

Report

Report to:	Community Resources Committee
Date of Meeting:	3 February 2009
Report by:	Executive Director (Community Resources)

Subject:	Housing (Scotland) Act 2006 - Home Reports and Consumer, Estate Agents and Redress Act 2007
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ♦ advise Committee that the Executive Director (Community Resources) has exercised his delegated authority to authorise officers of Consumer and Trading Standards to enforce parts of the Housing (Scotland) Act 2006 and undertake additional duties under the Consumer, Estate Agents and Redress Act 2007.
- ♦ approve arrangements made in relation to requests for hearings in respect of issuing fixed Penalty Charge Notices.

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the position on enforcement of Home Reports Legislation be noted.
- (2) that the Executive Director (Community Resources) be the designated person to which any request for a review hearing is made.
- (3) that the Executive Director (Community Resources) be responsible for selecting the Review Panel from senior officers within the Council with technical expertise.

3. Background

- 3.1. Part 3 of the Housing (Scotland) Act 2006 together with the (Prescribed Documents) Regulations 2008 require that houses placed on the market after 1 December 2008 require to be accompanied by documents that together make up a Home Report.
- 3.2. Additionally, new requirements introduced by the Consumer, Estate Agents and Redress Act 2007 place a duty on all persons who engage in estate agency work in relation to residential properties in the UK to join a redress scheme with effect from 1 October 2008.
- 3.3. From 1 December 2008 the seller of a house or their agent must possess a number of prescribed documents which together will be known as a Home Report before marketing the property.

- 3.4. The Home Report will provide prospective buyers with detailed information on the condition and value of the property in a standardised format before offers are made. As a result, buyers will not waste time and money on multiple valuation reports on properties where their offers are unsuccessful. It is envisaged the new process will also curb the practice of properties being marketed with artificially low 'offers over' prices which were designed to artificially stimulate interest in a property with the resultant effect of multiple surveys being commissioned.
- 3.5. Prescribed documents must be provided to prospective purchasers within 9 days of a request. The prescribed documents which make up the Home Report are the Single Survey, the Property Questionnaire and an Energy Report.
- 3.6. The Single Survey is a detailed survey of the house which ensures that both sellers and buyers of houses in Scotland have detailed information about the condition and value of a house before offers are submitted. The Single Survey includes information on the type, accommodation, age and construction of the house. It provides information on any required repairs with each allocated to one of three categories according to their urgency. It also contains an accessibility audit on the property.
- 3.7. The Property Questionnaire will give prospective buyers a useful summary of information such as council tax banding, parking facilities, utilities and services and includes details of any factoring costs in addition to details of any alterations made to the property.
- 3.8. The Energy Report contains an assessment of the energy efficiency of the home and its environmental impact. It also contains recommendations and practical advice on how to reduce carbon emissions and save on energy bills by way of improving the home's energy efficiency.
- 3.9. The Survey and Energy reports are required to be compiled by qualified surveyors registered with or authorised to practice by the Royal Institution of Chartered Surveyors. The Property Questionnaire is required to be completed by the seller of the home.
- 3.10. Sellers or their agents who either do not possess the relevant documents when a house is put on the market, fail to provide copies to potential purchasers on request or fail to ensure that the documents are authentic will be in breach of the legislation and may be served with a Penalty Charge Notice. The statutory fixed penalty is £500 and enforcement of the legislation requires to be undertaken by the Consumer and Trading Standards Service.
- 3.11. It is anticipated that investigations in the main will be complaint driven by prospective purchasers against agents of sellers or indeed sellers. Where action is taken against an Estate Agent, the Trading Standards Service will be required under a duty to notify the Office of Fair Trading (OFT) for consideration as to whether that person should be prohibited from carrying out any estate agency work.
- 3.12. Actual or potential buyers or sellers of residential property with complaints about estate agency work will have the right to be able to use a free, easily accessible, and fair estate agents' redress scheme which will have the power to make a range of awards including requiring a member to pay compensation.
- 3.13. At present, the OFT has approved two schemes, operated by the Ombudsman for Estate Agents Co Ltd and the Surveyors' Ombudsman Service.

- 3.14. Estate Agents that fail to join an approved redress scheme will be subject to Penalty Charge Notices issued by Trading Standards which can be repeated for continued failures to join. The statutory fixed penalty is £1000.
- 3.15. Following the issue of a fixed Penalty Charge Notice, the Council will be under a duty to notify the Office of Fair Trading for their consideration as to whether that person should be prohibited from carrying out Estate Agency work.
- 3.16. Other requirements of the Estate Agents' legislation provide Trading Standards with wider powers to inspect an Estate Agents' files on a transaction and give the OFT more scope to consider an Estate Agents' fitness to practice.
- 3.17. Consumer and Trading Standards Service has produced a guidance note on Home Reports which is available to the public.

4. Committee Considerations

- 4.1. Both legislative measures require the establishment of a review process to hear complaints about the issuing of Fixed Penalty Charge Notices. A person who has received a Fixed Penalty Charge Notice has 28 days beginning the day after service of the notice to request a review hearing in respect of the breach of the legislation. A request for a review hearing must be made in writing and is required to be sent to the person specified for review purposes in the notice.
- 4.2. Payment of the penalty will then be suspended until the outcome of the review.
- 4.3. Failure to pay a Fixed Penalty Charge will be recoverable by the Council as a debt through the Civil Courts.
- 4.4. It is proposed that the Executive Director (Community Resources) act as the specified person to whom requests for review hearings should be sent and will establish a Review Panel which will comprise of three senior officers of the Council who are independent of the enforcement process.
- 4.5. Relevant enforcement sections of the Housing (Scotland) Act 2006 have been added to the lists of legislation currently covered by the Trading Standards Service and incorporated into officers credentials.

5. Employee Implications

- 5.1. No additional resources have been allocated to local authorities for enforcement purposes. However, the Scottish Government did undertake training with limited numbers of enforcement staff. Additional training is being sourced to ensure that all enforcement staff are fully competent in these duties.

6. Financial Implications

- 6.1. The new enforcement burdens may result in additional investigations. However, these require to be managed within existing financial resources.

7. Other Implications

- 7.1. Energy Reports required under the Home Reports legislation are perceived by the Government as a cost effective way of giving practical advice on energy efficiency and identified as a major action with the largest potential to achieve carbon reductions in the Domestic sector.

8. Equality Impact Assessment and Consultation Arrangements

- 8.1. Legal Services has been consulted on the implications of the report. Housing and Technical Resources, together with Building Standards Services, are currently being consulted on Energy Performance issues.
- 8.2. The legislation has undergone an Equality Impact Assessment which was carried out by the Scottish Government.

Norrie Anderson
Executive Director (Community Resources)

5 January 2009

Link(s) to Council Objectives and Values

- ◆ Improve the quality, access and availability of housing

Previous References

None

List of Background Papers

Consumer and Trading Standards guidance note on Home Reports.

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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