

# Dickinson Manser

S o l i c i t o r s

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## **HOUSING ACT 1988** **ASSURED SHORTHOLD TENANCIES (AST)**

1. The Housing Act 1988 enables a Landlord to grant an AST which will give no lasting security of tenure and enables the Landlord and Tenant to agree a market rent.
2. Although there are no formalities to be complied with when creating an AST, we would advise that a Landlord should not give the Tenant the keys and allow him or her to take possession until references are received (and satisfactory), the Tenancy Agreement signed and the first months rent and deposit received.
3. It is important to note that all deposits taken by Landlords of AST tenants after 6<sup>th</sup> April 2007 must be held in accordance with an authorised Tenancy Deposit Scheme and that Landlords face significant consequences for non-compliance. If you require further information on this subject please contact us for a copy of our leaflet on Tenancy Deposit Schemes.
4. Although the 1988 Act allows the Landlord and Tenant to agree a market rent when granting the AST, the tenant does have the right to apply to the Rent Assessment Committee (RAC) to review the rent although such applications are seldom made. Even so, the Committee's determination of the rent is still to be on a market rental basis when the rent concerned would be compared with other rents for similar properties.
5. An AST has no minimum or maximum term. A Landlord can grant a tenancy for say six months and, when that expires, just allow the tenancy to follow on the same terms although, if the rent is due to be increased (say after a year) then the amount of the increase agreed should be recorded in writing.
6. If the Tenant is to vacate at the end of the term, then, as a pre-requisite, two months prior notice requiring possession must be given by the Landlord. This can expire on the last day of the tenancy or at some later date. Then, if the tenant is unable or unwilling to vacate voluntarily, Court Proceedings for possession would have to be taken in the usual way. Possession of the premises will not be given in the first six months of the tenancy however short the agreed term.
7. Generally, we advise that the law stationers printed forms of Tenancy Agreement be used but with any amendments appropriate for a particular case.

8. If the property is mortgaged, then, of course, the Lender's consent to the letting should be obtained before any tenancy is created. This will often trigger a surcharge on the mortgage payments.
9. References should be taken up prior to any new letting preferably from the prospective Tenant's Bankers (the prospective Tenant's consent is required and a fee is payable), previous Landlord and one other (e.g. Employer).
9. If the rent is fixed by the RAC then that rent continues until the end of the term of tenancy. Thus, it is prudent not to grant an initial term for too long, we usually advise six or twelve months but the latter is more likely to trigger a charge for stamp duty. Terms that are too short are an administrative nuisance, whilst a year is quite long enough to see if the tenant is likely to be satisfactory.
10. These Notes are for guidance only. Please ask for advice before proceeding in any particular case.

This fact sheet is one in a series of publications designed to provide practical guidance on matters of interest to clients. Copies of all our fact sheets may be obtained free of charge on request from any of our Partners or Staff.

We believe the information contained herein to be correct as at April 2007. Whilst all possible care is taken in the compilation and presentation of this fact sheet, no responsibility for loss, occasioned by any person acting or refraining from acting as a result of the material in this fact sheet, can be accepted by the firm or the author.

The information in this Fact Sheet is not designed to be a definitive text on this issue. On the contrary, it is designed to merely serve as a guide to supplement what we can advise you on directly. If you have any particular queries, especially where the circumstances of a matter make it unusual, you should seek further advice.