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National Landlords Register - Implications for Residential Lettings Industry

Recent government proposals mean that private sector landlords may be required to join a national register before being able to let properties to tenants. The Department of Communities and Local Government has recently undertaken a consultation arising out of concerns expressed in a report on the private rented sector by academics from the University of York (the Rugg Report).

The report (which also recommends that the government consider introducing mandatory regulation of the lettings and management agents industry) found that many private landlords do not take their role sufficiently seriously and did not offer a satisfactory level of service. The intention behind the implementation of a national landlords' register is to remind landlords of the need to provide a professional service and to 'secure behavioural change' in order to improve standards. John Denham, the Communities Secretary, wants to have legislation in place as soon as possible.

Current Problems

The government estimates that there are over 3 million households in the private rented sector in England. The Rugg Report, referred to above, identified various concerns, including:

- 1) Lack of a professional perspective and knowledge of existing legislation on the part of landlords
- 2) In some circumstances, difficulty in locating ill-intentioned landlords
- 3) Lower standard of decent homes in comparison with the social rented or owner-occupier sectors
- 4) Landlords responding to legitimate complaints by tenants by taking eviction action

The government looked at the possibility of introducing a system of licensing to address these issues, before concluding that a national landlords' register was the preferred option.

What will the Register mean for Landlords?

In order to implement these proposals the government will need to introduce primary legislation, which is unlikely to be in place before 2011 at the earliest. Any homeowner who lets a property will be required to pay a £40 fee in order to join the register. It is likely that this will apply to landlords who rent rooms to lodgers, although confirmation is awaited. Under the proposals, landlords will need to provide information including their name, address and the property address. If concerns arise in relation to the level of service provided by the landlord, and those complaints are upheld, landlords may be removed from the register and prevented from operating as a landlord. In that event, the property will be managed by either the Local Authority or a properly regulated managing agent.

What are the Objections?

The National Landlords Association is opposed to the register on the basis that the collection of such details is overly intrusive. The Association's Chairman has pointed to the fact that the private rented sector is already heavily regulated.

The Times has reported concerns that if live-in landlords are to be brought within the scope of the proposals, the register will enable tax inspectors to use the register to crack down on tax evasion. Currently, live-in landlords can earn up to £4,250 per annum by letting rooms to lodgers without needing to pay tax. It is reported that many live-in landlords charge lodgers over £81 per week in rent, in which case they are exceeding the tax threshold. There are concerns that the register may discourage people from taking in lodgers at a time when many householders are having to look for other sources of income. On the other hand Shelter, a charity representing homeless people, feels that the register does not go far enough.



James Woodhouse
Solicitor (Litigation)

CONTACT:

james.woodhouse@clmlaw.co.uk

Tel: 01635 521212

Fax: 01635 37784

www.clmlaw.co.uk

 Connect to James on LinkedIn

www.linkedin.com/in/jameswoodhouse

 Or follow him on Twitter
www.twitter.com/@JWWLaw

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Achieving Harmonious Client Relationships

The Property Ombudsman Services has announced that nearly four people every hour are complaining about problems with letting agents in the UK (October 2009). Complaints appear to be on the rise (currently 129 complaints per week compared to 77 per week in the same period last year). Issues include:

- Failure to make adequate checks on references
- Infrequent inspection visits
- Tenants losing holding deposits on cancellation

Unfortunately, letting agents have been no more immune to the recession than other property-based businesses. Press articles have reported incidences of agents going bust whilst owing clients money in collected rent / deposits held. The *Oxford Times* drew attention to an Oxford

academic's attempts to sue Charles Lawson (Lettings) for monies owed after the business apparently ceased trading.

From a legal perspective, letting agents can take certain steps to minimise the risks of complaints or indeed legal action if the worst should happen:

Terms of Business - Ensure that contractual documents are clear, unambiguous and up-to-date. Your terms of business will govern what happens should things go wrong.

Complaints Procedure - Most codes of practice provide for some form of arbitration. However, in the first instance complaints should be handled in-house.

Ensure Client Money is Protected - It is a requirement of most codes of practice that client money is retained in a separate bank account. Section 14 of the Estate Agents Act 1979 also refers.

Ensure that Deposits are Protected - Letting Agents are generally aware of the need to pay any deposits collected in relation to ASTs created on or after 6 April 2007 into an approved Tenancy Deposit Scheme.

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Money Laundering Regulations



Estate Agents have been required to comply with the Money Laundering Regulations 2007 for a number of years. The general rule is that agents who offer lettings services only are not subject to the Regulations.

The Office of Fair Trading (OFT) is the supervisory authority for estate agents (the meaning of the term "estate agents" is defined in Section 1 of the Estate Agents Act 1979). The OFT has introduced a system of registration, as permitted by the Regulations.

A registration scheme was implemented on 31 July 2009 and firms have until 31

January 2010 to register. A registration fee of £115 per premises applies.

After 31 January 2010 it will be an offence to carry on business without being registered. Prosecution could result in a prison sentence of up to two years and / or an unlimited fine.

The OFT has reported that it is likely to take up to 45 days to complete the registration process and firms are advised to apply before the end of November. For further details visit the OFT website at www.of.gov.uk.

How to Create a Lease - the Legal Requirements

The essential requirements of any lease or tenancy are set out in the case of Street v Mountford (1985). The tenant must be granted (1) exclusive possession (2) for a fixed or periodic term (3) in consideration of rent.

The Law of Property Act 1925 provides that tenancies granted for a term of more than three years must be created by deed in order to be valid in law. The Land Registration Act 2002 requires tenancies

granted for a term of more than seven years to be registered. This is so regardless of whether the landlord is granting a new lease or renewing an existing lease.

In order for a document to take effect as a deed the document must make it clear that such is the intention of those signing it. The parties' signatures must also be witnessed. Many 'standard form' tenancy agreements do not include a statement

that the parties intend the agreement to take effect as a deed.

This poses no problems if the term is for a period of less than three years. However, if the term is over three years the agreement will be void at law. The tenancy may still take effect as an "equitable lease", but may not be binding on third parties unless registered.