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## LEARNING FROM CODE ADJUDICATIONS: ADVICE FOR HOME BUILDERS

### FACTSHEET 2: PRE-PURCHASE INFORMATION AND RESERVATION AGREEMENTS

This factsheet looks at some of the lessons we can learn from decisions made by adjudicators acting for our Independent Dispute Resolution Scheme in relation to two aspects of pre-contract requirements: 2.1 – that Home Buyers must be given enough pre-purchase information to help them make suitably informed purchasing decisions, and Requirement 2.6 - The Reservation fee must be reimbursed if the Reservation agreement is cancelled. This includes pre-Reservation, Reservation and pre-contract periods.

To read about the other common areas where complaints have arisen, download the remaining factsheets from our website.

## SECTION 2.1: Pre-purchase information.

The Code sets out what information should be provided, including:

- a brochure or plan illustrating the general layout, appearance and plot position of the Home
- a list of the Home's contents;
- the standards to which the Home is being built
- a written Reservation agreement
- an explanation of the Home Warranty cover
- a description of any management services and organisations to which the Home Buyer will be committed and an estimate of their cost. This must include in what circumstances and on what terms the charges and fees may alter.
- the nature and method of assessment of any event fees such as transfer fees or similar liabilities.

However, adjudicators found evidence of breaches such as:

"the Home Builder breached Section 2.1 of the Code by **failing to appropriately notify** the Home Buyer of the removal of the gable windows from the design of the Property prior to exchange of contracts."

"the garden levels are matters that should have been disclosed to the Home Buyer under section 2.1 of the Code..... before exchange of contracts (ie. legal commitment), not before completion".

"[although] the Home Buyer viewed the Property prior to completion, I do not consider that the Home Builder has fully proved that it provided the Home Buyer with sufficient pre-purchase information in relation to the kitchen appliances."

## SECTION 2.6: RESERVATION AGREEMENT

The Code states Home Buyers must be given a Reservation agreement that sets out clearly the Reservation's terms, including, but not limited to:

- the amount of the Reservation fee
- what is being sold
- the purchase price
- how and when the Reservation agreement will end
- how long the price remains valid
- any management services the Home Buyer must pay for
- any event fees such as transfer fees or similar liabilities

The Reservation fee must be reimbursed if the agreement is cancelled. The Home Buyer must be told of any deductions that may be made. While in force, the Home Builder must not enter into a new Reservation agreement with another customer on the same Home.

However, adjudicators identified breaches such as:

"The Home Builder breached Code Section 2.6 because the reservation agreement with the Home Buyers was effectively cancelled when it reserved the Property to another Home Buyer and it ought to have refunded the HomeBuyers' reservation fee but it did not do so."

"The reservation agreement expressly set out that the Home Buyer was entitled to cancel the arrangement at any time before the exchange of contracts. Moreover, no statement of the likely range of costs for 'processing and holding' the reservation was stated"

## KEY LEARNING POINTS

- It is not enough simply to provide information. The information must be accurate and sufficiently comprehensive to enable purchasers to make a suitably informed decision.
- Take time to go through all of the relevant information required to be shared with home buyers to enable them to make a suitably informed decision.
- Use the Code's checklist to satisfy yourself that all information has been included.
- Obtain the home buyers' signature and record the date to evidence the information has been provided and that it has been understood.
- Use the Code's sample Reservation Agreement, which also has a checklist attached and prompts you to provide the relevant information to the home buyer.
- If changes are made to the home and/or garden/landscaping or wider environment throughout the sales process, evidence that you have made the home buyer aware of them, preferably in writing. Where changes significantly and substantially alter the size, appearance or value of the home from what was shown to the home buyer in the Reservation agreement and sale contract, you must **obtain and record the home buyer's agreement**. Ensure the relevant revision numbers are recorded.
- Be specific about any monies that may be retained if a Reservation Agreement is cancelled.

## REMINDER

Section 2.1 creates a positive obligation for home builders to supply information to home buyers, rather than placing the onus on home buyers to ask questions.

This doesn't mean you have to provide every detail of construction to home buyers.

The question is whether the details omitted were so significant that the resulting construction differed significantly from what could reasonably have been predicted based on the information actually provided to the Home Buyer.

## TOP TIP:

Where new information becomes available and/or plans/designs change which might affect the home buyer's purchasing decision, you need to notify them. You should record and evidence that you have done so and obtained the home buyer's agreement and understanding of the implications, where appropriate.



## FEEDBACK

Don't forget that online training is available to you, your staff and your agents to help improve customer service and compliance with the Code.

For more information or to suggest ideas for information you would like to receive, please email: [secretariat@consumercode.co.uk](mailto:secretariat@consumercode.co.uk)