

September/October/  
November 2010

**ASTBERRYS**

Newsletter

We are property specialists for:

- Lettings
- Short Let Apartments
- Sales
- Block Management

We operate in:

- South Kensington
- Gloucester Road
- Earls Court
- Knightsbridge

#### WHO ARE WE?

We are letting and managing agents for individual flats and blocks of flats in Kensington and Chelsea. We will also let to you our own properties and excellent short term apartments. We carry out all building works, refurbishment and maintenance of flats and blocks. We offer in-house legal advice on all aspects of the letting business and property law. We also carry out valuations and property sales.

We are members of the Association of Residential Letting Agents and we are authorised as appointed representative by the FSA to conduct insurance mediation activities. One of our directors is a barrister. We have a clear and transparent fee structure. We only bill for work we do, for example we do not charge second year letting commission on properties, which we do not manage. We offer a straightforward pricing menu for maintenance and building services.

Our regular Newsletter covers areas of interest concerning the management and legal aspects of property, the sales and letting markets.



#### ***Penywern Rd, SW5***

**Let at £575 pw**

Elegant and grand – 90m<sup>2</sup> raised ground floor 1 bedroom flat, comprising conservatory, kitchen, dining room, ambassadorial reception room, double master bedroom, bathroom and cloak room.

We have a continued demand for good quality flats in the SW5, SW7, SW10, W8 areas for our excellent applicants. If you have a similar property to let please contact us.



***Philbeach Gardens, SW5***  
**To let at £545 pw**

Modern and bright, 2 bedroom, 2 bathroom flat with outside space. Spacious, 90m<sup>2</sup>. Wooden floors throughout. Offered unfurnished or furnished.

We always have a selection of good quality flats to let. Visit [www.astberrys.co.uk](http://www.astberrys.co.uk)

**THE RISE IN THE THRESHOLD FOR ASSURED SHORTHOLD TENANCIES ["AST"]  
ALL TENANCIES FROM 1 OCTOBER 2010 ARE ASTs**

Up until the end of September if the annual rent on a property was above £25,000 p.a, equivalent to £480 per week the tenancy was not an AST. Since the weekly rent on a two bedroom flat in the Royal Borough of Kensington and Chelsea is generally in excess of £500 per week most larger flats and almost all houses did not count as ASTs before 1 October.

From 1 October the law has changed. After this date all properties let at a rent up to £100,000 p.a, equivalent to £1,923 per week will be ASTs. This means that from now on only the most expensive properties are likely to remain common law tenancies and so outside the scope of the legislation which applies to ASTs. Landlords who could previously ignore the AST legislation now cannot.

What does this mean in practice? The first point to note is that now a landlord, unless the rent is over £100,000 p.a. cannot keep a tenant's deposit. The deposit must, within 14 days of receipt, be lodged with one of three approved schemes. In order to find out more about the operation of these schemes please go to [www.astberrys.co.uk](http://www.astberrys.co.uk) and click on the Newsletter for December 2009/January 2010. At Astberrys we are members of the largest insurance based scheme, Tenancy Deposit Solutions. We are also expert in the proper administration of deposits. Beware, many agents are not. This may have serious consequences for you as a Landlord. If the Deposit is not properly administered then you may be ordered by a court to pay your tenant 3 months rent by way of compensation and you will have greater difficulties in evicting him if he refuses to leave at the end of the agreement or he has not paid the rent or is in breach of other terms of the letting agreement. The second point to note is that all the provisions of the Housing Act 1988 apply to ASTs, which following the October rise will mean most lettings. For example, you cannot assume that at the end of the tenancy agreement your tenant will leave. In order to ensure that he does special notices with statutory time limits have to be served, even though the agreement states that the tenant must vacate the property at the end of the lease. If you want to know more about how the provisions of the Housing Act 1998 may affect your property, then please go to [www.astberrys.co.uk](http://www.astberrys.co.uk) and click on the Newsletter for April/May 2010.

Any tenancy created after 1 October will now be an AST unless the rent is more than £100,000 p.a., but the changes will also apply to tenancies created before 1 October, which were not initially ASTs.

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Our specialist property law team deals with  
...leasehold enfranchisement...service charges...  
residential and commercial tenancies

We are delighted to accept instructions from Astberrys  
and their clients and will be pleased to advise in relation  
to all areas of property and landlord and tenant law.

*Clients of Astberrys, who wish to keep up with  
recent property law developments  
are welcome at*

**The *Property Law* Website**

**[www.propertylawuk.net](http://www.propertylawuk.net)**

*'The online property law  
updating service'*

What happens to any deposit held by a landlord or agent in relation to a tenancy entered into before 1 October? Opinions differ on this but the safe thing to do is ensure that the deposit is now paid into one of the three statutory schemes.

What happens if you want to terminate the tenancy? You can now only achieve this by following the provisions of the Housing Act, even though the Act did not apply to the agreement when it was originally made. You must now serve the appropriate notice within the specified time period or you will not be able to regain possession of your property even though you have a contractual right to insist that the tenant goes. That would have been sufficient before 1 October. Now it is not.

Finally remember that if you renew a tenancy which was originally entered into before 1 October then it will automatically be an AST, unless the new rent is over £100,000 p.a. Any deposit you or your agents are holding will have to be paid into one of the statutory schemes and the appropriate Housing Act notices will have to be served when you want the tenant to leave.

The main point to note is that for most lettings, as of 1 October 2010 the rules have changed. If you are in doubt as to your obligations under the new regime please talk to us. One of our directors is a barrister and we are members of the ARLA. We will be pleased to help you let your property and ensure that you are fully compliant with the recent changes.



### ***Hogarth Rd, SW5***

**Sold: £230,000**

**(Equivalent to £910 per ft<sup>2</sup>, un-modernised)**

A compact second floor, 1 bedroom flat of 23.5 m<sup>2</sup>, which requires full modernisation.

If you are looking to sell a property suitable for a professional buy to let investor, then please come and speak to us or telephone 0207 370 0123. We have cash buyers ready to purchase similar properties.

## SECOND YEAR COMMISSION. WHAT IS HAPPENING?

In the Summer of 2009 the High Court gave judgement in a case involving the terms and conditions on which Foxtons used to contract with landlords. The Court decided that the term requiring payment of second and subsequent year commission could not be enforced and fell foul of consumer protection legislation. For a full report of the case please go to [www.astberrys.co.uk](http://www.astberrys.co.uk) and click on the Newsletter for August/September 2009.

Now, over a year on what has happened? Agents still charge second year commission. They are allowed to do so. The Foxton's case decided that Foxton's old terms [they have since revised them] were wrong. The Court did not decide that as a matter of principle second year commission is always unlawful.

However in order to be able to claim second year commission it is necessary to flag this up very clearly in the terms and conditions which the agent asks you, as landlord to sign. It will not do to hide the clause relating to renewal commission in small print at the bottom of the last page. Most agents have taken the Foxton's case to heart and now make sure that the obligation to pay second year commission appears in a prominent position in their terms and conditions.

Many agents have now also reduced the level of commission they charge a landlord for a second or subsequent year if the same tenant stays on. Some have also limited to two or three years the maximum period for which they will claim such commission.

An interesting question still waits a clear answer from the Courts. If the clause in the agreement with the agent, under which you are to pay second year commission, is not valid can you reclaim any past commission that you have already been billed for and paid? There has been one case in Lambeth County Court where a district judge [the most junior type of judge] appears to have allowed such a claim against a firm of London estate agents and permitted a landlord to recover over £3,000 in past commission. However it may well be that the legal reasoning of the district judge was wrong. It remains to be seen if a higher court will be asked to deal with this issue and clarify the position. If you want to know more about reclaiming past commission and the sum involved is more than £5,000 then please contact one of our directors, who is also a barrister at [mkg@astberrys.co.uk](mailto:mkg@astberrys.co.uk) or telephone 0207 370 0123.

At Astberrys we think that second year commission, when all the agent has done is to find a tenant in year one, is "money for old rope". We have never charged it. We have noticed that a small number of other agents are adopting the same approach. After all, in the case of commercial premises a landlord does not normally pay renewal commission after the first year [and the rent and consequential agent's commission on the letting of office suits or shops in Kensington and Chelsea is often comparable to the rent and commission on the more expensive residential lettings]. Outside London renewal commission on residential property is also unusual in many parts of the country. Why pay it? If your tenant stays on, Astberrys only charge a flat fee of £375 plus VAT if you want us to negotiate the new rent and draw up a new agreement. Of course if we manage your property then in year two and subsequent years we do charge a percentage of the rent but we think this is fair - we are providing a service! Even then we give, to our landlords whose properties we manage, a discount in year two to reflect the fact that we do not have to find a new tenant. If you have a property to let in Kensington and Chelsea then please contact us at [business@astberrys.co.uk](mailto:business@astberrys.co.uk) and do not pay the renewal commission still charged by many agents.



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