

3<sup>rd</sup> April 2007



## **ARE LANDLORDS AWARE OF THE NEW TENANCY DEPOSIT LAW?**

The new Tenancy Deposit Protection (TDP) initiative came into force on 6<sup>th</sup> April 2007. From then onwards, landlords are required to either opt into a government approved insurance scheme or into a custodial scheme in order to ensure that their tenants will have their deposits returned to them in a fair and regulated manner.

The custodial scheme is essentially a government scheme that is open to all landlords and agents; within 14 days of the tenancy commencement date the deposit must be forwarded to the scheme and the money will be held safely until the end of the tenancy when both parties need to agree on its distribution. If there is a dispute the scheme will deal with this through alternative dispute resolution (ADR).

Many landlords and agents, however, object to having to 'part with' the deposit to a third party. They wish to continue to hold the deposit as they have done, safely and successfully, for many years. In this case they should use one of the two 'insured' schemes.

Penalties for failing to comply are harsh. Landlords who do not follow the rules could be fined three times the deposit amount, which may be equivalent to losing 5 months' rent! As if that were not enough of a deterrent, landlords will also be prevented from obtaining possession on the notice-only (Section 21) ground. The deposit will be either returned to the tenant or must be sent to the government custodial scheme if the landlord wishes to get possession.

Letting agents who fail to adhere to the requirements of TDP could find their landlords are bereft of insurance cover. Compliance with TDP is statutory and, amongst other types, Rent and Legal Protection Insurance will insist that TDP requirements are met. If they are not, insurers may limit or in cases of severe breach, withdraw cover to landlords.

Tenants must also be made aware that it will be against the law from April 6<sup>th</sup> for landlords to continue to hold deposits unless they can show that they are a member of one of the government approved schemes. Tenants will need to be given proof of the whereabouts of 'their' money.

Ashton Burkinshaw, a leading residential letting and property management company in the southeast, is a founder member of the TDS (Tenancy Deposit Scheme), one of the two 'insured' scheme that is administered by The Dispute Service. Indeed, one of Ashton Burkinshaw's directors was the original trainer for the TDS adjudicators. Ashton Burkinshaw is therefore very aware of the requirements needed to meet the standards set by the TDS.

Over the past few years Ashton Burkinshaw has advised its existing clients and potential new clients of the impending change. Actually there will be little change for most of its clients as the company hold deposits on all of its managed properties and on most of its 'let only' properties as well. Ashton Burkinshaw is pleased to say that its fees for TDS will be kept to a minimum for clients.

For those landlords who have historically held the deposits themselves, there will be a big change. The TDS has just announced subscriptions for individual landlords to join the scheme in their own right, i.e. not through an agent. Those who are members of trade associations will pay £44 plus VAT for each property per annum. The annual subscription for each property for unaffiliated landlords will be £95 plus VAT.

Ashton Burkinshaw will also shortly be announcing a new service for clients who wish to continue to let and manage their property but who do not wish to pay a high price to belong to a protection scheme. Ashton Burkinshaw will be happy to hold the deposit and return it upon joint instructions from both the landlord and tenant. It feels sure that local landlords will be happy to know that the deposit is being held safely and locally and that the fee for protecting that deposit will be reasonable.

Ashton Burkinshaw has over 30 years' experience of dealing with deposit returns so who better to use to let and manage property, and to hold and keep the tenants' deposits safe? By instructing a reputable letting agent such as Ashton Burkinshaw, landlords are removing the burden of having to administer the new Tenancy Deposit Protection Scheme or worry about any other issues relating to their property.

Members of staff in any one of Ashton Burkinshaw's **13** branches throughout Kent and Sussex will be happy to advise on the implications of TDP or indeed any other residential lettings matter. For details of your local branch, please call 0845 6060300 or visit our website [www.aboutletting.co.uk](http://www.aboutletting.co.uk)

Full information for landlords and tenants about the new TDP legislation is also available on [www.tds.gb.com](http://www.tds.gb.com)

