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Shared Ownership – Change to Pre-Emption Rights

BRIEFING

Introduction

From 30 April 2015 the Homes and Communities Agency (HCA) and the Greater London Authority (GLA) (in respect of properties within London), have removed the requirement for pre-emption rights to remain effective on Shared Ownership properties following final staircasing to 100% ownership. Final staircasing is when the owner of a shared ownership property (who part rents and part owns the property) buys additional shares resulting in them owning 100% of the property.

What are Pre-emption Rights?

Pre-emption is a right, if the property owner decides to sell, for the Registered Provider of a grant funded shared ownership property to be offered the opportunity to buy back the property or nominate a Purchaser to buy the Property at the prevailing market value.

This right exists for 21 years following final staircasing by the owner of the property.

After 30 April 2015

The HCA and the GLA have now varied the fundamental clauses in their leases to remove the pre-emption requirements in respect of properties where final staircasing has occurred.

For all grant funded schemes, Registered Providers must either use the new model leases or the revised fundamental clauses from 30 April 2015. The only exception to this requirement are properties with active reservations from prospective purchasers as at 30 April 2015, where the use of the updated model lease wording is optional and providers may continue to use the wording contained in the previous versions of the model leases (in use from April 2013).

The HCA and GLA also require Registered Providers to allow a variation to existing grant funded properties to remove pre-emption rights on final staircasing at the owner's request (and expense). The HCA and GLA have issued a precedent Deed of Variation for this purpose.

With immediate effect, pre-emption provisions should also now be excluded from transfers of Headleases and Freehold titles which occur on final staircasing.

How does the change affect Housing Associations?

Following consultation, the HCA and GLA found that pre-emption rights were very rarely exercised once final staircasing had occurred and there was little appetite within the sector to buy back properties.

However, Registered Providers will need to be aware of these changes and adjust their internal re-sales procedures accordingly.

Procedures for Registered Providers on re-sales of properties where the share owned is less than 100% are not affected by these changes. Although it should be noted there is nothing to stop shared owners selling on the open market by completing final staircasing simultaneously with the sale of a property.

Conclusion

The removal of Pre-emption rights following final staircasing will be attractive to buyers, owners and mortgage lenders of shared ownership properties. They will no longer be subject to delays in the sale of 100% owned properties, which were inevitably experienced in complying with pre-emption rights. Owners will have greater freedom to sell on the open market at the value they can achieve.

The majority of Registered Providers are also likely to benefit from a reduction in the administrative process of responding to pre-emption notices (although this may be more noticeable in the long term with the immediate requirement being for Registered Providers to vary their internal procedures).

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