

# Southside

## HOUSING ASSOCIATION

### Shared Ownership Policy and Procedures

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Last Reviewed:	March 2005
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#### 1.0 INTRODUCTION

- 1.1 Shared Ownership was introduced by Communities Scotland (formerly Scottish Homes) in the early 1990's to fulfil people's aspirations to home ownership by enabling a purchaser to buy a share (tranche) in a property and rent the remainder from a housing association. Southside Housing Association Limited is committed to providing a choice of tenures to residents in the neighbourhoods it works in.
- 1.2 This policy details the way in which Southside HA will manage it's Shared Ownership properties.

#### 2.0 DEFINITIONS

##### 2.1 Exclusive Occupancy Agreement

The exclusive Occupancy Agreement between the Sharing Owner and the Association sets out the obligations of each party. It includes the obligations of the Sharing Owner to pay the rent as well as to maintain and repair the property.

##### 2.2 Co-operation Agreement

Where the Sharing Owner is using a mortgage to finance the purchase of their tranche, the Association will enter into a Co-operation Agreement with the particular bank/buildings Society involved. This Co-operation Agreement between the Association and the lender binds both parties to act together where a Sharing Owner is in default on mortgage payments, rent payments or both.

##### 2.3 Staircasing

Sharing Owners may increase their share of the property after one year of occupancy by tranches of 25%, providing all Occupancy payments and other charges are paid to date. This involves a revaluation of the property, paid for by the Sharing Owner, with each party being responsible for its own legal fees. The Association will be entitled to retain 'Staircasing Sales Allowances' to reflect

reasonable administration costs, including legal fees for the Association.

When a Sharing Owner has staircased to full ownership then they are free to dispose of the property without any further recourse to the Association. However, there is no obligation on the Sharing Owner to purchase further tranches.

The Sharing Owner can only staircase once in each 12 month period.

Where a Sharing Owner has staircased upwards, the Association will amend the occupancy payment according to the percentage owned.

### **3.0 POLICY OBJECTIVES**

3.1 Southside HA will ensure that all prospective Sharing Owners receive detailed advice on the service we can provide and on their obligations under Shared Ownership.

In delivering and monitoring services to Sharing Owners Southside HA will aim to:

- Ensure that Sharing Owners and the Association fulfil their respective responsibilities as set out in the Exclusive Occupancy Agreement, title deeds, legislation and other relevant agreements; Ensure information on all aspects of the service to Sharing Owners is widely available in a variety of easily understood formats;
- Be proactive in identifying issues and ensure early action is taken to resolve common management problems;
- Ensure that the environment in and around our properties is maintained to the highest standard to protect investment in Southside's and Sharing Owners' homes;
- Provide a range of opportunities for Sharing Owners to be involved in the management of local areas and the factoring service;
- Minimise the opportunity for neighbour disputes between Sharing Owners and other residents;
- Develop and implement effective and efficient systems for the apportionment of charges to Sharing Owners and monitoring payments.

### **4.0 INFORMATION FOR SHARING OWNERS**

4.1 Southside will aim to provide the following information to owners:

Prior to Purchase: We will give clear information to prospective Sharing Owners about the responsibilities of being a Sharing Owner.

Post Purchase: Once the Sharing Owner takes up occupancy we will issue our guide to the Exclusive Occupancy Agreement and where relevant Southside's Factoring Services Information Guide.

Southside will keep Sharing Owners informed about changes to our policies, services and charges through newsletters, meetings, individual letters and leaflets.

## **5.0 SETTING THE OCCUPANCY CHARGE**

5.1 Southside Housing Association will set a charge on the portion of the property to be rented by the Sharing Owner. This is called the Specified Occupancy Charge (Rent) and comprises:

- a. A Basic rent calculated in accordance with the Association's approved rent policy less management and maintenance and major repairs allowances.
- b. A Management Charge to cover Southside's administration costs in managing shared ownership properties (including insurance)
- c. A Service Charge in respect of whatever maintenance obligations are undertaken by the Association and other services provided by it.

5.2 Calculation of the Specified Occupancy Charge (Rent) takes into account the fact that the Sharing Owner is responsible for meeting the cost of all repairs and maintenance to the property.

### **5.3 Review of Charges**

The Association's Exclusive Occupancy Agreement provides that rents will be reviewed on an annual basis in compliance with the Association's Rental Policy. Management and Service Charges will also be reviewed annually to ensure that the level of charges covers the Association's administration costs.

## **6.0 MANAGEMENT AND MAINTENANCE OF PROPERTY**

6.1 The external and common areas of the property will be inspected every three months to identify any management or maintenance issues that need attention.

Any works required will not be carried out without prior consultation and consent with the Sharing Owners.

6.2 Historically it was envisaged that shared ownership units would over time become fully owned. This has never been the dominant trend, and the Association will often now find it in a position whereby it owns 50% or 75% of an asset, but has no long term contract over ensuring that appropriate levels of investment are maintained.

6.3 To minimise this risk the Association will seek to develop a Maintenance Fund in each development.

## **7.0 SALES AND BUY BACKS**

### **7.1 Sales**

In normal circumstances if a Sharing Owner wishes to terminate their Occupancy Agreement, where the property has been well maintained and there is an interested party willing to purchase, a prospective purchaser and the outgoing Sharing Owner can enter into a direct sale of the tranche

with the agreement of the Association.

In all cases where a Sharing Owner indicates their wish to sell their tranche, the property will be inspected with a view to ensuring that it has been well maintained prior to agreeing any sales of a tranche.

The Association will instruct the District Valuer to carry out a valuation on the property. Southside are not responsible for any legal or marketing costs incurred by the Sharing Owner.

Southside will offer sellers the option of a 'Nomination Re-Sale' and/or 'Buy Back the Share of the Property'.

### **Buy Backs**

Under the terms of the Exclusive Occupancy Agreement, Southside has "first option" to buy back a property. In the early 1990's this option was not available to Southside due to financial constraints and a number of properties were sold on the open market thereby becoming 100% owned. This resulted in Southside losing a valuable asset. It was subsequently agreed by Committee that Southside would buy back any tranches offered for resale, as we had a sizable waiting list for shared ownership at that time, and there was a desire to retain valuable community assets.

In addition Southside will consider buying back a property when a Sharing Owner wishes to sell their share but remain in the property as a tenant due to financial difficulties.

Southside will also consider buying back a property when a Sharing Owner wishes to sell and will not consider tranching to full ownership. In this case Southside will re-sell the share, or consider the property for Mid Market Rent, dependent on the prevailing housing market condition at the time of resale.

In all cases the Finance Department will carryout a financial assessment on the viability of buying back the property.

The Head of Housing Services together with the Head of Finance will have delegated authority to approve or decline a buy back based on the assessment of and the principles set out above.

## **8.0 EXPIRY OF TWENTY YEARS**

- 8.1 The terms of the Exclusive Occupancy Agreement determine that the Occupancy Agreement will expire after twenty years and/or will terminate twenty years from the Date of Entry specified in the Agreement. In the first instance the Sharing Owner will have the option of buying the remainder of their share of the property. If the Sharing Owner does not wish to exercise the right, then the Association is entitled to purchase the Sharing Owner's share. In terms of the Occupancy Agreement, if neither party wishes to purchase the other's shares, the property must be sold on the open market and the proceeds split in accordance with the respective shares.

As an alternative to selling on the open market, the Sharing Owner and the Association can agree to enter into a fresh Agreement. The more up to date Exclusive Occupancy Agreement should be used.

## **9.0 CONSULTATION**

- 9.1 Southside will aim to establish a Sharing Owners Forum and consult the Forum regarding changes to this Policy, charges and other significant changes in services which specifically affect Sharing Owners.

## **10.0 RESPONSIBILITY**

- 10.1 The Head of Housing Services is responsible for monitoring and reviewing this policy.

# Southside

## HOUSING ASSOCIATION

### Shared Ownership Procedures

#### 1.0 INTRODUCTION

- 1.1 The Shared Ownership Procedure is an internal document to give guidance to staff on the implementation of the Shared Ownership Policy and to ensure that the policy is implemented in a consistent and equitable manner.

#### 2.0 STAIRCASING (PURCHASE OF FURTHER SHARES)

- 2.1 Southside reserves the right to refuse consent to staircasing where the Sharing Owner is in breach of any duty as set out in their Exclusive Occupancy Agreement.

The District Valuer shall be instructed by the Association to provide an independent valuation of the market value of the property taking into account any improvement carried out by the Sharing Owner with the consent of Southside which have a material impact on the market value.

Payment of this Valuation must be made to Southside prior to instruction to proceed. If the Sharing Owner withdraws from purchasing additional shares once the legal process has commenced they will be responsible for any reasonable legal costs incurred by the Association. The Sharing Owner will be asked to confirm in advance their agreement to this in writing.

#### 3.0 SALES AND BUY BACKS

- 3.1 Southside will consider nominating applicants in cases where both parties agree to a re-sale. This will involve an applicant on our waiting list purchasing a tranche directly from an existing shared owner. The new Sharing Owner will be required to sign an Exclusive Occupancy Agreement with Southside prior to completion of the Sale.

Southside will ask all prospective buyers for a property (including those nominated by the outgoing Sharing Owner) to complete a shared ownership application form and if acceptable then "nominate" the appropriate applicant to the current shared owner. Southside will charge an appropriate administration fee for this service to the outgoing Sharing Owner.

If the Sharing Owner withdraws from a transaction to sell or purchase an additional tranche, Southside reserves the right to recover any costs incurred by Southside in processing the transaction. Southside will make this clear in writing at the outset.

### 3.2 **Joint Sale of the Property for Full Ownership**

In the instance of an outright sale of the Marketing costs will be agreed by both parties in advance of signing agreements with agents and split pro-rate in line with the shares being sold.

On completion of any re-sale, a deduction may be made directly from the sale proceeds towards any outstanding rent, factoring fees or other charges until a final account has been prepared.

All parties will bear their own legal costs for these transactions.

### 3.3 **Buybacks**

#### **Buying Back for Resale**

If the Sharing Owner advises the Association that they wish to sell their share of the property, the Exclusive Occupancy Agreement clause 4 (b) makes provision for the Association to purchase the remaining share (if it so wishes).

- In the event that the Sharing Owners wishes to proceed to sell their share to the Association. The Sharing Owners should be advised that a valuation is required and that the preference would be to use the District Valuer to carry out the valuation and any cost associated with the valuation is the Sharing Owner's responsibility. Payment of the Valuation Fee should be paid in advance of the valuation being instructed by the factoring department. It should be noted that the Sharing Owner can instruct their own valuation with a surveyor of their own choice.
- On receipt of the Valuation Report a copy should be sent to the Sharing Owner and details of the property address and valuation emailed to the Finance Department in order to carry out a financial assessment.
- The assessment would include the cost of taking out a loan over a specific period, adding in management, maintenance and major repair cost, comparing the expenditure with the expected income.
- The Head of Housing Services together with the Head of Finance will have delegated authority to agree or refuse a sale dependent on the outcome of the financial risk assessment.
- If the valuation is not carried out by the District Valuer and if the Association has concerns with the valuation, the Sharing Owner will be advised that a second opinion will be sought from the District Valuer on Southside's behalf. Southside HA would be responsible for this.
- Once approved by the Head of Housing Services and the Head of Finance, the Sharing Owner will be contacted in writing and Solicitors details should be exchanged.

- Details of the proposed transaction will be passed to SFARS solicitor to carry out the conveyancing of the property and the Sharing Owner should be advised to contact their Solicitor.
- When the transaction is complete, a letter should be circulated to applicants from the Shared Ownership waiting list, together with details of the property, the percent share for sale, detailed costs of the share, rent and service charge costs and Council Tax band. An advert will be placed on Gum Tree and S1 Homes and/or similar.

### **Buying Back for Mid Market Rent**

- If the waiting list has been exhausted with little or no interest and there is no response from the advert place on Gum Tree and S1 Homes or similar, the property will be offered for Mid Market Rent.
- While the property is being brought up to the Mid Market lettable Standard, details will be circulated to applicants on the Social Housing List who currently reside in the Private Rented Sector. The details of properties will also be sent to the applicants registered on the Mid Market Waiting List. Adverts will be placed on Gum Tree and S1 homes and/or similar.
- Applicants will be selected in accordance with the Mid Market Allocations Policy.

## **4.0 TERMINATION OF EXCLUSIVE OCCUPANCY AGREEMENT AFTER 20 YEARS**

- 4.1 When Shared Ownership was originally introduced in the early 1990s a clause (clause 9 (a)) was inserted in the Exclusive Occupancy Agreement, which limited the Occupancy Agreement to a period of 20 years and so all Occupancy Agreements will terminated 20 years for the Date of Entry.

The Exclusive Occupancy Agreement has since been reviewed, however the terms are generally consistent and are summarised below:

- 4.2 Unlike a lease/tenancy agreement, there is no requirement on either the Association or the Sharing Owner to give a notice to remove/notice to quit to terminate the Tenancy Agreement on its natural expiry date (i.e. 20 years after the date of entry).

The Sharing Owner has the first option to purchase his share on the Expiry Date. In order to exercise his right he must give the Housing Association written notice at least 3 months prior to the Expiry Date.

If the Sharing Owner does not wish to purchase the Association's share then the Association is entitled to purchase the Sharing Owner's share. In order to exercise its rights the Association must give written notice within two months or 42 days prior to the Date of Expiry dependant on the type of

## Occupancy Agreement.

In terms of the Occupancy Agreement if neither the Sharing Owner or the Association wish to purchase the other's shares then the property must be sold on the open market and the proceeds split in accordance with the respective.

As an alternative to selling of the open market, the Sharing Owner and the Association can agree to enter into a fresh agreement. The more up to date Exclusive Occupancy Agreement should be used.

Unless reminded by the Association of the terms of the Occupancy Agreements it is unlikely that Sharing Owners will exercise their rights to purchase and even if they are aware of the right I suspect that not many will opt to purchase. This then gives the Housing Association an opportunity to purchase back a number of properties in the expiry dates which can then be rented out under SSTs or used for other purposes (i.e. mid market etc).

It should be noted that these procedures should be used in conjunction with the relevant Exclusive Occupancy Agreement.

## **5.0 LEGAL IMPLICATIONS OF THE DEATH OF A SHARING OWNER**

5.1 In the event of Death of a Sharing Owner the following is of note:

Where the Sharing Owners are married, then the survivor will automatically inherit that deceased share in the property.

5.2 Where there are joint Sharing Owners who are unmarried. On the death of the first Sharing Owner, unless their position has been dealt with either in Wills of the Sharing Owners or in the title, then it is possible that, the deceased's share of the property will not be left to the surviving Sharing Owner. If that happens then the Sharing Owner will have to buy out the share from the Executor if he/she wants to remain in the property.

5.3 On the death of a Sharing Owner this automatically results in a breach of the agreement, allowing the Association to formally serve Notice terminating the agreement. At the same time, however, the Executors are still liable to pay the occupancy payment of specified rent until the house is sold or the Sharing Owner's share is sold.

If agreement between the Association and the Executors cannot be reached, then the Association is entitled to serve a Notice terminating the occupancy agreement and would then be entitled to either purchase the Sharing Owners share or acquire the joint sale of the property. Although every opportunity should be taken to reach agreement with the Executor as the best way forward.

5.4 When the Executor and the beneficiary is one and the same person a number of scenarios may prevail. If the beneficiary does not want to live in the property, then the Association should exercise its option either to buy back or sell the property on the open market. The Association is entitled to recover the occupancy payment or rent up to the date of the buy back or the sale.

On the other hand if the beneficiary wishes to live in the property, (for example a Sharing Owner leaves the estate to her sister who wishes to move into the property and sell her own house), then the Association does not need to exercise its rights in terms of the Occupancy Agreement but can simply enter into a new Occupancy Agreement with the beneficiary.

Where the Beneficiaries are under the age of 16 years, it is not possible under Scots law to enter into any such contract with a beneficiary. If no agreement can be reached as to how to deal with this then the Association will require the Executors to sell the share to the Association or sell the property on the open market.

- 5.5 As there are a number of different situations which can arise on the death of a Sharing Owner, the Association should always make contact with the family and, in particular, the Executors to resolve the matter and deal with any housing needs that arise in consultation with the Association's solicitors.

## **6.0 REPAIRS AND MAINTENANCE**

- 6.1 Sharing Owners are responsible for all repairs and maintenance for their property (including major repair works).

Where a lack of maintenance and repair is evident from an inspection, then the Sharing Owner will be contacted and every effort made to ascertain the reason(s) whilst explaining the essential nature of regular repair and maintenance. It is an option for the Association to require a Sharing Owner to carry out repairs or carry out repairs on their behalf and charge them accordingly. This course of action will be at the discretion of the Head of Housing Services.

## **7.0 DEBT RECOVERY**

- 7.1 The approach to debt recovery will follow the procedures set out in the Exclusive Occupancy /agreement and Co-operation Agreements and also the principles detailed in Southside's Rent Arrears Policy; namely that we will adopt a firm but fair approach to arrears recovery. Owners will be offered advice about housing and other benefits which may assist them in maximising their income and /or meeting their liabilities.

Given however the complexities of shared ownership the Association will retain a flexible approach to arrears action by examining individual cases on their own merits.

Where there are arrears Southside will inform the Sharing Owner that it intends to inform the mortgage lender of the position as per the Co-operation Agreement. Non-payment of rent is default under the building society's security.

If Southside's attempts to eliminate or reduce arrears fail, an 'Irritancy Notice' will be served. In effect, this brings the occupancy to an end in 28 days, although the shared owner is not compelled to leave the property. Where the service of an Irritancy Notice has not resulted in an adequate improvement in payments and the Sharing Owner is not co-operating regarding other potential options such as resale, and then the Association will seek to remove the Sharing Owner by seeking to repossess the property. Such action would involve the case being entered into the Sheriff Court on the basis that the Association would be acting jointly with the mortgage lender (as prescribed by

the Co-operation Agreement) to repossess the property under the terms of the lenders heritable security.

It will be emphasised to the Sharing Owner that if there are arrears outstanding to either party then an eviction action could proceed.

Where there is no mortgage remaining on the property – Southside will seek legal proceedings for repossession on its own.

Southside will agree the apportionment of legal costs and other outlays in advance with the lender on the sale of the repossessed property. We will agree with the lender as to the dispersal of receipts arising from any repossession. Southside and lender will agree advertising costs and the method of advertising and costs will be split pro rata.

The approval of the Committee will be sought prior to the Association pursuing such repossession action.

## **8.0 Sub Letting**

8.1 The law allows tenants to sub let their tenancy with the approval of the Association. If a request is received (in writing), the Association must respond to the request within 28 days or else the tenant can assume by default that permission has been granted.

8.2 The Association cannot unreasonably withhold permission, but is able to set reasonable and appropriate criteria for any sub let they allow.

8.3 Tenants cannot sub let their property for material gain, and would still be responsible for the payment of the rent, therefore an appropriate system for collecting the rent between the tenant and the sub tenant would need to be in place.

8.4 Keeping the above in mind, the Association will therefore grant permission to sub let if:

1. The tenant puts their request for permission to sub let, along with reasons for the request, in writing to the Association.
2. The tenant gives the Association a copy of the proposed paperwork i.e a Short Assured Tenancy, for the agreement between the tenant and sub tenant, including proposed period of the sub let, the rent to be charged and appropriate conditions e.g. on anti social behaviour. The Association can assist with this if necessary.
3. The period requested for the sub let is no more than 6 months duration. This can be extended to one year at the discretion of the Housing Manager, but the signed agreement between the tenant and the sub tenant will, even if this is the case, be for the initial 6 months period. If the tenant requests a period of more than one year, or requests an extension to the existing sub letting agreement which would take them over one year, the matter must then be passed to the Management Committee or a delegated Sub-Committee for approval or rejection.

4. The rent proposed to be charged by the tenant to the sub tenant is no more than the rent charged on the property by the Association.
  5. The sub tenant's family composition must be of an appropriate size for the property they are seeking to sub let i.e. the property must not be overcrowded or underoccupied.
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- 8.5 The Housing Manager has discretion to add to conditions if particular circumstances dictate this.
  - 8.6 The Association will respond to any requests in writing within 28 days of receipt either to grant permission along with any conditions imposed, or to refuse permission.
  - 8.7 The Association will adopt appropriate procedures and paperwork to deal with requests from tenants to sub let, including legal paperwork checked by our lawyer to satisfy condition 2 of the conditions for allowing a sub let to proceed.