

# ROSEHILL HOUSING CO-OPERATIVE LEGAL STATUS

# Rosehill HC Status

- Rosehill is a Registered Social Landlord registered with SHR
- SHR is primary regulator of Rosehill
- Rosehill is a Registered Society registered with FCA under 2014 Act
- Rosehill is a fully mutual housing co-operative
- Consideration of conversion to Community Benefit Society

# Rosehill HC Rules

- What are your rules?
- Your constitution
- The key “contract” with the outside world
- The key “directives” for the internal governance of the Association
- The basis for registration by Financial Conduct Authority
- Intrinsically linked to your status
- Must meet legislative and regulatory criteria
  - 2010 Act

# SFHA Model Rules

- Since the beginning of time (almost!) SFHA have published model rules seeking meeting the requirements of the regulators and registration authorities
- Most recent model was published in 2020

# Housing Co-operative

- Rosehill is a fully mutual housing co-operative - rules state that only tenants/prospective tenants can be members
- Adopted model rules with amends for fully mutual
- Fully mutual objects in rules:
  - provision of houses for occupation by members and use as hostels
  - any additional other objects permitted under housing legislation

# Housing Association

- Compared with (Charitable) Housing Association (Com Ben) objects: to provide for relief of those in need by reason of age, ill health, disability, financial hardship, or other disadvantage through the provision, construction, improvement & management of land and accommodation and provision of care
- And any other objects permitted under housing legislation which are charitable

# Housing Co-operative

- Perceived benefits include:
- Operates on co-operative principles – organisation is run by the tenants, for the tenants
- Local control – ie members are tenants = only tenants can be committee members
- Historically suitable for small community based RSLs

# Housing Co-operative

- However due to expanding role of RSLs = less popular model
- Majority of co-ops converted to com ben
- Due to perceived restrictions/limitations on activities/business options including wider role activities
- RSLs operating in modern world recognised requirement to recruit committee members with specific skills
- Rosehill as large landlord/management of allocations linked to membership

# Committee Membership – Co-operative (1)

- Rules provide that you must be a member to be eligible to sit on the committee (unless you are a co-optee)
- Tenants and prospective tenants only
- Key point is significantly more restrictive than rules of a housing association – HA extends membership to service users/individuals/organisations who support the association's objects
- Recruitment Challenges – recruitment from closed group

# Committee Membership – Co-operative (2)

- Potential for weakness in governance of the organisation
- Regulatory risk – eg committee falls below 7
- Recruitment challenges – eg specific skillset identified as being required/desirable
- Casual vacancies must be filled by a member
- Can co-opt with a view to augment committee skillset but:

# Committee Membership – Co-operative (3)

- Co-optees do not need to be members but: may not make up more than one third of committee
- Co-optees cannot be office bearers, vote on rules, membership, appointment of office bearers
- Co-optees do not count towards quorum
- Not recommended practice to continually co-opt same people year after year

# Committee Membership – HA (1)

- As per fully mutual: rules provide that you must be a member to be eligible to sit on the committee (unless you are a co-optee)
- Require to publish a membership policy
- Committee has absolute discretion to accept/reject nomination for membership of Association eg
  - where committee considers not in Association's best interests
  - Conflict of interest adversely affects Association
  - Contrary to rules/policies

# Committee Membership – HA (2)

- Committee has power to accept/reject nomination for committee –  $\frac{3}{4}$  of committee may reject if
  - Election to committee contrary to rules or policies
  - Conflict of interest which adversely affects the work of the Association
  - Evidence that election not in the best interests of Association
  - Recognition refusal in exceptional circumstances

# Committee Membership

- SHR Regulatory Framework:-
  - Committee annually assess skills, knowledge, diversity and objectivity it needs to provide capable leadership
  - Deliver RSL's objectives
  - Identifies skills/knowledge gaps
  - Implements succession planning and learning/development plans
  - Sustainability of committee is key

# Charitable Status (1)

- Majority of RSLs are charitable – RSLs already non-profit making
- Benefits of charitable status include:
  - Tax reliefs eg relief from corporation tax, capital gains tax, land and buildings transaction tax and building rates

# Charitable Status (2)

- Primarily relief from corporation tax on the surplus generated by a charitable RSL from its primary purpose activity (providing social housing) ancillary trading and small scale trading also subject to exemption
- Rosehill should consult with accountant/tax adviser
- Access to sources of funding restricted to charities

# Charitable Status (3)

- Avoid restrictions on ability of non-charitable RSLs to accept a merger/transfer of engagements involving charitable RSLs
- Potential disadvantages
  - Additional regulation
  - Restricted to charitable activities
  - Compliance with Charities and Trustee Investment (S) Act 2005

# Charitable Status (4)

- Rosehill would require to meet the charity test – most RSLs are charitable
- Its activities would require to be permitted under Housing (S) Act 2010 and a charitable activity under the Charities Act (eg relief of poverty, relief of those in need by reason of age, financial hardship or other disadvantage)

# Charitable Status (5)

- Committee members = charitable trustees
- Duties align with existing requirements of rules/code of conduct
- Act with care and diligence reasonably expected of a person managing affairs of another

# Process (1)

- No legislative provisions covering process in Co-operative & Community Benefit Societies Act 2014 & no specific FCA guidance
- Conversion from fully mutual to community benefit society = rule change
- Rosehill would adopt charitable model rules and change name to remove “Co-operative”

# Process (2)

- Committee will consider charitable status and decide if it wants to pursue this
- Committee will consider draft charitable model rules and approve them
- Application to OSCR with:
  - Draft rules
  - Paper setting out intended activities and demonstrating that these meet charity test

## Process (3)

- Signed charity trustee declaration forms confirming agreement to be charity trustees
- Decision can take up to 3 months - model rules already approved so if no significant departure from model, should be approved much sooner

# Process (4)

- The terms of Rosehill's loan facility agreements should be checked – consent of lenders likely to be required – failure to obtain consent likely to be breach of loan agreement
- Accountants/auditors should also be consulted (would no doubt have been consulted re: tax implications)

# Process (5)

- No specific requirement to consult tenants but Rosehill should consider how to engage community in process
- Once approved by OSCR, proposed new rules and name change presented to membership and SGM scheduled
- SGM held (on 14 clear days notice) and new rules approved by membership at the SGM (by  $\frac{3}{4}$  of votes at SGM)

# Process (6)

- New rules/name then sent to FCA for registration
- New rules (and conversion) take effect as of date of registration with FCA
- Current members would continue to be members post-conversion
- Recognise large membership – rules provide membership ends if:
  - failure to attend 5 AGMs in a row (where no apologies/proxies etc)
  - failure to notify change of address
  - resign membership

# Process (7)

- No SHR consent required BUT there now is Notifiable Event guidance for Constitutional Changes
  - Notify within 28 days
  - Signed copy of new rules
  - Copy of report and minute of committee meeting agreeing to adopt
  - Confirmation complies with SFHA model

# Process (8)

- OSCR then notified that rules have been registered
- OSCR then register Rosehill as a charity
- Rosehill's accountants will notify HMRC of charitable status for tax purposes

# Rosehill Housing Co-operative Legal Status

Lauren Little

Partner

TC Young Solicitors

[lfid@tcyoung.co.uk](mailto:lfid@tcyoung.co.uk)

0141 225 2586

[www.tcyoung.co.uk](http://www.tcyoung.co.uk)