

# 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.

Set out below are various areas which 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 specific advice or help to set yourself up with the relevant deposit scheme and the preparation of tenancy agreements, then we have a dedicated Landlord and Tenant specialist team who can be contacted either by email at **landlordandtenant@shoosmiths.co.uk** or by phone on **08700 866 601**.

Please note our Landlord and Tenant specialist team will be entitled to charge separately for their time.

## 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 covenants/restrictions then they will not be enforceable against them and you may find that the Landlord will seek to enforce them against you personally.

## Energy Performance Certificates (EPC's)

It is now a requirement that when you offer a property for rent you must provide an Energy Performance Certificate to the prospective tenant. If you have been provided with an EPC by the seller as part of your property purchase, you may be able to utilise that EPC for prospective tenants as the information contained in an EPC is valid for three years from the time it is produced. Of course, if, having purchased the property, you carry out any work to improve its energy efficiency rating then it would always be advisable to obtain a new EPC before advertising the property for rent.

## 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:-

### 1. 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](http://www.depositprotection.com)**.

The service is free of charge and is funded entirely by interest earned from deposits held in the scheme.

### 2. The 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



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([www.tds.gb.com](http://www.tds.gb.com)) and Tenancy Deposit Solutions Limited ([www.mydeposits.co.uk](http://www.mydeposits.co.uk)).

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

1. You may not contract out of this obligation
2. You must pay the deposit into the custodial scheme or register the deposit with one of the two insurance based schemes within 14 days of the funds being paid to you by the tenants or the deposits being transferred to you in the instance that you are purchasing a property subject to an existing tenancy.
3. You must have agreed with the tenants the basis of refunding their deposit at the end of the tenancy and payment must be made within a maximum of 10 days
4. The Choice of scheme is yours and not the tenants

I 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. 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.

### Gas & Electrical Safety

As part of the requirements set out above, you must ensure that:

- Gas boilers/appliances and pipework are safety checked annually by a CORGI registered technician.
- A record is kept of all gas safety

checks and that these are supplied to the tenant within 28 days of the inspection being undertaken.

- Any electrical appliances supplied by you with the property e.g. cooker and immersion heater 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.

### Fire Safety

In addition to the gas/electricity safety requirements, you are required by law to ensure there are adequate means of escape from the property and that smoke detectors/alarms (compliant with BS 6446) are fitted and fire extinguishing equipment provided. Additionally, 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.

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

### 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, interest on any mortgage you have over the property) 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 government website:

[www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/TaxOnPropertyAndRentallIncome](http://www.direct.gov.uk/en/MoneyTaxAndBenefits/Taxes/TaxOnPropertyAndRentallIncome)

### 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. 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

Capital Gains tax is currently payable at a flat rate of 18%. 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.