

Consumer code for home builders

Introduction

The Code for Home Builders Scheme (the 'Code') came into force on 1 April 2010. The requirements are mandatory for those builders or developers that are registered with NHBC, Premier Guarantee or LABC New Home Warranty.

What is the Code for?

The Code is intended to ensure that buyers:

- are treated fairly;
- know what standards of service to expect;
- can base their decisions on reliable information provided to them; and
- know how to access speedy, low-cost dispute resolution arrangements if required.

Who does not benefit from the Code?

Registered social landlords, corporate bodies, partnerships and others buying for investment purposes cannot benefit from the Code.

If you are a participating builder or developer what should you do?

To comply with the Code you should:

- review your standard sales brochure and supporting literature to ensure they are Code compliant;
- ensure that your reservation agreements are Code compliant; and
- ensure that your contracts for sale are Code compliant.

Reservation agreements

Your reservation agreements must include:

- the amount of the reservation fee;
- details of what is being sold;
- the purchase price;
- details of how and when the reservation agreement will end;
- how long the price will remain valid; and
- the estimated cost and nature of any management services to be paid for by the buyer.

The reservation fee (less the reasonable administrative and other costs you may have incurred in processing and holding the reservation) must be reimbursed if the reservation is cancelled or expires. It does not matter how or why the buyer ends the agreement, except for your reasonable administrative and other costs, the reservation fee must be returned in full. The nature and extent of the likely cost of deductions must be set out in the reservation agreement.

You must not enter into any new reservation agreement or sale agreement with another customer on the same property while the reservation agreement is in force.

Making the Code available

You must display a copy of the Code at the site sales office and give, without charge, a copy to customers who ask for it and to all buyers who reserve a home.

Contracts for sale

The contract for sale must:

Head Office

3 Lonsdale Gardens
Tunbridge Wells
Kent TN1 1NX
T 01892 510000
F 01892 549884

Thames Gateway

The Old Rectory
St. Mary's Road
Greenhithe
Kent DA9 9AS
T 01322 623700
F 01322 623701

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- be clear and fair;
- comply with the Unfair Terms in Consumer Contracts Regulations 1999;
- clearly state the contract termination rights; and
- allow a buyer to terminate where there is a significant change in the property or an unreasonable delay in finishing the construction of the property.

Verbal statements made to the buyer

Your lawyer will need to ask the buyer's lawyer to confirm whether the buyer is relying on any statements that have been made that are not covered in the written documents.

Any anticipated date for completion given in the contract must be consistent with the information that is given to the buyer before exchange.

Resolution of disputes and awards

If a buyer thinks he has a dispute because the home builder has failed to meet the requirements of the Code, he may refer the dispute to an independent adjudication process. The Code only applies to complaints arising and notified to the home builder within two years from the start date of the home warranty cover.

The adjudicator may issue a performance award (where you will have to take some action), a financial award or a combination of the two.

The maximum value of the combined award under the Code is £15,000.

Sanctions

There are a range of sanctions which can ultimately include removal from the relevant warranty provider's register and exclusion from all registers run by other participating home warranty providers.

A buyer purchasing a new house or flat with a mortgage must comply with the requirements contained in the Council of Mortgage Lender's Handbook. This requires the buyer's lawyer to confirm for properties built or converted within the last 10 years that they were built or converted under a scheme acceptable to the lender. Exclusion from such schemes could therefore cause real problems for a developer trying to sell properties which are to be purchased using mortgage finance.

Conclusion

To ensure that you meet all the requirements of the Code it is important that professional advice is obtained well in advance of marketing your properties.

Further information

This information sheet has been prepared to highlight some of the key issues relating to the new Code. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the Code as at April 2010 and may be affected by subsequent changes to the Code. For more information, please contact Sarah Easton on 01892 510000 or email at sarah.easton@ts-p.co.uk.