

# THE LETTING OF LEASEHOLD FLATS

A guide to good practice  
and related issues



ARMA is grateful to the following organisations for their assistance in producing this guide:

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<b>CONTENTS</b>	<b>Page No.</b>
<b>INTRODUCTION</b> .....	2
<b>TERMS USED IN THIS LEAFLET</b> .....	2
<b>LESSEES' AND MANAGING AGENTS' CONCERNS ABOUT LETTINGS</b> .....	3
<b>LETTINGS AGENTS' CONCERNS ABOUT FLATS</b> .....	3
<b>LEASES AND LETTINGS OF LONG LEASEHOLD FLATS</b> .....	3
<b>GENERAL LEGAL POINTS ABOUT THE LETTING OF LONG LEASEHOLD FLATS</b> .....	5
<b>MANAGING AGENTS - FEES AND CHARGES FOR LETTINGS</b> .....	5
<b>SOME ADVICE FOR LESSEES SEEKING TO LET</b> .....	6
<b>INSURANCES</b> .....	7
<b>FEES AND CHARGES BY MANAGING AGENTS FOR LETTINGS</b> .....	7
<b>ADVICE TO LETTINGS AGENTS ABOUT THE LETTING OF LONG LEASEHOLD FLATS</b> .....	8
<b>ADVICE TO MANAGING AGENTS ABOUT LETTINGS</b> .....	8
<b>PROBLEMS WITH TENANTS</b> .....	9
<b>LETTINGS BY SOCIAL LANDLORDS</b> .....	9
<b>APPENDIX 1: SOME JARGON AND DEFINITIONS</b> .....	10
<b>APPENDIX 2: MODEL LEAFLET ON LETTINGS FOR MANAGING AGENTS TO ISSUE TO LESSEES</b> .....	11

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# THE LETTING OF LEASEHOLD FLATS

## A guide to good practice and related issues

### INTRODUCTION

Buy-to-let has seen some phenomenal growth over the last few years. Combined with homeowners who let as a result of personal circumstances, e.g. temporary assignments overseas, and homeowners who are letting because they cannot sell their properties, residential lettings are now a substantial part of the housing sector.

This guide is about the letting of long leasehold flats. Such lettings can as a result of misunderstandings cause problems for the owner of the flat (the lessee), the landlord of the block or the managing agent, the lettings agent and not least the other residents in the block.

Letting a flat is not difficult and involves the same processes as the letting of a house. But it also requires additional considerations because of the communal living arrangements in blocks of flats which the lessee trying to let and the lettings agent sometimes overlook. This guide sets out to explain these additional considerations.

Above all the message of this guide is that cooperation and good communication between lessees, managing and lettings agents can result in successful lettings in leasehold.

### TERMS USED IN THIS LEAFLET

It is very easy to cause confusion when discussing this subject because to a managing agent the landlord will be the landlord of the block of flats; whereas to the lettings agent and the occupier of the flat the landlord will be the leasehold owner of the flat who has let it. The tenant to the lettings agent will be the person who has taken a tenancy from the leasehold owner of the flat; however in landlord and tenant law the owner and lessee of the flat is also called a tenant.

In this guide the landlord always refers to the landlord of the block of flats and this landlord could also be a residents' management company. The lessee is always the owner of the long lease of a flat; and the tenant is always the person(s) renting a flat let by a lessee.

The letting of a flat by a lessee is correctly called a subletting but in this guide we use the terms a 'let' or 'letting'.

***Appendix 1 has some further definitions for reference.***

## LESSEES' AND MANAGING AGENTS' CONCERNS ABOUT LETTINGS

- The security of blocks may be jeopardised by tenants.
- Fire safety concerns when managing agents do not know who is in occupation and tenants are therefore not informed about fire safety instructions for the block.
- Fly tipping by tenants can happen upon changeover of tenancies.
- Tenants may bring in pets when they are not allowed to do so.
- Satellite dishes may be put up when they are not allowed or a communal system exists.
- Tenants move in and are not aware of parking arrangements and restrictions.
- Subletting to local authorities may increase the risk of anti-social behaviour problems in a block.
- Lettings may be as weekly serviced apartments or holiday lets which are prohibited in leases.
- Lessees who sublet often fail to give the managing agent an alternative contact address regarding problems and paying bills.
- Lettings to large number of persons may result in the creation of a house in multiple occupation with complications for the landlord and agent.
- Prohibited lettings may invalidate the block insurance policy.

## LETTINGS AGENTS' CONCERNS ABOUT FLATS

- The lettings agent is not told about any restrictions or rules about letting.
- Contact details for the managing agent are not passed onto the lettings agent.
- Poor response from the managing agent may hinder the ability to let a flat.
- The letting agent may find it difficult to rectify defects in new flats when they do not know how to contact or do not get an adequate response from the managing agent.
- Tenants are not aware of which person to contact if things go wrong.
- Lack of communication from managing agents on repairs.
- Lack of communication from managing agents on insurance claims.

## LEASES AND LETTINGS OF LONG LEASEHOLD FLATS

Long leasehold flats usually refers to any 'letting' over 21 years but in practice most new flats have leases for 99 or 125 years. The lease is the contract for the ownership of a flat and it is essential that all parties are aware of what it means for a letting. The lease terms apply whether a lessee is a member of a residents' management company or not.

Most leases will have clauses about lettings - in legal jargon this letting is correctly called subletting in the lease. Below are the most common arrangements used in leases and what they mean for managing and lettings agents and lessees who want to let their flats.

## **1. The lease prohibits any letting.**

Such prohibition is becoming rarer in leases but is still found in some leases. A clause preventing letting in a lease is enforceable in law and any lessee who ignores it can face legal action to forfeit his/her lease or an injunction. Lessees and lettings agents faced with such a clause in the lease should not seek to let. There may be scope, however, to amend the lease, and therefore ensure there is no breach.

## **2. The lease prohibits short term lettings.**

Many modern leases will allow lettings but only for a minimum of 6 months on a shorthold tenancy.

## **3. The lease requires the consent of the landlord or residents' management company before letting can occur.**

If consent is required then there is an implied legal understanding that it will not be unreasonably refused. However, the requirement for consent will still mean that the landlord can make certain reasonable conditions before granting it. The usual conditions that can be expected include:

- To see a copy of the proposed tenancy agreement.
- To require that the tenancy agreement contains similar restrictions and regulations as are in the long lease for the flat.
- To see the references for the proposed tenant.
- To ask for confirmation as to how the ground rent and service charge will be paid if consent is granted.
- To provide emergency contact details, key holders, alternate address for correspondence, ground rent and service charge demands.
- To demand a reasonable fee for the granting of consent.

## **4. The lease requires that the lessee must notify the landlord of any letting within a number of days after the event, often 28 days.**

A variation might also require that the lessee provides a copy of the tenancy agreement to the landlord. In most cases the landlord will be granted a right to levy a reasonable fee for registering the letting.

If a lessee lets to a company that then sublets that flat, notification will be required for each further subletting as well as the letting to the company.

Such notification clauses are enforceable in law and any lessee who ignores them within the timescale set is in breach of their lease. The landlord could start an action for an injunction or forfeiture for the breach which would involve the lessee in substantial costs to defend.

## GENERAL LEGAL POINTS ABOUT THE LETTING OF LONG LEASEHOLD FLATS

Assuming that the lease permits letting and any consent has been obtained there is a fundamental legal point that lessees who sublet and their lettings agents should be aware of.

***A lessee who grants a tenancy is responsible for ensuring that the tenant complies with the conditions of the lease.***

If lessee X grants a shorthold tenancy to tenant Y and Y misbehaves and breaches conditions of the long lease held by X, then X's landlord cannot sue tenant Y because there is no contract between them. X's landlord can sue X and seek damages or costs against X. However X can only claim against his tenant Y if the tenancy agreement contained the same conditions that are in the long lease and an indemnity for failing to observe the conditions set out in the long lease.

Because there is no direct contract between the landlord and any tenant of a letting by a lessee in the block, then the lessee who has let will always be responsible for observing the terms of the lease and for making any payments due arising from it. Therefore, managing agents do not expect the tenant to pay the service charge and ground rent after a letting; that is the responsibility of the lessee or his/her lettings agent. If there are debts during a letting the managing agent will seek payment from the lessee or the lettings agent not the tenant.

## MANAGING AGENTS - FEES AND CHARGES FOR LETTINGS

Some long leases do not allow for short term lettings, less than 6 months. In certain holiday resorts short holiday lets are accepted. Once again it is vital that lettings agents get their client, the lessee, to show them the lease.

Even if the lease does not specifically state that short term lettings are prohibited it is still reasonable for landlords and their managing agents to refuse such lettings where consent is required. A constant turnover of weekly or fortnightly lettings will lead to greater wear and tear on the common parts of blocks of flats, and so impose unnecessary costs and inconvenience on other lessees.

## SOME ADVICE FOR LESSEES SEEKING TO LET

**Check your lease.** Does it allow lettings? If yes, is consent of or notification to the landlord required? If you are not sure contact your managing agent for advice.

**Do you have a normal domestic mortgage?** In which case you will need the permission of your lender before subletting and a fee may be charged. The lender may also put conditions on any letting allowed.

**Obtain an energy performance certificate.** This is a legal requirement before letting.

**Get your gas and electrical appliances checked.** You must give any tenant a copy of a gas safety record before they move in. Electrical appliances should be tested frequently.

**Minimise the risk of fire.** Check with your managing agent that you have up to date fire safety instructions for the block so you can give these to any tenant. Inside your flat do you have suitable smoke alarms? Furniture must comply with the relevant regulations.

**Deposits.** If you take a deposit then by law it has to be protected by one of the government approved tenancy deposit schemes.

**Lettings agents.** Do use an accredited lettings agent such as those who are members of the Association of Residential Lettings Agents. (ARLA), National Approved Lettings Scheme (NALS) or Royal Institution of Chartered Surveyors (RICS).

**Your lease.** Give a copy of your lease to your lettings agent and point out any rules and restrictions in it. Many managing agents issue handbooks and welcome letters that explain the regulations for the management of each block. Ask your managing agent for the latest version and give a copy to your lettings agent.

**Pets.** Tell your lettings agent whether pets are allowed in the block or not.

**Parking arrangements.** Do make quite clear to your lettings agent what are the parking arrangements for the block. If you have an allocated parking space give the agent a plan with that space clearly marked on it.

**Your forwarding address.** Inform your managing agent of an address and telephone number where you can be contacted.

**Payment of service charges and ground rent.** Decide how these will be paid during the letting period. You the lessee remain responsible for payment not your tenant. So make arrangements for your lettings agent to pay the service charge or inform the managing agent where invoices should be sent to you.

**Tenancy agreement.** You should ensure any tenant of yours agrees to abide by the terms of your lease because you are responsible for the behaviour of your tenant. So it is sensible to incorporate the standard terms of your lease into any tenancy agreement. Tell your lettings agent that this is what you want them to do. A standard tenancy agreement will not protect you if your tenant breaks the terms of your lease.

**Disability discrimination.** You cannot discriminate when letting a flat on the grounds of disability and you may be required to make reasonable adjustments to your flat for disabled persons.

**Emergencies.** Provide emergency contact numbers and details of key holders to the managing agent.

## INSURANCES

The landlord of the block will arrange insurance for the structure of the block and common areas. The typical policy arranged will not assist those lessees who wish to let their flats in some important respects. Lettings to housing benefit applicants or students may not be allowed. Ask your managing agent. Lessees also need to check that their own contents insurance cover will be sufficient if they let the flat.

If the flat may be unoccupied for more than 30 days do tell your managing agent. Most insurance policies make it a requirement to inform the insurer of such absences.

Some blocks policies require to be informed if flats are "sublet" instead of being owner occupied. There are specialist policies to cover contents and legal expenses for let properties.

If the flats in a block cannot be lived in because of say a fire or flood, the block policy will NOT assist the tenants of lessees who have let their flats. The policy will assist lessees who require alternative accommodation but not the tenants.

Loss of rent cover if a block cannot be lived in for a period is also not normally provided through a block buildings policy for individual lettings and is a matter for individual lessees to consider and take appropriate cover as they think necessary.

## FEES AND CHARGES BY MANAGING AGENTS FOR LETTINGS

Landlords and their managing agents may charge lessees for the administration involved in lettings by lessees. Most commonly there will be fees if the lease requires the landlord's consent to a letting and/or notification of any letting to the landlord after the letting has taken place. Note some leases may require both actions.

There is no set scale for such fees. Some leases may state a figure, others just that a reasonable charge can be made. Lessees and lettings agents can check the terms of the lease and/or contact the managing agent to ask what fees may be payable if a letting takes place. VAT is normally chargeable on any fees levied.

Fees for lettings levied by landlords may be challenged by lessees at a Leasehold Valuation Tribunal. Such fees may be called administration charges in landlord and tenant law; these are charges payable by lessees under their leases which are neither service charges nor ground rent. Typical examples are charges for permission to sublet, alter or adapt a flat, and interest or fees for late payments. There is debate about whether notices of making a subletting are challengeable at a Tribunal. Any demand for an administration charge must be accompanied by a summary of rights and obligations statement; if not the lessee can withhold payment.

A lessee has the right to challenge an administration charge at a Leasehold Valuation Tribunal (LVT) and ask the LVT to decide if the charge is payable and/or reasonable. A lessee can challenge whether he/she has already paid the charge or not.



## ADVICE TO LETTINGS AGENTS ABOUT THE LETTING OF LONG LEASEHOLD FLATS

- Get hold of a copy of the lease and/or any rules and regulations for the block. Managing agents do not have copies of leases for every flat they manage but copies of leases can be obtained on-line at the Land Registry.
- Ensure that any permissions to let are obtained.
- Make sure the tenancy agreement contains the relevant rules contained in the lease and any rules/regulations for the block. A standard AST agreement is unlikely to be suitable.
- Or ask the tenant to sign a copy of the rules and regulations for the block. These restrictions are binding on the tenant whether he/she signs them or not; but your client/lessee may be the one to suffer because the tenant was not made aware. Your tenant will also be upset that they are later told of things that you should have explained.
- Explain to the tenant about the rules for that block, especially common areas of misunderstanding such as parking, pets and satellite dishes.
- Tell the managing agent the name of the tenant and the period of the tenancy.
- Ask your client, the lessee, how she/he intends to pay service charges and ground rent to the managing agent.
- If you are retained only to find a tenant, remind the lessee of the need to give the managing agent a forwarding address.
- If you are retained to collect rents for the ongoing management then cooperate with the managing agent if there are problems with the tenant's behaviour.

## ADVICE TO MANAGING AGENTS ABOUT LETTINGS

- Confirm the lettings policy for the block with the landlord.
- Have a model leaflet about lettings in your blocks available for lessees.  
*See example in Appendix 2.*
- Check the lease and do not insist on prior consent if it is not required.
- Set reasonable fees for consent where required and for notification of any subletting.
- Issue a menu of fees that can be given to those who enquire about them.
- Any fees you charge may be challengeable as administration charges and should be accompanied by a summary of rights.
- Cooperate with lessees and lettings agents if the lease does allow lettings. It is better to have a tenant who is aware of how the block is run than a letting made without your involvement even though your landlord may not like lettings in the block.
- Provide lessees who want to let and their lettings agents with copies of any rules and regulations for the block.
- Offer to provide a copy of the lease, if you have one, and point out the provisions which need to be in any tenancy agreement.
- Cooperate with any retained lettings agent to resolve problems with tenants and lessees. Sometimes lessees may behave badly towards tenants as well as vice versa.
- Managing agents should not generally accept payments for service charges or ground rents from anyone other than the named lessee. Payments from a letting agent should be expressly confirmed by the lessee.

## PROBLEMS WITH TENANTS

If a tenant causes problems in a block of flats by for example parking in the wrong spaces or leaving rubbish in the wrong places, the managing agent and the lettings agent can help each other.

The managing agent has no direct contract with the tenant and strictly the managing agent should go to the lessee and ask him/her to sort out the problem. However, if the lettings agent is retained for the period of the tenancy then the managing agent can contact the lettings agent to explain the problem.

Similarly the letting agent may receive reports of repairs from a tenant and it may not be clear which party should be responsible. It can often be difficult to know who should be making a claim on what insurance policy. Managing agents can assist lettings agents to clarify such matters.

## LETTINGS BY SOCIAL LANDLORDS

Many leasehold blocks now have a proportion of the flats sold to housing associations. Some lessees also seek to let their flats using a local authority which wants to then sublet to persons on its waiting list for social housing.

The same considerations as for a private letting will apply. Consent may be required and notification of any letting to the landlord with payment of a fee will invariably be required. Where a local authority has taken a letting and then sublets notification will also be required for each subsequent subletting.

Social landlords need to keep managing agents informed of who is living at the flat and should make their tenants aware of the rules and regulations that apply in that block.

Payment of service charge direct by the tenant is not recommended and can lead to problems for managing agents and social landlords. It is the contractual responsibility of the lessee, in this case the social landlord, to pay the service charges.

## APPENDIX 1: SOME JARGON AND DEFINITIONS

**Assignment** - the sale of the remaining term of a long lease to another person.

**Assured tenancy** - a type of tenancy created by statute which provides security of tenure for the tenant.

**Assured shorthold** - an assured tenancy which gives the tenant no security of tenure at the end of the agreed period of the tenancy, usually 6 months.

**Fixed term** - a tenancy which is granted for a fixed period of time e.g. shortholds in the private sector are usually granted for 6 months or more.

**Ground rent** - sum payable by a lessee to the landlord in addition to the service charge.

**Landlord** - the owner of a property who grants a lease or a tenancy, also known as lessor. In this leaflet the landlord refers to the landlord of a block of flats which may also be a residents' management company.

**Lease** - a contract giving limited ownership of a property for a fixed period of time. In law exactly the same as a tenancy but usually refers to a longer fixed term period.

**Leaseholder** - same as lessee or tenant.

**Leasehold Valuation Tribunal (LVT)** - a part of the Residential Property Tribunal Service which can consider most disputes between lessees and landlords.

**Lessee** - the person to whom a lease is granted. In landlord and tenant law tenant and lessee are the same.

**Lessor** - same as landlord

**Lettings Agent** - an agent who specialises in the lettings of short term tenancies including the collection of rents and the ongoing management of those lettings. Lettings agents carrying out ongoing management may also be known as managing agents.

**Managing Agent** - an agent who specialises in the management of the communal areas of blocks of long leasehold blocks of flats. The agent will be engaged by the landlord or the resident management company.

**Periodic** - a tenancy granted which is let from week to week or month to month until terminated by notice from landlord or tenant.

**Resident Management Company (RMC)** - the management of a large proportion of blocks of long leasehold flats are run by companies whose only members are the lessees of those blocks. The lessees then choose through the company's directors which managing agent to appoint and become the managing agent's client.

**Secure tenancy** - used in the private and housing association sectors prior to 1989 which gave security of tenure and rent control using fair rents. Also referred to as protected and statutory tenancies.

**Secure tenancy for local authorities** - still used and gives security of tenure but limited rent control.

**Tenancy agreement** - the contract setting out the conditions for the grant of a tenancy of a property, usually in writing.

**Tenant** - the person to whom a tenancy is granted may also be called the renter.

**Term** - in long leases the fixed period of time for the lease usually 99 or 125 years.

## APPENDIX 2: MODEL LEAFLET ON LETTINGS FOR MANAGING AGENTS TO ISSUE TO LESSEES

### YOUR LEASE AND LETTINGS

You need to check if your lease permits letting of your flat or whether there are any conditions for letting. Leases vary so if you need advice please contact us.

#### In general leases may:

- Prohibit letting in which case we will not give consent
- Require prior written consent to any letting and allow the landlord to state reasonable conditions.
- Not require prior consent but require you to notify and register your letting to the landlord through the managing agent.
- Not allow short lettings of less than 6 months .
- Require that any letting should be to a single household.

### MORTGAGES AND LETTINGS

If the lease allows letting and you have a normal domestic mortgage you must seek the permission of the lender before any letting.

### CONSENT OF THE LANDLORD TO A LETTING

If the lease requires the prior consent of the landlord to a letting then you should apply in writing to your managing agent. In order to give consent we will normally require the following:

- A copy of the proposed tenancy agreement.
- Confirmation that the tenancy agreement adequately reflects the rules in your lease and any other supplementary regulations for the block made under the lease.
- Your future contact details if a letting is made including a telephone number and/or email address.
- Confirmation of how you will continue to pay the service charges and ground rent after a letting. We will not accept that payments will be made by your tenant. It is your, the lessee's, responsibility to pay. We will accept payment by a properly accredited lettings agent.
- The contact details for any lettings agent who will be responsible for your flat during the period of the letting.
- The payment of a reasonable fee for the administration involved in granting consent.

### REGISTRATION OF A LETTING

If the lease allows letting there will usually be a requirement to register the letting with the landlord normally no later than 28 days from the start of the tenancy.

In order to register we will require a copy of the signed tenancy agreement and contact details for you and/or your chosen lettings agent. If you sublet to a company and it in turn sublets to another, you are still responsible for registering that subletting.

We charge a reasonable fee for handling the registration.

## SOME COMMON PROBLEMS WITH LETTINGS

There are common things which may go wrong with lettings which you can help to prevent.

**Pets.** If the leases or regulations at your block do not allow pets then your tenant cannot have a pet. If you are not sure if pets are allowed please ask your managing agent. Do make the position clear to your lettings agent.

**Parking.** If you have a designated parking space then do make sure that your lettings agent and tenant are quite clear where they can and cannot park. Give them a plan of the car park if necessary. If you are not sure of the parking rules at your block ask your managing agent.

**Noise.** Make sure your tenant understands any rules regarding noise. Most leases require no loud noises during the night. Living in flats is not the same as living in a house.

**Satellite Dishes.** Most blocks do not allow lessees, and so any tenants, to erect their own satellite dishes. If you are not sure of the position in your block ask your managing agent.

**Security.** The security of the main entrance door is vital to the security of all the owners in your block. Make sure your tenant and lettings agent are aware of the importance of keeping the block secure and not allowing entry to strangers.

## RESPONSIBILITY FOR THE BEHAVIOUR OF A TENANT

In law you will always be responsible for the behaviour of your tenant. Further your landlord can and will pursue you for any misbehaviour of your tenant, whether you have made your tenant aware of the rules for the block or not. Why? Because your landlord has no contract with your tenant and so no legal status to pursue the tenant. If your tenant breaks the rules in the lease then your landlord will expect you or your lettings agent to take action to get the problem remedied.

## SOME OTHER IMPORTANT POINTS TO REMEMBER BEFORE YOU LET YOUR FLAT

**Obtain an energy performance certificate.** This is a legal requirement before letting.

**Get your gas and electrical appliances checked.** You must give any tenant a copy of a gas safety record before they move in and this must be updated annually. Electrical appliances should be tested frequently.

**Furniture.** Any furniture must comply with the fire safety regulations for furniture and furnishings.

**Minimise the risk of fire.** Check with your managing agent that you have up to date fire safety instructions for the block so you can give these to any tenant. Inside your flat do you have suitable smoke alarms?

**Deposits.** If you take a deposit then by law it has to be in a protected in one of the government approved tenancy deposit schemes.

**Insurances.** The landlord of the block will arrange insurance for the structure of the block and common areas. Lessees need to check that their own contents insurance cover will be sufficient if they let the flat. If the flat may be unoccupied for more than 30 days do tell your managing agent. Most insurance policies make it a requirement to inform the insurer of such absences.

# ABOUT ARMA...

ARMA is the only trade body in England and Wales to focus exclusively on matters relating to the block or estate management of long leasehold residential property, whether for resident management companies or investor freeholders.

With over 250 corporate members managing some 900,000 units in more than 34,000 blocks of flats or estates (at least 60% of which are lessee-controlled properties), ARMA members are committed to reputable practices, professional codes of practice, consistent levels of service and client satisfaction.

ARMA members comprise selected firms and sole practitioners. All members agree to adopt and abide by ARMA's principal objectives and undertake to comply with the Code of Practice issued by the Royal Institution of Chartered Surveyors (RICS) as approved by the Secretaries of State for England and Wales under the terms of Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993.

For more information about ARMA  
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