

**Retention of units in apartment development by developer:  
stamp duty treatment and precedent documentation**

**Exchange Of Correspondence Between Conveyancing Committee And Revenue**

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**Letter 25<sup>th</sup> March, 2005, Conveyancing Committee to Revenue:-**

“I attach a copy of an exchange of letters many years ago in relation to this matter. The situation which arises now and then is that a developer is building, say, a stand alone block containing 50 apartments which it will sell by way of long leases. The developer is a limited company involved in the building of houses and apartments. It contracts in the usual way to transfer the freehold reversion and common areas to the Management Company when the last lease is granted. In the course of the development the developer decides to retain, say, 3 apartments for an indeterminate period – perhaps 5 years or so.

We had constant queries from solicitors to know what was the best technical way of dealing with this and last year I set about drafting a set of documentation which we could give as precedents to any solicitor in need.

The essence of the proposed new way of dealing with this is as follows:

1. The developer grants a lease of the unit it wishes to retain to a nominee, say the solicitor for the developer, reciting the fact that this lease is being granted in order to facilitate the transfer of the freehold reversion and common areas to the Management Company and that it is being granted in trust for the developer and to enable the legal structure for the apartment block to be put in place.
2. Immediately the lease is granted the trustee executes a Declaration of Trust in favour of the developer.
3. The developer transfers the freehold reversion of all the leases, including the one to the trustee nominee, to the Management Company.
4. Lastly the trustee assigns the lessee's interest under the lease of the unit intended to be retained back to the developer.

It seems to me that these arrangements would come within the spirit of the method of retaining these apartments already approved by the stamp office but it would be very helpful before recommending this procedure to solicitors if we knew that it is accepted by the stamp office that no beneficial interest passes by virtue of any of these documents.

I have precedents of the proposed documentation available and could send them to you but hesitated to do so. If you think this would be helpful could you email me and I will get them down to you.”

(Consultant to the Conveyancing Committee)

**12<sup>th</sup> April, 2005, Response from Revenue to Conveyancing Committee:-**

“I refer to your letter dated 24<sup>th</sup> March, 2005 regarding the stamp duty implications where a developer of an apartment complex wishes to retain ownership of one or more of the apartments in the complex and to transfer the freehold interest and the common areas to a Management Company.

I can confirm the Revenue practice, referred to in the copy correspondence enclosed with your letter, not to pursue a charge to ad valorem stamp duty where an unsold apartment(s) is transferred, together with the freehold interest and the common areas, by the Developer to the Management Company and the Management Company grants a leaseback of the unsold apartment(s) to the Developer.

I have noted the proposed new procedure, set out at points 1 to 4 in your letter, which it is intended to adopt to deal with the issue of retention of ownership by a Developer of unsold apartment(s) I can confirm that the new procedure will not give rise to a charge to ad valorem in relation to the retained apartments on the basis that no beneficial interest passes by virtue of any of the instruments executed in connection with the new procedure”

(Stamp Duty Interpretation  
Office of the Revenue Commissioners)