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Right to Buy

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18th July 2016

Introduction



- The right to buy a council flat/house at a discount based on number of years as tenant repayable within set period on certain disposals
- Housing Act 1980
 - Introduced on 3 October 1980 in England, Wales and Scotland
- Right to buy now being extended to
- Housing Association Tenants



What we will cover



- Who is and is not eligible
 - including the recent extension of the right to buy
- The RTB forms
 - England and Wales
- What should be in the offer from the landlord
- What are the discount limits
 - England and Wales
- What to do if the application is turned down
- The terms of the RTB lease
- The Voluntary Right to Buy Pilot Schemes
- The Housing and Planning Act 2016

Statutory authority



- Housing Act 1985
- Numerous other statutes and statutory instruments
 - Housing Act 1980
 - Housing and Building Control Act 1984, Part I
 - Housing and Planning Act 1986
 - Housing Act 2004
- Deregulation Act 2015 (England) Section 28
 - <http://www.legislation.gov.uk/ukpga/2015/20/section/28/enacted>
- Housing and Planning Act 2016

Right to Buy



- The right granted to the tenant of a local authority to purchase their home at a discount
- They must have rented their home for a specified period of time under a particular tenancy
- The discount will vary according to the length of time they have been renting their home



Preserved Right to Buy



- Large scale voluntary transfer
- Existing secure tenants become assured tenants
- Right attaches to tenants
- Right is portable



Right to Buy - Housing Associations



- Tenants who entered into tenancy agreements before 15th January 1989 are secure tenants and have RTB entitlement
- Does not extend to tenants of charitable housing associations
- **NB.** Right to buy is now being extended to all remaining housing association tenants from 2016 on a voluntary basis

Who is eligible?



Housing Act 1985, s119 and Schedule 4

- Public sector tenant
 - usually a secure one
- Only or principal home
- Self contained
- Individual or jointly with member of family living jointly for past twelve months

Sections 79 to 81 of the Housing Act 1985

- Definition of secure tenant

Deregulation Act 2015 (England)

- Qualifying period has been reduced from five years to three years as from 26 May 2015

Who is not eligible?



- Bankrupt, or bankruptcy petition, pending
- IVA with creditors
- Possession order in place, under Housing and Regeneration Act 2008, S304
- Where a court order suspending the right to buy has been granted by the court
 - Housing Act 2004 S192, creating S121 Housing Act 1985
- Where there is an application pending for a demolition order, a suspension order or a possession order sought on grounds of anti-social behaviour
 - Housing Act 1985, S138(2A) to (2D), as inserted by S193 Housing Act 2004
- Flat not used as main or only residence

Certain properties exempt



- Particularly suitable for the elderly
 - Appeal to the Tribunal within 56 days of landlord's notification of refusal
- Charitable housing trusts
- Held by the landlord on a Crown tenancy
- Exemptions and excluded properties
 - Schedule 5 HA 85
 - S120 and S121 HA 1985

Suitable for occupation by elderly persons



Paragraph 11, Schedule 5 of the Housing Act 1985

- Easy access to the dwelling on foot
 - unlikely access will be considered easy if there are more than three steps and no handrail
- One level
- Where above ground level
 - 24-hour access to a lift
- No more than two bedrooms
 - Heating arrangements
- Reasonably conveniently located for shops and public transport, having regard to the nature of the area



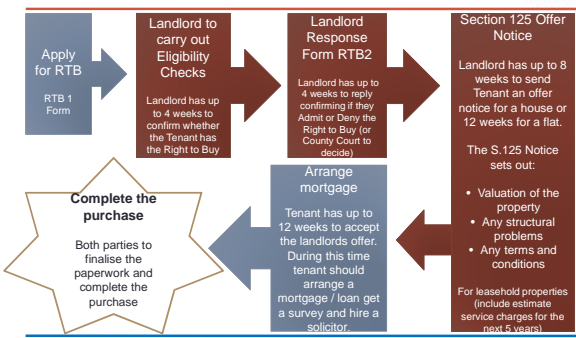
Right to Acquire



- Housing Act 1996
- Applies to charitable housing associations
- Dwellings built with public finance after 1 April 1997
- £9,000 to £16,000 discount
 - Flat rate
- Linked to properties, not tenant



RTB Process (overview)



The Right to Buy (RTB1) form - England



• The Housing (Right to Buy) (Prescribed Forms) (Amendment) (England) Regulations 2015

• In force from 17 August 2015

• http://www.legislation.gov.uk/uksi/2015/1542/pdfs/uksi_20151542_en.pdf

The Right to Buy (RTB1) form- Wales



• The Housing (Right to Buy) (Prescribed Forms) (Wales) Regulations 2015

• Came into force on 22 January 2015

• <http://www.legislation.gov.uk/wsi/2015/1320/schedule/1/made>

RTB Wales



*'A bill will be introduced to safeguard Wales' social housing stock by **abolishing the Right to Buy and the Right to Acquire**. This will ensure social housing is available to those who need it, and who are unable to access accommodation through home ownership or the private rented sector'.*

First Minister, Carwyn Jones
28 June 2016



Section 125 offer notice - contents



- Freehold and Leasehold
- The offer notice will confirm that the tenant is eligible to buy their home and will set out the following information:
 - Description
 - Price (Market Value)
 - Discount amount
 - Any known structural defects
 - Any terms and conditions attached to the sale

Section 125 offer - contents



- Additional leasehold information required:
- For the long lease of the flat
 - 125 years
 - Not more than £10 pa rent
 - Value at relevant time
- Improvements disregarded under S127
 - Right to appeal to district valuer
 - 12 weeks
 - decision final
- Service Charges

Section 125 notice – more contents



- Reference period
 - 5 years beginning not more than six months after date of section 125 notice
- Estimate of average amount
 - At current prices
 - Payable under each head in reference period
- Eg maintenance, insurance management
 - Total figure shown

And more contents



- Repairs
 - Itemised works estimated
 - At current prices for reference period and total shown
 - Non-itemised works estimated at average yearly amount
 - At current prices for reference period
- Improvements
 - Estimate of amounts for reference period and total shown
- Capped at these figures
 - Allowance for inflation
- Any structural defects
 - Affecting the dwelling or building
 - Only those known to the landlord

Increased discount limits - England



- £103,900 in London
- £77,900 outside London
- From 6 April 2015
- Increases each April in line with CPI
- *CPI was negative in September 2015, there was no increase applied effective from April 2016*



Maximum discount - houses



- There are different discount levels for houses and flats
- **Houses** 35% discount for a public sector tenant for 3 years. The discount remains at 35% until they have 5 years public sector tenancy
- After year 5, the discount goes up by 1% for every extra year they have been a public sector tenant, up to a maximum of 70% – or £77,900 across England and £103,900 in London boroughs (whichever is lower)

Maximum discount - flats



- **Flats** 50% discount for a public sector tenant for 3 years. The discount remains at 50% until they have 5 years public sector tenancy
- After year 5 the discount goes up by 2% for every extra year they have been a public sector tenant, up to a maximum of 70% – or £77,900 across England and £103,900 in London boroughs (whichever is lower)

Discount limits - Wales



- On 14 July 2015, the maximum discount available in relation to Right to Buy and Right to Acquire properties changed from the current level of £16,000 to £8,000
- Housing (Right to Buy and Right to Acquire) (Limits on Discount) (Amendment) (Wales) Order 2015
- Social landlords need to ensure any applications served on them before **14 July 2015** are subject to a maximum discount of **£16,000**, but any applications served on them on or after 14 July 2015 are subject to a maximum discount of **£8,000**

What if the offer is turned down?



- Appeal generally lies in County Court
 - S181
- Only one circumstance where First-tier Tribunal can decide
 - Suitable for occupation by elderly persons
 - Apply within 56 days



Tenant's notification of intentions



- S125D – Tenant to notify landlord of intentions
 - Accept or withdraw
 - Time limits
- S125E Default Notice
 - Tenants failure to notify Landlord - 28 days' notice from landlord requiring tenant to respond

What is in the lease?



- A Right to Buy lease under the Act will look like most other leases and will contain covenants and rights granted to the leaseholder in a form familiar with Leasehold Practitioners
- Unlike most other leases the essential covenants and terms of the lease are imposed under the provisions of [Part 3 of Schedule 6 of the Housing Act 1985](#)

The following slides will detail the most important implied covenants contained in these leases

Implied covenants – schedule 6



- Ground rent
 - Must not exceed £10 per year for the whole term
 - Paragraph 11
- Lease term
 - The lease term is 125 years
 - Paragraph 12
- The commencement date for all leases in a building may start on the same date



Implied covenants – schedule 6



• Common use of premises and facilities

- Where a tenant has been able to use facilities and premises as part of their tenancy they will enjoy the same rights once they become a leaseholder

- Paragraph 13

- Similar provision to Section 62 of the Law of Property Act 1925



Landlord's implied covenants – paragraph 14



- Maintain the structure
- Maintain the structure and exterior of the building and make good any defects
- Keep in repair other property, which the leaseholder has rights to use
 - Common parts
- Reinstate the building in the event of damage or destruction
- Maintain any services enjoyed by the leaseholder to a reasonable level and keep in repair any installation in respect of those services

Landlord's implied covenants



- *Irvine v Moran* [1991] 1 EGLR 261

- *Sheffield City Council v Hazel St Clare Oliver* LRX/146/2007

• **NOTE: The Act does not define what a structure is. We have to look to case law for a workable definition**

Landlord's implied covenants



- *Irvine v Moran* [1991] 1 EGLR 261
- The definition of the structure of a residential building is not limited to those aspects of the building that is load bearing
- External windows and doors fall within the definition of structural
- The windows in this instance were sash windows and it was held that the cords for the sashes and the window furniture could not be separated from the structure
- Although sash windows are now rare uPVC windows have complicated mechanisms and not logical to separate window furniture from the definition of the structure

Landlord's implied covenants



- *Sheffield City Council v Hazel St Clare Oliver* LRX/146/2007
- The case heard by the Lands Tribunal in 2008
- The RTB lease provided that the windows and doors were part of the demise and repairable by the leaseholder
- **See Paragraph 14(2) of Part III of Schedule 6** where the landlord is under an obligation to maintain the structure of the building

Landlord's implied covenants



- *Sheffield City Council v Hazel St Clare Oliver* LRX/146/2007

- Any variation from the implied covenants under Paragraph 14 may be approved by a County Court
 - Paragraph 14 (4)



- Without a court order any variation from the provisions of Paragraph 14 is void

Landlord's implied covenants exceptions – paragraph 15



- This paragraph applies where the landlord's interest is leasehold
- To pay any rent due under the lease and to discharge its obligations
- The covenants implied by Paragraph 14 shall not impose an obligation on the landlord which the landlord is not entitled to perform under its lease
- Where the landlord's lease provides for the superior landlord to perform covenants similar to those contained in Paragraph 14 the landlord shall use its best endeavours to enforce those covenants

Covenants by the leaseholder – paragraph 16



- The leaseholder should keep the demised property in a good state of repair
- To pay service charges to the landlord for costs incurred in meeting an obligation under Paragraph 14
- Leaseholder is not required to pay any more than what is specified in the landlords section 125 offer notice, plus inflation

Void provisions – paragraph 19



- Any provision that seeks to forfeit the lease where the leaseholder seeks to enforce the provisions of Schedule 6 is void



Right To Buy Extension (England)



- Right to Buy extension to tenants in Housing Associations
- Fund the replacement of properties sold under the extended Right to Buy by requiring local authorities to manage their housing assets more efficiently, with the most expensive properties sold off and replaced as they fall vacant



Voluntary Right to Buy (England)



- Agreement reached between the Government and National Housing Federation (NHF) to implement the right to buy extension on a voluntary basis
- NHF offer: compromise with a view to securing independence of housing associations
- The first Housing Association tenants will be able to buy their homes in 2016

The voluntary right to buy – pilot scheme six months on...



- Riverside
- Sovereign
- L&Q
- Thames Valley housing
- Saffron



sovereign



Number of eligible tenants



- NHF estimated an additional 850,000 tenants would be eligible under the extended RTB
 - Including those who fall under Preserved RTB and those who have not held a tenancy for three years

Of the 850,000 it is estimated that 221,000 tenants will be eligible and able to afford to buy their homes.



VRTB pilot – eligibility criteria



- Public sector tenant (usually a tenant of a council or housing association) for at least 10 years (can add up previous tenancies)
- Tenant of one of the pilot housing associations

Voluntary RTB pilot - exemptions



- Properties in certain rural areas
- Supported housing designed for people with specific needs
- Specialist properties of historic interest
- Charitable/ public benefit resources or purposes
- Tied accommodation
- Where landlord is cooperative
- Where landlord does not have sufficient interest to grant a lease over 21 years
- Properties held in Community Land Trust and
- Where there are clear restrictive covenants in existing resident contracts around protection of rural homes

Housing and Planning Act 2016



• 12 May 2016

- Chapter 1- Implementing the voluntary right to buy
 - Funding discounts offered to tenants
- Chapter 2 - Vacant higher value local authority housing
 - Payments to Secretary of State by local housing authorities

What's next?



- No implementation date for the extended RTB has been announced
- VRTB to become a national scheme





Questions?

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