

SA Housing Trust



Government
of South Australia

Community Housing Property Sale to Tenant Procedure

[Procedure details](#)

Community Housing - Property Sale to Tenant Procedure version 2.1

Confidentiality level: Public

Name of applicable policy: Community Housing Property Transactions Policy

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Date: August 2019

Next review date: August 2021

Comments: This procedure replaces the Property Sales to Tenant Procedure v2. This procedure applies to South Australian Housing Authority staff and to Community Housing Providers (CHPs) operating under the Master Community Housing Agreement.

** A minor amendment at section 3.3

[Approvals and review](#)

Policy Custodian - Wendy Scullen

Date of approval: 9 August 2019

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Community Housing Property Sale to Tenant Procedure

1 Procedure detail

This procedure sets out how the SA Housing Authority (the Authority) will support Community Housing Providers (CHPs) wishing to sell a community housing asset under the Master Agreement to a community housing tenant. The procedure defines the responsibilities of both the CHP and the Authority.

The Authority will not unreasonably withhold consent where CHPs wish to sell a property to a tenant and it is demonstrated that the net proceeds will be reinvested into increasing community housing outcomes.

This procedure is based on and complies with the following document:

- Community Housing Property Transactions Policy

This procedure replaces the following Community Housing Core Operating document:

- Property Sale/s to Tenant Procedure version 2

2 Context and scope

Under the terms of the Master Community Housing Agreement (Master Agreement) and the *Community Housing Providers (National Law) (South Australia) Act 2013*, CHPs may transact on property (including sell), subject to SAHT's consent. The core operating [Property Transactions Policy](#) outlines the elements that the Authority will consider when determining whether to give consent or otherwise. This procedure further articulates the steps to be taken by CHPs and the Authority.

As per the scope outlined in the Property Transaction Policy this procedure does not apply to properties leased to CHPs, which should be transferred back to SAHT for the Authority to manage the sale under the Real Property Transaction Policy.

This procedure specifically relates to the sale of a property to a tenant. There are other procedures and guidelines that sit under the Property Transactions Policy that deal with property disposals (sales on the open market and transfers to other CHPs), mergers, redevelopment projects (Community Housing Asset Renewal Program (CHARP)), and mortgaging of properties. While this procedure primarily addresses standard sale arrangements, proposals initiated by a CHP to sell to a tenant under a shared equity arrangement would be considered in a similar manner.

3 Procedure Steps

3.1 Community housing provider considers selling property to tenant

Sales to tenants may occur as a result of a request from a tenant or a pro-active program by the CHP. Where a request is initiated by a tenant, the CHP will consider the applications in

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line with their own sale to tenant policies, procedures and asset plans. Following due consideration, the CHP is not obliged to sell the property. The CHP may consider matters such as redevelopment potential of the site, fit with the CHP's Asset Management Plan, the tenant's capacity to sustain a home loan and/or proof of borrowing capacity by a lending institution, any tenant debt or damage, and tenant improvements made to the property.

Note: Where the tenant is an Authority staff member and the property is available for sale, approval must also be sought from the Chief Executive, the Authority for the staff member to purchase the property.

The CHP will also determine an appropriate sale price. The sale price will take into account the current market value (including development potential of the site), the financial interest held by SAHT, tenant improvements made with the CHP's permission, and any tenant shared equity.

The CHP will also consider how Total Sale Proceeds (see section 4) are proposed to be applied, so as to satisfy the requirements of the Authority, and contribute to the objectives of the CHP's Asset Management Plan.

3.2 CHP seeks consent from the Authority for sale to tenant

If the CHP determines to sell a property to a tenant, the CHP will notify and seek consent from SAHT in writing. The request can be made to SAHT using the [Property Sale Request Form](#) or other format that provides the necessary information to be considered by the Authority.

3.3 The Authority considers request

In addition to the consent considerations described in section 4.1 and 4.2 of the Property Transaction Policy, in assessing the request, the Authority will consider:

- Whether the sale of the property would be detrimental to potential urban redevelopment opportunities to be undertaken by either the Authority or a CHP.
- Whether sale of the property and the proposal for its replacement is consistent with the CHP's Asset Management Plan, and with broader social housing demand and supply (i.e. property type, location, tenant demographic, social mix).
- Any risk associated with proceeding, such as the CHP's capacity to deliver a replacement property in a timely manner, or any potential for negative impact on the SAHT financial interest.
- The reasonableness of the sale price proposed, essentially ensuring that the SAHT's financial interest is recovered, and that the asset is leveraged to its fullest extent for the purposes of facilitating additional community housing.
- Any other relevant matters such as a proposal to enter into a shared equity arrangement between the CHP and the tenant.

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The Authority's approval will be provided in accordance with the SA Housing Authority Instrument of Financial Delegations relating to SAHT operations. Approval will be conditional upon the sale price of the property being greater than 90% of the market valuation as determined by an independent market valuation.

If consent for the sale is to be granted, the Authority will provide in principle agreement to the CHP as soon as practicable. The consent will normally be subject to certain conditions being met, particularly in relation to appropriate use of the [Total Sale Proceeds](#). A Deed of Consent will be entered into for initial approval where proceeds will be used towards a project that has not yet been identified.

Provided the necessary information is provided by the CHP, and all aspects of the proposal are acceptable, the Authority will forward within 30 days a Project Agreement (or other agreed form of contract documentation) to the CHP for execution. Execution of the contract documentation by SAHT will serve as formal consent by SAHT, and acceptance by the CHP of the conditions imposed.

3.4 Project Agreement and Deed of Statutory Charge

Where consent is granted, the CHP and SAHT will enter into a Project Agreement (or other agreed form of contract documentation) to ensure:

- SAHT's financial interest in the property being sold is secured against a replacement property, alternate project property, or part thereof. Where there is not a specified property identified for the proceeds of sale, a bank guarantee to secure the government interest will normally be required. The Project Agreement will identify a timeframe for how long the proceeds can be held, before they are reinvested into purchase of another property (or another project);
- The [Total Proceeds of Sale](#) are reinvested into agreed community housing projects (as defined under the Act and to be documented as part of the Project Agreement) within a set timeframe;
- The Portfolio Profile distribution according to Schedule 2 of the CHP's Master Community Housing Agreement remains unchanged;
- Fixed Payment obligations are re-assigned to agreed alternate project property with a start date for this to occur. Any changes to this will need to be negotiated with the Business Relations Specialist (BRS);
- All other relevant matters are documented, such as insurance and anticipated settlement date.

A Deed of Statutory Charge will also be developed to protect SAHT's financial interest.

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The Project Agreement and Deed of Statutory Charge will vary for each project, depending on the circumstances, which can broadly be categorised into three different scenarios as outlined in the following table.

Scenario 1: An alternate property has been identified, can be purchased immediately, and is valued greater than the property to be sold. In which case:

The Project Agreement will specify the purchase of that property, within a specific time period, and the financial interest to be held by SAHT.

A Deed of Statutory Charge will be drafted concurrently and applied at settlement of the new property.

Scenario 2: An alternate property is not yet identified, but will be purchased. In which case:

The Project Agreement will specify the purchase of a property of a specific type (e.g. value, construction type, number of bedrooms), within a specific geographic region, within a specific time period, and the financial interest to be held by SAHT.

A Deed of Statutory Charge will be drafted once the new property details are known.

A bank guarantee or other arrangements will normally be required to protect SAHT interest until it can be secured against the new property.

Scenario 3: The proceeds of sale will be used towards an agreed development project (this option is likely to only be available to Tier 1 and Tier 2 registered providers with demonstrated development experience). In which case:

A Deed of Consent will be drafted detailing the Authority's initial consent for CHP to retain proceeds of sale where a proposed project development has not yet been identified.

The Project Agreement will outline the details of the project development (e.g. concept plan, key milestones, expected completion date), and the type of property (e.g. value, construction type, number of bedrooms), and the financial interest to be held by SAHT.

A Deed of Statutory Charge will be drafted once the new property can be uniquely identified.

A bank guarantee or other arrangements will normally be required to protect the SAHT interest until it can be secured against the new property.

Note: If the development project involves assets in which SAHT has an interest, then consent must be sought for the development project, and the CHARP Guidelines apply instead of this property sale to tenant procedure.

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3.5 Sale Process

The Community Housing Provider is responsible for managing the property sale, including funding all costs associated with sales, valuation and conveyancing on behalf of the CHP as the seller. It is reasonable to expect the tenant as the purchaser to pay for their own conveyancer to represent their interests, as they would in a private sale.

Valuation

A valuation is required to assist in determining the SAHT's financial interest to be maintained, to satisfy all stakeholders that a reasonable sale price has been set, and to satisfy the requirements of the Authority's Delegations of Authority.

The valuation must be obtained from a verified practicing Valuer. Valuations should be current and not exceed more than 120 days at the time of signing the contract of sale. Tenant improvements are considered within this process and if approved and to a standard consistent with the Community Housing Maintenance Accommodation Standards, their value may be deducted from the market value of the property.

The Authority reserves the right to undertake its own independent market valuation where the sale price of a property is estimated to fall below the 90% of current Valuer General value.

Contract for sale

It is the CHP's responsibility to enter into a suitable Contract for Sale with the purchaser, such as the Real Estate Institute of South Australia approved Contract for sale, but must investigate and consider the points below, and either include in the contract or address prior to the signing of the contract:

- Asbestos within the property
- Boundary check
- Building inspection
- Trees
- Fencing
- White Ants
- Landfill
- Firewalls
- Party walls and services

Additional information can be located in the Consumer and Business Services [Buyers information guide](#).

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Conveyancing

A conveyancer is required to prepare the documents to transfer legal ownership of the property to the purchaser. The responsibility for managing and all costs associated with the conveyancing process for the sale of a property to a tenant rests with the CHP.

The Business Relations Specialist will notify the Authority's Conveyancing team which will complete and submit an application to cancel a Statutory Charge to the Lands Titles Office. There are no fees payable for this process by either party.

3.6 Fixed Payments

The CHP is responsible for notifying its Business Relations Specialist of the settlement date to enable suspension of fixed payments for the property and the adjustment of the CHP's Quarterly Data Return.

This procedure largely contemplates situations where the sold property is replaced with a property of similar value, and that SAHT's interest will continue to be close to 100% of the value of the replacement property, thus continuing to demonstrate the characteristics of a SACHA Funded Asset (e.g. nearly 100% SAHT interest, general tenancy outcomes, fixed payments apply). Where substantial funds are contributed by the CHP, and SAHT's interest is correspondingly significantly less, the Authority may consider adjusting the Fixed Payment Amount e.g. proportionately discounting that property based on respective inputs and then redistributed across the portfolio as is done in mergers.

4 Definitions

"Total Sale Proceeds" – means the total of the sales proceeds from the sale of the Project Property after the amount of:

1. any Financial Accommodation for which the Property has been used as security and which ranks in priority to SAHT pursuant to a deed of priority entered into between SAHT, the Community Housing Provider and the Financier; and
2. the incidental Sales costs (being the costs of and incidental to both the preparation and execution of the sales agreement and the brokerage or conveyancing of the Project Property),

have been deducted.

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5 Related information

5.1 Controlling documents

This policy is based on and complies with:

- The Community Housing Providers (National Law) (South Australia) Act 2013
- The Master Community Housing Agreement
- Community Housing - Property Transaction Policy

Approvals will be obtained in accordance with:

- The Authority Instrument of Financial Delegations relating to SAHT operations

5.2 Other documents and resources

The supporting documents listed below are available at www.sa.gov.au/communityhousing:

- Community Housing Maintenance Accommodation Standards
- Property Sale Request Form

5.3 Date this Procedure applies from

August 2019

5.4 Version number

2.1

5.5 Disclaimer

This Procedure can be changed, withdrawn or replaced at any time.