



CLIENT NOTICE

LANDLORD GUIDE

A guide to letting your property

Purchasing a property that is subject to an existing tenancy, or with a view to letting it out, carries with it certain legal requirements and responsibilities which you, as the landlord, must ensure you comply with. Additionally, there are other considerations, that may not arise where you are purchasing the property as your principal residence, but which can impact significantly on an individual's decision to purchase a buy to let property e.g. tax.

This document describes in outline issues you should consider prior to committing yourself to your purchase. Our involvement in your purchase is specifically in relation to the mechanics of purchasing the property and we shall not be providing tailored landlord and tenant advice to you beyond the contents of this general advice note.

If you need help to set you up with the relevant deposit scheme and the preparation of tenancy agreements, contact our dedicated Landlord and Tenant specialist team through our helpline on 03700 86 8686.

LEASEHOLD PROPERTIES

Where you are purchasing a leasehold property you should check the terms of the lease to establish whether the consent of the landlord/freeholder is required to any proposed sub-letting. Additionally, you must notify your tenants of any covenants/restrictions contained in the lease which will be relevant to their tenancy of the property. If you do not notify the tenants of these then they will not be enforceable against them and you may find that the landlord/freeholder will seek to enforce them against you personally.

ENERGY PERFORMANCE CERTIFICATES (EPC)

It is now a requirement that when you offer a property for rent you must provide an Energy Performance Certificate (EPC) to the prospective tenant. An EPC gives a property an energy efficiency rating from A (most efficient) to G (least efficient) and is valid for 10 years.

If you have been provided with an EPC by the seller as part of your property purchase, you may be able to utilise that, provided it is within its 10 year lifespan. In Scotland, you must display the EPC somewhere in the property, e.g. in the meter cupboard or next to the boiler. An EPC is not needed for holiday accommodation that's rented out for less than four months a year or is let under a licence to occupy.

If, having purchased the property, you carry out work that improves its energy efficiency rating then it's advisable to obtain a new EPC before advertising the property for rent. Note that new EU laws which take effect in 2018 will make it an offence to let out properties with poor F and G energy efficiency ratings. As from April 2016 tenants will also be able to demand that their landlord makes improvements to the property's insulation and a landlord will be unable to refuse any such 'reasonable' requests to carry out that work.

CHECKING IMMIGRATION STATUS OF TENANTS

The requirement for private landlords to check the immigration status of their tenants was extended to cover all private landlords in England, taking effect as from **01 February 2016**. Landlords, no matter how big or small their property portfolio, must now undertake 'Right to Rent' checks on any tenant or lodger in their property. The rules relating to this area are complex.

For instance, the checks only apply to lettings to tenants or lodgers entered into on or after **01 December 2014**. If the tenant/lodger already lived in a property before this date then the landlord is not required to carry out these checks.

If the tenancy agreement is renewed and has not changed (in terms of content, or the parties involved), you will also not be required to undertake these checks.

However, if you entered into a new agreement to rent out your property to a tenant or lodger any time after 01 December 2014 (even if the agreement is merely a renewal and has not changed in terms of either content or the parties involved) then it is your responsibility as landlord to ensure these 'Right to Rent' checks are undertaken.

If you are purchasing a property with existing tenants then it would be prudent to instruct a letting agent to look after the property, making it clear in writing that it is the responsibility of the letting agent to conduct these 'Right to Rent' checks. You should ask the letting agent to conduct these checks in any event as soon as the letting agent has been instructed.

If you fail to confirm the identity of those to whom you are renting the property, don't check their identity documentation and/or fail to keep copies you have taken of their ID then you can be subject to a fine of £3,000.

It is recommended that copies of these documents should be kept in a secure place and that those copies should be retained for a period of one year after the tenant or lodger has left the property. After one year it appears that the copies you've taken of any documents can be safely destroyed.

The Home Office have produced a helpful guide to the scheme and what ID documents you should request at www.gov.uk/government/publications/right-to-rent-document-checks-a-user-guide

TENANCY DEPOSIT SCHEMES

Legislation now provides safeguards for the protection of tenant's deposits and resolution of disputes, requiring you to participate in one of the following schemes:

CUSTODIAL SCHEME

Here the deposit paid to the Landlord is to be paid into a designated account held by the Deposit Protection Service as scheme administrator until it becomes payable in whole or in part to the Landlord or the Tenant. You can obtain further information on this scheme from www.depositprotection.com. The service is free of charge and is funded entirely by interest earned from deposits held in the scheme.

INSURANCE SCHEME

Here the deposit paid by the tenant is retained by the Landlord on the basis that at the end of the tenancy such amount as is agreed by the Landlord and Tenant is released to the tenant and any balance of the deposit is paid to the administrator of the scheme. Insurance is maintained by the scheme administrator to cover the deposit for the period that it is held and to cover the situation where the Landlord fails to release the deposit in compliance with the agreed terms.

The two insurance scheme providers are The Dispute Service Limited (www.tds.gb.com) and Tenancy Deposit Solutions Limited (www.mydeposits.co.uk).

In relation to the requirements surrounding these schemes, you should note the following:

- You may not contract out of this obligation
- You must pay the deposit into the custodial scheme or register the deposit with one of the two insurance based schemes within 30 days of the funds being paid to you by the tenants
- The choice of scheme is yours and not the tenants
- You will be subject to a fine if you don't properly protect the deposit and provide certain "Prescribed Information" to the tenant.

We would strongly recommend that you discuss the requirements in relation to the deposit with any letting agents who may be administering the tenancies on your behalf to ensure you fully comply with the legal requirements in this regard, particularly the correct presentation, composition and service to tenants of the required Prescribed Information. Please note that failure to comply with the legal requirements in relation to deposits paid by tenants may constitute a breach of your mortgage conditions, in addition to any legal enforcement or sanctions that may result.

HEALTH & SAFETY

As a landlord you are responsible for ensuring that the property complies with various health and safety requirements. The property must be in a good state of repair, adequately heated and free from damp and hazards and all electrical, gas (or alternative fuel) supplies and sanitation must be kept in good working order.

The landlord is usually responsible for repairs to the following (the list is not exhaustive):

- Structure and exterior of the property
- Baths, sinks, basins and other sanitary installations
- Heating and hot water installations

Private landlords now also have a legal duty to ensure that the risk of exposure of tenants to legionella in hot water and cold water systems, cooling and heating systems is properly assessed and controlled.

GAS SAFETY

The landlord is required to ensure that all gas appliances are maintained in good order and that an annual safety check is carried out by a recognised engineer - i.e. approved under Regulation 3 of the Gas Safety (Installation and Use) Regulations 1998.

Gas boilers, appliances and pipe work must be safety checked annually by a Gas Safe registered technician. The landlord must keep a record of the safety checks and issue it to tenants within 28 days of each annual check. The landlord is not responsible for maintaining gas appliances which the tenant is entitled to take with them at the end of the letting.

ELECTRICAL SAFETY

The landlord should ensure that the electrical system and any electrical appliances supplied such as cookers, kettles, toasters, washing machines and immersion heaters are safe to use. In the event that you supply any replacement new appliances you are required to provide any instruction manuals to the tenants.

The Landlord and Tenant Act 1985 requires the landlord to ensure the electrical installation is safe when the tenancy begins and that it is maintained in a safe condition throughout that tenancy. Any electrical works must be carried out by a suitably qualified electrician.

One way of ensuring safety is to undertake a regular formal inspection of the electrical installation, looking for any obvious problems such as damaged cables, sockets showing scorch marks, etc. The Institution of Electrical Engineers recommend combined inspection and testing at least once every ten years.

Testing should only be undertaken by someone competent to do such work, such as a qualified electrician. Combined inspection and testing should be more frequent where the risk is found to be greater (e.g. where the installation is very old or damage is regularly found during inspections).

FIRE SAFETY

In addition to the gas and electricity safety requirements, you are required by law to ensure there are adequate means of escape from the property. At the time of writing landlords are presently obliged to fit smoke alarms/detectors (compliant with BS 6446) but as from October 2015 landlords will be required by law to install carbon monoxide alarms as well as smoke detectors in their properties.

If you will be letting the property on a furnished basis you must ensure that all furniture and furnishings comply with the Furniture & Furnishings (Fire Safety) Regulations 1988.

HOUSE IN MULTIPLE OCCUPATION (HMO)

The use of a property as a House in Multiple Occupation (HMO) will generally require that use to be licensed by the Local Authority. If you are proposing to use the property as an HMO then you should discuss with your local Housing Officer via the Local Authority whether a License will be required. You should also be aware that, as part of that license, you will be required to comply with additional conditions relating to fire safety. There may also be additional planning considerations should you use a property for this purpose.

TAXATION

The Chancellor's decision in the Summer Budget 2015 to restrict the relief on mortgage interest payments for all landlords to the basic rate of income tax (20%) has many implications for would be landlords. The move was claimed to be an attempt to 'level the playing field' as it was 'unfair' that landlords enjoyed a tax break which owner occupiers did not have (however owner occupiers do not pay capital gains tax when they sell their property).

Many experts maintain that buy-to-let landlords could protect their income by turning their rental activities into a business. If a private landlord transfers one or more properties into a company structure (known as 'incorporating a business') the total tax rate is greatly reduced. This is because a company pays tax on the actual profit and therefore the rate does not fluctuate - if profit reduces, so does the tax.

The down side of this arrangement is capital gains tax when the company comes to sell and dividend the profit to the owner at 49% compared to 28% for a private landlord. However, if you are reliant on the income rather than the property's price appreciation it may be worthwhile.

Incorporating your business helps you guarantee your monthly tax bill, but it is not a magic solution. Tax is only one consideration when forming a company – there will be considerable extra work involved in preparing audited accounts etc.

You should seek the opinion of a qualified financial adviser on these matters.

INCOME TAX

Because you will be receiving an income from the rent received on a tenanted property, tax will be payable on the total amount of rent received during a tax year less allowable expenses (e.g. routine maintenance and repair) and certain prescribed allowances.

It should be noted that the level of any tax payable will be dependent upon an individual's personal circumstances and you should therefore consult a qualified accountant who will be able to assess your situation and advise you as to likely tax liabilities and mechanisms by which that liability can be kept to a minimum.

If you require further information on this subject then we can recommend the following websites:

<https://www.gov.uk/renting-out-a-property/paying-tax>

<http://www.which.co.uk/money/tax/guides/tax-on-property-and-rental-income/>

CAPITAL GAINS TAX

As the property will not be your principal residence, you may be liable to pay Capital Gains Tax on disposal/sale of that property. You should note that, as from 2019, any Capital Gains tax due should be paid within 30 days, rather than by the end of the tax year as at present. The amount of the capital gain is calculated by deducting from the eventual sale price:

- The original purchase price
- The costs of purchasing and selling the property (e.g. solicitors and estate agency fees)

- Capital expenditure which has enhanced the value of the property e.g. erection of a conservatory (but not general maintenance and repair). You should note that capital expenditure is expenditure that is not allowable against income tax

You should discuss with your accountant whether there are any allowances that can be taken into account when calculating your capital gain which might reduce your tax liability.

In the event that you make a capital loss on the sale of the property you would be able to offset this against any capital gains made by you on future disposals. Please note that to be able to offset a loss against future gains, the loss must have been notified to HMRC within five years of 31st January of the year following the end of the tax year in which the loss was made.

BUILDINGS/CONTENTS INSURANCE

You must inform your insurers that you intend to let the property. If you fail to do this then you may find that your buildings and contents policy does not provide you with cover during the period of the tenancy. Your insurers may ask you to pay an increased premium to cover the period of the tenancy and in some cases it may be necessary for you to obtain separate cover.

WANT TO KNOW MORE?

If you are thinking of becoming a landlord, you should visit our website at:

www.access-legal.co.uk/services/landlord-law-4638.htm and take some time to read through the numerous guides designed to help and assist landlords.

You can also speak with our dedicated landlord and tenant team who are experts at helping landlords overcome and importantly avoid problems while also keeping you protected by drafting and maintaining all key documentation.

Contact us

Email us through the website or call our helpline on 03700 86 8686. Lines are open six days a week Monday to Friday 8 am to 6 pm and Saturday 9 am to 6 pm.

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