

The Effect of the *Housing Regulations 2009 on Your Business

Policy

Shared ownership schemes, such as New Build HomeBuy, play a vital role in helping first-time buyers into home ownership.

Under shared ownership, a buyer acquires an initial share (minimum 25%) in a property and pays rent on the remainder. The RSL retains the freehold (or long lease) and grants the buyer a long lease (or sub-lease). Further shares may be acquired gradually through the process known as "staircasing" and the buyer may eventually own the property outright.

Once the buyer has staircased to 100% shares in the property it is lost to the affordable housing sector. Generally, the Government wants tenants of shared ownership leases to be able to increase their equity stake over time and move to outright ownership when they can afford to do so.

However, in some cases, the loss of shared ownership properties may not be desirable. One example is in rural areas where replacement of a shared ownership property would be difficult due to planning controls or the severely limited supply of land or the small size of the housing market.

In such areas, land may not be brought forward for development unless the RSL can be assured that the affordable housing will remain affordable in perpetuity for the benefit of the community.

Newer shared ownership leases usually include a right of first refusal to enable the RSL to repurchase a property at market value when the buyer who has staircased to 100% shares wishes to sell within a prescribed period. However, funding for buy-back needs to be available at the right time. While the HCA prioritises for grant funding the repurchase of properties funded under its rural programme if the RSL's own funding options are not available, such funding from the HCA cannot be guaranteed.

An alternative option is to restrict the share which a buyer can acquire thereby ensuring that the property remains affordable in perpetuity.

Legislative Background

Before the entry into force of the Housing (Shared Ownership Leases (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009 ("the Regulations") on 7

September 2009, due to an anomaly in the law, if an RSL restricted a buyer's ability to staircase to 100%, it ran the risk, in certain circumstances, of early enfranchisement, i.e. the buyer acquiring the freehold under statutory rights in leasehold legislation before he had paid for 100% shares, resulting in financial loss to the RSL.

The Regulations designate certain rural areas as "protected". These are areas where shared ownership properties would be difficult to replace and, therefore, shared ownership properties need to be retained for future shared owners. The protected areas are the same rural parishes, parts of parishes and unparished areas which are already exempt from the Right to Acquire scheme and the same areas covered under the Rural Exception Site policy.

The Regulations enable an RSL operating in a protected area to impose a restriction in a shared ownership lease on the shares which a buyer can acquire without running the risk of early enfranchisement.

In designating these areas as protected, the Government aims to:

- ensure consistency in the rural housing retention policy;
- give greater assurance to an RSL considering bringing forward land for affordable housing in these areas that the housing will be retained as shared ownership and will therefore remain affordable in perpetuity; and
- simplify delivery of the rural affordable housing programme.

The Implications of the Regulations and the HCA

Although the Regulations only apply to houses, HCA policy is to apply the requirements for retention in the legislation to grant funded shared ownership schemes for both flats and houses developed in protected areas.

Consequently, from 7th September 2009 an RSL developing a scheme in a protected area must include in its shared ownership leases for both houses and flats on such scheme, a provision which either:

- restricts staircasing to 80%, or
- allows staircasing to exceed 80% but requires the buyer to sell his shares back to the RSL at market value when he wishes to sell after having "staircased " to 100%.

The above provisions are regarded by the HCA as "Fundamental

Clauses" and therefore failure to include one or other of the above provisions would render a scheme in a protected area ineligible for grant funding.

Things to Consider

An RSL, in deciding whether to include in a shared ownership lease a provision restricting staircasing to 80% or a provision allowing staircasing beyond 80% but requiring the buyer to sell his shares back to the RSL, needs to bear in mind that:

- Many lenders are reluctant to offer mortgages on schemes where staircasing is restricted and as a result there is a limited choice of mortgage products available for such schemes.
- Where a lease contains buy back provisions the HCA would usually expect the RSL to buy the property back and this will obviously have a cost implication. As stated above, funding from the HCA cannot be guaranteed.

* Housing (Shared Ownership Leases (Exclusion from Leasehold Reform Act 1967) (England) Regulations 2009

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