

# Rise in SDLT multiple dwelling relief claims against solicitors

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While Multiple Dwelling Relief (“MDR”) was introduced in July 2011, recent clarification as to what constitutes a separate dwelling appears to be giving rise to an increased number of professional negligence claims against solicitors who fail properly to advise their clients of the potential to claim MDR.

## What is MDR?

MDR is a way of reducing the Stamp Duty to be paid on the purchase of a property.

HMRC states that “you can claim [MDR] when you buy more than one dwelling where a transaction or a number of linked transactions include freehold or leasehold interests in more than one dwelling”.

To work out the rate payable, you divide the total amount by the number of dwellings, work out the tax due on this figure and multiply this amount by the number of dwellings. The minimum SDLT payable is 1% of the amount paid for the dwellings. MDR is not applicable to purchases of freehold reversions or headleases where the dwelling has a long lease of 21 or more years.

In HMRC’s guidance a dwelling is described as “a building or part of a building which is suitable for use as a single dwelling or is in the process of being constructed or adapted for such use.”

The original guidance appeared to suggest that MDR would be available to those purchasing properties divided into self-contained units to be let under assured shorthold tenancy agreements or flats where long leaseholds had not yet been granted. However, HMRC has recently provided further clarification as to what constitutes a dwelling:

“It is a question of fact whether a purchase consists of one or more than one dwelling. A self-contained part of a building will be a separate dwelling if the residents can live independently of the residents of the rest of the building including independent access and domestic facilities.”

## What does this mean for claims against solicitors?

It appears that as a result of the recent clarification as to what constitutes a separate dwelling, a number of property purchasers have become aware that their purchase could have qualified for MDR as a result of it having a “granny annex” or other self-contained residential unit that was purchased with their property. Where a purchaser believes that they have overpaid SDLT, they are looking to recover it from their conveyancing solicitor.

As ever, claims companies have also become aware of the potential for claims, seeking to encourage claims against solicitors, which has also increased awareness.

## Comment

Conveyancing solicitors, when acting on the purchase of a property, need to consider whether an annex or something similar could entitle their client to MDR and advise accordingly or risk a claim being made against them for the amount of overpaid SDLT later on.

As an amendment to an SDLT return can be made within 12 months of the filing date of the original SDLT return, practitioners might also want to consider whether they have recently acted in relation to any transactions that might be eligible for MDR and advise their clients to file an amended HMRC Return within the 12 month period.

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