

BRIEFING

Winckworth Sherwood

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## Consumer Code : Fourth Edition - April 2017

The new edition of the Consumer Code for Homebuilders ("CC") comes into effect on 1st April 2017.

Full details of the changes can be found on the CC's website <http://www.consumercode.co.uk/>.

You might find the "Summary of Changes" in the "download" section useful in terms of identifying the key changes. From a legal perspective we would like to highlight the following for our housebuilder and developer clients:

### 1) Change of Scope

Section 4 has been amended in relation to the Code not applying to investors and in particular, the definition of individual investors has been clarified. The Code Scheme does not apply to individuals buying 'more than one property on the same development for investment purposes'.

This effectively means that the distinction between an investor and an owner occupier is a false one. A seasoned investor, who may own several properties in the area, must be treated as an owner occupier if they are buying one property on the relevant development. If they buy a subsequent property then you can treat them as an investor but this will need to be carefully considered, not least because the same purchaser may find themselves with quite different contracts.

You may want to use a "bulk sale contract" (ie: what we might have previously referred to as an investor contract) if a buyer is buying more than one property.

### 2) Scheme Logo

The Scheme Logo must be displayed in the sales office prominently with sufficient explanation to

accompany this and a means to access the code. The Logo must also appear in your sales brochure

### 3) Provision of the Code Scheme docs to buyers lawyer

'The Code Scheme' documents must be provided to the Home Buyer with the reservation agreement. The Code Scheme must be provided to the Home Buyers' legal representative with the draft Contract of Sale documents. This may be provided either in paper or electronic form in both cases.

This means that you will have to provide all the code documents to your lawyers with the reservation form/memorandum of sale. This should include full details of the code including definitions, introductions, scope and dispute resolution scheme details.

### 4) Event fees

Following complaints about 'event fees' such as deferred management charges and fees on resale or transfer of leases (particularly in the retirement homes sector), which have been the subject of a current Law Commission investigation and report, there is now a requirement that any such 'event fees' are declared at the reservation stage.

You may need to liaise with your lawyers to ensure that the event fee details you provide are accurate. Our view is that this should probably include engrossment fees and notice of transfer/charge fees.

### 5) Reservation Fees

It is no longer sufficient to say that you will deduct reasonable fees. The reservation form should detail a range of the costs which may be

deducted. Be aware that this sum can be challenged and decided by the Independent Dispute Resolution Scheme

### 6) Recommended lawyers

You may offer incentives and/or refer Home Buyers to, for example, a panel of solicitors but you should not restrict their choice of legal representative, financial adviser or mortgage intermediary that they may wish to use.

This reinforces the requirement that buyers are not limited in terms of their appointment of lawyers etc.

### 7) Time Limits

Time limits for exchange must be clearly noted on the reservation form. This is important as you cannot deal with the unit during that period, unless the buyer has withdrawn and the unit is back on the market.

### 8) Snagging

This has been brought into focus due to the number of complaints concerning snagging! This should form part of your contract and the code goes as far as to provide sample wording on this point.

Due to the change in how an "Investor" is classed, overseas sales exhibitions will now need to be code compliant. This presents a number of issues, namely:

- a. Time periods : these must be very clear on the reservation form even if only for a few hours.
- b. Independent Legal Advice : where there is only one panel firm at the exhibition extreme care must be taken not to force buyers to use that firm. This may well mean taking a reservation and not exchanging in the room if the purchaser is not willing to use the panel firm present.

The Consumer Code offers training for developers and their sales staff – this is highly recommended. They do not like the idea of pressurised selling and want developers to ensure that their staff understand the code and what it stands for.

Please do not hesitate to contact us for further guidance or if you could like to arrange some training for your team.

**For further information, please contact:**



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