HOUSES IN MULTIPLE OCCUPATION (HMOs) – WHAT ARE THE LEGAL REQUIREMENTS?

The legal requirements relating to HMOs can be quite a daunting area for private sector landlords. The law itself was only recently overhauled by the Government, the changes coming into effect on 6 April 2006, creating a new system of regulation for HMOs.

Complicated as the law is in relation to HMOs, it is crucial for landlords to be in a position to recognise when a property within their portfolio is classed as one and in particular what that means in terms of licensing with the appropriate local authority. This article is intended to cut through some of the complexities of this area and provide you with a basic outline of the legal requirements and importantly advise where you can obtain further information and advice.

What is an HMO?

Under the Housing Act 2004 the following are now classed as HMOs:

- A house or a flat let to 3 or more tenants who are not of the same household where the tenants share a kitchen, bathroom or toilet. People are not part of the same household unless they are members of the same family which includes married and unmarried couples (including same sex couples) or blood relatives.

- A house which has been converted into bedsits, or other accommodation which is not self-contained, where there are three or more tenants living there and they form two or more households.

- A house which has been converted into one or more flats which are not wholly self-contained. To be self-contained the flats must include a kitchen, bathroom and a toilet.

- A building which has been converted entirely into self-contained flats where the building conversion does not meet with “appropriate building standards” and where less than 2/3 of the flats are owner-occupied.

For properties that were converted prior to June 1992, the conversion must comply with the 1991 Building Regulations to avoid being classed as an HMO. For those buildings converted after June 1992, the conversion must meet the standards imposed at that time.

In all cases, to be an HMO, the property must be used solely or mainly as residential accommodation where the occupiers live there as their only or main residence.

Are there any requirements for all landlords of HMOs regardless of size?

Yes, as a landlord of residential accommodation, whether or not the property is an HMO, you are responsible for ensuring that the fixed electrical installations are safe. Similarly, you are required to carry out an assessment of fire safety, the overall aim being to eliminate fire risks. As these requirements are imposed on all landlords of residential accommodation, you are referred to Bob Miller’s article on electrical and fire safety.
When must an HMO be licensed?

Not all HMOs have to be licensed. The Housing Act 2004 introduced a mandatory licensing scheme for larger HMOs, which applies throughout England and Wales. However, the legislation also gave local authorities the power to introduce ‘additional licensing schemes’ to cover smaller HMOs situated in their own area. If you own an HMO which does not fall within the mandatory licensing scheme, it is therefore very important for you to find out whether your own local authority has an additional scheme operating in your area requiring licensing for smaller HMOs.

HMOs are subject to mandatory licensing if the HMO:

- is occupied by five or more people
- comprising two or more households; and
- the building has three or more storeys

When will the local authority grant a licence for an HMO subject to mandatory licensing?

You will have to make an application to your local authority who may charge a fee.

Before granting a licence your local authority must be satisfied that:

- the HMO is reasonably suitable for occupation by the number of people you want to live there. However, the local authority may restrict the number of people who are able to live there as a condition of granting the HMO licence. The local authority must consider a range of factors when making this decision, in particular whether the HMO has an appropriate level for facilities for cooking and washing and that the property meets fire safety standards. You may have to adapt the property if these facilities are not satisfactory.

- You are a ‘fit and proper’ person to hold an HMO licence. Additionally, if you appoint a manager to manage your HMO, that person must also be a ‘fit and proper person’. A licence may be refused if you have committed criminal offences involving fraud, violence, drugs or sexual offences. You may also be refused a licence if you have practised unlawful discrimination against someone on the basis of their race or colour, ethnic or national origin, their sex or disability.

- If you have arranged for the HMO to be managed by someone else, the management arrangements and financial structures must be suitable.

Is it possible to appeal against a refusal of a licence?

Yes. You can appeal to a residential property tribunal within 28 days.

What are the penalties for failing to apply for a licence?

Although the licensing provisions came into force on 6th April 2006, landlords of HMOs subject to mandatory licensing were given until 6th June 2006 to apply for a licence. Beyond this date, however, it is an offence to fail to apply for a licence and you could be fined up to £20,000. Moreover, any tenants living in the HMO may apply to a residential property tribunal for their rent to be returned whilst the HMO was not licensed up to a maximum of 12 month.