



NHBC Sheltered Housing Code

| For Builders and Developers registered with NHBC |



Definitions Applicable to sheltered housing in England and Wales only

Some of the words in these Rules have special meanings. They are printed below in bold type and with an initial capital letter in the rest of these Rules. Where appropriate in these Rules the **Builder** or **Developer** is addressed as “you”.

Application for Inspection

An Application made to NHBC for the inspection and insurance of a **Home**.

Associate

Any **Builder** or **Developer** who at any time is subject to any substantial degree, whether direct or indirect, to the same ownership management influence or control as you.

Builder

Any person, partnership, company or organisation which constructs Homes.

Common Parts

In relation to any flat or other premises **Common Parts** means:

- i those parts of the building containing the flat or premises; and
- ii any drainage system, permanent outbuilding, retaining wall, boundary wall, external hand rail or balustrade, path, drive, garden area or paved area which serves that building, is within its grounds and is constructed by the **Builder** at the same time as it

for which an **Owner** shares responsibility with the owners of other flats or premises in the building.

Damage

Physical **Damage** to the **Home** caused by a **Defect**.

Defect

A **Defect** in the **Home** resulting from a breach of any of NHBC's **Requirements** caused by the **Builder**, his architect, engineer, subcontractor or some other agent employed by him or acting on his behalf.

It does not mean a failure solely to comply with the **Requirements** or guidance notes in the **Requirements** where the functional tests are satisfied.

Developer

Any person, partnership, company or organisation that arranges for the construction of **Homes** or is concerned in or with such arrangements.

First Owner or First Purchaser

The person defined as either the **First Owner** or First Purchaser in the relevant NHBC **Scheme Document** with whom the **Builder** or the **Developer** enters into a contract or, in Scotland, a missive, for the sale or construction of a **Home**.

Hazardous Site

A **Site** or any part of a **Site** which is in a condition which gives rise to an abnormal risk of damage to or defects in homes which are or may be built on it. It includes (but is not limited to) a **Site** which in any part:

- i** is subject to landslip;
- ii** is made-up ground;
- iii** is part of a mining area, whether past, current or contemplated;
- iv** is of such a nature that the local authority or an approved inspector has imposed special conditions regarding foundations;
- v** comprises clay soil which has (or has had within the previous five years) trees on or near it;
- vi** is liable to flooding;
- vii** comprises soil with a peat content in the ground;
- viii** is adversely affected by the chemical content of the ground; or
- ix** is affected by landfill gas or radon.

Home

The house, bungalow, flat or other premises referred to in any Buildmark Scheme Document together with the **Common Parts** (if any), the drainage

system for which the **Owner** or **Purchaser** is responsible and:

- i** any heating, air conditioning, smoke alarm or water softening equipment in that house, bungalow, flat or premises; and
- ii** any garage, permanent outbuilding, retaining wall, boundary wall, external handrail, or balustrade, path, drive, garden area or paved area built, sold or supplied under the original sale contract or building contract between the **Builder** and the **First Owner** or **First Purchaser**.

Home does not include any fence, temporary structure, swimming pool, lift, or any electrical, electronic or mechanical equipment (whether built in or not) other than the items listed in **(i)** above. In Scotland, in addition, it does not include any road, footpath or footway.

Management Organisation

Any person or body intended to be responsible for the management, maintenance, repair or renewal of a **Sheltered Dwelling** or of any communal facilities associated with it or for providing services or facilities to the residents of the **Sheltered Dwelling** in their capacity as residents, whether or not those services or facilities are related to the care of the residents.

NHBC

The National House-Building Council (a company limited by guarantee) having its registered office at Buildmark House, Chiltern Avenue, Amersham, Buckinghamshire, HP6 5AP.

NHBC's Requirements

The mandatory requirements in connection with building and associated matters adopted by **NHBC** and in force:

- when the concreting of the foundations of a newly built **Home** or if applicable, the **Common Parts** is begun
- when conversion or renovation work to or affecting the **Home** or, if appropriate, the **Common Parts** is started,

which ever is applicable.

NHBC Scheme Document

Any document (including a Notice of Cover) issued by **NHBC** or its subsidiary companies in connection with a **Home** covered by one of its schemes.

NHBC Sheltered Housing Code

The **NHBC Sheltered Housing Code** adopted by **NHBC** and in force when concreting of the foundations of the **Home** and its **Common Parts** (if applicable) is begun. The Sheltered Housing Code is not mandatory in Scotland.

Notice of Cover

- i** a Notice or certificate stating that a **Home** appears to have been designed and constructed substantially in accordance with **NHBC's Requirements**; or
- ii** a Notice or certificate stating that work to a **Home** appears to have been carried out in a satisfactory manner; or
- iii** a Final Certificate issued under the Building Act 1984. (This Act does not apply in Scotland, Northern Ireland or the Isle of Man).

Other Home Warranty Scheme

Any **Home** warranty scheme which incorporates:

- a** a register of builders and developers on which applicants may be entered provided they can show a good standard of building ability and sound business knowledge as applicable; and
- b** a set of published technical standards with which registered builders and developers must comply and which include reasonable standards of design, quality of materials, workmanship and durability; and
- c** a system of inspecting new homes during construction so as to ensure that they are built in accordance with the published technical standards; and

- d transferable warranties which provide the owners of homes covered by the scheme with a right, for at least ten years from the date of completion of construction of the **Home**, to have repairs carried out or to an indemnity against the cost of repairs, at least in respect of damage resulting from defects in the **Structure** of such homes.

Owner

The **First Owner** or First Purchaser and each subsequent **Owner** or Purchaser of the **Home** specified in the relevant **NHBC Scheme Document**. The **Owner** or Purchaser includes any mortgagee, or heritable creditor in possession of the **Home** pursuant to a mortgage granted as security for a loan to the **First Owner** or First Purchaser or to any such subsequent **Owner** or Purchaser.

Register

The **Registers** of Builders and Developers maintained by **NHBC** in England and Wales, Scotland, Northern Ireland and the Isle of Man respectively.

Registration

The entry of a **Builder** or **Developer** on the **Register**.

Sheltered Dwelling

A dwelling which is purpose built or converted for residence by elderly people and which forms part of a scheme of grouped, self-contained accommodation provided with a package of estate management services.

Site

An area of land which is covered by a single detailed planning consent.

Structure

The foundations of the house, bungalow, flat or premises and of any garage or permanent outbuilding and the structural loadbearing parts of its floors, walls and roof together with any retaining walls necessary for its stability. Structure includes the foundations and any structural loadbearing parts of any **Common Parts**.

Contents

Definitions	1
Part 1	
The duties of Builders and Developers of Sheltered Housing	8
Part 2	
The Purchaser's Information Pack	9
Form	9
Extra copies	9
Landlord and Management Organisations	9
Purchaser's legal rights	10
Consultation and complaints procedures	11
Charges and service charges	12
Services	13
Warden	13
Alarm system	13
Repairs	13
Insurance	14
Re-sale	14
Part 3	
The Management Agreement	15
Parties to the agreement	15
Form of agreement	15
Vendor's undertakings	15
Description of Vendor's undertakings	15
Transfer of Vendor's interest or management responsibility	18
Management Organisation's undertakings	19
Purchaser's information pack	19

Budgets and accounts	19
Residents association and consultation	20
Complaints	20
Services	21
Wardens	21
Emergency alarm system	22
Insurance	22
Repairs and maintenance	23
Re-sale	23
Transfer of management	25

Part 4

Your Legal Rights	27
Introduction	27
Tenants or Residents Associations	28
Service charges	28
Protection of money paid for services	29
Insurance	30
Your right to be consulted about repair works	31
Your rights if the landlord fails to carry out his obligations to provide services	31
Your rights to information about your landlord	32
Your rights to first refusal upon transfer of freehold	32
Management Organisations when acting as managers for a Landlord	32
Your individual rights as a Lessee	33

Part 5

Rule for Sheltered Housing	34
-----------------------------------	-----------



The duties of Builders and Developers of sheltered housing

PART 1

1. Every **Builder** or **Developer** registered with NHBC who builds or sells a **Sheltered Dwelling** must:
 - i ensure that every potential **First Purchaser** of the **Sheltered Dwelling** is provided with a Purchaser's Information Pack which contains the information specified in this Code; the Purchaser's Information Pack must be provided when the Purchaser reserves the **Dwelling** and in good time so that the **First Purchaser** can properly consider the information which it contains before exchanging contracts to purchase the **Dwelling**;
 - ii ensure that the **Management Organisation** of a **Sheltered Dwelling** built or sold by him enters into a Management Agreement as required by this Code. The Management Agreement must give each Purchaser of the **Sheltered Dwelling** the benefit of the legal rights specified in this Code.
2. If the freehold or leasehold of the **Sheltered Dwelling** is sold or transferred to anyone who is acting in the course of a business, the NHBC **Builder** or **Developer** who built or sold or transferred the **Sheltered Dwelling** must obtain from that person a covenant by which that person undertakes:
 - i that a Purchaser's Information Pack will be provided to the **First Purchaser** as required in (1i) above;
 - ii that the **Management Organisation** of the **Sheltered Dwelling** will enter into a Management Agreement as required in (1ii) above; and
 - iii that these covenants will be obtained on any further sale or transfer.

The Purchaser's Information Pack

PART 2

Form

1. The Purchaser's Information Pack must be given to Purchasers in a form that can be retained by them for easy reference at any time.
2. The Purchaser's Information Pack must be clear and unambiguously written in simple English and in large enough print to be easily read even by those with limited sight.

Extra copy for residents

3. Where the Purchaser and the resident of the **Sheltered Dwelling** are not the same an additional copy of the Purchaser's Information Pack must be provided for the use of the resident. In that case the Purchaser must tell the **Management Organisation** who the resident will be.

Copies for subsequent purchasers

4. A Landlord or **Management Organisation** which receives notice of a sale or assignment of a **Sheltered Dwelling** by a Purchaser must provide an up-to-date copy of the Purchaser's Information Pack to the subsequent Purchaser or assignee. This copy should be provided, if possible, before the sale or assignment is made.

Minimum contents

5. The Purchaser's Information Pack must contain at least the following:

The Landlord and the Management Organisation

- 5.1 Where the **Sheltered Dwelling** is sold leasehold, the name and address of the Landlord and of the freeholder, if different.

- 5.2 The name, address and telephone number of the head office and the relevant local branch office of the **Management Organisation**.
- 5.3 Details of the relationship between the Landlord and the **Management Organisation** and in particular whether the **Management Organisation** is a party to the lease.
- 5.4 An undertaking by the **Management Organisation** that it will enter into a binding legal obligation with each Purchaser of a **Sheltered Dwelling** to perform the undertakings in this Code.
- 5.5 Information on the nature of the **Management Organisation** (e.g. whether it is a Housing Association or a Private Management Company), on its history, and on the number of Sheltered Homes it currently manages.

The Purchaser's legal rights

- 5.6 Information on the Purchaser's legal rights following the form set out in the attached Schedule.
- 5.7 A summary of the main provisions of any lease of the **Sheltered Dwelling**. This must include details of:
 - i ground rent;
 - ii any charges on resale;
 - iii any charges for management services (whether periodic, irregular or one-off);
 - iv services;
 - v communal facilities;
 - vi any restrictions on occupation of the **Sheltered Dwelling** (including any requirements which relate to age of occupant);
 - vii any restriction on residents (including any restrictions as to the keeping of pets).

- 5.8** Where the **First Purchaser** purchases a freehold interest in the **Sheltered Dwelling**, a summary of the main provisions of the freehold transfer, including details of all covenants conferring rights or imposing restrictions upon the Purchaser or resident.

Consultation and complaints procedures

- 5.9** Information on Residents Associations, and the arrangements made by the Landlord and **Management Organisation** for the recognition of a Residents Association and for consultation with it.
- 5.10** Information on the matters about which Purchasers have the right to be consulted by the Landlord and the **Management Organisation**, and how such consultation is to take place:
- i** Each Purchaser must have the right to be consulted on major issues of housing and estate management;
 - ii** Each Purchaser must be provided with a copy of the accounts for management services, audited by an independent accountant, within no more than six months of the end of each accounting period;
 - iii** Each Purchaser must be provided with a copy of the proposed budget for the management services for the ensuing financial period and be given reasonable opportunity to comment on it before the review date of any charge;
 - iv** The consultation arrangements must include at least one annual meeting of all Purchasers prior to the annual review of service charges to enable Purchasers to comment on the budget for the next accounting year and the extent and quality of services provided; a reasonable period of notice must be given to all Purchasers of this annual meeting.
- 5.11** The complaints and grievance procedure of the **Management Organisation**, which must contain a timetable for action on complaints made by Purchasers or residents.

Charges and service charges

- 5.12** A full and detailed analysis of all payments, fees or charges (whether periodic or not) to which the Purchaser may become liable to the Landlord or to the **Management Organisation**, together with:
- i** a full explanation of the reasons for the payments, fees and charges;
 - ii** a full explanation of how all services are to be charged for and how they are apportioned between **Dwellings**;
 - iii** a full explanation of the sinking fund, how it will be funded and the uses to which it will be put;
 - iv** an estimate of the amount of all the anticipated payments, fees and charges (including the cost of auditors) for the current year of accounting, broken down into clearly defined budget items, and with a clear indication of the period to which each item relates;
 - v** how the payments, fees and charges and any contribution to any sinking fund are to be collected;
 - vi** how frequently the payments, fees and charges are to be collected;
 - vii** how frequently the level of payments, fees and charges is to be reviewed;
 - viii** how such review is to be conducted, and what consultation with Purchasers will be involved in such a review;
 - ix** a full explanation of how any deficit or surplus on any account will be treated, and in particular how any deficit will be made up.
- 5.13** Information on the Purchaser's responsibility for other charges, not payable to the Landlord or **Management Organisation** (including any responsibility for rates, water rates or charges, community charges, electricity, gas etc).

The Purchaser's Information Pack

Services

- 5.14** A full and clear explanation of all the services and the management facilities provided by the **Management Organisation**; including:
- i** details of the extent to which cleaning and gardening services are to be provided by the **Management Organisation**; and
 - ii** details of the availability of any guest room and the charging system which is to apply to it.

Warden

- 5.15** Where a Warden is to be provided, a definition of the Warden's role and duties; and:
- i** details of the Warden's hours of service;
 - ii** details of back-up or emergency cover during the Warden's absence;
 - iii** information as to whether the Warden's community charge, heating, telephone, electricity and other bills are to be charged to Purchasers.

Alarm system

- 5.16** An alarm monitoring system must be provided and there must be a full description of the system, with details of its nature, extent and cost.

Repairs

- 5.17** A full, clear and detailed explanation of the division of responsibilities between the Landlord, the **Management Organisation** and the Purchaser or resident for maintenance and repair of the buildings, fixtures and grounds.
- 5.18** The repairs reporting procedure setting out how and to whom the Purchaser or resident can report the need for maintenance and repair work to the buildings and grounds; this must include a procedure for reporting the need both for emergency and for non-emergency repairs.

Insurance

5.19 Details of the Insurance Cover arranged through the Landlord or **Management Organisation**.

This Insurance Cover must include:

- i buildings insurance (including the cost of providing suitable alternative accommodation for the residents);
- ii engineering plant insurance (eg lift and ventilation equipment);
- iii employer's liability and public liability insurance;
- iv communal contents insurance (eg Residents Lounge and Guest Room furniture).

Where this Insurance Cover does not extend to insuring the effects of Purchasers and/or residents this should be made clear in the Purchaser's Information Pack and advice included that such insurance should be separately obtained.

The Purchaser must be entitled free of charge to inspect the Landlord's policy for the buildings and proof of payment of the insurance premiums; information must be included as to this right and how the Purchaser may exercise it.

Re-selling the Sheltered Home

5.20 The rights and obligations of Purchasers of the **Sheltered Dwelling** in relation to re-selling their **Dwelling**. In particular:

- i any restriction on re-sale which relates to the age or other qualifications of potential subsequent Purchasers or subsequent residents must be clearly set out; and
- ii if the Landlord or **Management Organisation** makes any charge or requires any payment upon re-sale (including any requirements to make a contribution to a sinking fund), the charge or payment and its estimated amount must be clearly set out in writing and provided to all Purchasers.

The Management Agreement

PART 3

Parties

1. Where the Vendor of the **Sheltered Dwelling** to the **First Purchaser** is not also to be the **Management Organisation**:
 - i The parties to the Management Agreement shall be the Vendor and the **Management Organisation**.
 - ii The Management Agreement must be entered into before the **First Purchaser** exchanges contracts to purchase the **Dwelling**.
2. Where the Vendor of the **Sheltered Dwelling** to the **First Purchaser** is also to be the Management Organisation:
 - i The parties to the Management Agreement shall be the Vendor and the **First Purchaser**.
 - ii The Management Agreement must be entered into at the same time as the **First Purchaser** exchanges contracts to purchase the **Dwelling**.

Form

3. The Management Agreement shall be a written legal agreement.

The undertakings by the Vendor of the Sheltered Dwelling

4. The Management Agreement must contain an undertaking by the Vendor or the **Sheltered Dwelling** to require the **Management Organisation** to enter into a binding legal obligation with each Purchaser of the **Sheltered Dwelling** to perform the undertakings in this Code.

The Vendor's undertakings must include undertakings that:

- 4.1** All sales literature provided to **First Purchasers** insofar as it includes or refers to items covered by this Code must set out those items in full or be an accurate summary of them.
- 4.2** The requirements of the **NHBC Sheltered Housing Code** as to the provision of a Purchaser's Information Pack will be or have been complied with.
- 4.3** All obligations undertakings and assurances contained in the Purchaser's Information Pack will be duly honoured, and the Purchaser's Information Pack will contain all obligatory undertakings required in Part 2 of this Code. In particular:
 - i** an alarm monitoring system will be provided;
 - ii** the Insurance Cover described in the Purchaser's Information Pack will be provided;
 - iii** the consultation, complaints and grievance procedures contained in the Purchaser's Information Pack will be operated;
 - iv** the details given in the Purchaser's Information Pack relating to charges, service charges and payments will be complied with;
 - v** the services and management facilities described in the Purchaser's Information Pack will be provided (including Wardening service as so described);
 - vi** the details given in the Purchaser's Information Pack relating to repairs will be complied with;
 - vii** a sinking fund will be set up on or before the first sale of the first **Dwelling** in the Sheltered Housing Scheme. The fund will be adequate for and be used to finance long term repairs, renewals and improvements;
- 4.4** The Purchaser's Information Pack will be kept up-to-date and copies of the Purchaser's Information Pack as up-dated will be issued to all Purchasers.

The Management Agreement

- 4.5** No contribution will be sought from Purchasers or residents for meeting service charges attributable to unsold or void units of the **Sheltered Dwelling** scheme prior to their first sale.
- 4.6** On notification of any assignment or transfer of a Purchaser's interest in the **Sheltered Dwelling**, potential Purchasers of that interest will be issued by the landlord with a copy of the current Purchaser's Information Pack.
- 4.7** No condition on re-sale which allows only the landlord to find new Purchasers will be obtained from or enforced against a Purchaser. The provision will not apply to schemes for elderly people built with the aid of any public funding intended to reduce the purchase price to purchasers. In that case the new purchasers may be limited to those meeting the criteria required as a condition of that public funding.
- 4.8** All charges which the landlord makes on re-sale will be clearly itemised and any legal service provided by the landlord on re-sale will be clearly described in writing to the Purchaser before the Purchaser utilises such service.
- 4.9** The landlord will not make any charge or require any payment on a re-sale, except:
- i** for acting as an agent to sell the **Sheltered Dwelling**, when the seller has chosen to employ its services;
 - ii** for legal services provided at the request of the seller;
 - iii** for supplying Purchaser's Information Packs to prospective Purchaser's;
 - iv** the reasonable costs it has incurred in:
 - a** approving a buyer;
 - b** supplying copies of insurance details and services accounts to the seller's solicitor;
 - v** Any arrears of service charge or of ground rent or of other

outgoings which are provided for in the lease and which are outstanding at the date of sale.

- vi Any costs of internal decorations or repairs which are necessary at the date of sale because of the seller's failure to comply with obligations contained in the lease.
- vii As permitted by paragraph 4.10 below.

4.10 No share in the equity or equity growth of any **Sheltered Dwelling** has been or will be retained or claimed by the Vendor or on its behalf and no right to a share in the equity or equity growth will be enforced by the Vendor or on its behalf. Except where the lease or contract of sale provides:

- i for a fixed deduction on re-sale to finance long-term repairs, renewals and improvements to the **Sheltered Dwelling** Scheme from a sinking fund;
- ii for a fixed deduction on re-sale as part of a bona fide scheme to provide a Purchaser or resident with:
 - a extra care; or
 - b reduced service charges; or
 - c provision of income; or
 - d some other tangible benefit;
- iii for a defined share of the equity to be retained on re-sale where the **Sheltered Dwelling** was originally sold at a discounted price.

Transfer of Vendor's interest or management responsibility

4.11 The Vendor undertakes not to transfer the freehold interest in the **Sheltered Dwelling** Scheme or any **Sheltered Dwelling** (or any leasehold interest in these to anyone who is acting in the course of a business) without ensuring that before the transfer is completed the transferee has entered into a Management Agreement of identical content with this Part (including this undertaking).

The Management Agreement

The Transferee's Management Agreement must be either:

- i with the **Management Organisation**; or
- ii (if the transfer is to the **Management Organisation**) with the Purchaser of each **Sheltered Dwelling** who holds at the date of transfer the interest of the **First Purchaser**.

- 4.12** The Vendor undertakes that if the **Management Organisation** transfers or repudiates its Undertakings under this Management Agreement the Vendor will enter into a new Management Agreement as soon as possible with a new **Management Organisation** of identical content so far as it is possible or where not possible of substantially the same content (including this obligation).

Undertakings by the Management Organisation of the Sheltered Dwelling

- 5.** The Management Agreement must contain an undertaking by the **Management Organisation** of the **Sheltered Dwelling** to enter into a binding legal obligation with each Purchaser of a **Sheltered Dwelling** to perform the undertakings in this Code.

The undertakings of the Management Organisation must include undertakings that:

Purchaser's Information Pack

- 5.1** All sales literature provided to **First Purchasers** is an accurate summary of that required by the **NHBC Sheltered Housing Code**.
- 5.2** The requirements of the **NHBC Sheltered Housing Code** as to the provision of a Purchaser's Information Pack to the **First Purchaser** of the **Sheltered Dwelling** and as to the form and contents of the Purchaser's Information Pack will be or have been complied with.

Budgets, review of charges, accounts

- 5.3** The **Management Organisation** will each year draw up a proposed budget with estimates of all charges to be levied on Purchasers by the

Management Organisation and the Landlord; the **Management Organisation** will be responsible for ensuring that the proposed budget contains realistic estimates of charges based on all current evidence reasonably available.

- 5.4 A copy of the proposed budget, clearly indicating the period covering by the budget, will be made available to each Purchaser in reasonable time for each Purchaser to comment on it before the **Management Organisation** undertakes its annual review of charges; the **Management Organisation** will take reasonable account of all comments made by Purchasers and will advise Purchasers of the outcome of this consultation.
- 5.5 The **Management Organisation** will hold at least one meeting each year with Purchasers prior to the annual review of service charges giving reasonable opportunity for Purchasers to comment on the proposed level of charges.
- 5.6 The **Management Organisation** will provide all Purchasers with a copy of the accounts for management services audited by an independent accountant within six months of the end of each accounting period.

Residents Association and consultation

- 5.7 The **Management Organisation** will recognise an association which has as its members 51% or more of the Purchasers of the **Sheltered Dwellings** included in the **Sheltered Dwelling** scheme, and will encourage such an association to accept into membership all those who reside in the **Sheltered Dwellings**.
- 5.8 The **Management Organisation** will consult all Purchasers and residents on all major management proposals likely to have a significant effect on quality of service or level of service charges.

Complaints

- 5.9 The **Management Organisation** will implement and operate the complaints and grievance Procedure set out in the Purchaser's Information Pack.

The Management Agreement

Services

- 5.10** The **Management Organisation** will provide all the services described in the Purchaser's Information Pack.
- 5.11** The **Management Organisation** will comply with all the specifications contained in the Purchaser's Information Pack as to the nature and quality and costing of all services described in the pack.
- 5.12** the **Management Organisation** will arrange for the regular cleaning of all internal common parts of buildings contained within the **Sheltered Dwelling** scheme, for the regular sweeping and cleaning of all external hard services, including paths, driveways and car parking areas; for the clearance of fallen leaves from guttering and for the maintenance of continuous safe access on paths, parking areas and driveways, including the treatment of surface ice and the removal of fallen leaves.
- 5.13** the **Management Organisation** will maintain the shared garden areas to a standard consistent with the quality of the development.
- 5.14** where a residents lounge or guest room is provided, the **Management Organisation** will ensure that the furniture, fittings and decorations are cleaned and renewed.
- 5.15** where a common laundry is provided the **Management Organisation** will arrange for the maintenance and repair of all machines.
- 5.16** where a payphone is provided the **Management Organisation** will arrange for its maintenance and for the collection and secure accounting of all monies.

Wardens

- 5.17** Where a Warden is provided, the **Management Organisation** will:
 - i** make thorough enquiries into the character, employment history and background of any prospective Warden or Deputy Warden or relief or stand-by Warden before employing the same, and will satisfy itself that the person so employed is honest and trustworthy;

- ii provide any Warden or Deputy Warden or relief or standby Warden with full and proper management supervision and back-up support;
- iii ensure that the role, responsibilities and duties of any Warden or Deputy Warden or relief or stand-by Warden are clearly defined and that Purchasers are made aware of the same, and that any Warden or Deputy Warden is provided with a properly defined job description, and with a handbook giving details of their duties and all relevant procedures;
- iv ensure that any Warden or Deputy Warden or relief or stand-by Warden receives proper training.

The Emergency alarm system

- 5.18** The **Management Organisation** will maintain any emergency alarm system as specified in the Purchaser's Information Pack and will provide all Purchasers and residents with a full description of the system and its operation.

Insurance

- 5.19** The **Management Organisation** will be responsible for maintaining adequate insurance cover as set out in the Purchaser's Information Pack.
- 5.20** The **Management Organisation** will be responsible for ensuring that all such insurance cover is arranged at the best value in the interests of the Purchasers, and that an annual review is made of the extent of cover and the level of premiums.
- 5.21** The **Management Organisation** will be responsible for ensuring that all such insurance cover is arranged at the best value in the interests of the Purchasers, and that an annual review is made of the extent of cover and the level of premiums.
- 5.22** The **Management Organisation** will be responsible for ensuring that any Purchaser who wishes to inspect the insurance policies or the proof of payment of premiums is enabled to do so free of charge.

The Management Agreement

Repairs and maintenance

- 5.23** The **Management Organisation** will be responsible for undertaking and arranging all repairs for which it is specified to be responsible in the Purchaser's Information Pack.
- 5.24** The **Management Organisation** will ensure in the discharge of its responsibility for repairs that all repair work is cost-effective taking into account both the cost of the work undertaken and its durability.
- 5.25** The **Management Organisation** will draw up and implement an adequate programme of planned or cyclical maintenance for communal parts of the **Sheltered Dwelling** scheme together with all plant and services that require regular maintenance (including the maintenance and replacement when necessary of communal furniture and fittings). The **Management Organisation** will make a realistic assessment of the cost of that programme and include an appropriate item in the proposed annual budget and consult the Purchasers about this item.
- 5.26** The **Management Organisation** will undertake all necessary major repairs and renewals to the buildings contained in the Sheltered Housing scheme to ensure that the scheme is kept up to a reasonable standard of repair and decoration. The **Management Organisation** will maintain the sinking fund to defray the cost of performing this undertaking.
- 5.27** The **Management Organisation** will operate the repairs procedures set out in the Purchaser's Information Pack (including the procedure for emergency repairs); and will monitor the progress of repairs.

Re-sale

- 5.28** All charges on-sale made by the **Management Organisation** will be clearly itemised;

- 5.29** The **Management Organisation** will not in any way impede or prevent a Purchaser making independent arrangements for the re-sale of a **Sheltered Dwelling**. This provision will not apply to schemes for elderly people built with the aid of any public funding intended to reduce the purchase price to purchasers. In that case the new purchasers may be limited to those meeting the criteria required as a condition of that public funding;
- 5.30** The **Management Organisation** will not make any charge or require any payment on re-sale except for reasonable charges for payments where the lease provides in the following cases:
- i** for acting as an agent to sell the **Sheltered Dwelling**, when the seller has chosen to employ its services;
 - ii** for legal services provided at the request of the seller;
 - iii** for supplying Purchaser's Information Packs to prospective purchasers;
 - iv** to recover the cost it has incurred in:
 - a** approving a buyer;
 - b** supplying copies of insurance details and service accounts to the seller's solicitor;
 - v** to recover any arrears of service charge or of ground rent or of other outgoings which are provided for in the lease and which are outstanding up until the date of sale;
 - vi** to recover any costs of internal decorations or repairs which are necessary at the date of the sale because of the seller's failure to comply with obligations contained in the lease;
 - vii** as provided for in sub-paragraph **(5.31)** below.
- 5.31** No share in the equity or equity growth of any **Sheltered Dwelling** has been or will be retained or claimed by the **Management Organisation** or on its behalf and no right to a share in the equity or equity growth will be enforced by the **Management Organisation** or on its behalf.

The Management Agreement

Except where the lease or contract of sale provides:

- i** for a fixed deduction on re-sale to finance long-term repairs, renewals and improvements to the **Sheltered Dwelling** Scheme from a sinking fund;
- ii** for a fixed deduction on re-sale as part of a bona fide scheme to provide a Purchaser or resident with:
 - a** extra care; or
 - b** reduced service charges; or
 - c** provision of income, or
 - d** some other tangible benefit;
- iii** for a defined share of the equity to be retained on re-sale where the **Sheltered Dwelling** was originally sold at a discounted price in order to enable the Purchaser to participate in a **Sheltered Dwelling** Scheme that the Purchaser would not, without the discount, have been able to buy into.

Transfer of management responsibility

- 5.32** The **Management Organisation** undertakes that if it transfers management responsibility it will ensure that an alternative **Management Organisation** enters into a Management Agreement of identical content so far as it is possible or where not possible of substantially the same content (including this obligation).



Resident's bedroom, courtesy McCarthy & Stone

Your legal rights

PART 4

Schedule

This document must clearly set out the name and address of the freeholder who is the landlord, and must also give the name of the **Management Organisation**, if this is not one and the same.

In this document it is assumed that the **Management Organisation** is the owner of the freehold.

The document describes the rights of lessees and the obligations of landlords. Normally the **Management Organisation** looking after the development from day-to-day will be the landlord, but sometimes the **Management Organisation** may be running the scheme on behalf of the **Builder** or **Developer** who developed it.

The document should contain the details below

Introduction

The home you occupy is owned on a long lease (eg 99 years) which terminates in The freehold of the property is owned by XYZ. The **Management Organisation** whether or not the owner of the freehold has direct responsibility for managing the scheme of which your home is part.

This document sets out your legal rights as the lessee of your home. If you occupy your home but someone else owns the lease (perhaps someone else in your family), it is they who have the legal rights. However, the managers of the scheme have agreed to give the same information to occupiers as to owners and to allow non-owning occupiers to participate in the same way as owners.

The law covering leaseholds changes and this document only sets out a very brief summary. It is not intended to be detailed but only to give a very brief idea of what the law requires or entails. If you think that you need to know the law in detail you should consult a solicitor or Citizens Advice Bureau.

Tenants or Residents Associations

You and your fellow lessees have the right to form a Tenants' Association. The law gives greater consultation rights to recognised Tenants' Association than to individual lessees on certain issues.

If a Tenants' Association wishes to be recognised or accepted by the landlord and consulted on matters such as expenditure on major repairs, it must apply to the landlord. If the landlord refuses to recognise such an Association then it may be able to seek recognition under statutory procedures. A solicitor or Citizens Advice Bureau will be able to assist.

Service charges

Your landlord provides a range of services for which you pay through a service charge.

There may be other additional periodic charges for which you will also pay.

The law defines a service charge as any amount payable in addition to ground rent, or as part of that rent, in respect of services, repairs, maintenance, insurance or management costs and which varies according to the changes in cost in respect of those matters. It does not matter whether the charge is made as part of the rent or in any other fashion, the law controls the way in which service charges are raised and how they must be used.

A 'sinking fund' (to finance long term repairs, renewals and improvements) may be raised by contributions or by making a levy on the re-sale price of the **Dwelling** when it is sold. No more can be taken than is provided for by the formula written into the lease, and the money can only be used for the purpose specified by the lease. Where such a levy applies to your **Dwelling** its existence will have been made clear in your lease and in the pre-sales literature.

A service charge can only be demanded for the items which are specified in the lease.

Your legal rights

Protection of money paid for services

Any money which you pay in advance as a service charge is protected, as landlords have to hold money 'on trust'*. This means that the landlord can only spend the money for the purposes for which it was collected. If the landlord becomes insolvent the money held in trust is safe from other creditors. The trust prevails over any terms of a lease which are inconsistent with it. In practice any money paid by residents as service charges should be kept in a separate bank account in trust for those contributing to it and any interest received on the account should be credited for the benefit of them after deduction of tax.

Service charges need only be paid if they are 'reasonable' and only if the works or services provided are of a 'reasonable' standard. However, only a County Court can determine what is 'reasonable' Legal action should only be taken as a last resort after residents have sought to challenge the service charge in a meeting with the landlord. Your landlord should have consulted you about any large increase in the service charge he proposes to make. If you want to question or challenge service charges you the right to obtain details of costs of services and charges and to inspect and take copies of accounts and receipts. The landlord has the right to make a reasonable charge for the copying.

Lessees have the right to demand from their landlord:

A summary of the costs of services provided for the last accounts period split into:

- costs for which the landlord has not yet received an invoice
- costs for which the landlord has received an invoice but has not yet paid
- costs for which the landlord has paid the bill.

The first two categories should make you aware of likely future costs and so prevent landlords later presenting unexpected bills for costs incurred in previous years.

The summary of cost should:

- show how the costs are reflected in the service charge
- show the total amount of money received from lessees on account and the amount still standing in credit to residents

- be signed by a qualified accountant who is not a partner or employee of the landlord or **Management Organisation**.

If you need more details you have the right to ask for an inspection of all accounts, receipts and documents relating to the summary of costs of services you received and to take copies, for which a reasonable charge may be made.

You can refuse to pay the cost of any service incurred 18 months before a demand for payment was made, unless the landlord had already notified you in writing that the costs had been incurred and that residents would be expected to pay.

Insurance

Where the landlord arranges some insurance as part of the service charge on behalf of lessees, the costs must be 'reasonable' as with any other service charge. Any lessee or a recognised Tenants' Association can also request details of the insurance policy from the landlord.

Within one month the landlord must supply a copy of the policy, or a summary, and must state the amount insured and the name of the insured. Failure to produce this information can lead to prosecution.

Lessees who have asked for details of the policy have a further right to inspect the policy and a receipt of proof of payment of the premium. Residents have the right to take copies for which the landlord may make a reasonable charge.

Finally, lessees have the right to notify the landlord's insurers of a possible claim up to six months after the event which has led to the claim, even if there is a shorter time limit for making claims in the policy. This does not mean that a resident may make a claim on a policy, but it does mean that the claim does not fail because the landlord has failed to satisfy the insurers in time.

Where, however, a lease requires the lessee to insure the **Dwelling** with an insurance company nominated by the landlord, and the insurance available is unsatisfactory in any way or the premium is excessive, the County Court has power to deal with the problem.

Your legal rights

Your right to be consulted about repair works

Lessees have the right to be consulted by landlord before major repair works (of £1000 or £50 per **Dwelling**, whichever is greater) are carried out.

A landlord must get at least two estimates for major works, one of which should be from a contractor wholly unconnected with him. A notice accompanied by copies of the estimates should be sent by the landlord EITHER to all lessees OR displayed in a prominent place which will bring it to the attention of all lessees. You have one month (28 days) from receipt of the notice to make comments and the landlord must take account of them. If lessees are not consulted about the cost of major repair works then they have the right to refuse to pay part of those costs.

Recognised Tenants' Associations have greater rights in law to be consulted than individual lessees. If a landlord wishes to carry out major repair works he must send to the secretary of the Tenants' Association a specification of the proposed works and allow a reasonable time for the secretary to prepare names of contractors from whom he should obtain estimates. A copy of any estimates received should be sent to the secretary. In addition, all lessees who are members of the Tenants' Association should be sent a notice describing the works, summarising the estimates and inviting comments.

Your rights if the landlord fails to carry out his obligations to provide services

If a landlord has seriously or consistently failed to carry out his obligations to carry out repairs, any lessee has the right to ask a County Court to issue an order compelling the landlord to do the repair.

If lessees do go to Court (because they are unable to reach agreement with their landlord about a service or a service charge) and the lessees win, the law may prevent the landlord from re-charging his legal costs as part of any management fees to the residents and, again, the County Court will normally deal with such matters.

If the landlord is a registered Housing Association the rights set out below in this section do not apply.

If the landlord persistently fails to meet his obligations, then lessees of flats only have the right to apply to County Court for an order to appoint another manager

(or a receiver if the landlord is insolvent). However, lessees should serve notice on the landlord, prior to going to Court, stating what is wrong and giving the landlord reasonable time to put things right.

In extreme cases where the landlord has consistently failed to meet his obligations, and the appointment of another manager would not be a sufficient remedy, a Court may order the compulsory transfer of the landlord's interest in a group of flats to someone else acceptable to the lessees.

Your rights to information about your landlord

If a lessee puts in a written request, the **Management Organisation** must supply the name and address of the landlord within 21 days. If the landlord is a company then a lessee has the right to know the name and address of the directors and secretary of the company.

In addition a lessee of a **Dwelling** has the right to make a search at the Land Registry to find the name of the freeholder of the flat.

If there is a change of landlord then the new landlord must inform lessees of his name and address.

Your rights to first refusal upon transfer of freehold

If a landlord proposes to sell the freehold of flats then he must notify lessees. Lessees have the right to first refusal to purchase the freehold. This right does not apply if your landlord is a registered Housing Association.

Management Organisations when acting as managers for a Landlord

The landlord must if requested by the Tenants' Association, put in writing the duties of an existing **Management Organisation** and give the Association a reasonable period in which to comment on the Organisation's performance.

Before the appointment of a new **Management Organisation** the landlord must advise the Tenant's Association of the Organisation's name, address and its proposed duties. The Association has at least one month (28 days) in which to comment.

In both cases the landlord must take the Association's comments into account.

Your legal rights

Your individual rights as a Lessee

Where a resident is also the lessee his/her legal rights in respect of the individual **Dwelling** are very similar to those of freeholders. Ground rent and service charges which are specified in the lease must of course be paid and there are important rights for lessees given by the law outlined above. The lease will give the landlord power to take action if ground rent and service charges are not paid and will almost certainly include a number of obligations and conditions which must be complied with

If the obligations or conditions are not complied with or rent or service charges are not paid it is normal for the landlord to have a power written into the lease to bring it to an end prematurely. However, a lessee cannot be deprived of his/her home without special court procedures being followed. This is an extremely serious matter and a solicitor should be consulted if the landlord takes action under the lease.

Rule for sheltered housing

PART 5

NHBC Rules of Registration include the following rule. It only applies where a **Builder** or **Developer** registered with NHBC is the vendor or lessor of a sheltered housing scheme. It does not apply where the registered **Builder** is only employed as a contractor by the vendor or lessor.

1. You must ensure that every potential **First Purchaser** of a **Sheltered Dwelling** built or sold by you is provided with a Purchaser's Information Pack which contains the information specified in the **NHBC Sheltered Housing Code**. This must be provided when the Purchaser reserves the **Dwelling** and in good time so that the **First Purchaser** can properly consider the information which it contains before exchanging or entering into contracts to purchase the **Dwelling**.
2. You must ensure that the **Management Organisation** of a **Sheltered Dwelling** built or sold by you enters into a Management Agreement as required by the **NHBC Sheltered Housing Code**.
3. If you sell or transfer a leasehold or freehold interest in a **Sheltered Dwelling** to anyone who is acting in the course of a business you must ensure that he covenants:
 - i that a Purchaser's Information Pack will be provided to the **First Purchaser** as required in (1) above;
 - ii that the **Management Organisation** of the **Sheltered Dwelling** will enter into a Management Agreement as required in (2) above; and
 - iii that these covenants will be obtained on any further such sale or transfer.

Note: Whilst it is accepted as helpful guidance this rule is not mandatory in Northern Ireland and the Isle of Man.



NHBC

Buildmark House, Chiltern Avenue, Amersham, Bucks HP6 5AP

Tel: 0870 241 4302 Fax: 01494 735201 www.nhbc.co.uk CSSupport@nhbc.co.uk

NHBC is authorised and regulated by the Financial Services Authority

HB520 04/05