

More certainty for new home buyers

On the 1st April 2010, a voluntary code of practice, The Consumer Code for Home Builders came into force. The code sets out mandatory requirements that all participating developers of residential property must meet. Unfortunately the code does not apply retrospectively.

All home warranty bodies, such as NHBC Premier Guarantee and New LABC New Home Warranty, require their registered builders to comply with the code as a condition of registration. If a builder fails to comply with the code, then there are a range of sanctions which the home warranty body can use, which can ultimately result in the exclusion of the builder from all home warranty bodies.

The idea behind the code is to ensure that buyers of new property are treated fairly, know what service levels to expect and are given reliable information upon which to make their decisions. This is particularly important to home buyers who in the past have been given little or no idea of when the completion will take place of their new property.

Builders are now required to include the anticipated date by which the builder will issue the notice of legal completion to the buyer in the contract of sale. The suggested clause allows the buyer to terminate the contract if the developer fails to serve notice within a given number of months after the anticipated date stated in the contract. This guidance suggests 6 months for houses and 12 months for flats where construction is at a very early stage and the building is not weatherproof, or a period of 2 months for houses and 4 months for flats if exchange takes place at a later stage of construction.

This part of the code will be particularly important to buyers. Many buyers in the past have found themselves in the position of having been told by a builder that a completion date would be in 12 months, only to find out that it would be more like 24 months, and with no rights to cancel the purchase. A recent Court of Appeal decision in *North Eastern Properties Limited v Coleman & Quinn Conveyancing*, addressed such an issue. It was indicated by the builder that the block of flats would be finished in December 2007. Delays occurred and in May 2008 the buyer was told that the builder required a further month to complete the flats. The buyer decided to serve a notice to complete requiring completion within 10 days. The Court held that a notice to complete could only be served on or after the contractual completion date and therefore the buyer was contractually bound to purchase the flats, even though there had been a delay.

The code will now prevent such a situation occurring and the buyer will have rights under the code to terminate the contract if the builder fails to serve notice within the given number of months after the anticipated date stated in the contract.

The code also requires builders to make buyers aware of how to access speedy, low cost dispute resolution arrangements if they are dissatisfied.

Le-Ann Walker, head of our Residential Conveyancing Department comments

“The code will bring certainty into the purchasing of new build properties for buyers who in the past have often had to accept a contract for the purchase of a new property on the basis of no long stop date. This has left buyers in the past being in a position that whilst a builder has given an estimate of when the property is to be completed, they have not been able to rely on this information and have in some circumstances found that they have been homeless due to delays in construction.

From a builders’ point of view, the code will mean that they will need to provide buyers with realistic completion dates, although there may be a tendency to err on the side of caution.”

With the housing market improving, and builders starting new developments, the new code should hopefully allow the new build residential market to prosper.

Should you require any Residential Conveyancing assistance or further information or advice, then please do not hesitate to contact Le-Ann Walker on 01270 762521