

LEEK UNITED BUILDING SOCIETY TRADING AS LEEK BUILDING SOCIETY REQUIREMENTS IN RESPECT OF SHARED OWNERSHIP SCHEMES

(ENGLAND ONLY)

If the property is being purchased under a Shared Ownership Scheme you are instructed to follow these instructions in addition to the Society's Instructions to Solicitors in the Building Societies Association Mortgage Instructions – Combined Instructions and Specific Requirements ("BSA Instructions").

IT IS THE RESPONSIBILITY OF THE ACTING SOLICITOR/LICENSED CONVEYANCER TO ENSURE THAT ANY PROPERTIES PURCHASED PURSUANT TO THESE INSTRUCTIONS MEETS ALL REQUIREMENTS. LEEK BUILDING SOCIETY WILL NOT REVIEW ANY LEASES OR PROVIDE ANY ADVICE AS TO WHETHER A PROPERTY MEETS THESE REQUIREMENTS. IF THE INSTRUCTING SOLICITOR/LICENSED CONVEYANCER IDENTIFIES THAT A PROPERTY DOES NOT MEET THESE REQUIREMENTS YOU MUST INFORM US IMMEDIATELY IN WRITING, CONFIRMING THAT THESE REQUIREMENTS ARE NOT MET, AS THE SOCIETY WILL NOT LEND IN SUCH CIRCUMSTANCES.

SHARED OWNERSHIP REQUIREMENTS FOR ALL SHARED OWNERSHIP LEASES

1. Landlord

The landlord must be regulated by the Regulator of Social Housing or any successor authority carrying on any of the same regulatory functions as the Regulator of Social Housing that is responsible for regulating the landlords in a shared ownership lease.

2. Purchase Price

- 2.1 The purchase price must be a defined percentage of the full open market value and must not include any additional costs connected with the purchase of the property (e.g. any costs payable to the builder).
- 2.2 If the percentage purchase price of the property to be purchased differs to that set out in our mortgage offer, or does not reflect the valuation, you must inform us and await further instructions.

3. Percentage Share

The initial share to be purchased by the Borrower must not be:

- a. less than 25% of the market value of the whole property; and
- b. more than 75% of the market value of the whole property.

If the percentage of the property to be purchased is different from that set out in our mortgage offer, you must inform us and await further instructions.

4. Consent to Mortgage

- 4.1 Before exchange of contracts, you must ensure that the Landlord is shown a copy of the mortgage offer / terms of the mortgage to be taken out by the Borrower and the Landlord must provide written consent to the mortgage and (if appropriate) written consent to the assignment of the lease in the form set out at **Appendix A**.

- 4.2 It is acceptable for any consent to set out the lending that will be covered by the mortgagee protection clause and confirm that the Landlord's consent is required for any future lending by the Society (as without that consent such future lending will not be covered by the mortgagee protection clause)
- 4.3 It is acceptable for the Landlord to issue one letter to cover the Consent to Mortgage and the Possession Undertaking (below) providing the wording is compliant with our requirement in the Appendices.
- 4.4 You must not complete without the Landlord's consent and the signed consent must be sent to us following completion.

5. Possession Undertaking

- i You must ensure that the lease granted by the Landlord provides that the Landlord will give us at least 28 days' written notice of the Landlord's intention to forfeit the lease or commence proceedings under the Housing Act 1988; and
 - ii allows us (if we wish) to remedy such breaches within at least a 28 day period.
- 5.2 If the lease does not make provisions as noted in 5.1 above, you must obtain a written undertaking from the Landlord in the form set out at Appendix B, to provide us with not less than 28 days' written notice of intention to forfeit the lease or commence proceedings.
- 5.3 It is acceptable for the Landlord to issue one letter to cover the Consent to Mortgage (above) and the Possession Undertaking provided the wording is compliant with our requirement in the Appendices.

6. Term

The remaining term of the lease must be at least **75 years plus the term of the mortgage** at the outset of the mortgage. If the lease does not meet this requirement, you must obtain a deed of variation from the Landlord to grant an extension to the lease and the Landlord will be required to obtain any requisite consent which may be required from Homes England and Regulator of Social Housing.

7. Ownership

- 7.1 The property must be wholly owned by the borrower(s) and not held on trust for others and
- 7.2 The lease must be granted to the borrower(s) alone.

8. Staircasing¹

- 8.1 The lease must allow the Borrower to acquire further shares in the property up to 100% of its total value.
- 8.2 Leek Building Society will **not** lend where the lease does not allow staircasing up to 100% of the value of the property.
- 8.3 The Lease must not require the compulsory purchase of additional shares within specified periods unless the lease has been assigned in breach of nomination provisions within the Lease (see 10. below).

9. Downward/Reverse Staircasing

Shared ownership leases sometimes contain a provision for downward/reverse staircasing (i.e. where the Landlord is permitted to buy back a share in the property). Where this right exists, there must be a provision for the Landlord to ensure that the offer is approved in writing by the Society and the Landlord's mortgagee and that the sale proceeds are paid direct to Leek Building Society.

¹ Staircasing allows a borrower to purchase additional shares in the property.

10. Nomination Rights²

If nomination rights apply, (which will be the case in all instances where the current standard model leases are utilised) or any marketing restrictions apply, the Borrower must have the right to assign the lease on the open market free of the nomination right or marketing restriction, with no restriction on who can purchase or occupy the property if either the landlord fails to nominate or the nominee fails to exchange contracts within 26 weeks from the date of the leaseholder notice of an intention to sell.

11. Pre-emption rights³

11.1 If the lease includes a pre-emption right applicable on resale the owner must be permitted to sell free of the pre-emption right if the sale under pre-emption is not completed within 3 months of the date the owner gave notice of intention to sell; OR

11.2 Where the pre-emption is part of a nomination/marketing procedure the owner must be permitted to sell free of the pre-emption right within 3 months of the date when the pre-emption/marketing procedure becomes operative.

11.3 The price for the sale under a pre-emption right must be the full open market value of the relevant share in the property.

12. Restrictions on the disposal of the property

If the lease contains any further restrictions on the disposal of the property, you must also comply with paragraph 16 below.

13. Payment on assignment / surrender

There must not be any requirement to make payment on assignment / surrender other than a reasonable amount (maximum 2% of sale price) in respect of valuation, legal and administrative costs. In addition, no payment on surrender or assignment to a sinking fund is permitted.

14. Date of grant of Shared Ownership Leases

Leek Building Society will **not** lend where the lease was granted on or before 6 April 2010

15. Alienation/Mortgagee Protection Clause/Rent Review/Staircasing/Termination in the event of damage or destruction

15.1 Clauses relating to Alienation, Mortgagee Protection, Rent Review and Staircasing are fundamental clauses of the model lease and must be in the same form as those contained in the model shared ownership leases for flats, houses or Social HomeBuy houses or flats (as the case may be) at the time the lease was granted which can be found on the government website below:

www.gov.uk/guidance/capital-funding-guide

² A right provided in the lease that allows the landlord to 'nominate' a purchaser should the borrower/mortgagee wish to sell the property. Note that the current model form lease contains a 4-week period to nominate and a 12 week period (following receipt of contract) for the nominee to exchange contracts (house lease) and a ten week period from unconditional offer (flat lease) and this is acceptable to the Society

³ Pre-emption rights provide the landlord with the right of first refusal upon sale of the property. Pre-emption rights may apply even if the borrower has purchased 100% of the property under the 'staircasing' provisions. In cases where the standard HCA model lease is utilised pre-emption rights will apply during the Term subject to the lease provisions and for a further 21 years from the date of final staircasing.

- 15.2 The lease must contain a mortgagee protection clause which shall provide that if a mortgagee in possession wishes to sell the property it has the choice of either;
- a. assigning the lease to the buyer as it is; or
 - b. staircasing to 100% and then assigning.
- 15.3 The lease must also include the termination in the event of damage or destruction (Frustration) clauses as contained in the Homes England and Regulator of Social Housing model leases.

16. Restrictions on the Disposal of the property in a Section 106 Agreement (or equivalent)

In new developments, a proportion of houses are often sold as 'affordable housing'. Local authorities often attach conditions to the way these houses can be sold through what are known as 'Section 106 Agreements' or 'Restrictive Covenants'.

16.1 Acceptable Restrictions

Restrictions on the disposal of the property may have an impact on the value/marketability of a property, particularly where the Society has to take the property into possession due to a failure by the Borrower to comply with their mortgage terms and conditions. Notwithstanding the provisions of paragraph 1.2 below, you must provide us with written notice of any such restriction. We may refer such matters to the valuer for consideration in regards to the marketability of the property taking into account the restriction identified.

16.2 Acceptable Restrictions

16.2.1 Subject to paragraphs 16.2.2, 16.2.3 and 16.2.4 below The Society will accept the following restrictions relating to the disposal of the property ('Acceptable Restrictions'):

Please note however that the Acceptable Restrictions are separate to any standard restrictions / provisions which are set out in the model Shared Ownership leases.

- ✓ salary restrictions that increase in line with a local plan or are linked to another inflationary measure;
- ✓ local living restrictions;
- ✓ property can only be sold to first time buyers; or ✓
- ✓ a combination of the above.

16.2.2 The Acceptable Restrictions will only be acceptable where one (or more) of the following applies to each restriction:

- ✓ A cascade mechanism⁴ is in place that commences after a maximum of 3 months from the date of possession where no contracts have been exchanged, with no restriction of any kind after 6 months (the price for the sale must be the full open market value of the property); **OR**
- ✓ A Mortgagee Exclusion⁵ Clause applies immediately upon possession and will continue in force for successors in title to the mortgagee ensuring that all successors also take free from the relevant restrictions; **OR**
- ✓ The restriction only applies to the first transaction (i.e. the initial purchase transaction) and is subsequently dis-applied to any future transactions.

⁴ A cascade mechanism involves offering the property to a very local market and gradually widening the net until eventually the property can be sold on the open market.

⁵ A Mortgagee Exclusion Clause allows a lender who has repossessed the property to operate free of any Section 106 affordable housing restrictions which are placed upon individual properties. Mortgagee Exclusion clauses should not be confused with mortgagee protection clauses which are clauses designed to cover a lender's loss should a lender have to take the property into possession.

- 16.2.3 all pre-emption rights must be removed after 3 months from the date of repossession (save for any pre-emption rights forming part of the fundamental clauses of the model form Shared Ownership leases);
 - 16.2.4 all nomination restrictions must be removed after 3 months from the date of repossession (save for any nomination restrictions which form part of the fundamental clauses of the model form Shared Ownership Leases);
 - 16.2.5 all marketing restrictions must be removed after 3 months from the date of the repossession.
- 16.3 Where an Acceptable Restriction is in place (as set out 16.2 above) you must check that the property has been valued accordingly.

Leek Building Society will not accept any other restrictions that fall outside of the 'Acceptable Restrictions' listed above.

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APPENDIX A

Leek United Building Society Trading as Leek Building Society

Housing Association shared ownership consent to mortgage

This form must be completed by the Housing Association.

[ID/Reference]	
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Property address	
Full name(s) of the borrower(s)	
Full property value	
Share % to be purchased	
Purchase price of share	
Leek Building Society mortgage offer date	
Amount advanced to borrower(s) under the mortgage	
Details of the shared ownership lease	The lease dated _____ and made between: (1) the Housing Association named below; and (2) _____

Name of Housing Association	
Address of Housing Association	
Name of the Housing Association person who completed the form	
Contact telephone number	

In the special conditions of the mortgage offer there is a mortgagee protection clause. For the purposes of that clause, the Housing Association acknowledges that the full terms of the mortgage have been disclosed to it. The Housing Association confirms that:

- (a) it approves of Leek Building Society as the mortgagee of the property; and
- (b) it approves the terms of the mortgage.

.....
Signed for an on behalf of the Housing Association

.....
Date

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APPENDIX B

Name of Landlord
Address of Landlord
Postcode

Dear Sir/Madam

Property address	
Full name(s) of the Borrower(s)	
Lender	[Leek United Building Society Trading as Leek Building Society]
Lender Address	
Mortgage account number	
Solicitor/Conveyancer	
Solicitor/Conveyancer address	
Details of the shared ownership lease	The lease dated _____ and made between: (1) [the Landlord] ; and (2) _____

Leek Building Society has been asked to provide a mortgage for the purchase of the above property and requires your agreement to the undertaking below. This undertaking must be returned to the solicitor/conveyancer named above.

In consideration of the Lender granting the Borrower a mortgage on the Property, the Landlord undertakes not to take any action to forfeit the shared ownership lease or to commence any proceedings to obtain possession of the property under any of the grounds in Schedule 2 of the Housing Act 1988 (or any successor legislation) without:-

- (a) Giving the Lender not less than 28 days' notice in writing at the address above 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.....

You should retain the attached copy of this undertaking as it details the address where any notice should be sent:

Leek Building Society

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