

## Shared Ownership: Tenant or Owner? Information for Renovator Users

### Is a “shared owner” a tenant or an owner for DFG purposes?

An applicant may be in the not uncommon arrangement where they own some proportion of their property via a mortgage (typically half), and pay rent to a housing association for the remainder.

The issue is, should a person in this situation make an owner's application or a tenant's application?

The DFG scheme is prescribed by the Housing Grants, Construction and Regeneration Act 1996. "Owner" is a defined term. The definition given at s.99 is as follows:

*Meaning of "owner" of dwelling.*

99. - (1) *In this Part "owner", in relation to a dwelling, means the person who-*

*(a) is for the time being entitled to receive from a lessee of the dwelling (or would be so entitled if the dwelling were let) a rent at an annual rate of not less than two-thirds of the net annual value of the dwelling; and*

*(b) is not himself liable as lessee of the dwelling, or of property which includes the dwelling, to pay such a rent to a superior landlord.*

*(2) For this purpose the net annual value of a dwelling means the rent at which the dwelling might reasonably be expected to be let from year to year if the tenant undertook to pay all usual tenant's rates and taxes and to bear the cost of repair and insurance and the other expenses, if any, necessary to maintain the dwelling in a state to command that rent."*

In our view a shared ownership arrangement of the type we are considering cannot fit within either s.99(1)(a) or s.99(1)(b), and in order to be an owner one would have to fit within both. A shared owner could not let out their property at 2/3 of the "going rate" (which is what s.99(1)(a) is about). And as a matter of simple fact a shared owner is paying rent to a superior landlord which means they do not meet the terms of 99(1)(b).

Conversely it has always been the view that "tenant" in DFG is broadly defined and is meant to be taken broadly. There seems no reason why a shared owner cannot be treated as a tenant for DFG purposes.

In a specific case the housing authority responded to the above argument by saying that the issue was dealt with in s.19 of the Act.

That says:

19. - (1) *A local housing authority shall not entertain an application for a grant unless they are satisfied-*

*(a) that the applicant has, or proposes to acquire, an owner's interest in every parcel of land on which the relevant works are to be carried out, or*

*(b) that the applicant is a tenant (alone or jointly with others)-*

*(i) in the case of an application in respect of works to a dwelling, of the dwelling, or*

*(ii) in the case of a common parts application, of a flat in the building,*

and, in either case, does not have or propose to acquire such an owner's interest as is mentioned in paragraph (a), or

(c) that the applicant is an occupier (alone or jointly with others) of a qualifying houseboat or a caravan and, in the case of a caravan, that at the time the application was made the caravan was stationed on land within the authority's area.

(2) References in this Chapter to an "owner's application" or a "tenant's application" or an "occupier's application", in relation to a grant, shall be construed accordingly.

**(3) In accordance with directions given by the Secretary of State, a local housing authority may treat the condition in subsection (1)(a) as met by a person who has, or proposes to acquire, an owner's interest in only part of the land concerned. (my emphasis).**

(4) In this Chapter, in relation to an application for a grant-  
"qualifying owner's interest" means an owner's interest meeting the condition in subsection (1)(a) or treated by virtue of subsection (3) as meeting that condition; ..."

The reference there is to "an owner's interest in only part of the land". But that is "in accordance with directions given by the Secretary of State". And in 1996 the Secretary of State did indeed issue a direction on precisely this point:

#### ***The Housing Renewal Grants (Owner's Interest) Directions 1996***

*The Secretary of State for the Environment, in exercise of the powers conferred on him by sections 7(3), 19(3), 25(2) and 146 of the Housing Grants, Construction and Regeneration Act 1996 and of all other powers enabling him in that behalf, hereby gives the following directions -*

##### *Citation and commencement*

*1. These directions may be cited as the Housing Renewal Grants (Owner's Interest) Directions 1996 and shall come into force on 17 December 1996.*

##### *Owner's interest condition*

*2. -(1) A local housing authority may treat the condition in sections 7(1)(a), 19(1)(a) and 25(1) of the Housing Grants, Construction and Regeneration Act 1996 as fulfilled by a person who has, or proposes to acquire, an owner's interest in only part of the land to which an application for a grant relates if -*

*(a) the relevant works include specified works which are to be carried out (in whole or in part) on land which is not the applicant's land; and*

*(b) the applicant has the power to carry out the works.*

*(2) In sub-paragraph (1) "specified works" means -*

*(a) works to connect the applicant's land with a gas, electricity, water or drainage utility at the nearest practicable point so as to provide to the applicant's land -*

*(i) adequate lighting;*

*(ii) adequate heating;*

*(iii) an adequate piped supply of wholesome water; or*

*(iv) an effective system for draining of foul, waste or surface water;*

*(b) works described in section 23(1)(a) of the Housing Grants, Construction and Regeneration Act 1996; or*

(c) works to repair or replace (in whole or in part) any of the works described in paragraph (a) or (b).

(3) In sub-paragraph (2) "applicant's land" means land in which the applicant has, or proposes to acquire, an owner's interest.

*Application*

4. These directions -

(a) shall apply to local housing authorities in England only; and

(b) shall not apply in a case where the application for a grant was made before the date on which these directions come into force.

*Signed by authority of the Secretary of State*

*C L L Braun*

*Assistant Secretary*

*Department of the*

*Environment*

*2 December 1996*

As will be seen from the above, the reason for these slightly odd provisions about people owning only "part of the land" is in order to allow housing authorities to do work in relation to connecting services, etc. It is not a rule about "shared ownership" which is what is under consideration here.

So the earlier point, about the definition of owner, as above, remains valid.

This is not a purely academic speculation. A housing authority should be concerned as to whether requiring contributions at the higher, owner's, multiplier, can be done in such cases. Further, charges on properties in relation to statutory DFG under the Act, which were enabled by the Disabled Facilities Grant (Conditions relating to approval or payment of Grant) General Consent 2008 (England), can only be placed where "the applicant ("the recipient") has a qualifying owner's interest in the premises on which the relevant works are to be carried out". It therefore seems it would not be lawful to place such charges on tenant's applications (even where the tenant is a shared owner).

It does seem as if in the past Ferret has said that shared owners are owners for DFG purposes, but there seems no basis for that view in the legislation or the guidance.

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