



THE LEASEHOLD ADVISORY SERVICE
ADVICE GUIDE

THE RIGHT TO BUY

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This advice guide is not meant to describe or give a full interpretation of the law; only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties, then seek specific advice.

FACTSHEET

Since 1980 council tenants have been allowed to buy their home (Right to Buy), whether it is a flat or a house, at a lower price than the market value. The amount of the discount available depends on how long you have been a secure tenant (if you've rented a council property for 12 months or more you're likely to be a secure tenant). The property must be your only or principal home and be self-contained.

The Right to Buy may be exercised jointly with certain family members who have lived with you for the previous 12 months, or together with someone who is a joint tenant.

It is not possible to exercise Right to Buy if the court has made a possession order, you are an undischarged bankrupt, have a bankruptcy petition pending against you or have made an arrangement with creditors, and there is still money outstanding.

The council can also turn down your application to buy on the grounds that the home is particularly suitable for occupation by elderly people. Should you dispute this you have 56 days from the date the council refuses to sell to ask the [Residential Property Tribunal](#) to decide if the landlord's decision is correct.

Should the council intend to demolish your home, an 'initial demolition notice' may have been served on you. This is valid for up to five years and suspends the council's obligation to complete a Right to Buy sale.

Once you make the application any improvements or repairs that are due to be carried out will be cancelled except where the work is required by law to keep the property weather-tight. The reason for this is that the valuation is based on the date the application was made and any improvements or repairs after that date would affect the valuation.

The property bought under the Right to Buy scheme can be sold at any time. However, should you resell within the discount repayment period the whole or part of the discount may have to be repaid.¹

If you became a council tenant before 18th January 2005, the Right to Buy can be exercised so long as you have been at the property for at least two years. The discount is 32% for houses and 44% for flats. For a house, the discount increases by 1% for each extra year of the tenancy up to a maximum limit of 60%. For flats the increase is 2% per extra year of tenancy up to a maximum limit of 70%.

If the council tenancy started on or after 18th January 2005, you can apply for the Right to Buy after five years as a council tenant. The discount is 35% for houses and 50% for flats. The discount increases and maximum limits are the same as in the previous paragraph. There is a nationwide cap of £75,000.

If you bought under the Right to Buy scheme on or after 18th January 2005 and wish to sell your property within ten years of buying it, you must first offer it to your old landlord, eg the council, or another social landlord in the area.

Your home should be offered at the full sale price, which must be agreed between you and the landlord. If you can't agree on the price for your home, a district valuer will say how much your home is worth and set the price. You won't have to pay for their valuation.

If the landlord doesn't agree to buy your home within eight weeks, you can sell your home to anyone on the open market.

The procedure for exercising Right to Buy is fairly straightforward. Obtain a Right to Buy claim form (Form RTB1) from the council, complete it fully and send it to the council. Within four weeks

¹ See <https://www.gov.uk/right-to-buy-buying-your-council-home/discounts> for more information on what you might have to repay in these circumstances.

from receiving it the council must send you a notice (Form RTB2) stating whether or not you are eligible for the Right to Buy. An explanation should be given if the application is declined. If you dispute the explanation you should take legal advice about what to do next.

If the council agree to sell to you, within 12 weeks after you receive the RTB2 they should send you a separate offer notice called a Section 125 notice. This is a crucial document which you should read carefully and keep safely. It will describe the following:

- The property you have the right to buy
- The price
- The market value and discount awarded
- Estimates of the service charges, repair or improvement costs to pay during the first 5 years after purchase
- Any structural defects of which the landlord has knowledge
- The terms of the lease.

You should also receive an [Energy Performance Certificate](#) with the Section 125 notice.

You are entitled to challenge the price if you consider the market value shown in the Section 125 notice is too high. If you wish to do this you must inform the council not later than three months after receiving the Section 125 notice, and request that the district valuer make a determination, which will be final.

Otherwise, you have 12 weeks from receiving the Section 125 notice to tell the council if you want to go ahead and buy and serve a 'Notice of Intention'. If the property has been valued by the district valuer you have 12 weeks from their decision to let the council know if you will proceed with the purchase.

Should you fail to let the council know within the 12 week limit, you will be given 28 days' notice to decide, failing which it will be assumed that you do not want to proceed.

If you return the Notice of Intention stating you wish to proceed with the Right to Buy but do nothing further for 12 months from the date of the Section 125 notice, the council will send you two Notices requiring you to complete the sale. Should you not answer within eight weeks of the second such notice the application will be deemed withdrawn.

Once you have decided to buy, the council will prepare the leasehold documents including the plan. The papers will be sent to your conveyancing solicitor.

LEASE REPORT TEMPLATE

The following is an example of a typical Local Council lease which would be made on a Council property purchased under the Right to Buy (RTB). We explain in plain English what each Clause means. While your lease may not be identical to the example used, all of the key clauses are explained here and should help you navigate this complex document. This document should be read in conjunction with our advice guide on RTB leasehold properties under the Housing Act 1985, along with a copy of a draft RTB lease.

Particulars

This section sets out basic information such as the physical extent of the flat and the wider estate and/or building of which it forms part. A plan showing the location of the building and the flat should be attached. The commencement date and term, in years, of the lease are also laid out here, as well as other key information such as the purchase price (value) of the flat and the RTB discount.

Clause 1

Along with leasehold ownership of the flat, you are granted certain rights which are mentioned in the First Schedule; other rights are reserved to the Council and these are mentioned in the Second Schedule. The main structural parts of the building of which the flat form part are excluded from the lease.

The lease is for a term of 125 years from a commencement date which is the date the first lease was granted in the building. The ground rent is £10 per annum which is a fixed amount and cannot be exceeded. In addition, you will pay a service charge which is described in Clause 5 as well as further rent which the Council reasonably expends on insuring the building. The insurance contribution is described as rent, although legally it is regarded as a service charge.

Clause 2

The lease does not include any sewers, etc, which are located on the Council's adjoining land, although under the provisions of the First Schedule you are granted the right to use these facilities insofar as they pass through other parts of the building.

Clause 3

This Clause contains the tenant's covenants/obligations with the Council. You must observe all of these:

1. To pay the rent, service charge and insurance rent specified in clauses 1 and 5. If this is not paid within 14 days of the period specified, interest is payable at 4% above the base rate of the Co-operative Bank PLC or of such other bank as the Council may specify. Please be aware that although the insurance contribution is described as a rent payment, legally it is a service charge as defined by Section 18 of the Landlord and Tenant Act 1985.
2. To pay all rates or other taxes imposed on the flat. At present, your only payments, apart from those provided for in the lease, will be council tax, water rates and other outgoings, but if the law should change and some other form of tax or rate is imposed on property owners, it would be your responsibility to pay this tax or rate.
3. This sub-clause specifies those parts of the flat for which you are responsible and which have to be kept in good and substantial repair by you. These are primarily related to the internal parts of the property. These include the maintenance of the sanitary apparatus [3(a)(8)] and the radiators, tanks, pipes and drains etc [3(a)(9)].

4. To make good and repair any defects within 3 months (or sooner if required) of receiving notice from the Council.
5. The Council have the right to inspect the flat on 48 hours prior written notice between 8am and 6pm, and if they find that the property requires repairs they can require you to carry those out.
6. The Council have the right to enter the flat on 48 hours prior written notice (except in an emergency), between 8am and 6pm, to carry out repairs to the Council's adjoining property or other parts of the building and for other reasons specified in this sub-clause. They must do no unnecessary damage and make good any damage that is caused.
7. If the tenant fails to keep the property in repair the Council have the right to enter the property to carry out such repairs and to recover the costs from the tenant. These costs must be paid within 14 days of the demand.
8. A leaseholder of any other flat in the building is also given the right to enter your flat on 48 hours prior written notice to carry out necessary repairs at reasonable times provided he or she makes good any damage caused. By Clause 3 of the First Schedule you are granted a similar right to enter neighbouring leasehold flats to carry out necessary work. Be aware that this right of entry does not apply to flats let on secure tenancies (council tenancies).
9. The flat is to be used only for residential purposes. The lease restricts your ability to create two or more separate tenancies within the flat. You are entitled under the lease to sub-let the whole of the property. However, the restriction on subletting part of the flat is at odds with Paragraph 17 of Schedule 6 of the Housing Act 1985, which states, amongst other things:
A provision of the lease, or of an agreement collateral to it, is void in so far as it purports to prohibit or restrict the assignment of the lease or the subletting, wholly or in part, of the dwelling-house.
10. At the end of the lease term to give up the lease.
- 11.(a) If you sell or otherwise dispose of the flat within five years of the date of the lease you will have to pay the amount of the discount to the Council reduced by one-fifth for each complete year which elapses between the date of the lease and the date of disposal.
- 11.(b) This sub-clause defines those acts which amount to a disposal within the terms of Clause 11(a) (please note that an under-lease of the property for a term of more than 21 years may amount to a disposal). By way of example, if you transferred the lease to yourself and a relative or friend, that would amount to a disposal requiring repayment of the discount. There are certain disposals and transfers that do not require the repayment of the discount, such as a transfer to a beneficiary under a will or a transfer ordered by a court following a family breakdown.
12. The Council's right in certain circumstances to require payment of the discount amounts to a charge on the flat and a notice on the title will be entered by the Land Registry that the property was purchased under the provisions of the Housing Act, 1985 so that any purchaser will know the Council may be entitled to require payment of part or all of the discount.
13. If the leaseholder wishes to dispose of the flat within the first 10 years they are under an obligation to first offer the property to the council for the market price as agreed between the council and the leaseholder or as determined by the district valuer. A restriction detailing this provision should be registered against the flat by the Land Registry.
14. The tenant is responsible for and must pay the Council for any damage caused to the flat or other parts of the building or estate by any other person for whom the tenant is responsible, such as a family member or visitor.
15. If the flat is sub-let the tenant must enter into an agreement with the Council that he or she will observe the terms of the lease for which there will be a fee payable to the Council for the preparation of this document. The document will be a deed of covenant. [Follow this link to examine a typical deed of covenant.](#)

16. To provide notice to the Council within one month of transferring the flat, sub-letting or obtaining a mortgage. A reasonable fee is payable for receipting each notice.
17. You must not bring onto the property anything which may cause a danger, nuisance, annoyance or disturbance to the Council or other owners/occupiers of neighbouring and adjoining properties, this includes acts or items that in the opinion of the Council amount to racial harassment. This clause also refers to inflammable or combustible material. You must not do anything which might cause an increase in the insurance premium or give the insurance company the right to refuse cover.
18. You must not have in the flat any calor gas, paraffin or other inflammable fuel or liquid, without the Council's written consent. If, for example, you have a portable calor gas stove you should obtain the Council's permission to use it in the flat.
19. You are required to comply with all planning and other statutory regulations. You must supply a copy to the Council of any notices that you receive and to join in with the Council in making any representations in respect of any such notice. Any representations will be at the leaseholder's expense.
20. You are required to pay the Council's legal costs if they have to serve notices prior to forfeiting the lease as well as for any other notices or schedules that they have to prepare. The reference to Sections 146/147 Law of Property Act, 1925 are to legal provisions which entitle a landlord to repossess the property if you have breached the terms of the lease or are in arrears of services charges. Under this clause you are also required to pay the costs of the Council in preparing and serving repair notices as well as the costs of granting consents or licences. An example of when a consent or licence is required could be where you wish to undertake an alteration to the property.
21. No structural alterations can be made to the building unless you have obtained the prior written consent of the Council.
22. You must not erect an exterior television aerial nor exhibit posters, etc, either on the exterior of the property or in the windows.
23. You must not use the property for any illegal or immoral purpose. The tenant must not hold an auction at the premises. An example of an illegal purpose would be using the property to cultivate illegal plants, using the property to deal stolen goods or illegal drugs. An immoral purpose is generally held to mean using the property as a brothel or for the purposes of prostitution.
24. You must cover the floors of the flat with reasonable materials to minimise noise to other parts of the building.
25. You must allow the council to inspect the flat within six months of the end of the lease.

Clause 4

You covenant with the lessees of other flats in the building to observe the provisions of Clause 3. The purpose of this clause is to give a right to flat owners to take legal proceedings directly against other flat owners if there are breaches by that flat owner of the covenants in his/her lease. Alternatively, you can ask the Council to enforce the provisions of the other leases, for which you will have to pay the Council's costs.

Clause 5

This Clause details the expenses which can be recovered by the Council through the service charge as well as how they are calculated and payment collected. The flat owner is responsible for payment of all expenses incurred by the Council which relate solely to the flat as well as a proportionate part of the Council's expenses incurred on the repair, maintenance and renewal of the building, the provision of services for the building and the estate.

The amount of the service charge will be calculated on an annual basis and the Council must provide you with a certificate for its financial year (1st April to 31st March in the following year) containing a summary of their expenses and outgoings. On receipt of the certificate you must pay the amount of the service charge within fourteen days. You will be credited for any payments that have been made during the financial year and any surplus will be carried forward to the following year.

Sub-Clause (e)

You must pay the service yearly in advance on the 1st day of April.

Sub-Clause (f)

Provides for the calculation of the service charge as follows:

- (i) The expenses incurred by the Council in respect of the matters set out in the Third Schedule Part 1 are added together, divided by the total rateable value of all dwellings and other rateable parts in the building and then multiplied by the rateable value of your property (the building element).
- (ii) The expenses incurred by the Council in respect of the matters set out in the Third Schedule Part 2 are aggregated, divided by the total of the rateable value of all residential units on the estate and then multiplied by the rateable value of your property (the estate element).
- (iii) You must pay a fair and reasonable proportion of the Council's management expenses incurred under the Third Schedule part 3 (the management element).
- (iv) Then the building, estate and management elements are added together to any expenditure incurred under the provisions of clause 5(3)(e)(ii).

The Council is entitled to change the method by which the service charge is calculated. If the rateable value method is abolished, then, instead of using this, the service charge will be based on the floor area of the property. Some charges are calculated on a borough wide basis.

Sub-Clause (g)

The Council has the power to create a reserve fund so that, for example, they can set aside money for periodic re-decoration of the outside of the building. On the sale of your property you will not be entitled to any part of the reserve fund so that the purchaser will have the benefit of whatever you have paid on account towards future expenditure.

Clause 6

This Clause provides that the covenants by you will remain in full force even though the Council may be aware of some breach but do not take any action to enforce the lease. Therefore Council would have the right to take proceedings to enforce the terms of the lease, but if they chose not to do so, the tenant cannot then argue that they have given up their right to do so at some future time.

Clause 7

This Clause contains the Council's covenants with you.

- (1) Provided you pay the rent, which includes service charges, and observe the other covenants the Council will allow you to enjoy the property without interruption from the Council or any person who claims under them.
- (2) The Council agrees to insure the property in the joint names of the tenant and the Council for the full reinstatement value and also to insure the remainder of the building in their own name.

- (3) If the property or the building is destroyed or damaged by an insured risk the Council will use the insurance money on re-building or repairing the building. If the building is damaged beyond repair then the insurance money will belong to the Council and the tenant in the proportion which the values of their respective interests in the building bear to one another. For example, if your property is one of three flats in the building you would expect to receive one-third of the insurance money if the building could not be repaired. However under the provisions of Paragraph 14 (3) of Schedule 6 of the Housing Act 1985 the landlord is under an obligation to reinstate the building in the event of destruction. Below is the full text of Paragraph 14 (3).

There is an implied covenant that the landlord shall rebuild or reinstate the dwelling-house and the building in which it is situated in the case of destruction or damage by fire, tempest, flood or any other cause against the risk of which it is normal practice to insure.

- (4) If the property has been damaged or destroyed so as to be unfit for use and the insurance money is payable the rent will be suspended either until the property again becomes fit for use or until expiry of such period for which the Council receives insurance monies equivalent to the rent due, whichever is the shorter.
- (5) The Council agrees to repair the structure of the building and the other items specified in this Clause but not works for which the tenant is responsible under Clauses 3(3). Clause 8, below, states that the Council is not liable if it cannot do the work for reasons beyond its control.
- (6) The Council further agrees to provide certain services so far as reasonably practicable, for which the tenant pays a service charge.
- (7) The Council agrees that any leases granted for 21 years or more of any dwelling in the building will be in similar terms as this lease wherever reasonable and practicable.
- (8) The Council will, if requested by the tenant, take steps to enforce the covenants in the leases of other dwellings in the building. This is subject to the tenant indemnifying (agreeing to pay) the Council for its costs associated with enforcing the breach.

Clause 8

This Clause provides that the Council will not be liable to the tenant for breach of its obligations under the lease in certain circumstances. In particular, you will note that if, for example, they cannot provide services as a result of labour disputes, bad weather conditions or mechanical breakdown they will not be liable.

Clause 9

This Clause provides that if the rent is unpaid for fourteen days or you have not observed your covenants in the lease the Council can re-enter the property, evict the tenant and forfeit the lease. However, both as a matter of practice and in law, the Council must take proceedings for possession before a person can be evicted and, as stated above, the Court has power to give relief against forfeiture of the lease provided the tenant remedies the breaches of covenant.

Clause 10

- (1) Any notice by the landlord can be sent to the flat by post or in person.
- (2) The leaseholder can serve a notice on the council addressed to the Head of Law by post or in person.
- (3) The lease is granted by the council as freeholder and does not affect its other powers as a local authority.
- (4) This sub clause allows the use of words to be interpreted in a way to avoid mistakes relevant to plural, singular, masculine and plural. In a practical sense joint owners of the property shall

be regarded as single leaseholders and jointly liable to perform the obligations under the lease.

- (5) Any references to an Act of Parliament shall include any subsequent amendments to that Act of Parliament.
- (6) This is a Stamp Duty Land Tax certificate confirming that the purchase is not linked to another for tax purposes.
- (7) This certifies that there is no other agreement within the lease that creates another lease.
- (8) This clause takes effect if there is no stamp duty payable on the purchase. If there is stamp duty payable then this clause is crossed out.

THE FIRST SCHEDULE

This details the rights granted to you, which are necessary for you to use and enjoy the flat. For example, you are given the right to use the various services, right of access through the other parts of the building and rights of way over the estate. The Schedule also grants a right to enter other leasehold flats in the building if access is required to undertake repairs to the leaseholder's flat.

THE SECOND SCHEDULE

This specifies the exceptions and reservations from the lease. These are rights reserved by the Council for themselves and other occupiers of the building and estate in terms similar to those given to the leaseholder by the First Schedule.

THE THIRD SCHEDULE

This specifies the building, estate and management element of the services provided by the Council towards the cost of which you contribute under Clause 5 through the service charge. Please read this clause carefully so that you understand the costs to which you have to make a contribution. The Council should have provided you with an estimate of the likely annual service charge but it is most important to appreciate that, in addition to your mortgage, council tax, water rates and rent, you may have a substantial liability for the provision of services by the Council. The cost will vary from year to year, for example, it will be substantially higher in years when the Council is re-decorating the building or has to carry out structural repairs.

DEFINITIONS

What is in the lease?

A Right to Buy (RTB) lease under the Housing Act 1985 (the Act) will look like most other leases and will contain covenants and rights granted to the leaseholder. A general overview on [living in leasehold flats](#) is contained in our on line advice guide of the same name. The following link is to a draft RTB lease with a clause by clause interpretation in plain English: [RTB Lease](#)

However unlike most other leases, the essential covenants and terms are imposed under the provisions of [Part 3 of Schedule 6 of the Housing Act 1985](#). These are referred to as implied covenants in the Schedule. A brief outline of some of the more significant implied covenants follows:

Ground rent: must not exceed £10 per year for the whole term.

Lease term: a Right to Buy lease term is 125 years from the date the first lease in the building was granted. So the first tenant in the building to exercise the Right to Buy from 8 August 1980 gets a 125 year lease. If another leaseholder purchases their flat 10 years later they would get a lease with 115 years. Also if the landlord/council/housing association does not own the freehold but rather owns a head lease, the lease term granted to the tenant will be for a term equivalent to the landlord's lease term less 5 days. If the landlord has less than 50 years on any head lease a tenant will not have a right to buy. See paragraph 4 Schedule 5 of the Housing Act 1985.

Common use of premises and facilities: where a tenant has been able to use facilities and premises as part of their tenancy they will enjoy the same rights once they become a leaseholder.

Landlord's Implied Covenants:

To maintain the structure: to maintain the structure and exterior of the building and make good any defects to the structure. Also to maintain any services enjoyed by the leaseholder to a reasonable level and keep in repair any installation in respect of those services. A few examples of services may be lifts serving the building.

To reinstate: the landlord is under an obligation to reinstate the building if it is damaged or destroyed by an insurable risk such as fire flood and tempest. Be aware that the landlord is not under an obligation to insure the building. However the vast majority of councils and housing associations actually insure their buildings and their Right to Buy leases will contain a landlord's covenant to take out a buildings insurance policy.

NOTE: any deviation from these implied covenants must be approved by a county court. However if your landlord only owns a head lease they are not required to enter into obligations incompatible with the terms of that head lease.

Leaseholder's Implied Covenants

Repair: to keep the interior of the flat on a state of good repair.

Where the property is a flat, the leaseholder has an obligation to keep the interior of the flat in a good state of repair.

The leaseholder is under an obligation to pay service charges to the landlord where the landlord incurs costs in relation to the landlord's implied obligations detailed above.

Terms used in this advice guide

Covenants: are legally binding obligations by the leaseholder and the landlord

Rights granted: for instance, allows the leaseholder to enter and leave the flat through the common parts.

Lease term: is the number of years granted.

Unexpired lease term: is the number of years remaining on the lease.

Head lease: held by the freeholder, who may sublet the entire building, for example, to a housing association who in turn lease individual flats. The head lease will always be longer than the leases on individual flats.

Demise: the physical extent of the property owned by the leaseholder

Tempest: violent storm.

District Valuer: a government officer who values land and buildings for the purposes of council tax.

Secure tenancy: a weekly or monthly tenancy on a council flat or house.

Indemnity: a promise to pay another's costs or perform a specific action.

Quarter day: 25 March, 25 June, 29 September and 25 December. These are historically the days in the year when rent is due in England and Wales.

Forfeiture: the process where a landlord obtains possession of a leasehold property due to a breach of covenant by the leaseholder.

Relief from Forfeiture: where a judge refuses to make an order to forfeit the lease where the leaseholder has made good the breach of covenant complained of.

LEASEHOLD VALUATION TRIBUNALS**Residential Property Tribunal Service (RPTS) National Helpline:**

Tel: 0845 600 3178 Website: www.justice.gov.uk

Wales

1st Floor, West Wing, Southgate House, Wood Street, Cardiff CF10 1EW

Tel: 029 2092 2777 Fax: 029 2023 6146

Email: rpt@wales.gsi.gov.uk Website: <http://wales.gov.uk>

OTHER USEFUL ADDRESSES

Copies of all legislation regulations and other official publications can be downloaded from www.legislation.gov.uk.

Alternatively printed copies can be purchased from:

The Stationery Office Ltd (TSO),

PO Box 29, Norwich, NR3 1GN)

Tel: 0870 600 5522

Online ordering: www.tsoshop.co.uk

The Royal Institution of Chartered Surveyors (RICS)

12 Great George Street, Parliament Square, London SW1P 3AD

Tel: 0870 333 1600 Email: contactrics@rics.org Website: www.rics.org

The Federation of Private Residents' Associations

PO Box 10271, Epping CM16 9DB

Tel: 0871 200 3324 Email: info@fpra.org.uk Website: www.fpra.org.uk

020 7222 7000

For more information and how to apply for the right to buy your home see the Right to Buy website <http://righttobuy.communities.gov.uk/>

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