



## [Conveyancing Marketing Services Ltd](#)

### **Right to Buy Conveyancing**

The term "Right to Buy" relates to a tenant's right to purchase his council property at a discounted price which arises as a result of the tenant being a secure tenant of the local authority for a given period.

### **Applying for the Right to Buy Discount**

- **Who Is Eligible for a Right to Buy Discount?**

Council tenants whose tenancy began prior to 18th January 2005 and who have been council tenants continuously since have the right to buy. Tenants whose tenancies began after 18th January 2005 must be tenants for a continuous period of at least 5 years before qualifying. Tenants of a registered social landlord (RSL) such as a housing association who were originally council tenants and became tenants of an RSL as a result of their property being transferred to the RSL may also qualify.

- **How to Apply for the Right to Buy Discount**

To apply for the right to buy the tenant must submit form RTB1. The landlord must then reply within 4 weeks by issuing to the tenant form RTB2, which advises whether, in the landlord's opinion, the tenant does have the right to buy. If the right does exist then the landlord must issue, within 8 weeks (houses) or 12 weeks (flats or maisonettes) of issuing the RTB2, a Section 125 offer notice.

- **Section 125 Notice**

The section 125 notice advises how much the property is valued at, the amount of the discount which the tenant will be receiving, details of any structural defects of which the landlord is aware and if the property is leasehold, an estimate of the likely service charges for the next five years. It will also include the draft transfer deed/draft lease.

- **The Right to Buy Discount**

The tenant will be notified of the amount of the discount for which he/she qualifies in the Section 125 Notice. If the tenancy began prior to 18th January 2005 and the property is a house then the tenant is entitled to a discount of 32% of the valuation of the property if he has been a tenant for 2 years plus a further 1% for each additional year up to a maximum of 60%. If it is a flat the discount is 44% plus 2% for each additional year up to 70%. For tenants whose tenancies commenced after 18th January 2005 the discount is 35% after 5 years plus an additional 1% per year up to 60% for houses and 50% after 5 years plus 2% for each additional year up to 70% for flats.

Despite the percentage right to buy discount detailed above, the actual amount may be less because of three factors. First, each region has its own maximum discount, so that if for example the property is worth £100,000 and the tenant is entitled to a discount of 70% but the maximum discount in that region is £38,000 then he must pay £62,000 - not £30,000. The second factor is the "cost floor". If the landlord has recently carried out improvement works or recently purchased or built the property then the amount the tenant pays cannot be less than the amount spent on the purchase/improvements/build. The third factor is where the tenant has previously purchased a property under the right to buy scheme at a discount, the amount of discount received for the present purchase will be reduced by the amount of discount received for the original purchase.

- **The Right to Buy Valuation**

The landlord's valuation of the property will be given in the Section 125 Notice, issued after the tenant's application for eligibility to buy the property has been accepted. If the tenant does not agree with the valuation he may refer to the District Valuer for arbitration. This step should not be taken lightly however - the District Valuer's valuation is final and will replace the landlord's valuation even if it values the property higher than the landlord's valuation. When valuing the property the landlord must not take into account any improvement works carried out by the tenant at the tenant's expense.

- **Right to Buy Conveyancing**

What follows here are details of the important differences between a standard purchase transaction and one subject to the provisions of the right to buy legislation, including matters to take into consideration if acting in the purchase of a property which was formerly purchased in exercise of a right to buy:-

- **Proof of Title**

Council properties will rarely if ever be registered individually. If the title is registered therefore the council will supply official copies of the title to the estate. They will also draft the TP1 or Lease. If the title is unregistered then the council are not required to deduce title in the usual manner. Instead they will supply a certificate of title in form PSD 17 which will be acceptable to the land registry and will enable them to grant the purchaser absolute title, provided of course there are no registrations already affecting the land. An Index Map Search should therefore be done.

- **Implied Rights and Covenants**

Right to Buy - Freehold Schedule 6 Part 1 of the Housing Act 1985 ("the Act") implies certain rights and covenants into every conveyance/transfer made under the right to buy provisions. The implied rights are rights of support and rights to use services (drains, pipes, cables etc). In addition this part of the Act states that each conveyance/transfer shall include any rights of way as are necessary for the reasonable enjoyment of the property. Note the crucial difference - rights of support and to use services are implied and so are included automatically whereas the Act merely directs that the conveyance/transfer should include any necessary rights of way which the council is able to grant therefore if they are not actually expressed then they are not included. In any case only those rights which were in use at the time of the transfer and which the council was at the time able to grant (i.e it owned the land over which they are required) are covered by this part of the Act and upon a future resale it may be impossible to tell whether the council did own the land at the time therefore when the property is first purchased from the council the purchaser's solicitor should insist that all necessary rights are expressed.

The conveyance/transfer should also, according to the Act, include a covenant by the purchaser to comply with any covenants affecting the land and to indemnify the council against any future breach. Implied Rights and Covenants - Right to Buy - Leasehold Part 3 of Schedule 6 of the Housing Act 1985 ("the Act") implies covenants by the council where the property is a flat to maintain and repair the structure and common parts of the building and any shared services and in the event of destruction by any risk against which it is normal practice to insure to rebuild the building and the flat itself. The cost of repairs and maintenance must be paid for by all the tenants in the service charge.

The Act also states that the lease should include rights in favour of the tenant to use and common facilities or services within the block. The Housing Act Charge In order to ensure that the discount is repaid upon resale with the discount period a charge will be registered in favour of the council on completion of the tenant's purchase. This is a financial charge and will only be removed during

the discount period if the council supplies a DS1 (which of course they will only supply should the amount owing to them be settled in full). If at the time of the sale the discount period has expired then the charge will be removed automatically when the transfer is registered. In accordance with the Housing Act 1985, if the tenant buys with a mortgage, the council's charge is automatically postponed in favour of the mortgagee's charge. This is of course essential as the mortgagee will insist on having a first charge on the property.

Note however that this only applies where the amount of borrowing is the same or less than the purchase price. If an amount is borrowed over and above the purchase price then in order to proceed the council must agree to postpone their charge in favour of the lender, otherwise the lender would only have a 2nd charge. The council will usually only agree to this if the money is to be used for improvements to the property and they will require sight of evidence in the form of estimates for works. If they agree they will provide either a Deed of Postponement or a simple letter which can be presented to the land registry - both are equally effective. If the council will not agree to postpone then the borrower must reduce the amount he borrows.

- **Pre-completion Searches**

For registered titles an OS2 (as it will be a transfer/lease of part) and a bankruptcy search should be done as normal. A copy of the bankruptcy search must be sent to the council prior to completion (and it must be valid on completion). This is because an undischarged bankrupt does not have the right to buy. For unregistered titles there is no need to carry out a full land charges search. The certificate of title supplied certifies that there are no entries affecting the property (other than any disclosed by the council) and a search against the council would reveal an enormous number of entries (as of course it is not specific to the property).

- **Exchange & Completion**

There is actually no contract in a right to buy transaction and consequently no exchange. Completion generally takes place on a Monday. Once notified of the intended completion date the council will send to the buyer's solicitor the engrossment transfer/lease for signing. They will also advise of any outstanding rent arrears as these must be settled before completion can take place. The buyer's solicitor must send the council a copy of a clear bankruptcy search against the buyer which should reach the council a few days in advance and which must be valid on completion.

- **Sales Within the Right to Buy Discount Period**

The right to buy discount, or a portion of it, is repayable if the property is sold or otherwise transferred (except via an assent) within the discount period. That period is 3 years for right to buy applications made prior to 18th January 2005 and 5 years for applications made after that date. If the discount period is 3 years and the property is sold within the first year then the discount must be repaid in full. During the second year two thirds must be repaid and during the third year, one third. If the period is five years then the amount of the discount which is repayable is reduced by one fifth for each complete year that elapses, however rather than being a set sum, the amount to repay increases proportionately to the percentage increase in the value of the property at the time of the sale compared to when it was purchased. To clarify, imagine a property is valued at £100,000 at the time it is purchased by the tenant, and the tenant receives a £10,000 discount (10%). If after one complete year he sells the property for £110,000 then the total discount due for repayment is £11,000 (10% of the new value of the property). This is reduced by one fifth as a complete year has passed since the purchase meaning the actual amount due to the council is £8,800. If two complete years had passed it would be reduced by a further fifth, to £6,600 and so on. The idea is to ensure that the council (and so ultimately the taxpayer), as well as the tenant receives some of the profit.

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