

**RETENTION OF
UNITS IN
APARTMENT
DEVELOPMENT BY
DEVELOPER:
STAMP DUTY
TREATMENT AND
PRECEDENT
DOCUMENTATION**

A solicitor acting for a developer of an apartment development will occasionally be instructed that the developer wishes to retain one or more units in the development. Typically this will occur in a situation where the developer is building a block of apartments that it is selling by way of long leases. It contracts in the usual way to transfer the freehold reversion and the common areas to the management company when the last lease is granted. During the course of development it decides to retain one or more apartments for itself. As the developer cannot grant a lease to itself in respect of the apartment(s) to be retained, issues arise as to how and when the freehold reversion and the common areas will be transferred and as to how the title to the retained unit(s) will be held by the developer and any subsequent purchasers from the developer.

In the past, the practice was for the unsold apartment(s) to be transferred, together with the freehold interest and the common areas, by the developer to the management company and the management company would grant a leaseback of the unsold apartment(s) to the developer. It was Revenue practice in the above circumstances not to pursue a charge to ad valorem stamp duty.

The Conveyancing Committee proposed to Revenue a new way of dealing with this matter and a set of precedent documentation was drafted which accompanied the proposal. Revenue confirmed that the new procedure will not give rise to a charge to ad valorem stamp duty 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.

The structure of the new procedure is that the developer grants a lease of the unit it wishes to retain to a nominee reciting the fact that this lease is being granted in trust for the developer, and in order to facilitate the transfer of the freehold reversion and common areas to the management company, and to enable the legal structure for the apartment block to be put in place. Immediately the lease is granted, the nominee/trustee executes a declaration of trust in favour of the developer, the developer transfers the freehold reversion of all the leases, including the one to the nominee/trustee, to the management company and finally the nominee/trustee assigns the lessee's interest under the lease of the unit intended to be retained back to the developer.

More detailed particulars of the exchange of correspondence between the committee and Revenue on the stamp duty treatment of this matter and outlining the new procedure, together with the precedent documentation, is available by logging on to the members' area of the Law Society website and clicking in turn on Society Committees, Conveyancing, and Precedent Documentation.