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New Residential Tenancy Legislation In Jersey

On 14 July 2009 the States of Jersey approved the draft Residential Tenancy (Jersey) Law 200- (the “Law”). The Law, which will come into force once Privy Council approval has been obtained (a process which usually takes several months), makes some important changes to the law governing tenancies of residential property. Some aspects of the Law are entirely new whereas some overhaul and modify existing legislative provisions. Residential lease precedents will need to be reviewed, and modified as necessary, in order to comply with the Law’s requirements.

The following is an overview of some of the key provisions of the Law.

Scope of Law

- The Law will apply to tenancies of self-contained dwellings under agreements (referred to as “residential tenancy agreements”) for the exclusive occupation of such dwellings which are for value and either have a specified term of nine years or less or have no specified term.
- For an agreement to constitute a residential tenancy agreement, the exclusive occupation has to be “by one or more natural persons who are party to the agreement”. On the face of it, this would not therefore include leases for occupation by ‘j category’ (essentially-employed staff), which are typically entered into by the j category employee’s employer without the employee being a party to the lease agreement.
- Only residential tenancy agreements made after Article 3 of the Law comes into force, or which are varied or renewed after that date, will be caught by the Law. It should be noted, however, that although the Law requires residential tenancy agreements to be in writing (see Mandatory Requirements below), an agreement is still a residential tenancy agreement, and thus within the scope of the Law, if it is partly or wholly implied or partly or wholly oral.
- There are various exclusions, some simply for the avoidance of doubt, including holiday lets for not more than 3 months and agreements under which the occupier is a boarder, lodger or other licensee. The latter exclusion makes clear that the Law preserves the important legal distinction between tenants on the one hand and occupiers with no security of tenure on the other hand.

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Mandatory Requirements

- Residential tenancy agreements (and any variations or renewals) must be in writing and signed by or on behalf of the parties to the agreement and the tenant must be given at least one working day to read a residential tenancy agreement (or any variation or renewal) before having to sign it. In addition, a copy of the document must be served on the tenant as soon as reasonably practicable following its execution by all parties.
- All residential tenancy agreements must specify the details set out in Schedule 1 to the Law. There are 11 separate items, covering the key commercial elements of the letting.
- All residential agreements must set out provisions to the effect of the provisions contained in Schedule 2 to the Law, namely:
 1. The tenant can remove anything which he has affixed to the dwelling, subject to making good any damage caused in so doing;
 2. Where the agreement requires the tenant to obtain the landlord's consent, the consent must not be unreasonably withheld or delayed;
 3. The tenant is not required to purchase any fixtures, fittings or movable property in the dwelling;
 4. The tenant is not required to pay any premium or pin money in respect of the dwelling.
- The Schedule 2 provisions are deemed to form part of the agreement even if not included or purported to be excluded. There is also a general provision making void any contractual provisions which are inconsistent with the Law and making it an offence to seek to contract out of the Law's requirements.
- The court has a discretion to vary or terminate a residential tenancy agreement if the agreement is not in writing and/or does not contain the required Schedule 1 details. This power of variation/termination also applies if the tenant is not given one working day to read the agreement before having to sign it.

Deposits

- Where a deposit is required to be paid, the landlord must provide the tenant with a receipt as soon as possible after payment of the deposit. Campaigners for tenants had sought a much more extensive legislative regime in relation to deposits, to deal with problems encountered by tenants in having them returned.

Uninhabitable Premises/Quiet Enjoyment

- If a dwelling which is the subject of a residential tenancy agreement becomes uninhabitable other than through the malicious act of the tenant, rent and other payments due under the agreement cease to be payable for so long as the dwelling remains uninhabitable. In addition, this eventuality gives the court the power, upon application by the landlord or the tenant, to vary or terminate the agreement.

- The Law prohibits a landlord, without lawful reason, from preventing his tenant's occupation or enjoyment of any part of the leased dwelling. Breach of this is an offence and also empowers the court, upon application by the tenant, to vary or terminate the agreement.

Termination of Periodic Tenancies

- The Law replaces the current rules relating to the termination of periodic tenancies (contained in a statute dating from 1919) with new rules. Essentially, a landlord will have to give not less than three months' written notice of termination and a tenant will have to give not less than one month's written notice.

Tenant Breaches

- The Law sets out a mandatory scheme in relation to termination of a residential tenancy agreement on account of breaches of covenant by the tenant. In order to be able to apply to the court for an order terminating the agreement and evicting the tenant, the landlord has to have served notice of the breach upon the tenant requiring within seven days the cessation of the offending conduct and/or the taking of reasonable measures to rectify the breach and the tenant has to have failed to comply with the notice.
- The court may order termination and eviction if satisfied that the breach is sufficiently serious to warrant such an order.

Eviction Proceedings

- The Law clarifies the procedure for the eviction of tenants by the Viscount (court officer).
- Currently, there is power for the court (under a statute dating from 1946) to grant stays of execution of eviction orders. The Law expands and modifies these provisions. Notably, the Law spells out factors that the court must consider, namely:
 1. Whether any rent is outstanding;
 2. Whether either party has breached the tenancy agreement;
 3. Whether the party who committed the breach continued or repeated it, or took reasonable steps to remedy it; and
 4. If a stay were ordered, where the balance of hardship would lie as between the landlord and the tenant,

and factors that the court may consider. The latter include various factors relating to the history of the tenancy and the parties' circumstances, including the availability of other accommodation for the tenant.

Jurisdiction of the Court

- Under the Law the Petty Debts Court is granted exclusive jurisdiction to deal with disputes arising in connection with residential tenancy agreements and to grant all required relief, notwithstanding the usual monetary limit on the jurisdiction of the Petty Debts Court.
- There is a general power given to the court, when deciding on a matter relating to a residential tenancy or residential tenancy agreement which is brought before it, to adjust the rights of the parties to the agreement or to a related contract.

For further information, please contact:



Tim Hart

Jersey

Tel: +44 (0)1534 818 043

Email: thart@applebyglobal.com

Offices



<p>Bahrain Suite 2215 Level 22 West Tower Bahrain Financial Harbour King Faisal Highway Manama Kingdom of Bahrain Tel +973 1750 2848 Fax +973 1750 2847</p>	<p>Bermuda Canon's Court 22 Victoria Street PO Box HM 1179 Hamilton HM EX Bermuda Tel +1 441 295 2244 Fax +1 441 292 8666</p>	<p>British Virgin Islands No 56 Admin Drive Wickhams Cay 1 PO Box 3190 Road Town Tortola VG 1110 British Virgin Islands Tel +1 284 494 4742 Fax +1 284 494 7279</p>	<p>Cayman Islands Clifton House 75 Fort Street PO Box 190 Grand Cayman KY1-1104 Cayman Islands Tel +1 345 949 4900 Fax +1 345 949 4901</p>	<p>Hong Kong 8th Floor Bank of America Tower 12 Harcourt Road Central Hong Kong Tel +852 2523 8123 Fax +852 2524 5548</p>
<p>Jersey PO Box 207 13-14 Esplanade St Helier Jersey JE1 1BD Channel Islands Tel +44 (0)1534 888 777 Fax +44 (0)1534 888 778</p>	<p>London 2nd Floor 2 Royal Exchange Bldgs London EC3V 3LF United Kingdom Tel +44 (0)20 7283 6061 Fax +44 (0)20 7469 0540</p>	<p>Mauritius 8th Floor Medine Mews La Chaussée Port Louis Mauritius Tel +230 203 4300 Fax +230 210 8792</p>	<p>Seychelles Level 2B Caravelle House Manglier Street Victoria, Mahe Seychelles Tel +248 225 281 Fax +248 225 282</p>	<p>Zurich Bahnhofstrasse 52 CH-8001 Zurich Switzerland Tel: +41 44 214 6525 Fax: +41 44 214 6524</p>