

2. THE RIGHT TO BUY

Introduction

1. Sections 61 to 84 of the Housing (Scotland) Act 1987 is the principal piece of legislation which sets out the terms and procedures for the right to buy. This part of the guidance is designed to explain the main provisions of that legislation in turn.

Who is eligible?

2. The right to buy applies where the property is let under a secure tenancy by housing providers recognised as forming part of the social-rented sector. A list of organisations is provided at section 61(2)(a) of the 1987 Act and includes the likes of local authorities, registered housing associations and a number of public sector bodies which currently or previously have made properties available. Whilst it is expected, owing to the use of secure tenancies, that most council tenants will have the right to buy, only a small number of housing association tenants still retain the right owing to their tenancies pre-dating the introduction of assured tenancies from 2 January 1989.

Qualifying conditions

3. To qualify for the right to buy prior to 30 September 2002, a tenant must have been a tenant of a landlord subject to the Right to Buy or certain other public bodies for a period of not less than two years. The qualifying period does not have to be continuous, i.e. it can be the aggregate of a series of shorter public sector tenancies. Similarly, there is no requirement that the qualifying tenancy should be immediately prior to the application to buy.
4. Tenants need not have lived in the same property or had the same landlord all the time. For example, tenants can also count time spent as a tenant of certain other bodies like the armed forces, a water board or the forestry commission etc.
5. The qualifying conditions for all tenants will change with the of the modernised Right to Buy. However, all tenants who have a Scottish Secure Tenancy agreement who were previously secure tenants with a right to buy or assured tenants who previously had a preserved right to buy will continue to have the existing right to buy. The property to be bought must be occupied by the tenant as their only or main home.**[Do we mention exemptions here?]**

Joint Purchasers

6. The Right to Buy can be entered into by a secure tenant if he/she so wishes, together with one or more members of his/her family (as defined in the Housing (Scotland) Act 1987 Section 61(6)(a)), provided that such members are at least 18 years of age and they have occupied the dwelling as their only or principal home with the tenant for a continuous period of 6 months immediately prior to the application.
7. Evidence that this residence qualification has been satisfied should be obtained, and their residence in the dwelling is not a breach of any obligation of the tenancy, e.g. joint tenants occupying a single person property. Landlords have discretion to

waive residency conditions as they think fit. (Housing (Scotland) Act 1987 Section 61(6)(a) and (b)).

8. Where a joint tenancy exists not all the tenants are obliged to exercise their Right to Buy. In such circumstances the written agreement of any joint tenants not wishing to exercise the Right to Buy will be required in the right to buy application form at the time notice is served on the landlord. Additionally, the formal consent of their spouse will be required irrespective of whether he or she is a joint tenant (Section 61(5) 1987 Act). Provision for such an agreement is necessary since the tenancy lapses when a sale is completed and those former tenants not buying will lose their status as secure tenants. If such persons intend to remain within the dwelling house, it will be up to them to make appropriate arrangements with the purchaser.

Who is not eligible

- 9.

The price and discount structure

10. The price to be paid by the purchaser(s) is the market valuation of the property less any discount for which they are eligible, (Housing (Scotland) Act 1987 Section 62(3)) subject to the Cost Floor restriction.
11. The discount rates under the right to buy depend on the type of property in which the tenant lives and the length of time they have been a public sector tenant.
12. If a tenant lives in a house the discount starts at 32% of the market value of the house after 2 years tenancy increasing by 1% per annum to a maximum of 60% after 30 years tenancy.
13. If a tenant lives in a flat (including 4 in a block, tenement and multi-storey flats) the discount is higher. Discount starts at 44% of the market value of the house after 2 years tenancy increasing by 2% per annum to a maximum of 70% after 15 years tenancy.
14. Spouses can count time spent living in a house where they succeed to tenancy on the death of their husband/wife. Children who succeed to a house on the death of a parent can also count time spent in the house back to the age of 16.
15. Discount will be restricted where the cost floor rules apply. The cost floor rules apply where a landlord has incurred capital costs on repairs exceeding £5,500 and/or improvement costs (central heating, new kitchen etc) amounting to £5,000 or more. The offer of sale should reflect the costs incurred by the landlord. (Scottish Office circular 8/1999 sets out the cost floor rules in detail).
16. Discount entitlement can also be restricted where a tenant or joint tenant has previously purchased a property receiving discount and either party purchases a subsequent property in the social rented sector. Then the landlord will take into account discount previously awarded by deducting an equal proportion from all concerned if/when they apply. (See also paragraph [13?] above).

17. Section 49(4) of the Housing (Scotland) Act 2001 inserts new provision 62 (3B) into the 1987 Act. Where two or more tenants have previously purchased a property receiving discount and either party purchases a subsequent property in the social rented sector, then the landlord will take into account discount previously awarded by deducting an equal proportion from all concerned if/when they apply. For example if £10,000 has been awarded to two tenants and one re-applies to purchase a subsequent property then the landlord should take £5,000 only into account. Should the other tenant also re-apply then the remaining £5,000 will be taken into account. **New measure after September 2002.**

Selling Price

18. When an application to buy is received, the landlord must establish the market value of the property. Section 62 of the 1987 Act specifies the method by which the market value is to be determined as either by:
- a. a qualified valuer, nominated by the association and acceptable to the purchaser; or
 - b. the district valuer;
19. No account is to be taken of any element in the market value reflecting an increase in value as a result of works, the cost of which could qualify for reimbursement. Such works could be any alteration, improvement or enlargement, addition of new fixtures or fittings or erection of a garage, shed or any other structure, which has not been provided by the landlord and has received its consent (whether or not retrospective).
20. The market value is calculated on the assumption that the house is/was available for sale on the open market with vacant possession at the date of service of the application to buy (section 62, 1987 Act).
21. Subject to the operation of the cost floor (see Scottish Office Circular 8/1999), the selling price will be the market value LESS the discount which should be calculated in accordance with paragraphs [?] above.
22. Where costs have been incurred on a property which is subject to a right to buy application, the cost floor rule may apply. The works must have been carried out within the preceding ten years and, if this is the case, the selling price must not be less than the eligible costs. This is termed the "cost floor". To calculate the ten year period, the starting date is the beginning of the financial year which was current ten years before the application to buy was served. However, where the cost floor exceeds the market value of the dwelling, the selling price will be the market value and there shall be no discount entitlement. For further details and examples see Scottish Office Circular 8/1999.
23. If the cost floor is less than £5,000 or less than the discounted market value, the selling price will be the market value less discount.
24. For the purpose of calculating discount, any interruption in occupation shall be disregarded. In addition, landlords are required to take into account periods of

residence over the age of 16 years as a member of the family of a tenant to whose rights in the house the person succeeds. Naturally, residency periods running concurrently cannot be double counted for discount eligibility (Housing (Scotland) Act 1987 Section 61(10)).

25. The Right to Buy application form gives guidance to tenants on periods of eligibility. Landlords should check the dates and other details of tenancies claimed against their own records and, where necessary, other landlords should be asked for confirmation of previous tenancy periods. Where this information is unobtainable, the tenant should be asked to produce rent books or other evidence of residence. It is the responsibility of the tenant to provide details of periods of tenancy on which discount is being claimed (section 63(1), 1987 Act). Obtaining confirmation of these periods can be problematic, however.
26. Once the house has been valued and the appropriate discount deducted the landlord's solicitors can proceed to conclude missives in accordance with [paragraph 20?] above "Formal Offer of Sale".

Sales procedure and conditions of sale

27. The procedure and process for the administration of the Right to Buy is heavily dependent on timescales. It is essential that the timetable is followed and that deadlines are not missed.

Service of Notice

28. The purchaser(s) must serve notice to their landlord on claiming the Right to Buy, on the statutory Right to Buy application form APP1. **(Do we wish to attach a copy of the APP1 as an annex ?)**
29. The landlord will assess the application from the tenant in respect of entitlement under the legislation to buy his/her house and also for accuracy of completion. In checking the application form, particular attention should be paid to :
 - a. whether the applicant has the necessary minimum tenancy (2 or 5 years depending on whether it is the existing or modernised right to buy being applied for);
 - b. whether the property is exempt because it is (i) special needs housing, (ii) the landlord has charitable status and the tenant does not have a preserved right to buy, or (iii) is part of a fully mutual housing co-operative;
 - c. whether the property is exempt due to limitations (i) is in a designated pressured area, (ii) the RSL has exemption from the Right to Buy under the 10 year rule, (iii) the tenant is in arrears with their rent or council tax, (iv) eviction proceedings have been raised against the tenant due to their conduct;
 - d. discount entitlement claimed, and details of the tenancies on which the claim is based (section 63(I), 1987 Act). (Landlords will also need to consider what impact, if any, the cost floor rules may have on the discount claimed).

30. Where joint tenants wish to exercise the Right to Buy, landlords should ensure that all such applicants sign the declaration to this effect on the application. If the application is in order, the landlord will:
- a. calculate the cost floor in respect of the property, (see Scottish Office Circular 8/1999);
 - b. instruct the district valuer (or other qualified valuer acceptable to the tenant) to provide a market value of the property;
 - c. determine the sale price and the amount of discount entitlement;
 - c. advise the tenant of the proposed selling price (taking account of discount entitlement and the cost floor provisions) and obtain the tenant's INFORMAL agreement to the price and the proposed date of entry, in the event of the sale proceeding.
31. This work must be done in sufficient time for the landlord to meet the strict statutory timetable which is contained in the legislation. The tenant should be advised of the proposed selling price within two months of the application being received.

Responding to Notice Served by Tenant

Application proceeding to sale

32. Where the landlord is satisfied that a valid application has been received and that all necessary information has been provided, an offer to sell **must** be served on the tenant within TWO MONTHS of the application to buy being received (section 63(2), 1987 Act).

Application not proceeding to sale

33. Where the landlord disputes the tenant's right to Buy a Notice of Refusal must be served on the tenant within **ONE MONTH** of receipt of the application to Buy (section 68(i)).
34. Where the landlord intends to seek authority from Scottish Ministers to refuse an application because the property has been specially adapted for persons of pensionable age (section 69 of the 1987 Act), application must be made to Scottish Ministers within **ONE MONTH** of receipt of the application. A **NOTICE OF REFUSAL** must be served on the tenant within **ONE MONTH** of authority being granted by Scottish Ministers (section 69, 1987 Act).
35. Where the application received was incorrect in a material respect and the tenant has had an opportunity to amend the application if, after enquiries by the landlord, material information is still missing, Notice of Refusal must be served within **TWO MONTHS** of the application having been received (Section 68(2), 1987 Act).

Formal Offer to Sell

36. This must be issued to the tenant within TWO MONTHS of the application to purchase being received. This is essential, even if the tenant has not responded to the informal notice of the proposed selling price. The offer to sell must contain:
- a. the market value of the house, as determined by the District Valuer or other qualified valuer;
 - b. the discount entitlement (which may be restricted by the cost floor);
 - d. the selling price;
 - e. any reasonable conditions which the landlord intends to impose in terms of Section 64(1) of the 1987 Act;
 - f. formal offer to sell the property to the tenant (and any joint tenant named in the original application) at the price specified and in accordance with any specified conditions.

Notice of Refusal

37. This must be issued to the tenant within TWO MONTHS of receipt of an application which, after investigation, is deemed to be incorrect or within ONE MONTH of either: authority to issue a notice of refusal being granted by Scottish Ministers or where the landlord disputes the tenant's right to buy under Section 61.

The Notice of Refusal must contain:

- the grounds on which the landlord is refusing the application to buy, or, as the case may be, the grounds on which the landlord disputes the accuracy of the information provided by the tenant;
38. Where an application to buy has been refused, the tenant may apply to the Lands Tribunal, within ONE MONTH of the Notice of Refusal being received, to determine that he/she does have the right to buy (section 68(4) 1987 Act).

Conclusion of missives

Instruction to Solicitor

39. At the landlord's request, the solicitor acting on its behalf should proceed with the sales transaction, and should submit a formal offer to sell to the tenant. This formal offer must be issued not later than two months from the date of receipt of the tenant's application to buy. The landlord's solicitor must therefore be advised of the date on which the tenant's application was made, and of the deadline by which the offer to sell must be issued.
40. The following information should also be passed to the solicitor:
- a. a current District Valuer's or other qualified valuer's report;

- b. a detailed plan showing the boundaries of property to be sold with a clear description of any joint or common parts; and
- c. an extract of any prepared Deed of Conditions. It is particularly important that the Deed of Conditions makes provision for factoring or service charges, where these are appropriate, otherwise such charges may not be enforceable (see Part 9, Section 6 of this Manual);

Provisions for Recovery of Discount

- 41. Under the terms of the relevant statutes, a discount represents the difference between the market value and the purchase price and therefore includes transactions where the purchase price is determined by the cost floor.
- 42. Where a discount is to be given on the purchase price, the formal offer will be conditional upon the purchaser granting a standard security in favour of the landlord, obliging the purchaser to meet repayment or proportional repayment of the discount amount in the event of a resale taking place within three years from the date of conclusion of the missives between the landlord and purchaser. The Law Society's conveyancing committee does not require that such a security's discharge is recorded at the expiry of the three year period (or other defined period).
- 43. Repayment of discount is calculated proportionately, according to the date on which the property is sold. Section 72 of the 1987 Act specifies the proportion of discount recoverable and the circumstances in which this provision will/will not apply.
 - If the property is sold within the 1st year: 100% of discount must be repaid
 - If the property is sold within the 2nd year: 66% of discount must be repaid
 - If the property is sold within the 3rd year: 33% of discount must be repaid.
- 44. In calculating the relevant period, the date of service by the tenant of a notice accepting the offer to sell is the date from which the recovery period is determined. It should be noted that this date may precede the date of settlement by several months.

Example

- 45. Landlord serves formal offer to sell on tenant in October 2000. Tenant accepts offer by serving formal notice on 1 December 2000. Settlement date agreed 1 February 2001. For discount recovery purposes, the relevant period would be 1 December 2000 – 30 November 2003.
- 46. The standard security for the recovery of discount will rank by statute AFTER (I) any standard security granted for a loan for the purchase of the house or for the improvement of the house. If the landlord consents, the discount standard security will also rank AFTER a security granted over the house for any other loan (section 72 the 1987 Act).
- 47. Sections 72 and 73 of the 1987 Act specify certain circumstances in which the discount would not be recoverable. These are:

- (i) where the house is disposed of by one of the parties to the original sale to one of the other parties (e.g. a joint purchaser disposes of their interest to another joint purchaser); or
- (ii) a joint purchaser disposes of their interest to someone else but continues to occupy the property (or part of the property) as their only or principal home; or
- (iii) where the disposal is made by the executor of the deceased owner acting in that capacity (i. e. the property is being sold as part of the winding-up of the estate; or
- (iv) the disposal is the result of a compulsory purchase order; or
- (v) the disposal is to a member of the owner's family.

Lands Tribunal

48. Section 65 of the 1987 Act allows for disputes over the conditions of sale to be referred to the Lands Tribunal for Scotland, but the application must be made within **1 month of receiving the offer of sale**. Once a tenant has accepted the conditions attached to the sale and the sale is concluded it is legally binding on both parties. Any condition that the tenant wishes to challenge thereafter would be for those concerned to resolve with their legal advisers, and ultimately for the courts. It is therefore extremely important that the tenant fully understands the conditions he/she is agreeing to at the **offer stage** while there is a chance to reject the offer.

REFUSAL OF APPLICATION TO BUY

Procedures Following Refusal of Application

If the applicant is not entitled to buy his/her property under the legislation or the application has been incorrectly made the association will notify the tenant in writing denying the Right to Buy and stating fully the reasons why the application has been refused. Such notification must be served no later than one month from the date of service of the application to buy the tenant (Housing (Scotland) Act 1987 Section 68(1)).

It should be noted that the period available to the association to refuse the application can be extended to two months where, after reasonable enquiry and allowing reasonable opportunity for the tenant to amend his/her application, the association is of the opinion that the information contained in the application is incorrect in a material respect (Housing (Scotland) Act 1987 section 68(2)).

Where an application to buy is served by a tenant who is eligible to exercise the right to buy in terms of Section 61 of the 1987 Act but the property is one which is specially designed or adapted for older people (Section 69 of the 1987 Act), the association may within one month of receipt of the application, apply to the Secretary of State for authority to issue a notice of

refusal. Once that authority has been received, a notice of refusal must be issued within ONE MONTH of receipt.

The tenant has the right, within one month of the receipt of the notification of refusal, to apply to the Lands Tribunal for Scotland for a finding that he/she has a Right to Buy his/her house (Housing (Scotland) Act 1987 Section 68(4)). Also see Part 9, (Disputes arising from Application to Buy).