

# DBULLETIN

## Is it time to check those loan, ISDA and security documents?

Registered Providers (RPs) are currently having to get to grips with the potential impacts of the Localism Bill (in particular, changes to tenure), the introduction of international financial reporting standards and feed-in tariffs.

Although, at first glance these issues appear to be unrelated, there is one common factor that Finance Directors and senior management of RPs should be aware of and should be considering: namely, do they require consent from their lenders?

### Changes to tenure

As part of the Localism Bill, the Government announced new flexibilities to enable private RPs to make homes available on affordable rent terms.

As has been well documented, the two key features of the affordable rent model are:

- Rents can be 80 percent of local market rent
- Greater flexibility of landlords in the use of tenancies

New legislation will be introduced to create a new local authority flexible tenancy with a minimum fixed term of at least two years with appropriate safeguards around termination. Through the revised tenancy standard, the Government has provided greater freedom to RPs on the tenancies they can grant. We are working with the National Housing Federation on a new model tenancy. Our aim is that once agreed this will be approved by the Council of Mortgage Lenders at the same time as the Tenant Services Authority, in order to avoid individual loan negotiations (and lender reprice opportunities).

RPs need to consider these changes in the context of their banking arrangements. Loan and security documents often contain restrictions on the types of tenancy agreement that RPs can use and, in some cases, any changes will require lender consent.

The switch to the new affordable rent model could also affect valuations and RPs should be considering what rights lenders have to require properties to be valued on an EUV basis, as opposed to an MVT basis. A switch to EUV valuations may then require additional properties to be put in charge.

Some loans contain bespoke provisions in relation to rental streams, such as Haven and HAF. Particular care needs to be taken to ensure ongoing loan compliance on the property security for these transactions.

### IFRS

UK accounting rules are set to give way to new international financial reporting standards.

The proposed changes potentially adversely affect RPs' balance sheets by removing significant amounts from asset and reserve totals, as well as creating violent fluctuations in reported surpluses. The likely turbulence resulting from the accounting proposals may result in bank covenant breaches in RPs' loan agreements.

Finance Directors need to be reviewing the financial covenants in their loan agreements extremely carefully to ascertain potential breaches and whether they will be able to continue calculating compliance with their financial covenants on a "frozen GAAP" basis or not. The terms of the "frozen GAAP" provisions will also need to be examined to determine the latitude for

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negotiation on them as often the full capacity of the existing SORP will not have been utilised; and the terms of these clauses do vary.

## Feed-in tariffs

A number of RPs are installing solar panels in order to take advantage of feed-in tariffs. Before installing these solar panels RPs should consider whether, if the relevant properties are charged to a lender as security, lender consent is required prior to installation and whether there is any impact on value (and thus asset cover). Loan and security documentation often contains restrictions on undertaking any kind of development work without lender consent.

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