✓ TAX AND THE "OVERSEAS" OR "NON-RESIDENT" LANDLORD

Although it is common to refer to landlords as non-resident or overseas it is the **"usual place of abode"** which determines whether a landlord, benefiting from rental income of a property in the UK, falls within the relevant Inland Revenue scheme or not. For individuals, an absence from the UK of 6 months or more is normally regarded as meaning that the usual place of abode is outside the UK and thus the relevant Tax regime applies to that landlord.

Letting Agents are required by law to retain base rate tax from the letting income received for properties owned by landlords whose "usual place of abode" is outside the UK. This retention must be made unless and until the Inland Revenue issue the pertinent documentation to the agent relating to each relevant landlord. This absolves the agent from the requirement to deduct tax from that individual landlord's income.

In some cases, where a tenant is paying rent direct to a non-UK based landlord, the tenant may have to take this responsibility and may have to make the retention from the rent due to be paid.

✓ STAMP DUTY (LAND TAX)

A new regime came into affect for all short-term (less than seven years) residential tenancies commencing on or after 1st December 2003. The liability for paying Stamp Duty Land Tax (SDLT) is solely that of the tenant(s) – who are also responsible for completing and submitting the relevant forms (SDLT1 & SDLT4) to the Inland Revenue when making their payment.

As of 17th March 2005, the threshold of rent due under a short-term tenancy, over which SDLT becomes due, is £120,000, subject to the application of a mathematical calculation called NPV (Net Present Value). The amount of duty payable is currently fixed at 1% of the amount which represents the difference between the threshold and the NPV figure subject to amendment from time to time by the Chancellor.

Premium leases are treated a little differently in the way that the liability for duty is assessed, and, if applicable, the rate of duty to be paid. The total amount of the premium is treated as the single "relevant consideration" and that sum is subject to the same escalating percentage duty rate as used for calculating SDLT on the purchase price of a property.

Fuller details about SDLT are available from the arla.co.uk website or, inlandrevenue.gov.uk

✓ TENANCY DEPOSIT SCHEME

Government legislation will be introduced in 2006 which aims to help protect tenancy deposits by requiring such money to be held in a government recognised scheme which offers prompt and inexpensive independent adjudication of a deposit dispute after the end of a tenancy. In advance of this legislation a similar scheme already exists which many ARLA member firms have voluntarily signed up to. For more information about the scheme and to identify if your agent is a member, go to www.tds.gb.com or telephone 0845 226 7837.

✓ DAMAGE/DILAPIDATION TENANCY DEPOSITS

It is usual for a tenant to provide a tenancy deposit to be held during the term of the tenancy against the performance of obligations and responsibilities under the tenancy agreement. Any well-drafted tenancy agreement should include a clause that specifies how the tenancy deposit is to be held, by whom and whether interest is to be paid or not. The agreement should include some information on how the deposit will be dealt with at the end of tenancy, including the circumstances or criteria or procedure for its refund.

During the term of a tenancy, a tenant's deposit held by the agent in his client account, can be held either,

- by the agent **"as agent for the landlord"** which means that it has, ultimately, (unless subject to an alternative independent dispute resolution process such as the Tenancy Deposit Scheme or formal arbitration) to be refunded or apportioned on the client landlord's instructions or by the agent under his authority as a contracted Agent on behalf of a Principal (the landlord client).

Or,

- by the agent **"as stakeholder between the parties"** [this may vary in Scotland]. This means it is being held in a quasi-trustee position on behalf of both parties. Whenever possible the agreement of both parties (Landlord and Tenant) should be obtained (in writing) as to how the deposit is to be disbursed. In the event of a dispute an agent as stakeholder is entitled to retain the deposit (or the disputed part of it) until the dispute is settled and in such circumstances consideration should be given to alternative independent dispute resolution processes such as the Tenancy Deposit Scheme or formal arbitration.

ARLA/SYM/APRIL05

✓ WHAT ABOUT DISPUTES BETWEEN LANDLORDS AND TENANTS?

Although all ARLA members will try to mediate where they are involved in disputes between landlords and tenants (especially over deposits at the end of a tenancy) this is not always successful. ARLA can provide access to independent adjudication and/or arbitration, whichever is appropriate, to resolve Landlord/Tenant disputes promptly and inexpensively and avoiding the need for potentially costly and time-consuming Court action.

✓ WHAT ABOUT COMPLAINTS ABOUT THE SERVICE FROM AN ARLA MEMBER FIRM?

ARLA Member Firms are required by the conditions of their membership to have an internal complaints process (proportionate to their size and structure). This process must allow a dissatisfied client or customer the opportunity of having a dispute considered appropriately – and, hopefully, for it to be resolved.

When a client or customer remains dissatisfied (following an internal complaints process), ARLA offers access to its Complaint Scheme. This is for matters that would not be more properly dealt with by the Member Firm's PI Insurance. The complaint evaluation scheme provides a system for the independent assessment or adjudication of complaints considered against the requirements and provisions of the ARLA Code of Practice, relevant legislation, contractual obligations etc.

ARLA Association of Residential Letting Agents

ARLA Administration
Maple House, 53-55 Woodside Road
Amersham, Bucks. HP6 6AA

Telephone: 0845 345 5752
Fax: 01494 431 530
Email: info@arla.co.uk
www.arla.co.uk

ARLA Association of Residential Letting Agents

"Promoting the highest standards in residential lettings"

SAFEGUARDING *your* MONEY

- *Handling clients' money*
- *The ARLA Bonding Scheme*
- *Professional Indemnity Insurance*
- *Landlords – fees and commissions*
- *Applicants/Tenants – costs and charges*
- *Tax and the "non UK resident" landlord*
- *Stamp Duty*
- *Tenancy Deposits*
- *Disputes/Complaints*

The Association of Residential Letting Agents, ARLA, is the only professional body that is solely concerned with the self-regulation of letting agents and for nearly twenty-five years has been actively promoting the highest standards across every aspect of residential lettings and management in the private rented sector.

This leaflet outlines some of the financial requirements and obligations ARLA imposes upon Member Firms when managing other peoples' money. It is vital that landlords and tenants know that they are placing their trust in professional, qualified letting agents and that their money is safe; that it will be handled honestly and apportioned properly, by the agent.

✓ PROTECTING LANDLORDS' AND TENANTS' MONEY

As a minimum, ARLA Member Firms are required: -

- To maintain specially designated bank or building society accounts to receive and hold "client money" separate from their Firm's own business or office accounts;
- To reconcile such client bank accounts on a regular basis to ensure that balances match the ledgers or accounting records of the Member Firm and that individuals' money can be identified;
- To have a suitably qualified accountant audit these client bank accounts and the Member Firm's accounting records annually, and a certified report must then be submitted to ARLA;

And, all such money will be further protected because;

- The Association's Client Money Protection **Bonding Scheme** automatically covers the relevant money held in the client accounts of member firms against misappropriation by that firm. Member firms who are also Royal Institution of Chartered Surveyors members have their own client money protection scheme, which provides equivalent protection to customers of those firms.

✓ WHY EVERY LETTING AGENT SHOULD BE COMPELLED TO BELONG TO A COMPREHENSIVE BONDING SCHEME.

Letting Agents collect and then hold various - and often large - sums of money belonging to landlords and tenants, frequently for a long time, and these can all add up to quite considerable amounts. Sometimes rogue agents "misappropriate" and misuse these funds or simply close down and disappear. ARLA believes that consumers, whether they are landlords or tenants, are entitled to expect that their money is secure and protected at all times.

✓ WHAT DOES MISAPPROPRIATE MEAN?

In the context of such a Bonding Scheme, "misappropriated money" means: -

"Money rightfully belonging to clients (landlords or tenants) that has been wrongly and dishonestly used to the benefit of a lettings firm (by its partners, directors, employees or any direct associate). As a result, it has not been properly reimbursed to the client (landlord or tenant) who is lawfully entitled to it."

✓ HOW DOES A BONDING SCHEME WORK?

Some bonding schemes (also referred to as Client Money Protection Schemes) require the customer to attempt to recover their loss directly from a letting agent or their insurers as a first step. Often they are expected to wait for the results of a police investigation and a subsequent prosecution before a claim will be considered. This can be a long process and may be unsuccessful. As such schemes require customers to demonstrate that "monies are not recoverable by any other means" it is inevitable that there will be considerable delay before compensation can be paid.

ARLA does not believe that this is an appropriate way to provide protection for consumers in the 21st Century. ARLA's rules provide the Association with the powers to allow potential claims to be investigated immediately by ARLA and its professional advisers. Compensation is paid to successful claimants by ARLA as soon as the Association is satisfied that a loss by misappropriation of client's money has been established. Unlike other schemes, there is no precondition for a police investigation or hard evidence of criminal intent before your claim can be dealt with.

✓ HOW SUCCESSFUL IS ARLA'S BONDING SCHEME?

ARLA first introduced Bonding in 1991 and is justifiably proud of the way the scheme has developed over the years to provide substantially increased protection for those landlords and tenants who use an ARLA member firm. The best evidence of success (and of the standards of ARLA Member Firms) is the very fact that claims under the ARLA Bonding Scheme are so rare.

As well as having a general, published, Code of Practice relating to expectations of service standards, ARLA has internal Byelaws and rules of membership that include the framework that Member Firms must work within to organise, control and manage their client accounts. This helps ensure that all Member Firms operate to the highest professional standards. These Byelaws also set out the full technical detail for Chartered Accountants to understand the auditing and compliance requirements of the Association so that they can produce the certified reports required by ARLA.

Such monitoring and regulation helps protect and prevent the misuse of clients' money and so significantly reduces the risk to the public and the need for claims under the ARLA Bonding Scheme.

✓ ARE THERE LIMITS TO THE ARLA BONDING SCHEME?

The only limitation is that the scheme is subject to a total, annual, liability of £3,000,000 covering direct financial loss suffered by claimants. Most importantly, unlike some client money protection schemes to be found in the lettings industry, the ARLA Bonding Scheme has no individual limits or thresholds imposed on the amount of compensation payable to an individual claimant or to cover loss through any one Member Firm.

✓ MAKING A CLAIM

Any claims made against the ARLA Bonding Scheme should be notified to ARLA in writing as soon as possible. However, claims must be made within 12 months of discovery of the loss. Claimants will be asked for documentary and/or other evidence of their alleged loss, such as tenancy agreements, bank statements etc.

✓ HANDLING CLAIMS

When ARLA is satisfied that a claim may exist and is covered by the Bonding Scheme, ARLA will…

… where the member firm in question is still trading, give the firm seven working days to respond to the allegations. If a satisfactory response is not received, specialist claims investigators and/or relevant experts will be appointed to substantiate and verify any client loss. Once the relevant report is received, appropriate compensation for misappropriation will be paid to the claimant directly by ARLA.

Or…

… if the firm has ceased to trade, appoint specialist claims investigators and/or experts to substantiate and verify any client loss in co-operation with any liquidator. In addition, advertisements will be placed in local newspapers to notify the public of the closure and any identifiable existing clients will also be contacted. Again, as soon as the relevant report is received, the appropriate compensation for misappropriation will be paid out to the claimant directly by ARLA.

In all cases the priority of ARLA will be to verify losses speedily and to pay compensation promptly.

✓ DOES A BONDING SCHEME DEAL WITH ALLEGATIONS OF NEGLIGENCE?

No, usually not, because such claims are for financial loss arising from negligence or human error in the provision of a service and/or the conduct of the business. **Professional Indemnity Insurance** (PI) covers these claims and it is a condition of ARLA membership that all Member Firms are required to have this cover to minimum levels set by the Association.

✓ TERMS AND CONDITIONS OF BUSINESS – FEES AND COMMISSIONS

Written terms and conditions must be provided by an agent to a (potential) landlord which set out all the reasonably foreseeable liabilities for fees and commissions which the landlord will be expected to pay to the agent – these payments will, of course, be dependent upon the scale and scope of the service being provided.

Please note; ARLA is not allowed by law, to set or control the fees and/or commission scales of its Member Firms.

✓ APPLICANT/TENANT - CHARGES AND COSTS

It is against the law for any agent to take a payment from, or make a charge to, an applicant (a prospective tenant) simply for registering their requirements and/or for just providing details of available properties.

Reasonable administrative costs may be charged to an applicant to cover time, effort and expenses incurred for processing an application, taking up references etc; often, applicants will also contribute towards some aspect of the inventory costs and/or the preparation of the tenancy agreement. Any other administrative or further charges for which a tenant will or might become liable (for example, tenancy renewal or extension costs) should be explained prior to commitment to a tenancy.

Please note; ARLA is not allowed by law, to set or control the costs and/or other charges made by its Member Firms.