



Shared ownership: possession actions

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6 September 2024

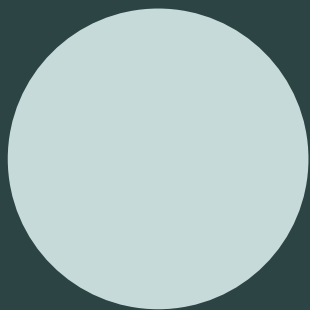


Your speakers today.

Key takeaways

- **Shared ownership agreements are a hybrid product**
- **In principle they operate like any other (usually assured) tenancy**
- **Issues have arisen recently with regard to the charging of rent**
- **Forfeiture remains the possession option where security of tenure has been lost**
- **The Renters Rights Bill is likely to present some significant reforms**





What is shared ownership?



What is a shared ownership tenancy?

**It is an assured
tenancy**

**It is a fixed
term tenancy**

**It allows the
tenant to
staircase to full
purchase**

Some further details

**200,000+
units**

**New
model
1/4/21**

**Minimum
share 10%**

**Landlord
repair
obligations
for 1st 10
years**

**Subsidised
rent on non-
purchased
share**

**Most
landlords are
housing
associations**

**Affordable
Homes
partial
funding**

**Leasehold
so service
charges**

A hybrid model

Housing Act 1988, Schedule 1

- Surely a long lease cannot be an assured tenancy?
- **Not** within the Schedule 1 exceptions
- **No** restriction on period of tenancy
- Usual exception is para. 3A of the Schedule

A tenancy—

(a) which is entered into on or after 1st April 1990 (otherwise than, where the dwelling-house had a rateable value on 31st March 1990, in pursuance of a contract made before 1st April 1990), and
(b) under which the rent payable for the time being is payable at a rate of, if the dwelling-house is in Greater London, £1,000 or less a year and, if it is elsewhere, £250 or less a year.

Commonhold & Leasehold Reform Act 2002, section 76

...a lease is a long lease if—

- (a) it is granted for a term of years certain exceeding 21 years, whether or not it is (or may become) terminable before the end of that term by notice given by or to the tenant, by re-entry or forfeiture or otherwise,
- (b) it is for a term fixed by law under a grant with a covenant or obligation for perpetual renewal (but is not a lease by sub-demise from one which is not a long lease),
- (c) it takes effect under section 149(6) of the Law of Property Act 1925 (c. 20) (leases terminable after a death or marriage or the formation of a civil partnership]),
- (d) it was granted in pursuance of the right to buy conferred by Part 5 of the Housing Act 1985 (c. 68) or in pursuance of the right to acquire on rent to mortgage terms conferred by that Part of that Act,
- (e) it is a shared ownership lease, whether granted in pursuance of that Part of that Act or otherwise, where the tenant's total share is 100 per cent., or
- (f) it was granted in pursuance of that Part of that Act as it has effect by virtue of section 17 of the Housing Act 1996 (c. 52) (the right to acquire).

The way in which the shared ownership scheme operates is that the tenant or lessee who has an interest of less than 100 per cent is an assured shorthold tenant, and subject to the general regime for assured tenancies under the Housing Act 1988 ("the 1988 Act"). Those conditions include a requirement for at least one joint tenant to occupy the property as their only or principal home in order to maintain security of tenure. The tenancy is also subject to the grounds of possession in Schedule II to the Act. Ground 12 is the discretionary ground. This applies where there has been a breach of any obligation of the tenancy other than payment of rent.

Mrs Justice Hill in **Aleksandrs Buka, Julija Tanusi v Metropolitan Housing Trust Limited** [2022] EWHC 3372 (KB) at [5]





How do landlords seek possession?



Keeping it simple

01

If security of tenure retained

- Pre-action Protocol
- Notice seeking possession
- Part 7 Possession claim

02

If security of tenure lost

- Pre-action Protocol
- Declaration of breach unless rent arrears
- S146 notice unless rent arrears
- Forfeiture proceedings

Protocol application

PRACTICE DIRECTION – PRE-ACTION CONDUCT AND PROTOCOLS

6. Where there is a relevant pre-action protocol, the parties should comply with that protocol before commencing proceedings. Where there is no relevant pre-action protocol, the parties should exchange correspondence and information to comply with the objectives in paragraph 3, bearing in mind that compliance should be proportionate. The steps will usually include—

(a) the claimant writing to the defendant with concise details of the claim. The letter should include the basis on which the claim is made, a summary of the facts, what the claimant wants from the defendant, and if money, how the amount is calculated;

(b) the defendant responding within a reasonable time – 14 days in a straight forward case and no more than 3 months in a very complex one. The reply should include confirmation as to whether the claim is accepted and, if it is not accepted, the reasons why, together with an explanation as to which facts and parts of the claim are disputed and whether the defendant is making a counterclaim as well as providing details of any counterclaim; and

(c) the parties disclosing key documents relevant to the issues in dispute.

Pre-Action Protocol for Possession Claims by Social Landlords

- The protocol does not apply to claims in respect of long leases (1.1).
- The aims of the protocol are:
 - (a) to encourage more pre-action contact and exchange of information between landlords and tenants;
 - (b) to enable the parties to avoid litigation by settling the matter, if possible; and
 - (c) to enable court time to be used more effectively if proceedings are necessary.

Grounds limitations

Housing Act 1988

Section 7(6)

The court shall not make an order for possession of a dwelling-house to take effect at a time when it is let on an assured fixed term tenancy unless—

- (a) the ground for possession is Ground 2, Ground 7A, Ground 7B or Ground 8 in Part I of Schedule 2 to this Act or any of the grounds in Part II of that Schedule, other than Ground 9 or Ground 16; and
- (b) the terms of the tenancy make provision for it to be brought to an end on the ground in question (whether that provision takes the form of a provision for re-entry, for forfeiture, for determination by notice or otherwise).

Sub-letting

Housing Act 1988

Section 15A

(and note section 15 & the need for an express term)

- (1) Subsection (2) applies if, in breach of an express or implied term of the tenancy, a tenant of a dwelling-house let under an assured tenancy to which this section applies—
- (a) parts with possession of the dwelling-house, or
 - (b) sub-lets the whole of the dwelling-house (or sub-lets first part of it and then the remainder).
- (2) The tenancy ceases to be an assured tenancy and cannot subsequently become an assured tenancy.
- (3) This section applies to an assured tenancy—
- (a) under which the landlord is a private registered provider of social housing or a registered social landlord, and
 - (b) **which is not a shared ownership lease.**

Bedford v Paragon Asra Housing Ltd

[2021] UKUT 266 (LC) – Martin Rodger QC

- Shared ownership lease – subletting allowed for 1 year – B continued beyond this
- PAH discover sub-letting – collect rent until 2020
- FTT section 168(1) application for declaration of breach – B seeks strike out due to waiver - FTT refused
- UT dismiss B’s appeal – clear waiver but possible damages/injunction claim

46. I do not accept that the availability of alternative remedies for the breach of covenant was an irrelevant consideration in the FTT's assessment of whether the application was an abuse of process. On the contrary, it was highly relevant. The most obvious alternative remedy that a landlord might seek in the face of a persistent breach of covenant by its tenant would be an injunction compelling the tenant to comply, either by requiring that he terminate the current sub-tenancy or by prohibiting any future sub-letting. Mr Gallivan also referred to the possibility of a claim for compensatory damages on a negotiating basis, as had been directed, for example, by Lightman J in [Crestfort v Tesco \[2005\] L & TR 20](#) where commercial premises had been sublet in breach of covenant.



Forfeiture and Rent



Forfeiture not available

If security of tenure is retained

01

Section 5(1), Housing Act 1988

An assured tenancy cannot be brought to an end by the landlord except by obtaining an order of the court in accordance with the following provisions of this Chapter...or, in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power...

02

Section 45(4), Housing Act 1988

For the avoidance of doubt, it is hereby declared that any reference in this Part of this Act (however expressed) to a power for a landlord to determine a tenancy does not include a reference to a power of re-entry or forfeiture for breach of any term or condition of the tenancy.

03

Artesian RD v Beck [2000] QB 541

I am quite satisfied that the terms of the 1988 Act expressly rule out a claim for forfeiture

Hirst LJ

Is a section 166 notice required?

Avon Ground Rents Ltd v Canary Gateway (Block A) RTM Co Ltd

[2023] 1 WLR 3516

01

Section 166, CLRA 2002

- No rent liability until notice served
- Applies to long leases

02

Section 76, CLRA 2002

- Defines long lease for the purposes of that Chapter
- Includes shared ownership regardless of share owned

03

Sovereign Network v East (2024)

- Set aside of possession order (Ground 8)
- Pre-action deficiencies
- Section 166 argument

04

Our view

- No s166 notice required
- Section 166 re ground rent
- Question over meaning of long lease



The future



Renters (Reform) Bill – before election

- Clause 28
- Fixed terms of more than 7 years cannot be assured tenancies (amendment to Schedule 1, Housing Act 1988)
- Would not effect:
 - Existing possession orders
 - Existing possession claims
 - NSP cases

Renters' Rights Bill – after the election

- Watch this space

(Voluntary) Code of Practice

Shared Ownership Council

Draft published 25 Jun
2024

The Code seeks to:

- Raise standards to improve protections for current and future shared owners
- Improve consumer experience of shared ownership through a clear and fair understanding prior to purchase and support during ownership and at sale
- Ensure best practice and drive consistency in the information available to consumers, including ensuring transparency, fairness and awareness of what service levels to expect.



Any questions?

