



# Assured Shorthold Tenancies – Guidance Note 2

## Possession Proceedings under Section 21

**Note: Law stated here is at August 2020 but does not take into account any emergency Covid-19 changes.**

The government is always making changes in this area of law. Please contact us before proceeding to check the current law.

Because you are seeking possession of premises subject to an assured shorthold tenancy we can use a court process known as the "accelerated possession procedure". This is a guidance note only on the basic procedure to enable clients to make an informed decision about whether they wish to adopt this route and should be read in conjunction with our guidance note "Assured Shorthold Tenancies – Guidance Note 1 - How can I end the tenancy?". Landlord and Tenant law can be complicated and individual guidance should be sought tailored to the circumstances of your case.

An important point to note is that if you have taken a deposit from your tenant, it must be protected by being placed in an authorised tenancy deposit scheme and you must also provide the tenant with certain required information about the scheme (known as "prescribed information"). If a deposit has not been protected and the required information has not been provided, any two-month 'Section 21' Notice which you serve upon the tenant will be invalid, and it will not be possible to cure this defect by protecting the deposit after you have served the Notice. If possession proceedings are issued following service of a Notice requiring possession which is invalid for this reason, your tenant will have a complete defence to the claim and a possession order will not be made.

It is important therefore that you tell us at the outset whether you took a deposit from your tenant and if so, provide us with evidence that the deposit has been placed in an authorised scheme (i.e. a copy of the relevant deposit protection certificate) and that you have provided the tenant with the prescribed information about the scheme.

There are also other prerequisites including giving tenants a copy of the government "How to Rent" booklet, an EPC and a gas safety record **before** they move in.

Once a valid notice requiring possession has been served and the notice period has expired, broadly, the procedure is as follows.



[www.kerseys.co.uk](http://www.kerseys.co.uk)

32 Lloyds  
Avenue  
Ipswich, Suffolk  
IP1 3HD

Telephone:  
01473 213311

844 The Crescent  
Colchester Business  
Park  
Colchester CO4 9YQ

Telephone: 01206  
584584

10 Victoria  
Street  
Felixstowe,  
Suffolk IP11 7ER

Telephone:  
01394 834557

17A Deben Mill  
Business Centre  
Old Maltings Approach  
Woodbridge IP12 1BL

Telephone: 01394  
813732

A claim form and the relevant legal documents are filed with the court together with the court fee. The court issues the claim and serves it on the tenant by post. The tenant has fourteen days from receipt of the papers from the court to respond.

If the tenant does not respond in that time we will request a possession order and the court file will go before the Judge who, if satisfied with the documentation, will make an order for possession. The timescale for the file going back before the Judge is outside our control because this is an administrative matter for the court but in our experience in Ipswich, allowing for the time for service, there is are four to six weeks between the point at which we lodge the claim and the time when the Judge considers making an order.

The normal order made by the Judge is possession after fourteen days, but the judge can extend this up to six weeks in cases of "exceptional hardship". Exceptional hardship is not expressly defined in law, but it normally applies to situations of very vulnerable tenants or tenants with young children who will be re-housed, for instance, by the council, but need a few extra weeks in order to achieve that re-housing. We will advise you if this situation arises in these proceedings. The judge can order a hearing to consider any application by the tenant or if he or she otherwise feels it is appropriate to hear further evidence from the parties.

If the tenant does not vacate after the lapse of the time set for possession by the judge then we can instruct a court bailiff on payment of the further court fee who will make an eviction appointment. This can take a further 4-6 weeks from application.

If the judge orders a hearing we will advise you regarding additional costs. There will be an additional charge for our time if we have to instruct the court bailiff.

The court fees and a fixed element of solicitors' costs, on a low scale, are usually awarded by the judge when a possession order is made. If the tenant does not pay these, it is usually not worth the additional cost of trying to enforce this costs judgment - the main point of the procedure is to enable you to get possession back as quickly and as cheaply as possible.

Sometimes, our clients seek our guidance on other aspects of the tenancy when we are instructed in assured shorthold possession cases e.g. about access to inspect the premises, or repairing obligations, or tenancy deposit issues. We are able to assist in these areas too. Please note that the above estimates of charges only apply to the steps set outlined above: if there is a charge for additional advice we will inform you at the time.



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