

STATUTORY INSTRUMENTS

1986 No. 2099

BUILDING SOCIETIES

The Building Societies (Prescribed Equitable Interests) Order 1986

Made - - - 2nd December 1986

Laid before Parliament 4th December 1986

Coming into Operation 1st January 1987

The Building Societies Commission, with the consent of the Treasury, in exercise of the powers conferred upon it by section 10(6) of the Building Societies Act 1986(a), and of all other powers enabling it in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Building Societies (Prescribed Equitable Interests) Order 1986 and shall come into operation on 1st January 1987.

Interpretation

2. In this Order —

“the Act” means the Building Societies Act 1986;

“the first type of equitable interest” means an equitable interest of the type described in article 4 below;

“nominee” means a person chosen by a borrower or by a vendor;

“registered land” in the case of land in England and Wales has the meaning which it has in section 3 of the Land Registration Act 1925(b) and in the case of land in Northern Ireland means land the title to which is registered under Part III of the Land Registration Act (Northern Ireland) 1970(c);

“the second type of equitable interest” means an equitable interest of the type described in article 5 below; and

“the third type of equitable interest” means an equitable interest of the type described in article 6 below.

Prescribed equitable interests

3. For the purposes of section 10(6) of the Act (which empowers building societies to lend on the security of prescribed equitable interests in land in England and Wales or Northern Ireland) a building society may advance money on the security of the first or second type of equitable interest or, subject to article 7 below, on the security of the third type of equitable interest.

(a) 1986 c.53.

(b) 1925 c.21.

(c) 1970 c.18 (N.I.).

Rights to acquire freehold or greater leasehold interest

4. The first type of equitable interest is an equitable interest in land the leasehold estate in which is security for the advance where the lease or a related instrument includes provision entitling the leaseholder to acquire a beneficial interest of any extent in the freehold or a greater leasehold interest and the right to acquire that interest is assigned as additional security.

Interests appurtenant to land

5. The second type of equitable interest is any easement, profit or like right, being merely an equitable interest and which is appurtenant to the land the legal estate in which is security for the advance.

Contracts for the development of land

6. The third type of equitable interest is an equitable interest in land arising under a contract for the development of that land which contract fulfils the following requirements —

- (a) the borrower is a body corporate having the provision of housing as its object or one of its objects;
- (b) the borrower agrees to develop the land primarily for residential purposes; and
- (c) it is a term that either —
 - (i) the borrower may at any time upon payment of the purchase price under the contract require the vendor to convey his legal estate in the land, or grant a leasehold interest derived therefrom, to the borrower, or
 - (ii) the borrower may upon fulfilment of his obligation to develop the land or any part thereof require the vendor to convey his legal estate in the land or that part, or grant a leasehold interest derived therefrom, to a nominee or to the borrower.

Protection of contracts

7.—(1) A building society may only accept the third type of equitable interest as security for an advance if it is satisfied that, where the contract is a contract for the development of —

- (a) land in England and Wales, the requirements of paragraph (2) below, and
 - (b) land in Northern Ireland, the requirements of paragraph (3) below,
- will be satisfied in respect of that contract.

(2) The requirements of this paragraph are satisfied in respect of a contract for the development of land if —

- (a) where the land is not registered land, the contract is protected by being registered as an estate contract under the Land Charges Act 1972(a), and
- (b) where the land is registered land, the contract is protected by registration of a notice or entry of a restriction under Part IV of the Land Registration Act 1925(b).

(a) 1972 c.61.

(b) 1925 c.21.

(3) The requirements of this paragraph are satisfied in respect of a contract for the development of land if—

- (a) where the land is not registered land, the contract is protected by being registered in the Registry of Deeds maintained in Northern Ireland under the Registration of Deeds Act (Northern Ireland) 1970(a), and
- (b) where the land is registered land, the contract is protected by entry of a burden under Part IV or lodgement of a caution or entry of an inhibition under Part VII of the Land Registration Act (Northern Ireland) 1970(b).

Acquisition, holding and disposal of residential land by societies without qualifying asset holdings

8. Only the first type of equitable interest shall be treated as an equitable interest for the purposes of section 17(10) of the Act (which empowers a society without a qualifying asset holding to acquire, hold and dispose of residential land so as to enable the society to make advances on the security of equitable interests in it).

In witness whereof the common seal of the Building Societies Commission is hereunto fixed, and is authenticated by me, a person authorised under paragraph 14 of Schedule 1 to the Building Societies Act 1986, on 27th November 1986.

L.S.

G. M. Binns,
Secretary to the Commission.

We consent to this Order.
2nd December 1986.

Michael Neubert,
Peter Lloyd,
Two of the Lords Commissioners of
Her Majesty's Treasury.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order prescribes three types of equitable interest which building societies may accept as security for an advance of money. The first type is a leaseholder's right—for example in certain types of shared ownership scheme—to buy the freehold or a greater leasehold interest. The second type is an easement, profit or similar right which is appurtenant to land. The third type is an interest arising under a contract for the development, primarily for residential purposes, of land which includes a right for the developer to call for legal estate to be transferred to him or to his or his vendor's nominee.

This Order also prescribes the first type of equitable interest as an equitable interest to which section 17(10) of the Building Societies Act 1986 applies. Section 17(10) of that Act empowers a society with commercial assets of less than £100 million to acquire, hold and dispose of residential land so as to enable the society to make advances on the security of equitable interests in it in prescribed circumstances.

(a) 1970 c.25 (N.I.).

(b) 1970 c.18 (N.I.).

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