



# Small Self Administered Scheme (SSAS)

## PROPERTY LETTING GUIDANCE NOTES

## Property Letting – Guidance Notes

These notes should be read in conjunction when completing the Property Letting Form.

A solicitor will need to be appointed, and can be chosen by you, to prepare the Lease. The costs of the solicitor can be borne by your pension scheme or may, by negotiation, be met by the tenant.

## Property Details

If you have a mortgage over the property it will most likely be necessary to obtain the consent of the mortgage company to putting a new letting arrangement in place. This should be dealt with by your solicitor.

By law an Energy Performance Certificate (EPC) must be provided to tenants under a letting arrangement of buildings that are required to meet Minimum Energy Efficiency Standards, other than renewal leases. From 1 April 2018 an EPC with a grade of A-E must also be provided for renewal leases. From 1 April 2023 an EPC with a grade of A-E must also be provided for all lettings including those that are part way through. An EPC must be provided to the tenant in accordance with the law in force at the time of completion of the lease and a copy sent to us. Professional advice should be sought where an EPC has a grade of F-G.

## Letting Arrangements

There are a number of letting arrangements that can apply. It is important that you have formal legal advice to determine what kind of letting arrangement you intend to create, and whether it is appropriate.

**Lease** - a Lease is defined as a contract by which one party conveys specific land, property, services etc to another for a specified time, giving them exclusive occupation, in return for a periodic payment.

**Farm Business Tenancy** – A Farm Business Tenancy (FBT) is a type of Lease that specifically relates to agricultural land which on the whole must be at least partly farmed during the life of the tenancy.

**Licence** – a licence does not confer any legal interest in the land, but rather creates a personal right or privilege. This means that under a licence, permissions are granted to the Licensee to use the Licensor's land and without that permission the Licensee's use of the land would be trespass. A licensee has no right to exclusive access to the land/property.

**Tenancy at Will** – a tenancy at will is occupation of property owned by another until such time as the landlord gives notice of termination of the tenancy which may be given at any time. A tenancy at will is created by agreement between the tenant and the landlord, but it cannot be transferred by the tenant to someone else since the landlord controls the right to occupy.

## Letting Details

### Why is a new Lease / Licence / Tenancy required?

There are a number of reasons why a Lease may be required. Such as:

- The property has been vacant for some time or has been developed and you have now found a tenant.
- The existing Lease has come to an end and you have found a new tenant.

- The existing Lease has come to an end and the same tenant wishes to remain in place and a new Lease is needed.
- By agreement the existing Lease is to be terminated and new Lease is required for a new tenant.

### **What are the main details of the letting arrangement?**

It is useful for us at the outset to know some of the outline terms of the Lease. These are set out in the form but alternatively you could provide us with a copy of the Heads of Terms.

We refer to Part II of the Landlord and Tenant Act 1954 and under this generally speaking a tenant has the right to renew their Lease at the end of the Lease term. Legal advice should be sought on whether or not you should contract out of the LTA. If there is a Lease in place at present that is 'contracted out' of the LTA it is very important that a new lease is put in place before the expiry of the old lease, otherwise the tenant may gain rights to occupation that were not intended.

### **Connected Party**

It may be that a tenant is a person or company that is connected to you – this has potential implications on property transactions, which are covered later in these notes. Connected parties are broadly speaking members, their families, close relatives and their spouses, partners and any company associated with a member or their family. A full definition of connected parties is given in sections 993– 995 of the Income Tax Act 2007 and sections 1122 and 1123 of the Corporation Tax Act 2010.

### **Valuations**

If this is a connected party transaction it will be necessary to appoint an independent Royal Institute of Chartered Surveyors (RICS) accredited surveyor to provide a valuation (dated within 6 months of the date of the Lease) of the property, market rent and rebuild costs addressed to the pension scheme trustees. This is necessary to ensure that the tenant or the pension scheme are not unfairly benefitting from the arrangement. Failure to treat this as an arms length transaction at a market rent may result in adverse tax charges for your pension scheme and/or any benefitting tenant. The costs of the valuation may be borne by your pension scheme or the tenant.

### **What happens once the Lease is in place?**

We must stress that we are not Managing Agents. It is your responsibility as the trustee to ensure that the property is managed appropriately. Where there is a Lease in place or a new Lease is granted, it is important that you adhere to the terms set out in any Lease. We will write to you from time to time regarding these and you must correspond with us in the future regarding these matters. If you do not wish to take on this responsibility and self manage then it will be necessary for you to appoint Managing Agents. If you wish to instruct Managing Agents please provide us with their details and we can make contact with them regarding such matters going forward. Please be aware that if you fail to adequately manage the property we reserve the right to appoint Managing Agents and their costs will be borne by your SIPP.

### **Rent Arrears**

If the rent due fails to be paid and arrears accrue and it is an unconnected tenant it is your responsibility to consider what action you wish to take. It may be you wish to instruct solicitors to take action against a tenant who fails to pay rent. In the case of a connected tenant we would have to consider instructing

solicitors to take action to recover the rent due and advise on the appropriate course of action for us to ensure the best interests of the trust are being met. The cost of any legal action must be met by your pension scheme. We will refer the matter to you before taking such steps but as trustees of your scheme we are required to take protect the interests of the trust.

## **Insurance**

It is essential that insurance cover remains adequate so insurers must be informed of any change in material details including any change of tenant, any change in the value of the property, loss of rent cover required or building works. If you insure the property yourself you must provide us with an insurance certificate annually following renewal. If your property is covered by our block policy we will update them and provide a copy of the new certificate of insurance.

We would encourage you to consider taking out insurance under our block policy. Due to the number of properties covered terms are generally very competitive owing to the size of the block policy which is fairly substantial and so insuring under it usually results in significant savings for our clients.

## **What is your responsibility?**

In summary we set out below your/your managing agents duties. It is necessary to:

- 1 Ensure the terms of all Leases are adhered to. This includes but is not limited to dealing with any Rent Review or Break clauses.
- 2 Ensure that rent is paid up to date.
- 3 Instruct a property manager to deal with the management of the property on your behalf, if you haven't already done so, or alternatively ensure that you understand all requirements of property management and are happy to remain responsible for the management of the property yourself.
- 4 Make sure that the property is fully insured. If you insure the property yourself then you must provide us with a copy of an up to date insurance certificate and send this to us each time it is renewed or changed. You must make sure that the insurance is adequate and you must understand the requirements of the terms of the insurance whether or not the property is vacant. If your property is insured under our block policy then we will hold the certificate but will provide you with a copy for your records annually on renewal. You must make sure that the requirements of the insurance terms are met both when the property is occupied and if it is vacant for any period. Where the property is insured through the block policy arranged by us, you are responsible for informing us of any changes to the property that may impact on the insurance cover.
- 5 Provide tenants with contact details for yourself or your managing agent should there be any problems with the property. In particular you must deal with tenant enquiries, such as leaks or damage to the property. You should provide tenants with contact details for the insurance company where necessary if you arrange the insurance.
- 6 Instruct a solicitor to act on behalf of the scheme for any legal property matters including but not limited to preparation of any Leases or consents granted under a Lease.
- 7 Make arrangements for both the property and market rent to be valued when required. We will let you know when valuations are required.

- 8 Keep us informed of all changes to the property such as but not limited to any change in use, change in tenant or level of rent, and changes that might affect the insurance like building works at the property, or any change in the circumstances such a party becoming connected or ceasing to be connected.
- 9 Make sure that any costs incurred in respect of solicitors fees, valuations or managing agents fees are met by your SIPP unless it is acceptable for another party, such as the tenant, to pay these.
- 10 Correspond with us regarding all matters affecting the property and enquiries, such as but not limited to the need for valuations, Rent Reviews, Lease Renewals, dilapidations and any other matters affecting the property.

Please be aware that we will not be liable for your failure to adhere to any of the above. In particular we will not be liable for any charges/losses/expenditure of any nature associated with your failure to correspond with us regarding these matters or your failure to deal with Rent Reviews, Lease Renewals, dilapidations and any other matters affecting the property.

We agree to take on limited obligations regarding the property including:

- 1 Making or continuing arrangements for the collection of rent and service charges, if applicable. If you have a managing agent they will usually deal with this. If the property is jointly owned we will arrange invoicing and collection of rent for the whole rent due and apportion the rent between the appropriate owners and we will deal with any VAT element.
- 2 Arranging or continuing to arrange the insurance, if you opt to insure under our block policy.
- 3 We will remind you when Lease End or Rent Reviews are due under the terms of any existing Lease. We will also notify you, requesting your instructions, if we are contacted by a tenant (or any other third party) regarding any matter affecting the property.

The work we carry out in respect of our above obligations is covered by our standard annual property charges. We reserve the right to charge additional fees if we are required to undertake work beyond our usual administrative tasks but will notify you of any additional charges before they are incurred.

Please keep us informed of your current contact details so that we know your preferred form of communication.

## **To Proceed**

In order for the new Lease to proceed it is essential that the following requirements are met:

- The Property Letting Questionnaire is completed satisfactorily
- If there is a connected party tenant a valuation is provided that supports the rent to be charged
- A solicitor has been appointed to prepare the appropriate legal document to confirm the letting arrangement which must be signed by all parties.