Justice Committee

Inquiry into the effectiveness of the provisions in the Title Conditions (Scotland) Act 2003

Written submission from bto solicitors

We have considered your call for written evidence for the inquiry and have the following submissions.

Generally the provisions of the Act are to be very much welcomed by comparison to the regime which previously applied.

One area of concern relates to properties which are not part of any tenement but which have an interest in common open spaces or features where title conditions for maintenance of these open spaces or features have been omitted.

There are no default provisions for properties in this category, unlike properties in tenements which have the default provisions of the Tenement Management Scheme. This scenario does not appear to have been contemplated by the Act but we have found that it does arise.

A possible solution appeared to lie in new title conditions being constituted under either Section 33 or Section 91 of the Act. This does not appear possible following the decision in the case of Sheltered Housing Management Limited v Bon Accord Bonding Company Limited.

As matters stand this is an area of great difficulty.

In response to the ten specific questions raised, following the numbering of the questions:

1. No.
2. Yes.
3. Yes, where the local authority/housing association retains ownership of other houses in the same development/scheme which is most likely to be the case.
4. First question, no and yes to second question.
5. No. It is essential that voting rights are fair.
6. First question, yes. We have experience of owners removing a private property manager and appointing a Registered Social Landlord in their place.
7. (a) no, (b) (1) competition amongst such maintenance companies or (2) acquisition by the house owners of the land.
8. Yes.
9. Yes.
10. First question, yes, second question, no and third question, no. The present regime is very much better than the previous one in which expenses did not follow success.

bto solicitors
28 February 2013