



Community housing property disposal procedure

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](#) 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 is related to the core operating [Community Housing Property Transactions Policy](#).

Detail

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 Community Housing Property Transaction 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 first section below. There are other procedures and guidelines that also sit under the Property Transactions Policy that deal with sales to tenants, mergers, redevelopment projects (such as the Community Housing Asset Renewal Program (CHARP)), and mortgaging of properties.

This procedure does not apply to properties under leased programs.

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](#)
- [Property disposal to support a development project](#)
- [Transfer of properties from one CHP to another CHP](#)
- [Property returns from CHP to SAHT](#)
- [Community Housing Provider to SAHT for re-release to the community housing sector](#)

Sale of a property to a tenant is discussed in the [Community Housing Sale to Tenant Procedure](#).

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.

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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.

CHP seeks consent from the Authority

A request to sell property can be made to the Authority using the [Community Housing Property Sale Request Form](#). The information collected in that form will be used to complete the necessary documentation.

The Authority considers request

The Authority will consider whether to grant consent based on the matters outlined in the [Community housing Property Transactions Policy](#).

If consent for the sale is anticipated (subject to satisfactory documentation), the Authority will provide approval 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 may be entered into where proceeds will be used towards a project that has not yet been identified. The SAHT will determine the appropriate form of agreement. 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 [Transfer from CHP to CHP](#)).

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 or security against alternative unencumbered property will 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 [Property sale to support a development project](#));
- the [Total Sale Proceeds](#) as defined by the Community Housing Property Transaction Policy are reinvested into agreed community housing projects within a set timeframe (timeframe determined 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.

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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 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 this disposal procedure¹.

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.

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:

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.

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- 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.

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.

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 [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 [Community Housing 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.

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.

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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 [Contract documentation](#)).

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

Transfer of property 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 Housing Partnerships inbox (housingpartnerships@sa.gov.au) 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). The interest held by the Authority will not change the value of the assets transferred must be an arm's length transfer and in accordance with the valuation principles of the Community Housing Property Transaction Policy.

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).

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 Merger Easy Guide](#) for information on merger transactions.

Property return from CHP to the Authority

Individual property returns to the Authority 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.

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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
- an 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 ([Community housing provider to the Authority for re-release to the community housing sector](#)), 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 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.

Community housing provider to the Authority for re-release to the community housing sector

When a CHP makes a strategic decision to return a community housing asset to the Authority and has sought consent from SAHT in line with [Property return from CHP to the Authority](#), the Authority may decide to release the property back to the community housing sector via a tender process.

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:

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- 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.

Conveyancing summary

CHPs will work at all times collaboratively to ensure tenants are not disadvantaged.

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

The Housing Partnerships team 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.

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 Information

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

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- Community Housing Property Transaction Policy
- Delegations and Authorisations Schedule

Supporting documents

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