

# Instructions for conveyancers

## Principality Building Society's requirements in respect of shared ownership schemes/section 106 agreements/properties purchased at a discount (including first homes) (England and Wales only)

If the property is owned or is being purchased under a Shared Ownership Scheme, and/or there is a Section 106 Agreement in place, you are instructed to follow these instructions in addition to Principality Building Society's ("the Society and/or us") instructions to Solicitors and Licensed Conveyancers in the UK Finance Mortgage Lenders' Handbook for conveyancers ("UKF Handbook") and the mortgage offer. For the avoidance of doubt, these instructions do not affect any responsibilities you have to us under the general law or any practice rule, the Solicitors' Code of Conduct or any guidance issued by your professional body from time to time

These instructions contain three parts and apply to both purchases and re-mortgages:

**Section 1:** Shared Ownership Requirements that must be complied with for all Shared Ownership Leases.

**Section 2(A):** In addition to Section 1, Shared Ownership Requirements which must be complied with for all Shared Ownership Leases granted on or before 6 April 2010.

**SECTION 2(B):** In addition to Section 1, Shared Ownership Requirements which must be complied with for all Shared Ownership Leases granted after 6 April 2010.

**SECTION 3:** Requirements where there is a restriction on the disposal contained within a Section 106 Agreement including, for example, where the property is being purchased at a discount. For example, where a property is being purchased under a Shared Ownership Scheme then the requirements set out in Section 1, 2(A) or 2(B) (as applicable) or Section 3 of these instructions will also apply (as appropriate).

It is the responsibility of the acting solicitor/licensed conveyancer to ensure that any property purchased pursuant to these instructions meets all requirements. The 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 why these requirements are not met, as the Society will not lend in such circumstances.

### Section 1 : Shared ownership requirements for all shared ownership leases

#### 1. Landlord

You must ensure that the landlord is a registered Housing Association or a registered Social Landlord.

#### 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 You must notify the percentage purchase price to the Society's Mortgage Administration Department (see UKF Handbook for contact details) and check with them that the property has been valued accordingly.

#### 3. Percentage Share

The initial share to be purchased by the Borrower must not be less than 25% 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 immediately and await further instructions.

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#### 4. Consent to Mortgage

4.1 Before exchange of contracts, you must ensure that the Landlord is shown a copy of the mortgage offer and the terms of the mortgage to be taken out by the Borrower. The Landlord must provide written consent to the mortgage and (if appropriate) written consent to the assignment of the lease.

4.2 You must not complete the purchase/re-mortgage without the Landlord's written consent and a copy of this written consent must be sent to the Society before completion.

#### 5. Possession Undertaking

5.1 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.

5.2 If the lease does not make provision for this, you must obtain a written undertaking from the Landlord in the form set out at Appendix A, to provide us with not less than 28 days' written notice of intention to forfeit the lease or commence proceedings. You must not complete without the Landlord's undertaking and a copy of the undertaking must be sent to us following completion.

#### 6. Term

The remaining term of the lease must be at least 85 years 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 (formerly the Homes and Communities Agency) or in Wales the Welsh Government and/or the appropriate authority for Wales.

#### 7. Ownership

7.1 The property must be wholly owned by the Borrower alone and not held on trust for others.

7.2 The lease must be granted to the Borrower alone. All Borrower(s) named on the mortgage must also be parties to the lease

#### 8. Staircasing

8.1 Staircasing allows the Borrower to purchase additional shares in the property. The lease must allow the Borrower to acquire further shares in the property up to 100% of its total value.

8.2 The Society will not lend where the lease does not allow staircasing up to 100% of the value of the property. The Society will not lend on a Protected Area Shared Ownership Lease, or where the lease has restricted staircasing.

8.3 The procedures and any time limits setting out how the Borrower can staircase must be adequate and reasonable.

8.4 The lease must provide that if a mortgagee in possession wishes to sell the property, it has the choice of (a) assigning the lease to the buyer as it is, or (b) staircasing to a 100% and selling the increased percentage.

#### 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 requiring the Landlord to ensure that the offer is approved in writing by the Society and the Landlord's mortgagee (if any) in order to proceed and that the entire sale proceeds are paid direct to the Society.

#### 10. Nomination Rights

10.1 Nomination Rights may be provided in the lease allowing the Landlord to nominate a purchaser if the Borrower or the Society wish to sell the property.

10.2 If nomination rights apply, or any marketing restrictions exist, the owner 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 6 months (26 weeks) from the date of the Borrower's notice of an intention to sell.

#### 11. Pre-emption rights

11.1 Pre-emption rights provide the landlord with a right of first refusal upon a sale of the property, and may apply even where the Borrower has purchased a 100% share in the property through staircasing.

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11.2 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 (12 weeks) of the date the owner gave notice of intention to sell; or

11.3 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 (12 weeks) of the date when the pre-emption/marketing procedure becomes operative.

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

11.5 The Society will not lend on shared ownership property where the pre-emption right survives 100% staircasing.

## **12. Restrictions on the disposal of the property**

If the lease contains any restrictions on the disposal of the property, you must also comply with Section 3 below. You must provide the Society with written notice of any restriction on the disposal of the property that may have an impact on the property's value or marketability. We may refer such matters to a valuer for consideration taking into account the restriction identified.

## **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. If such a clause will also apply to a mortgagee in possession this charge deduction will only be acceptable if it ranks after the Society's first charge security and will only be payable by the Society if there are sufficient sale proceeds remaining after repayment of the mortgage debt.

## **Section 2(a): Requirements for shared ownership leases granted on or before 6 April 2010**

### **14. Mortgagee Protection Clause**

14.1 The lease must contain a mortgagee protection clause which will protect the Society against any losses it may sustain should it have to take the property into possession, exercise its right to complete the final staircasing and assign the lease.

14.2 The mortgagee protection clause should provide that the amount payable by the Society to complete the final staircasing shall be either:

(i) the sum as calculated under the terms of the lease; or

(ii) the sale price less 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 lesser amount.

### **15. Staircasing**

The lease must provide that a mortgagee in possession has the option to (a) assign the lease as it is, or (b) staircase to 100% and then assign. There should be no time limits in the lease with regard to staircasing.

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## 16. Definition of Market Value

16.1 For staircasing purposes:

If the Borrower acquires further shares in the property, the price of the shares will be determined by the open market value of the property as at the date of the Borrower's notice to the Landlord setting out the Borrower's intention to acquire such further shares. We will not accept any prejudicial restrictions on the definition of market value. The market value will be assessed disregarding the following:-

- i. Any improvements made by the Borrower.
- ii. Any failure by the Borrower to comply with the repairing obligations in the lease.
- iii. The rights of any third parties in the property.
- iv. Any mortgage over the property.

16.2 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.

16.3 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 Borrower. The independent expert should be one agreed by the Landlord and the Borrower 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.

16.4 This section does not relate to the Mortgage Valuation undertaken by us to assess the value of the security for mortgage purposes.

## 17. Rent Reviews

Rent reviews should not allow increases of 2% above either the retail prices index or the average earnings index or by 5%, whichever is greater. It is accepted for the rent to increase in line with Local Authority rent increases.

### Section 2(b): Shared ownership requirements for shared ownership leases granted after 6 April 2010

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

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

<https://www.gov.uk/guidance/capital-funding-guide>

18.2 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:

- (i) assigning the lease to the buyer as it is; or
- (ii) staircasing to 100% and then assigning.

18.3 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 (formerly the Homes and Communities Agency) model leases and the appropriate Welsh equivalent.

### Section 3: Restrictions on the disposal of the property in a section 106 agreement (or equivalent) including where the property is purchased at a discount

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'.

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## 19. 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 20 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.

## 20. Acceptable Restrictions

20.1 Subject to paragraphs 20.2, 20.3 and 20.4 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 (mentioned at paragraph 18).

(i) salary restrictions that increase in line with a local plan or are linked to another inflationary measure (typically Affordable Housing/Discounted Housing Schemes);

(ii) purchase price (if restricted) provided there is no provision which restricts the Borrower’s entitlement to benefit from any increase in the market value of the property (e.g. through a fixed monetary cap);

(iii) local living restrictions;

(iv) property can only be sold to first time buyers;

(v) purchaser age restrictions, which can be minimum or maximum age restrictions (e.g. where the property can only be sold to purchasers over 60); or a combination of the above.

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

(i) A cascade mechanism<sup>1</sup> 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

(ii) A Mortgagee Exclusion Clause<sup>2</sup> 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

(iii) The restriction only applies to the first transaction (i.e. the initial purchase transaction) and is subsequently dis-applied to any future transactions.

20.3 Where a Housing Association is involved:

(i) 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 leases as mentioned in paragraph 18 above);

(ii) 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 leases as mentioned in paragraph 18 above);

(iii) all marketing restrictions must be removed after 3 months from the date of the repossession;

(iv) there must be no pre-emptive rights that allow a discounted sale outside of the scheme rules.

20.4 Where a restriction is in place (as set out at paragraph 20.1 above) you must provide the Society with the specific wording of the restriction and seek confirmation that the property has been valued accordingly.

**The Society will not accept any other restrictions that fall outside of the ‘Acceptable Restrictions’ listed above.**

<sup>1</sup>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.

<sup>2</sup>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.

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# Appendix A

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## Template form – written undertaking from the Landlord

**Name of Landlord:**  
**Address of Landlord:**  
**Postcode:**

Dear Sir/Madam

**Re: Insert applicant name and security address**

**Leaseholder:**  
**Solicitor/Conveyancer:**  
**Borrower:**  
**Landlord:**  
**Property:**  
**Lease:**  
**Lender:**  
**Mortgage Account No.:**

Principality 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 commence any proceedings to obtain 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.....

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

Principality Building Society,  
Principality House  
The Friary  
Cardiff  
CF10 3FA

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**Where home matters**  
**principality.co.uk**