

Which Agreement should I use?

Most new lettings will be assured shorthold tenancies (AST) unless the tenancy is of a type excluded under the Housing Act 1988. This section includes information from the Housing Act 1988 which allows you to determine whether you can use the default type of agreement (assured shorthold tenancy) or whether you will need another type of agreement.

Tenancies that may not be Assured or Assured Shorthold Tenancies:

(Housing Act 1988, Section 1, and Schedule 1, as amended)

The Housing Act 1988 defines various types of tenancy that cannot be assured (or assured shorthold). These are briefly summarised below:

- **A tenancy granted to a company or an organisation** (e.g. tenant is a housing association or a limited company). Assured and assured shorthold tenancies may only be granted to an **individual**, or in the case of a joint tenancy, joint tenants where the tenants are individuals. (Housing Act 1988, s.1)
- **A tenancy granted by a resident landlord.** A resident landlord is defined as one who continuously lives in the same property as his tenant. A landlord living in a separate flat or house converted into flats in which his tenant(s) live(s) may be a resident landlord. A landlord living in a separate flat in the same purpose-built block of flats as his tenant is not a resident landlord.
- **A Business tenancy subject to Part II of the Landlord and Tenant Act 1954**
- **A tenancy allowing the tenant to occupy the property for a holiday**
- **A tenancy of a property let together with more than two acres of agricultural land.** Agricultural land is land used as arable, meadow, pasture, woodland, poultry farming, orchard or as a market garden. Such agricultural land does not include land occupied with a house as a park, or as grounds used mainly for sport or recreation. It may be safely assumed that the land is agricultural for the purposes of the Housing Act 1988 if it has been rated for council tax purposes as agricultural (Local Government Finance Act 1988).
- **A tenancy of an agricultural holding**
- **A tenancy granted by an educational body** specified within a list issued by the Secretary of State to a student studying at that same institution.
- **A tenancy in which the landlord is the Crown or a Government Department.**
- **Protected tenancies under the Rent Act 1977** or the Rent (Agriculture) Act 1976.
- **A tenancy entered into before 15 January 1989**, or arising as a result of a contract entered into before then.
- **A tenancy of a licensed premises**
- **A tenancy where the landlord is a local authority, a housing action trust, certain specified statutory bodies or a fully mutual housing association** (unless they are old style assured tenancies that have been converted).
- **A tenancy which is rent-free or where the annual rent is less than two thirds the rateable value of the property.**
- **A tenancy of a property at a high rent.** Tenancies with an annual rent exceeding £100,000 are excluded (The Assured Tenancies (Amendment) (England) Order 2010 - SI 2010 No. 908).
- **A tenancy will not be an assured tenancy if it falls within any of these exceptions or if it fails to meet the definition of an Assured tenancy in the Housing Act 1988.** For example, if it is not let as a separate dwelling, or if the tenant does not occupy it as his only or main residence.

If the tenancy is one of the types (above) excluded under the Housing Act 1988, then the tenancy will generally operate as a **common law tenancy**. In the case of a company letting, we recommend that you use a **Company Letting Agreement**. In other common law tenancy situations, a **General Tenancy Agreement** will normally suffice.

If you are unclear as to what tenancy agreement you should use in your own particular circumstances, you should seek legal advice.