Lease Conference	S E TA 3
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#### Disclaimer

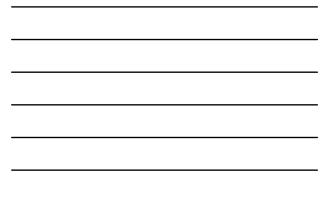


Whilst we make reasonable efforts to ensure our content is accurate and up-to-date, information and guidance in this webinar does not and is not intended to amount to legal advice in any particular case

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#### What is a shared ownership lease?



- Leaseholder buys share of equity
- Pays rent on share retained by landlord
- Mainly housing associations or other not-for-profit organisations
- National programme introduced in 1979
- Funding by Homes and Communities Agency

#### Who qualifies?



- Housing association tenants
- Local authority tenants
- First-time buyer
- Cannot afford now but former home owner
- Priority applicants
- Income limits

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#### Relaxing the criteria



- Government announcement
- From 1 April 2016
- Scheme now open to people of any occupation
- Income caps raised.....

#### Relaxing the criteria



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- Families earning up to £90,000 in London and £80,000 elsewhere eligible.
- $\circ$  Deposit of as little as £1,500 could be needed for potential homeowners to buy
- Existing shared owners can move into another shared ownership property
- No longer a restriction on numbers of bedrooms

#### Model leases produced by HCA

Latest versions available for use from 30 April 2015

- HCA Capital Funding Guide
- Recommended format

www.lease-advice.org	Page 10
The model lease	
<ul> <li>Houses and flats</li> </ul>	
<ul> <li>Social Homebuy</li> </ul>	
<ul> <li>Protected areas</li> </ul>	

### The model flat lease

#### Clause 1

- Definitions and interpretation
- Schedule 9
   Defined terms

#### Appendix

- 1) Memorandum of staircasing
- 2) Example of notice of rent increase
- 3) Key information for shared owners

#### **Fundamental clauses**

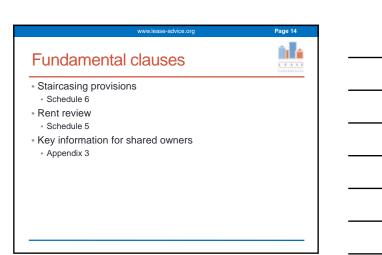


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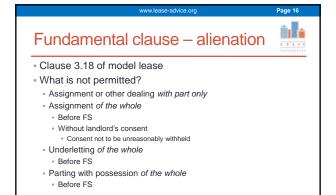
- Never been compulsory to use model leases
- If not adopted then "fundamental clauses" must still be used

- Must be included if scheme to qualify for public funding
- To facilitate lending to sector
- Preserve supply and characteristics of shared ownership

Fundamental clauses	L I A 5 1
Alienation	
Clause 3.18	
<ul> <li>Pre-emption provisions</li> </ul>	
Clause 3.19	
<ul> <li>Mortgage protection</li> </ul>	
Clause 8	







# The second fundamental clause – pre-emption

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- Clause 3.19 of model lease
- Triggered during pre-emption period
  - Start of lease and ending on date of Final Staircasing

#### The model leases changed...

- Removal of pre-emption right post 100% staircasing on 30 April 2015
- Existing leases pre-final staircasing • Pro forma deed of variation
- Existing leases post-final staircasing
   Pro forma deed of variation

	www.lease-advice.org	Page 19
Trigger event	S	
Assignment of whole period	of the Premises during	Pre-emption

#### Exemptions



- Will/intestacy
- Sections 24/24A of the Matrimonial Causes Act 1973
- Section 2 of Inheritance (Provision for Family and Dependants) Act 1975
- Paragraph 1 of schedule 1 to Children Act 1989
- Part 2/3 of Schedule 5 to Civil Partnership Act 2004

#### Land Registry entries



• HMLR restriction in the Proprietorship Register • Clause 3.19.4

- Application by landlord and leaseholder
- Form M

#### Starting the process



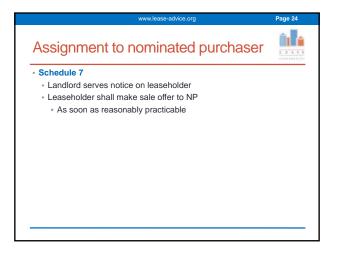
• Offer to surrender lease to landlord

- Written notice accompanied by Valuer's Certificate
   Associate/Fellow of RICS
  - Stating market value
  - Dated no more than 8 weeks before offer
- · Landlord has 8 weeks to either
  - Accept
  - Decline surrender
  - Nominate a buyer (NP)

#### The process continues



- If landlord nominates a buyer
- Procedure/timescales in Schedule 7 apply
  If landlord accepts surrender
- Procedure/timescales in Schedule 8 apply
- If landlord does not respond to offer within 8 weeks
   Time of the essence
  - Proceed with disposal provided completion/exchange within 12 months of service of leaseholder's notice



#### Terms of sale offer

- Unconditional
- Vacant possession
- Free from encumbrances
- Open for acceptance for six weeks
- Stipulate completion date not earlier than four weeks after offer accepted

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Subject to current Law Society Standard Conditions of Sale

#### What does the price comprise?

- Acquired % of open market value
- Assessed at date of landlord's notice
- By independent qualified valuer

(Acting as an expert)FRICS/ARICS/ISVA

· Follow relevant RICS guidance notes on valuation of land/buildings

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#### Appointment of valuer



- In default by President of RICS
- Application of either party
- Decision final and binding
- · Costs/expenses borne by leaseholder

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#### Assignment to nominated purchaser



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- Offer made to NP and refused
- NP does not accept offer within six week period
- NP does not enter into binding contract for purchase
- within four week period
- Leaseholder may assign whole flat
- Proviso
  - Exchange/completion
  - · Within 12 months of leaseholder's offer

#### Surrender by leaseholder

#### Schedule 8

- · Landlord serves notice on leaseholder
- Definition of payment sum
- Schedule 9
- Surrender and vacant possession on date to be agreed
   In default four weeks from date payment sum is determined
- Landlord pays to mortgagee of leaseholder payment sum less rent etc. arrears owing

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Receipt of mortgagee as absolute discharge

#### Pre-emption in a nutshell

- Applies from date of lease
- Limited exceptions
- Restriction at HMLR on leaseholder's title
- Landlord can require
- · For no more than market value of equity share
  - Surrender lease to landlord
  - · Assignment to nominee

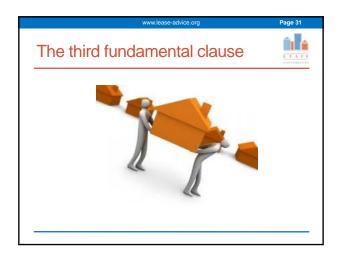


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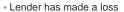
#### Mortgagee protection claim



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- Clause 8 of model lease
- · Ceases to apply on final staircasing
- Deducted from premium payable on final staircasing
- No obligation on mortgagee to accomplish final
- staircasing
- Purpose
  - Indemnify lender
    Following default and repossession
  - In event sale proceeds insufficient to cover certain amounts

#### When can the claim be made?



- Lender has obtained landlord's consent to terms of each and every loan
- Disposal on arm's length basis at best price reasonably obtainable in the market at the time of the sale
   Proof onus on landlord
- Leaseholder has not, before any mortgage default, achieved final staircasing

#### Capping of lender's loss

#### • The aggregate of

- Loans secured by a first legal charge Approved by landlord
- 18 months interest on such loans
- Any rents and/or service charges which mortgagee paid to preserve security
- Any fees/costs incurred by mortgagee in enforcing its security Legal, valuation and estate agency fees
  Capped at 3% of market value of leasehold interest



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Landlord should approve before contracts exchange

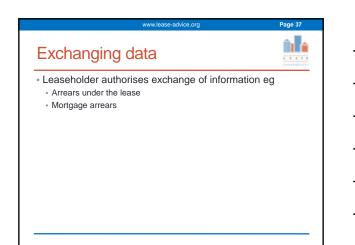
Steps to mortgagee protection

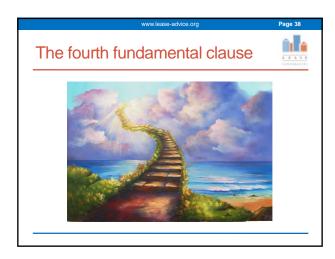
- Lender
- Amount
- Mortgage terms
- · Lender requires landlord undertakes not to institute forfeiture proceedings without advance notification

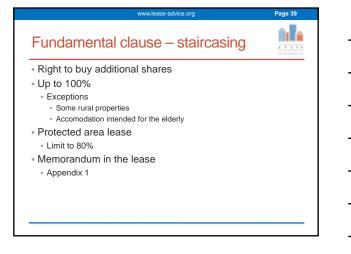
#### Seeking landlord's consent

Applying for landlord's consent to mortgage terms

- Provide full details of loan terms
- Landlord must
  - Respond promptly
  - Give decision within 28 days
  - Consent must be in writing
  - Written consent to be retained by Mortgagee







#### Fundamental clause – staircasing

- Portion of then market value
- Assessed by
  - an independent RICS qualified valuer
  - as at date of service of leaseholder's notice to staircas

#### Valuation assumptions

- Open market sale
- Willing seller
- Terms and conditions in lease
- SO lease not been granted
- Disregards include
- Improvements/disrepair

#### Starting the process



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- Schedule 6 of model lease
- Leaseholder serves written notice stating % wishes to acquire

- Minimum 10%
- Mortgagee of leaseholder can also serve notice

#### The landlord responds...

- Landlord applies to valuer to decide market value
   Within 14 days of receiving initial notice
  - Fees payable by leaseholder
- Landlord notifies leaseholder in writing of valuer's determination
  - Within 7 days of receipt
- Final and binding

#### The process concludes...



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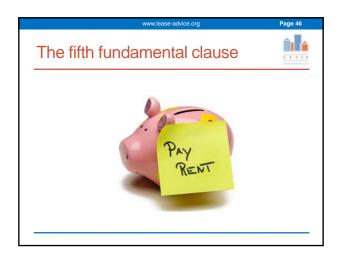
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- Leaseholder pays for %
  - Within three months of valuer's determination
  - Shall pay any arrears of rent and service charges
  - Any re-mortgage to be approved by landlord save following final staircasing

#### Memorandum of staircasing

- Appendix 1
- Specifies
  Payment date
  - Price paid
  - % acquired
  - Total share now owned
  - Revised rent
- Attached to original and counterpart lease



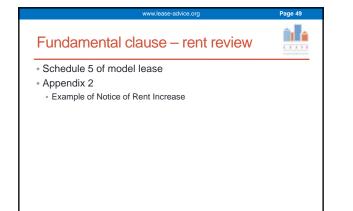


#### Fundamental clause - rent review

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- Rent based on equity retained by landlord
- 3%
- Annual review
- Review date in the particulars
- Link to RPI
- With additional 0.5% uplift
- Upwards only
- Expressed as a formula rather than verbally

# www.lease-advice.org Page 48 Fundamental clause – rent review • Caters for Possible abolition of RPI Rental payments if conclusion of review delayed Interest payable on any balance Barclays Base PLC base rate



#### Fundamental clause - rent review



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Index

- All items retail prices index published by the ONS
- Relevant Month
- The calendar month which is two calendar months before the relevant review date

#### Fundamental clause - rent review



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 $\circ$  A = monthly figure shown in the Index for Relevant Month in year of the immediately preceding relevant review date

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 ${}^{\circ}$  B = monthly figure shown in the Index for Relevant Month in the year of the relevant review date

#### What is the reviewed rent?

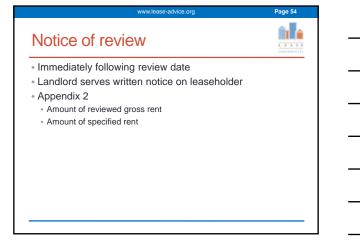


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Greater of

- Rent immediately before relevant review date x1.005;and
- $\,{}_{\circ}$  Rent immediately before relevant review date x (( B/A)+ 0.005

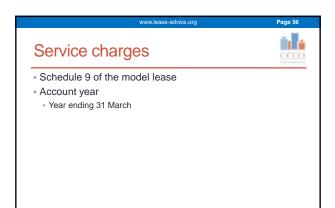
# www.lease-advice.org Page 53 If the reviewed rent cannot be agreed... If the reviewed rent cannot be agreed... • Reference to independent expert if no agreement within 3 months of the relevant review date

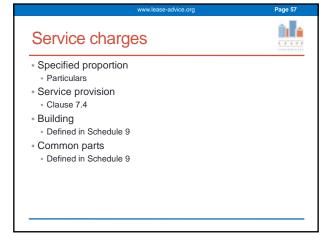


#### Service charges



- New leases issued with effect from 22 October 2010
- The service charge clause is no longer treated as a fundamental clause
- Recognised that the form of wording used in the model lease will not be appropriate in all circumstances





#### Service charges

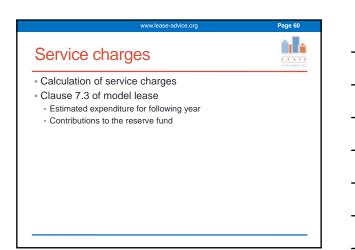


- Clause 7 of the model lease
- Payable by equal payments in advance
- End of year adjustment
- Certified by landlord
- At times and manner in which the rent is payable • Monthly

### Service charges

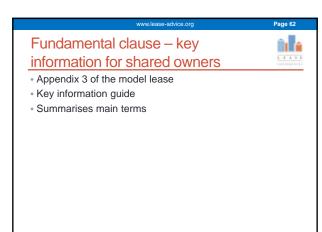


- Reserve fund
- Building insurance
- Maintain/repair/redecorate/renew
- Roof
- Foundations
- Joists
- External wallsDrains/sewers/conduits
- Common parts









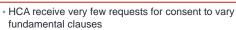
## Variation of Shared ownership leases

Lease granted on/after 1<sup>st</sup> October 2008

- Circular 03/08
   HCA consent needed to change fundamental clauses
   Sanctions if changed without HCA consent
- E.g. withdrawal of grant
- No such consent needed to changes that do not impact on fundamental clauses

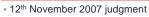
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# Variation of Shared ownership leases



- HCA will generally agree variations
  - To correct errors in expressing the fundamental clauses
     That become necessary due to new legislative/regulatory requirements

#### Richardson v Midland Heart Ltd.



- Purchase in 1995
- Without a mortgage
- Premium of £29,500
- 50% SO lease for 99 years
- Rent of £1,456 pa

#### Indexed increases

#### Richardson v Midland Heart Ltd.

- Staircasing not exercised
- 2003
  - Husband went to prison
  - R left flat following threats to family
- Feb 2005
  - Housing benefit ended
  - Arrears accumulated



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#### Richardson v Midland Heart Ltd

- 2005:
- MH agreed to sale
- Valued flat at £151,000
   Flat did not sell
- 15 September 2005
- MH issued Notice of Seeking Possession

#### Richardson v Midland Heart Ltd

#### October 2005

- Possession proceedings issued
- Ground 8 of Housing Act 1988 cited
  - Two months arrears at date of notice and hearing
- Mandatory ground
- January 2006
  - Outright Possession order made
  - "Lease" considered an assured tenancy
  - Mandatory ground satisfied

#### Richardson v Midland Heart Ltd



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R appealed on following grounds-

- 50% "equitable interest" in freehold held in trust for R
- There were "two tenancies"
- Long lease that had to be forfeited
- Assured tenancy

#### Richardson v Midland Heart Ltd



• What did the High Court say?

- Only one tenancy and HA 1988 requirements satisfied
- No long lease as R did not have 100%
- Amount of arrears meant Section 167 of 2002 Act not applicable
   50% payment was premium for lease and did not buy share of freehold
- No trust relationship just a Landlord/Tenant one

#### Richardson v Midland Heart Ltd



- R appealed
- Hearing due in March 2011
- Case settled beforehand
- MH gave R 50% original premium back but not increase in equity
- £29,500 less arrears and legal costs

#### Richardson v Midland Heart Ltd



Conclusion

- SO leaseholder only tenant with no financial interest in property
- Could be evicted under assured tenancy
   Two months rent arrears
- Premium bought right to staircase when could afford 100%

