



Community housing property sale to tenant procedure

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 Community Housing Agreement (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 the core operating [Community Housing Property Transactions 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.

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 public housing [Real Property Transaction Policy](#).

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 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 determine the sale price in accordance with the [Community Housing Property Transaction policy](#).

The CHP will also consider how [Total Sale Proceeds](#) 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.

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 the Authority in writing. The request can be made to the Authority using [the Community Housing Property Sale Request Form](#) the necessary information to be considered by the Authority.

The Authority considers request

In addition to the consent considerations described 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.

The Authority's approval will be provided in accordance with the SA Housing Authority Instrument of Financial Delegations relating to SAHT operations.

If consent for the sale is to be granted, the Authority will provide a project agreement or deed of consent 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 to the Authority Delegate, 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.

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 or securitising against another unencumbered property to secure the government interest will 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 Sale Proceeds](#) 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 Housing Partnerships team;
- 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.

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.

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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.

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.

Determining SAHT financial interest

Where a SACHA Funded Asset or state funded asset is to be sold the minimum price for sale must in accordance with the [Community Housing Property Transaction policy](#).

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

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- Fencing
- White Ants
- Landfill
- Firewalls
- Party walls and services

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

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 rest with the CHP.

The Housing Partnerships team 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.

Fixed Payments

The CHP is responsible for notifying the Housing Partnerships team 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).

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.

Related documents

- *The Community Housing Providers (National Law) (South Australia) Act 2013*
- The Master Community Housing Agreement
- [Community Housing Property Transaction Policy](#)
- The Authority Instrument of Financial Delegations relating to SAHT operations
- [Community Housing Maintenance Accommodation Standards](#)
- [Community Housing Property Sale Request Form](#)