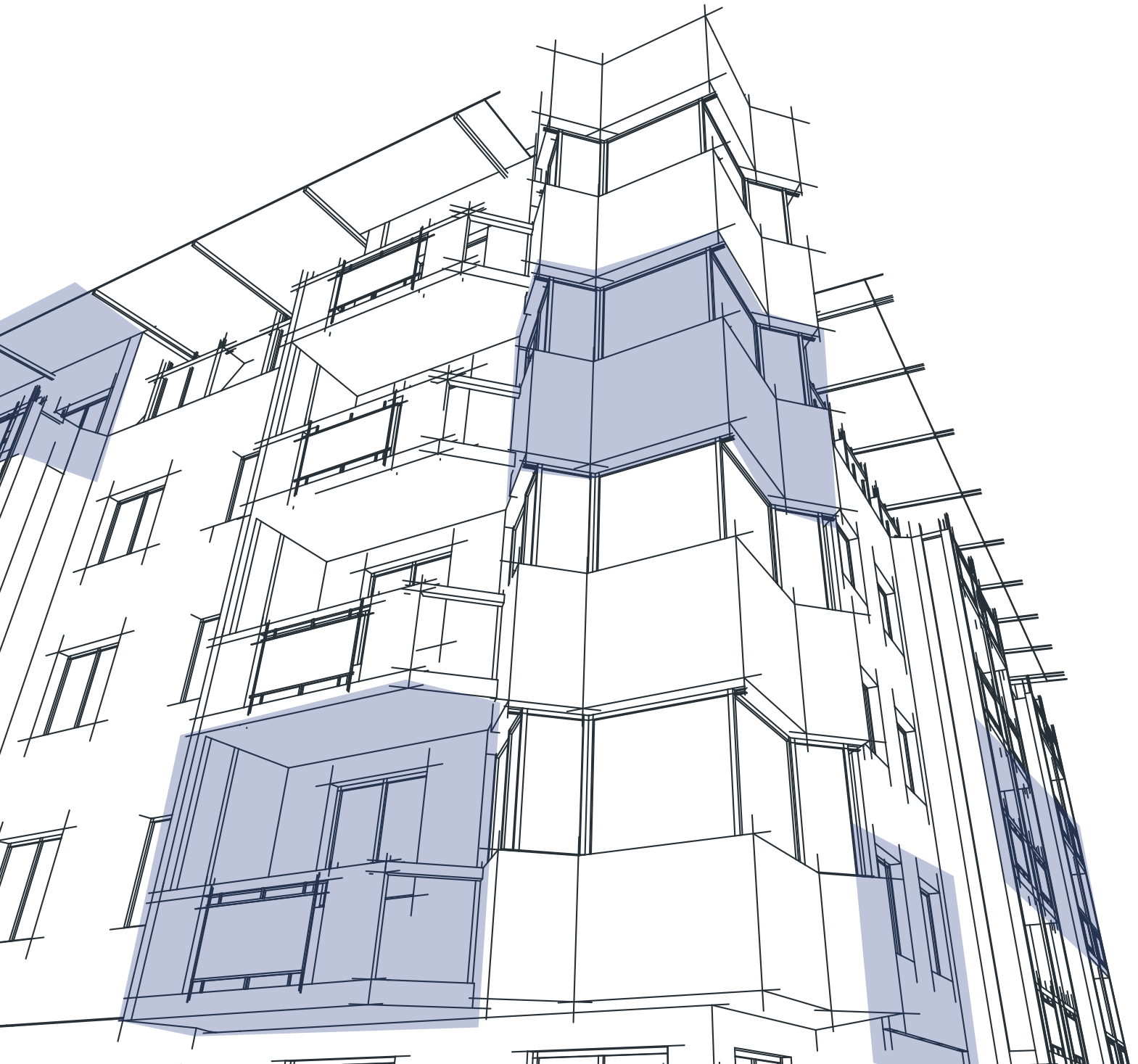


THE SHARED OWNERSHIP LEASES

Affordable Homes Programme 2021 to 2026



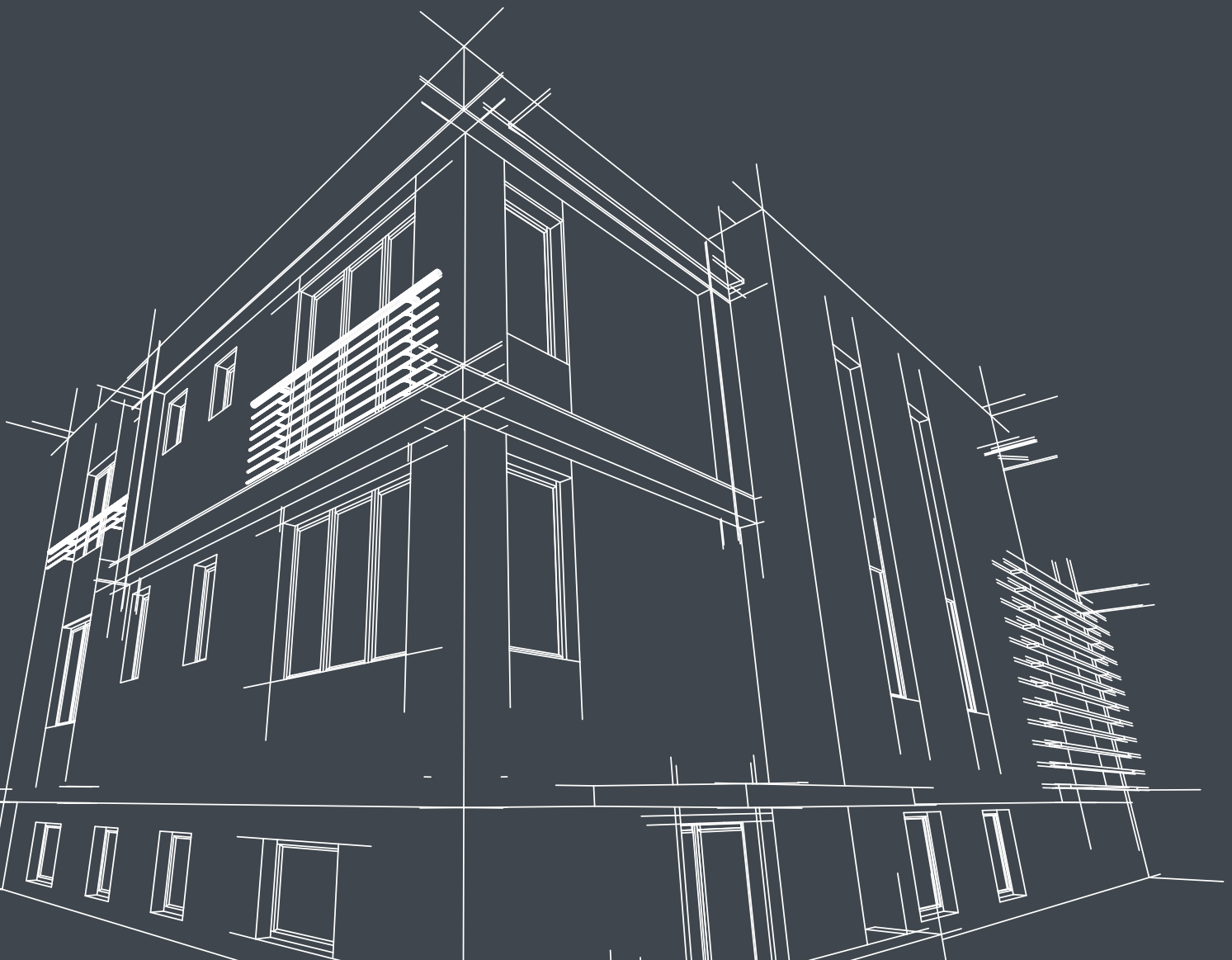
Foreword

In May 2021 Homes England published the updated model shared ownership leases to be used for schemes funded by the Affordable Homes Programme (AHP) 2021 to 2026 and for shared ownership homes required by new Section 106 agreements.

The new leases will remain familiar to housing providers and whilst there has been some significant policy changes and related drafting in relation to:

- the new minimum term of 990 years;
- the introduction of 1% staircasing;
- the landlord's responsibility for the cost of essential repairs during the first 10 years; and
- the leaseholder's ability to claim contributions towards certain general maintenance throughout the first 10 years.

The model leases have not been completely overhauled with other changes limited to updating statute references, taking steps to modernise and simplify language and a general update in line with current market/lender requirements.



The changes

Making the leases more user friendly

The first notable change is that an expanded particulars page has been included. This aims to place front and centre at the start of the document key information that the homeowners will want to know, and that the housing provider will want to check, when approving the lease for each transaction. This should also assist all parties where electronic documents are being used in place of hard copies - a practice the sector is likely to maintain as we move to a post-Covid way of working. The definitions have also now been moved to the front of the lease which will be popular with many users.

Fundamental clauses

Some thought has been given to usability. The fundamental clauses, being the clauses which may not be deleted or amended without the express permission of Homes England, are now highlighted in blue for ease of reference.

As well as the 1% Staircasing and the Initial Repair Period Schedule being added to the fundamental clauses (plus related cross referencing and definitions), the requirement to give notice to any mortgagee of the leaseholder before the landlord can commence possession proceedings has also now been made a fundamental clause. This is in line with the requirements of lenders.

Term

The minimum term of the lease, subject to a small amount of leeway for schemes where a standardised commencement date is required, must now be granted for at least 990 years. Housing providers will need to bear this in mind on schemes where they do not own the freehold to ensure that they obtain a leasehold interest of sufficient length. There are no exceptions to this requirement.

Use clause

With working from home the new normal, the use clause now specifically includes working from home from a home office as long as such use is not inconsistent with residential occupation.

Assignment and underletting

The lease now specifically provides that underletting may be possible with landlord's consent which cannot be unreasonably withheld. This takes into account certain circumstances where it is not possible for a sale to take place to avoid leaseholders being trapped with homes that they cannot use and cannot sell. The clause makes it clear that if any requested underletting would not be in line with the guidance of the grant funding conditions, this would be a reasonable reason for the landlord to withhold consent.

The nomination/assignment period has now been reduced from 8 weeks to 4 weeks and the valuation validity period has been extended from 8 weeks to 12 weeks prior to the date of exchange.

The Initial Repair Period Schedule

The first of the two major additions to the lease is the new Initial Repair Period Schedule.

During the first 10 years of the lease, the landlord is now responsible for procuring and paying for essential repair works (including covering the cost of any administration charges or excess fees) to:

1. the load bearing framework of the building;
2. the external fabric of the building;
3. all other structural parts of the building, the roof, foundations, joists and external walls of the building; and/or
4. the service media and machinery and plant within (but not exclusively serving) the premises and all parts of the building which are not the responsibility of the leaseholder under the lease or of any other leaseholder under a similar lease of other premises in the building.

Parts of the external fabric demised to leaseholders, such as external doors and windows, will still be caught by these obligations. It is anticipated that these works will in most cases be covered by warranties or insurance.

Any required works need to be notified to the landlord during the 10 year period to qualify under the Schedule. This does ensure that there is a quantifiable and certain fixed end point to the obligations which will assist housing providers in risk planning/budgeting.

The definition of External and Structural Repairs does not include normal general maintenance, redecoration and renewal works. Such works will be chargeable to the leaseholders via the service charge provisions, in the normal way where they are the landlord's responsibility. The landlord is also prevented from collecting and using any reserve fund contributions for the purpose of the External and Structural Repairs.

The landlord must also provide the leaseholders with access to an annual £500 contribution to help towards the cost of Qualifying General Repairs and Maintenance Works. This is not intended to cover all costs or improvements that the leaseholder will face as a normal part of home ownership but is limited to the costs of keeping in repair and proper working order:

1. the installations in the premises for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences, but not other fixtures, fittings and appliances for making use of the supply of water, gas or electricity); and
2. the installations in the premises for space heating and heating water (where those obligations are the leaseholder under the terms of the lease).

The landlord needs to approve the Qualifying General Repairs and Maintenance Works in advance and the works must be carried out by workmen approved by the landlord or by a TrustMark approved tradespersons. It is the leaseholders' choice as to who they choose to instruct.

Leaseholders are able to roll over a maximum of one year's worth of unused contribution into the following year. There is no limit on the number of claims that can be made in any one year.

A contribution towards the costs of any Qualifying General Repairs and Maintenance Works cannot be claimed in respect of any work that is covered under a warranty, insurance policy or guarantee, although any administration fee or insurance excess in respect of a claim under the same may be claimed.

The lease is deliberately not prescriptive on timeframes for dealing with claims but the expectation is that these will be dealt with in a reasonable period with emergency issues dealt with as such, given that the maintenance is to water, electricity and heating supplies.

1% Staircasing Schedule

The second major addition is the 1% Staircasing Schedule.

Each leaseholder (both on initial and resales) benefits from a 15 year period where they may staircase in 1% increments. Prior to final staircasing, the 15 year period resets each time there is an assignment.

The initial cost of a 1% share is recorded in the particulars (the Initial Additional Percentage Value). At least once a year, the landlord is required to update the valuation and to serve notice of the new valuation on the leaseholder.

Each valuation of the Additional Percentage is valid for three months and at any time within that three month period the leaseholder may opt to purchase the 1% share by making the relevant payment set out in the valuation notice.

If the leaseholder has obtained a more recent RICS valuation, for example as part of a remortgage, they may request the landlord use that valuation as the base value. That RICS valuation is then used as the base value until a more up to date market value or RICS value is obtained.

Either party can request a new market value calculation by a valuer at any time should they have concerns that the current calculation is not accurate. The cost of that valuation is payable by the person who requests it

Once the leaseholder makes an Additional Percentage payment (and provided there are no arrears which would otherwise also need to be settled to complete the process), a memorandum will need to be prepared to record the new percentage owned by the leaseholder and the new Specified Rent.

Updating the HPI valuation

The formula might look intimidating at first glance but this is largely a consequence of the different ways that the base HPI rate can change. We anticipate that once housing providers have run through the first calculation, they will recognise that the process is quite similar to their standard rent review processes.

There are quirks, especially given that UK House Price Index (HPI) is reviewed and updated as more sales data becomes available – and can therefore be changed retrospectively. Housing providers will need to keep a record of the relevant dataset from UK House Price Index as at the date they carry out their calculation.

The formula used to calculate any new HPI valuation requires three pieces of information which are referred to as X, Y and Z in the formula set out in the Schedule.

The base number is X in the formula. This is the most recent of either the Initial Additional Percentage Value quoted in the particulars, or, 1% of the most recently certified market value, or 1% of an RICS valuation of a market valuation obtained by the leaseholder. If either party is unhappy with the source being used as the base, they can request (at their own cost) for a new market value to be prepared so that a new up to date base figure is created.

Once X is known, the landlord will need to obtain two HPI index figures using the data set for the relevant local authority and type of property. Based on the model clauses these would be:

1. the HPI index figure for the month (or where not yet published the nearest published month) that X was calculated i.e. the date of the lease, the date of the most recent market value or the date of the leaseholder's RICS valuation. This index figure is Y in the formula.
2. The HPI index figure for the defined month before the leaseholder's latest request. Based on the model clause, this would be the index figure for the month which is two months before the leaseholder's request. This index figure is Z in the formula.

The following calculation is then made:

$$(X \times Z) / Y$$

Once the calculation has been made, the landlord then serves the Additional Percentage Value Notice on the leaseholder confirming the new valuation. In Appendix 2 to the Schedule there is an example Additional Percentage Value Notice.

Prior to each Review Date, the landlord is required to serve an Additional Percentage Value Notice providing the new current value of a 1% share and so the calculation will need to be carried out at least once a year. In that case, the Review Date is used as a reference to determine Z.

It should be noted that the leaseholder can request a new valuation whenever an Additional Percentage Value Notice is older than three months and so the landlord may need to make up to four calculations per year if requested to do so, and cannot charge for the administration.

On completion of the payment for an Additional Percentage, a memorandum is prepared by the landlord to record the same. The form of memorandum is set out in Appendix 1 to the Schedule.

Key information forms

The final main change is the removal of the key information wording from the appendices and the introduction of a new steps in the sales process requiring that prospective buyers must be provided with a key information document pack (see 11.2.5 of the Capital Funding Guide - <https://www.gov.uk/guidance/capital-funding-guide/1-help-to-buy-shared-ownership>) as part of the reservation process.

The new key information document pack comprises three documents which should be made available to prospective buyers as follows:

Document 1 – Key information about the shared ownership home

This document is intended to accompany property listings for initial sales and resales.

It's for prospective homebuyers:

- who are looking at different homes
- before they have completed a financial assessment

Document 2 – Summary of costs

This document is intended for prospective homebuyers:

- after they have registered with a Help to Buy agent
- after they have gone through a financial assessment
- before they pay the reservation fee to secure a shared ownership home

Document 3 – Generic key information about shared ownership booklet

This document is intended for prospective homebuyers:

- after they have registered with a Help to Buy agent
- after they have gone through a financial assessment
- before they pay the reservation fee to secure a shared ownership home

Homes England expects that housing providers will give this document:

- to the homebuyer together with the personalised 'Summary of costs' document
- to the homebuyer's solicitors

Next steps

For more information and guidance on implementing the new leases please contact



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