

PRACTICE DIRECTION 1/2017

RELEASE OF NIHE CHARGES

Background

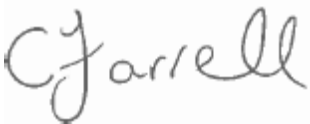
Qualifying tenants have for a number of years been able to purchase their homes from the Northern Ireland Housing Executive (“NIHE”). Tenants are entitled to a discount which must be repaid if the dwelling or equity in the dwelling is sold within five years from the date of purchase. In addition if the tenant chooses to sell the dwelling within ten years of the date of purchase NIHE must be given the option to buy the dwelling back. NIHE secures its interest through the registration of two charges at Land Registry.

New Arrangements

NIHE have agreed templates with the Registry for the release of the two charges. Applications for the release of the five year discount charge on the expiry of five years are to be lodged by Solicitors using the Solicitor’s Certificate detailed in Schedule 1. If the five year discount period has not expired, a release executed by NIHE will be required.

Applications for the release of the ten year option to purchase charge are to be lodged by Solicitors using the Solicitor’s Certificate detailed in Schedule 2 on foot of the general Consent attached in Schedule 3. If the ten year period has not expired, a release executed by NIHE will be required.

These arrangements are to take effect immediately.



CHRISTINE FARRELL
REGISTRAR OF TITLES

DATED THIS 2nd DAY OF MAY 2017

LAND REGISTRY

FOLIO _____

COUNTY _____

REGISTERED OWNER _____

REGISTERED OWNER OF CHARGE - NORTHERN IRELAND HOUSING EXECUTIVE

I, A.B. of _____ Solicitor, hereby certify as follows:

1. As solicitor for the above named Registered Owner of the above mentioned Folio, I apply for release of the charge in favour of the Northern Ireland Housing Executive ("The Housing Executive").
2. I refer to the General Consent dated 6 September 2005, which has been lodged by the Housing Executive in Land Registry. This application is made pursuant to that General Consent.
3. I refer to the transfer which has been registered upon the above Folio ("the Housing Executive transfer"), whereby the lands in the above mentioned Folio were transferred by the Housing Executive to the Registered Owner.
4. I certify that the Transferee under the Housing Executive transfer and the Registered Owner are one and the same person.
5. I have personally explained to the Registered Owner the meaning of the term "disposal" as defined in the appropriate Appendix to the General Consent.
6. After hearing that explanation, the Registered Owner has confirmed to me that, within a period of five years, beginning immediately after the date of execution of the Housing Executive transfer, neither all nor part of the lands comprised in the above mentioned Folio have been the subject of:
 - (1) a transfer; or
 - (2) a further conveyance; or
 - (3) the grant of a lease or sub-lease of the subject premises for a term of more than 21 years otherwise than at a rack rent; or
 - (4) an assignement of a lease.

7. On the basis of the information available to me, it appears that there has been no “disposal”, within the meaning of the appropriate Appendix to the General Consent, within five years after the date of the execution of the Housing Executive transfer.

Dated 20

(To be signed personally by the above mentioned solicitor)

LAND REGISTRY

FOLIO _____

COUNTY _____

REGISTERED OWNER _____

REGISTERED OWNER OF CHARGE - NORTHERN IRELAND HOUSING EXECUTIVE

I, A.B. _____ of Solicitor, hereby certify as follows:

1. As solicitor for the above named Registered Owner of the above mentioned Folio, I apply for release of the charge in favour of the Northern Ireland Housing Executive ("the Housing Executive").
2. I refer to the General Consent dated 26th January 2017 which has been lodged by the Housing Executive in Land Registry. This application is made pursuant to that General Consent.
3. I refer to the transfer which has been registered upon the above Folio ("the Housing Executive transfer"), whereby the lands in the above mentioned Folio were transferred by the Housing Executive to the original Purchaser and to the Option to Purchase contained therein.
4. I have personally explained to the Registered Owner the meaning of the term "Option to Purchase" as defined in the appropriate Appendix to the General Consent.
5. After hearing that explanation, the Registered Owner has confirmed to me that, within a period of 10 years, beginning immediately after the date of execution of the Housing Executive transfer, neither all nor part of the lands comprised in the above mentioned Folio have been the subject of a Transfer or other "disposal" in breach of the Option to Purchase.
6. On the basis of the information reasonably available to me at the date of this certificate, it appears that there has been no transfer or other "disposal" within the meaning of the appropriate Appendix to the General Consent within 10 years after the date of the execution of the Housing Executive transfer.

Dated 20

(To be signed personally by the above mentioned solicitor)

GENERAL CONSENT

1. This General Consent dated 26th January 2017 applies to any charge in the Northern Ireland Housing Executive's favour affecting registered land and which arises from the Option to Purchase in the terms set out the in Appendix A, Appendix B, Appendix C, Appendix D or Appendix E to this General Consent.
2. The Housing Executive consents to the cancellation by the Registrar of Titles of any such registered charge if the following conditions are all satisfied:
 - (1) The application for cancellation is made more than ten years after the date of execution of the transfer from the Housing Executive to the original Purchaser ("the Housing Executive Transfer").
 - (2) It appears that there has been no Transfer or other "disposal" in breach of the Option to Purchase within ten years of the date of execution of the Housing Executive Transfer.
 - (3) The application for cancellation is made by the solicitor acting for the current registered owner of the land.
 - (4) The application for cancellation of the charge is in the form set out in Appendix F to this General Consent.

PRESENT when the Seal of the
Northern Ireland Housing Executive
was affixed hereto

Authorised Officer

Officers of the Northern
Ireland Housing Housing Executive

[Extract from Housing Executive Standard Form – Transfer 2005(1) Edition]

SCHEDULE 4A

Option to Purchase

1. The Transferee hereby grants to the Executive or its appropriate nominee a right to exercise an option to purchase the subject premises from the owner of the subject premises for the time being in the event of the owner of the subject premises wishing to dispose of the subject premises at any time within ten years from the date hereof if any such disposal would be a relevant disposal. (This obligation shall be known and referred to as the “Option to Purchase”).
2. It is hereby mutually agreed by the parties to this Transfer, that the Option to Purchase:
 - (1) shall be exercisable even if the Transferee is no longer the current owner of the subject premises; and
 - (2) shall be exercisable by the Executive or its appropriate nominee.

For the purposes of this Transfer “appropriate nominee” means any registered Housing Association nominated by the Executive.

3. The Transferee hereby covenants with the Executive that the Transferee or the owner of the subject premises for the time being shall give prompt written notice to the Executive of his/her/their intention to dispose of the subject premises at any time within ten years from the date hereof if any such disposal would be a relevant disposal.
4. No Option to Purchase shall be exercisable unless written notice of intention to exercise the Option to Purchase is served, in writing, by the Executive or its appropriate nominee upon the owner of the subject premises, within a period of six weeks after the date of receipt by the Executive of any notice given pursuant to paragraph 3 above.
5. If the Executive or an appropriate nominee does not give written notice in accordance with paragraph 4 above, within the period stipulated above, then the owner will have the right to dispose of the subject premises free of any such Option to Purchase. In such a situation the Option to Purchase lapses.
6. (1) The consideration for any sale which takes place pursuant to the Option to Purchase shall be such amount as may be agreed between the parties, or determined by the Valuation and Lands Agency, as being the amount which is to be taken to be the value of the subject premises at the time the Option to Purchase is exercised.

(2) The value shall be taken to be the price which (at the relevant time) the subject premises would realise if sold on the open market by a willing vendor, on the assumption that any liability under clause 6A of the Fourth Schedule (the Discount Covenant) will be discharged by the person who is the vendor under any sale which takes place pursuant to the Option to Purchase.

(3) If the Executive or its appropriate nominee completes the purchase, no payment shall be required in pursuance of the Discount Covenant, but the consideration shall be reduced by such amount, (if any), as, would be payable if a relevant disposal was being made at the relevant time

7. The provisions of this Schedule have been drafted with a view to ensuring the effective implementation of any Option to Purchase which is provided for in the version of the Housing Executive's Statutory House Sales Scheme which is currently in force.

[Extract from Housing Executive Standard Form - Flat Lease 2005 Edn.]

SCHEDULE 3B

Option to Purchase

1. The Lessee hereby grants to the Executive or its appropriate nominee a right to exercise an option to purchase the Flat from the owner of the Flat for the time being in the event of the owner of the Flat wishing to dispose of the Flat at any time within ten years from the date hereof if any such disposal would be a relevant disposal. (This obligation shall be known and referred to as the "Option to Purchase").
2. It is hereby mutually agreed by the parties to this Conveyance, that the Option to Purchase:
 1. shall be exercisable even if the Lessee is no longer the current owner of the Flat; and
 2. shall be exercisable by the Executive or its appropriate nominee.

For the purposes of this Lease "appropriate nominee" means any registered Housing Association nominated by the Executive.

3. The Lessee hereby covenants with the Executive that the Lessee or the owner of the Flat for the time being shall give prompt written notice to the Executive of his/her/their intention to dispose of the Flat at any time within ten years from the date hereof if any such disposal would be a relevant disposal.
4. No Option to Purchase shall be exercisable unless written notice of intention to exercise the Option to Purchase is served, in writing, by the Executive or its appropriate nominee upon the owner of the Flat, within a period of six weeks after the date of receipt by the Executive of any notice given pursuant to paragraph 3 above.
5. If the Executive or an appropriate nominee does not give written notice in accordance with paragraph 4 above, within the period stipulated above, then the owner will have the right to dispose of the Flat free of any such Option to Purchase. In such a situation the Option to Purchase lapses.
6. (1) The consideration for any sale which takes place pursuant to the Option to Purchase shall be such amount as may be agreed between the parties, or determined by the Valuation and Lands Agency, as being the amount which is to be taken to be the value of the Flat at the time the Option to Purchase is exercised.

(2) The value shall be taken to be the price which (at the relevant time) the Flat would realise if sold on the open market by a willing vendor, on the assumption that any liability under clause 12 of Schedule 3A (the Discount Covenant) will be discharged by

the person who is the vendor under any sale which takes place pursuant to the Option to Purchase.

(3) If the Executive or its appropriate nominee completes the purchase, no payment shall be required in pursuance of the Discount Covenant, but the consideration shall be reduced by such amount, (if any), as, would be payable if a relevant disposal was being made at the relevant time.

7. The provisions of this Schedule have been drafted with a view to ensuring the effective implementation of any Option to Purchase which is provided for in the version of the Housing Executive's Statutory House Sales Scheme which is currently in force.

[Extract from Housing Executive Standard Form – Conveyance 2005(1) Edition]

SCHEDULE 4A

Option to Purchase

1. The Purchaser hereby grants to the Executive or its appropriate nominee a right to exercise an option to purchase the premises from the owner of the premises for the time being in the event of the owner of the premises wishing to dispose of the premises at any time within ten years from the date hereof if any such disposal would be a relevant disposal. (This obligation shall be known and referred to as the “Option to Purchase”).
2. It is hereby mutually agreed by the parties to this Conveyance, that the Option to Purchase:
 1. shall be exercisable even if the Purchaser is no longer the current owner of the premises; and
 2. shall be exercisable by the Executive or its appropriate nominee.

For the purposes of this Conveyance “appropriate nominee” means any registered Housing Association nominated by the Executive.

3. The Purchaser hereby covenants with the Executive that the Purchaser or the owner of the premises for the time being shall give prompt written notice to the Executive of his/her/their intention to dispose of the premises at any time within ten years from the date hereof if any such disposal would be a relevant disposal.
4. No Option to Purchase shall be exercisable unless written notice of intention to exercise the Option to Purchase is served, in writing, by the Executive or its appropriate nominee upon the owner of the premises, within a period of six weeks after the date of receipt by the Executive of any notice given pursuant to paragraph 3 above.
5. If the Executive or an appropriate nominee does not give written notice in accordance with paragraph 4 above, within the period stipulated above, then the owner will have the right to dispose of the premises free of any such Option to Purchase. In such a situation the Option to Purchase lapses.
6. (1) The consideration for any sale which takes place pursuant to the Option to Purchase shall be such amount as may be agreed between the parties, or determined by the Valuation and Lands Agency, as being the amount which is to be taken to be the value of the premises at the time the Option to Purchase is exercised.

(2).The value shall be taken to be the price which (at the relevant time) the premises would realise if sold on the open market by a willing vendor, on the assumption that any liability under clause 8 of the Fourth Schedule (the Discount Covenant) will be discharged by the person who is the vendor under any sale which takes place pursuant to the Option to Purchase.

(3) If the Executive or its appropriate nominee completes the purchase, no payment shall be required in pursuance of the Discount Covenant, but the consideration shall be reduced by such amount, (if any), as, would be payable if a relevant disposal was being made at the relevant time.

7. The provisions of this Schedule have been drafted with a view to ensuring the effective implementation of any Option to Purchase which is provided for in the version of the Housing Executive's Statutory House Sales Scheme which is currently in force.

[Extract from Housing Executive Standard Form – Assignment of Whole
2005(1) Edition]

SCHEDULE 3A

Option to Purchase

1. The Purchaser hereby grants to the Executive or its appropriate nominee a right to exercise an option to purchase the premises from the owner of the premises for the time being in the event of the owner of the premises wishing to dispose of the premises at any time within ten years from the date hereof if any such disposal would be a relevant disposal. (This obligation shall be known and referred to as the “Option to Purchase”).
2. It is hereby mutually agreed by the parties to this Assignment, that the Option to Purchase:
 1. shall be exercisable even if the Purchaser is no longer the current owner of the premises; and
 2. shall be exercisable by the Executive or its appropriate nominee.

For the purposes of this Assignment “appropriate nominee” means any registered Housing Association nominated by the Executive.

3. The Purchaser hereby covenants with the Executive that the Purchaser or the owner of the premises for the time being shall give prompt written notice to the Executive of his/her/their intention to dispose of the premises at any time within ten years from the date hereof if any such disposal would be a relevant disposal.
4. No Option to Purchase shall be exercisable unless written notice of intention to exercise the Option to Purchase is served, in writing, by the Executive or its appropriate nominee upon the owner of the premises, within a period of six weeks after the date of receipt by the Executive of any notice given pursuant to paragraph 3 above.
5. If the Executive or an appropriate nominee does not give written notice in accordance with paragraph 4 above, within the period stipulated above, then the owner will have the right to dispose of the premises free of any such Option to Purchase. In such a situation the Option to Purchase lapses.
6. (1) The consideration for any sale which takes place pursuant to the Option to Purchase shall be such amount as may be agreed between the parties, or determined by the Valuation and Lands Agency, as being the amount which is to be taken to be the value of the premises at the time the Option to Purchase is exercised.

(2) The value shall be taken to be the price which (at the relevant time) the premises would realise if sold on the open market by a willing vendor, on the assumption that any liability under clause 3 of the Third Schedule (the Discount Covenant) will be discharged by the person who is the vendor under any sale which takes place pursuant to the Option to Purchase.

(3) If the Executive or its appropriate nominee completes the purchase, no payment shall be required in pursuance of the Discount Covenant, but the consideration shall be reduced by such amount, (if any), as, would be payable if a relevant disposal was being made at the relevant time.

7. The provisions of this Schedule have been drafted with a view to ensuring the effective implementation of any Option to Purchase which is provided for in the version of the Housing Executive's statutory House Sales Scheme which is currently in force.

[Extract from Housing Executive Standard Form – Assignment of Part 2005(1) Edition]

SCHEDULE 5A

Option to Purchase

1. The Purchaser hereby grants to the Executive or its appropriate nominee a right to exercise an option to purchase the premises from the owner of the premises for the time being in the event of the owner of the premises wishing to dispose of the premises at any time within ten years from the date hereof if any such disposal would be a relevant disposal. (This obligation shall be known and referred to as the "Option to Purchase").
2. It is hereby mutually agreed by the parties to this Assignment, that the Option to Purchase:
 1. shall be exercisable even if the Purchaser is no longer the current owner of the premises; and
 2. shall be exercisable by the Executive or its appropriate nominee.

For the purposes of this Assignment "appropriate nominee" means any registered Housing Association nominated by the Executive.

3. The Purchaser hereby covenants with the Executive that the Purchaser or the owner of the premises for the time being shall give prompt written notice to the Executive of his/her/their intention to dispose of the premises at any time within ten years from the date hereof if any such disposal would be a relevant disposal.
4. No Option to Purchase shall be exercisable unless written notice of intention to exercise the Option to Purchase is served, in writing, by the Executive or its appropriate nominee upon the owner of the premises, within a period of six weeks after the date of receipt by the Executive of any notice given pursuant to paragraph 3 above.
5. If the Executive or an appropriate nominee does not give written notice in accordance with paragraph 4 above, within the period stipulated above, then the owner will have the right to dispose of the premises free of any such Option to Purchase. In such a situation the Option to Purchase lapses.
6. (1) The consideration for any sale which takes place pursuant to the Option to Purchase shall be such amount as may be agreed between the parties, or determined by the Valuation and Lands Agency, as being the amount which is to be taken to be the value of the premises at the time the Option to Purchase is exercised.

(2) The value shall be taken to be the price which (at the relevant time) the premises would realise if sold on the open market by a willing vendor, on the assumption that

any liability under clause 8 of the Fifth Schedule (the Discount Covenant) will be discharged by the person who is the vendor under any sale which takes place pursuant to the Option to Purchase.

(3) If the Executive or its appropriate nominee completes the purchase, no payment shall be required in pursuance of the Discount Covenant, but the consideration shall be reduced by such amount, (if any), as, would be payable if a relevant disposal was being made at the relevant time.

7. The provisions of this Schedule have been drafted with a view to ensuring the effective implementation of any Option to Purchase which is provided for in the version of the Housing Executive's statutory House Sales Scheme which is currently in force.