

CIRCULAR

The General Consent

February 2008

01/08

This Circular is for the attention of:

- Registered Social Landlords; more than 250 properties
- Registered Social Landlords; less than 250 properties
- Co-ownership Societies
- Co-ownership Equity Sharing Societies
- Almshouse Charities
- Abbeyfield Societies
- Co-operatives
- Local authorities
- Registered Social Landlords' Auditors
- Registered Social Landlords' Solicitors
- Audit Commission
- Arms Length Management Organisations
- Land Registry

Legislation, regulation and policy requirements

Under Section 9 of the Housing Act 1996, any disposal of land or interest in land by housing associations requires the sealed consent of the Housing Corporation. The Corporation's regulatory and policy requirements are contained in the booklet *Disposing of Land* (the booklet). The General Consent issued in April 2003 is replaced by the new General Consent also contained within the booklet. The new General Consent is effective from 1 February 2008.

This Circular updates and replaces:
Circular 03/03, issued in April 2003.

Note:

'Housing association' is used as a generic term for registered social landlords.

'Corporation' means Housing Corporation.

Summary

This Circular announces the issue of the General Consent 2008 incorporated in the booklet *Disposing of Land 2008*.

1 Definitions

All definitions required for use of the General Consent are listed in Appendix B of the booklet *Disposing of Land 2008*.

2 Corporation expectations

The Regulatory Code states that “housing associations must operate according to the law and their constitutions”. Section 9 of the Housing Act 1996 requires Corporation consent for certain disposals of housing and land.

Section 9 gives the Corporation an opportunity to review proposals to dispose of property. We interpret this as Parliament’s method of protecting tenants, maintaining the availability of sustainable housing lets, protecting public investment and preventing improper disposal of property. An application can also alert the Corporation to potential regulatory problems.

3 Changes since the 2003 General Consent

The new General Consent is shown in Appendix B of the booklet. The key changes are:

New categories of the General Consent 2008

The Corporation has widened the scope of the General Consent to include categories of disposal for which RSLs previously needed an individual consent. The main extensions are summarised below, but the detailed wording in the Consent itself must be checked.

- Transfer of untenanted housing stock to another RSL, a local authority or an ALMO, provided none of the RSLs are under supervision (categories 3a, 4a and 5a);
- Disposal of houses built specifically for outright sale at market value without grant assistance, either to individual purchasers or to a body appointed to sell. It can include disposals in which the part exchange of the purchaser’s old home forms all or part of the consideration (categories 2a and 2c);
- Disposal of houses provided under the terms of a section 106 agreement, including sales at a transferable discount (categories 2b and 2c);
- Extensions of housing leases when the original lease was either exempt or permitted by the General Consent, e.g. the leases of former shared owners and RTB leaseholders (categories 1c, 1d, 7h, 7i and 7j);

- Granting a rentcharge solely to secure payment of a service charge (category 6c);
- When an open market or auction sale of an individual house/flat obtains an individual consent but falls through, the ability to proceed with a new purchaser and/or at a new price, provided the price is still supported by an up-to-date valuation; also more scope to correct errors of fact (categories 13 and 14);
- Deeds merging freehold and leasehold titles (category 7g);
- Grant of easements and disposals of small parcels of land up to a value of £10,000, previously £5,000. Relinquishing rights to light added (category 8);
- The exercise of an option as well as the initial grant of the option (category 9);
- More circumstances in which an RSL can sell the freehold of a building occupied by private leaseholders (but not on schemes for over 55s) (categories 7e and 7f); and
- Granting charges to developers or sellers for the duration of the development or sales period or to a registered charity with a financial interest (category 6a).

Withdrawal and replacement

- Under category 3d of the General Consent 2003, it was possible for an RSL to lease premises, including housing, to any person for a period of up to ten years. This category has been withdrawn, meaning that in future RSLs will need to obtain individual consent to grant leases of housing, except when covered elsewhere in the General Consent (e.g. categories 3a, 4a, 5a and 12). Category 7d allows granting of leases for up to 25 years on non-residential property, which can include parts of residential property that are not for living in, e.g. garages and outbuildings.

4 Recording use of the General Consent

Part I of the General Consent 2008 requires RSLs to record on form HACON 5 each disposal made under the General Consent. Version 6 of HACON 5 should be used for disposals completed from February 2008. RSLs should keep these records in a register. This process is based on self certification.

5 Land Registry procedure

Paragraph 9 of Disposing of Land provides an update of the Land Registry's requirements for registering disposals.

6 Disposals requiring an individual application and seal

Any disposal not covered by the General Consent and not otherwise exempt requires an individual consent under our seal. We will consider each application on its merits and will not unreasonably withhold consent. However, our normal policy is to withhold consent in the following circumstances:

- disposal of tenanted social housing property (unless the disposal is to another RSL or a voluntary sale to the tenant);
- disposal at less than the full open market value (unless to another RSL where a price up to open-market value can be negotiated). Special valuation rules apply to co-ownership sales to members – refer to Corporation Circular 15/99;
- disposal that is contrary to an RSL's objects and/or permissible purposes; and
- disposal that raises issues of financial concern or impropriety.

Version 8 of HACON 2 and version 4 of HACON 6 should be used from 1 February 2008.

7 Ongoing regulation

Use of the General Consent can be withdrawn at any time.

8 Enquiries about this Circular

For private finance queries about this Circular please contact the association's financial analyst.

The Consents Section in Leicester can offer advice on administration and the Corporation's policy. Its address is Attenborough House, 109/119 Charles Street, Leicester LE1 1FQ, telephone 0845 230 7000, fax 0116-242-4801 or email to: section9query@housingcorp.gsx.gov.uk.

The Corporation does not provide legal advice. If after reading this guide, RSLs are unsure whether they have a legal obligation to obtain consent they should seek advice from their own solicitors.

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