VRTB campaign launched

Future Housing Review, supported by the Joseph Rowntree Reform Trust, has launched a campaign to challenge the Voluntary Right to Buy agreement forged between the NHF and the Government. We are unconvinced by arguments that a voluntary deal is better for the sector than a statutory scheme. By-passing parliamentary scrutiny for such an important policy means that the whole process is inherently undemocratic. One of our principal concerns is that implementation of VRTB nationwide will result in further erosion of provision of social rented housing in England.

The VRTB Agreement

The agreement itself seems to have appeared from nowhere. NHF made an offer in October 2015 which was ‘accepted’ by Government, seemingly without negotiation. CLG has been unable or unwilling to produce the terms of the Government’s acceptance. So, we only see half an agreement – the NHF offer. Our attempts to obtain all the information concerning the agreement through Freedom of Information requests are continuing. In the meantime NHF members can request NHF to publish the full terms of the agreement.

What is the legal position?

We have looked at the legal position in detail and have the benefit of a joint opinion from Kelvin Rutledge QC and Ashley Bowes, both of Cornerstone Barristers in London. We have published the full opinion on www.futurehousing.org. We were interested to see if it is legally possible for an association to opt out of VRTB entirely. The answer, in a nutshell, is as follows:

- If an association, which is a member of the NHF, takes a decision not to implement VRTB, then it could be expelled from the NHF.
- Alternatively, an association might decide to leave the NHF, in which case it has no contractual obligation to implement VRTB.
- However, dissenting associations, who were members of the NHF at the time of the vote, might face judicial review challenges from a disappointed tenant on the grounds that he or she had a legitimate expectation of having a right to buy their home. We suggest you consult the full legal opinion on futurehousing.org – it makes an interesting read. For ease of reference, we prepared some questions to which Kelvin Rutledge QC and Ashley Bowes have proposed answers (see box).

The VRTB scheme cannot be rolled out nationally until consultation and evaluation processes have been completed. Nothing is set in stone and there is still time to influence outcomes. We would be interested in hearing your views, especially on the questions of eligibility, exceptions, replacements and portable discounts.

Suggested answers to six questions about the VRTB Agreement

Q1. My association is a member of the National Housing Federation. Is the 2015 Agreement on VRTB between Government and the National Housing Federation contractually binding on my association?

A. Yes. The NHF is a company limited by guarantee. Housing associations are members of that company, they pay a subscription and agree to be bound by the company’s constitution. Housing association members of the NHF are therefore contractually bound by the company’s constitution, which includes its resolutions.

Q2. Is the National Housing Federation legally obliged to supply a copy of the agreement on VRTB reached with the Government to its members?

A. Yes. Members of the company would be entitled to see the agreement entered into on their behalf.

Q3. Am I entitled to know how associations voted in the secret ballot on VRTB organised by the National Housing Federation?

A. No. The terms of the vote included its secrecy.

Q4. Can my association opt out of VRTB without leaving the National Housing Federation?

A. Highly unlikely under the NHF rules of membership. Members of the NHF agree to be bound by the NHF articles of association, which include an undertaking to abide by the objects of the NHF. It is highly likely that the NHF would argue that the principle of a voluntary right to buy scheme is now part of the objects of the NHF evidenced by a majority vote of its members.

Q5. Can my association opt out of VRTB if it leaves the National Housing Federation?

A. Potentially, but not without risk of challenge from its tenants. Having been a member of the NHF at the point the vote was taken, it is highly likely a substantive legitimate expectation would arise in favour of the tenant that the housing association would adopt a policy which offered tenants a right to buy, albeit it might well be subject to exceptions.

Q6. If my association does not opt out of VRTB, to what extent can it use its discretion to decide which properties it will sell under the scheme?

A. The NHF offer envisages exemptions, which would appear to mirror the current statutory scheme for council tenants. Indeed, a failure to contemplate exemptions for specialist accommodation might well expose a housing association to liability under the Equality Act 2010.

The answers given above have been suggested by Kelvin Rutledge QC and Ashley Bowes of Cornerstone Barristers, London. Should you be interested in exploring these issues further, please contact us.
Shared ownership must change

FHR has been pressing for reforms to the legal structure of shared ownership for some time. Now a major lender has commented on concerns around mortgagee protection in the present HCA model. In an article in Inside Housing (3rd June 2016) Andrew Baddeley – Chappell, head of policy at Nationwide Building Society, outlines how the present system is, to a certain extent, based on trust between associations and lenders. As new providers enter the market place, lenders would need greater legal protection than is offered under the traditional scheme. Without a legal structure that ensures lender protection, shared ownership will simply not expand in the way Government would like. Despite promising a review of shared ownership in March 2015, DCLG seems unwilling to look at alternatives to the traditional HCA model. Lobbying from CML, lenders and associations might just help to change the official perspective.

GO scheme

The graduated ownership (GO) scheme has been developed by FHR’s commercial arm, Future Housing Management, and is based on a combination of shared equity and restricted resale period. It has none of the inherent structural weaknesses of the HCA model and works for lenders, buyers, local authorities and public or private providers alike. FHM will offer a royalty-free licence to associations and local authorities to use the GO scheme together with collateral marketing material. Full details are on www.futurehousing.org.

Starter homes

FHR lobbied for amendments to Part One of the Housing and Planning Bill to allow Local Planning Authorities to choose types of home ownership that were suitable for local needs, rather than having a blanket imposition of starter homes. Despite valiant efforts on the part of various individuals and organisations, this part of the Act was passed more or less intact. FHR regrets that the NHF did not take a more active part in the lobbying on behalf of the sector when the bill was going through Parliament. It now remains to be seen what the regulations on starter homes will provide, but FHR is not sanguine that Government will be much influenced by industry responses to the consultation undertaken after the Act became law. The words lock, door and horse spring to mind.

The Government’s home-ownership blitzkrieg now has statutory backing, which is worrying as starter homes will not increase supply, and the funding of discounts will take up resources that might otherwise go towards much needed new social rented housing. Moreover, FHR is keen to understand how the Government intends to expand other forms of affordable home ownership such as shared ownership whilst decreeing that one in five new homes built will (subject to rural exceptions) be starter homes.

Starter homes will no doubt be popular with buyers – who wouldn’t want a 20% discount on a purchase – but they will do very little to help ease the housing crisis or promote affordable home ownership in the long term. It will take a Government of a different complexion to undo this unfortunate piece of legislation.