



Ministry of Housing,  
Communities &  
Local Government

## **Right to Buy**

A guide for local authorities

April 2018

Ministry of Housing, Communities and Local Government (MHCLG)



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**The Right to Buy scheme is governed by the Housing Act 1985, as amended, and this guide reflects the current legislation. All the legislative references in this guide relate to the Housing Act 1985. The Department cannot provide a definitive interpretation of legislation as this is done by the Courts. This guide is therefore only the Department's view on the operation of the Right to Buy.**

**The Department will make every effort to ensure the guide is updated where there are changes but it is the landlord's responsibility to ensure that they are applying the relevant legislation correctly.**

# Introduction

The guide is intended for use by landlords of secure tenants who are entitled to buy their properties under the Right to Buy scheme. The guide is intended to provide you, as the landlord responsible for processing your tenant's Right to Buy applications, with information and best practice advice to help you process the applications you receive in an efficient and effective way. It will also provide you with information to assist in advising your tenants about the Right to Buy process and answering their most frequently asked questions.

The Right to Buy scheme is governed by the Housing Act 1985 and all legislative references in the guide relate to this Act unless stated otherwise. The Act and other Right to Buy legislation can be found at [www.legislation.gov.uk](http://www.legislation.gov.uk). The legislation has been amended several times and this guide reflects the current legislation governing the scheme. The Department cannot provide a definitive interpretation of the legislation as this is done by the Courts. The information provided in this guide is therefore the Department's view on the operation of the Right to Buy.

All the figures given in the guide are correct at the date of publication. The Department will make every effort to ensure the guide is updated where there are changes but it is the landlord's responsibility to ensure that they are applying the relevant legislation correctly. All care has been taken in producing this document, but we strongly advise that where you are considering adopting any of the guidance you ensure that it complies with your own organisation's policies and procedures and, if appropriate, has been cleared by your organisation's legal service.

We have set out the things that you are required to do by legislation, as well as suggestions on best practice.

The guide is divided into sections, each covering a different stage in the Right to Buy process.

- Before an application is submitted
- Admitting or denying an application
- Calculating the sale price and making the offer to sell
- The sale process
- Delay Procedures

Where appropriate, each stage of the Right to Buy process has been outlined as a series of steps leading from start to finish.

It is important to communicate with tenants about the process so that they can work out if buying their home is the right choice for them, helping to ensure that only those who are eligible apply. One easy way of doing this is to signpost tenants to the government's purpose built Right to Buy website: [www.communities.gov.uk/righttobuy](http://www.communities.gov.uk/righttobuy); or to the Right to Buy Agents: <http://righttobuy.communities.gov.uk/agent-service/>.

## Further help with Right to Buy (RTB)

In addition to this guide there are a number of resources available to support you in delivering Right to Buy including:

- MHCLG Right to Buy website – [www.communities.gov.uk/righttobuy](http://www.communities.gov.uk/righttobuy)
- Knowledge Hub – <https://khub.net/>
- Eligibility quiz, discount calculator tools and RTB informational video - <http://righttobuy.communities.gov.uk/partnermaterials>
- Right to Buy Agent service - <https://righttobuy.gov.uk/agent-service/>
- Right to Buy Facebook page - <https://www.facebook.com/righttobuy>
- Money Advice Service - <https://www.moneyadviceservice.org.uk>
- Information and promotion templates - contact the Right to Buy team
- Events toolkit- contact the Right to Buy team
- Communications Toolkit- contact the Right to Buy communications team

Right to Buy Team – [RTB@communities.gsi.gov.uk](mailto:RTB@communities.gsi.gov.uk)

Right to Buy Communications Team – [marketing@communities.gsi.gov.uk](mailto:marketing@communities.gsi.gov.uk)

## Informing your tenants about their Right to Buy

The legislation governing the Right to Buy requires all landlords to issue an up to date Right to Buy information document to all of their secure tenants (Sections 121AA and 121B, and Statutory Instrument 2005/1735). Landlords are required to give this document to all new secure tenants, as well as providing the document to all of their secure tenants at least once every 5 years. The document must be revised to keep it up to date as far as this is practical; and the amended document should be issued to all secure tenants within 1 month of any revision.

This mandatory document must contain the following:

1. An outline of the effect of the Right to Buy provisions in Part 5 of the Act relating to:
  - The circumstances in which the Right to Buy can and cannot be exercised.
  - The exceptions to the Right to Buy set out in Schedule 5.
  - The procedure for claiming to exercise the Right to Buy.
  - The price payable for the dwelling-house by a tenant exercising the Right to Buy.

- Delay notice procedures for landlords and tenants set out in sections 140, 141, 153A and 153B.
2. The fact that initial costs are likely to be incurred by a secure tenant exercising the Right to Buy, with specific reference to costs in respect of:
    - Stamp duty.
    - Legal and survey fees.
    - Valuation fees and costs associated with taking out a mortgage.
  3. The fact that a secure tenant will be likely to have to make regular payments as an owner of a dwelling-house, with specific reference to payments in respect of:
    - Any mortgage or charge on the dwelling-house.
    - Building insurance, life assurance, and mortgage payment protection insurance.
    - Council tax.
    - Water, sewerage, gas, electricity, or other utility services.
  4. The risk of repossession of the dwelling-house if regular mortgage payments are not made.
  5. The fact that in order to keep the property maintained and in good repair an owner of a dwelling-house will be likely to have to incur expenditure which may include payment of service charges in respect of major works.

In addition to the information that you are legally required to provide to all tenants about the scheme, it is good practice to provide tenants who have expressed an interest in exercising their Right to Buy with more detailed information early on. This can help tenants work out if buying their home could be the right choice for them and help ensure that only those who are eligible go on to apply. One easy way of doing this is to signpost tenants at an early stage to the government's Right to Buy website: [www.communities.gov.uk/righttobuy](http://www.communities.gov.uk/righttobuy); or to the Right to Buy Agent service: <http://righttobuy.communities.gov.uk/agent-service/>. It is also good practice to ensure that your website is up to date, correct and user-friendly.

Your organisation will want to ensure that there is a balance between providing enough information to enable tenants to make informed choices and not overwhelming them. It is up to your organisation to decide exactly how this can be achieved, but things you might want to consider making available to tenants are:

- Tips on completing the application form.
- Key contacts in your Right to Buy section.
- Frequently asked questions and answers.

- Free printed guides from the Money Advice Service– these can be ordered online at: <https://www.moneyadviceservice.org.uk/en/articles/free-printed-guides>.
- The Right to Buy summary booklet – *Want to make your home your own?*
- A link to the Right to Buy website, individually or in material you send to tenants. This website has an eligibility quiz to help tenants work out if they have the Right to Buy, information about the discount they may get, and links to free, independent financial advice.

If your organisation would like advice and support in keeping your tenants informed about the Right to Buy and any recent amendments to the scheme, the Right to Buy team at the Ministry of Housing, Communities and Local Government can provide you with a number of options.

- We can assist you with updating your website – including standard copy and tools (Eligibility quiz and a calculator to work out what discount tenants might be entitled to).
- We can provide you with ideas for things to include in your Right to Buy information pack.
- We can provide you with a practical communications toolkit which contains a range of templates, advice and material on effectively communicating with tenants.
- We can discuss a range of options and provide templates for Right to Buy tenant events.
- Contact the RTB communications team at [marketing@communities.gsi.gov.uk](mailto:marketing@communities.gsi.gov.uk) for more practical advice, templates and information about how we can help you to keep your tenants informed.

## Helping your tenants to prepare and submit their applications

We consider that there are a range of benefits for landlords in providing assistance to their tenants in preparing their applications. Providing support before an application is submitted could help to:

- Reduce the costs involved in processing Right to Buy applications.
- Reduce the work involved in abortive applications.
- Encourage responsible, considered applications.

You can provide this support to your tenants either at the point that they receive the application form or when they submit it to you.

Although this can incur an administrative cost (in terms of officer time and resources), talking to the tenant at an early stage could offset this by delivering both short and long term savings such as:

- Improving the quality of applications you receive thereby reducing your administration time.

- Reducing the time spent obtaining confirmation of previous tenancies.
- Reducing the number of withdrawn applications by ensuring tenants are fully aware of the requirements, costs, advantages and disadvantages of home ownership before applying.
- Minimising the number of post Right to Buy complications.
- Making tenants aware at an early stage where they would not qualify for the Right to Buy.
- Encouraging tenants to get independent advice regarding the costs involved in buying and owning their home, before they apply to buy

#### Good Practice

- By creating your own 'Right to Buy Information Pack' you can help provide tenants with the information they need about the Right to Buy and the Right to Buy process before they submit an application form. See the Knowledge Hub for ideas on what you might want to include in an information pack.
- A simple discussion about the eligibility criteria, the likely cost of purchasing and level of discount is likely to help tenants make an informed decision about whether to buy. You may want to consider face-to-face advice or drop-in sessions.

## Admitting or denying an application – Section 124

The first stage of the Right to Buy process begins with the receipt of an application form (RTB1) from a tenant. You are required to respond to the tenant with a Section 124 notice (RTB2) advising them whether their application has been accepted or denied.

The date that the RTB1 is received by the landlord is referred to as the '**relevant time**' and sets the date for valuation and calculation of the sale price. It is also the date used to calculate the admittance or denial statutory timescale.

You must admit or deny an application within **4** weeks of receiving the application or within **8** weeks if the tenant has had a tenancy with any other landlord which is needed to meet the minimum statutory qualifying period. The qualifying period is set out in Section 119.

If you do not meet the statutory timescale for accepting or denying an application, the applicant is entitled to use the delay procedures outlined on pages 37 and 38 of this guide to claim compensation for any delay caused by you, the landlord.

## Step 1: Checking the application form – RTB1

When you receive an RTB1 you should check that it provides:

- The address of the property.
- The signature(s) of all applicants.

Most landlords consider that these are the only essential pieces of information needed for the RTB1 to be accepted as a valid application. It is good practice to date-stamp the application.

It is the responsibility of the landlord to obtain the remaining necessary information required to process the RTB1 and, wherever possible, landlords should make reasonable attempts to obtain missing information from tenants without returning applications.

By signing the RTB1 the tenant is indicating their wish to apply for the Right to Buy their home, and the landlord will wish to obtain outstanding information by the most practical means to ensure the application is processed in line with statutory timescales.

Where the tenant fails to disclose details of any previous tenancies, despite being requested to do so, the qualifying criteria and discount entitlement should be calculated on the basis of the current tenancy information and any other tenancy details provided.

### Good Practice

- It is common practice to keep a register of all applications you receive, regardless of whether they are determined to be valid or not. This register generally records the date the application was first received and allocates each a unique reference number to help identify the application throughout processing and in correspondence.
- You may wish to send the tenant a letter to acknowledge receipt of the RTB1, providing them with any reference number they may need to quote when contacting you and outlining any other relevant information; this will help to reduce the number of queries you may get at this stage and later on.

## Step 2: Checking the eligibility of the tenants

### Current tenancy status

The current tenancy status must be a secure one in order to be eligible for the Right to Buy. If the tenancy status is not secure, the application is automatically denied.

There are certain types of tenancies which cannot be considered as secure for the purposes of Right to Buy, and these are detailed in the following table.

### Tenancies that cannot be secure (Section 79 (2) & Schedule 1 amended)

- Where a long lease has been granted for a fixed term of more than 21 years.
- Introductory tenancies (Part V –Housing Act 1996).
- Demoted tenancies (Section 143A Housing Act 1996).
- If the dwelling is occupied in connection with employment:
  - Where the tenancy is required for the better performance of duty.
  - Police tenancies (rent free).
  - Fire authority employee granted tenancy in order to reside near a fire station.
  - If a previous tenant (within the 3 years immediately prior to the tenancy) met one of the conditions above. Landlords must notify tenants in writing that this exception will apply.
- Where the dwelling is on land acquired for development that the landlord is using as temporary housing accommodation.
- Properties that provide homeless accommodation (Part VII Housing Act 1996):
  - Tenancies granted to asylum seekers (Part VI Housing Act 1996).
  - Tenancies granted as provision for displaced persons (Temporary Protection Regulations 2005).
- Temporary accommodation provided to meet the needs of obtaining or undertaking employment in that, or in an adjoining, district.
- If the dwelling is leased to a landlord with vacant possession by the owner (private sector) for use as temporary accommodation, where there is a provision in the lease for obtaining vacant possession at the end of the lease.
- If the dwelling is temporary accommodation while works are being carried out to previously occupied dwelling.
- If the dwelling is on an agricultural holding and occupied by a person who is controlling the farming of the holding.
- Where the dwelling is, or is within, a property licensed to sell alcohol.
- Where a tenancy is granted to meet the needs of an educational course within the category designated by Regulations.
- A business tenancy within Part II of the Landlord and Tenant Act 1954.
- Almshouses – Schedule 1

## Joint tenancies

Where a tenancy is issued in joint names, all tenants must be named on and must sign the RTB1.

If all tenants have not indicated their intentions, or have not signed in the appropriate place on the RTB1, you must contact them and make arrangements for the form to be completed correctly.

Only one of the joint tenants has to be living at the property as their only or principal home. The other tenant(s) may live away from the property and retain their Right to Buy or agree to the other tenant(s) buying without them joining in, provided they indicate on and sign the application form in the appropriate place.

If one or more of the tenants does not signify their agreement, the other tenant(s) will not be able to exercise their Right to Buy and the application will be denied.

## Court Orders affecting eligibility

Any tenant or family member who is subject to one of the following orders will not be allowed to join in the Right to Buy:

- Possession order with a fixed date - including Suspended Possession Order
- Ground 2 criminal nuisance order
- Right to Buy suspension order
- Bankruptcy order
- Demotion order

If the application is denied because one of the above orders is in place, the tenant will be required to submit a new RTB1 once the term of that order has been satisfied if they wish to continue with the Right to Buy.

### Good Practice

- Where a Court hearing date has been set for one of the above orders, landlords might wish to consider suspending the Right to Buy application until the result of that hearing is known. This can help avoid unnecessary processing costs.
- Note that the tenant can require the landlord to continue processing their application up to the point of completion but without actually completing.

## Step 3: Checking for property exemptions – Schedule 5

The 1985 Housing Act exempts certain specific types of properties from the Right to Buy and details the specific criteria that must be met for exemption. In order for you to declare a property as exempt from the Right to Buy it must meet the exact criteria set out in legislation.

You should note that where a property is described as ‘particularly suitable’, the legislation requires more than a basic level of suitability to apply. Illustrations of suitability may include ramps, widened doors, lowered kitchen worktops etc.

### Good Practice

- You should ensure that if you are denying the Right to Buy because the property falls under one of the exemptions, that you have a detailed written record of your decision that clearly illustrates every way in which the property meets the criteria set out in legislation.

### Elderly Persons Dwellings

Unlike the other types of exempt dwellings, if you deny the Right to Buy on the basis that it meets the criteria set out for elderly persons dwellings, the applicant will be entitled to appeal your decision within 56 days of the RTB2 date.

#### Elderly persons dwelling

All 3 of the following criteria must be met before you can deny an application under this ruling. Circular 7-2004 – Right to Buy: Exclusion of Elderly Persons Housing gives guidance on this exemption. A copy of this circular can be obtained from this Department.

The property was let for occupation by a person aged 60 or over. This can be either the tenant/s or another person

**and**

The property is an individual dwelling which is *particularly suitable* for an elderly person

**and**

The property was first let before the 1st January 1990.

**If ALL of the above criteria are met the application will be denied under Part C of the RTB2.**

### Other exempt dwellings

#### Dwelling houses for persons of pensionable age

All 4 of the following criteria must be met before you can deny an application under this ruling.

The property is one of a group

**and**

All dwellings in this group are particularly suitable for an elderly person

**and**

It is the practice of the landlord to let these dwellings to persons aged 60 or over, or for people who are physically disabled

**and**

The services of a warden are provided for the tenants of these properties. This can be either a resident warden or a non-resident warden who is on call, coupled with the use of a common-room in close proximity to the group of dwelling houses.

If ALL of the above criteria are met the application will be denied under Part B of the RTB2.

### Dwellings for disabled persons

All 4 of the following criteria must be met before you can deny an application under this ruling.

The property must have features that are substantially different from those of ordinary dwelling houses  
**and**

Is designed for people who are physically disabled  
**and**

Is one of a group of dwellings which it is the practice of the landlord to let for occupation by people who are physically disabled  
**and**

Is in close proximity to a social service or special facility provided wholly or partly for the purpose of assisting the occupants.

If ALL of the above criteria are met the application will be denied under Part B of the RTB2.

### Dwellings for people suffering from a mental disorder

Both of the following criteria must be met before you can deny an application under this ruling.

The property is one of a group of dwellings which it is the practice of the landlord to let for occupation by people who are suffering or have suffered from a mental disorder as defined in the Mental Health Act 1983  
**and**

Has a social service or special facility provided wholly or partly for the purpose of assisting the occupants.

If BOTH of the above criteria are met the application will be denied under Part B of the RTB2.

## Property scheduled for demolition

A further reason that a particular property can be exempt from the Right to Buy is if that property is designated to be demolished.

Once a property has become subject to an **Initial Demolition Notice** the Right to Buy cannot be completed.

The application can be suspended at the stage it has reached when the Initial Demolition Notice is issued. The tenant can require the landlord to progress the application up to the completion stage but completion cannot take place.

When/if a **Final Demolition Notice** is issued on the property, the Right to Buy comes to an end and the application is cancelled.

### Good Practice

- You should have a process in place to check whether a property is, or is likely to be, subject to a Demolition Notice. You should be aware of who in your organisation has the responsibility for making the decision to issue Demolition Notices and ensure that they inform you when any demolition notices have been served.
- The demolition notices should contain specific information relating to the Right to Buy which will protect the landlord from unnecessary compensation claims where tenants have incurred costs as a result of acquiring a mortgage/solicitor etc.

## Step 4: Checking the eligibility of family members - Sections 123 and 186

Certain family members have the right to join in a Right to Buy application, even if they are not tenants. In order for a family member to exercise their right to join in the Right to Buy they must satisfy all **3** of the following requirements:

1. They must be a relevant family member who are specified as:
  - The spouse or civil partner of the tenant; or the tenant and that person live together as if they were husband and wife or civil partners, *or*
  - The tenant's parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew or niece.
2. They must live at the property as their only or principal home.
3. They need to have been living at the property for 12 months immediately preceding the date of application, except in the case of spouses or civil partners where the 12 month residential requirement does not apply.

Family members are automatically excluded from the Right to Buy if they are subject to any of the Court Orders detailed in Step 2.

### Important Note

For the purposes of the family member provision:

- A relationship by marriage shall be treated as a relationship by blood.
- A relationship of the half-blood shall be treated as a relationship of the whole blood.
- The step-child of a person shall be treated as his/her child.
- An illegitimate child shall be treated as the legitimate child of his/her mother and reputed father.

### Landlord's discretion to allow family members to join in an application

Right to Buy legislation provides landlords with the discretion to allow persons who meet the requirements of a relevant family member, but who are not resident at the property for the full 12 months prior to applying, to join in a Right to Buy application.

Any decision to exercise this discretionary power should be done in consultation with your legal advisers and in accordance with your agreed policy.

### Good practice

- You will wish to assess each application individually on its merits.
- You should establish clear and consistent standards on what is required to establish proof of residence for eligible family members. This will ensure clear guidelines on what is acceptable.
- By admitting family members with less than the 12 month minimum residency you are likely to reduce the number of aborted and repeat applications. Most family members are included for finance purposes and will reapply once the minimum residency criterion has been satisfied.
- Where the landlord requires proof that the residence is their only or main home, the onus to provide this generally falls to the family member.

## Step 5: Checking the qualifying period

The tenant will need to have been a public sector tenant for a minimum of 3 years (Section 119). This is most commonly tenancy with either a council or a housing association.

The qualifying period can be made up from the present **and** any previous relevant public sector tenancies. These periods do not need to be consecutive.

Any *previous* public sector tenancy is not required to have been a secure tenancy and it does not matter whether or not the tenant had the right to purchase the previous property. You can include temporary, homeless, introductory, short-hold tenancies etc. Demoted tenancy periods however are excluded.

The requirements of a public sector tenancy are that it is a dwelling let as a separate dwelling and both the landlord and tenant conditions are satisfied (Schedule 4).

**Tenant condition** – that the tenant is occupying the dwelling as their only or principal home. Where there are joint tenants only one of them needs to satisfy this condition.

**Landlord condition** – that the interest of the landlord belongs or belonged to a relevant body, or predecessor of that body (see RTB1 for a list of bodies which are treated as public sector landlords for the purposes of the Right to Buy).

### Periods of occupation that count towards the qualifying period (Schedule 4):

The following can all be counted towards the qualifying period:

- Periods that the *tenant* held a public sector tenancy
- Periods spent as the *spouse* of a public sector tenant where they occupied that property as their only or principal home
- Periods during which the *spouse of the purchaser* was a public sector tenant providing the purchaser and spouse are living together at the relevant time
- Periods during which the *deceased spouse of the purchaser* was a public sector tenant providing the purchaser and spouse were living together at the time of death

- Periods in which the *spouse of the purchaser* (if living together at the relevant time) was *formerly the spouse of a public sector tenant* and lived there as his/her only or principal home
- Periods during which the *deceased spouse of the purchaser* (if living together at the time of death) was *formerly the spouse of a public sector tenant* and occupied that dwelling as his/her only or principal home

If the purchaser is living with his/her spouse at the time of applying (or if deceased, at the time of his/her death) they can count all the spouse's periods of public sector occupation whether or not the spouse is:

- a tenant at the present time
- included as joint purchaser

The spouse's period of occupation may include periods when he/she was:

- a public sector tenant
- living with a spouse who was a public sector tenant

Any period during which, before the relevant time, the secure tenant qualified for the Preserved Right to Buy or was the spouse of such a person and occupied that property as his/her only or principal home, also counts towards the qualifying period.

Whole and part years must be included when calculating the qualifying period. Use the total number of years, months and days of each tenancy when adding different tenancies together to determine the discount entitlement. An example of discount calculation can be found on page 26.

If only one of the joint tenants wishes to buy, they may still use one of the other tenant's years of secure tenancy to meet the minimum qualifying criteria, but **not** for their discount entitlement.

If they do **not** have the minimum qualifying period in their own right, but have qualified via another tenant's secure tenancy years, then they may be awarded the minimum discount of 35% for a house or 50% for a flat. As with all other areas of this guide, you will want to check that this interpretation of the legislation is viewed as correct by your organisation before amending any current policy you have in place.

## Previous tenancies

In order to confirm that a previous tenancy was a relevant public sector tenancy and to confirm the dates of that tenancy you may need to contact other landlords. These landlords may require a signed authority from the tenant to disclose this information.

Where you receive a request for information about one of your previous tenants, your own policies may require you to provide proof that you have the tenants' authority to release this information in order to provide an audit trail. You may therefore wish to obtain written consent from the tenant of any landlord requesting tenancy information from you. Where it becomes difficult to either obtain the information from the landlord or to confirm any previous tenancy there are several options available.

## Tenancies with your own authority/organisation

If the previous tenancy was with your authority or organisation but the information is no longer available, you may decide to accept certain proof of residency such as:

- Documents relating to the tenancy or tenancy agreement.
- Letter from GP or other official source confirming that the property was registered with them as the tenant's principal home.
- Copies of relevant electoral register.
- Other ID showing the tenant's name and previous tenancy address which relates to the period in question.

You may then decide to accept the dates claimed by the tenant as they have signed the RTB1 declaring that the information they have provided is true and accurate. The tenant would be responsible for any false information should this become evident at a later date.

Please bear in mind that evidence of residency is not proof of public sector tenancy and will not confirm claimed dates of tenancy. Always check with your manager/audit team before deciding on what evidence you will accept.

## Tenancies with your organisation or another landlord

If a previous tenancy either with your organisation or with another landlord cannot be confirmed you may ask the tenant to provide a statutory declaration which is a signed legal document sworn on oath and witnessed by a solicitor of their choice. The solicitor will charge a fee for this service which is payable by the tenant. You may also require the tenant to provide proof of residency at that address alongside the statutory declaration.

### Good Practice

- You should establish a clear policy on confirming tenancies with another landlord. This policy should be agreed with your own legal services and management to comply with your organisation's policies on such matters and to adhere to any audit trail that is required by your organisation.
- When writing to another landlord for information on a person's previous tenancies it would be useful to also ask if that person has previously benefited from a discounted sale of a property (See Step 5 on page 30).
- Although you only need to prove the 3 years qualifying period at this stage of the process, you will need to establish the total length of all tenancies when calculating the discount should the application be admitted. It will be easier if you confirm the applicants' full rental history and obtain any related evidence at this stage.
- When requesting a statutory declaration from a tenant, it is a good idea to request the precise information to be contained in the wording of the document. This will ensure that all declarations meet your requirements and will ensure consistency in the information provided.
- Suggestions for information you might request are: that the tenant claims to have been a secure tenant of the property, the dates of tenancy claimed and what evidence they are supplying to support this.
- You may wish to follow up any accepted statutory declaration with a letter to the tenant explaining that although you have accepted the statutory declaration, you are prepared to take legal action should any information come to light which questions any information contained within the declaration. You could also add a time period for them to inform you of any further information which comes to light.

## Step 6: Issuing the RTB2 – Notice in Reply to Tenant’s Right to Buy Claim

Once you have completed all of the preceding steps you should have the information you need to decide whether the application will be admitted or denied.

Once the decision is made, you will need to issue a RTB2 as required under Section 124.

The RTB2 has 3 parts. You only need to complete the parts that are relevant to that particular application.

### Part A – Admission of the Right to Buy

Part A is used to advise that an application has been admitted.

### Tenants

If the answer to the following questions is ‘yes’, the tenant’s Right to Buy can be admitted:

- Is the current tenancy a secure tenancy?
- Where applicable, have the joint tenancy rules been complied with?
- Is it the tenant’s only or principal home?
- Has the minimum qualifying period been satisfied?
- Have you checked to ensure that the tenant is not subject to any of the court orders listed on page 12? (Where a court order is in place, deny the applicant(s) under Part B.) *If a court order is pending for any applicant, the Right to Buy application may be suspended until the result of the court hearing is known.*
- Is the property free from exemption, including exemptions under Schedule 5? (If ‘no’, deny under Part B unless it applies to the elderly persons dwellings provision in which case it must be denied under Part C.)

Providing that all of the answers are ‘yes’ you can admit the Right to Buy to the tenant using Part A of the RTB2.

If any one of these answers is ‘no’ you must ensure that you have taken all the necessary steps to gain any outstanding information before denying the application.

### Family members

If the answers to the following questions are ‘yes’, the family member can also be admitted to join in the Right to Buy:

- Is the family member a ‘Relevant Family Member’? See page 15.
- Is the property their only or principal home?

- Does the family member meet the residential requirements and has the necessary proof of residency been provided?

Provided that all of the answers are 'yes' and that the tenant's Right to Buy has been admitted, you can admit the family member to join in the Right to Buy using Part A of the RTB2.

If any of the answers is 'no', you must ensure that you have taken all the necessary steps to obtain any outstanding information before denying the family member the Right to Buy using Part B of the RTB2.

## Part B - Denying the Right to Buy

Part B of the RTB2 is used to advise that an application has been denied, or that one of the persons joining the application has been denied. The one exception is where the reason for the denial is that the property is suitable for elderly persons, which is denied under Part C.

If the application is denied under Part B or C of the RTB2, you should list **every** reason for denying the tenant or family member. If all reasons are not listed, you may not be able to rely on those reasons to deny a future Right to Buy application where the reason for denial on the original RTB2 is no longer valid.

A family member's Right to Buy cannot be admitted if the tenant's Right to Buy has been denied. A family member's Right to Buy is also denied using Part B of the RTB2. See number 10 in the table.

Examples of reasons to deny an application	
1	YOU ARE NOT THE SECURE TENANT OF THE PROPERTY AS REQUIRED BY SECTION 118 OF THE HOUSING ACT 1985.
2	YOUR NOTICE CLAIMING THE RIGHT TO BUY IS NOT A VALID ONE AS THIS IS A JOINT TENANCY AND ONE OF THE JOINT TENANTS HAS NOT COMPLETED THE RIGHT TO BUY NOTICE AS REQUIRED BY SECTION 118 OF THE HOUSING ACT 1985.
3	YOU HAVE NOT BEEN A PUBLIC SECTOR TENANT FOR THE MINIMUM QUALIFYING PERIOD OF 3 YEARS AS REQUIRED BY SECTION 119 OF THE HOUSING ACT 1985.
4	YOU DO NOT OCCUPY THE PROPERTY AS YOUR ONLY OR PRINCIPAL HOME AS REQUIRED BY SECTION 118 OF THE HOUSING ACT 1985.
5	YOU ARE NOT A MEMBER OF THE TENANT'S FAMILY AND THEREFORE CANNOT JOIN IN THE RIGHT TO BUY (SECTION 123 OF THE HOUSING ACT 1985).
6	YOUR CONTRACT OF EMPLOYMENT REQUIRED YOU TO OCCUPY THE PROPERTY FOR THE BETTER PERFORMANCE OF YOUR DUTIES (PARAGRAPH 2 OF SCHEDULE 1 TO THE HOUSING ACT 1985).
7	ON >INSERT COURT DATE< A >INSERT ORDER TYPE< ORDER WAS MADE AGAINST YOU IN >INSERT NAME OF COURT< COURT. CONSEQUENTLY YOU ARE NO LONGER A SECURE TENANT FOR THE DURATION OF THE ORDER AND THEREFORE DO NOT QUALIFY FOR THE RIGHT TO BUY YOUR HOME. IF YOU HAVE ANY QUERIES REGARDING

	THIS YOU MAY WISH TO GET INDEPENDENT LEGAL ADVICE.
8	THE RIGHT TO BUY DOES NOT ARISE BECAUSE YOUR TENANCY IS NOT A SECURE TENANCY AS IT IS ONE TO WHICH PART II OF THE LANDLORD AND TENANCY ACT 1954 APPLIES (TENANCIES OF PREMISES OCCUPIED FOR BUSINESS PURPOSES)(PARAGRAPH 11 OF SCHEDULE 1 TO THE HOUSING ACT 1985).
9	THE RIGHT TO BUY DOES NOT ARISE BECAUSE THE FREEHOLD OF THE PROPERTY IS NOT HELD BY THIS AUTHORITY BUT IS HELD BY THE COUNCIL AS TRUSTEES FOR >INSERT NAME< (PARAGRAPH 7 OF SCHEDULE 4 TO THE HOUSING ACT 1985).
10	A FAMILY MEMBER CANNOT JOIN IN THE RIGHT TO BUY WHEN THE TENANT'S APPLICATION HAS BEEN DENIED.

### **Part C – Elderly person’s dwelling: Denying the Right to Buy on the grounds in paragraph 11 of Schedule 5 to the Housing Act 1985**

Part C is only used where the application is denied because the property is considered suitable for elderly persons and meets all of the criteria specified. See Step 3 above for more information.

In this case, the tenant will be entitled to appeal your decision within 56 days of the RTB2 date.

Ensure that you send appropriate information with the RTB2 explaining the tenant’s right to appeal and the steps they will have to take if they decide to do this. You may wish to use the information leaflet: [http://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court\\_leaflets\\_id=2744](http://hmctsformfinder.justice.gov.uk/HMCTS/GetLeaflet.do?court_leaflets_id=2744) which is produced by the Tribunal Service.

If you receive notification from the Appeal Tribunal that a tenant is appealing your decision to deny them the Right to Buy under Part C, ensure that you respond appropriately and within the timescales provided. You may wish to refer this part of the process to your manager or legal team.

## **Making the offer to sell –Section 125**

Once an application has been admitted and you have sent a Section 124 notice (RTB2) to the tenant telling them they have the Right to Buy, you must send a Section 125 offer notice which gives the purchase price and the terms and conditions of the sale.

The time limit for this is normally **8** weeks for a freehold property (house/bungalow). If the property is leasehold (flat/maisonette) the time limit is **12** weeks. In a few cases, houses and bungalows are also leasehold and the time limit of 12 weeks will also apply where this is the case.

If you do not meet the timescale set down in legislation, the applicant can use the delay procedure outlined on pages 37 to 38 to claim compensation for any delay caused by the landlord.

Once the applicant's Right to Buy has been admitted, you will need to calculate the sale price for the property (Section 126) and to do this you will need to:

- Establish a value for the property
- Calculate the level of discount to be applied
- Determine any Cost Floor amount which may affect the discount entitlement
- Establish any applicable leasehold charges
- Identify any previous public sector discounts which the applicants may have received

Once you have all of this information you will then be able to complete and issue a Section 125 offer notice which is the formal offer to sell the property under the Right to Buy scheme.

#### Good Practice

Where tenants wish to add someone to the application during the RTB process this can be done at the discretion of the landlord. If landlords allow this, it can remove the need to duplicate valuation and administration costs for the landlord. In cases where a landlord does *not* wish to allow an applicant to be added, the tenant will have the option to continue with the current application or cancel and re-apply with changed/added applicants. The landlord cannot automatically cancel the existing application simply because a change of applicants has been requested.

## Step 1: Establishing the value of the property - Section 127

The first step in preparing the offer to sell is to establish the value of the property. If your authority does not have its own in-house valuer, you will generally need to make arrangements with an external valuer to provide this valuation. They will usually do this by visiting the tenant's property when you instruct them to do so.

The Royal Institution of Chartered Surveyors (RICS) has published a Code of Practice (revised 2009) on 'Valuations for Right to Buy, Right to Acquire and Equity Sharing of Social Housing'. You may find it useful to recommend that your valuer follows this code of practice, a copy of which can be obtained from RICS.

The valuer is likely to need certain information and you may find it useful to provide the following:

- If the landlord does not own the freehold or the property is a flat, the length of the lease to be granted together with the amount of the annual ground rent
- Details of any known structural defects. This information should include, if relevant, a statement that the property is one of a type designated as 'defective under the Act, or is of system built construction
- Estimates of any service charges and improvement contributions over the 'reference period' (see page 32)

- Any tenants' improvements
- Any specific covenants or conditions
- Details of any third party interests or leases
- A plan indicating the boundaries of the property

You will also need this information for the Section 125 offer notice. Once the completed documentation is returned to you by the Valuer, you will have some of the information you need to produce the offer notice.

#### Good Practice

- If you ask the valuer to provide details of the comparables used in deciding the value of the property, along with any other representations they wish to add, you will not need to trouble them for this information should the tenant decide to request a determination of value later in the process.
- Some landlords ask external valuers to tender for the valuation contract which can result in obtaining the valuations at a competitive rate.

## Step 2: Calculating the discount entitlement - Section 129

### Determining the total length of eligible tenancies

For each complete year of confirmed tenancy, the tenant is entitled to receive a discount percentage. The monetary value of this percentage is deducted from the market valuation of the property.

If, in order to meet the minimum tenancy period to qualify for the Right to Buy, an application has relied on the qualifying years of a joint tenant who has chosen not to join in the Right to Buy, that tenant may only use their own qualifying years when calculating their discount entitlement.

If the remaining tenant(s) who have chosen to exercise their Right to Buy do not have the minimum qualifying period in their own right, then they can be awarded the minimum discount of 35% for a house or 50% for a flat. If this is not your organisation's current policy, you will wish to seek advice and approval from your management and legal teams before deciding whether to adopt this practice.

Remember, only complete years of tenancy can be used, but you can add together partial years from different tenancies to make up complete years.

## Example Tenancy Calculation (\*We have assumed a month is 31 days in this instance.)

Tenancy	Start Date	End Date	Years	Months	Days
Current	1 Nov 2013	14 April 2017	3	5	14
Previous	1 Jan 2010	21 Aug 2013	3	7	21
Total:			7	1	4*
Discount entitlement			7 Years		

Once you have calculated the total years of relevant tenancy, you can award the discount percentage.

Remember, for the purposes of calculating the discount entitlement, previous tenancies do not need to have been secure and they do not need to have been consecutive. Refer to 'Checking the qualifying period' on page 17.

### Discount percentages and maximum amounts

For **freehold** sales the tenant is awarded a 35% discount for the minimum 3 year qualifying period. The discount remains at 35% for the 4<sup>th</sup> and 5<sup>th</sup> year. There is then a further 1% for each additional complete year of confirmed tenancy, up to a maximum of 40 years which will give a 70% discount.

For **leasehold** sales the tenant is awarded a 50% discount for the minimum 3 year qualifying period. The discount remains at 50% for the 4<sup>th</sup> and 5<sup>th</sup> year. There is then a further 2% for each additional complete year of confirmed tenancy, up to a maximum of 15 years which will give a 70% discount.

The maximum discount amount that can be applied to either freehold or leasehold properties in England is £80,900 with the exception of London boroughs where the maximum discount amount is £108,000.

<b>Freehold sale – Houses, Bungalows</b>	
<b>Years of tenancy</b>	<b>% discount allowed</b>
3, 4 and 5	35
6	36
7	37
8	38
9	39
10	40
11	41
12	42
13	43
14	44
15	45
16	46
17	47
18	48
19	49
20	50
21	51
22	52
23	53
24	54
25	55
26	56
27	57
28	58
29	59
30	60
31	61
32	62
33	63
34	64
35	65
36	66
37	67
38	68
39	69
40	70-MAXIMUM DISCOUNT

<b>Leasehold sale - Flats</b>	
<b>Years of tenancy</b>	<b>% discount allowed</b>
3,4 and 5	50
6	52
7	54
8	56
9	58
10	60
11	62
12	64
13	66
14	68
15	70-MAXIMUM DISCOUNT

## Step 3: Determining the Cost Floor - Section 131

As part of the calculation of the sale price of the property, you will need to determine the Cost Floor figure. This is the amount of money spent on an individual property in the 10 year period prior to receipt of the RTB1. If the property was built or acquired after 1<sup>st</sup> April 2012, the Cost Floor period increases to 15 years.

The costs that can be included within the Cost Floor calculation are set out in The Housing (Right to Buy)(Cost Floor)(England) Determination 1999. A Cost Floor amount should include the costs of:

- a) The construction of the dwelling including site development works and acquisition of land
- b) The acquisition of the dwelling
- c) Those works initially required following the acquisition of the dwelling by the landlord to put it into good repair or to deal with any defect (exceptions apply where the property was acquired under Part XVI of the Housing Act 1985)
- d) Those works of repair or maintenance; or works to deal with any defect affecting the property (except works within paragraph c) above). Costs can only be included in the Cost Floor where the aggregate of these costs exceeds the sum of £5,500; the figure that is included in the costs is the amount in excess of £5,500 (i.e. the first £5,500 of relevant costs cannot be included in the Cost Floor calculation)
- e) Other works to the property, except the cost for works which are excluded under paragraph c; and costs of the type set out in paragraph d) which make up the excluded initial £5,500 costs.

Costs that are excluded from the Cost Floor calculation are also set out in the Determination. Costs to be excluded from the Cost Floor amount are:

- a) Costs paid on or after the relevant time unless:
  - (i) the landlord has before that date entered into a written contract for carrying out the works; or
  - (ii) the tenant has, before the date of service of the landlord's Section 125 offer notice, agreed in writing to the carrying out of the works
- b) Any costs to the extent that they are unreasonably incurred
- c) Any administrative costs
- d) Interest
- e) Costs of acquisition from:
  - A local authority
  - A registered social landlord
  - The Housing Corporation
  - Housing for Wales
  - A development corporation
  - The Commission for the New Towns
  - The Development Board for Rural Wales
  - An urban development corporation

A Housing Action Trust established under Part 111 of the Housing Act 1988 (Housing Action Trust areas)

(or the relevant successor bodies)

- f) Any costs recoverable by the landlord as a service charge or improvement contribution.

When the Cost Floor figure is prepared for a leasehold property, you will want to ensure that block costs are considered and included where they are relevant. Your leasehold team will be able to advise you about these costs.

Where the Cost Floor figure is equal to or lower than the sale price, no action is required. However, where the Cost Floor is higher than the sale price or higher than the market value, the discount amount is adjusted as outlined in the following examples.

### Example 1 – Cost Floor is higher than sale price but lower than market value

If the total Cost Floor figure is higher than the sale price (market value less discount) you will need to reduce the discount amount so that the sale price is the same as the Cost Floor figure.

Initial calculation		How the Cost Floor changes the calculation	
Market valuation	£115,000	Market valuation	£115,000
Less the eligible discount amount	£69,000	Discount less the Cost Floor shortfall	£62,000
Sale Price	£46,000	<b>Final Sale Price</b>	<b>£53,000</b>
<b>Cost Floor Amount</b>	<b>£53,000</b>		
<b>Shortfall between Cost Floor and Sale Price</b>	<b>-£7,000</b>		

In this example the initial sale price would have been £7000 less than the Cost Floor amount. This shortfall needs to be deducted from the initial discount amount to ensure that the final sale price reflects the Cost Floor figure.

### Example 2 – Cost Floor is higher than the market value

If the total Cost Floor figure is higher than the market value of the property the tenant will forfeit their discount entitlement and the sale price is increased to reflect the Cost Floor figure. In this instance the landlord may also make a loss.

Initial calculation		How the Cost Floor changes the calculation	
Market valuation	£98,000	Market valuation	£98,000
Less the eligible discount amount	£39,200	Discount less the Cost Floor shortfall	£NIL
Sale Price	£58,800	<b>Final Sale Price</b>	<b>£98,000</b>
<b>Cost Floor Amount</b>	<b>£101,000</b>		
<b>Shortfall between Cost Floor and sale price</b>	<b>-£42,200</b>		

In this example, the Cost Floor amount is £3,000 higher than the market value so the shortfall between the

Cost Floor and the sale price is more than the eligible discount. This shortfall reduces the discount amount to nil but the landlord will still make a loss of £3,000 on the sale.

#### Good Practice

- You should establish a clear policy on how to calculate the Cost Floor and have a process in place to ensure that all relevant costs are included in the final calculation.

## Step 4: Calculating any leasehold charges - Section 125

When a tenant of a leasehold property applies for the Right to Buy you will need to include the relevant future leasehold charges in their Section 125 offer notice. This is because the tenant will become responsible for these charges on completion of the sale.

Whoever deals with the management of leasehold properties in your authority should be able to provide this information for you.

These charges include:

- Annual service charges.
- 5 year forecast of maintenance and repair work to the block in which the property is situated.
- 5 year forecast of improvements to the block in which the property is situated.
- Internal and external insurance premiums and cover amounts.

Your valuer may be able to note any general repairs that need undertaking so that these can also be incorporated into the forecast of works.

You will also need to consider whether the possible effect of the Social Landlords Mandatory Reduction of Service Charges (England) Directions 2014 should be reflected in the offer notice.

## Step 5: Consider any previous discounts - Section 130

The final thing that may affect the sale price is whether one or more of the applicants has previously benefitted from a discounted sale on another property either with your authority or with another public sector landlord.

Where an applicant has previously received such a discount it is deducted from the current discount amount. If the previous discounted sale was shared between parties, a proportion of the discount they received is deducted for each party who is joining in the current application.

You will need to find out:

- Which applicant(s) have previously received a discount.

- Whether that discount was shared with others who are **not** included on this application.
- The previous discount amount.
- How many people were party to the original purchase.
- Whether or not they have repaid any of the original discount amount.

### Previous discounted sale in sole name

If the tenant, or any family member joining in the Right to Buy (this includes any spouse or civil partner of any person currently exercising the Right to Buy), previously purchased a property in their sole name, the amount of the current discount will need to be reduced by the amount of the original discount (less any discount that has already been repaid) regardless of how many people are joining in the sale now.

### Previous discounted sale in joint names

If the tenant, or any family member joining in the Right to Buy now (this includes any spouse or civil partner of any person currently exercising the Right to Buy), previously purchased a public sector property at a discounted price in two or more names but not all of those parties are included on the current application, the current discount amount will need to be reduced accordingly.

To calculate the discount reduction, divide the original discount amount by the number of original purchasers and use that figure for each of those parties included in the current application to reduce the current discount amount (less any discount that has already been repaid).

### Examples of working out previous discount deductions

**Example A** - Mr & Mrs A previously received a public sector discount of £24,000 on a joint purchase in 1987. Both Mr & Mrs A are now exercising their Right to Buy.

Initial calculation		How the previous discount changes the calculation	
Market valuation	£120,000	Market valuation	£120,000
Less the eligible discount amount	£60,000	Current discount reduced by previous discount	£36,000
Sale Price	£60,000	<b>Final Sale Price</b>	<b>£84,000</b>
<b>Previous Discount Amount</b>	<b>£24,000</b>		
<b>Discount to be deducted</b>	<b>£24,000</b>		

In this example, the whole of the previous discount amount is deducted from the current discount amount as all of the original parties are now exercising their Right to Buy on the current application.

**Example B** - Mr & Mrs B previously received a public sector discount of £24,000 on a joint sale in 1985. Mrs B is now exercising the Right to Buy with her daughter Miss B.

Initial calculation		How the previous discount changes the calculation	
Market valuation	£89,000	Market valuation	£89,000
Less the eligible discount amount	£35,600	Current discount reduced by previous discount	<b>£23,600</b>
Sale Price	£53,400	<b>Final Sale Price</b>	<b>£65,400</b>
<b>Previous Discount Amount</b>	<b>£24,000</b>		
<b>Discount to be deducted</b>	<b>£12,000</b>		

In this example, 50% of the previous discount amount is deducted from the current discount amount, as only one of the original parties is exercising their Right to Buy on the current application.

### Good Practice

- To help identify any previous discount amounts the applicant(s) may have benefitted from (whether they have listed them in Part E of the RTB1 or not) it is useful to request this information when writing for confirmation of previous tenancies with other landlords.

## Step 6: Calculating the sale price - Section 126

The things you will need in order to calculate the sale price are:

- Market value of property
- Discount entitlement amount (less any relevant Cost Floor or previous discount amount)

## Step 7: Completing and issuing the Section 125 offer notice

The Section 125 offer notice is the formal offer of sale required under Section 125. Once you have admitted the tenant's Right to Buy, you must send the Section 125 offer notice to them within a specified time of issuing the RTB2. This is:

- 8 weeks for a freehold property
- 12 weeks for a leasehold property

The Section 125 offer notice must include certain information which will vary depending on whether the property is freehold or leasehold. Information which must be included in the Section 125 offer notice is:

## Freehold and leasehold properties

- A description of the property including the address, property type and the number of bedrooms, plus any land which is also included (Section 184)
- The price at which the tenant is entitled to buy the freehold or lease plus:
  - The market value based on the date the RTB1 was received by the landlord
  - Any improvements disregarded (Section 127)
  - The discount amount to which the tenant is entitled.
- The qualifying period taken into account and, where applicable, any amount reducing or capping the discount amount (Sections 129 -131).
- Provisions contained in the conveyance or lease (in draft form).
- A description of any structural defect known to the landlord affecting the property or the block in which it is situated (including any other building to which the purchaser will have rights).
- The tenant's right to have the value of the property determined by the District Valuer (Section 128).
- The effects of serving the Section 125 offer notice, the notice of intention (Section 125D) and notice in default (Section 125E).
- The effects of any change to a tenant or qualifying family member after serving the Section 125 offer notice (Section 136).
- The effect of the landlord's notices to complete, the effects of failing to respond and any rights to defer completion.
- The tenant's right to a loan for repair charges above a prescribed amount.

You need to issue an Energy Performance Certificate during the Right to Buy process, and you may wish to consider sending it with the offer notice. If the Certificate is not sent with the offer notice, you will need to issue it to the applicants before completion.

## Additional leasehold information required

For leasehold properties, the offer notice must also contain the following:

- The length and expiry date of the lease
- Reference to:
  - Ground rent
  - Responsibility for internal & external repairs
  - Non-Itemised repairs
  - Itemised repairs
- A draft lease or conveyance
- Estimates and information regarding limits on charges required by Section 125A or 125B where provision has been made in the offer notice enabling the landlord to recover service charges or improvement contributions
- Service charges for repairs which may be incurred in the reference period (see below), showing the likely cost of, and the tenant's likely contribution for, each item. These may include amounts for specific items and may also give an annual figure to cover items not specifically anticipated.

- An estimate of works for improvement contributions within the reference period, showing the likely cost of, and the tenant's likely contribution for, each item.

The landlord may not charge more during an initial period than the stated amounts plus inflation. See Schedule 6 of the Act for details.

You should also include:

- Water charges
  - Insurances
  - Payment methods and information
- The reference period must be stated for the purpose of estimates for both repair and improvement contributions and information given as to the tenant's rights under paragraphs 16B and 16C of Schedule 6.
  - The reference period is a period of 5 years which can begin on any date providing this date is not later than 6 months after the date of the Section 125 offer notice. This is generally a date by which the landlord reasonably expects the Right to Buy sale to be completed.
  - This period is not necessarily exactly the same as the initial period during which charges are actually limited by Schedule 6.
  - For leasehold properties, the notice must state the provisions which enable the landlord to recover service charges or improvement contributions and other charges required by Section 125A or 125B.

## Notice of Intention – Section 125D

This must be included with the Section 125 offer notice and is a notice giving the tenant 12 weeks from the date of the Section 125 (or the Section 128 which is the notice informing the tenant of any revised valuation after a determination has been carried out) in which to respond.

The tenant must state in writing whether they wish to proceed with the Right to Buy and accept the offer; or withdraw their application using the Notice of Intention (S125D).

If a response is not received at the end of the 12 week notice period, you will need to serve the tenant with a Default Notice (S125E); see the next section for more details on this.

### Good Practice

- It is a good idea to print the Notice of Intention on coloured paper where possible so that it is easily identifiable by the tenant when they receive the Section 125 offer notice. Also, the freehold and leasehold Notices of Intention could be printed on different coloured paper to help you easily identify freehold and leasehold sales.
- Consider including on the leasehold Notice of Intention, a specific section which asks the tenant to sign that they have read and understood the information on leasehold charges.

## Next Steps

### Default Notice – Section 125

If the tenant does not respond to the Section 125 or 128 notice within the 12 weeks allowed, a default notice should be served which gives the tenant another 28 days in which to let you know whether they wish to proceed with their Right to Buy or withdraw their application.

If the tenant does not respond by the end of the 28 day notice period you may cancel the tenant's application and the Right to Buy comes to an end.

Where the landlord considers it reasonable, they have the discretion to extend the 28 day default notice period. This can be done as often as the landlord considers appropriate. The 28 day default notice period can only be extended while it is in effect (i.e. before it expires).

#### Good Practice

- Contacting those tenants who have not responded after the 28 day default period by telephone to discuss their intentions can save you the administrative costs and burden of cancelling the application only to have the tenant reapply at a later date.

## District Valuer - Section 128

If the tenant does not agree with the landlord's opinion of the market valuation of the property, they have the right to a determination of value by the District Valuer (DV). Responsibility for appointing a DV lies with the Valuation Office Agency which is an Executive Agency of HMRC. The DV's costs are met by MHCLG.

A request must be made in writing by the tenant to the landlord no later than 3 months from the date of the Section 125 offer notice. The landlord must then refer the request to the DV.

Best practice is for all requests for a determination (including scanned copies of accompanying documents) to be sent:

by email to:

[svthub@voa.gsi.gov.uk](mailto:svthub@voa.gsi.gov.uk)

or

in hard copy to:

**Statutory Valuations Team (SVT Hub), Valuation Office Agency, BP5202, Dunstanburgh House, Benton Park View, Longbenton, Newcastle upon Tyne, NE98 1ZZ**

The DV will determine the value and this determination is binding on both the landlord and the tenant. There are however very limited circumstances in which the determination can be appealed

by either the landlord or the tenant. This is known as a review of determination and is explained more fully below.

Landlords must give the DV any information the tenant has provided to support their request for a determination. It is best practice to send a copy of the tenant's written request for a determination to the DV together with copies of:

- the RTB1
- S125 offer notice, and
- the property's plans with boundaries marked in red.

As the landlord, you and your valuer also have the right to include any comparables used in valuing the property and to make any representations concerning the valuation to the DV. You can include these with your initial letter to the DV or you can send them within 28 days.

In undertaking a determination, the DV has no connection with either the tenant or landlord or any party acting on their behalf. The DV will make their own inspection of the property and, alongside representations from the landlord, will invite representations from the tenant. The DV will share the representations made by the landlord and the tenant with each party to ensure that the determination process is transparent.

Once the DV has determined the value of the property, they will send their report on the valuation to both the landlord and tenant. The issue of this determination report will normally end the involvement of the DV in the RTB process.

You should then write to the tenant informing them of the outcome of the determination. If this is a different value from your original valuation, you should advise the tenant of the impact of this on the discount and the sale price (para 5 of Section 128). You should also advise the tenant of their right to ask the DV to review the determination (section 128A (2)). You will also need to advise the tenant that the 12 week notice of intention period will begin again from the date of your letter.

The tenant or landlord can ask the DV to review the determination where they consider that there has been a significant error with the determination. Significant errors are errors of fact (e.g. a property has been valued as having 3 bedrooms instead of 2). DVs can also review their own determination if they become aware of new significant facts. A review of determination must be requested in writing within 28 days of the date of the Section 128(5) determination notice being served. Requests from either the landlord or the tenant should be served on the DV at the address on page 34.

Following the review, which may conclude that the original determination was not significantly in error or alternatively make a further determination, the DV will issue a report.

Again, the 12 week notice of intention period re-starts from the date that the tenant is advised of the effect of the DV's review by way of a new Section 128 notice.

#### Good Practice

- It is good practice to send a copy of the letter sent to the DV to the tenant and to the original valuer along with a copy of the tenant's written request
- Ensure that you inform the DV of any comparables and representations used in the original valuation so that they take this into account when reaching their conclusion.

## Progressing the sale

Where the tenant returns the Notice of Intention indicating their wish to proceed with the Right to Buy sale, you will need to have plans of the property and to then prepare the TR1 which is the transfer documentation.

A draft copy of the TR1 is sent to the tenant's solicitor whose details should be on the returned Notice of Intention.

### First Notice to Complete

If the tenant is delaying the sale after accepting their offer to purchase and more than 3 months have passed from the date of the Section 125 or Section 128 offer notice, the landlord may serve on the tenant a First Notice to Complete. This Notice gives the tenant a minimum of 56 days in which to respond and it must state that a Final Notice will be served if no response is received by the end of the notice period.

### Final Notice to Complete

If the tenant does not respond to the First Notice, the landlord may then serve on the tenant a Final Notice to Complete which allows for a further minimum of 56 days in which to complete the sale. This Notice must state the effects of not complying which will be the withdrawal of the Right to Buy.

If no response has been received from the tenant by the expiry date of the Final Notice, the Right to Buy application can be cancelled by the landlord.

#### Good Practice

- Contacting tenants who have not responded to a Final Notice to Complete (or their solicitor) by telephone to discuss their intentions can save you the administrative costs and burden of cancelling the application only to have the tenant reapply at a later date.
- Where you cancel an application because the tenant has not responded to the Final Notice (or the Default Notice), it is good practice to write to the tenant confirming the cancellation.

## Completion

When all matters of the conveyance or lease are confirmed and agreed, the sale can proceed towards completion.

The sale is then finalised on a date agreed between the tenant and the landlord. On the completion date the sale price and any outstanding rent must have been paid to the landlord.

Upon completion, the authority will need to terminate the rent account and inform all relevant local authority parties to the sale. This may take the form of sending out a copy of the Transfer of Sale or a memo to all the departments/parties concerned.

## Cancelling an application

The only time a landlord can cancel or withdraw the Right to Buy application is either:

1. After the serving of a relevant notice on the tenant.

Relevant notices are:

- Default Notice – served when no response has been received from the tenant after the 12 week notice period given in the Section 125 or Section 128 offer notice has expired.
- First Notice to Complete – served no less than 3 months after the date of the Section 125 or Section 128 offer notice if the tenant is delaying proceedings and has not completed all necessary transactions.
- Final Notice to Complete – served after the notice period in the First Notice to Complete has expired if completion has not taken place.

2. After receiving a signed request to cancel the Right to Buy claim from the tenant(s).

If the tenant is delaying the Right to Buy process at any other stage of the application the landlord should take reasonable steps to progress the Right to Buy to the next relevant stage where a default, first or final notice can be served.

## Delay Procedure – Section 153

If an applicant has applied to exercise the Right to Buy their home and believes that their landlord is in some way delaying the process, they are able to use the delay procedures prescribed in legislation.

### **When can the tenant use the delay procedure?**

The tenant can use the procedure at any time when the landlord is causing delay. There are statutory timescales set for the first two stages in a Right to Buy sale where the delay process may become relevant.

Once the tenant has applied to exercise their Right to Buy, you must send them a Section 124 notice (RTB2) telling them whether or not they have the Right to Buy. You must do this within 4 weeks of receiving their application or within 8 weeks if the tenant has not been your tenant for the full qualifying period.

**The tenant can use the delay procedure if you do not send the RTB2 within the statutory timescales.**

Once it has been established that the applicant has the Right to Buy, you must send a Section 125 offer notice which gives the purchase price and the terms and conditions of sale. The statutory timescale allowed for this is **8** weeks for a freehold property and **12** weeks for a leasehold property, from the date the RTB2 was served.

**The tenant can use the delay procedure if you do not send the Section 125 offer notice within the statutory timescales.**

Once the tenant has received the Section 125 offer notice, they must tell you whether they wish to go ahead with the Right to Buy sale.

If the tenant decides to go ahead you have to complete the sale of the property as soon as all the details have been settled.

There is no set time limit for this, but the tenant can use the delay procedure if they think your delays are generally holding up the purchase.

## **How the tenant will use the delay procedure?**

The tenant will fill in an initial notice of delay (RTB6). It should say what, as far as they know, was the last action you as their landlord took in dealing with their application, and give their reasons for saying that you are causing delay by ticking box A, B or C on the form. The tenant should also say how long they are giving you to reply, which must be at least 1 calendar month.

## **What happens next?**

You may not agree that it is you who is causing the delay, or you may already have taken the next step in dealing with their application. Either way, you must send the tenant a counter notice to avoid receiving the final delay notice (RTB8) which will require you to refund rent monies during the delay period.

If the tenant has served you with an initial notice of delay because you were late in sending them a RTB2 or a Section 125 offer notice, you can only send a counter notice if you have already sent them the RTB2 or Section 125 offer notice, or you send it **with** the counter notice.

If the tenant has sent an initial delay notice for any other reason, you can only send a counter notice if there was no action for you to take when their delay notice was served, or if you have now taken any action which there was for you to take at that time.

If you send the tenant a valid counter notice within the time allowed, this cancels their initial delay notice. They can, however, send a further initial notice of delay at a future date if they believe you are delaying their application again.

## **If the landlord does not respond**

If you do not send a valid counter notice in the time allowed, the tenant can serve you with an operative notice of delay (RTB8).

Once they have sent an RTB8, rent paid during the delay period will be treated as an advance payment towards the RTB purchase price. This does not happen automatically; the tenant must continue to pay rent and any amount relevant to the delay will be deducted when the sale is completed. Payments in respect of council tax or service charges do not count as rent.

If you are late in sending either an RTB2 or the Section 125 offer notice, the rent refund is calculated from the day after this was due and ends when the RTB2 or Section 125 offer notice is served. This amount will be deducted from the purchase price at the point of completion.

If the tenant serves their initial notice of delay for any other reason, the rent refund is calculated from the date of their operative notice of delay (RTB8) and ends when the delayed action is taken. This will be deducted at the point of completion.

Once you have taken the next step in dealing with the application you can send the tenant a counter notice. The rent they pay after that will not be treated as an advance payment, but they can start the procedure again if there is another delay. Rent will also stop being treated as an advance payment when the tenant completes their purchase, or if they withdraw their Right to Buy application, or cease to have the Right to Buy.

### **When the purchase is completed**

When the sale is completed, you must deduct from the purchase price under the Right to Buy all the rent which has been treated as an advance payment. If the tenant has used the delay procedure more than once, the rent treated as an advance payment during different periods of delay must be added together.

If any period of delay lasts for more than 12 months, the rent refund amount will incur an extra charge equivalent to an additional 50%.

### **Reduction of discount repayment period**

If the tenant disposes of their home within 5 years of purchasing it, they will normally have to repay some, or all, of the discount received. If a rent refund is applicable due to a period of delay, the discount repayment period will also be reduced by the total delay period. This is to ensure that the tenant is not penalised further by any official period of delay. The start of the discount repayment period will therefore be a date which precedes the date of completion to reflect the total of the periods covered by RTB8 notices.

For example, where a sale completed on 1 September 2013 and there had been a total delay of 92 days, the covenant requiring repayment of discount would apply for a 5 year period beginning on 1 June 2013. Repayment of discount would therefore only apply for 4 years and 9 months from the date of sale instead of 5 years.

#### **Good Practice**

- It is a good idea to record the date any delay form is received so that you can respond within the time period allowed. Where this is not possible you may need to know the date the delay notice is received to calculate any rent refund due.
- Always try to serve a Counter notice as soon as the delay is remedied as this will determine the end of the delay period.

# TROUBLESHOOTING GUIDE

## Examples of how to progress an application if the tenant does not respond

- If the valuer cannot gain access to the property to assess the market valuation, the landlord can, as a last resort, request a 'drive-by' valuation in order to serve the Section 125 offer notice. The tenant then has 12 weeks to confirm whether they wish to proceed with the purchase. If the tenant fails to respond the landlord can serve a Default Notice giving them a further 28 days in which to reply. If the tenant does not do this, the application can be withdrawn.
- If after 8 weeks of making their application, the tenant has failed to provide sufficient evidence for previous tenancies which they wish to count towards their qualifying period, the landlord can deny the application. The landlord should already have written to the tenant requesting the necessary information stating the consequences of not providing it within the 8 week period.
- If the tenant fails to provide enough information for a previous tenancy period to count towards their discount entitlement, after a reasonable period of time and/or repeated requests from the landlord, the landlord will have no choice other than to serve the Section 125 offer notice calculating the discount with the information they have to hand. The landlord should already have written to the tenant requesting the necessary information and stating the consequences of not providing it within a set period.
- Where a family member wishes to join in the Right to Buy but has failed to provide any requested proof of residency or identity, and the landlord is ready to serve the RTB2, the landlord has the right to deny the Right to Buy to that family member. The tenant and any other family members who qualify to join in the Right to Buy will be admitted.

## Other options

In order to confirm proof of postage you may find it useful to serve any default notice (or other notice) by recorded or registered delivery. This will reduce the likelihood of any dispute over the dates on which the notices were served and where delivery is not possible, you will have evidence of this.