Right to Buy and Right to Acquire

Jackie Dickins

Programme

- Background
- Who has the right to buy
- What properties are exempt
- The procedure:
  - Eligibility checks
  - Qualifying periods
  - Discounts
  - Cost floor
- Setting the service charge
- The offer notice
- Dealing with disputes
- Delays
- Good practice

Programme ...(cont'd)

- Right to Acquire
  - Background
  - Who is eligible
  - Which properties are eligible
  - What properties are exempt
- The procedure
  - Eligibility checks
  - Qualifying periods
  - Discounts
  - Cost floor
- Setting the service charge
- The offer notice
- Dealing with disputes
- Delays
- Good practice

Note: Words in italics – indicate that the same point is relevant to both the RTB and the RTA

Right to Buy

Right to Buy

- Introduced – Housing Act 1980, governed by Housing Act 1985
- Changes over the years to:
  - Eligibility – number of years with a public sector tenancy
  - Discount – ranging from maximum £50,000/£38,000/£127,940 now in London (£96,010 elsewhere in England) – increases 1/4
  - Previously limited to secure tenancies – pilot open to HA tenants who are not secure
  - Includes preserved Right to Buy (PRTB)
  - Potentially now to include tenants of housing associations

Who has the Right to Buy

- A **secure** tenant/s:
  - who has held a public sector tenancy for at least three years. NB, this does not have to be continuous
    - 1st check – do they hold a secure tenancy?
    - 2nd check – have they held a public sector tenancy for a minimum of 3 yrs (the qualifying period)?
- Secure tenancies issued by public sector landlords, eg, local authorities
- HA's may inherit secure tenancies = Preserved Right to Buy (PRTB)

Who has the Right to Buy ...(cont'd)

- Other members of the family can join with an eligible tenant in the application providing:
  - They are named on the tenancy agreement
  - They are spouse or civil partner
  - Up to three family members, who have been living in the property for the 12 months immediately before the application. They don't have to be on the tenancy agreement but it must be their main home

Properties exempt from the RtB

- *Properties specifically designed to provide supported housing – eg, Category 11 where a scheme manager is provided, and where special facilities may be provided nearby*
- *Homes particularly suitable for occupation by the elderly- Categorised under paragraph 11, Schedule 5 Housing Act 1985 including such features as:*
  - *Ease of access on foot*
  - *Usually on one level*
  - *If above ground floor level, easy access to a lift*
  - *No more than two bedrooms*
  - *Heat to at least living room and one bedroom*

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Properties exempt from the RtB ...(cont'd)

Other exempt dwellings:

- *Designated for elderly*
- *Disabled*
- *Mental disorder*

See handout

Properties exempt from the RtB ...(cont'd)

- *Properties due for demolition*
- *If a property is subject to an initial demolition notice processing can be suspended – can be served seven years before*
- *If a final demolition notice is in place then the application is cancelled – A notice is valid for two years, extended by application to the Secretary of State*
- *Who holds this information in the organisation??*
- *How do you get to find out?*

The procedure – RTB1 claim form

- Tenant completes and submits the application claiming the RtB (RTB1). *It is used to determine:*
  - *If the tenant is eligible*
  - *How much discount will be awarded*
- *The date the claim form is received is important because it is referred to as the 'relevant time' for:*
  - *The date at which the valuation is set and therefore the calculation of the sale price*
  - *Used to calculate the statutory timescales for admitting or denying the claim/completing the transaction (sale/purchase)*
  - *What arrangements are in place for getting the claim form from A to B?*

The procedure – Checking the RTB1 claim form

- On receipt of the RTB1 claim form:
  - Date stamp the form
  - Ensure that the following is checked:
    - The address of the property that the claim is in respect of – not as silly as it sounds!
    - There are signature(s) for all the applicants to the claim
    - There are signatures from all tenants – if joint
  - Check eligibility, ie, are they secure tenants?
    - The very first check to be made

Frequently asked questions at RTB1 stage

- Q – Only one of the joint tenants wants to buy the property. Is this allowed?

  A – The other tenant(s) may live away from the property and retain their Right to Buy or agree to the other tenant(s) buying without them joining in, provided they indicate on and sign the application form in the appropriate place

- Q – Only one joint tenant has made a claim and the other tenant has not signed to agree. Can the one party purchase?

  A – If one or more of the tenants does not signify their agreement, the other tenant(s) will not be able to exercise their Right to Buy and the application will be denied

Other eligibility checks

- *Any tenant or family member who is subject to one of the following orders will not be allowed to join in the Right to Buy:*
  - *Possession order with a fixed date – including Suspended Possession Order*
  - *Ground two criminal nuisance order*
  - *Right to Buy suspension order*
  - *Bankruptcy order – undischarged bankrupts, have a bankruptcy petition pending or where they have made an agreement with a creditor but have not fulfilled the terms of the arrangement*
  - *Demotion order*

Other eligibility checks ...(cont'd)

- *Check Government Bankruptcy and Insolvency Register – check if applicants are bankrupt or subject to Debt Relief Order/Individual Voluntary Arrangement (IVA)*

NB: If the application is denied because one of the above orders is in place, the tenant will be required to submit a new RTB1 once the term of that order has been satisfied if they wish to continue with the Right to Buy

Other eligibility checks – other applicants

- To qualify for the RTB those other applicants to the claim must satisfy **all three** of the following requirements:
    1. They must be a relevant family member who are specified as: The spouse or civil partner of the tenant; or the tenant and that person live together as if they were husband and wife or civil partners, *or* the tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece
    2. They must live at the property as their only or principal home
    3. They need to have been living at the property for 12 months immediately preceding the date of application, except in the case of spouses or civil partners where the 12 month residential requirement does not apply

NB: they are automatically excluded if they are subject to a Court Order previously mentioned

Applicant checks

- *Signatures – TA and RTB1 application match*
- *Housing benefit – establish source of funds for the purchase*
- *Check photo ID and residency for all applicants and that d.o.b is consistent with your records and is consistent with the person, ie, they look the right age, and that the documents have not been tampered with:*
  - *EU or UK driving licence photo*
  - *Ten year EU or UK passport with photo*
  - *EU identity cards*
  - *UK identity card for foreign nationals/residence permit issued by the Home Office*
  - *UK certificate of naturalisation*
  - *Doctors verification – elderly*

Residency checks

- *P45, P60 or payslip – for previous 12 months and now*
- *Current benefit, pension claim letter, book or card*
- *Utility or council tax bill – for previous 12 months and now*
- *NHS letters/documentation*

NB: keep copies of the identification provided

Other eligibility checks – the qualifying period

- *Public sector tenancy of at least three years – does not need to be continuous*
- *Any previous public sector tenancy does not need to have been secure*
- *Do not need to have had the RtB/A previously*
- *Can include temporary, homeless, introductory, short-hold tenancies, etc – not demoted tenancies*
- Periods of time within the armed forces counts towards the calculation of the discount period for the RtB/A, or living with someone who is eligible for the RtBA within accommodation provided by the armed forces

Other eligibility checks – the qualifying period ...(cont'd)

- *Periods counting towards the qualifying period:*

Handout provided

Other eligibility checks – the qualifying period ...(cont'd)

- Interestingly, a landlord may decide a policy whereby:
  - If only one of the joint tenants wishes to buy, they may still use one of the other tenant's years of secure tenancy to meet the minimum qualifying criteria, but **not for their discount entitlement**

  Another way of looking at it:
  - If they do not have the minimum qualifying period in their own right, but have qualified via another tenant's secure tenancy years, then they may be awarded the minimum discount of 35% for a house or 50% for a flat

Other qualifying checks

- *Where there are suspicions regarding the financial circumstances or residential qualifications of the applicant/s then outsource further investigation to investigation teams, eg, Experian, National Fraud register*
- *Checking/being satisfied that tenant/s have capacity*
  - *The offer and acceptance = contract*
  - *Contract not enforceable if one party does not have capacity*
  - *May need to involve social services*
- *Is there suspicion of domestic violence??*
  - *Interview tenants separately*

The procedure – admitting/denying

- Landlord has up to **four** weeks from receipt of the application (relevant date), to admit or deny the right to buy or **eight** weeks if the tenant has indicated time spent with another landlord to meet the requirements of the minimum statutory qualifying period
- RTB2(S124) is issued – once eligibility is qualified. If denying the claim then reasons must be inserted on the form

See handout

Instructing the valuer

- *Assuming the right has been admitted:*
  - *In-house valuer or contracted – must be qualified as RICS*
  - *Must follow code of practice for valuing properties under RTB/RTA*
- *Supply details of:*
  - *Any improvements noted on the RTB1*
  - *Contact details of tenant*
  - *Service charge and costs of improvement estimates over the reference period – to be covered later*
  - *A plan indicating boundaries*
  - *Any third party interests*
  - *Term of the lease – 125yrs hopefully!!!*
    - *Para 12(3) Schedule 6 Housing Act 1985 – 'may' be co-terminus to other leases granted*
- *Request that report is received within a timescale that provides for the issue of the S125 Offer Notice to be issued within timescales*

Discounts

- Assuming that the application has been admitted
- Calculate the eligible discount
- Complete years of confirmed tenancy – note partial years can be added together to make a complete year
- If that tenant does not have the minimum qualifying period in their own right they may qualify for the minimum of 35% for a house and 50% for a flat – if this is your organisations policy
- Deduct any previous discounts provided

See handout

Calculating the discount – Houses

- Houses:
  - Discount commences at 35% where the qualifying period is between three – five years and then increases by 1% for each subsequent year beyond five years to a maximum of (40 years)70%
  - The discount is then applied to the market value obtained
  - The value of the discount is capped at £96,010 or £127,940 in London
- Flats:
  - Discount commences at 50% for applicants where the qualifying period of between three – five years then increases by 2% for each subsequent year of tenancy to a maximum of (15 years) 70%
  - The percentage discount is then applied to the market value obtained
  - The value of the discount is also capped at £ 96,010 or £127,940 in London

NB – however, the cost floor rule!

Cost floor calculation

- The discount cannot reduce the purchase price below the costs of building, improving or maintaining the property during a given number of years preceding the date on which the tenant initially exercise the RtB – currently 10 years or 15 years if built/acquired after 2012

See handout

Cost floor calculation ...(cont'd)

- MV is below the cost floor calculation(or CF is higher than the MV) = no discount is allowable
- CF is lower than the MV but higher than the discounted sale price = sell at CF
- CF is lower than the discounted sale price = ignore the cost floor and sell at the discounted sale price

See example – handout

Calculating the service charge

- *If a property has already been sold in the block/street(if a house): use that calculation if apportionment is similar, ie, equal split, or apply percentage proportion to known costs of expenditure*
- *If a first sale in the block*
  - *Use previous three years spend on services to calculate the charge*
  - *Remember to include building insurance and costs of communal repairs*

What can be included in a service charge? – leaseholders

- *Determined by lease – lease plan, definition of demised premises*
- *Provision of all equipment/services/ maintenance*
- *Costs of improvements – if lease allows*
- *Management fee – not the same as when they were a tenant, ie, % add on*
- *Sinking/reserve fund – if lease allows*
- *Managing agents fees*
- *Audit fees*

NB: Not an exhaustive list – only if lease allows for recovery

Making the offer – S125 offer notice

- S125 – formal offer of sale
- Must be served:
  - Within **eight** weeks of the date of the RTB2 – for freehold sales
  - Within **12** weeks of the date of the RTB2 – for leasehold sales (can be houses/bungalows where a lease is being granted)
- Must include:
  - A Notice of Intention (NoI) (S125D) – gives tenant 12 weeks notice on which to respond
  - Tenant uses the NoI to notify if proceeding or not with the RTB

Making the offer – S125 offer notice in respect of leasehold properties

- *Must also include:*
  - *The length and expiry date of the lease*
  - *Reference to:*
    - *Responsibility for internal and external repairs*
    - *Non-Itemised repairs*
    - *Itemised repairs*
    - *A draft lease or conveyance*
- *Estimates and information regarding limits on charges required by Section 125A or 125B where provision has been made in the offer notice enabling the landlord to recover service charges or improvement contributions*

Known/anticipated (service) charges during the reference period

- *These charges include:*
  - *Annual service charges: as mentioned above*
  - *Five year forecast of maintenance and repair work to the block in which the property is situated**
  - *Five year forecast of improvements to the block in which the property is situated**
  - *Internal and external insurance premiums and cover amounts*

*NB: For costs indicated with * the landlord may not charge more during the initial period more than the stated amounts plus inflation*

Initial v reference period

- ***Reference*** *period: is a period of five years commencing on any date providing this date is not later than six months after the date of the S125 offer notice. It is usually the date by which the landlord believes the sale will have completed by*
- ***Initial*** *period: is the five year period starting from the date of completion of the sale extended to the end of the accounting period*

Dealing with disputes

- *Valuation: tenant asks for a determination*
  - *Independent valuation by District Valuer (DV)*
  - *Tenant must make request within three months of receiving S125 offer notice*
  - *Tenant has four weeks to make representation to the DV*
  - *DV valuation is binding to both parties*
  - *Can challenge if believe that DV not taken account of some facts*
  - *DV's – no timescale to provide the re-determination*

Instructing solicitors

- *Once tenant has confirmed acceptance of the offer instruct solicitor*
- *Provide copy:*
  - *S125 offer notice*
  - *Standard lease/transfer – or ask solicitor to draft*
  - *Copy plans to attach to lease*
  - *Service charge/amenity or estate charge calculation*
  - *EPC report*
  - *Asbestos reports if any*

Landlords failure to meet statutory timescales

- Failure to admit/deny (RTB2/S124) within four to eight weeks or to serve S125 offer notice in 8/12 weeks:
  - Tenant serves initial notice of delay (RTB6)
  - Landlord must complete or serve counter notice within one month with the RTB2/S125 – giving reasons for delay
  - Tenant serves operative notice of delay (RTB8) if not completed or no counter notice served
  - If delay is due to failure to serve RTB2 or S125, delay period starts the day after date that they should have been served to the day they are served
  - If delay for another reason period starts from date of RTB8 to day when reason for delay is resolved
  - Reduction of value (advance payment) by the rent payable x no. of weeks period of delay period

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Dealing with tenants delays

- Default notice (S125E) is served if no receipt of S125D notice of intention within 12 weeks of issuing s125 offer notice
  - Tenant has 28 days in which to respond
  - If no response application is cancelled
  - Landlord can extend if chooses to – only within the 28 day period

Dealing with tenants delays ...(cont'd)

- After solicitors have issued documentation to the purchasers(tenants) solicitors, and if there is a delay in completion landlord sends RTB 3 – first warning requiring completion in 56 days. (NB Cannot be served earlier than **three months** after service of S125 offer notice)
- If tenant fails to comply then a further final notice is served (RTB4) requiring completion within a further 56 days
- If no completion then deemed withdrawn – write to tenant/and solicitor to advise

Other points to remember

- *You can only sell properties where your organisation owns the freehold or has a leasehold interest sufficient to grant 21 year lease of a house or a 50 year lease of a flat*
- *An energy performance certificate (EPC) must be issued prior to completion of the sale – preferably with the offer notice*
- *An organisation is only required to carry out emergency repairs and repairs to keep the property weather tight during the RtB process – if challenged refer tenant to www.ownyourhome.gov.uk*

Good practice

- Have clear policies in place and posted to the website
- Maintain a clear detailed website for tenants – an expectation by Homes England
- Include links to the government web-sites for tenants to calculate potential discount and eligibility, eg, www.communities.gov.uk/righttobuy
- Have an FAQ on the website and refer to www.ownyourhome.gov.uk
- Assists in:
  - Reducing speculative applications
  - Reducing withdrawn applications
  - Time and resources in administering
  - Makes tenants aware of why they may not be eligible

Good practice ...(cont'd)

- *Have sound procedures and prepared covering letters for all stages of the process for officers to access easily and including:*
  - *Ensuring the person for demolition notices informs the RtB admin officer to avoid compensation claims at a later date from tenants*
- *Ask valuer to provide comparables as basis for the valuation – in case of requests for determination*
- *Use RtB monitoring software where possible to assist with monitoring and reporting*
- *Include within the policy and procedure for a home visit to be carried out to the tenant*

Requirements of landlords

- Required by legislation to:
  - Provide the RtB information document to all new secure tenants
  - Provide the same information to all secure tenants at least once every five years
  - Issue any amended/updated version of the document to all secure tenants within one month of any revision
- Document must include:
  - Criteria/eligibility/exceptions
  - Costs of purchase such as stamp duty/legal fees/valuation costs for mortgage purposes
  - On-going costs – mortgage/service charges/maintenance
  - Risks of non-payment of mortgage/service charge

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Requirements of landlords ...(cont'd)

- Defective dwellings – if designated due to design/construction can still be bought but landlord must advise tenant:
  - Of defects
  - To obtain a structural survey
  - Might have difficulties obtaining a mortgage
  - On-going repair responsibilities – costs will be purchasers

Post sale

Repayment of discounts

- If selling within five years of purchase will be required to pay back some/all of discount
  - During first year – all
  - During second year – 80%
  - During third year – 60%
  - During fourth year – 40%
  - During fifth year – 20%

Based on a percentage of the value in line with what percentage the discount was to the value when initially bought

See handout example

Example of repayment of discount calculation

If owner sells within three years of purchase:

1. Property valued at £200,000 at time of RtB application and purchase
2. Discount of £40,000 was received = 20% of 1.
3. Property is now valued at £220,000
4. Repayment is £220,000 x 20% x 60%, ie, £26,400

Exempt disposals

- *No repayment of discount is required in the following circumstances:*
  - *Disposal to any member of the family who joined in the original application or who has resided in the property twelve months immediately before the date of disposal*
  - *Disposal to a spouse*
  - *Disposal to a person under the terms of a will or on a intestacy*
  - *Disposal arising from compulsory purchase by a public body*
  - *Disposal of the whole of the property in pursuance of an order under Section 24 of the Matrimonial Causes Act 1973*

Waiving the claim to repayment of discount

- *Policy required*
- *Remember the public purse!*
- *Judicial review/audit – be mindful*
- *Circumstances might be:*
  - *Owner wishes to move because a family member faces a demonstrable threat of violence/harm; for example, due to:*
    - *Relationship breakdowns involving actual or threatened domestic violence*
    - *Racial, faith, homophobic or any other kind of harassment or*
    - *Extreme anti-social behaviour, eg, drug dealing in an adjoining or nearby property*

Waiving the claim to repayment of discount ...(cont'd)

- *Where there is a sudden onset of a severe medical condition or serious deterioration of an existing condition makes a move essential on medical grounds*
- *Where an early move is essential to return to employment; for instance where an individual has a firm offer of a job in another area and would thereby be able to return to work, either:*
  - *After long term unemployment*
  - *After having been made redundant, when his/her skills are such that there is no prospect of getting another job locally*
  - *Where a traumatic personal event (for example, sudden bereavement) makes a move essential for emotional or psychological reasons*

Right of first refusal

- *If owner wants to sell within ten years of buying under the RtB*
  - *Must offer property first to housing provider, or*
  - *Another social landlord in the area*
  - *At full market value*
  - *If unable to agree value – DV determines*
  - *If value not accepted in eight weeks – can sell on the open market*
- If property is in national park/area of outstanding beauty/designated rural areas:
  - Re-sale limited to someone living/working in area for three years

Preserved Right to Buy (PRTB)

- A secure tenant of a Council has the RTB if a HA bought the property from the Council.
- Tenant can transfer to other properties owned by the landlord and retain RtB
- If a mutual exchange outside organisation incoming tenant will not have PRTB as they were not a tenant of the stock transfer landlord at the time of the transfer

See handout

Right to Acquire

What is the Right to Acquire?

- Tenants have the opportunity to buy the property they rent at a discount provided **both they and the property** are eligible

Relevant legislation

- 2008 Housing and Regeneration Act sections 180-185 (as amended by section 165 of the Localism Act 2011) and sections 304 to 310
- 2004 Housing Act sections 180 to 189 and 192 to 193
- 1996 Housing Act sections 16 and 17, and 20, 21, 24, 25 and 26
- 1985 Housing Act Part V
- The Housing (Right to Acquire) Regulations 1997 (Statutory Instrument No. 619)
- The Housing (Right to Acquire) (Discount) (Amended) Order 2002 – SI 1091
- The Housing (Right to Acquire or Enfranchisement) (Designated Rural Areas) Orders 1997 Nos. 620-625
- The Housing (Right to Acquire or Enfranchise) (Designated Rural Areas) Order 1999 (No 1307)

The procedure

- Tenant sends in a completed RTA1 or HA's own version of RTA1
- *On receipt of the claim form/letter:*
  - *Date stamp the form/letter – date used to establish qualifying period*
  - *Ensure that the following is checked:*
    - *The address of the property that the claim is in respect of*
    - *There is/are signature(s) for all the applicants to the claim*
    - *There are signatures from all tenants – if joint*
  - *Check eligibility*

The procedure – What properties are eligible?

- Self contained properties purchased or developed using Social Housing Grant, Social Housing Assistance, the Disposal Proceeds Fund or any combination of these, on or after 1 April 1997
- Previously funding via HAG (Housing Association Grant)

The procedure – Properties not eligible

- Properties developed using only recycled capital grant funding
- **Schemes that received grant confirmation before 1 April 1997 –**
- Those designated for demolition within the next seven years:
  - An initial demolition notice is served if proposing to demolish in next seven years
  - HA notifies tenant: The reasons for demolition/the intended timetable/that obligation to complete the RtA is suspended
  - If a final demolition notice is in place then the application is cancelled – if it expires no further notice for five years unless by application to the Secretary of State
- Rural areas – listed on Government website: AND
- Where the freehold interest is owned by a non-public sector body

Other categories: see handout

The procedure – eligibility

- Tenant cannot apply if previously applied for RtB or PRtB unless they withdraw that application or it is denied
- *Tenant may include up to three family members:*
  - *Who are not joint tenants, but*
  - *Must be occupying as their only and main residence*
  - *Are the spouse of or have been living at the property for 12 months prior to the application*
  - Landlords discretion to allow family members that do not satisfy the requisite time period criteria

The procedure – Who is eligible?

- Tenant(s) has/have secure, assured tenancy, or
- Tenants has/have an assured shorthold tenancies (where the tenancy began on or after 1 April 2012 and is of a fixed term of at least two years)
- *That each tenant has been a public sector tenant for the appropriate qualifying period – minimum of three complete years. (Where there is a joint tenancy only one tenant needs to satisfy the qualifying period*
- *Previous public sector tenancies count and do not need to be continuous*

The procedure – Who is eligible? ...(cont'd)

- If the provider acquired the property under a mortgage rescue arrangement then the qualifying period is five complete years where the previous owner is now the tenant
- *Qualifying public sector landlords/armed services – see Government website and Right to Acquire regulations*

NB: Tenants must meet the qualifying criteria up to the point of exchange of contracts

Frequently asked questions at RTA1 stage – same as RTB

- Q – Only one of the joint tenants wants to buy the property – is this allowed?
- *A – The other tenant(s) may live away from the property and retain their Right to Acquire or agree to the other tenant(s) buying without them joining in, provided they indicate on and sign the application form in the appropriate place*
- Q – Only one joint tenants has made a claim and the other tenant has not signed to agree. Can the one party purchase?
- *A – If one or more of the tenants does not signify their agreement, the other tenant(s) will not be able to exercise their Right to Acquire and the application will be denied*

The procedure – Other eligibility checks

- *Any tenant or family member who is subject to one of the following orders will not be allowed to join in the Right to Acquire:*
  - *Possession order with a fixed date – including Suspended Possession Order*
  - *Ground 2 criminal nuisance order*
  - *Right to Acquire suspension order – HA should have a clear policy*
  - *Bankruptcy order – undischarged bankrupts, have a bankruptcy petition pending or where they have made an agreement with a creditor but have not fulfilled the terms of the arrangement*
  - *Demotion order*

The procedure – Other eligibility checks ...(cont'd)

- *Check Government Bankruptcy and Insolvency Register – check if applicants are bankrupt or subject to Debt Relief Order/Individual Voluntary Arrangement (IVA)*

Note: If the application is denied because one of the above orders is in place, the tenant will be required to submit a new application once the term of that order has been satisfied if they wish to continue with the Right to Acquire

The procedure – Other eligibility checks ...(cont'd)

Other applicants

- *To qualify for the RTA those other applicants to the claim must satisfy the first two of the following requirements:*
    1. *They must be a relevant family member who are specified as: The spouse or civil partner of the tenant; or the tenant and that person live together as if they were husband and wife or civil partners, or the tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece*
    2. *They must live at the property as their only or principal home*

The landlord has discretion regarding this third point

3. They need to have been living at the property for 12 months immediately preceding the date of application, except in the case of spouses or civil partners where the 12 month residential requirement does not apply

NB: they are automatically excluded if they are subject to a Court Order previously mentioned

The procedure – Applicant checks

- *Signatures – TA and RTA1 application match*
- *Housing benefit – establish source of funds for the purchase*
- *Check photo ID and residency for all applicants and that D.O.B is consistent with your records and is consistent with the person, ie, they look the right age, and that the documents have not been tampered with:*
  - *EU or UK driving licence photo*
  - *Ten year EU or UK passport with photo*
  - *EU identity cards*
  - *UK identity card for foreign nationals/residence permit issued by the Home Office*
  - *UK certificate of naturalisation*

The procedure – Residency checks

- *P45, P60 or payslip – for 12 months previous and now.*
- *Current benefit, pension claim letter, book or card*
- *Utility or council tax bill – for 12 months previous and now*
- *Bank or credit card statement – not downloaded, only via the post.*

NB: keep copies of the identification provided

The procedure – Other eligibility checks – the qualifying period

- *Public sector tenancy of at least three years – does not need to be continuous*
- *Do not need to have had the RtB/A previously*
- *Can include temporary, homeless, introductory, short-hold tenancies, etc – not demoted tenancies*
- *Periods of time within the armed forces counts towards the calculation of the discount period for the RtA, or living with someone who is eligible for the RtA within accommodation provided by the armed forces*

Other eligibility checks – the qualifying period

- *Periods counting towards the qualifying period:*

Handout provided

The procedure – Other qualifying checks

- *Where there are suspicions regarding the financial circumstances or residential qualifications of the applicant/s then suggested outsource further investigation to investigation teams*

The procedure – Admitting/denying

- *Landlord has up to four weeks from receipt of the application (relevant date), to admit or deny the right to acquire or eight weeks if the tenant has indicated time spent with another landlord to meet the requirements of the minimum statutory qualifying period*
- *RTA2 'notice in reply to the tenant's right to acquire application' is issued – once eligibility is qualified. If denying the claim then reasons must be inserted on the form*
- If admitting, the HA can offer an alternative property for the tenant to exercise the RtA – naturally occurring voids/not held over/not new grant funded developments

Known/anticipated (service)charges during the first five years of the lease

- *These charges include:*
  - *Annual service charges: as mentioned above*
  - *Five year forecast of maintenance and repair work to the block in which the property is situated**
  - *Five year forecast of improvements to the block in which the property is situated**
  - *Internal and external insurance premiums and cover amounts*

*NB: For costs indicated with * the landlord may not charge more than the stated amounts plus inflation in the first five years of the lease*

Instructing the valuer

- *In-house valuer or contracted – must be qualified as RICS*
- *Must follow code of practice for valuing properties under RtB/RtA*
- *Supply details of:*
  - *Any improvements noted on the RTA1*
  - *Any structural report (for flats only)*
  - *Contact details of tenant*
  - *Service charge and costs of improvement estimates over the reference period*
  - *A plan indicating boundaries*
  - *Any third party interests*
- *Request that report is received within a timescale that provides for the issue of the (RTA3) S125 offer notice to be issued within timescales*

hqn TRAINING

Discount and Cost floor

Discount

- Fixed – outer London ranges from £9,000 – £16,000
- Current levels can be found at:
  - Housing (Right to Acquire)(Discount)Order
- Restricted to no more than 50% of the value of the property
- Reduce by the value of any previous discounts
  - Handout: Applicable discounts

Cost Floor

- RTA does not arise if the net debt or peak debt for the property on the date of service of the notice claiming the RTA is equal to or greater than the purchase price plus the discount.

The procedure – The offer notice

- *RTA3 (S125) – completed with information as prescribed*
- *Timescales:*
  - *Within eight weeks of serving the RTA2 – if selling the freehold*
  - *Within 12 weeks of serving the RTA2 – if selling as a leasehold*
- *The relevant sections of Right to Acquire Regulations 1997 are:*
  - *125D and 125E (1) and (4)*
  - *Section 128 (determination/redetermination of value)*
  - *Section 136(2) (change of tenant after service of the offer notice)*
  - *Sections 140 and 141 (1), (2) and (4) (landlords' notices to complete and effect of failure to comply), as amended by section 184 of The Housing Act 2004*

Dealing with disputes

- *Valuation: tenant asks for a determination*
  - *Independent valuation by District Valuer (DV)*
  - *Tenant must make request within three months of receiving S125 offer notice*
  - *Tenant has four weeks to make representation to the DV*
  - *DV valuation is binding to both parties*
  - *Can challenge if believe that DV not taken account of some facts*

Then what happens?

- *The tenant has 12 weeks to accept the offer or within three months of the offer asking for a determination of the value*
- *If tenant asks for determination HA must ask District Valuer for a valuation*
- *On receipt a further RTA3 is issued*
- *Either party can ask the DV to review the determination (a re-determination) – only if facts provided to the DV were incorrect*

Instructing solicitors

- *Once tenant has confirmed acceptance of the offer instruct solicitor*
- *Provide copy:*
  - *S125 Offer Notice*
  - *For leaseholders – Standard lease – or ask solicitor to draft*
  - *Copy of structural survey – if appropriate*
  - *Copy plans to attach to lease/transfer document.*
  - *Service charge/amenity or estate charge calculation*

Before completing

- HA's must check:
  - *That a possession or suspension order has not been obtained during the period of processing the tenant's application*
  - That the tenant's mortgage offer is from an authorised mortgage lender, entitled to register tenants' mortgages as a first charge or that the lender is taking a second charge and
  - That they (the organisation) have consulted their own lender(s):
    - Whether they will redeem their mortgages or
    - Provide alternative security for existing loans against the property being sold

Other points to remember

- *You can only sell properties where your organisation owns the freehold or has a leasehold interest sufficient to grant 21 year lease of a house or a 50 year lease of a flat*
- *An energy performance certificate (EPC) must be issued prior to completion of the sale – preferably with the offer notice*
- *An organisation is only required to carry out emergency repairs and repairs to keep the property weather tight during the RtA process*

Dealing with tenants delays

- *If tenant fails to accept the offer within 12 weeks the HA sends a notice asking them to state in writing whether they wish to proceed with the purchase*
- *The notice should say that if no response in 28 days HA will consider the application withdrawn*
  - *If no response application is cancelled*
  - *Landlord can extend if chooses to – only within the 28 day period*
    - *HA must say what that there is an extended deadline and when it is*

Dealing with tenants delays ...(cont'd)

- *After solicitors have issued documentation to the purchasers(tenants) solicitors, and if there is a delay in completion landlord sends RTA4 – first warning requiring completion in 56 days. Can be served at any time after the 12 weeks acceptance period***
- *If tenant fails to comply then a further final notice is served (RTA5) requiring completion within a further 56 days*
- *If no completion then deemed withdrawn – write to tenant/and solicitor to advise*

Handout – RTA4

Post sale

Repayment of discounts

- *The discount to be repaid is based on a percentage of the resale value equal to the percentage of the discount received by the tenant on purchasing the property. Repayment is as follows:*
  - *Sale within year one: an amount equal to the % value as above*
  - *Sale within year two: 80% of the amount calculated above*
  - *Sale within year three: 60% of the amount calculated above*
  - *Sale within year four: 40% of the amount calculated above*
  - *Sale within year five: 20% of the amount calculated above*
  - *No repayment is required after year five*

Example of repayment of discount calculation

If owner sells within three years of purchase:

1. Property valued at £200,000 at time of RtA application and purchase
2. Discount of £16,000 was received = 8% of 1.
3. Property is now valued at £220,000
4. Repayment is £220,000 x 8% ie, £17,600

Right of first refusal

- *If owner wants to sell within ten years of buying under the RtA:*
  - *Must offer property first to the landlord*
  - *At full market value*
  - *If unable to agree value – DV determines*
  - *If value not accepted in eight weeks – can sell on the open market*
- *The above does not apply to successors in title or subsequent purchasers*

Good practice

- *Have clear policies in place and posted to the website*
- *Maintain a clear detailed web-site for tenants – an expectation by Homes England*
- *Include links to the government websites for tenants to calculate potential discount and eligibility, eg Homes England Right to Acquire Information Booklet for tenants*
- *Have an FAQ on the website*
- *Assists in:*
  - *Reducing speculative applications*
  - *Reducing withdrawn applications*
  - *Time and resources in administering*
  - *Makes tenants aware of why they may not be eligible*

Good practice ...(cont'd)

- *Have sound procedures and prepared covering letters for all stages of the process for officers to access easily and including:*
  - *Ensuring the person for demolition notices informs the RtA admin officer to avoid compensation claims at a later date from tenants*
- *Ask valuer to provide comparables as basis for the valuation – in case of requests for determination*
- *Use RtB/A monitoring software where possible to assist with monitoring and reporting*
- *Include within the policy and procedure for a home visit to be carried out to the tenant*

What landlords must do

- *Provide information to tenants, and which must include:*
  - *An outline of Right to Acquire*
  - *Notification that initial costs are likely to be incurred upon exercising Right to Acquire*
  - *The likely regular payments to be incurred by a homeowner*
  - *The risk of repossession*
  - *The requirement for, and likely level of, expenditure in relation to good repair and maintenance of a property, which may include the payment of a service charge*

Any questions?