

# Stress-free Securitisation and Asset and Liability Registers



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# What we can do for you – Getting your money quicker!

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In the current market especially, RPs and RSLs are looking to charge properties as quickly and as efficiently as possible to access funds and extract full value. Our Securitisation Team can assist you in doing this in a number of ways.

**A streamlined process** – We have developed an in-house bespoke software programme called the Securitisation Toolkit which is a revolutionary transaction management system that has streamlined the charging process. This “talks” to the Land Registry and our Search Providers and enables us to download (at the press of a button) all Land Registry Titles, Plans, MapSearches and documents which are then automatically saved in the relevant E-Packets for each Title (along with the Search results). Any documents which clients provide to us will be saved in electronic form to this Toolkit as well. The Securitisation Toolkit enables us to easily create a Titles Table/Table of Outstanding Items, detailing all items required to charge the properties, which Tables will be made available to our clients on our Portal on-line so that the Table can be seen in real-time. Clients can also access the E-Packets via this Portal at any time, both during the transaction and post-completion.

**Regular updates** – Our Tables of Outstanding Items are available via our Portal which shows the current position on all matters in real-time. The Tables are split into items awaited from clients and items awaited from third parties for ease of reference. The Tables also identify whether clients are, based on our considerable experience, likely to achieve Market Value Subject to Tenancies (MV-STT) when charging properties or whether the value of the properties is likely to be restricted to Existing Use Value for Social Housing (EUV-SH) and, if the value is likely to be restricted, where Deeds of Variation are recommended to enable the value of the properties to be uplifted to maximise the amount clients can secure against the properties.

**An experienced and well-resourced team** – Our team is led by Partner and Head of Securitisation, Sharon Kirkham and also comprises sector renowned Partners Richard Sharpe, Saghar Roya and Chris Drabble who together spearhead a team of over 30 other securitisation specialists, all of whom are highly experienced in charging properties. As the pre-eminent securitisation team in the sector, we have acted for over 100 RPs and RSLs in charging properties under facilities ranging from £1m to £500m and therefore have a wealth of experience in securities work. We do offer a unique service, in that we have a large dedicated team which deals only with security work and we have bespoke systems designed to facilitate and speed up the charging process. Sharon has been in the Securitisation Team since 1994 and the team together has over 150 years of experience in charging properties.

**Ability to anticipate issues at an early stage** – Because Partner Chris Drabble and other members of the Team have acted for lenders in taking security from RPs and RSLs in the past, we have the benefit of the experience of acting on the other side of the charging process and are therefore able to identify issues at an early stage and anticipate lenders' requirements.

**Instant quality response** – We will assemble a Partner led “core team” on each transaction to deliver a greater consistency of service and to enable the core team members to develop a deeper understanding of the client's business, people and how they work. In addition, we will also be able to pull in additional resource as needed from the wider Team to meet any deadlines set for transactions. All of the Team have extensive experience in working for RPs and RSLs in getting properties ready for charging, charging properties, meeting tight deadlines and ensuring a streamlined and smooth transaction.

**Training sessions** – We offer clients a free security training seminar lasting approximately two hours at which we walk clients through the charging process, explain the legal steps and at which we give practical advice as to how clients can speed up the charging process. We have delivered this to a large number of RPs and RSLs to date, who have found this hugely beneficial in improving their own charging process and procedures. If you would be interested in us delivering one of these security training seminars for your finance and development staff to attend (either at your offices or for Devonshires to host), please let us know.

We offer competitive fees for the high quality service outlined above and would appreciate the opportunity of meeting with you to discuss your next charging exercise.

## Our team

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Our team is led by Partner and Head of Securitisation, Sharon Kirkham, and also comprises sector renowned Partners Richard Sharpe, Saghar Roya and Chris Drabble who together spearhead a team of over 30 securitisation specialists, all of whom are highly experienced in charging properties and dealing with the wider property securitisation work.

Our team works out of three offices in London, Leeds and Colchester, working as a cohesive unit with the assistance of our Securitisation Toolkit. Leeds is our newest addition, having opened in February 2017 to specifically service the needs and aspirations of our northern clients.



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# Specialist Team for Smaller RPs and RSLs

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We understand the pressures and obstacles faced by Smaller RPs and RSLs and can guide them through the challenges that play a pivotal role in the sector so that they can concentrate on what they do best – providing quality housing and care services to their residents.

We recognise that the challenges faced by Smaller RPs and RSLs will also extend to their securitisation and refinancing exercises and as a result we have set-up our own specialist team within the Securitisation Team dedicated to Smaller RPs and RSLs which is headed up by Saghar Roya, one of the Partners in the London office.

Saghar works very closely with numerous Smaller RPs and RSLs in the G320 and nationally to provide specialist advice on all securitisation matters. We also provide bespoke training aimed at helping Smaller RPs and RSLs maximise and enhance their property portfolios and upskill their staff with a view to streamlining the securitisation process.

## Smaller RPs Testimonials:

***“Saghar and the Securitisation Team provide a high quality and very professional service throughout the whole securitisation process.”*** - Gary Pliskin, Finance Director, Islington and Shoreditch Housing Association

***“We wanted a bespoke securitisation service to suit our circumstances without having to compromise on the quality of the service received or the cost to Tamil Housing. The service we received from Saghar and her team was excellent - bespoke, high in quality and cost effective.”*** - Devan Kanthasamy, Chief Executive, Tamil Community Housing Association

***“The assistance and support we received from Saghar and the team throughout the transaction was excellent. Saghar’s practical advice and tips were very helpful.”*** - Rafik Ghumra, Director of Resources and Risk, Tuntum Housing Association

# Ways the charging process can be made stress-free

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- By holding a free Security Training Seminar for your Finance and Development Officers which looks at the charging process and highlights the most efficient and cost-effective ways of preparing your properties for charging.
- By ensuring that your Development Officers retain and collate the documentation required for charging properties as detailed in our bespoke precedents (such as the DEV1 Form) so that we are not reliant on third parties supplying this information.
- By getting your uncharged properties ready for charging in advance of requiring the funds, so that any issues which may make the properties unacceptable as security, or the charging process more problematic are identified in advance and dealt with.
- By determining if any of your existing facilities are heavily over secured and arranging for any excess security to be re-utilised to secure new funding, making sure you choose the right properties so that they are acceptable as security and will achieve maximum value, taking into account funders' current requirements.
- By ensuring that mortgagee exclusion clauses in your Section 106 Agreements, Transfers, Leases, Nominations Agreements etc. are adequate to enable the higher MV-STT (Market Value Subject to Tenancies) basis to be achieved, so that you maximise your funding capacity. We offer a service of reviewing mortgagee exclusion clauses before you acquire or develop properties to assist with this.
- By assessing whether your ex-LSVT units are capable of being uplifted in value from EUV-SH (Existing Use Value – Social Housing) to MV-STT following deregulation.

For further details of the above, please contact **Sharon Kirkham** on 07932 105777 or [sharon.kirkham@devonshires.co.uk](mailto:sharon.kirkham@devonshires.co.uk)

To view our DEV1 Form, please visit:

<https://www.devonshires.com/stress-free-securitisation-dev1-form/>

# Security training seminar

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By holding a security training seminar you can educate Development and Finance Officers on the charging process and learn about more efficient and cost-effective ways of preparing properties for charging.

## Speakers

One of:

- Sharon Kirkham, Partner and Head of the Securitisation Team, who has over 24 years' experience in acting for RPs and RSLs on securing facilities ranging from £1 million to £500 million.
- Richard Sharpe, Partner, who has worked exclusively in the social housing sector for over 16 years.
- Saghar Roya, Partner, who has worked exclusively in the social housing sector for over 9 years.
- Chris Drabble, Partner, who has worked exclusively in the social housing sector acting for borrowers and lenders for over 18 years.

## Length of seminar

The seminar lasts approximately two hours with a question and answer session at the end.

## Cost of seminar

Free of charge.

## Venue

The seminar can be held either at your offices or at Devonshires Solicitors' offices in either London or Leeds.

## Topics covered

- The charging process including the steps taken by lawyers, valuers and other parties.
- Details of the loan Conditions Precedent required to be satisfied.
- Issues that prevent or delay properties being charged.
- Issues that restrict value.
- How Development and Finance Officers can assist in speeding up the charging process.
- Funding issues that may arise, including Section 106 Agreements and mortgagee exclusion clauses.

# Getting uncharged properties ready for charging

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You can speed up the charging process for when you require funds by getting your properties ready for charging in advance.

**Advantages** – the biggest advantage is that there is less stress for all involved. The delay encountered in charging properties is usually due to items being awaited from third parties, such as Local Authorities, and it is stressful and difficult to manage this when funds are required urgently.

**Cost** – our fee for acting for you in getting properties ready for charging and then separately charging them at a later date will be broadly the same as if we were to charge the properties straight away. The only additional minimal costs which may be incurred are Council's fees for obtaining up-to-date LLC1 Only Searches. You are, however, likely to achieve costs savings against this as you will not incur the fees which the lenders' solicitors charge for dealing with properties in tranches.

**Timing** – if you know that you are going to need funds in the next two to three years you can get the properties ready for charging in advance. There is no timescale within which the properties must be charged once they are ready, as the only work which is carried out which has an expiry date is the LLC1 Only Searches which may need to be refreshed when the full sample Searches are carried out.

## **Steps to be taken - Getting the properties ready for charging:**

- Identify the Titles.
- Obtain Official Copy Entries, Filed Plans and Official Copy Documents.
- Compare the Filed Plans with the free Land Registry MapSearch service to accurately identify the properties and determine that there are no boundary issues.
- Prepare a Titles Table.
- Carry out LLC1 Only search results on one property from each road in each scheme and check these to identify the planning histories for the properties.
- Apply for the planning and other items required, such as planning permissions, Section 106 Agreements, Building Regulations Completion Certificates, Section 278 Agreements, Section 33 Agreements and Nomination Agreements.
- Obtain confirmations of compliance with all conditions requiring formal discharge in planning permissions and of compliance with obligations contained in Section 106, Section 278 and Section 33 Agreements.
- Obtain evidence of NHBC or equivalent cover where the properties are less than ten years old.
- Prepare a Table of Outstanding Items and update this as and when items are received in.
- Prepare a draft Certificate of Title on the properties to be charged.

### **Steps to be taken - When lender identified:**

- Agree sample full Local, Water and Drainage, Environmental and Chancel Check Searches (and any other relevant Searches) with the Lender's solicitors and carry these out, check the results of these Searches and report on these in the draft Certificate of Title.
- Collate the Conditions Precedent, such as valuation, block insurance policy and up to date insurance schedules, standard form tenancy agreements and Legal Charge.
- Agree the Certificate of Title with the Lender's solicitors.

This stage can be done within four to five weeks of being advised of the Lender to whom the properties are to be charged, if the properties are cleared for charging at that time.

# Reviewing Over-Secured Facilities

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Registered providers often find that older facilities can be very heavily over-secured. This is the natural result of the amount outstanding on the loan reducing over time, together with the value of the properties charged increasing over the same period.

In these circumstances, you should strongly consider re-utilising what may well be a very considerable number of units from the existing facilities and applying them elsewhere to secure new funding.

## How we can help:

- By recommending which properties are best to release from the existing facilities, by advising on the likely valuation that will be achieved in today's lending climate. It is important to bear in mind that some properties which were charged at an MV-STT value many years ago may now only achieve an EUV-SH value or even be unacceptable as security due to current lender requirements and we can determine where this is likely to be the case. In this way, you can maximise the charging potential of your asset base and ensure that you release the correct properties from the existing facilities.
- By preparing the relevant properties in the usual way once you have identified the properties to be re-utilised and have obtained the lender's consent to this.

## Uplifting the value of ex-LSVT stock

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The need to obtain the consent of the Secretary of State for dispositions by RPs relating to properties subject to the standard Section 133 LSVT restriction ceased to apply pursuant to the amendments introduced by Schedule 4, Part 1 of the Housing and Planning Act 2016.

As a consequence, properties that traditionally have only been capable of achieving an EUV-SH valuation for charging purposes can now potentially realise an MV-STT value.

### How this can be achieved:

- We can advise you on your ability to achieve an uplift by carrying out a review of the relevant LSVT documentation – the transfer will have imposed certain restrictions and covenants, the precise wording of which will be critical to achieving an uplift.
- You will need to review your loan documentation and liaise with the funders which currently rely upon the properties as security, to establish if the documentation and those funders will allow an uplift to MV-STT.
- You will need to obtain input from your valuers to ascertain whether the properties are within a geographical location which will enable MV-STT value to be attributed to them.

Once it has been determined that the value of the ex-LSVT units is capable of being uplifted, taking into account all of the above, we can then assist by preparing Certificates of Title for these properties which will be required before the uplift can be achieved, as the lenders take the view that the Deeds of Warranty are insufficient for that purpose.

# Reviewing mortgagee exclusion clauses

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Devonshires Solicitors offer a service reviewing documentation containing mortgagee exclusion clauses to identify any material issues and to enable you to achieve maximum value when charging properties.

**How we can help** - We can review mortgagee exclusion clauses in draft Section 106 Agreements, Nomination Agreements, Transfers, Leases and other documents for properties which you are in the process of acquiring/developing and advise you of any amendments necessary to satisfy current Lender requirements, thereby enabling you to achieve maximum value when ultimately charging the properties.

We can also review mortgagee exclusion clauses in existing completed documents and advise you whether these will similarly be acceptable to a Lender and enable you to achieve maximum value when charging the properties, or whether these would need to be amended by way of a formal Deed of Variation.

**Our experience** - our Securitisation Team has been established for over 25 years and has unrivalled experience serving the social housing funding sector, acting on behalf of RPs, RSLs and their lenders. We are therefore well placed to advise on the acceptability or otherwise of mortgagee exclusion clauses and their often dramatic negative impact on the value of a portfolio of properties being charged.

**Our fee** - We charge a standard fee for reviewing mortgagee exclusion clauses and suggesting any required amendments and also have a standard fee for dealing with Deeds of Variation (where these are identified as being required). For further details of these fees, please contact Sharon Kirkham, Partner and Head of the Securitisation Team.

## Specialist Team for Deeds of Variation

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We act for the majority of our RP and RSL clients in agreeing Deeds of Variation with third parties to enable properties which would otherwise be unacceptable as security to be charged, or to ensure that our clients maximise their funding capacity by being able to charge them on a MV-STT (Market Value - Subject to Tenancies) basis rather than an EUV-SH (Existing Use Value – Social Housing) basis.

To provide a streamlined, efficient and cost-effective service for dealing with these Deeds of Variation and to deal with the high demand for these, we have established a dedicated specialist team. This team is led by Jemma Brown, Trainee Legal Executive, with assistance from Matthew Robin, paralegal, and managed by solicitors Rachel Eldridge and Sara Snook.

# Asset and Liability Registers

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## How can we assist you with preparing your Asset and Liability Registers?

In addition to having an accurate and up-to-date list of all of the properties which you own, the Regulator also requires you to have a record on your Asset and Liability Register of the existence of any restrictions on the use, disposal and value of all of the properties which are owned by you. This can only be ascertained by a review being carried out on the Titles, any documents referred to on the Titles, any Nominations Agreements, any Leases and any planning documents, such as planning permissions and Section 106 Agreements relating to the properties. The Regulator also requires copies of all documents backing up this review to be easily available.

The steps we would recommend you take to comply with the Regulator's requirements are:

**Step 1** - Make sure you are satisfied that you have an accurate list of properties owned by you which confirms the property address, the Title Number, whether the properties are owned freehold or leasehold, the unexpired term of any leasehold titles and details of any security granted - we can carry out a PN1 Search at the Land Registry for you to identify the Title Numbers registered in your name and can cross-check the properties comprised in these Title Numbers against your list of properties if you are not confident that your list of properties is correct.

**Step 2** - Try to locate copies of the signed and dated Certificates of Title for all properties already charged so these can be referred to in the "Restriction" column in your Asset and Liability Register – we can provide you with scanned copies of all Certificates of Title we have provided for you in the past and can assist with identifying the solicitors who have given other Certificates of Title in the past by liaising with the Land Registry.

**Step 3** - Deal with first registration of any unregistered titles for properties owned by you at the Land Registry and carry out the necessary due diligence reviews on the properties comprised in these unregistered titles – we can also deal with these first registration applications for you.

**Step 4** - Carry out due diligence reviews on any of your uncharged properties and on any of the charged units where the original signed and dated Certificates of Title cannot be located or, alternatively, get all of your uncharged properties ready for charging – we can deal with this for you if you provide us with a list of the properties.

# Testimonials

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We are ranked in Band 1 for social housing finance in Chambers & Partners which states that:

*“Sharon Kirkham is described as “knowledgeable and approachable, organised and co-ordinated. A key figure on the property charging side of matters, clients emphasise her responsiveness and affable manner. Sharon is also highlighted for her excellent management of the property charging team which is a well-oiled machine”.*

*“One of the leading firms for borrowers, regularly handling capital market issues and loan documentation. Frequently advises on registered provider to registered provider lending arrangements and acts for over 90 registered providers on property charging exercises. Also equipped to advise registered providers on the finance aspects of their mergers”*

*“Chris Drabble is a pleasure to work with, his technical knowledge is impressive and his knowledge of funders’ requirements is invaluable”.*

The Legal 500 also ranks us in Band 1 for social housing finance and states that:

*“The Securitisation Team is a first class and integrated practice and Sharon Kirkham is highly respected”.*

Our clients also have said the following about our expertise:

*“The support we get from Sharon and her team is first class. They have been a great help in providing expert advice to both the Finance and Development teams to ensure everyone knows what is required for a smooth securitisation” – Ben Colyer, Assistant Director Corporate Finance & Treasury, Platform Housing Group*

*“Sharon and her team are professional, efficient and reliable. They always go the “extra mile” to provide a quality service” – Helen Shackleton, Chelmer Housing Partnership*

*“I have worked with Sharon, Richard and their team in my time at both Midland Heart and currently at Stonewater and the service provided has always been second to none. Everyone I have had dealings with have always been very approachable, friendly, professional and informative and have always met any deadlines that we have set them” – Nigel Miller, Security Analyst, Stonewater Group*

*“Sharon and her team brought a new focus and attention to detail to our charging process and documentation requirements: their help was invaluable in making the deal happen” – Steve Wood, Finance Director, Onward Homes*

*“Sharon and her team are fantastic! They always provide the highest level of service. Whether we are working on a £400M securitisation or a single Deed of Variation we know that we can count on their practical and knowledgeable approach to deliver quality solutions” – Desislava Vazharska, Treasury Legal Team Leader, Notting Hill Genesis*

*“I have worked with Devonshires’ Securitisation Team for almost 10 years now and they are our first point of call for our securitisation work. Sharon Kirkham, the Partner in charge of the Securitisation Team, has always been very helpful, approachable and proactive in sourcing solutions to issues that arise during the charging process. Also the development of Devonshires’ online Portal and Toolkit has been a god-send in terms of housing both current and historical documentation for all charging exercises and making these documents accessible to both the acting solicitor and client at all times has given us the opportunity to work much more effectively and coherently. I have also found that the team in general are open to suggestions for improvement and react positively to constructive feedback” – Atinuke Alder, Treasury Securities Manager, The Hyde Group*