

7th March 2007



'D-DAY' – 6TH APRIL 2007
ARE LANDLORDS PREPARED FOR IMMINENT LEGISLATIVE CHANGES?

What is D-Day, I hear you say? D-Day is Deposit Day for Protection of Tenants' Deposits. As of 6th April landlords and tenants will be able to reap the benefits of this new legislation that will apply to deposits held against Assured Shorthold Tenancies (ASTs). High value lets (over £25,000 per annum), company lets, resident landlord lets etc. will not be covered by the legislation.

Tenancy Deposit Protection will ensure that deposits taken by landlords for ASTs are placed in a tenancy protection scheme within 14 days of payment. The scheme has been introduced to enforce good practice in deposit handling and clear agreements on a rented property's condition at the end of a tenancy. The Government introduced this legislation within the Housing Act 2004 and although there have been delays, the legislation will now definitely take effect from 6th April 2007.

Unfortunately although 6th April is just around the corner, not all the information and literature has yet been produced so guidance can be sketchy. Certain things, however, are very clear. The law allows for three schemes, one custodial scheme and two insured schemes.

The custodial scheme is essentially a government scheme that will be run and operated by Computershare. This scheme 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 'insured' schemes.

Ashton Burkinshaw, a leading residential letting and property management company in the southeast, is a founder member of the TDS (Tenancy Deposit Scheme), an 'insured' scheme that is administered by The Dispute Service. Indeed, one of Ashton Burkinshaw's directors, Lindsay Ostervig 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.

The TDS is open to all, landlords or agents. There will, however, be differing levels of membership fees. Any agent, like Ashton Burkinshaw, who is a member of a professional body such as ARLA (The Association of Residential Letting Agents) will pay a far lesser sum; an agent, not belonging to any trade association, will pay far more.

Some landlords have, historically, held the deposits themselves and for these there will be a 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 is very surprised to learn how many landlords and even practising agents are not aware of this looming change in the law. In fact it is quite scary to think that these landlords and agents will be breaking the law and committing an offence!

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 our clients as we hold deposits on all of our managed properties and on most of our 'let only' properties too. Ashton Burkinshaw is pleased to say that its fees for TDS will be kept to a minimum for clients.

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. We feel 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.

The NLA (National Landlords Association) has created its own "insured" scheme. Landlords will be able to join this scheme and pay a membership fee that will also cover an insurance premium. The fees for this scheme have not yet been made public.

The service provided by these three authorised deposit protection schemes is free to tenants.

Government has stated that there will be much publicity over this new legislation. We very much hope so. Tenants must be made aware that it will be against the law from April 6th 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 be given proof of the whereabouts of 'their' money.

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.

Picture: Frances Burkinshaw, Director of Ashton Burkinshaw

