

Note outlining the proposed changes to the 2019 Rentcharge Deed¹ due to Homes England's requirements concerning "Help to Buy"

For the purposes of this note Chilmington Management Organisation is referred to as the "CMO".

Why the Rentcharge Deed needs to be amended?

1. Schedule 31 to the Section 106 Agreement dated 27 February 2017 contained a Rentcharge Deed which was subsequently replaced by the 2019 Rentcharge Deed.
2. Pursuant to the 2019 Rentcharge Deed and Section 121 Law of Property Act 1925, the CMO has powers to enforce payment of the rentcharge. In the 2019 Rentcharge Deed the CMO voluntarily restricted those powers.
3. Homes England, as a term of funding the Help to Buy: Equity Loan 2021 - 2023 Programme, does not permit rentcharge owners to be able to use Section 121 Law of Property Act 1925 or any other express means of enforcement of rentcharges enabling re-entry, the granting of a lease or repossession of a property for whose purchase Help to Buy was used.
4. The CMO has therefore agreed to amend the existing restrictions on enforcement, to reflect the requirements of Homes England so that Help to Buy funding will be available to purchasers.

What are the Changes?

Clause 2 – Rentcharges

This clause has been amended so the CMO promises: -

- not to enforce its powers under section 121 of the Law of Property Act 1925 nor enforce its rights by way of any express enforcement rights enabling forfeiture, the grant of a lease over or repossession of the property the subject of the rentcharge; nor
- not to enforce any other rights it may have without giving the property owner and any lender two months' notice of any breach of the Rentcharge Deed (so that they may have an opportunity to correct any breach); and
- if the CMO proceeds to enforce those other rights, to notify any lender.

Clause 4 – Manager's Covenants

Here there is an additional promise by the CMO that, should it transfer the benefit of the rentcharge to any third party, it will obtain promises in the same or similar form by the new rentcharge owner in favour of property owners who have entered into Rentcharge Deeds. Minor amendments to the definition of "Plot", and to Part 2 of Schedule 1, reflect the fact that this promise will apply to properties subject to both the 2019 Rentcharge Deed and this revised version. There are no other changes to substantive provisions.

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¹ The "2019 Rentcharge Deed" means the revised Rentcharge Deed referred to as the "2019 Edition" in a decision of Ashford Borough Council dated 29 August 2019