

W3c NHMF 1/2 Naomi Goode

Housing associations are not yet piling them high and selling them cheap, but the sector (supported by the Housing Corporation) is disposing of a significant number of “surplus” homes as part of a stock rationalisation process.

In some cases the disposals are necessary to raise cash to avert financial difficulty or disaster. In others, it is part of the association’s efficiency drive to consolidate the areas in which it operates.

But what is the legal and regulatory position in relation to stock rationalisation? Can associations sell their homes on the open market to maximise the sale price? How about charitable housing associations?

Objects of RSLs

The standard RSL objects clause is to carry on for the benefit of the community the business of providing housing, accommodation, and assistance to help house people and associated facilities and amenities. For charitable RSLs, the beneficiaries must be those “in necessitous circumstances”.

Sale by a non-charitable RSL to another RSL

The most straight forward disposal in legal and regulatory terms is the transfer by a non-charitable RSL (the seller) to another RSL (the buyer). Although the seller is likely to want to obtain the best possible price, the transfer to another RSL will be in pursuance of the social housing seller’s objects, so provided the seller’s board is satisfied that the transfer is in the best interests of the RSL, the seller may sell at any price it wants.

The Housing Corporation will grant section 9 consent to the disposal provided it is satisfied that the tenants have been properly consulted. The seller will need to repay any grant to the Corporation or, more usually, transfer it to the buyer. The Corporation is relaxed about the sale price for intra-group disposals.

Sale by a charitable RSL to a non-charitable RSL

It is a commonly held misconception that a charitable RSL cannot transfer its stock to a non-charitable one. This is not necessarily the case. There are two circumstances in which such a transfer can take place.

The charitable RSL can justify its disposal on one of two grounds. First it can make the transfer pursuant to its charitable objects as a means of making use of its assets in furtherance of its charitable purposes i.e ensuring the continuing provision of social housing to those in “necessitous circumstances”. Provided that the seller imposes binding obligations on the purchasing RSL to use the housing stock to house those in necessitous circumstances, the disposal will be intra vires the selling RSL and the seller will not need to obtain the highest possible price.

Secondly, charities have power to dispose of assets they deem surplus to requirements. The board must be satisfied that sale of the stock is in the best interests of the charity (i.e. it is more beneficial to sell the stock than keep it), and that the disposal is on the best terms reasonably obtainable. This means the board must obtain advice on the timing and method of the disposal; ensure that the land is marketed in a way which will encourage the most offers; and accept the best financial offer (which may include non-monetary elements).

Sale by an RSL (charitable or non-charitable) to a non-RSL

There is no legal barrier to an RSL (whether charitable or not) disposing of its stock to a private landlord, provided the board considers it is in the best interests of the RSL to do so and the RSL obtains the best possible terms. The barrier is a regulatory one - the Housing Corporation will not give section 9 consent to such disposals. The reason for the Corporation's policy is to protect the tenants. It is not sufficient for the private purchaser to contract with the selling RSL to guarantee tenants' existing rights, as the Corporation cannot enforce the promises against the private landlord.

The Housing Corporation acknowledges that RSLs have been using stock disposal, monitored by the Corporation consents process, as part of their asset management practice since the 1980s. The Corporation is currently working on a stock rationalisation project.

In its August 2006 consultation paper on General Section 9 Consents, the Corporation says it wants to extend the general consent to disposals within the sector as a de-regulatory measure to facilitate the rationalisation of stock holdings. The Corporation seeks consultees' views on whether its consent policies should be altered to provide an incentive for housing associations to rationalise their stock holdings.

However, the project only covers intra-RSL transfers and does not look at private sector disposals.

The future

It will be interesting to see whether DCLG's newly rekindled enthusiasm for tenants' rights will override the Government's efficiency agenda. RSLs could make a respectable argument that they should be able to dispose of tenanted properties to private landlords against the tenants' will, if the disposal will provide funding for three times the number of homes in a cheaper area. Consistent with the extension of grant to developers, is there any reason why the Corporation shouldn't permit RSLs to dispose of tenanted housing to accredited private landlords which, like developers with grant, enter into legally binding agreements with the Corporation to protect the interests of the tenants?

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