



Legal update — April 2017

Residential private client Residential team quarterly: Spring 2017

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Welcome to the first of our quarterly bulletins in which we consider topical issues affecting private residential transactions.

Private Residential Property Licensing – are you affected?

Under the Housing Act 2004, local authorities have powers to introduce "selective licensing" schemes to improve the management of private rented properties.

This is a separate licensing system from that governing "houses in multiple occupation" (HMOs) and covers, for example, a two-storey house rented as a whole to one household and a flat rented to one couple or two individuals. Guidance from the Department for Communities and Local Government (DCLG) is that this licensing designation can be made where an area of high private rental is experiencing persistent anti-social behaviour; or poor property conditions; or high levels of deprivation or high levels of crime. However, only where there is no practical alternative to a designation should a scheme be made. Ordinarily, an authority must carry out a 10 week public consultation before designation, but the Secretary of State's approval is required where the scheme affects more than 20% of its area.

private rented properties and compliance with statutory requirements, such as providing the authority with copies of gas safety certificates. There is a fee payable to the authority and failure to licence is a criminal offence. However, there are exemptions from the licensing requirements including: HMOs; tenancies granted by social landlords; holiday lettings and lettings to certain family members.

Before purchasing a property subject to residential tenancies or one which you propose to let out, please contact us for further guidance on whether these licensing schemes are applicable.

Banning letting agents' fees paid by tenants

According to the English Housing Survey published in March 2017 by DCLG in 2015-16 the private rented sector accounted for 4.5 million or 20% of households, an increase from 11% in 2004/2005. The same survey reveals that private tenants spend around 35% of their household income on rent. Recognising the importance of the sector and concerns about opaque letting costs for tenants, DCLG has launched a public consultation until 2 June 2017 on "driving up standards and supporting good landlords and agents" by imposing a ban on letting agents' fees paid by tenants in England.

This would build on transparency provisions introduced in May 2015 obliging agents to display a list of all fees or penalties payable by landlords and tenants for any letting agency or property management service. DCLG considers that the current trend for short term lettings of less than 12 months and the consequential churn in tenancies increases the opportunities for agents to charge fees and it hopes the ban will encourage agents to compete for landlords' business; lower overall fees; raise standards of service and increase the length of tenancies. However, DCLG proposes exemptions to the ban in the following circumstances:

- Agents accept "holding deposits" to take properties off the market, commonly whilst reference checks are carried out. DCLG considers these are reasonable to ensure there is a commitment from a tenant and mitigate against



Source: iStock

Designation can last for up to five years, but must be kept under review by the authority. The licence holder must be a "fit and proper" person (background checks can be carried out for criminal activities) and demonstrate satisfactory competence of managing

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Trowers & Hamblins LLP recommends that no action be taken on matters covered in this document without taking full legal advice.

speculation on a number of properties leading to wasted and costly work by agents and landlords.

- In-tenancy property management service charges arising because of tenant requests (replacement keys) or late payment charges (delayed rent).

We will report on the responses to the consultation in future bulletins.



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Register of beneficial owners of overseas companies

As part of the Government's transparency initiatives, since June 2016 all companies incorporated in the UK must provide information to Companies House on people with "significant control" over their companies (for example, an individual holding more than 25% of the shares or having the right to appoint or remove the majority of the board) with their annual confirmation statement. Most of the information is publicly available, but with limited exceptions where the individuals are at serious risk of violence or intimidation.

The Department for Business, Energy & Industrial Strategy (BEIS) is consulting until 15 May 2017 on extending the register at Companies House to cover beneficial owners of overseas companies owing or buying UK property. As this will be the first of its kind in the world, BEIS recognises the need to strike the right balance between "improving transparency and minimising burdens on legitimate businesses." Under BEIS' proposals:

- Overseas companies and entities will not be able to buy or sell UK property unless they have provided their beneficial ownership information for this register.
- Existing owners of registered UK property will have 12 months to comply.
- A note will be placed on titles by HM Land Registry prohibiting sales, charging or granting long leases without compliance with these registration requirements.

- There may be further exemptions to mitigate the risk of harm to individuals of being publicly associated with properties.

We will be making representations to BEIS on these proposals and will report on the responses to the consultation in future bulletins.

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