

Tenant's Rights of First Refusal under the 1987 Act

The Issue

The Landlord and Tenant Act 1987 (as amended by the Housing Act 1996) gives residential tenants a right of first refusal to buy their landlord's reversion to their building and effectively become their own landlord ("1987 Act").

Up until the change in the assured shorthold tenancy ("AST") rent threshold introduced with effect 1st October 2010 (the AST rent limit was increased from £25,000 p.a. to £100,000 p.a.) an increasing number of buildings were being caught by the operation of the 1987 Act with significant consequences for investors of residential buildings subject to short term residential tenancies.

Even with the recent change in the AST rent threshold, whether selling or buying such a residential investment, careful consideration is always required to determine whether the right of first refusal applies to the disposition contemplated.

The Consequences

A "disposal" is widely defined under the 1987 Act and even catches an exchange of contracts (conditional or not) so that the scope of avoiding the legislation is extremely limited.

Failure on the part of the seller landlord to comply with the provisions of the 1987 Act is a criminal offence.

A person guilty of such an offence will be liable on summary conviction to a fine. Where the seller landlord is a body corporate, an officer of the body corporate may also be liable in their personal capacity (if they have consented to the offence, or connived at the offence or have caused the offence through their neglect).

The seller landlords guilt has no effect on the validity of the disposal which is neither void or voidable. The donee will acquire good title to the property disposed of and will be able to pass on good title.

However, any disposal of premises where the seller landlord has contravened the provisions of the 1987 Act, means that the "qualifying tenants" may have certain rights against the purchaser (as donee) and also against any successors in title.

The main right is the right to acquire the interest disposed of from the purchaser (as donee) provided certain notices have been served on the purchaser as provided for under the 1987 Act.

The right to acquire the interest disposed of would be on the same terms as the terms of the disposition which contravened the 1987 Act. The obvious consequence of that is that the purchaser would suffer a significant financial cost as a result, including abortive acquisition fees (including SDLT) and foregoing any uplift in value of the premises between the date of the original disposition and the date of transfer to the qualifying tenants (in a rising market).

The Solution

Whether acquiring or disposing of residential buildings, it is important to ascertain whether the building is premises to which the 1987 Act would apply.

Failure to identify whether a building may be subject to the 1987 Act may lead to significant delays for the seller landlord in disposing of the building whilst the necessary steps and procedures as required by the 1987 Act are complied with. Any potential purchaser may lose interest in the building as a result.

A prospective purchaser looking at property which may fall within the 1987 Act will want to ensure that it acquires the property free from any subsequent rights of the requisite majority of qualifying tenants. This may be achieved by the purchaser either serving a notice under Section 18 on at least 80% of the tenants of the flats in the building to ascertain whether at least 50% of those tenants indicate that they wish to avail themselves of the right of first refusal (in which case the S5 notice procedure will need to be adhered to) and/or raise appropriate pre-contract enquiries or requesting warranties and indemnities from the seller landlord.

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