

# COMPLIANCE GUIDE FOR NEW FULLY MUTUAL HOUSING CO-OPERATIVES



This guide is here to help as you embark on this exciting journey and covers the main formalities that you will need to comply with as a mutual organisation.

## **Members and rent**

Do not jeopardise the co-operative's fully mutual status by allowing people who are not members of the co-operative to live in your property and pay the co-operative rent. If your fully mutual status is put into question, it could affect your tax status and may mean the local authority considers you a "house in multiple occupation" (which in turn introduces unwelcome regulation).

## **Avoid unapproved tenancy agreements**

The housing co-operative model allows freeholders more discretion, in comparison to normal residential landlords, to terminate tenancy agreements if relationships break down. Therefore, be careful when creating any protocols or agreements with members to avoid inadvertently diluting the co-operative's rights as a freeholder and losing this flexibility. For example do not agree that that a member can remain in their accommodation for an indefinite period

without taking specialist legal advice. Agreeing open-ended terms can leave your co-operative exposed to really problematic consequences as seen in the *Mexfield*<sup>1</sup> case.

## **Change of address**

If you change your address for service of official documents, remember to update your address at:

- the Financial Conduct Authority (for a co-operative society)
- Companies House (for a company limited by guarantee)
- the Land Registry (for both co-operative societies and companies limited by guarantee)

## **Register of members**

Ensure that the co-operative's register of members is kept up to date.

## **Name change or rule change**

File these changes promptly (together with associated member resolutions) with the relevant regulatory body as follows:

- the Financial Conduct Authority (for a co-operative society)
- Companies House (for a company limited by guarantee)

## **Getting a mortgage**

If you borrow by way of a mortgage over your property in the future, be aware that the mortgage needs to be registered within 21 days at:

- the Financial Conduct Authority (for a co-operative society)
- Companies House (for a company limited by guarantee)

## **Redeeming a mortgage**

If you pay off your mortgage, remember to file the necessary paperwork to have the mortgage removed at:

- the Financial Conduct Authority (for a co-operative society)
- Companies House (for a company limited by guarantee)
- the Land Registry (for both co-operative societies and companies limited by guarantee)

## **Property or legal structure changes**

Before you make any changes to your property management arrangements or legal structure, take specialist legal and accountancy advice. Any changes could lead to unexpected tax charges.

## **Obtain tax reliefs**

If your co-operative is a fully mutual housing association, obtain approval from HMRC that certain tax reliefs available to such housing associations are available to you under section 488 of the Income Tax and Corporation Taxes Act 1988 including:

- the relief that rents paid to the co-operative by its members are disregarded for tax purposes; and
- the relief from corporation tax on chargeable gains on the disposal of property which has been/is occupied by a tenant.

Co-operative societies can benefit from a relief to both the corporate rate of stamp duty land tax when buying residential property and the annual tax on enveloped dwellings. Consider taking advice if this is relevant to you.

## **Consider registering with the Regulator of Social Housing ("RSH")**

This option is typically more applicable to larger, multiple property housing co-operatives. To assist with any of the following (if important to you), consider registering with RSH for:

- potentially accessing public grants; and
- demonstrating the credibility and status required to borrow money from private lenders

but be aware that registration will lead to greater regulation from government bodies and may give members the right to acquire the freehold or leasehold of their home.

If you would like to discuss any aspect of this guide further, please contact:



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The information in this guide is necessarily of a general nature. Specific advice should be sought for specific situations. If you have any queries or need any legal advice please feel free to contact Wrigleys Solicitors

<sup>1</sup>The case of *Mexfield Housing Co-operative Ltd v Berrisford* [2012] 1 A.C. 955