

EAST AYRSHIRE COUNCIL

HOUSING COMMITTEE – 19 MAY 2004

FEUDAL REFORM/FACTORING OF RIGHT TO BUY HOUSING PROPERTIES

Joint Report by Executive Director of Neighbourhood Services and Solicitor to the Council

1. PURPOSE OF REPORT

- 1.1 To advise Committee on the effects of recent legislation (the Abolition of Feudal Tenure etc (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003) on the ability of the Council to enforce title conditions in Right to Buy Sales, to seek authority to amend the Council House Sales and Feu Duty collection process to address the legislative effects and to report on current progress on the introduction of a proposed factoring service to be offered by the Council to owner occupiers of former Council house properties, linked to the proposed introduction of the Tenement (Scotland) Bill presently being considered by the Scottish Parliament.

2. BACKGROUND

- 2.1 On 28th November 2004 (the appointed day) the feudal system of land tenure will be abolished by the implementation of the new legislation on title conditions. On that date superiorities will cease to exist. Those who are feudal superiors and by dint of that entitled to enforce title conditions (or burdens) imposed on the sale of property will after the appointed day cease to be entitled to enforce these conditions. The Council are superiors in respect of many properties sold by it and its predecessor authorities including properties sold under the Right to Buy.

3. IMPACT ON COUNCIL PROCESSES

3.1 Right to Buy Sales

- 3.1.1 While the right of a superior to enforce title conditions will be abolished at the appointed day, title conditions themselves will not be abolished. Some will automatically be preserved while others can be electively preserved or reallocated and become enforceable by neighbouring owners of property adjoining the land affected by the title condition. However in many cases if the superior fails to take timely steps to preserve or reallocate existing validly constituted title conditions, these conditions will fall on the appointed day. Under the new legislation some title conditions (or burdens) will be preserved automatically e.g. facility burdens which regulate the maintenance of shared facilities in tenements or four in a block properties. However in respect of amenity title conditions these are capable of being preserved only if certain actions are taken by the Council. Typical examples of amenity title conditions in Right to Buy Sales are: obligations regarding the maintenance of the house

and any garden ground attached; prohibitions against alterations to the house without the Council's consent; prohibitions against use as a shop, business or commercial premises or for the sale of excisable liquor; and provisions regarding insurance and reinstatement of the house.

- 3.1.2 At present in Right to Buy Sales title is granted to the purchaser by way of a Feu Disposition which is granted by the Council as superior. For sales of houses in the North Area (the landward area of the former Kilmarnock and Loudoun District) title conditions are, to reflect the historic position adopted by Kilmarnock and Loudoun District Council and to ensure consistency in sales in that area, imposed by way of Deeds of Conditions which govern the rights and obligations of each proprietor in, for example, a four in a block or tenement property and the terms of the Deed of Conditions are referred to in the Feu Disposition granted for each dwellinghouse in the block.
- 3.1.3 In the South Area (the landward area of the former Cumnock and Doon Valley District) Deeds of Conditions have not been used. Instead title conditions are, again to reflect the historic position adopted by Cumnock and Doon Valley District Council and to ensure consistency in sales in that area, imposed at length in each Feu Disposition granting title to the purchaser. This difference in practice has a bearing on what happens to the title conditions after the appointed day.
- 3.1.4 In the North Area all existing facility burdens and amenity title conditions will survive after the appointed day without further action by the Council. In the case of amenity burdens these will be enforceable by all owners in a group of related properties e.g. a four-in-a-block tenement against the other owners in the block, including the Council as neighbouring owners as opposed to Superiors. In the South Area the existing facility burdens will survive after the appointed day. However the existing amenity title conditions do not automatically survive in the South Area without further action by the Council.
- 3.1.5 As from the appointed day, the granting of a Feu Disposition will be incompetent. Accordingly all future titles will be granted by way of Disposition. In the North Area, title conditions will be enforceable under the existing Deeds of Conditions which will be referred to in the Dispositions which are granted.
- 3.1.6 The Council could obtain the right to enforce amenity title conditions in the South Area by registering Deeds of Conditions in respect of all houses which remain unsold within a group of related properties e.g. flats in a tenement. In relation to a number of the amenity title conditions, legislative powers under Planning, Building Control, Housing and Environmental Protection legislation are available to the Council and can be enforced by the Council using these powers. On the other hand the continued existence of these amenity title conditions will provide a useful backup to the legislative powers available to the Council and will also ensure a degree of uniformity as regards title conditions in Right to Buy sales in both the North and South Areas. It is proposed therefore that a Deed of Conditions in respect of the unsold houses within any group of related properties within the South Area be recorded at the time of sale of any house with the exception of a semi-detached property.

3.2 Feu Duty.

- 3.2.1 The Council as superiors currently collects a number of feu duties as detailed below. As from the appointed day all feu duties will be extinguished and the former superiors will be entitled, by sending Compensatory Payment Notices prior to 28th November 2006, to claim compensation for the feu duty extinguished under the legislation. The compensation due in respect of each feu duty is approximately 20 times the annual feu duty payable. 58 separate feu duties are payable to the Council with an average annual value of approx £5.00.
- 3.2.2 It is recommended that Compensatory Payment Notices in respect of all feu duties payable to the Council as detailed in paragraph 3.2 of this Report are served prior to 28th November 2006. The Council will adopt a reasonable approach to the recovery of the compensation payable and where appropriate will accept payment by instalments.

3.3 Factoring

- 3.3.1 The titles already granted by the Council under Right to Buy sales also contain manager burdens i.e. title burdens which reserve to the Feudal Superior (or any other party) the right either to manage a property or group of properties personally or to appoint a factor or manager for such properties. Existing manager burdens will automatically survive and continue to be enforceable by the Council as Housing Authority after the appointed day. Similar management burdens will continue to be imposed in future sales in the manner indicated in Section 3 of this Report.
- 3.3.2 Manager burdens in Right to Buy Sales only survive for a maximum period of 30 years. This period starts from the date on which the burden was imposed. In the North Area a number of Deeds of Conditions incorporating manager burdens have been in place for over 20 years so the life of any such burdens may survive for only a few more years. In addition any manager or factor appointed can be dismissed by the owner of two thirds of the houses in any property, e.g. a four in a block tenement which he manages and another appointed in his place; this would override the Council's rights under the manager burden.
- 3.3.3 The manager burdens themselves are expressed in basic terms and would not easily support a detailed factoring arrangement.
- 3.3.4 Introducing a factoring agreement to a block of properties will require the approval of a purchaser who has already acquired under a Right to Buy Sale in that block.
- 3.3.5 The Tenements (Scotland) Bill presently being considered by the Scottish Parliament and which is anticipated will also come into force on the appointed day attempts to address a number of management issues impacting on factoring arrangements not covered by title conditions. Consideration is

presently being given to introducing a factoring system including in particular a standard form of factoring agreement with all the proprietors including right to buy purchasers in a block. Progress on this can only be made once the final terms of the Tenement (Scotland) Bill are known. A further report will be submitted to Committee on this proposal in due course

4. FINANCIAL IMPLICATIONS

- 4.1 The cost of recording a Deed of Conditions in respect of a block of unsold properties is presently £25.00.
- 4.2 Total Feu Duty compensation payable to the Council is anticipated to be in the region of £5,400.

5. LEGAL AUTHORITY/IMPLICATIONS

- 5.1 The Council requires to comply with the terms of the new legislation on title conditions.

6 POLICY IMPLICATIONS

- 6.1 There are no policy implications arising from this Report other than those highlighted in respect of the proposed process reviews.

7 CONCLUSIONS

- 7.1 The changes proposed in this Report to the current processes both for Council House Sales and collection of Feu Duty in light of the terms of the new legislation on title conditions best protect the Council's position.

8 RECOMMENDATIONS

- 8.1 The Committee are recommended to: -
 - (i) Approve the proposed changes to the Council House Sales process
 - (ii) Authorise the Solicitor to the Council to serve Compensatory Payment Notices in respect of Feu Duties payable to the Council.
 - (iii) Otherwise note the contents of this Report.

William Stafford
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CMCA/DM

28 April 2004

LIST OF BACKGROUND PAPERS

1. Abolition of Feudal Tenure etc. (Scotland) Act 2000.
2. Title Conditions (Scotland) Act 2003
3. Tenements (Scotland) Bill.

Any person wishing to inspect the background papers listed above should telephone Anna Gallagher at 01563 576170.

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