

June/July  
2009

ASTBERRYS

Newsletter

We are property specialists for:

- Lettings
- Short Let Apartments
- Sales
- Block Management

We operate in:

- South Kensington
- Gloucester Road
- Earls Court
- Knightsbridge

#### AGENTS COMMISSION FOR SECOND YEAR LETTINGS TO THE SAME TENANT IS IT LEGAL?

**Are you a landlord?** Have you ever wondered why you have to pay commission to a lettings agent when the tenant renews the lease for a second or subsequent year?

At present the High Court in London is considering just this question. The Office of Fair Trading has taken one firm of well known estate agents to Court. The OFT is asking the Court to scrutinise carefully the following conditions which are usually found in the letting agreement that most estate agents ask landlords to sign

- Second and subsequent year commission – the agreement includes a term which makes landlords liable to pay the agent commission when a tenant renews the original letting agreement
- Commission on sale to the tenant – the agreement includes a term which makes landlords liable to pay the agent commission if the tenant, who starts off renting, subsequently purchases the landlord's property.

**The key point** - the OFT say that in both cases the agent is asking the landlord to pay “something for nothing”. After all the agent has done nothing to ensure that the tenant signs up for a second year and nothing to ensure that the tenant buys the property, originally rented. It is the tenant's connection with the landlord that has resulted in the second year letting or subsequent sale. Why should the agent benefit?

The OFT argue that these conditions fall foul of the Unfair Terms in Consumer Contracts Regulations 1999 and that the Court should declare them unlawful and stop agents from using them. The Regulations have their origin in Brussels and form part of European consumer protection. This is the first time they are being tested in the context of letting property.

The decision of the Court is expected by the early Summer. Whoever loses will almost certainly appeal and so the final position may not be clear for many months.

**How this affects you** - If you have paid second year letting commission then depending on the circumstances and the final decision of the Courts you may be able to force an agent to return to you any such commission, going back 6 years. For a landlord with a number of properties who has paid commission on renewals this might prove welcome news. Some agents may be less pleased.

However why take the risk that the OFT may lose. At Astberrys we do not charge second year letting commission. We only charge for work we actually do. **If we find you a tenant in year one and he or she stays on you pay nothing more, unless you ask us to renegotiate the agreement [in which case you pay a flat fee of £350 plus VAT] or you instruct us to manage the property.**

**Contact us at [business@astberrys.co.uk](mailto:business@astberrys.co.uk) or on 0207 370 0123. We offer a professional, value for money letting service. We are also qualified to advise you concerning the recovery of overpaid commission and can arrange for consultations with specialist barristers in our offices.**

We will update you in the next newsletter of any developments in the OFT case.



#### SHORT TERM LETTINGS

- We let our own apartments
- Serviced or un serviced
- Excellent locations and value
- Prices from £425 per week

To check on availability or discuss placing your property with us for short term lettings come to **[business@astberrys.co.uk](mailto:business@astberrys.co.uk)** or **0207 370 0123**



#### MARKET UPDATE - SALES

We think prices in Kensington and Chelsea will continue to fall from the highpoint reached in late Summer 2007. However the worst is probably over and by about the end of the year prices should stabilise – rises are a different matter. The position in the Borough differs from the rest of the country because of the high level of ownership linked to activities in financial services and the preponderance of international interest and investment. Beware of national house price trends. What happens nationwide does not necessarily happen in the Borough at the same time.

- The Borough has a very high level of mortgage free property ownership. Repossessions are rare
- The pace of redundancies in the City is slowing
- Good stock is low. Very few sellers have to sell. While the euro remains strong there is interest from continental buyers who did not purchase at the recent market highs. However buyers want bargains. The result is a low level of transactions.
- The average rental yield in the Borough at about 4.6% makes property an attractive income investment when compared to gilts. Property investment also promises the potential for capital growth. And the CGT regime [especially following the increase in the top rate of income tax] favours such investments.
- In the first quarter of 2009 a survey of ARLA members showed that, for the first time in more than two years, more landlords were buying properties than selling.

**Our Tip** – Keep an eye on the inflation figures and forward LIBOR. A steep rise in interest rates will not help the market to recover but it might bring out more sellers.

## MANAGEMENT

We manage:

- Individual properties
- Blocks of flats

We know:

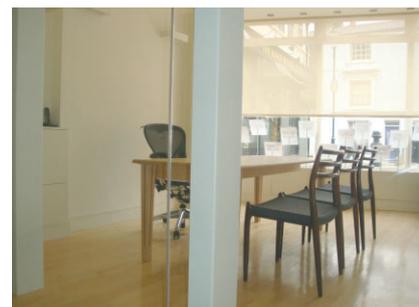
- about property and how to maximise rental returns
- how to maintain and refurbish your property using our own in-house maintenance contractors.
- you expect to pay fair and fixed fees
- and understand the legislative and accounting aspects of property management. All our landlords and freeholders also benefit from our in house legal advice and administrative expertise.

To talk to Astberrys about property management whether you have one property or are a freeholder telephone us on **0207 370 0123** or email us at [management@astberrys.co.uk](mailto:management@astberrys.co.uk)

1 Earls Court Square SW5 – managed by Astberrys



Our offices in Kenway Rd, SW5 and consultation rooms



## MARKET UPDATE - RENTS

The lettings market is reasonably buoyant. Price reductions, especially for flats and houses at the higher end of the market [£1,000 plus per week], are now firmly in place. In some cases reductions from the 2007 highs have been as much as 30%. There has been less of a percentage reduction amongst the smaller properties. There are few quality small properties to rent at around £300 a week.

- The market at the lower end shows a more reasonable balance between available stock and applicants actually ready to move. Asking prices have become far more realistic for larger more expensive properties but here there is still an imbalance of supply over demand.
- There are large numbers of “letting tourists” endlessly viewing properties, talking and thinking about moving but making low offers, if any.
- Genuine demand comes both from potential buyers, sitting on the sidelines for the moment and financial professionals downsizing. In both cases these trends favour the smaller properties.
- It is not yet, and may never be cheaper to buy than rent in the Borough, all the more so when interest rates rise and the current mortgages famine continues. Some people have no alternative; they have to rent if they want to live in the Borough.

**Our Tip** – Depending on what happens in the City we think that rents could start to rise next year. Voids are always to be avoided but landlords should not be too quick to capitulate. It may not pay to agree to a let of more than 12 months - try to negotiate an option to extend based on the CPI or RPI as an alternative.

**Whatever your property needs please talk to us. Professional investors and freeholders are especially welcome. Please contact us at [business@astberrys.co.uk](mailto:business@astberrys.co.uk) or 0207 370 0123.**

## PRICES ARE FALLING. HOW DO YOU PROFIT IN A RECESSION? NOW IS THE TIME TO EXTEND A SHORT LEASE

**The problem.** Do you have a lease of about 80 years or less? If so you should think about extending it sometime soon. Selling a flat with a short lease almost anywhere in Kensington and Chelsea in anything but a bull market, which this is not and will not be for some time to come, presents problems. Banks and building societies can be reluctant to lend money on properties unless the lease is at least 75 years long. If they lend, the deposit demanded will be high and the term of the mortgage short. So now is the time to act. The Leasehold Reform, Housing and Urban Development Act 1993 gives the right to most leaseholders to extend their lease. Under the provisions of the Act your freeholder has to extend your lease by 90 years. This means that if you have a lease of 82 years, then after “enfranchisement” [the name given to the process of lease extensions] you end up with a lease of 172 years. Your obligation to pay ground rent also disappears.

**What do you pay?** In leases of more than 80 years you pay to compensate the freeholder for the loss of ground rent and a further sum to compensate him for the loss of the right to have back your flat at the end of the original lease.

**An example** – You have a flat with an 82 year lease and annual ground rent of £200 for the duration of the rest of the lease. The flat is worth £500,000.

1. Using actuarial tables you can calculate the value of £200 over 82 years at a capitalisation rate of say 6% [the rate can vary in practice] The figure comes out in the region of £3,500.
2. Using the tables you will also be able to calculate the value now to the freeholder of losing a flat worth £500,000 in 82 years. The deferment rate used is almost always 4.75% for this part of the valuation. The figure comes to about £11,000.

Now imagine you had extended your lease in 2007, when the market was much higher. What would you have paid?

1. The ground rent would have had another 2 years to run – 84 years instead of 82 years. This makes very little difference in practice, say £100. You still would have paid about £3,500.
2. However at the height of the market in the late Summer of 2007 your flat would have been worth around £650,000. You would have had to compensate the landlord for the loss of an extra £150,000. And you would have paid around £13,000, an extra £2,000.

**The moral of the story** – When prices fall try to extend your lease. Do not wait until the market turns. By then your lease will be shorter, the value of your property higher and you will pay more to enfranchise. If you have a lease very near to or less than 80 years your need to act is even more urgent. We will look at enfranchising leases of less than 80 years and the concept of “marriage value” in the next newsletter. **Meanwhile if you would like help with lease extensions then please contact us at [business@astberrys.co.uk](mailto:business@astberrys.co.uk)**