

# Shared Ownership Sub-letting Request Policy

<b>Description</b>	This document sets out Southern Housing Group's policy for managing requests from shared owners to sub-let their property
<b>Who to Contact</b>	In-house counsel and Head of Home & Property Management
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## 1. Introduction

### 1.1 Background

This document sets out Southern Housing Group's policy for managing with requests from our shared owners to sublet their property.

Shared ownership is a housing product supported by publicly funded grants designed to help people who may not otherwise afford a property on the open market to buy a home for themselves to live in. For this reason, and in order to protect public funds, shared owners who have not yet staircased to 100% ownership are prohibited by the terms of their shared ownership lease from sub-letting their homes.

We recognise that it is possible for a shared owner to find themselves in exceptional circumstances where they have an unavoidable need to sub-let their homes for a period of time to help deal with a difficult and serious situation. In such 'exceptional circumstances' (which are further explained later on in this policy), Southern Housing Group may consider agreeing with the shared owner that they can sub-let their home for a limited time to assist if possible, and if relevant conditions are met.

It is only in exceptional circumstances that we may agree with a shared owner that they can sub-let their home and we expect such instances to be extremely rare. In practice, if a shared owner needs to move, it is most likely that staircasing to 100% ownership to enable them to sub-let, or selling their shared ownership home, will be the only two options.

Shared ownership customers who have staircased to 100% do not normally require Southern Housing Group's permission to sub-let (although the terms of the lease would still need to be checked to ensure there are no restrictions or conditions). This policy does not apply to sub-letting requests from shared ownership customers who have staircased to 100%.

### 1.2 Purpose

This policy is designed to assist both Southern Housing Group and shared owners by setting out Southern Housing Group's policy in relation to requests from shared owners to sub-let their homes.

### 1.3 Scope

This policy applies to sub-letting requests from shared owners properties provided by of Southern Housing Group Limited (shared ownership customers who have not 'staircased' to 100% ownership of their home). It supersedes any information provided by the Group prior to the date of its approval.

Sub-letting is where a customer rents out their home (or part of it) to someone else, so that person lives there (or that part) instead of the customer. This is different from taking in a lodger, which is where a customer allows someone simply to live with them, without giving that person any rights to exclude the customer from any part of the home. A shared owner may take in a lodger without Group permission, unless permission is otherwise required by your lease.

### 1.4 Shared ownership customers who have staircased to 100%

Shared ownership customers who have staircased to 100% ownership of their home do not normally require Southern Housing Group's permission to sub-let (although the terms of the lease would still

need to be checked to ensure there are no restrictions or conditions). This policy does not apply to such customers.

In the event that a fully staircased shared ownership customer wishes to sub-let, then the terms of their lease (and any headleases or other relevant documents) should be checked as to whether Southern Housing Group's permission is required and, if so, whether Southern Housing Group would itself need permission from another person (such as a superior landlord) before granting permission.

Customers are advised that any permission or agreement to sub-let that is granted by Southern Housing Group does not remove the need for the customer to obtain the permission of any other person that may be needed for the proposed sub-letting. It is the customer's responsibility to ensure that they have checked all relevant documents and obtained all the permissions needed.

We ask fully staircased customers to let us know when a home is sub-let and provide up to date contact details in case we need to contact them while they are not living at the property.

## 2. Definitions

<b>Capital Funding Guides</b>	means the GLA's Capital Funding Guide and HE's Capital Funding Guide, taken together. The Capital Funding Guides set out rules and procedures for relevant providers of affordable housing such as Southern Housing Group.
<b>GLA</b>	means the Greater London Authority.
<b>HE</b>	means Homes England.
<b>Shared owner</b>	means a shared ownership customer who has not staircased to 100% ownership of their home (and where the shared ownership lease is owned by two or more shared owners (as lessee), the term " <b>shared owner</b> " refers to all of the shared owners as the context requires).
<b>Sub-tenant</b>	means the person(s) to whom the shared owner is proposing to sub-let their home.

### 3. Southern Housing Group's Policy

#### ***Southern Housing Group is subject to GLA and HE requirements***

##### **3.1 Southern Housing Group follows GLA and HE requirements and the Capital Funding Guides**

Southern Housing Group is subject to GLA and HE requirements in relation to requests from shared owners to sub-let their property. It is our policy to make decisions on whether to grant a shared owner permission to sub-let in line with these requirements. These include the requirements of the Capital Funding Guides, which set out rules and procedures for relevant providers of affordable housing such as Southern Housing Group.

#### ***Requirements, considerations and conditions***

##### **3.2 The circumstances must be exceptional and stem from unavoidable need**

In relation to a proposed sub-letting by a shared owner, the Capital Funding Guides provide that:

1. Southern Housing Group is allowed to agree to sub-letting arrangements if it chooses to do so in **exceptional circumstances**.
2. When dealing with requests to sub-let, we must consider whether the reasons for sub-letting **genuinely stem from unavoidable need**, and are not primarily for speculation or gain.

To help explain what 'exceptional circumstances' means, some examples of the types of situation that might be taken into consideration in determining whether there may be exceptional circumstances are below. These examples are illustrative. Our consideration of requests to sub-let will be made on a case-by-case basis and will depend on the particular circumstances of each case. It is important to remember that shared owners who are still within shared ownership are prohibited from sub-letting their homes by the terms of their shared ownership lease. We expect any instances where we may consider agreeing with the shared owner that they can sub-let their home to be extremely rare.

- ***Temporary relocation for reasons of employment:*** The shared owner needs to move more than 50 miles (or 90 minutes travelling time) away from the area for a fixed period because they are required to do so by their current employer. The Capital Funding Guides give the example of a serving member of the Armed Forces whose tour of duty requires them to temporarily relocate in this way. Please note that changing work location on a voluntary basis, or choosing to travel, volunteer or study away from home, would not in and of itself be a reason for us to agree to a sub-letting.
- ***Relocation to provide care to, or receive care from, a close family member:*** The shared owner needs to move because a close family member (such as a grand parent, parent, sibling or child) needs the shared owner to be their primary carer, or the shared owner needs to move nearer to a close family member so that the close family member can be the shared owner's primary carer.
- ***The shared owner is in negative equity:*** If a shared owner is in negative equity (meaning broadly that the value of their equity share is less than the amount outstanding on the shared owner's mortgage) then this would not in and of itself be a reason for us to agree to a sub-letting, but it is a matter that we may take into consideration in determining whether a particular case may constitute

exceptional circumstances overall. For example, where there is an immediate and unavoidable need to move out of the property due to overcrowding, the impact of the shared owner being in negative equity will be a relevant consideration as to whether this may constitute exceptional circumstances and whether the reasons for sub-letting genuinely stem from unavoidable need.

- *The shared owner is unable to re-mortgage, staircase or sell their home as a result of Government guidance certification being unavailable to satisfy mortgage lenders' / valuers' requirements:* Since the fire at Grenfell Tower in June 2017, the Government has been issuing guidance to building owners for assessing the fire safety of their multi-storey, multi-occupied residential buildings. Some mortgage lenders and valuers have been requiring applicants to provide independent certification that their building meets this recent government guidance. In some cases shared owners have found that this certification is not yet available for their building and this has meant that they have not been able to re-mortgage, staircase or sell their home. Although this may not in and of itself be a reason for us to agree to a sub-letting, this is a matter that we may take into consideration in determining whether a particular case may constitute exceptional circumstances overall.

The above illustrative examples are not intended to be exhaustive and there may be other circumstances or details that may be relevant in considering a particular case a whole. A key point for both Southern Housing Group and the shared owner to bear in mind is that we are required to consider whether the reasons for sub-letting genuinely stem from unavoidable need and that the circumstances have to be exceptional.

For each particular case, it will also need to be kept in mind that we would only agree to a sub-letting for a limited time (see section 3.4 below), so the extent to which this would actually address the issue at hand will need to be thought through by the customer.

### **3.3 The circumstances must be evidenced**

The shared owner's circumstances behind the reason for requesting the permission to sub-let must be suitably evidenced. In each case, the evidence we will require (or that we will accept) will be decided at Southern Housing Group's discretion, however, below are some illustrative examples of some types of evidence that would be helpful for the shared owner to provide, where relevant.

- *Evidence of temporary relocation for reasons of employment:* E.g. A letter from the shared owner's current employer (on the employer's headed paper, where applicable) confirming the temporary work relocation and its details (including the start and end date of the temporary relocation).
- *Medical evidence or evidence of care needs:* E.g. A report or letter from a hospital doctor and/or a court order confirming care responsibilities.
- *Evidence of negative equity:* E.g. A recent mortgage statement and formal valuation (or other objective evidence of the property's value).
- *Evidence of being unable to re-mortgage, staircase or sell as a result of Government guidance certification being unavailable to satisfy mortgage lenders' / valuers' requirements:* E.g. Relevant correspondence from the relevant mortgage lender or valuer.

The above examples are not prescriptive and further or alternative evidence may be required. The evidence needed will depend on the particular circumstances.

### 3.4 Further requirements, considerations and conditions

Where there are exceptional circumstances behind a request to sub-let, it is Southern Housing Group's decision as to whether we agree to the request or not, what requirements would need to be satisfied before we agreed, and what conditions our agreement would be subject to. Where relevant, we will make these decisions in line with GLA and HE requirements, including the Capital Funding Guides.

We have set out below some requirements, considerations and conditions that would apply to any request to sub-let, however, these are not exhaustive.

- **Permission period:** Any permission to sub-let that we grant to a shared owner will only be temporary and for a fixed period. The fixed period should be only as long as necessary and in any event no longer than 12 months. Where a permission to sub-let has been granted and the fixed permission period is coming to an end (meaning there are three months or less of the fixed permission period remaining) it may be possible to request further permission, however, there is no guarantee that any further permission would be granted.
- **Details of the proposed sub-letting:** The details of the proposed sub-letting will need to be checked, including the expected rental income. As noted above, we will need to be satisfied that the reasons for the sub-letting are not primarily for speculation or gain. The proposed sub-tenancy must be an assured shorthold tenancy and the form of the assured shorthold tenancy agreement that the shared owner is proposing to use will need to be checked with us first. Furthermore, when dealing with requests to sub-let, we must also consider whether the proposed sub-tenant would satisfy our criteria for shared ownership.
- **Written permission from the shared owner's mortgage lender:** Where the shared owner's home is mortgaged, the shared owner will need to ensure their mortgage lender has consented in writing to the proposed sub-letting. We will need to see a copy of the written permission from the mortgage lender as evidence of this before we give our permission. Deciding when to contact the mortgage lender for permission is a decision for the shared owner, however, it may be sensible for the shared owner not to request permission from their mortgage lender formally (i.e. in a way that would commit the shared owner to paying a fee to the mortgage lender) unless and until Southern Housing Group has confirmed that, in principle, we may be prepared to grant permission, subject only to conditions that the shared owner is comfortable that they will be able to meet.
- **Permissions needed from other third parties:** The shared owner (or Southern Housing Group) may be prevented or restricted from sub-letting (or granting permission to sub-let) by obligations owed to third parties. For example, where Southern Housing Group's ownership of the property is leasehold, or subject to relevant restrictions under a transfer, the permission of a superior landlord/estate owner may be required.

***N.B. Shared owners are advised that any permission or agreement to sub-let that is granted by Southern Housing Group does not remove the need for the shared owner to obtain the permission of any other person that may be needed for the proposed sub-letting. It is the shared owner's responsibility to ensure that all the permissions needed are in place.***

- Conditions of permission: Any permission to sub-let that we grant will be on such conditions as Southern Housing Group may decide. The shared owner should expect such conditions (where we do grant permission) to include the following:
  - Any arrears of rent and/or service charge must be cleared prior to commencement of the sub-letting.
  - The sub-letting agreement between the shared owner and the sub-tenant must be in the same form as the assured shorthold tenancy agreement the shared owner has provided to us and checked with us in advance. To confirm this condition has been met, the shared owner must send us a copy of the signed assured shorthold tenancy agreement within 28 days from the start of the permission period.
  - The shared owner would need to comply with their legal obligations as landlord. They would also be required to enforce the tenant covenants of the sub-tenancy agreement and not release any of them nor waive any breach of them.
  - The shared owner's lease of the property would continue in full force and effect. This means that the responsibility for the payment to Southern Housing Group of all rent, service charges and other payments under the shared ownership lease would remain with the shared owner. The shared owner would also remain responsible for ensuring that all of their other obligations under their lease of the property continue to be met.
  - The shared owner would also be responsible for ensuring that no nuisance or disturbance is caused by their sub-tenant and that their sub-tenant does not do (or fail to do) anything that would or might cause the shared owner to be in breach of their lease, or the conditions of our permission to sub-let.
  - The shared owner's sub-tenant must be required by the shared owner to contact the shared owner directly regarding any repairs or maintenance issues rather than Southern Housing Group.
  - The permission would not remove the need for the permission or consent of any person (other than the relevant Southern Housing Group entity that is giving the permission as the shared owner's landlord) that may be required for the shared owner to sub-let. The shared owner is responsible for ensuring they have all the permissions and consents needed
  - The permission to sub-let would not constitute a variation of the terms of the shared owner's lease.
  - Any other conditions as may be decided by Southern Housing Group.
  - Southern Housing Group may withdraw permission to sub-let at any time should the shared owner's circumstances change or should the shared owner fail to ensure that all of their obligations under their lease and the conditions of the permission to sub-let are met. Should any relevant circumstances change, the shared owner would be required to advise us of this immediately.
  - On or before the start of the permission period, the shared owner must sign a letter of agreement with Southern Housing Group, confirming their agreement to our conditions.

We must consider requests on a case-by-case basis and other matters may be taken into consideration as Southern Housing Group may decide as appropriate in the circumstances (including, without limitation, the impact the proposed sub-let may have on our ability to contact the shared owner in an emergency, income recovery, our neighbourhoods and communities, and the prevention of anti-social behaviour).

## ***Administration fee***

### **3.5 Southern Housing Group's administration fee**

Before considering an application to sub-let, we require the applicant to pay an administration fee on a non-refundable basis (meaning that the administration fee will not be refunded, whether or not the application is successful). We charge this administration fee as a contribution towards the time our colleagues incur in considering and processing the application. The administration fee is currently £50 plus VAT. Where an application is made for a new permission to sub-let during an existing period of permission that has been granted, Southern Housing Group may decide not to charge an administration fee for the application for the new permission where there has been no or little change in circumstances.

## ***We may contact the GLA or HE***

### **3.6 Southern Housing Group may contact the GLA or HE**

In handling a request to sub-let, we may contact the GLA or HE for guidance on, for example, whether a case constitutes 'exceptional circumstances' and we therefore have discretion over whether or not to agree to a particular request to sub-let. The Capital Funding Guides provide that where we have any doubt as to whether or not to allow a sub-letting request, we should contact them. If we do contact the GLA or HE, we will not share the shared owner's personal data with the GLA or HE without the shared owner's consent, unless there are other lawful grounds for doing so. We will ensure that we comply with applicable data protection law whenever we share personal data with the GLA or HE.

## ***Becoming a landlord***

### **3.7 The shared owner's responsibilities as a landlord**

In case it is helpful, the shared owner is advised to bear in mind that, in the event that their application is successful and they do proceed with sub-letting their property, there are a number of legal obligations that the shared owner will need to comply with as the landlord to their sub-tenant. By way of example only, as a landlord renting out their property, a shared owner would be required to:

- keep the property safe and free from health hazards
- make sure all gas and electrical equipment is safely installed and maintained, ensuring all required safety checks are carried out
- provide an Energy Performance Certificate for the property
- protect the sub-tenant's deposit in a government-approved scheme
- check the sub-tenant has the right to rent the property



The above list of examples is by no means complete or comprehensive. If a shared owner has any doubts or concerns in relation to what they would be required to do as a landlord, we would strongly recommend that the shared owner seeks appropriate advice from a specialist in this regard.

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