

# Residential Property Investing Protecting Clients

We have produced some information on the most common scenarios involving residential and pension investment. It should be noted that legislation changes and as such none of the information provided here should be relied on as advice, or to support any financial decision.

This information has been written by our technical team, based on their 30 years of experience on the recent phenomenon of using your pension to invest into residential property projects.

## Reciprocal Lending

SSAS seminars and online forums promote reciprocal lending schemes. We do not offer this for important reasons.

The method by which one person lends to another for a residential development, who in turn lends back to the original lender for their own development is not permitted with Retirement Capital. This is because GAAR rules are intended to avoid a scenario of the creation of unfair tax advantage amongst taxpayers deliberately created to by-pass current taxable property legislation.

GDCV's continued....

This can include real estate investment trusts, certain trading companies and funds that can be subscribed to via a share dealing platform, or via an approved investment prospectus.

Provided that FCA rules are adhered to and suitable customers have the right level of recourse, for example the exchange the investment is listed is on a recognised list by HMRC, or is recommended or authorised by an approved firm, such as your IFA or fund manager, stock brokerage, then such holdings can be held in your SSAS.

## Unregulated Lending Schemes

Unregulated – the person or firm may be introduced to a developer and the developer will offer a “bank grade” due diligence on their residential project. The developer/broker may also offer the same deal to other investors and in doing so, could be acting outside of FCA rules governing financial promotion. Unregulated lending schemes are not possible via Retirement Capital.

## GDCV's

The most common use for a special purpose vehicle is to hold the leasehold or freehold title of a property and then issue units to investors. Investors hold an interest in the performance and returns from the underlying property by being a shareholder, rather than owning the physical title to the property. This is achieved by being a genuinely diverse commercial vehicle (GDCV).

## Lending to developers

Retirement Capital does permit, subject to compliance with FCA, GAAR compliance, and HMRC taxable property rules, lending to your own or a connected business. Where the loan is to an unconnected firm, such as a house builder, whilst meeting the requirements highlighted in this guide, four conditions must also be met for tax purposes..

- The borrowing company is a trading company and not an investment company.
- You have no “use” of the assets of that company
- You are not a director or shareholding (nor do any relatives have) any interest collectively of more than 20% of the shareholding of that firm.
- You are not associated to that company, or associated with anyone else.

Speak with our compliance team if you need assistance or guidance. They are very helpful, have bags of experience, and first-hand experience of HMRC practice.

## Case Study

*Associated with a company means if the assets of the company you have invested in dispose of those assets, then you would be entitled to a greater distribution of those assets.*

Here is an example of why we take this approach.

Mr Riley makes a loan to a developer from their SSAS to convert a single dwelling house to a HMO which is a house of multiple occupancy (HMO) for £100,000. The total value of the transaction is £200,000. Mr Riley's SSAS has joint 1st charge against the development.

Mr Riley's SSAS would be subject to a tax assessment by HMRC as he would be caught by the associated rule –he is receiving a greater distribution of those assets where there is a default.

Associated with a company means if the assets of the company you have invested in dispose of those assets, and those assets are taxable (a HMO is taxable) then you would be entitled to a greater distribution of those assets. The fact that he is not related or connected to the developer is irrelevant. This is specifically stated in [Corporation Taxes Act of 2010 – Part 4, Section 450](#).

## Off Plan Property

Certain off-plan property may be held. This means that the property is developed just short of being habitable and then sold. In this case, it is not residential property until it is recognised by HMRC as habitable and receives a certificate of habitation.

If the land was, for example, previously part of someone's garden and planning permission was granted for a dwelling, HMRC would look through the investment as being residential at outset.

## Halls of residence

Student halls of residence may be owned. They must be connected to a college or university and must be reserved exclusively for the students. They should have communal living areas to avoid being classed as residential property.

## Twin purposes

Buildings that serve the twin purposes of residence and a profession (e.g. dental and medical surgeries) can be a problem. If the residential property such as a flat has a separate entrance from the commercial part and no internal connection then it will not be taxable property even if there is a communal hallway. A caretaker's flat is not considered residential as one of the exceptions

## In Summary

Speak with our compliance team if you need assistance or guidance. They are very helpful, have bags of experience, and first-hand experience of HMRC practice.

Our approach is intended to ensure you are protected from undue risk.

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