

SWLA Membership Enters the 21st Century

After due consideration of usage and costs, we will no longer issue annual membership cards as a matter of course. However, a new card may be requested if desired via the office or at a General Meeting.

How to Renew Membership-

You can renew from September 2016. Your membership will then last until 31st October 2017. Consider early renewal to avoid losing access to the member's area.

IMPORTANT – when renewing always quote your name and membership number.

Membership will remain at only £40 per annum for 2016-2017.

The easiest way to renew is by BACS to sort code – 206810, account number 50498610. Remember to quote your name and membership number as reference **OR** Renew by cheque or cash to 30 Dale Road, Plymouth PL4 6PD. Please do not send cash in the post.

This year, for the first time initial renewal notices will be emailed in September 2016. If you require a postal copy, please contact the office. Once we receive payment and process your renewal a receipt will be emailed unless a paper copy is specifically requested.

We have agreed this new process of renewing in order to keep membership fees as low as possible. We are aiming to bring the Association into the 21st Century by becoming greener, more efficient and making more use of electronic communication.

SWLA are delighted to announce that our new web-site will be coming soon. The new web-site will still contain all the information currently available but with additional areas such as improved training information and a new Trade Directory.

Thank you for your continued support.

August 2016

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Empty property Owners Warned of Fake Landlord Scam

The National Fraud Intelligence Bureau (NFIB) reports that empty property across the UK is being used by fake landlords to commit rental fraud. Criminals have been illegally entering vacant premises changing the locks and then advertising the property for rent. Tenants have moved into the building and have been evicted by the real owners – leaving them homeless. Real landlords not only face the emotional and financial crisis of having to evict unsuspecting tenants, but also risk damage to their reputations and the cost of replacing locks and repairs to return the property to its original state. Guy Other CEO for property management experts ORBIS said “Landlords have an obligation to ensure that their rental property is not being used inappropriately. By employing rigorous security and monitoring measures on their sites, managers can protect the public from falling victims to these crimes. However unsuspecting tenants are not the only vulnerable party in fake landlord scams. The cost to landlords in terms of monetary and reputational loss could be huge potentially”. To help landlords secure empty premises ORBIS has issued the following advice –

- Be wary of anyone calling up to ask for details of your property,
- Arrange regular property inspections
- Secure vacant buildings to protect them from break-ins
- Keep an eye out for your property being listed on-line.

My Deposits

From April 2016, mydeposits launched a new free to use custodial deposit protection product designed for all letting agents and landlords in England and Wales.

If you prefer using a custodial based deposit protection service there will now be a choice of scheme provider. From 1st April 2016, there will be three government backed providers of custodial tenancy deposit schemes – mydeposits, Tenancy Protection Scheme and Deposit Protection Service. My deposits new custodial product will sit alongside the existing mydeposits insurance based product (that enables landlords and agents to hold the deposit) allowing members to mix and match how they protect their deposits.

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Source: Martin & Co Customer Satisfaction Survey Jan-Sept 2015

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Serving a Section 21 Notice

We have been asked by lots of members about the earliest date they can serve a Section 21 notice from 1st October 2015.

Tenancies and notices work slightly differently in respect of time. For example when drafting an Assured Shorthold Tenancy agreement using 6 months it would be from 12 November 2015 to 11 May 2016 (notice how the end date is the day before)

However, when drafting a Section 21 notice, it must be 2 clear months so for example 14th April 2016 to 14th June 2016 (ignoring dates added for service at the moment).

From 1st October 2015, for a new fixed term AST the earliest date a Section 21 can be served is 4 months plus 1 day. For example if a new AST is granted from 10th October 2015 to 9th April 2016 the Section 21 notice cannot be served until 11th February 2016 at the earliest as four clear months is 10th October to 10th February. We should therefore wait until this period has passed and serve the Section 21 from 11th February 2016 onwards.

It may be okay in this example to serve the Section 21 on the 10th February 2016 but SWLA would advise never to risk it in fear of unnecessary argument in court. Better to wait an extra day and be outside the four months.

If in doubt – SWLA Training Day – Repossession 6th October 2016.
Contact the office for more information.

Insurance

When your insurance on your rental property is due for annual renewal, please obtain a quote from BOTH our preferred insurance companies to ensure you get the best cover at a competitive cost.

Excaliber Associates – 01752 340183

Batemans Group Landlords Direct – 01926 405882

Losing Buy to Let Tracker Legal Fight Costs Building Society £27.5 Million

The West Bromwich Building Society has lost a court case over varying mortgage interest rates for buy to let landlords whose loans tracked the Bank of England base rate.

The lender offers buy to let mortgages on the basis that the interest rate would rise by a fixed amount against the Bank of England base rate. Despite the base rate sticking at a low of 0.5% from March 2009, the lender hiked the rate by close to 2% in December 2013. The West Bromwich Building Society claimed that in its terms and conditions such a rise was permitted to reflect the market conditions even though the official interest rate was not changed. The lender won a legal challenge at the Commercial Court against an action group of 350 landlords. The decision was appealed and overturned in the Court of Appeal. The building society was ordered to compensate around 6,000 landlords who had to pay extra mortgage costs as a result of the lender's action. The cost to West Bromwich Building Society is estimated at 27.5 million. West Bromwich shares which were suspended at one point pending the court ruling dived by 19% after the cost implications were announced. The lender has stated that reimbursing landlords will put the building society into a full-year loss.

As a result of the West Bromwich case, buy-to-let landlords are also considering similar actions against the Bank of Ireland and Skipton Building Society's Amber Home Loans. Both allegedly raised tracker rates without a corresponding Bank of England rate increase.

Bristol Rogue Landlord Funding

Bristol has successfully bid for central government funding to tackle rogue landlords. Since February unannounced evening visits have been carried out on suspected properties. The properties have been selected where intelligence has shown there are poor business premises, the likelihood to also to have poor residential premises. Officers are co-ordinating with police, a trafficking organisation and immigration officers.

So far these visits have been carried out over 12 evenings, resulting in 80 inspections, they have found 4 unlicensed properties, 11 risks of serious falls and a number of fire safety issues. They have also come across council tax avoidance, prostitution, trafficking and safe guarding issues with children. In addition there is a marketing campaign to encourage tenants to come forward.

Managing Tenants and their Utility Bills

Q: Who pays for utilities in a rental property?

A: It makes sense for the person who is using the utility to pay for it. The most common arrangement is for the tenant to be signed up with the utility companies directly, although in certain cases, for example some house in multiple occupation this will not be possible. Ensure that you include ALL meter readings on the inventory and check-out report.

Q: Who selects the suppliers?

A: If the tenant is the direct customer of the supplier, they have the right to choose which supplier they wish to use. Many tenancy agreements state they must seek permission to transfer the account (in the main) so the landlord knows where the account has gone. Permission should not be unreasonably withheld. It is worth noting however that whilst some suppliers are cheaper, charges may be levied from changing meters from, or to prepayment types, if the account is with another supplier. If this is the case, the landlord's permission could be conditional on covering any such charge at the end of the tenancy to revert any meter change requested by the tenant. The roll out of smart meters will make things simpler in this respect, enabling billing or pre-payment to be switched remotely without the need for a physical meter change.

Q: What happens where the tenant is not the direct customer of the supplier?

A: Some landlords offer an all-inclusive cost for the accommodation regardless of the usage. Others pay the utility bill and resell i.e effectively recovering the actual costs from the tenant(s). Ofgem sets the maximum rate at which natural gas (but not liquefied petroleum gas) and electricity can be resold, which since January 2003 has been the price the reseller has paid for it including and standing charges. Tenants are entitled to request to see evidence of these charges if being charged separately for utilities. How costs are apportioned between different tenants must be explained to tenants if they ask. Where sub-meters are used the meter units readings should be checked. Unlike standing charges, costs for the metering system cannot be factored into the resale price which is effectively a buildings cost recovered normally by factoring into the rent or by way of a service charge. Where no sub-meters are in place, landlords need to consider how best to estimate any particular tenants share and also be able to explain their reasoning if asked. Examples could be based on floor area, number of occupants or energy ratings of appliances.

Continued next page...

Q: What are the Heat Network regulations about?

A: Landlords of shared accommodation where heating of water and/or space is included, are required to comply with the Heat Network (metering and Billing) (Amendment) Regulations 2015. If you let accommodation with a single heat source supplying multiple dwellings, including HMOs, bedsits and properties converted into flats relying on a central heat source, you need to notify the National Measurement & Regulation Office using their template forms, undertake viability assessments in respect of metering for individual units and install meters where viable. This needs to be done by 31st December 2016. Although it is unlikely that the majority of HMOs will require remedial work, assessments are required to comply with the regulations. Landlords of self-contained properties whose tenants are directly responsible for their utility bills and contract directly with utility providers are outside of the scope of the regulations. This may change with Brexit.

Q: Are landlords liable for unpaid utility bills of a former tenant?

A: If the utility accounts are in the tenant's name then payment is a matter between the suppliers and the tenant and generally suppliers cannot require landlords to pay. When the tenant moves in you should notify all the suppliers of the tenant's name and the date the tenancy started. This should also be done even when pre-paid meters are fitted as the rate set could be inclusive of clearing arrears which the new tenant should not pay for. You need to pay the bills for any services used during a void period. If the electricity or gas company is attempting to charge you, when you have notified them of the name of the new tenant you can complain to the Consumer Focus. The Landlord Tenant Address Portal (www.landlordtap.com) can be used to inform water billing companies of tenants details in England and Wales. Since January 2015, water companies wholly or mainly in Wales must be made aware of tenant details within 21 days of the tenancy commencing. Failure to do so results in the landlord becoming jointly and severally liable with the tenants for water and sewerage charges.

Q: How can landlords establish which companies are supplying gas and electricity to a property?

A: Previous tenants may have changed suppliers without informing the landlord. The Meter Number Enquiry Line 0870 608 1524 is a dedicated number used to establish who is registered as the current gas supplier at the premises using the Meter Point Reference Number (MPRN). The enquiry line can also help you find your MPRN. You can also find out your electricity supplier by contacting your local electricity distribution company and asking for their Meter Point Administration Service.

(From NLA)

Upcoming Landlord Training Courses

How to get your property back – Repossession

Thursday 6th October 2016 - 9.30am-4.30pm. Venue – Astor Room, Plymouth Guildhall, Royal Parade, Plymouth PL1 1HA. If you are accredited this will count towards your CPD hours, but the course is open to all.

Cost for SWLA members - £65 for full day. Non SWLA members - £75 for full day.

Course will cover – Completing Section 21s, completing form 6A, completing form 3 (Section 8), abandonment rules and procedures, move out disputes, possession claims on-line and when to use, court procedure including demonstration of online form completion.

Landlord Accreditation Course

Wednesday 19th October 2016 – 9.30am-4.30pm. Venue – Astor Room, Plymouth Guildhall, Royal Parade, Plymouth PL1 1HA.

Cost for SWLA members - £65.00 for full day. Non SWLA members - £75 for full day.

Course covers ASTs, deposits, Section 21s, Section 8s, HMOs, Gas & Electrical safety, inventories and much more.

The course will provide you with all the skills needed to start, manage and finish a tenancy.

The course can lead to Accreditation if required. Free accreditation for SWLA members.

½ Day Landlord Training Courses

Wednesday 23rd November 2016. Venue – Astor Room, Plymouth Guildhall, Royal Parade, Plymouth, PL1 1HA.

Morning Session – 9.30am-12.30pm – Legal Update

Course will include – Housing and Planning Act 2016, Immigration Act 2014 and amendments in Immigration Act 2016, hidden letting agents fees, minimum EPC rating in 2018, Supreme Court decisions and many other current topics

Afternoon Session – 1.30pm – 4.30pm – Inventories

Move in and maintaining a good property condition.

Cost for SWLA members - £35 per ½ day or £65 for both courses

Cost for non SWLA members - £40 per ½ day or £75 for both courses.

Places for all courses will be secured upon receipt of payment. Book your place through the office on 01752 510913.

Courses will be instructed by Stephen Fowler from Training for Professionals

Testimonial

SWLA were delighted to receive the following testimonial from a longstanding member.

“Good afternoon I just wanted to say thank you to South West Landlords for all the help I have received 'over the years'. I am sending special thanks to Gillian and Sarah who have always been extremely kind and helpful , and especially so recently with some problems that I have had selling the last of my rental properties. It is just so important to be able to ask advice, even about a small matter, and know that the advice will be given in such a sensible, down to earth way and with a lot of thought. You certainly go 'the extra mile'. I will, as I have always done, recommend anyone to you and know that they will be helped with everything that it is possible to be helped with, in a very understanding manner and also treated as I have been with respect and of course with a sense of humour when possible. I would also like to thank Alan and wish everyone good health and happiness in the years to come.”

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THINK CAREFULLY BEFORE SECURING OTHER DEBTS AGAINST YOUR HOME. YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP PAYMENTS ON YOUR MORTGAGE.

Human Rights & Property Rights - McDonald V McDonald in the Supreme Court

Background – the appellant Fiona McDonald had been living in a property purchased by her parents as a home for her in 2005 with the assistance of a loan from CHL which was secured by way of a registered legal charge. From June 2005, the respondents granted a series of ASTs to the appellant the last of which was granted in July 2008 for a term of one year. Owing to financial difficulties, the respondents failed to make loan repayments and CHL appointed A Hughes and J Smith to act as receivers. The rent was regularly paid but arrears persisted. The Receivers served a notice in the name of the appellant's parents, on the appellant on 13/01/12, indicating that they would be seeking possession of the property then issued proceedings in the name of the parents for possession of the property in Oxford County Court. His Honour Judge Corrie gave his judgement on 22/04/13, and held that the court was not required to consider the proportionality of making an order for possession against a residential occupier where the person seeking possession was not a public authority and as Section 21 (4) of the Housing Act 1988 required him to make an order for possession against a person holding under an AST who had been served with an appropriate order, he had to make such an order. The judge added that, had he been entitled to consider proportionality, he would have concluded that the claim for possession was disproportionate and dismissed the action. The appellant then appealed to the Supreme Court arguing that being required to leave the property breached her right to a private and family life as outlined in Article 8 of the European Convention on Human Rights. The judges did not agree with this and rejected the appeal.

Supreme Court Ruling Edwards v Kumarasamy

The Supreme Court has overturned an appeal by Mr Edwards (the tenant) who was suing Mr Kumarasamy (his landlord) over a fall on an uneven paving stone on a path leading to a communal area. Mr Edwards sued for compensation on the grounds that his injury was caused by Mr Kumarasamy's failure to keep the paved area in repair in breach of the Landlord & Tenant Act 1985. At the first hearing Deputy District Judge Gilman accepted Mr Edward's case and awarded £3,370 in damages. A legal wrangle ensued and the case ended up in the Supreme Court who overturned the decision of the Court of Appeal and found in Mr Kumarasamy's favour. In addition to overturning, the judge went further stating that a landlord needs to have been notified of disrepair before they are liable for injury. The decision is good news for landlords. The court finding in favour of Edwards could have set a precedent for similar cases which could see tenants sue landlords over injuries outside areas they are liable to maintain.



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Housing and Planning Act

The Housing and Planning Act 2016 received a Royal Assent in May 2016 and includes a number of strategies to deal with Rogue Landlords including:

An introduction of banning orders for repeat offenders

A database of rogue landlords/property agents

Extension of rent repayment orders

Civil penalties of up to £30,000

A more extensive “Fit and Proper Person” test.

Sharing Tenancy Deposit Protection Scheme data amongst Government agencies and councils

Powers to bring in requirement for electrical certificates and Client Money Protection for Agents.

In respect of Civil Penalties, Rent Repayment Orders and Fit and Proper Person Test, the Government expects to publish guidance on these aspects of the Act, in March 2017 with the measures taking force in April 2017.

Some of the other measures will require new regulations it is expected these will be published in early 2017 and the measures coming into force in October 2017.

Another major point in the new Act is the proposed change in the law on tenant abandonment of a rental property. A new statutory code will give a landlord the power to recover a property if the tenant has abandoned it, (if let under an assured shorthold tenancy) without serving a Section 21 Notice or obtaining a possession order.

LORDS UNITE TO CHALLENGE UNFAIR MORTGAGE INTEREST RELIEF PLANS

A group of Tory peers has urged George Osborne to rethink plans to cut Mortgage Interest Relief for landlords. In an article for The Times, Lord Flight, Lord Howard, Lord Lytton and Lord Cathcart say the Government’s assault on private-sector landlords is ‘misguided’ and will make the UK housing crisis worse, forcing up rents and making it harder than ever for tenants to save for a deposit. The Lords challenge the chancellor’s claim that restricting Mortgage Interest Relief for landlords to the basic rate of income tax, will ‘level the playing field’ between landlords and homeowners.

They also quote the findings of an RLA survey of more than 1,200 landlords, which revealed that of those paying the basic rate of income tax, more than 60 per cent said that the changes would push them into a higher rate of tax despite their income not increasing.

A New Fire Safety PRS Awareness Application

A new interactive tool has been launched to make it easier for landlords and tenants in the private rented sector to understand risk from fire, risk mitigation options, fire detection and fire alarms. Each user of the app is taken through a basic risk assessment, which they complete identifying hazards, understanding the consequences if fire risk and identifying the remedial action required. Participants are guided through this process using a range of realistic examples. The tool allows local fire and rescue services to simultaneously increase awareness of fire safety and access knowledge levels. Designed by Firemark Education and G2G3, the new tool is part of a national fire safety programme and is being run in partnership with the Chief Fire Officers Association.

The app is available on iTunes. To find out more visit www.firemarkeducation.com



Landlords Direct from the Bateman Group Exclusive rates for South West Landlord Members

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Email: schemes@bateman-group.co.uk

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Deed of Guarantee Form

SWLA have received several queries from members regarding Clause 1 which reads –

1. The Guarantor hereby acknowledges receipt of one penny being consideration for the granting of this guarantee and hereby covenants with and to the landlord that: (a) If the Tenant shall make any default at any time during the term of the Tenancy Agreement and any extension of that term, whether evidence in writing or not, in payment of the rent or in observing or performing any of the covenants or restrictions contained in the Tenancy Agreement, the Guarantor will pay the rent and observe and perform the covenants.

Members have wanted to know whether it is entirely necessary to take receipt of the penny.

We have clarification for our members as follows –

A guarantee is a contract and so it must have consideration. SWLA suggest it is best in the tenancy agreement. If it is a separate agreement, as long as it is executed prior to the start of the tenancy, then the consideration will be 'the granting of the tenancy' in which case the Penny is not necessary.

However if the guarantee is created AFTER the tenancy has started, it must be by DEED in which case consideration, such a one penny, is necessary.

SWLA are often asked about making checks on a guarantor – You would normally check a guarantor the same as a tenant. You can use a tenant referencing service to carry out a credit check on the guarantor. You can also optionally obtain an reference from an employer. SWLA would always recommend that the guarantor is a home owner (but you would have to make this clear to them at the outset). You can check that the guarantor is the owner of a said property by using the Land Registry and this will cost about £3.00 at eservices.landregistry.gov.uk.(find a property).

Deposit Reminder

Private landlords are reminded that they must place their tenants' deposit payments in an approved protection scheme. There are three approved tenancy deposit schemes in England and Wales. The schemes are:

Deposit Protection Service

My Deposits

Tenancy Deposit Scheme

Deposits made by a third party such as a tenant's parent should be put into a scheme. If a landlord accepts a valuable item as a deposit like a car or jewellery, these do not have to be put into a scheme. Landlords or letting agents must put the tenants' deposit into a scheme within 30 days of receiving it. At the end of the tenancy the deposit must be returned within 10 days of both parties agreeing how much the tenant would receive back. In the case of a dispute the deposit will remain protected until the issue is settled. If landlords do not protect their tenants' deposits then tenants can apply to a County Court to get the landlord to do what they are supposed to have done. They can take this action at any time during the tenancy. If the Court finds that the landlord has not protected the deposit the landlord can be ordered to repay the deposit to the tenant or pay it onto a custodial scheme within 14 days. The Court may also order a landlord to repay the tenants up to 3 times their original deposit within 14 days of making the order. At the end of the tenancy the Courts may decide that the tenants do not have to leave the property when the tenancy ends if you didn't use an approved tenancy deposit scheme when you should have. There is a free dispute resolution service as part of each tenancy deposit scheme. This service is for those tenants and landlords who disagree how much deposit should be returned.

SWLA Trade Directory

Our new web-site with trade directory will be up and running very soon. If you have a product or service that would benefit landlords and you would like to advertise on the directory, please contact the office on 01752 510913. The cost for placing an advert will be £50 per annum .

NOTICE

SWLA stationery

SWLA stationery may change without notice so before using a document, make sure that you use the latest one on the SWLA website, by checking the issue date or check with the SWLA office at the email address or telephone number shown below.
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Greg Yates Solicitor

Greg Yates is with Howard & Over on 01752 556606 and will continue to support our members.

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WBW Solicitors of Torquay

Will support initial telephone calls to discuss your problem.
Telephone Karen Barnard
01803 407636

Rory Smith, Enigma Solicitors

Rory Smith is a highly experienced specialist in a wide range of disputes and their resolution. Rory can also recommend to you other law firms in Plymouth who will all offer free initial advice to SWLA members in other specialist areas.
Contact Rory on 01752 600567 or by email at rls@enigmaw.com Enigma is located 5 minutes away from SWLA's office at Farrer Court, 77 North Hill PL4 8HB The office is open 8:50 a.m. until 5:00 p.m. weekdays.

Richard Gore Solicitor in Bristol
Richard is with Greg Latchams on 0117 9069424 and will support initial telephone calls to discuss your problems

E-Mail address

If you change your email address **PLEASE TELL US** otherwise you might miss important messages from us!

SWLA

South West Landlords Association

Published August 2016

Produced by Mark Price

By The South West Landlords Association Ltd 30 Dale Road, Plymouth PL4 6PD

You can contact our ansaphone service on 01752 510913 or E-mail us at swlandlords@hotmail.com, visit our website at www.landlordssouthwest.co.uk
Or visit our office in Dale Road, it is open week days from 10 to 3pm

The Association provides assistance and advice. However, the Association does not hold itself out as providing specialist legal advice and therefore whilst written and oral advice is given in good faith, no responsibility can be accepted by the association, its officers or members for the accuracy of its advice, or shall the association be held liable for the consequences of reliance upon such advice.