



## THE LAW COMMISSION

### EVENT FEES IN RETIREMENT PROPERTIES

This optional response form is provided for consultees' convenience in responding to our consultation on a draft code of practice.

The response form includes the text of the questions in paragraphs 7.1 – 7.17 of the consultation on draft code of practice provisions, with boxes for yes / no answers (please delete as appropriate) and space for comments. You do not have to respond to every question. Comments are not limited in length (the box will expand, if necessary, as you type).

Each question gives a reference in brackets to the paragraph of the consultation on a draft code of practice at which the question is asked. Please consider the surrounding discussion before responding.

We invite responses from 30 September 2016 until 31 October 2016.

Please return this form:

By email to: [event\\_fees@lawcommission.gsi.gov.uk](mailto:event_fees@lawcommission.gsi.gov.uk)

By post to: Ruth Keating, Commercial and Common Law Team,  
Law Commission, 1st Floor Tower,  
Post Point 1.53, 52 Queen Anne's  
Gate, London SW1H 9AG

We are happy to accept responses in any form. However, we would prefer, if possible, to receive emails attaching this pre-prepared response form.

**Freedom of information statement**

Any information you give to us will be subject to the Freedom of Information Act 2000, which means that we must normally disclose it to those who ask for it.

If you wish your information to be confidential, please tell us why you regard the information as confidential. On a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded as binding on the Law Commission.

***The Law Commission processes personal data in accordance with the Data Protection Act 1998 and in most circumstances it will not be disclosed to third parties.***

**YOUR DETAILS**

Name:	Mark Hayward
Organisation:	National Association of Estate Agents (NAEA)
Role:	Managing Director
Postal address:	Arbon House 6 Tournament Court Edgehill Drive Warwick Warwickshire CV34 6LG
Telephone:	01926 417 777
Email:	<a href="mailto:mark@naea.co.uk">mark@naea.co.uk</a>

**CONFIDENTIALITY**

Do you wish to keep this response confidential?

Yes:	No: X
If yes, please give reasons:	

**QUESTION 1: ENFORCEMENT OF THE CODE PROVISIONS**

(Consultation on draft code of practice provisions, paragraph 2.11)

Do consultees agree that the sinking fund portion of an event fee should be enforceable, regardless of whether there has been a breach of the code?

Yes: X	No:	Other:
<p>Yes, NAEA agrees that the sinking fund option of an event should be enforceable, regardless of whether there has been a breach of the code. As outlined at point 2.0 on page 5 of the Consultation on Draft Code of Practice Provisions, without the sinking fund this may leave maintenance costs unpaid. However, we think that this issue needs to be looked at in greater detail to ensure more protection for consumers. We would, for instance, support additional qualifications to the Consumer Rights Act as outlined at point 2.10 on page 5.</p>		

## **QUESTION 2: DEFINITIONS**

(Consultation on draft code of practice provisions, paragraph 3.4)

We welcome comments on the definitions generally.

<p>NAEA is happy that the definitions cover all of the main areas. However, it is often unclear to the consumer what services or benefits they receive for payment of the fee. In order to increase awareness for consumers and agents the code of practice provisions should include examples of services such as care charges, gardening or maintenance.</p>
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## **QUESTION 3: WHEN EVENT FEES MAY BE CHARGED**

(Consultation on draft code of practice provisions, paragraph 4.12)

Our proposals for the prescribed cap are based on event fee models which use a percentage rate. We welcome views on how the prescribed cap would operate when the event fee model is based on an equity uplift model.

<p>We are supportive of the proposals for the prescribed cap to be based on event fees which use a percentage rate. However, we do not know how the prescribed cap would operate when the event fee model is based on an equity uplift model.</p>
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## QUESTIONS 4 TO 13: THE FREEHOLDER'S OBLIGATIONS

(Consultation on draft code of practice provisions, paragraph 5.8)

Do consultees agree that the disclosure document should be standardised to facilitate comparison of properties?

Yes: X	No:	Other:
Yes. NAEA agrees that the disclosure document should be standardised to facilitate comparison of properties.		

(Consultation on draft code of practice provisions, paragraph 5.12)

Do consultees agree that the current range of property price inflation rates in the worked example, 5%, 0% and -5%, are appropriate?

Yes:	No: X	Other:
We do not think that the property price inflation rates in the worked example are appropriate.		

Alternatively should these rates be changed to 3%, 0% and -3%?

Yes: X	No:	Other:
We think that the rates should be changed to 3%, 0% and -3% in order to account for an ageing population and people living longer.		

(Consultation on draft code of practice provisions, paragraph 5.15)

- (1) Do consultees agree that the disclosure document should be no longer than one page to avoid "information overload"?

Yes: X	No:	Other:
Yes, we agree that the disclosure document should be no longer than one page to avoid "information overload". However, the document has room to include more information to help consumers.		

- (2) Do consultees agree the proposed wording that the consumer should ask the freeholder about other charges is sufficient?

Yes:	No: X	Other:
<p>The proposed wording that the consumer should ask the freeholder about other charges is not sufficient and should also say “prospective purchasers should seek independent legal advice before signing any agreement.” Furthermore, there is room on the disclosure document to include contact details for Trading Standards, Money Advice Service and Citizens Advice. The disclosure document should also include wording that says, “You should also ask the landlord, <b>agent, developer or management company</b> about the other charges...” There is also a need to reference the actual Companies of retirement villages, who deal with their own marketing and selling.</p>		

- (3) Do consultees think that we should include a simple explanation of event fees in the disclosure document?

Yes: X	No:	Other:
<p>Yes. Something akin to, “Event fees are the money some residential leases require the leaseholder to pay on the sale of the property or other event such as sub-letting. These fees are common in retirement housing where there are usually costs for gardening, maintenance or care services. A clause in the lease can allow purchasers to off-set service costs to when the property is sold or sub-let and a certain percentage of the proceeds of the sale must be paid back.”</p>		

- (4) Do consultees think that we should include a second worked example based on sub-letting the property?

Yes: X	No:	Other:
<p>Yes. Sub-letting has been widely highlight as a problem that triggers event fees and therefore should be included as a second worked example to raise awareness. Another issue that should also be mentioned is the taking out of an equity release mortgage.</p>		

- (5) Do consultees consider that the equity uplift models for event fees can be provided in the same format and, if so, how?

Yes: X	No:	Other:
<p>Yes we consider that the equity uplift models for event fees can be provided in the same format as event fees. It could be described with a simple example of average fee against below market value figures.</p>		

(Consultation on draft code of practice provisions, paragraph 5.18)

We welcome views on whether the use of the Elderly Accommodation Counsel website as an online database to host event fee information raises any practical issues.

<p>We would advocate that both the freeholder and the Elderly Accommodation Counsel establish online databases of properties with event fees. This is because prospective purchasers and agents are more likely to find information about the property from the solicitor as well as the landlord, developer or managing agent. Furthermore, the Elderly Accommodation Counsel is not well known and would require publicity within the industry and the general public to ensure that agents know where to find the information they need.</p>
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(Consultation on draft code of practice provisions, paragraph 5.22)

Do consultees think that solicitors or conveyancers should be required to provide the disclosure document as a matter of course when acting on a conveyance of a retirement property?

Yes: X	No:	Other:
<p>Yes. We also think that the Law Society should be included in the development of guidance and training as outlined at point 5.20 on page 13.</p>		

(Consultation on draft code of practice provisions, paragraph 5.25)

We welcome views on whether and by what means potential beneficiaries of an estate could be made aware of an event fee on a retirement property.

NAEA has long held the view that consumers need to be told about event fees when they see the property advertised, visit an office or view the property. Potential beneficiaries could be made aware of an event fee on a retirement property through an individual's Will and Testament or the solicitor contacts the next of kin when the buyer puts in an offer and has it accepted.

**QUESTIONS 15 TO 17: ASSESSING THE IMPACT OF REFORM**

Do consultees agree our proposals will increase consumer confidence in the specialist housing market? If so, what effect might this have on the market?

Yes: X	No:	Other:
<p>Yes, we agree that the proposals will increase consumer confidence in the specialist housing market. The issue is important for estate agents because they need to comply with Consumer Protection Regulations and consumers need to be told about event fees before making a decision on whether to purchase these type of property. The disclosure document will improve this process.</p> <p>In relation to the effects on the market, downsizing is a part of the housing cycle and can allow many younger buyers with families to make use of larger properties which older people often still occupy after their own children have grown up and left or a partner may have died. Therefore with an ageing population these types of property will become more prevalent. When purchasing retirement housing many developers of these specialised property go through the fees with prospective buyers and many agents do the same with the lease. What's important is that purchasers and their families realise that the longer they live in these types of property the bigger the charge is likely to be.</p>		

Do consultees think that following our proposals, event fees which comply with the code of practice will have sufficient legal certainty to meet the standards required for secured lending?

Yes: X	No:	Other: X
<p>Yes, we do think that following the Law Commission's proposals, event fees which comply with the code of practice will have sufficient legal certainty to</p>		

meet the standards required for secured lending. They are consistent with the principles of the consumer protection rules for estate agents.

We welcome evidence on the effect which removing the current legal uncertainty over event fees may have on the volume of lending available.

We do not have relevant information about volume of lending to answer this question.