



*Professional Series*

# **Company Letting Agreement**

## **(Form A05)**

Drafting & Guidance Notes

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# 1. Introduction

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The Company Letting Agreement (A05) is designed to provide a secure standard agreement for the letting of residential property to companies and other organisations where the tenant (or each of the joint tenants) is not an individual person. This type of letting agreement is fundamentally different at law to most common residential tenancies, in that the agreement is governed essentially by contract law rather than housing law.

The essence of this agreement is to establish the key parameters of the let and to ensure that any persons living in the house do so only as licensees and approved occupiers of the company.

## Scope

The Company Letting Agreement A05 is designed for use primarily by property professionals *acting in the capacity as agent for the landlord*. The agreement is suitable for residential tenancies created in England & Wales. Different rules may apply under Scottish law and amendments may be necessary for lettings in Scotland.

It will be important to establish that the tenancy being entered into is a genuine company letting. With significantly reduced security of tenure for the tenants, a court would need to be convinced that the true purpose of the agreement was to let to a company and not merely a 'sham' agreement for the landlord to avoid the obligations of the Housing Act 1988.

## Style

Letting Centre leases are drafted so as to be comprehensible not only by lawyers, but also by the individuals who will be affected by them, i.e. the 'lay' landlord and tenant. Established usage and precedents have led to the inclusion of some standard legal terms and construction in the agreement which are widely accepted and understood. Otherwise, we rely on the use of plain and simple English.

## Terminology

In these notes, a reference to the Landlord should be taken to also include the agent. 'He' is often used in its general sense for the landlord or tenant (meaning he and she).

The terms '**lease**', '**letting agreement**' and '**tenancy agreement**' are used interchangeably and are intended to have a similar meaning.

### Copyright

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The forms are revised formally on an annual basis and further updates and changes will be available to licence holders as necessary. The law of landlord and tenant is continually affected by new legislation and court case precedents; the Letting Centre aims to keep you fully informed of these changes using the regular updates.

### Compliance Support

The annual membership/licence fee includes the provision of compliance support in specified circumstances – this is where users have compliance issues – such as where the wording of the Forms has been questioned or disputed by a client’s lender, or professional legal advisor. The Letting Centre will make reasonable efforts to provide the necessary legal support to ensure that such queries are satisfied. Compliance Support does not include the provision of general technical advice on using the tenancy agreement, drafting bespoke clauses or dealing with legal problems arising out of a tenancy that has been created. For general legal advice landlords and agents will need to obtain advice from a legal advisor.

A summary of the main licence terms is given in Appendix E to the A02/A03 Guidance Notes.

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## Company Lettings

When a company or similar organisation occupies a residential dwelling as a tenant, and the company or its employees or contractors intend to occupy the property for residential (as opposed to business) purposes, then the general rules for residential tenancies will apply (although the specific rules relating to assured and assured shorthold tenancies will not). This type of tenancy is generally referred to as a "company letting".

### Operation of company lettings

A letting to a company is one of the categories of lettings excluded from the system of assured and assured shorthold tenancies under the Housing Act 1988, and consequently, the statutory procedures for operating and terminating these types of tenancies will not apply. A company letting generally operates as a 'common law' or 'contractual' tenancy since the tenancy will be governed principally by a combination of common law and contract law rules.

Excluded from the protection of the Housing Act 1988, the company, as tenant, has fewer statutory rights than an assured or assured shorthold tenant. Once the term of tenancy has expired, the tenant has no security of tenure and must leave. Furthermore, there will be different requirements for serving notices, operating rent increases and terminating the tenancy.

It is normally very straightforward to set up the tenancy using the company letting agreement but the practitioner needs to be wary of several potential pitfalls:

- the risk of a company gaining protection under Landlord and Tenant Act 1954;
- the financial status of a company may be harder to discover than an individual;
- letting to governments and diplomats may confer diplomatic immunity.

### Similar types of lettings

The term "company letting" is used broadly, and can refer to other similar types of organisations who wish to rent a property for the residential occupation of their employees, or staff such as charities and trade associations and churches.

Government departments and embassies may also occasionally wish to enter into tenancy arrangements in order to secure accommodation for their staff, and the same general framework used for company lettings may be employed, although special rules for such lettings may need to be followed (see sections below entitled "Government departments" and "Diplomats").

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## Business Use and the Landlord and Tenant Act 1954

One of the key concerns when letting to a company is that the company is not allowed to use the premises for business purposes and so gain protection under the Landlord and Tenant Act 1954. For this reason, the agreement contains a covenant not to use the premises other than as a private residence, and a tenant who started using the premises for business purposes without prior agreement from the landlord would be in breach of his agreement and forfeit the lease (thus preventing any protection being established under the 1954 Act).

It is useful to understand the distinction between a company occupying 'for business purposes' and the situation where the occupation is merely for a convenience. A company (assuming it is trading) is assumed to be occupying 'for the purpose of its business' if its occupation is in furtherance of its business activities. For example, it might use a portion of the building to store commercial goods or stock in trade, or allow the tenant to occupy under a **"service occupancy"**. A service occupancy is typically where the tenant lives on or adjoining the business premises, and such occupation is necessary in order for the individual to perform his duties properly. Examples of a true service occupancy might be the stockman who is employed by the company, and has to live in a dwelling in the centre of the stockyard so as to carry out his duties, or the hotel manager who is allowed to live in one of the cottages in the grounds of the hotel.

In an important ruling (*Chapman v Freeman*, 1978), the courts held that a company occupying a residential property for the purpose of housing staff was occupying merely for the convenience of the business, and did not constitute occupation for business purposes (and therefore gained no protection under the Landlord and Tenant Act 1954). In the *Chapman* case, the tenant of a cottage used it to provide accommodation for staff employed at a nearby hotel. The court held that the company had simply occupied the cottage for the purpose of housing hotel staff, and merely for the convenience of the business.

The risk to the landlord, when a tenant gains protection under the 1954 Act, is that although the landlord will be able to recover possession if he intends to occupy the premises as his residence, he would be liable to pay compensation under s.37 on the tenant's giving up possession. The Letting Centre's company letting agreement prohibits the use of the property for business purposes thus affording the landlord a measure of protection.

If it is clear that the occupation of the property involves a significant portion of business use, then practitioners are advised to take further advice. A tenancy of a term not exceeding six months (with the landlord restricting any such letting to one company for two six month terms and no more) will also help to avoid protection under the 1954 Act in such cases.

## Government departments

When letting to a government department, it is advisable to include an extra clause in the agreement (in the 'Special Conditions' section) where the parties agree that the 1954 Act does not apply (this requires the sanction of the County Court and payment of a fee).

## Status of occupier(s)

Unless the company letting agreement allows sub-letting, the occupiers (normally the company's employees) of the property will occupy as licensees of the company. Licensees have permission to reside in the property from the company and have very little security of tenure. Even though the licensees are occupying the property it will be the company who is responsible for ensuring that all the terms of the agreement are complied with.

As tenant, the company will be responsible for the property and performance of the various obligations under the tenancy agreement. In some cases, the company may wish to protect its position by setting down corresponding terms to any occupier in a formal written way. This may be done using a simple licence or "occupancy agreement". This is an explicit agreement between the company and the approved occupier which defines the terms which govern the occupation of the property and helps to protect the company from any claims of tenure by present or past occupiers. An example of such an agreement can be found in Appendix B of these notes.

## 2. Pre and Post Tenancy Procedures

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### **Vetting the company**

The landlord should be satisfied as to the size and reputation of the tenant company and the normal credit checks are recommended. The company should be one whereby the landlord or agent is confident that the rent will be fully and promptly paid and that the other obligations under the lease will be performed. The intention is that the company will then permit the employees or contractors to occupy the premises.

Where there is any doubt as to the financial background, stability or ability of the company to pay the rent either now or in the future, it would be appropriate to request a surety to guarantee the performance by the tenant of his obligations under the lease. Generally, a director of proven financial status would then be asked to act as guarantor for the tenancy agreement.

### **Vetting the individual occupiers**

The landlord may wish to 'vet' the person(s) who are to occupy and provision for this is made in the company letting agreement. In other cases, the landlord may decide to overlook this requirement, relying on the company to do this instead.

### **Right to Rent Checks**

Landlords who rent property in England under a residential tenancy agreement must carry out checks on adult occupiers from 1<sup>st</sup> February 2016 to ensure the occupier has a right to rent in the UK even if they are not named on the tenancy agreement. A residential tenancy agreement is a tenancy which grants a right of occupation of premises for residential use, provides for payment of rent and is not an excluded agreement under the Immigration Act. Tenancy also includes any lease, licence, sub-lease or sub-tenancy and an agreement for any of those. Landlords must establish the occupiers who will be living at the property; whether the property is their only or main home and conduct right to rent document checks. Where a tenant sublets the property, they will usually be responsible for checking the right to rent status of their subtenants. However, the landlord can perform the right to rent checks if it is expressly agreed with the tenant who is subletting that they will do so.

Occupiers should provide original documents and landlords will need to check the documents are genuine with the tenant present and keep copies on file.

If the occupier is only allowed to stay in the UK for a limited time, the tenant company will need to do the check in the 28 days before the start of the tenancy and must diarise a follow up check one year after the initial check or upon expiry of the time limit whichever is later. Where an occupier does not have a right to rent in the UK landlords will need to make a report to the home office. The checks do not apply to existing occupiers or under 18s but, according to government guidance, when an occupier turns 18 during the course of a tenancy agreement *'landlords do not need to conduct additional follow up checks but, where other adult occupiers require follow up checks, the now adult should be checked at the point these further checks fall due.'*

As the tenant will be letting the property to the occupiers the tenant will be responsible for carrying out the right to rent checks. The tenant company should keep appropriate evidence of the checks and provide copies of such evidence to the landlord.

Further guidance is available on the [government website](#).

### Overseas companies

There are obvious risks when conducting any contractual relationship with a company registered overseas. Enforcement of unpaid rent and possession orders from overseas companies is more difficult and the legal rules are more complex. For example, a landlord seeking recovery of a debt (e.g. rent arrears) from a company registered abroad is normally required to commence proceedings in the country where the company is registered. Some measures are available to reduce the risks (discussed below) but landlords are advised to seek further professional advice before entering into such relationships.

Many overseas companies will be structured so that local trading companies are established in each local country, and registered with Companies House in the same way as any other UK company. This facilitates such business dealings since the landlord is then able to deal with the organisation as for any other company letting subject to the standard credit checks.

Clearly, the ultimate decision to let a property rests with the landlord. If the overseas company is a reputable and established organisation with an excellent credit rating, then the landlord may decide to proceed with the letting regardless of the complications discussed above.

When letting to overseas companies, it is also advisable to ensure that the letting agreement specifies that the interpretation of the agreement will be in accordance with English law and disputes decided in an English court. (see Special Conditions and Optional Extensions below).

As for UK based companies, you should ensure that any rental agreement is authorised by a Director or other Proper Officer (e.g. Company Secretary).

Try to obtain a guarantee or co-surety debtor. However, most companies are reluctant, or not authorised by their Articles, to enter into guarantees or appoint co-sureties for property rental in respect of company employees. As further security, the landlord can consider taking a deposit equivalent to three months' rent, in addition to the usual dilapidations deposit, repayable after (say) three months' satisfactory tenure.

### Diplomats and diplomatic immunity

Care needs to be taken when letting to a foreign embassy, government or to a diplomat.

Embassy officials have "diplomatic immunity". That is to say, they are immune from the court process and cannot be arrested. Therefore a landlord may be able to bring possession proceedings but would be unable to enforce, or arrest a tenant for not appearing in front of court. Embassies and their officials do not automatically have immunity; they must have an arrangement with the British Government, and the Foreign Office holds records of all those who have diplomatic immunity. Where diplomatic immunity exists, the tenant would need the support of his embassy to invoke his rights and where a tenant was in rent arrears or remained in possession of the property unreasonably it is unlikely that this support would be given. Also, it should be noted that it is possible for the legal status of an embassy employee to

change during the period of the tenancy, so that diplomatic immunity is gained once the tenant or occupier is in occupation.

If the tenancy is with a foreign government, the diplomatic status of the occupant should be checked with the Foreign Office. If there is diplomatic immunity, then great care must be taken; if the tenant (or occupiers) refuses to leave at the end of the tenancy the courts cannot enforce eviction if the occupier's immunity is supported by their embassy. This is unlikely to happen with a reputable foreign government.

Best advice when letting to an embassy or a diplomat is to insert an extra clause into the tenancy agreement whereby it is agreed, in the case of dispute, that diplomatic immunity is waived and the English court shall have jurisdiction. Notwithstanding such clauses, the diplomat's State can still claim immunity ultimately in any event. The only fail safe protection in such cases (or in cases where the Embassy declines to waive immunity) is to require that a guarantor is provided, who is sufficiently credit-worthy and who does not have diplomatic immunity. Thus, even if the tenant cannot be evicted using the normal legal process, at least the rent will be guaranteed.

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## Procedures for Termination

The usual statutory requirements for service of notices and termination of tenancies for assured and assured shorthold tenancies *will not* apply since a company letting will operate under common law rules, and not under the statutory procedures defined in the Housing Act 1988.

At common law, a fixed term tenancy terminates automatically when the term comes to an end, unlike an assured tenancy or assured shorthold tenancy. If a fixed term tenancy is granted, then no notice to quit will be required as there is no need for either the landlord or the tenant to do anything in order to end the tenancy. If the tenant does not vacate the property at the end of the tenancy, the landlord may commence possession proceedings forthwith. Although, it is good practice for the landlord to give the tenant written notice of the termination date beforehand.

### *Tenancy at will*

If the tenant remains in occupation after the fixed term with the consent of the landlord, then the tenancy becomes a 'tenancy at will'. The landlord must demand possession from a tenant at will before he commences proceedings for possession (as a 'letter before action').

### *Tenancy at sufferance*

If the tenant remains in occupation without the landlord's consent, the tenant becomes a 'tenant at sufferance' and there is no requirement to serve notice to terminate such a tenancy. The landlord may commence immediate proceedings for possession. Where the tenancy is periodic, or has become periodic by the further payment and acceptance of rent, or by some other agreement after the initial fixed term, then the landlord will need to serve the tenant with a "**notice to quit**" in order to bring the tenancy to an end.

## Notice to quit - periodic tenancies

At common law a notice to quit is required to terminate a periodic tenancy, and such notices are subject to the following rules:

- the notice must be in writing and shall be given not less than four weeks before the date on which it is to take effect
- the length of the notice must be of a minimum length of four weeks, or equal to the length of the period of tenancy whichever is longer. Thus, for example, a monthly tenancy requires a

month's notice. The exception is a yearly tenancy which requires six month's notice, expiring at the end of a completed year.

- the notice must contain certain prescribed information (a standard form is available from legal stationers or The Letting Centre).

- the notice must be given so that it expires at the end of one of the periods of the tenancy. For example in a monthly tenancy where each period begins on the first day of the month, the notice should expire on the last day of the preceding month. In practice, the notice to quit is permitted to expire on either the first day or the last day of a period.

### Right to Rent

The Immigration Act 2016 also states that it is an implied term of a residential tenancy agreement which is not an assured tenancy within the meaning of the Housing Act 1988 that the landlord may terminate the tenancy if the property is occupied by *an adult* who is disqualified as a result of their immigration status from occupying the premises (s40 which inserts a new section 33E into the Immigration Act 2014).

### Forfeiture

Where one of the terms of the tenancy has been broken and the tenancy includes a forfeiture clause which allows the landlord to terminate the tenancy for this reason, the landlord is able to forfeit the tenancy. The act of breach in itself will bring the tenancy to an end (so long as it can be proved) and no new tenancy will arise, differing to an assured tenancy or assured shorthold tenancy where a statutory tenancy will arise in such circumstances.

Under non-Housing Act 1988 tenancies, breaches of covenant other than non-payment of rent are governed by s. 146 Law of Property Act 1925 which demands that the landlord must serve a notice on the tenant in accordance with s.146 before he can commence possession proceedings. There is no prescribed notice, but the notice must contain certain prescribed information which includes specifying the particular breach complained of, requiring the tenant to remedy the breach (if capable of remedy) and requiring the tenant to make compensation in money for the breach. The tenant must also be given reasonable time to remedy the breach where the breach is capable of remedy. Forfeiture arising through non-payment of rent does not require that a section 146 notice is issued before court proceedings.

# 3. Agreement Guidance Notes

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This chapter provides explanatory notes on the structure and key clauses of the Letting Centre *Professional Series* Company Letting Agreement (A05).

The guidance is intended to:

- Assist practitioners to understand the general structure of the agreement
- Explain some key decisions and choices to be made when granting a tenancy
- Explain the purpose of each of the main sections and clauses, and any related issues or statutory requirements
- Assist practitioners to complete and use the standard agreement when drafting agreements for individual tenancies
- Provide advice on signing and dating the agreement including guidance that may apply when using the documents with electronic signing systems

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## General Comments on Format and Layout

1. Traditionally, at least two duplicates of the agreement should generally be prepared for each letting - these are called the Original and Counterpart. You may mark them accordingly although there is no requirement to do so. If you are using an electronic signing process or technology, then these procedures will differ. See 'Completing and Signing the Agreement' and 'Electronic Communications' discussed later in this chapter.

2. The two duplicate agreements may be generated or reproduced in a number of ways such as photocopying the original masters supplied or reproduction on a word-processor or equivalent computer-based system. Copies should be made onto a quality paper and any further additions or signatures should be made in permanent ink. Copies taken using thermal paper (used in many fax machines) should be avoided since they may fade irretrievably in time.

3. The agreement may be reproduced on separate sheets of paper and securely stapled. Where the agreement is contained within four type-written sides, it is possible to reproduce the pages on to one folded page (e.g. A3) which provides a single secure document.

4. It is a good idea to annotate pages in order to indicate both the page number and the full extent of the document e.g. 'page 2 of 4'.

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## Preliminary Clauses and Definitions

This section gives a clause by clause explanation of the clauses and sections of the standard A05 tenancy agreement.

### Title page & 'General Notes'

The title page and general notes identify the agreement and explains clearly the purpose of the agreement, its legal principles and the operation of key clauses and definitions used in the document. This information is important, and should not be deleted.

In General Note 8 the tenant's period of notice for a periodic tenancy occurring at the end of a fixed term tenancy should be at least 28 days (Section 5 Protection from Eviction Act 1977) but will be one month for a monthly periodic tenancy and 3 months for a quarterly periodic tenancy. It would be best to amend the notice period in brackets if rent is not paid weekly or monthly so it is clear to the tenant what notice they need to give if the tenancy becomes a periodic tenancy.

### Main Agreement (page 2 onwards)

The preliminary section is a declaration and it identifies the agreement as a company letting agreement between the parties specified.

This initial section identifies the key parameters of the tenancy agreement (e.g. the date and term of the agreement, the address and extent of the property, the amount and frequency of the rent etc.) and defines these terms so that they may be used later in the agreement with a standard meaning.

With the exception of the Date field, this section must always be completed fully, clearly, and unambiguously. If any part of the agreement is not completed, and a court is called upon to interpret the agreement, it might apply the '*contra proferentum*' rule. Under this rule, ambiguity is resolved against the party preparing the agreement. Otherwise, it could be concluded that the parties had still to reach agreement concerning the uncompleted parts.

**Date:** This field is normally called the execution date. Traditionally, practitioners are advised to avoid adding an execution date to tenancy agreements prior to the occupation date due to the legal rules that apply to shorthold tenancies. Under the Law of Property Act 1925 a lease that is not executed formally as a deed takes effect in possession and a lease dated prior to this date might be considered to be invalid. Agreements which are dated prior to occupation may still be valid and enforceable as 'equitable tenancies' but this is a route that brings its own problems and is best avoided. In addition, it is equally advisable to avoid artificially back dating the execution date by agreeing the tenancy after occupation.

Some situations may require that the date field is best removed, or left blank. For example, where electronic signing software is being used, where the signing software adds both a signature and a date below the signature, the presence of multiple dates on the agreement could cause confusion. The absence of an execution date will not generally invalidate the tenancy; and may therefore be safer practice in some situations.

If the tenant has moved into the property and rent has been paid, then the law will infer that a tenancy has come into existence along the terms set out in the tenancy agreement accepted by the parties. With company let agreements possession will usually take place by handing over control of the property to the tenant e.g. the tenancy commencement date.

**Landlord:** Enter full name of the landlord.

**Landlord's Agent:** Enter full name and address of the agent. This will normally also be the main address where the landlord wants all correspondence and other contact from the tenant directed.

**Section 48 Notice:** The line below the agent's details is a provision in compliance with section 48 of the Landlord and Tenant Act 1987. Section 48 requires the landlord of the

property to furnish the tenant with an address in England or Wales at which notices may be served.

**Tenant:** Enter here the name and address of the company. The address should be the address of the registered office.

**Property:** The property being let should be accurately defined within the lease. On a longer lease (more than one year) a plan may be included. Where no plan is included, the person drawing the lease must ensure that the address or description fully identifies the property and is free from ambiguity.

**Maximum Number of Permitted Occupiers.** Enter the total number of occupiers who are permitted to occupy the property including tenants (including any children or other family members). HMO management and licensing regulations may restrict the number of occupiers permitted to live in the property. See 'Clause 5.8 Permitted Occupiers' on page 14 for more information. If the mandatory HMO licensing rules do not apply to the property, and there are no other national or local licensing schemes that may apply, then you may leave this field blank. However, it will be much safer to always include a maximum number of permitted occupiers.

**Term:** There are no restrictions on the length of tenancy that can be granted for a company letting, although in practice, three years is normally the maximum term that is granted on short leases. If the term exceeds three years, then the agreement should be drawn up in the form of a deed (a more formal type of legal document) and will need to be signed by at least two directors (or by a director and the company secretary) and in the presence of a witness.

If it is possible that the occupation of the property might involve a significant degree of business use, then a term of six months is the preferred period. A tenancy of a term not exceeding six months (with the landlord restricting any such letting to one company for two six month terms and no more) will help to avoid protection under the 1954 Act in such cases (see section entitled "Business Use" in Chapter 1 above).

For stamp duty reasons, prior to December 2003, it was also preferable to keep the term to below a year:- a lease drafted for the term of 'one year less one day' is commonly used. If the tenancy is to exceed one year, the landlord should consider including an extra provision to allow for rent increases in subsequent years.

**Commencing on:** Insert here the commencement date of the tenancy. Unless otherwise defined (e.g. by insertion of a specific time) a tenancy agreement or lease expressed to commence 'on' a particular day commences at the first moment of that day.

**Rent:** The agreement must clearly state the amount of rent payable. Normally this would be quoted as '**per calendar month**'. Rent accepted as a result of the tenancy should come from the company itself (via company cheque, standing order etc.), not by way of personal cheques, as further supporting evidence that the company let is genuine. Rent is stated to be payable 'by standing order' by default; you may amend this to suit your own commercial procedures or systems.

Should you wish to include provision for a rent increase during the term, this should be drafted as an extension clause. If this provision is not made within the lease, the landlord is not entitled to increase the rent during the fixed term. It is also important to make clear at this point in the agreement who is responsible for payment of water rates. If the rent is calculated so that the rent is inclusive of water rates, then this should be stated at this point. E.g. **Rent: £650 per calendar month including water charges** (in this case, don't forget to remove the references to water charges in clause 3.)

**Payment:** It is important to specify the timing and frequency of the rent payments. Many landlords prefer to collect all rents on a specified day each month (e.g. first day of every month). In this case the appropriate wording should be added (e.g. '*on the first day of every month*').

You can also use this clause if necessary to specify the method of payment that you require. Many letting agents prefer to receive their rents by standing order and the appropriate wording

for this has been added to the standard agreement. Other payment methods can be mutually agreed in writing and inserted as a special condition at the end of the agreement.

**Deposit:** There is no restriction on the size of deposit that can be demanded. To provide adequate security for the landlord, it would be unusual to take less than the equivalent of *four weeks rent* as deposit.

Where an agent has been engaged, the dilapidations deposit or bond is generally held by the agent either as 'stakeholder' or 'agent for landlord'. It is recommended that this information is made clear within the agreement. If the manner in which the deposit is held is not specified it will be assumed that the deposit is held as agent for the landlord. If the deposit is to be held as stakeholder, the following wording should be included:

*'A Deposit of £ is payable on signing this Agreement and held by the Agent as stakeholder'*

Briefly, holding as stakeholder means that the agent acts fairly and balances the interests of both the landlord and the tenant and so can release the deposit accordingly. Ideally, the agent should obtain the permission of both the landlord and tenant before releasing the deposit. If the deposit is held as agent for the landlord the agent must pay the deposit to the landlord. Many agents prefer to hold as stakeholder because it avoids problems with aggrieved tenants whose landlord has not agreed to return the deposit at the end of the letting.

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## The Main Clauses

This section explains the purpose and operation of the various standard clauses in the agreement; no comment is made where the meaning and purpose of the clause is self-explanatory.

**Clause 1:** This clause confirms the intention of the tenancy agreement.

**Clause 2.1:** Often omitted in many standard contracts, this clause is a valuable safeguard against the 'last month syndrome' (tenant fails to pay last month's rent using deposit to offset liability). Omitting this clause opens the possibility that a court may allow the deposit money to be offset against any rent arrears with the result that no deposit is left to cover any cleaning or dilapidations.

**Clause 2.2:** It is useful to draft up an inventory and important that the tenant signs a copy of the inventory and returns it to the landlord.

### The Obligations of the Tenant

Generally called 'User Covenants' these clauses have two main functions. Firstly, they allow the landlord to control the use that the tenant makes of the premises. Secondly, they protect the interests of the landlord by preventing the tenant acquiring specific legal rights which might be gained without these clauses. (E.g. use of premises by a tenant for business purposes will give the tenant additional rights under the Landlord and Tenant Act 1954).

**3.1. Occupation.** An essential part of the company letting agreement is the prevention of any approved occupiers gaining tenancy rights. Otherwise the company might assign or sublet to an individual who might then occupy the premises as his only or principle home and become an assured shorthold tenant.

**3.2. Licensee.** This clause confirms the occupation of any occupiers approved by the company as licensees.

**3.3. Change of Occupier.** This clause requires the tenant to inform the landlord before any change of occupier.

**3.4. Right to Rent Checks.** This clause requires the tenant to carry out right to rent checks on all occupiers as required under the Immigration Act 2014. Landlords should request evidence from the Tenant that these checks have been carried out.

**4.1. Payment Method.** Your rent collection system may be set up to collect rent in a specific and cost effective way and should thus be written into the agreement.

**4.2. Charges.** The tenant would normally become liable for any costs incurred for services used or consumed in connection with his occupation of the property. This clause clearly confirms this fact although the tenant is generally liable for such charges anyway (e.g. section 6.6 of the Local Government Act 1992 states that the tenant will be responsible for payment of the council tax there is a material interest i.e. an interest granted for a term of six months or more unless the house is a "House in Multiple Occupation" or "HMO").

N.B. WATER RATES. If water rates (or any other charges included in this clause) are already included in the quoted rent (see under 'Rent' above) and to be paid by the landlord, references to the tenant's liability for the water costs and charges in this clause should be deleted accordingly. Where all charges for services are included in the rent we have drafted a clause in Appendix A 'Additional Clauses' of the A02/A03 Guidance Notes that can be used for this purpose.

**4.3. Charges.** This clause allows the landlord or agent to reclaim reasonable costs from a tenant (in addition to any direct repair or re-instatement costs) where the tenant has caused some damage to the property, or committed some other breach of the agreement. These consequential costs typically comprise the administration cost of co-ordinating the repair, or finding a particular replacement part – costs which are genuinely incurred and that can easily exceed the direct cost of the repair itself.

**4.4. Charges.** This clause may assist the Landlord to obtain full costs (not just fixed court fees) of obtaining a possession order where the tenant does not vacate the property after expiry of a valid notice seeking possession.

### **Usage Clauses:**

**5.1. Assignment.** In the absence of any restriction in the lease, a tenant is entitled to assign his or her tenancy to another person. This is not a desirable situation since there might be financial or other reasons why this third party would not prove to be a suitable tenant. The standard agreement does not allow the tenant to assign or sublet the property.

**5.2. Use as Private Dwelling.** The purpose of this clause is to ensure that the dwelling is to be used as a residential dwelling only (thus preventing the tenant gaining greater rights of tenure under the Landlord and Tenant Act 1954).

**5.3. Prohibition on Carrying on Business.** This sub clause has a similar purpose to the clause above to acknowledge that the dwelling is not to be used for business purposes. It does not seek to prevent a working person from bringing documents to the property in the evening for example in order to carry on extra work at home. Such use when conducted in an informal way, and where the associated work activity does not represent a significant portion of the occupation of the property, is not generally considered to constitute "business use".

Although, you may be asked by the tenant to delete this clause, you are strongly advised against this course without taking further advice since this clause gives the landlord important extra protection.

**5.4. Nuisance Covenant.** Usually the wording used is all that is necessary. As conditions dictate (i.e. sensitive residential neighbourhoods, blocks of flats etc.) you may want to extend the covenant (see Extensions below) in order that tenants know what is and what is not permitted. An additional clause inserted in this way would restrict the times for the playing of music, radios, instruments and even make provision for carpeting of floors.

**5.5. Pets.** Landlords often agree that tenants may keep their pets in the property, although many have had negative experiences in this respect. Without wanting to encroach on the tenant's freedom, it is important for the landlord to retain control since pets do not always

obey instructions and are immune from legal proceedings! Therefore, this clause prohibits the tenant from keeping pets at the property without written permission.

Where permission is granted, it is generally important for landlords to make appropriate checks beforehand as to the number and type of pets to be living at the property (tenants have been known to arrive with a pack of dogs!) and whether the property and pet are suitable (large active dogs can easily ruin a small suburban garden). There are also situations where it may not be suitable to keep a pet (e.g. in a block of flats) and such cases can cause extreme annoyance to other occupiers.

**5.6. Illegal or Immoral Purposes** - this clause is self-explanatory.

**5.7. Terms in Headlease.** Where the property is leasehold (e.g. a flat within a block of flats) there will be a further agreement (the Headlease) which may provide terms on the usage of the Property by the tenant and any subtenants. Where the headlease makes such provisions, it is important that a copy of the Headlease, (or a schedule detailing the terms under the Headlease) is attached to the tenancy agreement otherwise these terms may not be enforceable against the new tenant.

**5.8. Permitted Occupiers.** The purpose of this clause is to prevent HMO licensing regulations being exceeded and to prevent an HMO occurring without the Landlord's knowledge. If you are confident that the property is not and will not become an HMO you could leave this field blank. Under HMO management regulations, a property is likely to be an HMO if there are three or more people living in the property who form two or more households and who share common facilities such as a kitchen and bathroom. Landlords must comply with certain requirements where the property is an HMO but not all HMOs need to be licensed. At the time of writing, a licence is required under mandatory licensing if the property is at least three stories high (but the government propose removing this requirement from October 2018), rented to five or more people who form more than one household and the tenants share common facilities such as a kitchen and bathroom. Landlords may also require a licence for an HMO which is in an area where the local authority has introduced an additional licensing scheme. Where a selective licensing scheme is in force, all rented properties will need a licence even if they are not licensable HMOs.

The number of permitted occupiers will need to include any children living at the property and not just adults as the regulations apply to 'people' living at the property.

**Example 1:**

Two single unrelated people who do not form a couple live in a two storey house. The house is not an HMO. During the tenancy one of the tenants becomes pregnant. Once the child is born the house will become an HMO as there will be more than two people who form two households. Prior to the birth of the child the property was not subject to HMO regulations but after the birth of the child the landlord will be required to comply with HMO management regulations. Here the number of permitted occupiers would be 2 but the tenant will be required to inform the landlord once the child is born so that he can ensure compliance with HMO management regulations.

**Example 2:**

A three storey house is rented to four unrelated sharers. This is an HMO under the Housing Act 2004 definition and HMO management regulations will apply. Mandatory licensing will not apply as there are only four sharers. In this example the number of permitted occupiers would be 4 and the landlord would need to be informed if this number was exceeded as, if the tenants allow another person to occupy the property or one of them has a child, then the property will be subject to mandatory licensing.

When carrying out regular inspections of the property it may become apparent to the landlord or agent that the number of occupiers permitted under the tenancy agreement has been exceeded. Where the tenant is in breach of this clause by allowing the number of permitted occupiers to be exceeded the landlord may be able to recover reasonable charges incurred as a result of the tenant not informing the landlord of the additional occupiers.

**5.9. No Smoking.** Self explanatory clause prohibiting smoking tobacco and other substances in the property. The main purpose of this clause is so that the landlord can recover

reasonable costs from the tenant at the end of the tenancy for any damage caused to the property where they are in breach of this non smoking clause. There is no evidence at the time of writing that e-cigarettes or vaping causes the same damage to a property as traditional cigarettes hence why these are not specifically mentioned in this clause. It may be possible to argue that these would come under 'any other substance' but could be difficult to enforce. If a landlord specifically requests prohibition on vaping/e-cigarettes for a particular property the clause can be amended as follows and moved to the special conditions section of the tenancy agreement

*The Tenant agrees not to permit any Approved Occupier, guest or visitor to vape, or smoke, tobacco, e-cigarettes or any other substance in the Property without the Landlord's prior written consent*

### **Clauses Relating to Repairs:**

**6.1. Damage, Alterations and Improvements.** The tenant should be responsible for paying the reasonable costs for damage to the property and contents caused by the approved occupier, a member of the approved occupier's family, visitors or permitted occupiers. For obvious reasons, it is not in the landlord's interest to permit the tenants to alter the property without prior consent. For short tenancies (e.g. landlord letting home whilst abroad) it would not be appropriate to allow the tenant to carry out internal redecoration and under the agreement, and so this clause provides the landlord with the right to veto any changes in decoration.

**6.2. Damage.** It is important that the landlord is compensated for any damage caused by the approved occupier, and made aware of any damage at the earliest opportunity. A landlord has a right to seek contractual damages during the tenancy and may ask the tenant to make a payment to cover the cost of repairing a fitting or furnishing where this work cannot reasonably wait until the end of the tenancy.

**6.3. Care of Property.** The tenant is asked to take care of the interior of the property. This care is extended to a specific obligation to adequately heat and air the property as damp and mildew can cause considerable cosmetic damage and staining which will be costly to put right. This clause is also used to introduce the idea of 'reasonableness' in assessing wear and tear at the end of the tenancy.

**6.4. Power of Entry.** It is an implied term of a tenancy (Landlord and Tenant Act 1985) that the tenant shall allow the landlord access to the property to carry out those repairs which he is entitled to execute. An express clause found here is, however, important in allowing the landlord right of entry outside the obligation of repair (e.g. in order simply to inspect the property).

**6.5. Care of Gardens.** A standard clause to ensure that the garden is kept in good order. The clause provides a general cover which, within reasonable bounds, requires the tenant to upkeep the gardens on a regular basis (rather than by one massive tidy-up at the end of the tenancy).

Should the garden or objects in the gardens (plants or shrubs, garden furniture, appliances etc.) require any special types of care or upkeep, then it would be prudent to draw attention to this by way of an extra clause agreed within 'Special Conditions'.

**6.6. Damage.** It is important that the landlord is made aware of any damage at the earliest opportunity.

**Clauses 6.7 – 6.16.** These clauses are self-explanatory.

### **Other Tenant Responsibilities:**

**7.1. Correspondence.** It is important that any statutory notices and other correspondence relating to the Property reaches the Landlord. This clause imposes that requirement on the tenant.

**7.2. Recovery of Costs.** It is important that the landlord or agent is able to recover any reasonable direct or indirect (e.g. legal costs) incurred as a result of any breach of the tenancy

agreement by the tenant. This clause operates in conjunction with clauses 3.3 and 5.3 to ensure that the landlord can recover these types of costs.

**7.3. Surrender.** Defining what is considered to be surrender within the tenancy agreement will strengthen the landlord's case for possession should a tenant vanish and become uncontactable. This clause assists landlords in situations where a tenant has abandoned the property.

N.B. Situations concerning abandonment are inherently complex; each case needs to be assessed on the individual circumstances and professional advice taken where necessary. This clause does not give a landlord an incontrovertible right to take possession (only the court has this right) although it may assist a landlord to demonstrate that he considers a property to be surrendered.

**7.4 – 7.6. Security and alarms.** It is in the interests of the landlord (especially where the property contains several living units) to ensure that adequate security measures are taken so as not to attract break-ins.

**7.7. Immigration document checks.** This clause may assist with cost recovery where the tenant does not cooperate with information requests from the landlord to carry out right to rent checks particularly where the tenant has a time limited right to rent.

### **End of the Tenancy:**

**8.1. Condition and Reinstatement.** This is a useful and important clause. It confirms to the parties that the property, at the commencement of the tenancy, is in a clean condition, and requires the tenant to return the property in a similarly clean condition at the end of the tenancy. This clause does, however, impose the obligation on the landlord that the property is let in a good and clean condition as warranted and the clause will be rendered ineffective if this is not the case.

**8.2. Reinstatement.** This is a common standard clause; it imposes an obligation on the tenant to restore the position or location of the furniture and other effects supplied with the property to approximately their original locations.

**8.3. Keys.** The landlord or agent is often faced with the frustrating situation of tenants leaving without returning keys to the property. This clause encourages the tenants to return the keys and also allows the landlord to recover reasonable costs where the tenant fails to do so (normally from the deposit).

**8.4 & 8.5.** These clauses are self explanatory.

**8.6. Access for Viewings.** It is important that the landlord or agent is able to gain access to the property in the final portion of the tenancy in order to conduct viewings for new tenants. Without this clause, the landlord has no automatic right to carry out such viewings.

A provision giving the landlord excessive rights to enter a rented property could be deemed unenforceable. In other words, tenants must be free from unwarranted and excessive intrusion. In exercising his right of access for inspections and viewings (see also clause 6.4), the landlord should carry out such access at reasonable hours (i.e. in daytime) and with reasonable prior notice (generally 24 hours).

Clause 8.6 allows for the landlord to conduct viewings in the last two months of the tenancy. For short lettings (i.e. six months or less), it might be appropriate to shorten this viewing period to say one or one and a half months in order to reduce intrusion on the tenant's right to quiet enjoyment.

**8.7.** This clause is self explanatory.

### **Other Clauses:**

## **9. Landlord's Covenants and Obligations.**

**9.1. Quiet Enjoyment.** This term is implied into every tenancy agreement as is commonly referred to as the '**covenant of quiet enjoyment**'. The landlord undertakes to

respect the right to quiet enjoyment of the tenancy and recognise the rights of the tenant (e.g. 24 hours notice before carrying out visits to the property).

**9.2. Frustration Clause.** This clause governs the situation where the property becomes uninhabitable and the tenancy is frustrated. The clause makes provision for the tenancy to terminate if the property becomes uninhabitable. Without this clause, the tenant could, in law, remain liable for payment of the rent until the end of the agreed tenancy.

**10. Forfeiture.** The forfeiture clause is an express provision in the agreement that allows the landlord to repossess the let property (i.e. to forfeit the lease) on the breach of any of the obligations.

Contrary to common interpretation by many lay landlords, this clause does not allow the landlord to get back his property (even on default) without carrying out the correct possession procedures through the courts. Any person who attempts to evict or harass a tenant in this way may be liable to conviction and extensive fines under the Protection from Eviction Act 1977.

**11. Obligation to Repair.** This clause clarifies the landlord's main statutory repairing obligations. It is important, however, for the landlord to be aware of some of the main repairing covenants in law:

- that the property is fit for human habitation (*Wilson v Finch Hatton*, (1877) 2 ExD. 336);
- when landlord is also the builder, the landlord is liable for negligence in the construction of the building;
- repairing obligations - the landlord is bound by various statutory obligations (predominantly the Landlord and Tenant Act 1985) to keep the property in good repair

The Landlord and Tenant Act 1985, Section 11 is a repairing obligation on landlords for short leases (i.e. less than 7 years). In summary, the landlord is obliged to:

- keep exterior, drains and gutters in good order and repair;
- keep installations for heating and supply of electricity, gas and water in good order;
- ensure ongoing supply for utilities (gas, electric, water etc.);
- repair any defects in common parts.

**12. Inclusive Definitions.** This clause defines specific terms used in the agreement and where necessary, expands the scope of such definitions.

**13. Service of Notices.** Recent case law relating to the service of notices (*Wandsworth London Borough Council v. Atwell*, 1995) suggests that the tenancy agreement should ideally contain express terms prescribing a method of service of legal notices under the tenancy. The landlord and tenant are not required to give notice to end a fixed term company let but it is good practice for landlords to remind the tenant a couple of months before the end of the fixed term that they will be required to leave the property upon expiry of the tenancy. Where the tenancy becomes periodic after the end of the fixed term both parties will be required to give notice to end the periodic tenancy. See page 7 for more information on terminating company lets.

Section 196 of the Law of Property Act 1925 provides that a notice shall be sufficiently served if sent by registered or recorded delivery post (if the letter is not returned undelivered) to the tenant at the Property or the last known address of the Tenant or left addressed to the tenant at the Property. In the case of a company this would include the registered office address of the company [see also general note 5].

**14. Service of Notices and Documents.** Landlords and agents may need to send the tenant notices and other documents in connection with the tenancy via email. In this case the tenant must have agreed to accept service of such documents by this method. It is important to keep an audit trail of any emails or set up a read receipt request to show a secure method of receipt as although there is mention in the tenancy agreement when notice will be regarded as received you will need to show that the tenant has received the notice or document.

**15. Data Protection:** Landlords and Agents should make it clear to tenants when they sign the tenancy as to what may happen to their personal information and how it may be given out. However, with the introduction of the General Data Protection Regulations in May 2018 this may not be enough and landlords and agents will need to obtain explicit consent from tenants so that they can share information with third parties such as utility companies and contractors etc. Individuals must give a very clear and specific statement of consent and positively 'opt-in' meaning the use of pre-ticked boxes will be banned. We have added an extra section to our 'Required Document Checklist' to include a paragraph regarding use of data and an opt-in tick box for tenants to complete and sign to confirm their explicit consent.

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## Special Conditions and Optional Extensions

Generally, use this section to add any extra clauses or conditions that are specific to your tenancy. Where there are several clauses, you may want to label them A, B, & C etc. in order not to confuse them with the main clauses in the agreement.

A number of example clauses are provided below (other additional clauses are available from the Letting Centre):

**1) Notice:** A landlord wishing to allow either party to give notice may insert the following clause in the 'Special Conditions Section':

*'This agreement may be terminated by either party by way of two months written notice'*

**2) Maintenance:** With company lettings, there is often less attention paid by the company or the approved occupiers to the upkeep of the property or the gardens. Consequently, it may be appropriate to make arrangements for ongoing maintenance.

*'The Landlord reserves the right to appoint a maintenance contractor to tend the gardens and clean the common areas of the Property at the Tenant's expense'*

**3) Number of Occupants:** Where the number of occupants in the property may be varied by the company from time to time throughout the tenancy, a clause may be inserted to specify a maximum number of individuals that may occupy at any one time.

*'It is agreed that the number of persons living at the Property may not exceed <NUMBER> at any one time'*

**4) Pets:** Since the standard agreement prohibits the keeping of pets at the property, it will be necessary to insert a special clause should you wish to relax the restriction. Given the extra risk of damage and dilapidation to the property, it is recommended that this permission is only given after due consideration and consultation with owners, and that such permission is revocable in the event of damage arising. E.g.:

*'It is agreed that the Landlord consents for the Tenant to keep a cat in the Property and that the Landlord may withdraw this consent on reasonable grounds at any time in the future.'*

**5) Special Conditions:** Where a dwelling is situated in close proximity to other residents (e.g. blocks of flats) a landlord or local resident's association may stipulate particular rules which can be incorporated within the tenancy agreement. E.g.:

*'The Tenant agrees not to allow or permit in the flat any singing of music or playing of any musical instrument, record player, radio, hi-fi, television or loudspeaker or any disturbing noise whatsoever before 7am or after 11pm.'*

**6) Overseas Companies:** It is important when letting to overseas companies that the agreement specifies that the interpretation of the agreement will be in accordance with the Law of England and that, in the event of dispute, the English courts will have jurisdiction.

*'The parties agree that this Agreement is subject to the Law of England and that, in the event of a dispute arising, the English courts will have jurisdiction'*

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## Signing

The signatures on the bottom of the agreement are evidence of the fact that the written agreement has been concluded by the parties. The part of an agreement that the parties sign is known as the **attestation clause**. The tenant should be asked to sign the agreement ideally on the day of occupation rather than several days or even weeks in advance. There is no legal requirement to sign or even initial each individual page of the tenancy agreement, and we see no significant benefit to this style or practice.

Two copies of the agreement are normally prepared, and these are generally referred to as the Original and Counterpart. Where the landlord has instructed an agent to let the property and draw up the tenancy agreement, the agent may wish to sign the tenancy agreement on behalf of the landlord. In this situation, the agent is advised to check that such instructions or management agreement give the agent express authority to sign the agreement on behalf of the landlord. Typically, the date field (execution date) on a tenancy agreement is completed after signing, with the date that the agreement was concluded and agreements exchanged.

Traditionally, once the landlord and tenant have signed their respective copies they 'exchange' their tenancy agreement copies. The main copy (or Original) agreement is signed by both parties and is given to the tenant(s). The counterpart is also signed and is held by the agent or landlord. Any additions, deletions or amendments to the agreement should also be initialled by both the tenants and the landlord (or his representative). Modern practice allows for one main agreement to be drafted and signed by all parties, and then copies given to the parties; and under electronic signing, only electronic copies are generated and distributed. All methods are equally valid if done correctly.

### **Contracts signed by companies**

A contract can be signed 'by' or 'on behalf of' a company. There are different formalities for execution which are set out under the Companies Act 2006. The Letting Centre A05 Agreement provides for the agreement to be signed 'by' the tenant company and not 'on behalf of' the tenant company. It is good practice to check that the signatories are duly authorised to sign the agreement (the company's articles of association will normally contain a clause which allows the directors and company secretary to contract and sign on behalf of the company). Identity checks should also be made to ensure that the signatories are who they claim they are.

#### ***Contracts made on behalf of a company***

In most cases simple contracts are made 'on behalf of' a company due to the simple formalities involved. Contracts can be signed on behalf of a company by a person acting under the company's express or implied authority (s43(1)(b) Companies Act 2006). This may be a director or can also be an employee of the company who has authority to contract on the company's behalf. The person authorised should sign the document and state that they are signing on behalf of the company.

#### ***Contracts made by a company under its common seal***

Where a contract is made by a company under its common seal it will be correctly executed either by affixing the company's common seal or where it is signed by two authorised signatories (e.g. a director and a company secretary) or one director in the presence of a witness (s44 Companies Act 2006).

### **Seals**

Companies often have a company seal - this is a device that was more commonly used in earlier times to authenticate any transactions which a company entered into. If applicable, a document is executed by a company by the affixing of its common seal.

Sometimes the articles of the company require that the director signs under seal, or enters into such agreements with the agreement of the other directors. In this case, the agreement with the company should still be signed accordingly.

**Witness**

A witness is a person who observes the signing of a legal document in case it is subsequently necessary to verify the authenticity of the signature. Under English conveyancing law, it is not compulsory to use a witness when signing a tenancy agreement, unless the agreement is executed as a deed (e.g. when the tenancy is for a term over three years) or where the agreement is made by the company by one director. However, letting agreements often make provision for a witness to sign the agreement since this is a reasonable safeguard against the situation where a person denies ever signing or being shown the agreement in the first place. A witness could be a colleague or some other third party who is present during the signing of the agreement.

**Signing as a Deed**

The law requires that any tenancy agreement for a fixed term of more than three years must be granted by deed (Law of Property Act 1925) although the rule can be easily avoided by making the agreement for three years or less initially, and allowing the tenancy to continue after the fixed term as a periodic tenancy.

To be a deed, the document must be clear on its face that it is intended to be a deed by the person making it, or the parties to it, and must be validly executed as a deed. A document is validly executed as a deed by an individual if it is signed by that person, in the presence of a witness who attests the signature, and it is delivered as a deed (e.g. the parties must show an intention to be bound by it) (s1(3) Law of Property (Miscellaneous Provisions) Act 1989). A deed can also be signed at the direction of the individual, and in their presence, and the presence of two witnesses who each attest the signature, where the individual is unable to sign (s1(3) Law of Property (Miscellaneous Provisions) Act 1989).

Where a company is signing a deed it must be validly executed by the company (in accordance with s44 of the Companies Act 2006 – see above) and delivered as a deed (s46 Companies Act 2006). A company may instruct a person to execute a deed on its behalf using a Power of Attorney (s47 Companies Act 2006). Where the tenancy agreement is set up as a deed, and signed by a director, the signature section should be amended to say:

IN WITNESS whereof the parties sign this document as a Deed:

**SIGNED by the LANDLORD(S) :-**

.....

**In the presence of :-**

Name .....  
Address .....  
Occupation .....  
Witness Signature .....

**SIGNED by the TENANT**

.....  
**Position in Company:** Director

**In the presence of :-**

Name .....  
Address.....  
Occupation .....  
Witness Signature .....

**Electronic Communications**

For many years, the law has allowed legal agreements to be signed in person, and then exchanged electronically by fax or by email. In these cases, the document is still signed with a proper (physical) signature even if an electronic communication method is adopted to send a copy of the signed document. However, in recent years, the capabilities of the internet and information technology have been moving fast and the law was struggling to catch up.

As companies increasingly rely on email to conclude contractual agreements, the law has gradually evolved to make this possible. The Electronic Communications Act 2000 came into force in 2002 to give legal certainty to electronic signatures, and web-based services such as Adobe Sign, DocuSign and RightSignature provide the technology to support this process.

If you decide to use electronic signatures for your agreements, then you should still ensure that you store a copy of the signed agreement in a safe place either on your computer server or in your paper files. Any system will need to be able to satisfy the court that there is a valid signature, in order to create a binding tenancy. Your referencing procedures should be capable of proving a person's identity, and linking this to any signature supplied.

One feature of many electronic signing systems is that they record a signing date either on the tenancy agreement itself, below the signature, or within the signing certification record held elsewhere. If you are using the tenancy agreements in this way, it is no longer necessary to complete the execution date field at the start of the agreement. In these situations, we recommend that you remove the execution date field from the agreement or just leave it blank to avoid confusion.

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## Sureties and Guarantors

The landlord may require a surety to guarantee the payment of the rent or the tenant's other obligations under the lease.

A surety or rent guarantee is generally used whenever the tenant's ability to pay the rent is in question. Typical cases will be where the tenant is:

- **A company.** In this case, a director or, if the company is a subsidiary of a large and financially sound company, the parent company should be required to act as surety. Note that where the tenant is a private company, it is always advisable to seek a surety.
- **A student or unemployed person.** Such persons have no current earnings and often little in the way of previous earnings history to rely upon. They generally have a low credit rating and this is a classic situation where a surety would be appropriate.
- **A divorced or separated spouse.** Where the separated person is solely dependent on maintenance payments for income, the 'paying' spouse or ex-spouse should be required as surety.

### Guarantor

It will first be necessary to find an appropriate guarantor. Similar credit checks and references should be taken on the guarantor as would normally be taken for a tenant in order to establish the guarantor's ability to meet any defaulted rent payments or other costs.

### Guarantor agreement

It is recommended that the surety be set up using a separate guarantor agreement. This will be a written legal agreement between the guarantor and the landlord. Standard agreements can be obtained from suppliers of legal forms, or individually drafted by a solicitor. It is important that the agreement is correctly drafted; there are several important recent legal precedents in this area and the agreement should include these changes.

A surety will *prima facie* be construed as applying only to the (contractual) fixed term and not to any statutory extension, or to any period where the tenant simply holds over paying rent. Any agreement should therefore be drafted to provide for the continuance of liability under any extension or renewal.

## Setting up the Guarantor agreement

It is good practice to send the guarantor copies of the relevant tenancy and guarantor agreement prior to signing along with a letter confirming that he/she has been asked to stand as guarantor for a specified tenant and an explanation of the financial implications of providing such a guarantee. The reasons for this are firstly that the guarantor should be given time to peruse the document, understand the commitment and take advice. Secondly, it provides a means of verifying both the validity of the guarantor agreement and the guarantor's address.

Equally, landlords should try and ensure that the guarantor is present when the agreement is signed (preferably at the same time as signing the tenancy agreement) rather than by exchange of signed forms. It has been known for such agreements to be signed fraudulently (i.e. not by a bona fide guarantor) and thus declared worthless.

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## Inventory

Finally, it is important to include an inventory when letting furnished property. Ideally, the inventory should include not just how many of a particular item are present, but also what condition; and this is sometimes referred to as a Schedule of Condition. Of course, it will be necessary to apply some simple logic and discretion to the process; it is of far greater importance to accurately note the condition of a set of antique dining chairs than a set of old cutlery.

The Schedule of Condition may also include a complete description of the condition, colour, and texture of the walls, wallcoverings, fixtures and fittings, doors and even door handles. It is difficult to recommend what should be included and what may be left out; this decision may ultimately be dictated by the agent's standard procedures, the value of the items in the property and the requirements of the landlord.

# Appendix A

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## **General Rules for the Drafting and Interpretation of Leases**

### General Drafting Rules

In drafting any legal agreement, there are two main principles that apply. Clearly, the first objective is to include absolutely everything in the agreement that should legally be there, and by doing so make provision for all possible disputes that may arise between the parties. This is particularly important should any matter need to be resolved by way of legal proceedings, as the courts will look to the substance of the agreement to determine the intention of the parties. This first principle requires knowledge of the law of Landlord and Tenant. It is worth remembering that some terms will be implied either by law or by statute, and that some duties on landlords are absolute and so cannot be passed on to the tenant. The length of a document should also be considered and a person drafting their own agreement should strive to be concise whilst being thorough. The second principle follows logically from the first, that is to use straightforward and clear language so that no possible doubt can arise as to its meaning.

There are also rules of interpretation which will be utilised by the court in order to interpret the intentions of the parties. It is for this reason that established phrases are so common to many residential leases. Often the interpretation of a standard phrase has already been decided by the court and so it is adopted generally. It is, therefore, prudent to have a general understanding of the three main rules of interpretation and of some of the lesser ones. The three main rules are:

#### a) The Literal Rule

This is self explanatory - the word or phrase is interpreted literally. If this rule cannot be successfully applied the second rule will be utilised.

#### b) The Golden Rule

The grammatical and ordinary sense of the words is to be adopted, unless that would lead to some absurdity, or some inconsistency with the rest of the document in which case the court will, in essence, read between the lines, to give the effect they decide was intended, or should have been intended, by the parties. The court will also always take into account any common law or statutory provisions which place obligations on either party when interpreting any document.

### Surrounding Circumstances

It is an overriding principle that in applying 'The Golden Rule' above, the court interprets the words taking into account all of the surrounding circumstances unless the words are so unambiguous that no surrounding circumstances could affect their construction. Where there is an issue which the draftsman feels to be of importance in relation to the construction of the agreement, it is prudent to include it as a **recital** or a **declaration**, in the body of the agreement.

### Consistency of use

When interpreting any document if the court determines that a word used in one part has some clear and definite meaning, then the presumption is that it is intended to mean the same thing in the remainder of the document. Similarly, there is a presumption that the draftsman uses his terms consistently, and that therefore a change in use is intended to have significance. This is known as the *expressio unius est exclusio alterius* rule.

The court will, as far as possible, give effect to every word and every clause and will always lean towards treating words as adding something or having some effect rather than being

## Appendix A: General Rules for the Drafting and Interpretation of Leases

'mere surplusage'. This is known as the '**ut magis**' rule (the thing that may avail (or be valid) rather than perish).

In the case of *ambiguity* in a document, ambiguity is to be resolved against the party preparing it. However, this rule is applied low in the order of seniority and only when construction by reference to the surrounding circumstances has failed to produce an answer. This is known as the '**contra proferentem**' rule

If even the Golden rule of interpretation, together with the minor rules cannot successfully be applied the court will move on to utilise the final rule.

### c) The Mischief rule

The court will consider the " mischief ", for example, the Housing Act 1996 was designed to prevent, when considering the construction of an agreement.

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## Other common drafting techniques in leases

### Recitals and factual matters

Recitals are those parts of the lease that merely declare facts and do not affect any of the substance of the agreement. They are usually inserted to explain the reason for the transaction or other related background circumstances.

In short term or periodic leases, recitals of the relevant facts should be included wherever the landlord intends to rely on the existence of those facts at a later date to found his claim for possession. Thus, for example, if the landlord lets the house in which he has been living to an individual, and intends to rely on Ground 1 of Schedule 2 of the Housing Act 1988 for possession in future, the tenancy agreement should recite his previous occupation and the service of the relevant notice. Likewise, the amount of any deposit should be stated.

### Definitions and Labels

It is now accepted practice in letting agreements to define certain words as 'labels' at the beginning of an agreement. Once defined, the labels can be used throughout the agreement in place of the longer expressions which would otherwise be necessary; the definition of 'Landlord' and 'Tenant' being the most common example. Once these expressions have been defined, it is unnecessary to refer to the parties by name again.

The labels to be adopted should be clear and accurately reflect the concept to which they relate. They should not be capable of accidental transposition. Thus 'Lessor' and 'Lessee' should be avoided since it is possible that they could become reversed with disastrous consequences.

It is usual to use an initial capital letter throughout the agreement for any word that has been specifically defined. The use of the initial capital indicates that the word is being used in its defined sense, and this also allows the same word to be used elsewhere in the agreement in its general sense, e.g. '*..the Tenant and the other tenants in the Building*'.

### Decisions on the meanings of previous words and phrases

There are many common words and phrases that are used in modern leases whose meanings have a well established and settle meaning in law. In case of a dispute, the courts will uphold these established meanings provided that they have been correctly used. Care must therefore be taken when using a word which has acquired a technical meaning or become a term of art, to use it accurately.

## **Appendix A: General Rules for the Drafting and Interpretation of Leases**

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# Appendix B

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## **Example Occupancy Agreement**

## Appendix B: Example Occupancy Agreement

THIS AGREEMENT is made on the date specified below BETWEEN the Company and the Approved Occupier. It is intended that this Agreement shall create a licence to reside at the specified Property.

**Date**

20

**Company**

**Address:**

(Registered Office)

**Approved Occupier**

‘Approved Occupier’ includes any respectable and responsible person(s) [and his family] appointed by the Company and previously approved in writing by the Landlord

**Property**      The dwellinghouse known as

1. The Company has rented the Property and the possession and control of the Property shall remain vested in the Company who shall be the tenant for all purposes.
2. The Company [requires the Approved Occupier to reside at the Property for the proper performance of the duties of the Employment and accordingly] gives the Approved Occupier licence to reside at the Property and to use the fixtures and fittings therein
3. The Company shall manage the Property and may enter at any time.
4. The Approved Occupier agrees to reside in the Property as licensee. The licence given to the Approved Occupier by this Agreement is personal to the Company and is not assignable.
5. This Agreement will end automatically without any notice on the termination of any employment or contract with the Company, or if the Approved Occupier ceases himself personally to reside in the Property.
6. The Company may deduct any sums payable by the Approved Occupier under this Agreement from any wages or salary at any time due from the Company to the Approved Occupier
7. The Approved Occupier further agrees with the Company:
  - (a) To pay promptly to the authorities to whom they are due, council tax and outgoings (including water and sewerage charges, gas, electric, light and telephone (if any) relating to the Property), including any which are imposed after the date of this Agreement (even if of a novel nature) and to pay the total cost of any re-connection fee relating to the supply of water, gas, electricity and telephone if the same is disconnected for so long as this licence subsists.
  - (b) To keep the interior of the Property and fixtures and fittings therein in good and clean condition and decorative order and to replace all cracked or broken glass and make good all damage attributable to the neglect or default of the Approved Occupier other than damage by fire
  - (c) Not to make any alterations or additions or attach any fixtures or fittings of any kind to any part of the Property
  - (d) Not to use the Property except as a private residence for the Approved Occupier and his family and private guests and not to let or purport to let any rooms or take in any lodger or paying guest
  - (e) Upon ceasing to be employed by the Company to quit the Property and leave it vacant
  - (f) To cultivate the garden of the Property and keep the same with all hedges, fences, trees, shrubs, bushes, paths, and surrounds properly weeded, tended, trimmed and in good order and not to erect any shed, building or structure in any part of the garden or surrounds without the prior written consent of the Company

## Appendix B: Example Occupancy Agreement

8) The licence granted by this Agreement includes licence to use the furniture, furnishings and effects in and about the Property specified in the attached inventory signed by [(or) on behalf of] the Company and the Approved Occupier (and hereinafter called 'the Contents') and the Approved Occupier further agrees with the Company:

- (a) To take reasonable care of the Contents
- (b) To keep the Contents clean, in good condition and (if applicable) working order
- (c) Not to remove any of the Contents from the Property
- (d) On quitting the Property to make good or pay for the repair or replacement of such of the Contents as may have been lost, destroyed or damaged by the neglect or default of the Approved Occupier and the cleaning of such as shall have been soiled and to pay for the laundering of all linen included in the Contents but the Approved Occupier will not be liable to make good or pay for fire damage

**SIGNED by the COMPANY :-**

.....  
Position in Company  
.....

In the presence of :-

Name.....  
Address .....  
.....  
Occupation .....  
Witness Signature .....

**SIGNED by the APPROVED  
OCCUPIER(S) :-**

.....  
.....  
.....  
.....

In the presence of :-

Name.....  
Address.....  
.....  
Occupation .....  
Witness Signature .....

## **Appendix B: Example Occupancy Agreement**