

# FREEHOLD BLOCK MANAGEMENT

Regulation of ASTs



# REGULATION OF ASTS

**NOTE:** This guide is correct as at July 2023. The upcoming Renters Reform Bill will, once passed into law, introduce significant changes to ASTs and an up to date guide will be published in due course.

With the increase in the number of build to rent developments and/or the use by freeholders of short-term lets while they wait for units in a development to sell means that freeholders and managing agents need a solid understanding of the rules and regulations surrounding the grant and termination of assured shorthold tenancies.

The regulatory requirements have, in recent years, become greater and more complex, and mistakes or omissions at the time an AST is granted can lead to problems for freeholders in obtaining possession further down the line.

### WHAT NEEDS TO BE IN PLACE WHEN AN AST IS GRANTED?

The following are all required when an AST is granted:

- An energy performance certificate (EPC) is required before the property can be marketed for let. A copy must be provided to the tenant;
- A gas safety certificate must be provided to the tenant;
- The property must be fitted with smoke and carbon monoxide alarms;
- For tenancies granted from 1 July 2020 onwards, an electrical inspection report must be provided;
- The tenant must be supplied with a copy of the latest version of the government 'How to rent: The checklist for renting in England' booklet;
- A 'right to rent' check must be carried out in order to establish the tenant's immigration status;
- If the property is a house in multiple occupation (HMO) then a licence from the local authority may be required;
- If a deposit is being taken it must be placed into a government-approved tenancy deposit scheme AND the tenant must be given the prescribed information regarding the deposit, within 30 days of receipt of the deposit from the tenant.

### WHAT FEES CAN THE TENANT BE REQUIRED TO PAY?

The Tenant Fees Act 2019, which applies to all ASTs granted on or after 1 June 2019, limits the fees which a tenant can be required to pay. Freeholders and agents cannot ask tenants to pay any fees other than those which are expressly permitted by the Act. The following are not permitted:

- Front-loaded rents (i.e. paying a higher rent for the first month, in lieu of fees).
- Deposits greater than five weeks' rent, if

the annual rent is less than £50,000, or six weeks' rent, if the annual rent is £50,000 or more.

- Holding deposits which are greater than one week's rent.
- Fees for replacement keys which exceed the cost of replacement.
- Fees for late payment of rent, unless the rent is outstanding for 14 days or more.
- Fees greater than £50 for renewing or varying a tenancy.

### WHAT ARE THE CONSEQUENCES OF FAILING TO COMPLY WITH THE REGULATORY REQUIREMENTS?

If the freeholder fails to comply with the above requirements, the ability to serve a section 21 notice in order to recover possession of the property subject to the AST may be affected. The freeholder may also be liable to other penalties.

A freeholder cannot serve a valid section 21 notice if any of the following exist:

- Failure to supply an energy performance certificate, gas safety certificate or (where applicable) electrical inspection report.
- Failure to provide the 'How to rent' booklet.
- Failure to place the tenancy deposit in an authorised tenancy deposit scheme within 30 days of receipt.
- Failure to provide the tenant with the prescribed information regarding the tenancy deposit.
- Breach of the Tenant Fees Act 2019 by charging a fee or requiring a deposit greater than the permitted amount.

Most of these omissions or breaches can be rectified, and a section 21 notice served thereafter. For example, missing certificates, the 'How to Rent' booklet or tenancy deposit prescribed information can be provided, and any overpaid fees can be refunded before a section 21 notice is served.

However, the failure to protect a tenancy deposit within 30 days of receipt is an omission which cannot be rectified by subsequent compliance. A freeholder who fails to protect a deposit within this deadline cannot serve a valid section 21 notice unless the deposit is repaid to the tenant. The freeholder will also be liable to pay to the tenant a penalty of between one and three times the size of the deposit.

Finally, freeholders should note that failure to carry out the right to rent checks is a criminal offence and freeholders can be liable to pay a penalty of up to £3,000.

#### LEGAL SUPPORT

Please contact our property litigation team if you need assistance with:

- Advice on rectifying non-compliance with regulatory requirements.
- Serving notice to terminate an AST.
- Commencing possession proceedings.

#### LINKS TO OTHER GUIDES

1. [Tenants' right of first refusal](#)
2. [Residential service charges](#)
3. [Tenants taking control – collective enfranchisement](#)
4. [Tenants taking control – Right to manage](#)



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