

CORNWALL
HOUSING

HRA

Shared Ownership Policy

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PART OF THE
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A CORNWALL
COUNCIL COMPANY

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Policy guidance and advice contact details

Directorate	Service Area	Name of policy developer	Contact number	Email address
Landlord Services				

Notes

Legal influences on this policy

Commonhold and Leasehold Reform Act 2002

Housing Act 2004

Statutory Instrument – 2013 no 1036 – Transfer of Tribunal Functions

Non-legal influences on this policy

Other documents linked to this policy

CC- CHL Management Agreements

HRA Shared Ownership Precedent Lease

HRA Shared Ownership Income Management procedure

HRA Shared Ownership Alterations and Improvements procedure

HRA Shared Ownership Staircasing procedure

HRA Shared Ownership Subletting and Lodging procedure

HRA Shared Ownership Initial Sales Procedure.

HRA Shared Ownership Resales Procedure – to be developed

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1. Summary:

- 1.1 This Policy has been developed in order to define how Cornwall Housing, (CHL), will manage shared ownership leases for Cornwall Council (CC), Housing Revenue Account (HRA), shared ownership properties.
- 1.2 The policy provides an over view, supported by procedures, across all areas of shared ownership management, from the point of sale, if an existing HRA property, or from the point of sale if a newly developed HRA property.
- 1.3 This includes:
- Breaches of Lease
 - Purchase of additional shares – Staircasing (reference to Reverse Staircasing)
 - Resales administrative processes - (currently under development)

2. Background

- 2.1 Shared ownership is a new management function for CHL, and the purpose for the policy is to give staff and customers clarity on how shared ownership units will be managed.
- 2.2 For the purpose of this policy the shared ownership units referred to are managed on behalf of CC, as part of the HRA housing stock. CHL are responsible for pre-initial resale if an existing HRA property, and from the point of sale if a newly developed HRA property, and any following staircasing. Any future non-HRA shared ownership properties are dealt with under a separate policy, due to the differing management agreement(s).
- 2.3 Sales of developments delivered under the Housing Development programme, or the HRA Development Programme are dealt with under the HRA Shared Ownership Initial Sales Procedure, which is governed by the Cornwall Council Local Sales Plan as appropriate to each scheme, and the Service Level Agreement with Help to Buy South.

3. Objectives

- 3.1 The objective of this policy is to ensure that shared ownership units are dealt with in a consistent and fair way that reflects the requirements of the CC – CHL management agreement and legislative and regulatory requirements, whilst offering high levels of customer service.

- 3.2 The aims of the policy will be that CHL calculates and maximises collection of all shared ownership rents and service charges, and manages the leasehold agreements, including the purchase of addition shares while:
- Meeting all responsibilities to leaseholders (for the purpose of this policy 'leaseholders' refers to shared ownership leaseholders), under the terms of their lease
 - Ensuring value for money is achieved in the provision of the management fee
 - Collecting from leaseholders all monies due from them under the terms of their lease, and offering support, advice and information to anyone having difficulty in making a payment
 - Repaying, in a timely manner, all monies and refunds due to leaseholders
 - Making details of the management costs available to leaseholders
 - Ensuring that leaseholders uphold the covenants in their leases, particularly with regard to harassment, neighbourhood nuisance and other actions taken by them that are likely to affect other residents
 - Ensuring that leaseholders have access to a range of tenancy management services that are, as far as possible, aligned to those available to non-leasehold tenants of CC

4. Scope

- 4.1 This policy covers all aspects of shared ownership leasehold management on behalf of CC. Post initial sale – see 2.3 above

5. Policy

5.1 What is a 'shared ownership' leaseholder?

- 5.1.1 A leaseholder (i.e. shared owner) is someone who meets the financial eligibility, and in some cases local connection criteria, to be able to purchase a share of a property, and pay rent on the remaining share for a fixed number of years. Although the term is fixed at the start of the lease, it decreases every year until it expires at which time the property reverts to CC, ('the landlord').
- 5.1.2 The leaseholder can buy further shares in the property at the market value of those shares at the time of purchase. Buying further shares is referred to as staircasing. Normally when the leaseholder owns 100% he or she can acquire the freehold of the property at no extra cost. This may not apply if the property is in a protected area where the staircasing may be capped at 80% or the leaseholder may be able to acquire the freehold but be obliged to offer the property back to the landlord if they decide to sell.
- 5.1.3 In order to meet the financial criteria, the purchasers must have insufficient income or available resources to be able to afford the outright purchase of satisfactory housing at current market prices, but must have sufficient savings or income to meet the

associated cost of purchasing the initial share in the property and to pay the rental element without financial hardship. When making the initial purchase, CHL will carry out an affordability check.

5.2 What is the lease?

5.2.1 The lease is a contract between CC, (the landlord), and the shared ownership leaseholder. It sets out the respective rights and responsibilities of each party. The lease is a legally binding contract and enforceable by law. Current legislation may override the lease if there have been legislative updates since the lease commenced.

5.3 Shared Ownership Leaseholder's Rights

5.3.1 CHL is bound by the terms of its management agreement with CC, which in turn makes CHL bound by the terms of the shared ownership lease.

5.3.2 The lease will include information about:

- The Parties to the lease
- The market value of the whole property at the time of purchase, the amount the shared owner is paying and the percentage bought
- The rent to be paid, how this is determined, when payment is due and how it will be reviewed
- The arrangement for collecting contributions to additional charges, (service charges and any estate management/maintenance costs)
- The procedures to purchase additional shares in the property,(staircasing)
- The process to assign or transfer the lease
- The restrictions on 'sub-letting' the property
- The responsibilities of the leaseholder, in respect of repair, decoration, servicing and alterations to the property
- The grounds for the landlord, or its agent, CHL, ending the lease by forfeiture or re-entry.
- Details of the responsibilities of both the leaseholder and CC, (the Landlord), and its agent, CHL.

5.4 Rental Element

5.4.1 Leaseholders will pay rent to CC on the remaining share they do not own. CHL, under their contract with CC, are responsible for managing rent collection on all CC Leases.

5.4.2 CC will ensure that any rent payable will be calculated to be affordable in line with rent setting guidance.

- 5.4.3 The rents will be reviewed every year. The reviewed rent will be increased in line with any proportionate increases in the retail prices index (RPI). The rent will be reviewed on an 'upward only basis'. This means that the rent will not go down when it is reviewed. However, any increase in the rent will be capped at a figure representing the RPI plus 0.5%. This means that where the RPI is zero or negative at the time of review, the most the rent can increase by is 0.5%.
- 5.4.4 CC will decide what the increased rent figure will be, in line with section 5.4.3 above; but must also comply with schedule 4 of the Lease
- 5.4.5 CHL will provide the leaseholders with written notice of the review, as detailed in the lease.

5.5 Services

- 5.5.1 Where services are provided to shared ownership properties, these will be referenced in the lease, and charges will be set and administered in accordance with current legislation.

5.6 Building Insurance

- 5.6.1 Leaseholders will be provided with copies of the relevant building insurance policy.

5.7 Accounts

- 5.7.1 Individual computerised accounts will be created for each leaseholder. Each account will be credited with the rental income, and debited with rent, buildings insurance, service charges, (if applicable), and management fee charges. A six monthly statement will be produced for each account.
- 5.7.2 In line with legislation when a demand for payment is issued a summary document explaining Leaseholder Rights and Obligations (Service Charges) will also be issued. (See Appendix 1).

5.8 Rent Arrears

- 5.8.1 Any leaseholder who falls behind with payments will be contacted promptly by the income management team, and appropriate action will be taken in accordance with the Shared Ownership Income Management Procedure.
- 5.8.2 The procedure takes into account the best practice published by the Council of Mortgage lenders.
- 5.8.3 Interest is payable under clause 3.2 of the shared ownership lease and may be applied once a period of 14 days from the due date has passed.
- 5.8.4 CHL will be responsible in their actions to make sure that anyone experiencing difficulties in making rent or mortgage payments is referred to a CHL Inclusion Advisor to provide advice on welfare benefits and indebtedness.
- 5.8.5 Where CHL is satisfied that appropriate courses of recovery action have been taken by staff and rent and charges remain unpaid, legal proceedings will be considered for

persistent failure to pay rent, including forfeiture (possession) in accordance with the lease.

- 5.8.6 CHL will act reasonably and only take possession action where there is no other reasonable alternative, and all other avenues to maintain the shared owner in their home have been exhausted.

5.9 Disputed Charges

- 5.9.1 CHL will take a proactive approach to the resolution of disputes, by ensuring queries are dealt with as quickly as possible, to minimise customer dissatisfaction
- 5.9.2 To ensure we provide the same standards of customer care as we offer to tenants and Right to Buy Leaseholders, CHL's corporate complaints policy will be followed.
- 5.9.3 In appropriate cases CHL will sign post the complainant to the First-Tier tribunal (Property Chamber), for guidance and a ruling. CHL will advise CC of all such cases.

5.10 Overpayments

- 5.10.1 All overpayments of rental charges will automatically be carried forward to the next financial year. Any repayment of overpaid charges will be considered on an individual basis.
- 5.10.2 If a leaseholder sells their home during the year, then a refund of any credit balance will be provided.

5.11 Repairs

- 5.11.1 The leaseholder is solely responsible for the maintenance of the property. This includes the maintenance of gardens, any fences, walls or hedges.
- 5.11.2 In addition to the repairs the leaseholder is also responsible for arranging for all gas installations within the property to be serviced
- 5.11.3 Shared owners will be required to contribute to any estate maintenance, repairs and improvements, dependant on the requirements detailed in their lease. If qualifying works will result in that contribution being more than £250 (including VAT), the Landlord will be required to carry out a consultation under section 20 Landlord and Tenant Act 1985. Failure to do so will result in the contribution being 'capped' at £250.

5.12 Alterations and Improvements

- 5.12.1 Under the terms of the CC shared ownership lease structural alterations and improvements are prohibited without the prior written consent of the landlord. CHL will consider the request to carry out alterations or improvements on a case by case basis.
- 5.12.2 Leaseholders must not make any alterations or additions to the property without written approval from CHL.

- 5.12.3 Any leaseholder wishing to carry out alterations or additions to their home must first submit full details of the proposed work to CHL.
- 5.12.4 Each request will be looked at on its own merits and will be formally responded to by CHL, following the Alterations and Improvements procedure. Alterations and improvements that relate to welfare adaptation or an evidenced household need will be amongst the factors considered.
- 5.12.5 Any refusal of the proposed alteration or improvements will be accompanied by a full written explanation
- 5.12.6 There is no appeals process. The terms of the lease will be referred to on all occasions.

5.13 Purchase of additional shares ('Staircasing')

- 5.13.1 Leaseholders can purchase additional shares at any time following the initial purchase. When making further purchases of shares, each additional share acquired must not be less than 10% and not more than 25%, of the market value of the property at the time the application to purchase additional shares are made. Under schedule 5, clause 1.9 the cost of the determination by a valuer shall be paid by the leaseholder to the landlord on demand.
- 5.13.2 As Leaseholders buy further shares the rent will be reduced proportionately to reflect the fact that CC's interest in the property has reduced. The purchase of additional shares will follow CHL's 'Staircasing procedure'

5.14 Flexible Tenure (Reverse Staircasing)

- 5.14.1 Any leaseholder who falls behind with mortgage payments or rent payment and could potentially lose their home *may* be considered for a flexible tenure.
- 5.14.2 Flexible tenure is designed to enable a shared owner to remain in their home either by selling some of their shares back to their landlord, in order to reduce their mortgage to a more affordable and sustainable level, or by selling all of their shares back to the landlord and becoming a tenant renting the whole property.
- 5.14.3 There is no right to flexible tenure, and each case will be considered on an individual basis, with CC's decision being final. There is no appeals process and the terms of the lease will be referred to on all occasions.

5.15 Sale of Share – Assignment or Transfer

- 5.15.1 A Leaseholder can sell his/her share at any time, but must follow the procedures within the lease. In some circumstances, the landlord has a right to nominate a purchaser or approve the eventual buyer.
- 5.15.2 CHL is currently developing its resales procedure.

5.16 Additional borrowing and change in lender

- 5.16.1 The lease doesn't prevent a leaseholder from obtaining additional borrowing; however any further borrowing is subject to CHL approval in liaison with advice from CC Legal

and the terms of the Mortgage Protection Clause (MPC), which protects the mortgage company and is a fundamental clause in the shared ownership lease.

- 5.16.2 There is no specific procedure in the case of additional borrowing or change of lender, only principals that should be adhered to as each case will be different.
- 5.16.3 CHL will approve, in writing, all requests to change a lender as long as the leaseholder's legal representative confirms that the sum being borrowed has not increased from the sum owed to the previous lender, (i.e. no additional lending) and that the terms of the mortgage are in CHL's opinion reasonable, given current market conditions and that the original shared owners are still on the new mortgage. CHL will seek legal advice from CC's Legal Department prior to any approvals.
- 5.16.4 Under the terms of MPC only certain advances are protected so it is unlikely that a lender will loan a leaseholder additional funds for anything other than:
- The premium lent to purchase that initial share
 - Further borrowing to enable the purchase of additional shares (staircasing)
 - Further borrowing to comply with the leaseholder covenants in the shared ownership lease such as essential repairs; and
 - Further borrowing to allow the leaseholder to buy out another leaseholder's interest, (in the same property), and any further borrowing does not exceed the market value of the leaseholders share in the property.
- 5.16.5 In terms of Loans given to prevent forfeiture the MPC only applies where the landlord has consented to the terms of each and every loan, so a lender would need to request specific consent to the terms before paying off rent arrears as a loan in order to use the MPC.
- 5.16.7 All additional borrowing should be for repairs to the home only e.g. a replacement boiler, but not for improvements like a conservatory.
- 5.16.8 CHL will not approve additional borrowing for the consolidation of additional debt, the purchase of a car or holiday etc.
- 5.16.9 All requests for additional borrowing for replacement will be thoroughly investigated with technical advice and reports sought as required.

5.17 Subletting and lodging

- 5.17.1 The shared ownership lease prohibits sub-letting. This stops the leaseholder from having the right to sub-let. However, CHL may agree to sub-letting or lodging arrangements if they choose to do so in exceptional circumstances. Exceptional circumstances may include the prevention of homelessness or financial hardship. However this may require a deed of variation to the lease, and CHL should seek CC legal advice prior to any approvals.
- 5.17.2 This is to protect public funds from misuse and to ensure that applicants are not entering into shared ownership for financial gain, apart from the creation of equity.

5.17.3 In all cases of sub-letting or lodgers must be approved by the appropriate Housing Management Officer in liaison with CC Legal services. The principles detailed in the subletting and lodging procedure will be referred to in all cases.

5.18 Breaches of Lease

5.18.1 CHL will take appropriate action whenever it becomes aware that a leaseholder is acting in breach of the terms of their lease, which may include:

- Non-payment of rental income for 21 days after becoming payable
- Unapproved works to the home or building
- Improper use of the home or building
- Failure to maintain or damage to the premises
- Refusal of access to CHL staff
- Antisocial behaviour including harassment or neighbour nuisance.

5.18.2 In all cases CHL will work with the leaseholder to resolve the issue. However, if the breach continues legal action could be taken which may include seeking an injunction, or action for the forfeiture of their lease.

5.19 Leaseholder involvement

5.19.1 CHL aims to; make customers at the heart of all the services it provides; be a learning and listening organisation; provide services that people want; and to meet the needs of our diverse communities. Customers need to be at the heart of all we do.

5.19.2 CHL will provide leaseholders with opportunities for participation and involvement on a similar basis to those offered to RTB leaseholders.

5.20.3 CHL will work with leaseholders to provide leaseholders the opportunity to share information and ideas, to influence services provided to them and to provide the opportunity to discuss issues that are important to Leaseholders.

5.21 Performance monitoring and reporting.

5.21.1 CHL will regularly monitor service provision, associated costs and performance in collecting shared ownership income to report to CC in line with the management agreement KPI's.

5.22 Feedback

5.22.1 Any dissatisfaction or complaints received in any format will be responded to within 10 working days. If the leaseholder is unhappy with any area of service provided, the issue will be progressed through CHL's complaints process, if the issue cannot be dealt resolved to the leaseholder's satisfaction at that stage.

5.24 Auditing

5.24.1 Income and Expenditure will be reconciled on an annual basis.

6. Policy Management

- 6.1 The delivery of this policy and associated procedures is the responsibility of the Managing Director of CHL, the wider Executive Leadership Team and service delivery teams
- 6.1.1 CHL will develop procedures which will ensure effective implementation of this policy and provide training for staff to ensure that they fully understand the wider issues surrounding shared ownership, and the surrounding legislative framework and procedures.
- 6.1.2 If at any time any issues with the effective operation of the policy or associated procedures they will report this to the policy owner. This feedback will be incorporated into the policy/procedure review process.

7. Breaches and Non-Compliance

- 7.1 Any breach of or non-compliance with this policy by a member of staff may be dealt with under CHL's normal disciplinary procedures or by further training and mentoring of the staff member depending on the severity of the breach or non-conformance.

8. How the impact of the policy will be measured

- 8.1 The impact of this policy will be measured by any management agreement key performance indicators, which will be regularly monitored by staff and regularly reported in line with the CHL/CC management agreement, and levels of upheld complaints.

9. Evaluation and review

- 9.1 This policy will be reviewed within 6-12 months of its implementation and be reviewed at least every 3 years or sooner if there is a change in legislation, regulation or best practice guidance affecting service charges.

Appendix 1

Service Charges – Summary of tenants’ rights and obligations

(1) This summary, which briefly sets out your rights and obligations in relation to variable service charges, must by law accompany a demand for service charges. Unless a summary is sent to you with a demand, you may withhold the service charge. The summary does not give a full interpretation of the law and if you are in any doubt about your rights and obligations you should seek independent advice.

(2) Your lease sets out your obligations to pay service charges to your landlord in addition to your rent. Service charges are amounts payable for services, repairs, maintenance, improvements, insurance or the landlord’s costs of management, to the extent that the costs have been reasonably incurred.

(3) You have the right to ask a leasehold valuation tribunal to determine whether you are liable to pay service charges for services, repairs, maintenance, improvements, insurance or management. You may make a request before or after you have paid the service charge. If the tribunal determines that the service charge is payable, the tribunal may also determine—

- who should pay the service charge and who it should be paid to;
- the amount;
- the date it should be paid by; and
- how it should be paid.

However, you do not have these rights where—

- a matter has been agreed or admitted by you;
- a matter has already been, or is to be, referred to arbitration or has been determined by arbitration and you agreed to go to arbitration after the disagreement about the service charge or costs arose; or
- a matter has been decided by a court.

(4) If your lease allows your landlord to recover costs incurred or that may be incurred in legal proceedings as service charges, you may ask the court or tribunal, before which those proceedings were brought, to rule that your landlord may not do so.

(5) Where you seek a determination from a leasehold valuation tribunal, you will have to pay an application fee and, where the matter proceeds to a hearing, a hearing fee, unless you qualify for a waiver or reduction. The total fees payable will not exceed £500, but making an application may incur additional costs, such as professional fees, which you may also have to pay.

(6) A leasehold valuation tribunal has the power to award costs, not exceeding £500, against a party to any proceedings where—

- it dismisses a matter because it is frivolous, vexatious or an abuse of process; or

- it considers a party has acted frivolously, vexatiously, abusively, disruptively or unreasonably.

The Lands Tribunal has similar powers when hearing an appeal against a decision of a leasehold valuation tribunal.

(7) If your landlord—

- proposes works on a building or any other premises that will cost you or any other tenant more than £250, or
- proposes to enter into an agreement for works or services which will last for more than 12 months and will cost you or any other tenant more than £100 in any 12 month accounting period, your contribution will be limited to these amounts unless your landlord has properly consulted on the proposed works or agreement or a leasehold valuation tribunal has agreed that consultation is not required.

(8) You have the right to apply to a leasehold valuation tribunal to ask it to determine whether your lease should be varied on the grounds that it does not make satisfactory provision in respect of the calculation of a service charge payable under the lease.

(9) You have the right to write to your landlord to request a written summary of the costs which make up the service charges. The summary must—

- cover the last 12 month period used for making up the accounts relating to the service charge ending no later than the date of your request, where the accounts are made up for 12 month periods; or
- cover the 12 month period ending with the date of your request, where the accounts are not made up for 12 month periods.

The summary must be given to you within 1 month of your request or 6 months of the end of the period to which the summary relates whichever is the later.

(10) You have the right, within 6 months of receiving a written summary of costs, to require the landlord to provide you with reasonable facilities to inspect the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them.

(11) You have the right to ask an accountant or surveyor to carry out an audit of the financial management of the premises containing your dwelling, to establish the obligations of your landlord and the extent to which the service charges you pay are being used efficiently. It will depend on your circumstances whether you can exercise this right alone or only with the support of others living in the premises. You are strongly advised to seek independent advice before exercising this right.

(12) Your lease may give your landlord a right of re-entry or forfeiture where you have failed to pay charges which are properly due under the lease. However, to exercise this right, the landlord must meet all the legal requirements and obtain a court order. A court order will only be granted if you have admitted you are liable to pay the amount or it is finally determined by

a court, tribunal or by arbitration that the amount is due. The court has a wide discretion in granting such an order and it will take into account all the circumstances of the case.”

Alternative formats

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Address

Cornwall Housing Ltd
Chy Trevail
Beacon Technology Park
Bodmin
Cornwall
PL31 2FR

Telephone

General enquiries: **0300 1234 161**

Text: **07941 712 712**

Email

General enquiries: info@cornwallhousing.org.uk

Website

www.cornwallhousing.org.uk