

SA Housing Trust

Community Housing

Property Disposal Procedure



Guideline or Procedure details

Community Housing Property Disposal Procedure version 1

Confidentiality level: Public

Name of applicable policy: Community Housing Property Transaction Policy

Policy Author: Monique Pringle

Date: August 2018

Next review date: August 2021

Comments: This procedure replaces the Community Housing Property Acquisition and Disposal Procedure. This procedure applies to SA Housing Authority staff and to Community Housing Providers (CHPs) operating under the Master Community Housing Agreement.

Approvals and review

Policy Custodian – Joe Noone

Date of approval: 6 September 2018

Policy Content Architect –

Date of review: Date reviewed.

Delegate ^{for} Michael Buchan

Endorsed:

Ballett
A/CE

Date of endorsement: 4/10/18

SA Housing Trust



Community Housing Property Disposal Procedure

Contents

1	Procedure details.....	1
2	Context and scope.....	1
3	Community Housing property disposal opportunities.....	1
4	Property Sale on the open market.....	2
	4.1 CHP seeks consent from SAHT	2
	4.2 SAHT considers request	2
	4.3 Contract documentation	3
	4.3 Sale Process and Conveyancing	5
5	Property sale to support a development project.....	6
6	Transfer of properties from one CHP to another CHP (does not include merger).....	7
7	Property return from CHP to SAHT	8
8	Community Housing Provider to SAHT for re-release to the community housing sector	9
9	Conveyancing Summary.....	9
10	Definitions.....	10
11	Related Information	10
	11.1 Controlling documents	10
	11.2 Other documents and resources	11
	11.3 Date this procedure applies from	11
	11.4 Version number	11

SA Housing Trust

Community Housing

Property Disposal Procedure

1 Procedure details

This Procedure outlines the responsibilities of the SA Housing Authority (the Authority) acting on behalf of the South Australian Housing Trust (SAHT) and Community Housing Providers (CHPs) wishing to transfer, sell and or dispose of properties which are operating under the Master Community Housing Agreement (Master Agreement).

The Authority will not unreasonably withhold consent to CHPs wishing to undertake a transaction where it is demonstrated that the Total Sale Proceeds (see section 10) will be reinvested into increasing community housing outcomes, there is no reduction in the number of housing outcomes and that significant detriment will not be suffered by tenants of the property.

This procedure replaces the following Community Housing Core Operating document:

- Property Acquisition and Disposal Procedure

This procedure is related to the following Community Housing Core Operating Document:

- Community Housing Property Transactions Policy

2 Context and scope

Under the terms of the Master Agreement and the CHP Act, CHPs may dispose of individual property (vacant or tenanted), subject to SAHT's consent.

The 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.

This procedure specifically relates to disposal and sale of properties as outlined in Section 3. There are other procedures and guidelines that also sit under the Property Transactions Policy that deal with sales to tenants, mergers, redevelopment projects (e.g. Community Housing Asset Renewal Program (CHARP)), and mortgaging of properties.

This procedure does not apply to properties under leased programs.

3 Community Housing property disposal opportunities

The following disposal/sale options are available to CHPs, each of which are discussed below:

- Property sale on the open market (refer to section 4)
- Property disposal to support a development project (refer to section 5)
- Transfer of properties from one CHP to another CHP (refer to section 6)
- Property return from CHP to SAHT (refer to section 7)

Community Housing Property Disposal Procedure

- Community Housing Provider to SAHT for re-release to the community housing sector (Section 8)

Sale of a property to a tenant is discussed in the Community Housing Sale to Tenant Procedure document.

4 Property Sale on the open market

A CHP's Asset Management Plan may recommend selling properties/land the subject of the Master Agreement on the open market. Prior to commencing the sale process, CHPs must seek the written consent of the Authority.

The CHP will also consider how the proceeds of sale are proposed to be applied, to satisfy the requirements of the Authority, and contribute to the objectives of the CHP's Asset Management Plan.

4.1 CHP seeks consent from SAHT

A request to sell property can be made to the Authority using the Property Sale Request Form. The information collected in that form will be used to complete the necessary documentation.

4.2 The Authority considers request

The Authority will consider whether to grant consent based on the matters outlined in the Property Transactions Policy.

If consent for the sale is anticipated (subject to satisfactory documentation), the Authority will provide in principle notification as soon as practicable. Provided the necessary information is provided by the CHP, and all aspects of the proposal are acceptable to the Authority, the Authority will forward within 30 days a Project Agreement or Deed of Consent to formalise the consent and articulate any conditions, particularly in relation to appropriate use of the proceeds of sale.

A Project Agreement is preferred, but a Deed of Consent will be entered into where proceeds will be used towards a project that has not yet been identified. Execution of the contract documentation by SAHT will serve as formal consent by SAHT, and acceptance by the CHP of the conditions imposed.

Direct sale (i.e. not on the open market) is unlikely to be consented to unless it can be otherwise demonstrated that the sale price will be maximised. Sales to tenants and transfers to other CHPs are exceptions (see Community Housing Sale to Tenant Procedure and Section 6 below).

Community Housing Property Disposal Procedure

4.3 Contract documentation

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 the purchase of another property (or another project – See section 5);
- 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 (timeframe determine on a case by case basis);
- The Portfolio Profile distribution according to Schedule 2 of the CHP's Master Agreement remains unchanged on completion of the project;
- 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 level and type of 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 in the following table.

Community Housing Property Disposal Procedure

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 be required to protect SAHT's 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 SAHT's initial consent for the CHP to retain the 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 the SAHT.
- A Deed of Statutory Charge will be drafted once the new property can be uniquely identified.
- A bank guarantee or other arrangements will be required to protect SAHT's interest until it can be secured against the new property.

Note: If the development project involves assets in which SAHT has an interest, then SAHT consent must be sought for the development project, and the CHARP Guidelines will apply instead of (or maybe in addition to¹) this disposal procedure.

¹ Two options exist and circumstances will dictate the most appropriate course:

- the development (including the disposal of assets) is considered under CHARP guidelines; or
- the asset disposal is considered separate from and not contingent upon the CHARP redevelopment project. In this case, the CHP would require a backup plan to reinvest the proceeds of sale in a timely and agreed manner if the CHARP project is not approved.

SA Housing Trust

Community Housing

Property Disposal Procedure



4.4 Sale process and conveyancing

The Community Housing Provider is responsible for managing the property sale, including funding all costs associated with sales, conveyancing and valuation.

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 and a copy forwarded to the Authority. Valuations should be current and not exceed more than 120 days at the time of signing the contract of sale.

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](#).

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 rests with the CHP.

Community Housing Property Disposal Procedure

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.

5 Property sale to support a development project

CHPs may seek consent to sell an asset in which SAHT has an interest, to support a development project. Where that development project involves redevelopment of assets in which SAHT has an interest under the Master Agreement, the CHARP Guidelines will apply instead of this procedure.²

Where the development is unrelated to assets under the Master Agreement, consent to sell a property to support a development project will broadly follow the steps outlined in Section 4 above. However, additional information will be sought in relation to the development project, sufficient to ascertain and manage any risk to SAHT or the Authority, particularly in relation to its financial interest in the asset.

Information requirements are outlined in the Property Sale Request Form. The information provided will be used at the consent consideration stage and will be incorporated into the Project Agreement. The Authority is particularly interested in:

- How the proceeds from the sale will be applied
- The type and location of asset to which SAHT's financial interest is to be applied, and particularly how it correlates with the Authority's strategic asset plan.
- The date when the SAHT's interest will be protected by Deed of Statutory Charge on the new property, and how the SAHT's interest will be protected in the interim (e.g. bank guarantee).
- Risk associated with the proposal and therefore the SAHT's financial interest e.g. in relation to:
 - Provider capacity (to develop and deliver)
 - Provider financial viability and financial risk exposure
 - The funding model.

Prior to submission, CHPs are encouraged to discuss their proposals with the Authority's staff including their Business Relations Specialist and the Senior Financial Analyst.

Based on the information provided, the Authority will advise the CHP of the outcome of the request within 30 days.

² The CHARP Guidelines currently only apply to SACHA Funded Assets (formerly debentured properties) under the Master Agreement. It is proposed that the CHARP Guidelines be expanded to include other assets under the Master Agreement.

SA Housing Trust



Government
of South Australia

Community Housing Property Disposal Procedure

If approved, the conditions of the approval will be identified initially in the Deed of Consent (if there is no specific project identified), and then subsequently in the Project Agreement and will include target dates for both parties. At the completion of the project, the necessary contract variations will be made to the CHP's Master Agreement.

A Deed of Statutory Charge will also be executed and lodged over the replacement property (refer section 4.3 above).

CHPs will normally be responsible for all aspects of sale and conveyancing (as for Section 4.4 above), with the Authority supporting as required to remove the original Statutory Charge and ensure the lodgement of the new statutory charge.

6 Transfer of properties from one CHP to another CHP (does not include merger)

Requests to transfer properties from one CHP to another must be made in writing (e.g. letter or email) to the relevant Business Relations Specialist and include:

- reasons for the transfer (e.g. wind-up of operations in a particular region)
- addresses of the transferring properties
- agreed tenant/property exemptions/special conditions/maintenance provision.

The Authority, will consider the matters outlined in the Property Transaction Policy in determining whether to provide consent and will provide a written outcome within 30 days.

If approved, the Authority will prepare a Deed of Consent to be executed by all three parties (the relinquishing CHP, the receiving CHP, and SAHT). The Authority will also arrange the required variations to the Master Agreement schedules for both CHPs (normally via a Project Agreement), and the new Deed of Statutory Charge.

The CHPs are responsible for developing any documentation between themselves that might describe specific obligations and responsibilities outside of the Master Agreement (e.g. maintenance funds to transfer or payments to be made, or obligations to tenants to be maintained). If there is payment to be made by the receiving CHP to the relinquishing CHP, the Project Agreement with the relinquishing CHP may stipulate conditions on the use of the proceeds of sale, consistent with the Deed of Statutory Charge and the Master Agreement.

Normally, where CHPs have negotiated the transfer to achieve their own complementary objectives, the Authority will not manage nor bear costs associated with the conveyancing, but will support as necessary for the removal of the statutory charge to facilitate transfer, and immediate replacement of the statutory charge once transferred. (Where the Authority has initiated the transfer, for example via an Expression of Interest process, the Authority will manage the conveyancing. This is explained in detail in the Community Housing Expression of Interest Guidelines and in Section 8 below).

SA Housing Trust



Government
of South Australia

Community Housing Property Disposal Procedure

The relinquishing CHP is responsible for ensuring properties are at a condition consistent with the Community Housing Maintenance Accommodation Standard and any other property related costs, unless otherwise negotiated between the CHPs. The Authority takes no responsibility for the standard of properties.

Refer to the Community Housing Easy Merger Guide for information on merger transactions.

7 Property return from CHP to SAHT

Individual property returns to SAHT by a CHP are not encouraged and CHPs are expected to develop strategies to manage properties that no longer meet their asset and development needs. However, if a CHP wishes to return a property, it must advise the Authority in writing. The advice must include:

- Their exploration of alternative options
- The reasons for returning the property
- The issues which lead to this decision and
- Anticipated vacancy date.

The Authority will determine the future intent for the property and will advise the CHP of the outcome to the request within 30 days. (This may include for example redistribution to another CHP (see section 8 below), sale on the open market, demolition and redevelopment, demolition and sale of vacant land, or re-use by the Authority for public housing.)

Returning properties must be brought by the CHP to a standard agreed between the Authority and the CHP. Normally, unless the property is to be demolished, the property should meet the Community Housing Maintenance Accommodation Standards. Where the property is to be sold, and it is likely the purchaser will demolish, a lower standard may be negotiated, provided the property is safe and poses no risks to visitors while it is on the market.

Unless otherwise agreed, the house, grounds, fixtures, fittings and any other standard items provided with the property must be in good repair and must not present a health hazard.

The Authority will arrange the required variations to the Master Agreement schedules for the CHP (normally via a Project Agreement). There may be conditions imposed by the Authority (e.g. transfer of funds for maintenance liability), particularly if the CHP has contributed to the devaluing of the property through negligent asset management approaches, or if the property is to be re-released to another CHP.

The Authority will normally undertake the conveyancing for a property return.

The CHP will be fully responsible for the property, including payment of Fixed Payments, until the date of settlement. Final electricity and gas readings must be arranged and paid for by the CHP prior to the property being returned to SAHT. Community housing providers will not be reimbursed any rates and taxes paid by the CHP for the year ahead.

SA Housing Trust

Community Housing

Property Disposal Procedure



8 Community Housing Provider to SAHT for re-release to the community housing sector

When a CHP makes a strategic decision to return a community housing asset to SAHT, and has sought consent from SAHT in line with section 7 above, the Authority may decide to release the property back to the community housing sector via a tender process. This process is managed via the Community Housing Expression of Interest Guidelines.

Properties must be at a standard commensurate with the Community Housing Maintenance Accommodation Standards.

In addition, the relinquishing CHP must make available to the Authority and prospective CHPs, asset management planning documents which forecast and budget for maintenance of all returning properties. The maintenance provision, or other amount agreed with the Authority, must accompany the properties being transferred to the new CHP.

Normally the Authority will manage the Expression of Interest (EOI) process while the properties continue to be managed by the relinquishing CHP.

Once the new CHP has been selected, the Authority will prepare all necessary contract documentation including:

- Variations (normally via Project Agreements) to the Master Agreements for the receiving and relinquishing CHPs
- Deed of Statutory Charge with the receiving CHP
- Deed of Consent if appropriate (not normally used where the Authority has managed the EOI process).

The Authority will manage the conveyancing to transfer the properties to the new CHP including:

- The preparation of the Statutory Charge
- The preparation of Cancellation of Charge
- Rates and Taxes search
- Preparation of Form 1s

CHPs are responsible for completing at their cost the Verification of Identity process to enable the Authority to act on their behalf in relation to conveyancing.

9 Conveyancing Summary

Unless otherwise negotiated with the Authority, CHPs will manage all aspects of and bear the costs of conveyancing in the case of:

- Properties sold on the open market

SA Housing Trust



Government
of South Australia

Community Housing Property Disposal Procedure

- Properties sold to tenants – see Sale to Tenant Procedure
- Properties transferred directly to other CHPs.

The Business Relations Specialist will notify the Authority's Conveyancing team of the pending transaction who 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.

The Authority will bear the costs and undertake all aspects of conveyancing in the case of:

- Properties being returned to the Authority,
- Properties to be released to other CHPs via an EOI process

Verification of Identity is required for the Authority to act on behalf of a CHP. The costs associated with verifying identities of Authorised Officers of CHPs is the responsibility of CHPs (approximately \$50 per person as at 2018).

10 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.

11 Related Information

11.1 Controlling documents

This procedure 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's Instrument of Financial Delegations relating to SAHT operations

SA Housing Trust

Community Housing

Property Disposal Procedure

11.2 Other documents and resources

The supporting documents listed below are available on SharePoint:

- [Community Housing Merger Easy Guide](#)
- [Community Housing Asset Renewal Program \(CHARP\) Guidelines](#)
- [Community Housing Maintenance Accommodation Standards](#)
- Community Housing Expression of Interest Guideline
- Deed of Novation template
- Deed of Consent template
- Deed of Statutory Charge template
- Project Agreement templates
- Property Sale Request form

11.3 Date this procedure applies from

TBA

11.4 Version number

1

11.5 Disclaimer

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

