



CML Guidance

Handling arrears and possession sales of Shared Ownership Properties

On the 7 September 2009 the Council of Mortgage Lenders (CML) released a guidance note aimed at lenders and Housing Associations (HA) when handling arrears and possession sales of Shared Ownership Properties. The guidance was prepared by the CML and the National Housing Federation with a view to explain best practice in handling mortgage arrears and to ensure that when enforcement becomes necessary, it is handled efficiently, with effective communication between the HA and the lender.

Aim

The underlying purpose of the guidance is to improve communication between the lender and the HA and thereby to help effect co-ordination when the owner is in default. Experience suggests that co-ordination has not always been effective and that in many cases it can be improved, along with awareness of the needs of the other party. The guidance note highlights the key actions or decisions that each party is expected to take and communicate at the successive stages of the arrears and possession process.

At present, it is often the case that a HA is invited to buy back the property only when it has been repossessed and the lender is trying to sell it. It is hoped that by notifying the HA earlier on in the arrears process this will result in a HA considering offering the Borrower a grant to effectively sell back a percentage of the property to the HA, allowing the owner to remain in occupation.

Summary of the guidance

The guidance encourages dialogue between the lender and the HA at the beginning of the arrears process, during the enforcement stages and following possession. Of particular importance is the suggestion that when issuing proceedings, the lender should enquire as to whether the HA wishes to buy the property back, where possible providing a valuation. The HA has 14 days in which to respond setting out their position.

Once a property is in possession and it is established that the HA does not wish to buy the borrower's share, the lender can experience difficulty in obtaining information from the HA regarding staircasing (buying the HA's share) and the calculations under the mortgage protection clause. The guidance specifies clear timescales for response times of the HA which will greatly increase the efficiency of the process.

Contact details

The CML have published contact lists giving details of who to contact in lenders and HAs respectively in the event of default. These are listed in Appendices A & C and available to download for members at www.cml.org.uk.

Service Level Agreement

The CML have suggested that the lenders and the HAs individually enter into a Service Level Agreement, which will set out the framework for standards of responsibilities and service. An example is given in Appendix C, available for download by members at www.cml.org.uk.

Next steps

We will be discussing these proposals with clients in the next few weeks in order to decide how and to what extent our respective procedures are altered to give effect to the guidance. The guidance is shown in further detail below.

The Guidance

Procedure at arrears stage	
Action to be taken by lender	Action to be taken by HA
If possible, tell the HA in writing when the mortgage account shows two months of arrears. There may also be rent arrears, which could affect your recovery strategy and theirs. Inform the borrower that you have disclosed this information to the HA.	If possible, inform the lender in writing when rent is two months in arrears and where you have been unable to reach an agreement with the leaseholder to repay the arrears. There may also be mortgage arrears, which could affect your recovery strategy and theirs. Inform the tenant that you have disclosed this information to the lender.
BOTH: Advise the borrower to contact their HA and/or the free independent money advice sector if they are having difficulty paying their rent or their mortgage.	
	Tell the lender when the matter has been entered into small claims court for non-payment.
	Capitalisation of arrears should not be seen as an automatic solution or as a substitute for reaching an agreement with the tenant to repay over a period.
	Note: if you are considering forfeiture of the lease you MUST give the lender 28 days notice in the form prescribed by the HCA/CML/Federation guidance.
BOTH: Consider a home visit where appropriate, either independently, or with the HA.	

Procedure during the enforcement process	
Action to be taken by lender	Action to be taken by HA
On issue of proceedings, write to the HA warning of proceedings and ask for an indicative decision as to whether HA will buy back the property. If possible, provide the HA with valuation and details of the outstanding mortgage balance and arrears. Consider giving the borrower seven days notice that you intend to disclose information to the HA.	Reply within 14 days setting out likely position on buy back.
Check if there are any restrictions on staircasing and/or whether there is a mortgagee protection clause (MPC) in the lease.	

If HA will not exercise buy back option, find out whether they will assist in marketing the property eg by offering it to a list of prospective buyers.	Obtain valuation within 14 days and tell the lender immediately. If buy-back has been indicated, confirm to the lender within three working days of receiving valuation. If not, provide procedures for staircasing and solicitor's contact details within three working days.
On receipt of notice of possession, inform HA in writing.	Inform insurers that the property is vacant and that insurance cover remains in force. If buying back the property, complete within seven days; if not, give the lender the up to date insurance policy.

Procedure during sale process following possession

Action to be taken by lender	Action to be taken by HA
On obtaining possession, draw up interim income and expenditure statement for approval by the HA if a claim is to be made against the HA under the MPC.	Agree income and expenditure and valuation within two working days if possible.
If HA is buying back, tell them within 14 days if possible that possession has been obtained.	Agree/contest income and expenditure statement promptly to avoid unnecessary delay at exchange of contracts.
On receipt of an offer, tell HA of the amount.	Agree sale price within two working days if possible. Provide sealed memorandum of staircasing and transfer of freehold (if applicable) within 14 working days.
Following exchange and with completion date known, give HA a final statement showing the claim (if any) under the MPC.	Review the claim under the MPC (if any) for approval.
On completion, tell HA and transfer funds to HA's solicitors if applicable.	