

Multiple Dwelling Relief Update: no Door, no Claim

A recent appeal judgment from the First-tier Tribunal Tax Chamber (FTT Tax Chamber) may provide a barrier to some claims against solicitors for failing to claim multiple dwelling tax reliefs.

The judgment drew a distinction in relief applicable when an annexe is attached to a dwelling by a doorless corridor. In its decision released on 9 April 2020 (in *Fiander and Brower v HMRC* [TC/2019/00071]), the FTT Tax Chamber determined that in these circumstances the purchase did not qualify for multiple dwelling relief (MDR).

Conveyancing solicitors will be accustomed to the rise in MDR claims since HM Revenue & Customs (HMRC) provided guidance in October 2018 as to what constitutes a dwelling:

"It is a question of fact whether a purchase consists of one or more than one dwelling. A self-contained part of a building will be a separate dwelling if the residents of that part can live independently of the residents of the rest of the building, including independent access and domestic facilities."

This clarification led to a number of property purchasers becoming aware that their purchase could have qualified for MDR by having a self-contained residential unit, such as a "granny annex", and resultant claims against their conveyancing solicitor for stamp duty land tax overpayment.

However, in its appeal judgment the FTT Tax Chamber confirmed that it did not matter if the annexe had a separate entrance, as it was also connected to the main dwelling by a corridor with no door. The FTT Tax Chamber highlighted a test of "suitability" for use as a "single dwelling", at the time of completion, by considering whether an objective bystander could consider that the main house and annex could be used individually, absent the knowledge of a very particular kind of relationship subsisting between the occupants of the two parts. In this case, the insufficiency of privacy and security was fatal to the claim.

This decision is helpful for conveyancing practitioners seeking to defend claims when properties have an inter-connecting corridor with no door.



Recommendations

- Conveyancing practitioners, when acting on the purchase of a property, should remain vigilant as to whether an annex is present. If so, further enquiries should be undertaken to determine whether MDR should be claimed and clients advised accordingly. Additionally, firms should consider ensuring that a surveyor's report clearly establishes the full particulars of the annex before they advise.
- Firms should consider using checklists for practitioners acting on conveyancing transactions, to ensure that MDR questions are asked and significant advice not missed.
- Where there are on-going claims against practitioners for failure to apply for MDR, arguments concerning insufficiency of privacy and security should be tested.
- In recent transactions, where practitioners consider they might have failed to advise their clients to apply for MDR, they should consider advising their clients to file an amended HMRC tax return within the 12 months allowance period. In these circumstances, practitioners should be mindful of own interest conflict arguments and consult with their compliance officer for legal practice, insurer, and potentially the Solicitors Regulation Authority as to whether they should continue to act.

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VICTORIA PRESCOTT
Senior Vice President, FINPRO
+44 (0)207 357 1241
victoria.prescott@marsh.com

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