

Information

Short Assured Tenancies

The Short Assured Tenancy was introduced by the Housing (Scotland) Act 1988 and guarantees the landlord vacant possession of his property at the end of the contractual let, provided the correct procedures are followed both at the beginning and at the end of the tenancy. To qualify as a short assured tenancy, a lease must be for a period of at least six months and Notice (in a specified form) must be served on the tenant **prior to the creation of the tenancy.**

It is vital never to allow a tenant into a property or to take rent from them before the written agreement is in place and the appropriate Notice served. If you do, you are in danger of entering into an Assured Tenancy in which the tenant has security of tenure.

Although on following the correct procedure a landlord is entitled to vacant possession of his property at the end of the contractual tenancy, if the tenant does not vacate the property following service of the relevant notices, the landlord must obtain a Court Order before the tenant can be evicted. If a Short Assured Tenancy has not been created then the landlord will not be entitled to an Order for eviction and the Court will not award vacant possession on the basis that the contractual tenancy has come to an end. There are strict rules laid down about the procedures which must be gone through before the Court will award a Possession Order. The correct Notices must be served.

Where the ground on which possession is being sought is the end of a Short Assured Tenancy the landlord must give the tenant not less than two months' notice that possession will be required and that he will raise Court proceedings to obtain possession if necessary (Housing (Scotland) Act 1988). This is in addition to the notice requirements to bring the contractual tenancy agreement to an end (Sheriff Court (Scotland) Act 1907).

The other grounds on which possession of a property let on a short assured (or indeed, assured) tenancy can be obtained are set out in Schedule 5 to the Act. These grounds are **extremely** limited. Under some of these grounds the Court is required to order possession (three months' arrears of rent still outstanding at the date of the hearing to obtain possession is included in this category) but on some grounds the Court has a discretion whether to order possession or not. Accordingly, these other grounds cannot always be relied upon and, indeed, in many cases they do not apply.

In order to be assured of obtaining possession of a property it is essential to know who is in occupation of it. An owner should not accept rent except from the tenant specified in the lease and where there is a change in tenant should not accept rent from any new occupant until he has taken legal advice.

The Housing (Scotland) Act 1988 also provides protection for the spouse or civil partner of a sole tenant in the event of the sole tenant's death. Provided that the spouse or civil partner was, immediately before the sole tenant's death, occupying the property as his or her only or principal home, then the tenant's spouse or civil partner will be entitled to become the tenant of the property on the same terms as their deceased spouse or civil partner. We would advise a landlord to seek advice, should a tenant die whilst still in occupation of a property.

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This note is intended as a brief summary of provisions relating to Short Assured Tenancies. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

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