

SOCIAL HOUSING & CHARITIES BULLETIN

CHARITIES AND SOCIAL HOUSING

Rollits has a well-earned reputation for acting for many leading Social Housing organisations. The addition of Ros Harwood's nationally recognised expertise as a charity specialist, and head of the firm's Charities Group, adds a much needed dimension to the advice that the Social Housing Group can give. Although the two groups have always worked closely together, Ros' expertise in governance and constitutional matters is being recognised within the RSL world.

Clive Gardner, Head of Social Housing, says "with the addition of Ros Harwood's expertise we are able to offer a much enhanced service to RSLs in governance and constitutional matters." Says Ros Harwood "there is an enormous overlap between Social Housing and Charities and my expertise in the constitutional and governance aspects of Charities is applicable to both sectors."

The group will of course continue to draw upon the firm's existing complementary expertise including trusts, education, employment, intellectual property, data protection, pensions, commercial finance, corporate, commercial and litigation.

If you are a social housing provider or charity and you need expert advice in any of these areas please contact either Clive Gardner on 01904 688502, email clive.gardner@rollits.com or Ros Harwood on 01904 688503, email ros.harwood@rollits.com.

STAMP DUTY LAND TAX RSL EXEMPTION

The Finance Act 2003 which came into effect from the 1 December 2003 has undertaken the most comprehensive review of stamp duty in the last 300 years. As of the 1 December the tax will be assessed on the transaction itself and not simply, as before, on the Deed giving effect to the transaction. The Act is immensely complicated and it will no doubt be sometime before "the dust settles" and people begin to understand the functioning of the new regime. There are a number of areas of interest to RSLs. First, there is the provision which makes the tax payable on the "Effective Date". This date is the date on which the transaction is substantially performed or, if earlier, the actual completion date. This should prevent the habit of allowing large transactions to "rest" on contract. The tax is due 30 days from the "Effective Date". Secondly, certain acquisitions by RSLs are exempt from charge where they involve Public Subsidy which includes lottery grants, social housing grants under section 18 of the Housing Act 1996 and under section 126 of the Housing Grants, Construction and Regeneration Act 1996.

It is to be noted that there is no exemption given for properties being transferred pursuant to planning agreements by builders to RSLs where no relevant grant is involved. RSLs would be well advised to liaise closely with their local planning authorities in relation to the negotiation of future planning agreements to ensure that the significant burden imposed by Stamp Duty Land Tax is borne or at least shared by the developer by ensuring that Stamp Duty Land Tax is taken account of in section 106 agreements.

The Stamp Duty Land Tax return needs to be completed and signed by the person liable to the duty. It cannot be signed by their solicitor on their behalf. In some cases the client will need to take independent valuation advice in order to complete the form properly and ensure that the correct amount of tax is paid if interest and/or penalties are to be avoided for late payment or payment of the incorrect amount of tax.

LANDLORDS RECEIVE THE YELLOW CARD

The Commonhold and Leasehold Reform Act 2002 provides a right for leaseholders to force the transfer of the landlord's management functions to a special company set up by them - the right to manage company. The right was introduced, not just as a means of wresting control from bad landlords, but also to empower leaseholders, who generally hold the majority of value in the property, to take responsibility for the management of their block. The right to manage is available to leaseholders of flats, not houses. The right is exercisable irrespective of fault and the right may be applied against a landlord who has managed in a faultless manner.

However the right may only be operated if the building is self-contained. It must include at least two flats and at least two thirds of the flats must be qualifying in other words they must be let on leases for an original term of more than 21 years. The building may be part commercial but the non residential part must not exceed 25% of the total floor area.

The procedures and qualifications for exercising the right are complicated but clearly this right could have a significant effect upon Social Housing providers. So if you are planning or managing flats where you have outright sales or disposals where the owners could become outright owners you need to consider this issue.

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THE GOVERNMENT'S COMMITMENT TO MAKE SOCIAL HOUSING A CHARITABLE PURPOSE

It seems that the government has finally realised that Social Housing Groups are in fact charitable mainly because the sole reason they are set up is for the public benefit. For many years RSLs have known that they have been established for the public benefit given that even though they are run as businesses, they do not trade in any way for profit, with all surplus money being ploughed back into the organisation to maintain existing homes and to help finance new ones. However, until now gaining charitable status has not always been easy and it has led to Housing Associations being involved in large and often complex group structures as some of the work carried out was not viewed by the Charity Commission as necessarily being charitable.

It should be borne in mind that "the Government believes unequivocally that a flourishing, independent not for profit sector is essential for the health of our democracy" which is what the Government's Strategic Unit had in mind when it was carrying out a review of the law and regulation of charities and other not for profit organisations, which subsequently led to the government making recommendations in relation to the provision of affordable housing becoming a charitable purpose. One of the Strategic Unit's main points following its Review, was that charities should be required to show that they are established for the public benefit. The Government accepted this point and, as RSLs are set up for the public benefit, it is hard to imagine that they will have difficulty satisfying this criteria and subsequently gaining charitable status.

We should note however, that this will not only affect RSLs who are about to seek charitable status, it will also affect many Housing Associations which are already charitable, because as previously mentioned not every activity which is viewed as social housing for regulatory purposes is necessarily charitable. This will hopefully lead to increased flexibility for existing charitable Housing Associations and the need to have both types of RSL (charitable and non-charitable) within a complex group structure will, we hope disappear, along with the concerns of the Charity Commission about charitable RSLs having independence from other members of the group. It should also dispose of the need to have a non-charitable group parent, which a charitable RSL often struggles to demonstrate total independence from.

It also seems likely that the need to choose between charitable and non-charitable status for an RSL will become a much simpler choice, and eventually all RSLs will become charitable and be in a position to benefit from the numerous advantages charities currently enjoy.

Actually obtaining charitable status has been made as simple as possible to encourage RSLs to become charities. This is due to the Charity Commission and the Housing Corporation streamlining the process leading up to registration of RSLs seeking charitable status. The procedure involved is as follows: the Housing Corporation will carry out the bulk of pre-registration scrutiny and then confirm to the Charity Commission that the RSL meets certain criteria. Confirmation from the Housing Corporation that respective charitable RSLs meet its criteria will help facilitate their registration as charities in accordance with the Commission's criteria for determining charitable status.

In conclusion, the provision of affordable housing being recognised as a charitable purpose is a great benefit to all Housing Associations seeking charitable status and also those Housing Associations who are already charitable, who currently lack the flexibility which other charities benefit from because currently not every activity viewed as social housing for regulatory purposes is necessarily charitable.



UNFAIR TERMS IN CONTRACTS - WHAT IS AN UNFAIR TERM?

The High Court has decided, in line with the Office of Fair Trading's views, that the Unfair Terms in Consumer Contract Regulations (UTCCRs) apply to tenancy agreements and other contracts relating to a transfer of an interest in land.

The OFT was acting as an interested party in a case about the London Borough of Newham's Housing Policy for homeless persons. The Council claimed that the UTCCRs did not apply to land, including the terms of its agreement; that it was not a supplier for the purposes of the regulations, as it was fulfilling a statutory duty; and that the tenant was not a consumer, as she was seeking a benefit from the State.

Mr Justice Newman ruled that the regulations do apply to contracts for the transfer of an interest in land (including tenancy agreements), that the Council can be considered as a supplier and the tenant a consumer. The Judge also accepted the OFT's argument that exempting contracts relating to land would significantly reduce the protection for consumers.

Clearly there are wide implications here for RSLs particularly in relation to the plain language requirement. According to the UTCCRs, a standard term must be expressed in plain and intelligible language. A term is open to challenge if it could put you at a disadvantage because you are not clear about its meaning - even if its meaning could be worked out by a lawyer. If there is a doubt as to what a term means, the most favourable to the consumer will apply.

Clearly there are implications here in respect of all forms of tenancy and lease documents used by RSLs and this case is a timely reminder for such organisations to get to grips with their legal documentation to make it comply with the UTCCRs.



INFORMATION

**If you have any queries on any social housing or charity matters please contact:
Social Housing – Clive Gardner on (01904) 688502
Charity – Ros Harwood on (01904) 688503**

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

**The law is stated as at 23 February 2004
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