

Executors - To rent or not to rent?

Renting property from the Estate

The legal title in real property – buildings and/or land – is placed with the personal representatives of a deceased person from the moment of death.

Little difference can be distinguished between being an ‘executor’ under a will and being an ‘administrator’ in an intestacy situation – you will have power to deal with the property in any way as best benefits the estate.

In many circumstances a sale will be the easiest and most convenient method of dealing with a property within an estate. However, other factors can make a sale less attractive. These would include situations where the property is not worth enough to redeem any mortgage secured against it (known as negative equity) or where there are children and/or long-term beneficiaries to whom a property might be of use in the future.

In situations like this you may wish to rent the property. You are able to do this before the Grant of Probate/Letters of Administration are made, although there are certain steps that arise from being a landlord where these are necessary. Where possible it is more straightforward to have all the paperwork in order before commencing a tenancy.

Tenancies

Under statute there are many types of tenancy that can exist, although most only come into effect in special circumstances. The main tenancy you will wish to consider granting is an Assured Shorthold Tenancy (‘AST’) under s19A Housing Act 1988. This provides you with the greater control over the property and the best options at recovery in the unhappy event that something goes awry.

An AST can be granted for any period and contains two elements – the fixed term and the period term. Simply put this means that when the fixed period runs out, the tenancy continues on the same agreed terms (rent etc) on either a monthly or four weekly basis depending on how the rent is calculated. There is therefore no need to ‘re-issue’ a tenancy after the expiry of the fixed term, although some landlords prefer to.

Common Problems

Deposits - Many landlord are currently struggling with the issue of deposits. Since April 2006 it has been mandatory to protect a tenants deposit and to provide them with certain information within 14 days of receipt of the money. Sadly many landlords are still not aware of this requirement – the penalty for breach is the return/protection of the money and a fine payable to tenant of three times the value of the deposit.

As a result many landlords now do not take deposits. You will need to consider the best interests of the estate and whether the potential risks of failure to comply with the rules are outweighed by the need for some protection in situations where there is damage to the property.

Rent Arrears – By far and away the most common problem facing landlords in rent arrears. If you wish to recover a property as a result you need a court order. It can take up to six months to obtain an order and legal fees in excess of £1000. You should therefore make sure that where possible you keep some of the early rent received in reserve to cover the costs of the legal fees and the missing rent.

Legal Obligations – the law now imposes many obligations on a landlord of a property including safety of the premises, including regular gas appliance inspections. All landlords should take specific advice on their obligations from our specialist Housing law team.

Property Recovery

If you want the property back at any stage you can do so provided:

1. the fixed terms has elapsed (or will have elapsed by the date the property is sought) and;
2. a least six months have passed since the tenancy was granted.

You may also seek to recover the property for reasons such as breach of tenancy or rental arrears. For more information on this process contact our Housing Law team.