will be required before you can proceed to completion.

3.4.12 If there is no MPC, Section 442 Agreement or Side Agreement

We require either a MPC to be included in the lease, or a section 442 guarantee or a Side Agreement. If none of these is available, the lease cannot be varied **and** the lending is more than 75% of the value of the share being acquired by the applicant, you cannot proceed. If the lending required is 75% or less of the value of the share being acquired by the applicant, we may still be able to proceed. You must notify your instructing processing unit and must not proceed until you receive further instructions.

4. SHARED EQUITY SCHEMES

4.1 STANDARD SHARED EQUITY SCHEME

A standard shared equity scheme is as follows:

- The borrower purchases/acquires 100% ownership of the property but shares the equity in the property.
- The borrower has to fund a percentage of the full purchase price (e.g. 75%) as the remaining equity in the property is funded through an equity sharing lender.
- The balance of the purchase monies (e.g. 25%) are provided by the equity sharing lender as a loan (secured by a subsequent charge/security). There may be more than one equity sharing partner (subsequent charge/security).
- The equity sharing lender and the purchaser agree that any future change in the value of the equity in the property, on a disposal or sale, will be shared in the relative percentages (e.g. 75% for borrower and 25% for the equity sharing lender). The right of the equity sharing lender, to share in the equity, will be secured by the terms of the subsequent charge/security.
- The equity sharing lender's percentage will be repaid on disposal/expiry of the term (allowing 100% equity share for a future purchaser or the existing borrower).
- Unlike Shared Ownership, no rent is paid in respect of the equity sharing lender's percentage (as the customer owns the property outright). The equity sharing lender may charge monthly interest on their equity share.
- Some schemes give the borrower the right to increase their personal equity share prior to disposal/expiry of term by repaying the equity sharing lender's percentage (or part thereof) in incremental stages. This is acceptable but not a requirement.
- These types of scheme include both Government funded social housing schemes (e.g. Housing Associations), Co-funded social housing schemes (e.g. Government and Developers) and Private Company schemes (e.g. Developers and sometimes employers).
- Where the repayment term of a scheme is less than 25 years, the maximum share we will permit the equity sharing lender to retain is 25%. Where the repayment term is at least 25 years or is open ended, this limit does not apply.
- The repayment term of a scheme must be equal to, or greater than our mortgage term, or include a condition that allows the term to be automatically extended to be equal or be greater than our mortgage term

4.2 FIXED SHARED EQUITY SCHEME

A fixed shared equity scheme is the same as the standard shared equity scheme except that a borrower is NOT given the right to realise 100% equity share by repaying the equity sharing lender's percentage in it's entirety either prior to or on disposal/expiry of term.

4.3 SHARED EQUITY SCHEME REQUIREMENTS

The requirements apply to both standard shared equity and fixed shared equity schemes and must be met:

4.3.1 Restrictions on Disposal / Resale

The same requirements will apply as detailed in section 1.

Any registered restriction must not affect **Bank of Scotland plc, Halifax Division** as a registered mortgagee such as preventing **Bank of Scotland plc, Halifax Division** from being able to sell the property without the consent of the second lender.

4.3.2 The Subsequent Charge (protecting the percentage of retained equity)

Our formal consent to register the subsequent charge(s) in connection with a shared equity scheme is not required. You should approve the terms of the subsequent charge and arrange for notice of the subsequent charge to be served on Subsequent Loans - Secured Assets, Barnett Way, Gloucester, GL4 3RL DX 55251 GLOUCESTER (2), on completion.

Where there is more than one subsequent charge, there is sometimes a Deed of Priority drawn up between the equity sharing lenders. The bank will not be a party to such deeds but has no objection to them, providing it does not affect our first charge/standard security.

We will not agree to postpone our mortgage in respect of this or any other charge.

In Scottish cases, you must ensure that the Standard Security is first ranking and that appropriate ranking arrangements are put in place to achieve this. Any ranking arrangements must not prejudice the bank by placing any financial restrictions on our first ranking Standard Security. Where there is a separate ranking agreement entered into, that needs to be executed by the bank, please send it to Mortgage Underwriting Support, Trinity Road, Halifax, West Yorkshire, HX1 2RG.

NB: Further Advances/Additional Lending

Where an equity lender requires confirmation from the bank that no further lending will be permitted without their consent, the following information should be provided to the equity sharing lender in all cases:

- **The bank confirms that provided the notice of subsequent charge is served on us, it is our policy that no further lending will be provided by the bank without the subsequent chargee(s) agreeing to postpone their charge(s) to our further lending (this applies to all shared equity scheme lending).**

4.3.3 Repayment Terms

It is now usual for interest to be charged/be payable on the lender's equity share during the term of the 'loan'. Where this is the case, you must provide the processing unit with details of the interest terms. The processing unit will need to check that the terms are suitable and ensure any monthly interest payments have been taken into account when assessing the applicant's mortgage affordability, upon which the mortgage offer is based. These monthly interest payments will need to be included in the affordability calculation, even if the interest doesn't commence until part way through the term of the 'loan'.

A scheme including a repayment term will only be acceptable if the scheme term is equal to, or greater than, our mortgage term, or include a condition that allows the term to be automatically extended to be equal or be greater than our mortgage term.

If, prior to the repayment date for the loan, there is an option to purchase a further percentage of equity or repay part of the 'Repayment Sum' by instalments, this will only be acceptable if, as a minimum, the final instalment is based on the 'Market Value' as detailed in paragraph 4.3.4. If it is solely based on the original amount retained by the shared equity lender, this is not acceptable.

You must ensure that the cumulative total borrowing does not exceed 100% of the value or purchase costs. If it does, you must notify your instructing processing unit and not complete without our written approval.

4.3.4 Definition of Market Value on Disposal/Purchase of Outstanding Percentage of Equity

On a sale/disposal of the property, the borrower/mortgagee in possession must be entitled to receive a sum based upon the full market value of the property.

When ascertaining the repayment sum payable to the shared equity lender, the definition of "market value" should disregard any increase in the overall value of the property as a direct result of improvements made by the borrower (this is to ensure that the borrower will not be prejudiced by improving his home). The shared equity lender must only be entitled to a percentage of the market value in relation to the percentage share secured by way of the second charge.

Where the definition of "market value" does not disregard the value of improvements made by the borrower and the shared equity lender is not willing to amend the terms of the scheme/'loan' to accommodate our requirements, this will only be acceptable on the understanding that you make the applicants fully aware of the consequences of this clause, should they make any home improvements in the future.

We will not accept a scheme which provides that the repayment sum, at the time of disposal by the borrower or acquisition by the borrower of the retained interest of the equity sharing lender, cannot be less than the initial amount secured by the second charge. Nor will we accept any scheme where the market value of a property is based on a house price index and/or an income index.

5. DECLARATION OF TRUST SCHEMES

A Declaration of Trust Scheme is where:

- the property is purchased in the joint names of the borrower and the seller, as tenants in common, and
- a declaration of trust in the transfer document sets out the basis on which a property is held as between the borrower and the seller and sets out what percentage of the sale price must be paid to the seller on a sale/disposal of the property.

We will only lend on this type of scheme where the seller is a Registered Social Landlord/Registered Provider or a local authority.

We accept this type of scheme provided that both the borrower and the seller execute the mortgage deed, to ensure that we will obtain a valid mortgage. Please write to Mortgage Underwriting Support, Trinity Road, Halifax, West Yorkshire, HX1 2RG to obtain the appropriate mortgage deed to be used in these circumstances.

In approving a Declaration of Trust Scheme you must ensure that the terms of the Scheme do not adversely affect or prejudice a mortgagee selling the property in possession (see section 1).

6. KEY WORKER SCHEMES

Key worker schemes form a part of the affordable housing market, generally these will fall within the terms of one of the scheme types set out in these guidance notes. You must approve the scheme terms in accordance with the relevant section, along with the points mentioned in this section.

Where the scheme states that the property can only ever be disposed of to a "Key Worker", please let the processing unit know the definition of "Key Worker" so that we can refer this to our valuer to see whether this impacts on the marketability and value of the property.

Some schemes state that if the borrower is no longer a Key Worker (e.g. because they have left their employment) they have a limited period within which to sell the property/repay any loan, as they are no longer entitled to be on the scheme. This is acceptable as long as the limited period is at least 2 years.

7. LEASEHOLD SCHEMES FOR THE ELDERLY

We class an elderly person's lease as a lease, under which:

- the applicant acquires the lease at a discounted price, usually 75% of the market value; and
- there is an age restriction affecting future buyers of the property (e.g. 55 and over).

If it is also linked to one of the other affordable housing schemes, then all requirements (not solely those detailed in this section) will apply.

7.1 Assignability/Surrender Provisions

An absolute prohibition against assignment in a lease is unacceptable unless there are satisfactory surrender provisions. Please refer to section 1 and paragraphs (3.4.2) and (3.4.5.2).

In some leases the landlord is entitled to make deductions from the consideration to be paid upon a surrender of the lease. These deductions often relate to matters such as essential repairs required to the property if the tenant has failed to comply with his repairing obligations under the lease, the landlord's costs in connection with the surrender of the lease, any service charge or ground rent arrears and contributions to a sinking fund. Any such deductions specified in the lease must be reasonable and not unduly excessive. By way of guidance a deduction of 1% of the consideration is not considered unreasonable.

We will not accept a scheme where there is a deduction of a certain percentage (e.g. 1% of the value of the property for every year the lessee has owned the property), which will be deducted from the surrender value before the lender receives the money from the landlord.

The lease must expressly provide that any mortgage the tenant may have over the lease must be repaid out of the repayment sum before the tenant is given the balance of any moneys due. The lease should also contain a provision that it cannot be determined until such time as any mortgage on the property has been repaid in full.

7.2 Notice of Forfeiture Proceedings

Please refer to paragraph 3.4.7.

If the lease can be forfeited on the grounds of the mental incapacity of the tenant it must be provided that before a landlord can apply for forfeiture on these grounds he must produce written independent medical evidence in support of his contention.

7.3 Notice of Mortgage to be given to the Landlord

Please refer to paragraph 3.4.6.

7.4 Restrictions on Disposal / Resale

The same requirements will apply as detailed in section 1 and it will be acceptable for a mortgagee selling in possession to remain bound by the elderly persons lease age restriction.

Appendix 1

Model Form of Undertaking (Clause 3.4.8)

Leaseholder:
Landlord:
Property:
Lease:
Lender:
Mortgage Account No:

In consideration of the Lender granting a mortgage, secured on the Property, to the Leaseholder, the Landlord undertakes not to commence any proceedings for obtaining possession of the Property under any of the grounds in Schedule 2 of the Housing Act 1988 without: -

- a) giving the Lender not less than 28 days notice in writing of their intention to commence proceedings; and
- b) if within such a period of 28 days (or within such other period specified in the notice period, if longer), the Lender indicates in writing to the Landlord that it wishes to remedy such breach, or is going to take such action as may be necessary to resolve the problem complained of by the Landlord, giving the Lender such time as may be reasonable (in view of the nature and extent of the breach/problem) to take such action.

Signed.....

Dated.....

Example 1 - Mortgagee Protection Clause pre 6/4/2010 (Clause 3.4.9)

If a mortgagee of the Leaseholder (who shall have been approved and the terms of the mortgage to such mortgagee shall have been approved by the Landlord in writing prior to the Mortgage) exercises the right to complete the final Staircasing (pursuant to Paragraph 2 of the Fifth Schedule) and assigns this Lease and the sale price obtainable upon such assignment after adding the amount realised or realisable by the said mortgagee from any collateral security (in aggregate in this clause called "the Sale Price") is insufficient to meet:-

- (a) the total principal (which shall not include any capitalised interest) and not exceeding 12 months unpaid interest due to the mortgagee under the terms of the mortgage
 - (i) disregarding
 - A. any part of the mortgagee's initial advance to the Leaseholder which was in excess of the Premium or in the case of an assignment was in excess of the Market Value (as defined in the Fifth Schedule hereto) of the Percentage of the Premises assigned to the Leaseholder as at a date no more than twelve weeks prior to the date of exchange of contracts for the assignment and for the purposes of this clause the Market Value shall be assessed by the Valuer and evidenced by a Certificate in writing in such a form as may be approved from time to time by the Housing Corporation which shall be sent to the Landlord with the details for the assignment pursuant to Clause 3(17) hereof; and
 - B. any further advances made by the mortgagee of the Leaseholder at his request unless such further advance is made to enable the Leaseholder to pay for a Portioned Percentage (as hereinafter defined) pursuant to the provisions of Clause 2 and the Fifth Schedule hereto and does not exceed the amount paid by the Leaseholder for such Portioned Percentage or such further advance is made to enable the Leaseholder to comply with his covenants contained in this Lease and accordingly to preserve the mortgagee's security or such further advance is made to enable the joint leaseholder to purchase the interest in this lease of the other joint Leaseholder and the further advance does not exceed the Market Value (as defined in the Fifth Schedule hereto) of the interest assigned as at a date no more than twelve weeks prior to the date of exchange of contracts for the assignment and for the purposes of this Clause the Market Value shall be assessed by the Valuer and evidenced in writing in the same manner as described in paragraph A above; but
 - (ii) including any payment of Specified Rent, Service Charge or other monies due hereunder by the Leaseholder to the Landlord and including any monies outstanding in respect of any premiums paid or provided by the mortgagee by way of a loan or otherwise under a mortgage protection life policy or an endowment policy and secured by the mortgage

- (b) any reasonable legal charges incurred by the mortgagee in recovering or attempting to recover any sums due under the mortgage or in respect of completion of the Final Staircasing and the assignment of this Lease Except if the relevant work shall be undertaken by an employee of the mortgagee in which case a reasonable allowance for such work
- (c) any reasonable agent's commission on such sale Except if the relevant work shall be undertaken by an employee of the mortgagee (which expression shall not include any employee of an estate agency owned by the mortgagee) in which case a reasonable allowance for such work
- (d) any other costs or expenses (other than the mortgagee's internal costs of administration) reasonably incurred by the mortgagee in connection with the protection of the security or the completion of the Final Staircasing and the assignment of this Lease except if the relevant work shall be undertaken by an employee of the mortgagee in which case a reasonable allowance for such work
- (e) the price payable upon completion of the Final Staircasing under the provisions of the Fifth Schedule hereto

the said price payable upon completion of the Final Staircasing shall be such sum as equals the amount of the Sale Price less the aggregate of the sums referred to in sub-clauses (a) (b) (c) and (d) hereof

PROVIDED ALWAYS the person primarily liable for the moneys due to the mortgagee as above referred to shall pay to the Landlord on demand with interest calculated in accordance with the provision of Clause 3(1) hereof such amount by which the said sum payable under the provisions of Paragraph 2 of the Fifth Schedule hereto has been reduced.

NB: It is acceptable for an RSL/RP to want product fees and administration fees (such as the "Mortgage Account Fee") excluded from the Mortgagee Protection Clause, so where this is the case there is no need to refer this to the processing unit.

Example 2 - Mortgagee Protection Clause introduced 6/4/2010 (Clause 3.4.9)

MORTGAGEE PROTECTION

If a Mortgagee enforces its security in respect of the Loan then (subject to the other provisions of this Clause X) the Mortgagee is entitled to deduct the amount of the Mortgagee Protection Claim from monies that would otherwise be paid to the Landlord as the price for the Final Staircasing. There is no obligation on a Mortgagee to accomplish Final Staircasing.

The deduction under Clause XX is conditional upon the Mortgagee agreeing simultaneously with the deduction under Clause XX that upon such deduction or, if later, promptly upon the Mortgagee recovering the whole of its Loss, the Mortgagee shall assign to the Landlord any guarantees, insurance policies and any other collateral security given to the Mortgagee or secured by the Mortgagee in respect of the Loan together with all other rights to enforce the same and all sums payable under them.

A claim may only be made to the extent:

- the Mortgagee has made a Loss; and
- the Mortgagee has obtained the Landlord's consent to the terms of each and every Loan; and
- the disposal of the Leaseholder's interest in the Premises was made on an arm's length basis at the best price reasonably obtainable in the market at the time of sale. For the purpose of this Clause XX the onus of proof is on the Landlord to show the sale was at an undervalue; and
- the Leaseholder has not, prior to any default occurring under the Loan, accomplished Final Staircasing.

When applying for the Landlord's consent under Clause XX the Mortgagee must provide full details of the terms of the proposed Loan. The Landlord must respond promptly to any request for consent and give its decision within 28 days. If such consent is given it must be given in writing, and must be retained by the Mortgagee. In addition such consent shall be deemed to be given in the event that the Landlord receives any amounts advanced by the Mortgagee which are applied in protecting, preserving or enforcing its security over this Lease (including any amounts advanced by the Mortgagee and applied in discharging any arrears of rent and/or other sums payable under this Lease).

If the Landlord makes a payment to the Mortgagee or a deduction is made by the Mortgagee the Landlord shall be entitled to claim against the Leaseholder for any such amount together with interest on such sum calculated in accordance with the provisions of Clause XX).

The Leaseholder hereby authorises:

- the Landlord to disclose to any Mortgagee of the Leaseholder from time to time personal information relating to the Leaseholder or to the provisions of this Lease (including details of any arrears of rent or other sums payable under this Lease); and
- any Mortgagee from time to time of the Leaseholder to disclose to the Landlord such information as the Landlord may request regarding the Leaseholder and the Loan (including details of any arrears).

DEFINITION OF MORTGAGEE PROTECTION CLAIM

“Mortgagee Protection Claim” means the Loss capped at a maximum of the aggregate of:

- (a) an amount equivalent to interest on the Loan for a period of 18 months from the Enforcement Date at the interest rate applicable to the Loan immediately before the Enforcement Date;
- (b) the Loan;
- (c) any amounts advanced by the Mortgagee and applied in discharging any arrears of rent and/or other sums payable under this Lease; and
- (d) any costs and fees incurred in enforcing the Mortgagee’s security for the Loan (capped at 3% of Market Value at the time of such enforcement).

Appendix 3

Model Form of Consent for Mortgagee Protection Clause (Clause 3.4.9)

BANK OF SCOTLAND PLC, HALIFAX DIVISION

Shared Ownership: Landlord's Approval of Mortgage - Mortgagee Protection Clause

The account number:	
The lender:	<i>Bank of Scotland plc, Halifax division 1 Lovell Park Road, Leeds, West Yorkshire, LS1 1NS</i>
The borrower:	
The mortgage:	The mortgage over the property dated _____ and made between the borrower and the lender.
The landlord:	
The shared ownership lease:	The lease dated _____ and made between the landlord (1) and (2)

In the shared ownership lease there is a mortgagee protection clause. For the purposes of that clause the landlord acknowledges that the terms of the mortgage have been disclosed. The landlord confirms that:

- the landlord approves of the lender as mortgagee of the property.
- the landlord approves the terms of the mortgage.

Signed.....
for and on behalf of the landlord

Date