



Homes for Scotland response to Land Registration (Scotland) Bill

Homes for Scotland is the representative body of the Scottish homebuilding industry, with over 200 full and associate members. Its members build around 95% of all new homes for sale built each year, as well as a significant proportion of the affordable housing output annually. Homes for Scotland makes policy submissions on National and Local Government policy issues affecting the industry, and its views are endorsed by the relevant local committees and advisory groups consisting of key representatives drawn from within our members.

Our members wish to draw attention to concern they have with one particular area of the Bill – Section 5 Shared Plot Title Sheets.

Section 5 – Mapping: Shared Plot Title Sheets

We welcome proposals that address difficulties experienced by home builders in trying to identify common land too early, particularly for large phased developments.

It does of course seem sensible that where possible common amenity areas are identified on the Cadastral Map and given a separate Cadastral unit number. In reality however we know that very often at the time when a plot is sold, common areas are yet to be fully defined and we welcome the proposed facility to manage the conveyance of titles to common areas through the Provisional Shared Plot Title Sheet.

We understand that when units are sold the title sheets for those properties would contain a reference to the provisional shared plot Title Sheet, but that the right for the land would remain with the home builder until completion of the development when the home builder would be expected to lodge with the Keeper the final plan of the common areas forming an ascertainment deed. The Keeper would then map the common areas in the Provisional Shared Plot Title Sheet, removing them from the home builder's Title Sheet and giving the owners of the individual properties a real right in common to the common parts. We understand that it is proposed that the home builder would have nine years to lodge the ascertainment deed with the Keeper.

The consultation proposes that if after nine years the home builder has not ascertained the common areas, the Keeper will cancel the provisional Shared Plot Title Sheet and remove any reference to it from the Sharing Plot Title Sheets. It is this that concerns our members.

If the provisional Shared Plot Title Sheet is removed from the sharing plot we assume ownership of the relevant areas reverts back to the home builder with no rights for the customer? It would of course be in the interest of the home builder to ensure the ascertainment plan is lodged to pass over responsibility of the land once the development is complete.

However, what happens if during the nine year period the home builder fails and goes into liquidation? As far as we understand it, this scenario is not addressed in the proposals. Would it be left to the administrators/liquidators to realise that the common areas of a development are not ascertained and up to them to lodge the deed of ascertainment? What would happen if they failed to do so? Would the land just be left in limbo?

Should there not be a provision in the legislation that gives another party, whether the Keeper or the various plot owners the right to "ascertain" the common areas in the event of a home builder failing to lodge an ascertainment plan or becoming insolvent in the nine year period? This could be based on the information given to customers at the point of sale.

(30 November 2010)