



GUIDE TO LEGAL ISSUES FOR RESIDENTIAL LANDLORDS

Moving forward together

WHETHER YOU ARE PURCHASING YOUR FIRST BUY-TO-LET PROPERTY, ADDING TO AN EXISTING INVESTMENT PORTFOLIO, OR SIMPLY IN NEED OF LEGAL ADVICE TO SETTLE A DISPUTE WITH ONE OR MORE OF YOUR TENANTS, PALMERS SOLICITORS IS HERE TO HELP.

Regardless of your circumstances, it is always important to be aware of the legal issues which you – as a buy-to-let landlord – may potentially encounter. This will in turn ensure that you are well prepared for any potential hiccups during the conveyancing process, or any unexpected or difficult landlord and tenant disputes.

Our specialist team at Palmers Solicitors have put together this helpful guide to shed some light on the legal issues surrounding buy-to-let property ownership. However, while useful, it is important to note that this is only a brief guide and expert advice should always be sought in line with your unique circumstances.

Conveyancing

‘Conveyancing’ is the term used to describe the process whereby ownership of property is transferred from one party to another. However, the process is not quite simple as it sounds and can be fraught with worrying complications if expert advice is not sought.

For buy-to-let investors purchasing a property with aid of a mortgage, lenders will only permit a firm of solicitors approved on their ‘panels’ to act on their behalf in connection with a loan. If the solicitors appointed are not well-recognised, significant additional costs and delays may be incurred in instructing ‘in-house’ lawyers for lenders.

The conveyancing teams in our offices are staffed with professionals who will handle and be responsible for every transaction from start to finish.

How does conveyancing work?

- 1** You have got your deposit together and an agreement in principle for your mortgage.
- 2** The Seller of the house you want to buy has accepted your purchase price offer.
- 3** You instruct us to act for you.
- 4** You supply evidence of your identity and detailed proof of source of your deposit funds.
- 5** We check the property title on the Seller's conveyancer's documents. We also carry out conveyancing searches and check over questionnaires about the property supplied by the Seller.
- 6** We ask the Seller's solicitor any specific questions which arise out of the search results, title papers and questionnaires and from our discussions with you.
- 7** We let you know if the searches have raised any issues and discuss them with you.
- 8** We receive your mortgage offer, advise you on the mortgage and ask you to sign the mortgage deed.
- 9** We report to you on search results, the property title and questionnaires.
- 10** We advise you on the purchase contract and ask you to sign it.
- 11** You pay your deposit over to us.
- 12** When you confirm that we may do so, contracts are then exchanged. This legally commits you to buy the property and the Seller to transfer the property on a set date known as the "completion date". The completion date is when the rest of the purchase price is paid and you are entitled to collect the keys.
- 13** In the period between exchange and completion we order your mortgage money, ask you for the remainder of any other funds payable and the Seller signs the transfer deed.
- 14** We ask you for any remaining money needed to complete, including any Stamp Duty Land Tax and Land Registry fees which are payable.
- 15** The completion date arrives and we transfer the purchase money to the Seller's solicitor. They authorise the release of the keys to you.
- 16** The Seller gives the keys to the estate agent, who gives the keys to you.
- 17** The property is now yours and available for you to let out to a tenant
- 18** We then deal with post-completion formalities, such as arranging to pay over your Stamp Duty Land Tax and we register your ownership of the property at the Land Registry.

Transfer of shares in property

There are many reasons that a buy-to-let landlord might wish to amend the ownership of one or more of their properties.

Whether this relates to a divorce or separation, a rearrangement of assets for tax or other purposes, or simply a wish to benefit certain members of the family such as children, legal assistance will inevitably be required, and Palmers Solicitors is ideally placed to help.

We can advise on the process that must be undertaken. Should you instruct us to help, our team can:

- Consider with you whether the proposed property transfer is advisable and, if so, how best to deal with it
- Suggest an application to a lender for consent to rearrange a mortgaged asset
- Carry out the legal process to effect your wishes
- Handle any fund transfers where necessary and appropriate
- Make any Stamp Duty Land Tax (SDLT) payments on your behalf
- Make applications for registration of the amended ownership records at the Land Registry



Listed building consent

Before a property owner is allowed to carry out any external and/or internal alterations or extensions which could affect the character of a listed building, the owner will need to apply to their local planning authority for a 'Listed Building Consent'. This is in addition to any other consent required by the Local Authority – and also applies in cases where an owner wishes to demolish a listed building.

It is not always easy to decide what constitutes an alteration of a building's character, so it is important to obtain specialist advice before beginning any work. **It is a criminal offence to go ahead with any work which is unauthorised**, and local planning authorities are within their rights to take legal action against both the person who carried out the work and the owner who allowed the alterations to occur – which can potentially result in hefty penalties for both.

Those who are planning to buy a listed building are advised to check if any previous alterations have been pre-approved through a Listed Building Heritage Partnership Agreement (or HPA).

HPAs

The HPA is an agreement between the owner, the local planning authority and other interested parties, such as Historic England, which grants listed building consent for specific works to be carried out. This can reduce the number of occasions the Local Authority needs to be involved – which can potentially save a lot of time and money. A HPA can:

- Specify the type of work that would (or would not) affect the character of the building
- Detail the maintenance and preservation required
- Put in place arrangements for any specified work

It is important to be aware that even if a listed building has an HPA in place, the owner will still need to go through the usual channels for obtaining local authority planning permission and/or building regulation approval.



The laws surrounding landlord and tenant agreements

The laws that regulate landlord and tenant agreements can be complicated and confusing, but it is important that buy-to-let investors are aware of their rights and comply with their obligations. Failing to do so can result in serious financial – and sometimes even criminal – consequences or penalties.

Simply put, the law is designed to protect both landlords and tenants and, in effect, dissuade both from taking matters into their own hands in the event of a dispute. For example, landlords are unable to evict a tenant without a Court Order for possession. Attempting to remove a tenant by other means – i.e. changing the locks to the property – **is against the law and could lead to up to six months imprisonment and/or a £5,000 fine** under English law, not to mention a civil claim for compensation for illegal eviction.

It is important that, from the outset, a correctly-worded tenancy agreement is put in place and is agreed by both parties. If the tenancy agreement is not drafted properly, this can result in disputes and legal action further down the line.

Tenancy Deposit Protection (TDP) schemes

Tenancy Deposit Protection (TDP) schemes effectively help tenants to receive all or part of their initial rental deposit back from their landlord – assuming they have fully complied with the conditions stated in their tenancy agreement.

In Assured Shorthold Tenancies (ASTs) – which are the most common type of tenancy in the UK – the landlord is legally required to protect the deposit (including deposits paid by a third party) and register it with a Government-backed TDP scheme within 30 days of receipt. In the same timescale, they must also give the tenant certain information about the scheme and the protection of their money. The tenant can seek compensation of up to three times the value of the deposit if they fail to do so.

At the end of the tenancy, the general rule is that the landlord and tenant must agree on the sum to be repaid. This must then be returned within 10 days of the tenancy ending. If the landlord and tenant disagree, the deposit is ‘protected’ until the dispute has been resolved. If no agreement can be reached, either party can raise the issue with their TDP scheme, which should provide free, impartial adjudication to settle the matter.

Our team specialise in supporting landlords with expert advice in the event of such disputes, should they escalate any further.

Residential landlord and tenant disputes

Disputes between landlords and tenants can arise for any number of reasons – and such disagreements can often escalate quickly if not handled sensitively and professionally.

On the rare occasion, a landlord may be able to resolve a dispute informally through reasoning with a tenant, thus bypassing the need for legal assistance. However, more often than not, landlords and tenants will have trouble seeing eye-to-eye over a contentious issue.

At Palmers Solicitors, we can offer advice and support in relation to a wide range of common landlord and tenant disputes, which may arise over:

- Lease renewals
- Lease breaks
- Changes of use
- Rent reviews
- Service charge issues
- Repair claims

For more information about how we might be able to help, please contact us.



Property fraud

Sadly, property fraud is growing increasingly common across the UK – and it is important to be aware of the warning signs of common scams, such as conveyancing fraud.

Conveyancing fraud

Conveyancing fraud typically occurs when cyber-criminals commandeer communications between homebuyers, solicitors and estate agents by hacking into email exchanges and posing as one of the aforementioned parties.

Simply put, hackers will attempt to redirect conveyancing fees and mortgage deposits into their own bank accounts – usually by posing as a solicitor and informing homebuyers of a bogus ‘last minute change’ to bank account details.

It is important to always speak directly with solicitors and estate agents, either in person or over the phone, to clarify such details prior to transferring any funds.

Other types of property fraud

Property fraud is growing increasingly diverse and difficult to identify. In recent years, HM Land Registry has warned that homeowners who rent out their properties in particular, or leave them empty, are running a high risk of falling victim to fraud.

Properties targeted by fraud can encounter financial losses, and in many cases owners can only be compensated if the property is correctly registered by the Land Registry. For this reason, it is important to register all properties and remain vigilant.

HM Land Registry warns: ***“Fraudsters can and do target properties for fraud. By pretending to be you they can try to sell or mortgage your property, leaving you to deal with the consequences. Fraud of all kinds is on the increase, so it’s important you do what you can to protect yourself.”***

The Land Registry operates a property fraud helpline, which can be reached using **0300 006 7030**.

Possession proceedings

Residential landlords who wish to recover possession of the property (and/or rent arrears) from a tenant must usually obtain a court order for possession in order to evict that tenant – unless the tenant is happy to leave voluntarily.

A failure to obtain a court order for possession could potentially result in severe financial penalties.

Landlords can sometimes use what is known as an ‘accelerated possession procedure’ in order to obtain an order for possession from the local county court. This will usually allow the landlord to bypass expensive court hearings, but only applies in instances where:

- The property has been let under a written AST.
- Any tenancy deposit taken from the tenant has been properly put into a recognised deposit scheme.
- A valid (no grounds) notice giving two months’ notice has been served on the tenant in compliance with section 21 of the Housing Act 1988.
- The landlord simply wants an order for possession to recover the property.

Many landlords do not realise that where they do not properly register a tenancy deposit, **a court could order that they immediately repay the deposit in full and make a penalty payment of three times the deposit for failing to register it correctly in the first place**, should the tenant apply to the court.

Care therefore needs to be taken to deal correctly with the tenancy deposit and rectify any previous deficiencies before issuing court proceedings for possession.



How can Palmers Solicitors help?

Palmers Solicitors' expert Residential Conveyancing team are able to offer specialist advice to landlords and buy-to-let investors in relation to the intricacies of purchasing properties and any associated legal issues. Meanwhile, our Dispute Resolution experts are ideally placed to advise landlords who may find themselves facing difficult landlord and tenant disputes.

For more information about our expert services, or how Palmers Solicitors could help you, please contact a member of our team.



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