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The Consumer Code for Home Builders

The new Consumer Code for Home Builders comes into force on 1 April 2010 and sets out mandatory requirements that all Home Builders must meet in relation to marketing, selling of new homes and all after sales customer service. The code will apply to all Home Buyers provided that:

- (i) They have reserved to buy a new or newly converted home on or after 1 April 2010; and
- (ii) Where the home sold is under the insurance protection of one of the home warranty bodies, namely NHBC, Premier Guarantee and LABC New Home Warranty.

If you are a builder that has registered with one of the above warranty providers then adoption of the code will be mandatory.

The Home Buyers rights previously afforded to them are unchanged, but the code does allow the homebuyer to refer a dispute to an Independent Dispute Resolution scheme where any Home Builder has failed to meet the requirements of the code. Any action enforceable under the code must be brought within two years of the start date of the home warranty cover in order to be covered.

The code does not apply to:

- Second hand properties (e.g. ones taken back in part exchange and then sold by a Home Builder on the open market); and
- Properties acquired by registered social landlords; and
- Properties acquired by corporate bodies and partnerships and others for investment purposes; and
- Properties built by self builders for their own occupation; and
- Properties built under architect's certificates.

Further, any claim brought under the new dispute resolution scheme does not cover:

- Personal Injury claims; and
- Loss of property value or Blight; and
- Claims relating to the land conveyed in its registered title; and
- Claims where the amount of redress claimed exceeds the limits of the Dispute Resolution Scheme which is currently set at £15,000 inclusive of VAT.

I have summarised the main aspects below so both you will be aware of the requirements of the code.

Pre- Contract Information

The code can be downloaded in a PDF format from www.consumercodeforhomebuilders.com

1) Displaying the Code

The Home Builder must display the code and give a copy to any customer who requests this and to all homebuyers that reserve a property. In order to comply the Home Builder should:

- (a) Enclose a copy of the code with the sales pack; and
- (b) Display the code (with copies) in the site office with copies; and
- (c) Have a link on your company website to the consumer codes home page.

2) Training

The Home Builder is responsible for training their staff to deal with Home Buyers and explain the responsibilities of the Home Builder under the code. If the Home Builder uses estate agents to sell your properties then it is advisable that the estate agents also receive a similar level of training to ensure compliance with the code.

3) Pre-Purchase information and reservation forms

The pre-purchase information and reservation forms must be in accordance the code and in all cases must include;

- (a) A written reservation agreement setting out the key terms and price, a list of contents included in the home (e.g. white goods, carpets, curtains etc) and the standard at which the home is being built. More details are provided below under the heading Reservation Requirements.
- (b) Brochures or plans showing the layout and appearance and plot position of the Home. Please note requirements relating to plans and right for Home Buyer to terminate the contract detailed in this letter.
- (c) An explanation of the home warranty cover which should include the name and contract details of the provider of the insurance backed home warranty and a summary of the insurance cover protection provided by the insurance backed home warranty. On a practical note it may be possible to get literature direct from the warranty bodies to give directly to the homebuyer.
- (d) The Home Builder must give a full description of any management services and organisations to which the homebuyer will be committed, with an itemised estimate of management services, maintenance costs and fees. This requirement will include the provision of details regarding any management company set up or to be set up.

NB. (a) – (d) inclusive should be readily available at the site office or sales office.

4) Home Builder contact

The Home Buyer will need to be told how you will deal with their questions and the main point of contact during the home buying process. This will likely to be the project manager or estate agent/sales negotiators.

5) Health and Safety on visits by Home Buyer

If the Home Buyer is visiting the property at any time then the Home Builder is responsible for informing them of all the Health and Safety precautions and procedures on site. The Home Builder should then make it clear to any visiting Home Buyer that they are personally liable for following all procedures, signs and other safety measures in place on the site.

6) Recommended Legal representation

It is common for a Home Builder to recommend legal representation to act on behalf of the Home Buyer. This is not prohibited by the code but the Home Builder should ensure that the Home Buyer's choice of legal representation is not restricted in any way.

Reservation Requirements and Agreements

The Home Builder must ensure that the reservation agreement provides all of the following information:

- The amount of the reservation fee; and
- What is being sold e.g. Plot Number, Postal Address, Garage or Parking Space; and
- The Purchase Price; and
- The Deadline Date when the reservation agreement will end if contracts are not exchanged e.g. 28-day period; and
- How long the price will remain valid; and
- A reliable estimate of the costs and a summary of the management services that the home buyer must commit to and pay for (together with a copy of the budget if readily available); and
- That all matters set out in the reservation agreement are subject to contract; and
- Any dependant or conditional matters, for example, part exchange terms; and
- Likely administrative costs to be incurred should the reservation agreement be terminated or expire.

The reservation agreement should then be signed by both the Home Buyer and the Home Builder as an intention of acceptance of the terms outlined. Once that reservation agreement has been

signed by both parties then the Home Builder should not sell or attempt to sell the home to another buyer within the time period stated in the reservation agreement.

The homebuyer has the right to cancel the reservation agreement at any time during the reservation period and there should be no restrictions put on this by the homebuilder. Other matters to consider are:

Extending the reservation period

If the parties both agree the reservation period can be extended and it would be good practice to record this in writing. Normally this would be recorded by your legal representative on instruction.

If the deadline is not agreed to be extended and contracts have not been exchanged then the reservation agreement automatically expires and the Home Builder will be able to remarket the property.

If the reservation period expires or the reservation period is cancelled then the Home Builder must return the reservation deposit to the home buyer less the reasonable administrative and other costs that they may have incurred in processing and holding the reservation. The code states that the Home Builder should outline the potential costs for the above in the reservation agreement so the Home Buyer is fully aware.

The Contract Requirements

Under the code all contract documentation must be clear and fair and comply with the Unfair Terms in Consumer Contracts Regulations 1999. The particular issues raised under the code are detailed below:

1) Spoken and written statements to avoid disputes over spoken statements

Any spoken and written statements that the Home Buyer is relying on must be communicated to the Home Builder and their legal representative before exchange of contracts. If there are any issues regarding these spoken or written statements then these should be resolved before contracts are exchanged. The Home Builder should be aware that any information given whether formally or informally should be accurate and not misleading.

2) Changes the Home Builder makes to the design or construction of the home

If following exchange of contracts and where there is a change to the design construction or materials to be used in the home that would significantly and substantively alter its size

appearance or value the Home Builder must get the agreement of the Home Buyer. The Home Buyer does at this point have the right to end the contract and get their deposit and reservation fee back if they find these changes unacceptable. This right must be confirmed to the homebuyer before exchange of contracts and the Home Builder must also explain the specific circumstances when they can exercise it.

Where the changes are minor which do not significantly and substantially alter the size, appearance or value of the home then these should still be notified to the Home Buyer, however the Home Buyer's agreement is not required to carry these out and the Home Buyer is not permitted to end the contract on this basis.

3) **Additional Work**

If there is additional work or additional terms that the Home Buyer will pay for and they are not specifically included in either the reservation agreement or the contract then they must be set out and agreed in writing. The code requires that this is set out in a separate quotation and written order signed by both of the parties. The Home Builder must also make the terms clear of that agreement including cancellation and refund of rights. If as a result of the extra work the Home Builder requires further time to complete the property then this must be agreed and recorded by the legal advisors acting for the parties in writing.

NB. Please note that the code does not extend to extra work or agreements made between the home buyer and third party contractors whether the home builder has agreed to it or not.

4) **Timescales for completion**

The homebuyer must be given reliable and realistic information regarding the construction of the home. The homebuyer should be given the date of which the home will be finished, the date of legal completion and the date of the handover of the home. You may already have processes in place to ensure that this is adopted, however, further reference and a worked example is shown in the code.

In order to comply the contract must also include the anticipated date by which the notice of the legal completion should be served based on guidelines set out in the code. If then there is unreasonable delay beyond the date given in the contract the Home Buyer will have the right to end the contract.

Subsequently, the contract for sale should provide for the Home Buyer to withdraw from the purchase after the expiry of a period following the anticipated date referred to. This period will depend on the stage of construction when contracts are exchanged. For example:

- Contracts exchanged before the roof and building weather proofing is completed then the period is six months for houses and twelve months for apartments.
- Contracts exchanged after the home is decorated and mains services are connected then the period must be no more than two months for houses and four months for apartments.
- If however, the property is complete then the contract for sale may state a fixed date for legal completion.

5) Estate roads and landscaping post completion

It is essential that the Home Builder explains to the Home Buyer the arrangements to complete any work outstanding at the handover which will include for example estate roads and landscaping. On larger scale developments this information may be difficult to disclose due to the phased nature of construction. If this is the case then the Home Builder should give information in relation to the relevant phase of the development for that home and facilities directly affecting it. Further, if the Home Builder has not already done so, you should give details of any warranties or bonds in relation to adoption of drainage systems and roads. This is likely to be provided in the initial legal pack, however the Home Buyer should be made aware of this directly from the Home Builder.

6) Termination rights

All rights of termination afforded to the Home Buyer under the code should be directly communicated to them by the Home Builder. These are as outlined above but in brief are:

- (a) if there is a significant change to the home; and/or
- (b) unreasonable delay in finishing the construction of the home and serving the notice to complete.

7) Deposits

Under the Home Warranty schemes contract deposits paid by Home Buyers may be protected. The Home Builder is responsible for making these arrangements if available to them.

If the Home Buyer does end the contract for reasons given above then you must return the contract deposit, reservation fees and costs of extras in full and without reductions within fourteen days of the cancellation taking effect. Any payment to the Home Buyer should be made within 14 days of the termination of the contract.

POST COMPLETION AND OTHER INFORMATION

1) After sales services

The Home Builder should provide to the Home Buyer an after sales service and let the Home Buyer know what it is and how to use it. Information given in the handover pack should include:

- (a) Details include telephone, email and address of who to contact in the first two years of the Home Warranty Cover; and
- (b) Explain the process of handling emergencies including examples of what is an emergency; and
- (c) The period that after sales service is available for; and
- (d) Details and documents for all warranties or guarantees for electrical items, central heating and other items included in the sale. This may also mean white goods supplied.

2) Phased Developments

In some circumstances and on larger developments the site may be phased and only part completed. In these circumstances the Home Builder should inform the Home Buyer about the Health and Safety precautions in place and to be adhered to. The Home Builder should give the Home Buyer the Health and Safety file for the home in compliance with the relevant construction (Design and Management) Regulations 2007.

3) Complaints

The Home Builder must have a system and procedures for receiving, handling and resolving Home Buyers service calls and complaints. The information the Home Builder gives to the Home Buyer must explain the complaints procedure and tell them about the dispute resolution arrangements operated as part of a code. This can be done by referring them to the relevant section of the code which would have been given to them pre-contract by the Home Builder.

In dealing with any complaints or disputes you must also tell the homebuyer that their normal legal rights are not affected by the referral of any complaint to the home warranty body or to the independent dispute resolution scheme.

DISPUTE RESOLUTION SCHEME

- The code sets out the independent dispute resolution scheme in appendix A which can be found on page 16 of the summary enclosed.
- A Home Buyer can refer a failure to meet the requirements of the code to the dispute resolution team.
- Any complaint must initially be referred to the Home Builder. If the Home Buyer is not satisfied that the Home Builder has dealt with the complaint adequately then the Home Buyer must then refer the complaint to the home warranty. It will then be the decision of the home

warranty provider as to whether they will deal with this themselves or they will offer the Home Buyer the opportunity to refer the complaint to the resolution scheme and an adjudication process will then follow this.

- The adjudicator will decide on the merit of the Home Buyer's complaint. If the adjudicator upholds the Home Buyer's complaint then he may issue a performance award which will essentially mean that the Home Buyer will need to do something or a financial award or a combination of the two. As stated previously in this letter the maximum value of a combined award available under the scheme is £15,000 inclusive of VAT. Further costs can be directed for the homebuilder to refund the homebuyers case registration fee of £100 plus VAT. Any decision made by the adjudicator is not binding on the Home Buyer, however it is binding on the Home Builder.

CONTRACTS AND DOCUMENTS

In summary the code does set out various procedures and new requirements for the Home Builder to comply with and various changes will need to be made to the standard contract documentation and we are in the process of reviewing this. If you have a current development we will be writing to you with suggested amendments to bring the documentation in line with the code. If however, you are in the process of acquiring development sites or you do not have any current projects then we can confirm that contact information provided in the future will adopt the principles of the code.

We also enclose a copy of the Guidance for Homebuilders with this letter for information.

Should you have any questions whatsoever please do not hesitate to contact David Miller of this office for further information.