ATLAS & LLAS PRESS

PRIVATE RENTED SECTOR

Post, Training, Networking & BBQ Event Edition July 2022

Improve your Knowledge & Save Money

LLAS training will do both!

Accreditation is good for business

Inside this issue

ATLAS

London Landlord Accreditation Scheme

Welcome to the Post Event edition of the PReSs

I would like to thank everyone that attended this year's Training, Networking & Live BBQ Event, held on Thursday 7th July 2022 at the Taj Hotel set in the heart of Westminster, St. James Courtyard, one of the Capital's most idyllic spaces, set around a historic cherub-ordained Victorian Fountain. I hope you all found it both educational and useful.

We had over 158 delegates on the day, including our sponsors, property investors, landlords, agents, local authority staffs, housing professionals from the PRS and others.

As the delegates took their seats in the Edwardian room, the event began with an introduction from **Marie Parris** (**CEO & Founder George Ellis Property Services**) Master of Ceremony.

We had short presentations from our 8-expert panelist.

- **David Smith (Partner, JMW Solicitors & Specialist in Landlord & Tenant law) -** HMO Law & P*ractice, including Banning Orders, Rent Repayment Orders, HMO Management Regulations*
- **Richard Tacagni** (**CEO of London Property Licensing)** Update on Licensing**,**
- **Des Taylor (Casework Director, and co-founder of Landlord Licensing & Defence)** - A pragmatic approach on handling Council Enforcement action and Notices.
- **Kam Dovedi (Founder of Premier Property, & Author of 'Boost Your Pension and Income from Property) -** A presentation on How you can become a Successful Property Developer In 4 Simple Steps
- **David d'Orton-Gibson (CEO & Founder of Training for Professionals (TFP))** *An* overview of legislative changes that have happened over the past year and what is in the pipeline
- **Lisa Williamson (Head of New Business & Compliance) -** Why landlords should initiate mediation before issuing proceedings and resolving deposit disputes themselves rather than time consuming formal arbitration"
- **Chris Bailey (Entrepreneurial Chartered Accountant Co-Founder & Group Director of Less Tax 4 Landlords (LT4L)** Presentation on how to Deal with the Rising Costs of BTL Ownership
- **Maxine Fothergill (Immediate Past President of ARLA Propertymark and Managing Director and Founder of AMAX)** An overview on the State of the PRS Market: Current and Future.

Following on to the courtyard, everyone enjoyed the fabulous and scrumptious selection of food, and I am pleased to say that the feedback received from delegates about the venue, food, and the day has been excellent. Everyone was networking around the fountain and in the middle of the buzzing crowd; we had a fantastic singer Paul, entertaining everyone, which added a touch of class to the networking and BBQ afternoon session. David the photographer was doing his thing, the weather was fabulous and there was laughter, conversations, networking, and enjoyment of each other's company, more eating and drinking of course. Fantastic day had by all.

Overall, it was another very successful event. Thank you all for your continued contribution to our success and we look forward to seeing you all again at our 2023 events.

On behalf of LLAS & Partners, I would like to take this opportunity to sincerely thank all our sponsors who have helped to ensure the success of the Training, Networking & BBQ event in 2022: **Azad Ayub Ltd, Less Tax for Landlords, Premier Property, Landlord Licensing Defence, Central Housing Group & Seraphim Business Services,** and many others whose support has ensured the success of the events.

The LLAS & ATLAS membership stands at over 45000 accredited landlords and agents and growing daily. The scheme's membership continues to grow in part due to the energy of all our partners and the awareness of both landlords and agents that, it is essential to keep up to date with the changes occurring in the rules and regulations affecting the PRS. The scheme is proud that it continues to provide a reliable means for the sector to maintain and improve its awareness through its excellent training and CPD program. Remember that training is an investment, being fully up to date with the law so you know how to comply with the rules, is the best protection you can have against penalties and fines. So, continue to update yourselves with our CPD & Accreditation training courses, Online, Virtually & Face to Face, all info available at www.londonlandlords.org.uk

I hope you enjoy this special edition of the ***PReSs***

Thank you

Jessica Alomankeh (LLAS/ATLAS Projects Manager)


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Housing White Pape
2022"
21
Standard


The Next Decade?
As interest rates rise, profits will squeeze
Debt will need to be paid down
may involve selling properties
TAX PLANNING FOR RISING INTEREST RATES:
Keeping Your Options Open?

Less Tax 4 Landlords®
Tax & Estate Planning Consultants

TWO WAYS TO SAVE TAX

1 Run a Highly Tax Efficient Professional Property Business

If it's right for you, then by taking professional advice to restructure your property business, you could enjoy:

- Full relief for finance & mortgage costs (Section 24)
- Reduced Capital Gains Tax (CGT) on Portfolio Reinvestment
- Inheritance Tax potentially mitigated within two years of trading
- Maximum Tax Rate of 20% payable on your property income until April 2023
- Maximum Tax Rate of 25% (Corporation Tax Rate) payable from April 2023

And that's with no requirements to remortgage or change legal title, and no SDLT or CGT to pay on your business restructure.

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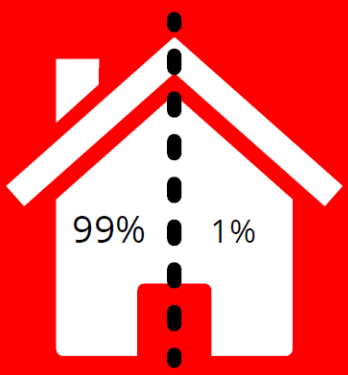

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2 Change the Recipient of Income from Rental Property

You should consider this option if you:

- Are looking to change the recipient of income from your rental properties for tax purposes.
- Want to make changes to the default 50/50 split for property owned jointly with your spouse.

Our conveyancing practice can provide a complete Form 17 service. Charges as low as £300 per property including preparing the legal documentation and creating a deed of trust, plus filing the Form 17 paperwork.


STATE OF THE MARKET
MAXINE FOTHERGILL
• Joined the industry in 1988
• Began in property in 1998
• Found tes and property in 2002
Maxine Fothergill - Amax Estate

AZAD AYUB

Azad Ayub started as a property management company in 1980 and it was incorporated in 1995, providing continuity to our clients both landlords and tenants for over 35 years.

We manage properties in North London and other areas within the M25. Most properties are owned by the directors of the company and a small number by our clients, who use the management services that we provide to Landlords.

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PROPERTY OWNERSHIP MANAGEMENT AND DEVELOPMENT
AZAD AYUB

North West London

Investor in People

Best Green Landlord
UK Landlord Accreditation Partnership Awards 2016 Winner

Information for people who are working as an estate agent - what you must do to meet your legal obligations

Defining common listing terms used to describe the status of a property during the sale process.

It is a legal requirement that the status of a property is accurately described and updated in a timely manner, as this is material information for prospective purchasers. It is the responsibility of the estate agent to ensure that this information is clear, unambiguous, and up to date while any advertising is still live. The use of any of these terms is voluntary but agents must still ensure that material information about the status of the property is clearly communicated to potential buyers

Definition of terms

'New on the market' – a property which has not been marketed in (at least) the last six months; the description should only be used for a short period of time. This term should not be used if the property has been previously offered for sale by another agent and remained unsold in the last six months. 'Refreshing' a listing to make a property appear new on the market is misleading, especially where there has been no significant marketing break

New instruction' – a property which an agent has recently been instructed to sell (and which may have been offered for sale by another agent without being sold); the description should again only be used for a short period of time.
'New listing' (on a property portal) - a property which has recently been listed on that portal; commonly used in conjunction with 'New on the market' or 'New instruction' - the description should only be used for a short period of time.
'Recently added / Just added' (on a property portal) – a property which has recently been listed on that portal; commonly used in conjunction with 'New on the market' or 'New instruction'- the description should again only be used for a short period of time.

'New and Exclusive' – either a new instruction or new on the market which is exclusive to that agent or portal (depending on the context). The description 'new' should only be used for a short period of time, although the term 'exclusive' can be used for as long as it is applicable.
[**NOTE**: 'short period of time' referred to above - any guidance on the length of time for which the above descriptions is used can only be very general. Material considerations such as the advertising medium, the buoyancy (or otherwise) of the market and the method of sale and perhaps even the nature of the 'average consumer' at whom the marketing in question is targeted will vary greatly and only the courts will be able to decide based on all the individual circumstances. Use of the above terms for a period not exceeding one calendar month is unlikely, in the general course of events, to be considered misleading]

'Reduced' – a property which has been recently reduced in price. Any reduction should be a genuine reduction against the previous price, in accordance with the Chartered Trading Standards Institute's 'Guidance for Traders on Pricing Practices'.

'Under offer' – used when an offer has been received which is under consideration by the vendor, but the property is normally still on the market (i.e., further offers may be made dependent upon the vendor's written instructions) – the description should only be used until the offer is accepted or declined, as the case may be.

'Sale agreed' – used when an offer has been accepted by the seller, but (for example) contracts may not have been prepared or the buyer may not be in a final position to proceed. The property may or may not still be on the market, i.e., further offers may be made dependent upon the seller's written instructions. The seller's decision on future marketing is material information in this context and should be clearly stated on property listings to avoid any confusion amongst potential buyers. This description may be used until the property is sold or the sale falls through, as the case may be.
'Sold subject to contract' – relates to a property on which an offer has been accepted by the seller and the sales process is complete, subject to contracts being exchanged. The seller should be asked to confirm whether or not the property should continue to be marketed for sale, and this decision should be clearly stated on property listings, as above. This description may be used until the property is sold or the sale falls through, as the case may be.

Sold subject to conclusion of missives' (in Scotland) – an offer has been accepted but the sale has not been concluded - the property should no longer be marketed for sale. In rare cases the sale may still fall through, hence the use of this description.

'Sold' – contracts have been exchanged and the sale is completed – the property must no longer be marketed for sale. 'Sold' property listings should be removed in line with portal requirements and/or relevant codes of practice (e.g., RICS UK Residential Real Estate Agency 6th edition, the Property Ombudsman code of practice for residential sales, etc.)

Offers from prospective purchasers

Any offer received on a property at any stage in the sales process must be communicated to the vendor in writing without delay. The only exception to this is where a vendor instructs the agent in writing that offers of a certain type do not need to be passed on or where agents are under a statutory duty to delay passing on such offers (e.g., where a suspicious activity report is being made). Agents must therefore establish at every significant stage of the sales process whether or not a vendor wishes to continue receiving offers. Without written instructions to the contrary, the agent is obliged by law to continue passing on offers until contracts have been exchanged or missives concluded. Where instructions have been received that no further offers are to be accepted, this is material information and should be declared in the property listing and any other advertisements.

Source: www.powys.gov.uk/estateagency

Possession proceedings.

If an occupier who is not a bare licensee or an excluded occupier, does not leave of their own accord then a landlord must follow a procedure, called "Due process" if they want the property back.
This procedure is normally conducted in the county court and in rare instances the High Court.
To evict a tenant without following due process is to commit a criminal offence under Section 1 of the Protection from Eviction Act 1977.
In short, the procedure is this:
Landlord serves notice on tenant.
Landlord applies to court for possession order
Landlord gets possession order
Landlord returns to court for warrant of eviction.
This procedure is exactly the same for possession proceedings against mortgagors apart from the requirement for the service of a notice, although, as with social housing tenants, mortgagees must follow a pre-action protocol before bringing repossession action.
A landlord will be illegally evicting if they change the locks at any stage in this procedure other than when the court bailiffs are in attendance overseeing the execution of the warrant. It all starts with service of a notice.

The notice must be the right type for the right tenancy type and must abide by the service rules that apply to that particular notice.
Notices:
There are 5 main types:
• Reasonable notice
• Notice To quit
• Section 8 notices
• Section 83 notices • Section 21 notices.
The type of notice must fit the occupancy type. For instance, if a council landlord serves a s21 notice on a Secure tenant it will not be valid because the correct notice for that type of tenancy is a s83 notice.
In addition, each type of notice has specific requirements that pertain to that type of notice and defects in the notice can be fatal to a possession application.
This is why homelessness case workers need to be conversant with defective notices and hot they can be used to prevent homelessness.
Mistakes in notices can still be accepted by the courts as long as the wording is "Substantially to the same effect"32 and some surprising mistakes have been allowed in possession proceedings.
32 Ravenscroft
There was a case where a notice was addressed to the "Waterman's Arms" instead of what it should have read, the "Bricklayer's Arms"33 but was accepted by the courts because the street address was the same, as was a case which referred to possession being given up in 1973 rather than 197534 so caseworkers need to be awake to the fact that courts can sometimes seem to be quite lax.

The rule of thumb is that a notice must be clear and unambiguous and that minor misdescriptions can be acceptable as long as the recipient can understand what is reasonably meant and that they cannot be misled by it.

Reasonable notice
This is used mainly for excluded occupiers.
In the Housing Act 1988 there was no definition of what a 'Reasonable' period would be but since that time it is pretty much generally accepted that 28 days will suffice, but bear in mind this isn't statute, just custom and practice.

Notice to quit
Used for protected tenancies, common law tenancies, contractual licenses, abandonment cases.
Period of the notice relates to the rental period. An NTQ on a monthly tenancy should last a month, a quarterly tenancy for 3 months.
It also has a specific end date which. The bible on this stuff "Defending possession proceedings" states "Any notice to quit expiring on any other day is completely invalid and the tenant would have a complete defence to possession proceedings.
35 The end date must be either the day the tenancy renews or the day before.
35 Precious
Also, the NTQ must contain the prescribed information in order to be valid.

Section 8 notice.
This is used for assured and assured shorthold tenancies where the landlord is seeking possession on grounds for eviction.
In April 2016 a new section 8 notice was issued that must be used for all possession applications now. Old ones will be invalid. The new one contains the additional grounds for possession that were ushered in by the Anti-Social behaviour, Crime and Policing Act.
The period will be 2 weeks or two months, depending on which of the 19 grounds are being used.
There are arguments circulating, over whether a s8 would be valid if the landlord were a limited company and the notice was not signed in accordance with the Companies Act (see below on prescribed information)

The argument centres on whether a s8 is a document that needs to be "Executed", in the sense referred to in the legislation. Cases have been defended where notices have been served on leaseholders, but it should also be noted that there is only space for one signatory on the s8, a point raised by lawyers in cases where this is raised. There is no harm in raising this as a defence but just be aware that the matter is not satisfactorily resolved and there are counter arguments.

Section 21 notice.
Used solely for ending Assured Shorthold Tenancies. Radical changes have come in over these notices that apply to all tenancies entered into or renewed after the 1st of October 2015.
S21s have to be for a minimum of 2 months and are now in a prescribed form for the first time (Form 6A).

- They cannot be served during the first 4 months of a tenancy
- They only last for 6 months before they expire and a new one has to be served if the landlord did not initiate possession proceedings.
- A copy of the EPC has not been given to the tenant) not applicable in HMOs)

Invalid section 21 notices.
In addition to the above list a s21 will also be invalid in the following circumstances.

The deposit has not been protected.

- The prescribed information of the deposit scheme has not been served on all relevant persons.
- An up-to-date copy of the govt. booklet How to Rent has not been given.
- The property does not have a licence where one is required.
- A copy of the gas safety certificate was not given to the tenant ***before*** they moved in.

In these instances, any s21 served will be invalid until the landlord has rectified the shortcoming but in the case of a gas safety certificate it cannot rectified by later service, so a landlord in breach cannot evict the tenant through that route.

Prescribed information.
There are some very important points to note in respect of this requirement that often get missed by advisers.
Firstly, the prescribed information is not the deposit protection certificate, a mistake landlord often make. It is in fact the information of the specific scheme that tells a tenant how their scheme works and how to deal with claims.

Secondly, it must be served on the tenant AND 'All relevant persons', such persons being an individual or organisation who pays the deposit for the tenant. It is quite common for local authorities to make such payments as part of homelessness prevention strategies, which makes the council a relevant person for the purposes of the Act and therefore a s21 would be invalid if the council were not given a copy first as well as the tenant.

Thirdly, a recent case raised some issues that are creating problems for landlords serving the prescribed information where the landlord is a company rather than an individual, such as a letting agent, who would often be the persons serving the documents at the start of the tenancy.

The Companies Act 2006 states: -
(2) A document is validly executed by a company if it is signed on behalf of the company–
(a) by two authorised signatories, or
(b) by a director of the company in the presence of a witness who attests the signature

In Bali, the prescribed information was not signed properly, and the possession application was dismissed on the basis of an invalid s21, because Manaquel were a limited company.

Retaliatory eviction.
This is the legislation brought in as a response to public concerns that landlords would use the no-fault S21 procedure to evict a tenant when they complained to the council about the property condition.

Where a defect is flagged up by the tenant in writing the landlord has 14 days to respond, stating what the works will be and setting out a reasonable timescale to fix it. If the landlord doesn't respond, if the landlord's response is inadequate, or the landlord can't be traced then the tenant can complain to the local authority. If the council serve a relevant notice, then the trigger to invalidate the S21 is the date the council served the relevant notice, so any S21 served after that will be invalid.
Once the council have visited and serve a 'relevant notice' on the property the notice will effectively block service of a section 21 notice for a 6-month period following service of the relevant notice or if the relevant notice has been suspended, within 6 months of the date of suspension.

A s21 notice would also be invalid if the tenant cannot get a satisfactory response from the landlord within 14 days and complains to the council and the landlord serves notice before the council serve the relevant notice. A s21 is not invalidated if it was served before the tenant contacted the council.

A s21 is not invalidated if it was served before the tenant contacted the council.
Section 34 (3) of the Deregulation Act 2015 provides an exemption to an invalid s21 notice where a relevant notice has been served and that is where the property is genuinely up for sale but handily the act goes on to say that it will not be considered genuinely up for sale if the proposal is to sell to:
• A person associated with the landlord
• A business partner of the landlord
• A person associated with a business partner of the landlord • A business partner of a person associated with the landlord.

S21 will also not be invalid if at the time the notice is given, whether in breach of the relevant notice rules or not, the mortgage lender or a receiver is in the process of selling or repossessing the property.

Source: Ben Reeve Housing law in a rogue landlord environment

LANDLORD LICENSING & DEFENCE

CONTEST a Rent Repayment Order (RRO) from the council or a tenant.

Received an application for a Rent Repayment Order (RRO) or a notice from the First Tier Tribunal (Property Chamber) that a claim has been made against you?

Do NOT ignore.
Do NOT talk to the tenant or council.

You have limited time and you need immediate advice. Most tenants use ruthless no-win-no-fee solicitors.

TALK TO US 0208 088 3494

PROTECT yourself from enforcement with a Property COMPLIANCE Audit.

- HHSRS 29 Hazards – Confidential audit to bring your property into compliance (that the council cannot use against you)
- Professional Fire Risk Assessment – the best defence against Gross Negligence Manslaughter
- Council & Amenity Standards
- Full confidential audits covering all of the above

TALK TO US 0208 088 3494

CHALLENGE A CIVIL FINANCIAL PENALTY

Councils can issue massive Civil Financial Penalties for breaches of housing law.

- Failure to licence a property or having the wrong licence.
- Breaches of your property licence or HMO conditions.
- Failure to comply with an Improvement Notice, Prohibition Order or Management Order.

The council gets to keep all the money so their motivation to fine you is immense.

Stay silent with the council and get immediate professional defence.

£30,000 FINE

TALK TO US 0208 088 3494

FIGHT a Tenancy Deposit Claim

Received a letter or notice of deposit protection claim from your tenant or a solicitor?

Most claims come from aggressive no-win-no-fee solicitors.

It probably demands a lot of money and threatens court action.

Whatever you do, do not respond.

Seek immediate professional help to avoid court and minimise extortionate demands for compensation.

TALK TO US NOW 0208 088 3494

Compliant HMO design advice

90% of architects and builders do NOT understand HHSRS and Amenity standards requirements.

Advice on compliance after 2nd Fix can cost a fortune in reworks.

Get a professional review of your drawings or at 1st Fix and save yourself a fortune.

TALK TO US 0208 088 3494

Unwitting, Accidental or Unlicensed HMO?

Any property with 3 persons where one is not related to the others IS an HMO even if you are unaware.

If it should be licensed but isn't you have already committed a criminal offence and the fines can be £30k+

Do NOT talk to the council. Get professional defence to mediate for you and apply for the missing licence in the safest way possible.

TALK TO US 0208 088 3494

DEFEND against Enforcement from Council!

Landlords are entitled by law to have professional defence.

- Improvement Notice
- Failure to Licence HMO or Selective
- Prohibition Order. Not Fit and Proper Declaration
- HMO Management Regulations Penalty
- PACE interview under caution

TALK TO US 0208 088 3494

CONTEST a Fitness for Human Habitation claim

The latest get-rich scheme of ruthless no-win-no-fee litigation solicitors.

They will rack up vast legal costs and attempt to make you pay them through the courts. Plus, they'll take a hefty percent of the damages they win for the tenant.

They do not care about getting repairs done or tenant safety

Do NOT answer them, you're likely to self-incriminate.

TALK TO US NOW 0208 088 3494

It Could Be Less Than Three Minutes Before Your Tenants Die

In 2020/21 there were 151,000 fires attended by the Fire and Rescue services in Great Britain (England, Wales & Scotland). Of those fire **33,000 were in dwellings** – 27,000 dwelling fires were in England.

2020/21 saw the lowest figures since modern records began - but still 240 people died.

Alarmingly nearly 80% of those deaths occurred in dwellings, many of which would have been rented properties with landlords vicariously responsible and at risk of appearing before the courts on a Gross Negligence Manslaughter or Actual Bodily Harm charge with potential custodial sentences.

Of the 240 deaths:
33% died purely from smoke inhalation
32% died from burns
16% died from a combination
21% cause of death not recorded

No of fires by the cause of fire:
12,711 Cooking appliances
6,375 Electrical wiring / consumer unit
4,087 Electrical appliances
3,360 Matches & cigarette lighters
3,212 Smoking materials
1,291 Portable heaters
991 Candles
467 Blowlamps, welding, etc.
295 Central & water heating

If you haven't read and fully understood LACORS fire safety as a landlord, you are not doing your job properly. Google it! Read it! Implement it!
But be aware, it is out of date regarding fire alarms and the minimum is now Grade D1, coverage LD2 per BS5839-6:2019 +A1:2020. That's the minimum!

To understand just how much of a risk tenants (and all of us in our own homes) are in a dwelling fire the following is an extract from our tenant fire safety booklet.

0 Seconds

Something starts smouldering.
It could be a phone charger, a hair dryer or straighteners left too close to the bed.
It could be a fan heater or even an oil-filled portable heater.

A dropped cigarette, an overloaded four-way electric adaptor or a shorted phone charger cable.

10 Seconds

The bedding, or maybe some papers or soft furnishings, have caught fire already. The flames are growing.
The smoke detector hasn't gone off yet – even if it's inside the room.

30 Seconds

By 30 seconds the bedding or curtains are well alight and thick black, poisonous smoke is starting to fill the room.
If you are lucky and there is a smoke alarm inside the room, then it will have started sounding.

Essential to wake you up if you're asleep when a fire starts.
Heaven help you if its outside the room.

1 Minute

The fire is spreading to other items in the room, the smoke is black, acrid and poisonous. It's full of poisonous gases like Cyanide and Carbon Monoxide.
It's becoming too hot to breathe.
Drop to the floor to crawl out.

1 Minute 30 Seconds

The smoke and heat are unbearable.
One lungful of that smoke could boil the insides of your lungs.

2 Minutes

In just two minutes, this bedroom has become a raging inferno.
The air temperature is well above boiling point near the floor and 600C at the ceiling.
If you are still in there your chances of survival are low and even if you survive, you're likely to suffer horrendous burns.

2 Minute 22 Seconds

At just 2 minutes and 22 seconds, everything in the room spontaneously combusts.
The air temperature reaches 600 to 800 Celsius. Nobody will survive.
A few seconds later 'flashover' occurs as the black smoke itself ignites – creating a massive, all-consuming fireball.

It is strongly suggested you read the full booklet yourself and watch the linked video then give a copy to every single one of your tenants to help them understand why fire alarms, doors, etc. are important, especially when they're sleeping.

Download the booklet here: bit.ly/LLDL14

Your property

How certain are you that your rental property(s) are Fire Safe? Landlord Licencing & Defence inspectors see thousands of properties where the Landlord says 'the council has signed it off' or where the landlord 'thinks' it is fire safe.

99% of these properties, when our surveyors inspect, have serious fire precaution shortcomings. Because most landlords and most council officers are not qualified Fire Risk Assessors.

Maybe it is time you look for a professional to make sure your tenants' lives are not at risk in ways you don't realise.

And to make sure you have a solid defence in front of the Judge when fire strikes without warning: contact Landlord Licencing & Defence, now, to arrange a fire safety audit or a full HHSRS and fire audit. Use this contact form **bit.ly/LLDL07** **or call 0208 088 3494.**

By **Phil Turtle, Compliance Director, Landlord Licensing & Defence**

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- **5 Crucial Predictions for 2022**
- **7 Steps To Becoming A Successful Property Investors**
- **7 & 1/2 Mistakes Property Investors Must Never Make**

PRS Relevant notices.

- A notice served under section 11 of the Housing Act 2004 (improvement notices relating to category 1 hazards),
- A notice served under section 12 of that Act (improvement notices relating to category 2 hazards)
- A notice served under section 40 (7) of that Act (emergency Remedial)

Deposit protection regulation.

- Any deposits taken on an AST must be protected within 30 days of receipt of deposit.
- Proscribed information of the scheme being used must also be served within 30 days of receipt of deposit.
- If the landlord has not done either of these things the tenant can sue them for a penalty of up to three times the amount of the deposit.

At the time of writing there are different requirements depending on the date the tenancy began but as with all Deregulation Act issues this will apply to all Assured Shorthold Tenancies from October 2018 except for the provisions for gas safety certificates, an EPC and the How to Rent booklet. These will **NOT** be required for pre–Deregulation Act ASTs.

Section 21 and deposit protection regulation.

As you know the deposit protection legislation of the past 8 years has been an absolute fiasco. It was worded so badly in the original 2007 format that it fell apart on every case that went through the court of appeal. Government re-drafted into the Localism Act 2011; it fell apart again. Third time lucky.

Deposits taken before April 2007 and where the tenancy became a periodic tenancy also before April 2007

The deposit doesn't have to be protected nor the prescribed information served, and the landlord can't be sued for not having done either HOWEVER, the landlord cannot serve a s21 until they have either protected the deposit and served the prescribed information or returned the deposit.

Deposits taken before April 2007 but where a periodic tenancy arose after April 2007.

- The Deregulation Act amnesty stated that landlords had until the 23rd of June 2015 to protect deposit and serve prescribed information. If landlords have done this then they are safe and can serve section 21, even though protection was technically late.
- If not protected they cannot serve a section 21 until the deposit has been returned.
- The tenant can sue the landlord for the penalty.

Deposits taken between 6th April 2007 and 6th April 2012 (Localism Act changes)

- Back then the time period for protection was 14 days. If deposit not protected within 14 days but protected late within the life of the fixed term tenancy it will be considered protected and Section 21 can be served.
- If deposit was not protected and the prescribed information was not served then S21 can only be served if the landlord returns the deposit to the tenant. The tenant can also sue for the penalty.
- Or if the deposit was protected but the prescribed information not served or is defective then the prescribed information needs to be served first if S21 is to be valid.

Deposit taken after 6th April 2012.

- If the deposit and the prescribed information was not protected or served within the 30 days then no S21 can served during the initial tenancy until the deposit is returned to the tenant. And the tenant can sue for the penalty.
- If deposit was protected and prescribed information served late but still within the original fixed term, but the tenancy has been renewed or become a periodic tenancy then S21 can be served, although the tenant can still sue for the penalty. If deposit not protected or prescribed information served within the original fixed term, then S21 cannot be served until deposit returned to the tenant. The tenant can sue for the penalty but note…the penalty can apply to any subsequent tenancies.

The new Section 21.

It is to be used for all tenancies that began after the 1st Of October 2015, remember this includes older tenancies that are renewed after the 1st of October 2015.

- Prior to this there was no prescribed format for a s21, so technically they could be written on the back of an envelope in crayon but after 26 years there is now a recognized document.
- It is permissible to use them for older style tenancies, but it isn't advisable, as there are several caveats written into the form (basically all the above invalidation points) which could cause confusion for both landlord and tenant.

The old requirement for a s21 (4) a; to end on the day before a tenancy renewal date has gone41, so now the only requirement on time is that the notice be for two months duration.
• As before even one day less than two months would invalidate it.
• The notice itself contains bullet points covering a range of issues which may invalidate the notice and advice for the tenant about what to do if the notice is served, similar to the prescribed information on the back of a Notice to Quit,
• One useful addition is the clause which advises the tenant if the notice period expires short of the period for which they may have paid rent in advance they would be entitled to a refund for the excess paid.

Section 6 possession proceedings Applying for possession
After the notice has expired, the landlord can apply to court for a possession order. If they apply the day of the expiry of the notice it will be enough to invalidate it.
There are two methods of applying for possession, one does not require a court hearing but the other one does.

Accelerated Possession.
This is a procedure used solely for cases where the fixed term of an AST has expired, and the landlord simply wants possession for no other reason. The fabled s21 notice is served.
The landlord fills in the relevant form and a defense form and copy of the application form are sent to the tenant for comment and defense.
The only 3 possible defenses on the form are that:
• The type of letting is not as claimed.
• The deposit wasn't protected
• The property is not licensed.
The tenant has 14 days to file the defense but in practice this isn't hard and fast, as long as the defense is in before possession is granted. The process of granting possession is done on what judges call "Box work", basically the applications are stuffed into a box and a judge on any given day will simply grab the pile and start rubber stamping possession orders based on what the landlord has filled in and what the defense may be.

Landlords often lie about deposit protection or licensing requirements. The judge is not a detective and may well grant possession even if the landlord hasn't done what is required of them. This can result in possession being grated in error. If the judge has reservations about the paperwork or the situation in general, they can order a hearing to take place rather than just grant possession automatically. Since November 2017 there is a new application from to be used. It is still called an N5B, like the old one but now has boxes where the landlord must provide proof of compliance with all the Deregulation Act requirements, not just the Housing Act 2004 ones.

Possession through hearing.
For any other type of possession claim there will have to be a hearing where the landlord and tenant can both put their case.
As with accelerated possession cases a defense form is sent out to the tenant. Where proceedings are brought following service of a section 8 notice the tenant can counterclaim against the landlord for harassment or disrepair, which is usually held at the hearing itself.
It is for the landlord to prove their case.
The hearing is often allocated 10 or 20 minutes but could well be adjourned if matters are more complex than the court anticipated.

Types of possession order.
There are 3 types of order a court can grant.
• Outright possession order
• Suspended possession order
• Postponed possession order.

Outright possession orders.
This will be granted where the landlord has proven their case to the satisfaction of the court or where the tenant does not turn up to defend it. There will usually be a period of 14 – 28 days on this order, after which time it becomes effective.

Suspended possession orders.
These are still possession orders but acting on them is restricted to situations where the tenant breaches the terms of the order. They are most used in rent arrears cases or anti-social behaviour where conditions are set on the possession, for instance, the tenant is ordered to pay the rent plus £10 a week off the arrears. As long as they stick to the terms then possession will not go ahead.

If the tenant breaches the terms, for instance in not sticking to the agreed payment arrangement then the landlord is allowed to go straight to bailiffs for a warrant.
If a person is subject to an SPO for rent or mortgage arrears, it is important to understand that once the debt is cleared the SPO isn't automatically lifted. The person must write to the court asking for an official discharge.

If they don't do this then the SPO will sit in the background for years and if they get into arrears again, the landlord or mortgagee can apply straight for a warrant.
In Part VII terms note that a suspended possession order is still a possession order, and the person will be officially homeless, even though they are allowed to remain in their home.

Postponed possession orders.
Similar to suspended orders in that terms can be set but there is actually a date for possession set in these orders, however, if the landlord wants to apply for a warrant, they must go back in front of a judge to ask permission.

The Right to Rent.
Where the Secretary of State notifies a Landlord that all his tenant/s are illegally in the country the Landlord will be expected to terminate the tenancy under Section 40. The Landlord will need to give the tenant/s 28 days' notice in prescribed form. If the tenants do not vacate on the expiry of the notice the Landlord may use reasonable force to evict himself or instruct a High Court sheriff to evict the tenant/s. This section applies to Rent Act 1977 and assured shorthold tenancies under the Housing Act 1988.

So, you could be present at an eviction against people who have all the hallmarks of a tenancy where there is no bailiff's warrant. In such instances you need the landlord to produce his notification from the government because the power to trigger section 40 evictions only comes following notification to the landlord by the secretary of state. But what if it's a shared house and some of them have legal immigration status whilst others don't? The landlord must use the new mandatory ground for eviction, 7B against all occupiers but the legal tenants can apply on the application to have the tenancy transferred to them.
Source [landlord and tenants' rights]

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Safety case: what you'll need to know and do

The Building Safety Act introduces a set of new roles and responsibilities for people who manage occupied, high-rise residential buildings.

Although the Act has become law, the duties it describes for existing occupied high-rise residential buildings have not come into force yet. Registration of existing buildings is expected to begin in April 2023, with the Building Assessment Certificate process expected to begin in April 2024. You can read more about transitional arrangements in this factsheet.

We are providing the information in the links below to help those who will have duties under the Act to get ready for the new regime and manage risks effectively.

If you manage a high-rise residential building, you'll need to take all reasonable steps to:

- prevent any building safety incidents
- reduce the severity of an incident, should one occur

The Act defines a building safety risk as the spread of fire, or structural failure. The spread of fire includes the spread of all forms of combustion, for example smoke, fumes, and heat.

In the Act, those responsible for occupied, high-rise residential buildings will be required to:

- register their building with the Building Safety Regulator (BSR)
- perform a building safety risk assessment
- introduce measures to manage building safety risks
- prepare a safety case report for their building to give to BSR on request

BSR will be publishing case studies and examples of proportionate responses to common situations as we develop the new regime.

The following series of pages will help you to prepare for the new regime. They contain information and advice on what the Building Safety Regulator is likely to need in any submission.

Safety case information in more detail

1. Building Information
2. Identifying building safety risks
3. Risk prevention and protection information
4. Safety Management Systems
5. Safety case report

Source: **Safety cases and reports - Building safety - HSE**


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Successful prosecution in major unlawful eviction and harassment trial

On Tuesday 19 July 2022, in a case prosecuted by Thanet District Council, a jury at Canterbury Crown Court reached 28 guilty verdicts in respect of four defendants involved in managing rented flats in Athelstan Road, Margate.

Sohila Tamiz, of Flint Lane, Lenham, was found guilty on five counts of conspiring to unlawfully evict a tenant, eight counts of conspiring to, or interfering with, the peace or comfort of a residential occupier, and one count of conspiring to burgle.

Pedram Tamiz, of Flint Lane, Lenham, was found guilty of two counts of conspiring to unlawfully evict a tenant, and five counts of conspiring to, or interfering with, the peace or comfort of a residential occupier.

Adam McChesney, of Gloucester Avenue, Margate, was found guilty of two counts of conspiring to unlawfully evict a tenant, and three counts of conspiring to interfere with the peace or comfort of a residential occupier.

Kasem El Darrat, Athelstan Road, Margate, was found guilty of one count of conspiring to unlawfully evict a tenant, and one count of conspiring to interfere with the peace or comfort of a residential occupier.

Council officers began investigating after a series of allegations came to light, involving criminal activity in relation to the management of a building containing 26 flats in Athelstan Road, Margate. Lawful tenants were routinely threatened and evicted without notice; locks were changed, and some tenants' belongings were removed or thrown onto the street. In one case, a tenant was doused in petrol and punched causing the loss of several teeth. The allegations shared with council officers were the most harrowing heard in any investigation relating to tenancy management.

The unlawful actions of the defendants resulted in the council incurring significant costs in rehousing those tenants who had been systematically thrown out of their properties using violence or threats of violence.

Legal proceedings against Sohila Tamiz began in relation to a single incident of unlawful eviction. Following Ms Tamiz's election of a trial in the Crown Court, the council instructed Michael Polak, a barrister specialising in unlawful evictions, and junior barrister, Llewellyn Culver-Evans, to review the case and prepare it for trial. Further investigations revealed evidence of other unlawful evictions and harassment against vulnerable tenants. Additional charges were added to the indictment, as were three more defendants: Sohila's son Pedram, and Adam McChesney and Kasem Al Darratt who worked for the Tamiz's as an enforcer and agent respectively.

The case was presented to the jury over four weeks following which the jury returned unanimous verdicts on 28 counts on the indictment.

Cllr Jill Bayford, Cabinet Member for Housing, said "This is a landmark prosecution for us, and underpins our key priority of ensuring the ongoing safety of all of our residents. We hope that this outcome sends out the serious message to other landlords in the district and further afield that criminal activity, or any intimidatory or threatening behaviour towards tenants, will not be tolerated, but will instead be routinely prosecuted."

The council will now begin the process of gathering victim impact statements ahead of sentencing, which is due to take place on Monday 10 October 2022.

The council believes this case to be the largest ever prosecution of its type for offences under the Protection from Eviction Act 1977.

Source: [Successful prosecution in major unlawful eviction and harassment trial - Thanet]


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Derelict sites to be transformed into new homes as new fund opens

Derelict and underused brownfield sites across England will be transformed into thousands of new homes, the Department for Levelling Up, Housing and Communities has announced.

Councils can now apply for a share of the new £180m Brownfield Land Release Fund 2, which will help to transform disused urban areas into 17,600 new homes and create around 54,000 jobs over the next four years.

An initial £40m is available to support local regeneration projects, releasing council land for around 4,000 new homes, and creating 12,400 jobs. The move will boost local economies and help thousands of young people and families into homeownership. The remaining £140m of the Brownfield Land Release Fund 2 will be made available to councils over the next two years.

The scheme forms part of the government's plan to level up communities across the country and turn unloved areas into new places for people to live and work.

The minister for government efficiency, Jacob Rees-Mogg, said: "Opening up this land is a fantastic opportunity for regeneration, improving government efficiency and playing a vital role in tackling the housing shortage while increasing home ownership. I am pleased to see this work is being delivered, after many attempts over the decades.

"This will provide a boost to the economy, foster the creation of thousands of jobs, and it is also the opportunity to convert derelict and unloved land into beautiful new hamlets or villages, which will give many young families their first step on the housing ladder."

The fund aims to support the transformation of small council-owned sites that have been previously developed, by funding small scale infrastructure and remediation work to enable the release of the land for new homes.

This builds on the success of the first Brownfield Land Release Fund which saw £77m go to councils across the country to release brownfield sites for around 7,750 new homes.

As with the previous scheme, the new fund will be delivered through the One Public Estate partnership between the Department for Levelling Up, Housing and Communities, the Office of Government Property, and the Local Government Association.

Councils will be able to draw on their understanding of local needs in determining the type, tenure, and delivery approach for the new homes. They have until 19 August 2022 to submit applications via the designated accountable body of their local OPE Partnership.

Source: [Derelict sites to be transformed into new homes as new fund opens - Property Industry Eye]

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