

Fact Sheet – Tenanted Property

You are purchasing a property that you intend to or is already let to a tenant. This Fact Sheet summarises the main legal issues associated with buying property intended for this use. Many of the issues are included in buy to let mortgage criteria and required by mortgage lenders to be addressed before approving release of buy to let mortgage funds.

- **Assured Shorthold Tenancy Agreement**

This is generally considered to be the best and most secure type of Agreement in terms of obtaining a possession order from the Court as quickly and cost effectively as possible in the event that the Tenant defaults under the terms of the Tenancy. You should hold a validly signed and executed original Assured Shorthold Tenancy Agreement signed by your current Tenant. Your failure to have this document available will make it more difficult and costly for you to evict the Tenant obtain a possession order.

- **Prescribed Information**

If the term of the Tenancy Agreement commenced on or expired but informally continued after 1 October 2015, you will need to be able to prove that you supplied the Tenant with a copy 'How to Rent Guide' (<https://www.gov.uk/government/publications/how-to-rent>)

- **Right To Rent Check**

You may need to be able to prove that all of your Tenants have a right to live in this country. This is usually fulfilled by obtaining copies of the Tenant's passports and if necessary the supporting visas as applicable.

- **Certificates**

You will need to be able to show to any Tenant a copy of the Energy Performance Certificate relating to the Property as well as a copy of the annual Gas Safety check (by a Gas Safe registered engineer) and Electrical Installation Condition Report (formerly known as Periodic Inspection Report) carried out by an appropriately qualified electrician.

- **Deposit**

The Deposit must be 'protected' under one of the following statutory schemes. If you cannot prove this, you could be fined and the Tenancy Agreement declared invalid:

- o Custodial Scheme (Deposit Protection Service) – The deposit is lodged with the Scheme provider. You must be registered with them as the Landlord to deal with negotiation of the release of the deposit at the end of the Tenancy.
- o Insurance Scheme – The majority of the Deposit is backed by an insurance policy administered by the scheme provider. If the scheme is administered by the Tenancy Deposit Scheme, then you must register as a Landlord with the scheme provider and thereafter provide the Tenant with confirmation of your registration together with information about the insurance scheme protecting the deposit.

If the scheme is administered by Tenancy Deposit Solutions Ltd there can sometimes be difficulties in 'unprotecting' and 'reprotecting' the deposit which is usually a concern for the Buyer of a Property seeking to continue the existing Tenancy following their purchase of the Property. The Seller could terminate the existing Tenancy Agreement and the

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Buyer grant a new Tenancy Agreement to be co-ordinated to occur simultaneously with completion of the sale and purchase of the property.

- **Mortgage Notice**

If you are obtaining buy to let mortgage finance associated with the Property, most Mortgage Lenders require you prior to affirming any new Assured Shorthold Tenancy Agreement to give formal legal notice to the Tenant that it may be possible for the Lender to regain possession of the Property thereby cutting their tenancy short even in circumstance that they have abided by the terms of the Agreement. This is known as a Ground 2 Schedule 2 Notice (of the Housing Act 1988). You should be able to find example notices online. Failing that your Lender should be able to supply you with a Notice that is satisfactory to them. The Notice must contain certain key information and so the content is quite important.

- **Rolling Over**

You should consider renewing any Assured Shorthold Tenancy Agreement upon it's expiry rather than allow it to 'roll over' on the same terms. Rolling over without signing up to a new Agreement is likely to continue the existing tenancy on the same basis but it may invalidate the terms and conditions of the 'protected deposit scheme' and therefore make it much more difficult for you to obtain a possession order in the event that your Tenant breaches the terms of the existing tenancy and will not vacate the Property by agreement.

- **Buildings Insurance**

You should let your insurer know that the property is let unless the property is leasehold property and it is the responsibility of the Landlord / Management Company to insure the block building. Your failure to do so may invalidate any subsequent insurance claim that you make.

- **Leasehold Property**

If your Property is a leasehold property then you need to check the terms of your lease to ensure that there is no restriction preventing you from subletting your flat. You should ensure that you have supplied your Landlord / Management Company as applicable with relevant contact details of your Tenant as they are responsible for managing the affairs of all of the occupiers within the block. It is likely that your landlord will want to retain a copy of your Tenancy Agreement and that they will charge an administration fee for updating their records. They may also want to check that your Tenancy Agreement includes a covenant to observe and perform all of the covenants contained in your Lease.

- **Landlord Insurance**

You should consider obtaining additional insurance coverage to include cover for additional risks like non-payment of rent, repairs and legal costs associated with enforcing the terms of the Tenancy Agreement (inclusive of obtaining a 'possession order'). You should seek advice from an independent insurance advisor in this regard. The insurers associated with this type of insurance product usually require evidence that you have carefully 'vetted' the tenant (reference, proof of income documents and credit reference searches).

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- **Initial State and Condition & Ongoing Maintenance**

You will be bound to keep the property in good repair and supply appropriate annual safety certificates to your Tenant. You should make allowances for the additional time and costs in this regard and you should rely on your Survey to ascertain whether there are any hidden costly maintenance tasks that may need to be carried out in the near future. You should consider sourcing local, reliable and cost effective maintenance professionals who you may have to appoint to carry out repairs sometimes in an emergency and at an inconvenient time.

- **Air BnB**

There are sometimes legal covenants affecting your property confining use of the Property to a private residence for the occupation of one family only. The Courts have construed Air BnB arrangements to be in breach of this type of covenant on the basis that Air BnB arrangements do not have the degree of permanence envisaged by the covenant. This is a greater risk within a leasehold block but in any event you need to be aware of the issue.

- **House in Multiple Occupation Licensing Schemes**

The Local Authority Search should indicate whether the Council operate a 'licensing scheme' in the area with respect to houses being 'shared' by more than two 'households.' Where the scheme applies, the Council require Landlords to obtain a HMO License intended to ensure that appropriate 'standards' are in place for the Property to be let. The Licenses are renewable every 5 years. Fines of up to £20,000 can be issued for breaching this requirement. In addition, building works to comply with modern building regulation standards can be costly.

- **Tax**

In recent years the Government have introduced various changes to the tax system that has resulted in the owners of multiple properties having to pay more tax; whether that be stamp duty, income tax, capital gains tax or inheritance tax. Clearly the Government are currently motivated to create a regime that encourages the introduction of a greater percentage of owner occupiers into the housing market. Please do seek advice from a tax specialist relative to your specific circumstances and in view of all of the income and assets owned by you.

- **Managing Agent**

Given the increasing level of regulation involved in acquiring and then managing tenanted property many owners appoint a reputable managing agent to deal with most of the issues raised in this fact sheet.

- **Notice of Completion**

Upon completion of your purchase you should write to and physically meet with your Tenant to confirm completion of your purchase (if applicable). You should also confirm appropriate details of the protected deposit to the protected deposit scheme provider. Your failure to do so may invalidate the existing Tenancy Agreement and make it more difficult and costly for you to obtain a possession order. We can provide further evidence that you are the Tenant's new Landlord following completion if you need this.