



Thoroughbred Breeders' Association Employment Law Fact Sheet No. 22

Notes on Draft Service Occupancy Agreements.

Why a licence and not a tenancy?

- 1 Both draft service occupancy agreements create a licence rather than a tenancy. This is an important distinction because:

possession can be obtained faster for a licence; and

the employee can be required to vacate, and possession proceedings can be issued immediately on termination of employment for a licence.

Can a fee or rent be charged for accommodation?

- 2 Yes, but studs need to be sure that by doing so they do not create a tenancy and forfeit the advantages set out above. See below for more details.

Why don't these licences provide for charging a fee or rent?

- 3 Because of the risk of creating a tenancy, these draft licences do not require the payment of rent. If no rent is charged a tenancy cannot be created.
- 4 However, it is possible to charge 'rent' without creating a tenancy, provided the elements of a service occupancy agreement exist. They are:-
 - 4.1 the accommodation is required by the employee in order to better perform their duties; and
 - 4.2 the employee is expressly required to occupy the accommodation to perform those duties.
- 5 **Warning!** If a fee or rent is charged, whatever is written in the agreement,-:
 - 5.1 the employee's occupation of the accommodation is not in fact of material assistance to their employment/was offered as a fringe benefit/to encourage the employee to work better; or
 - 5.2 the employee was not actually required as a term of their employment to take up the accommodation and instead was given an option to do so it is likely that a tenancy will be found to be created.
 - 5.3 If employees **are obliged** to live on site so as to be on hand to deal with equine emergencies, foaling etc out of hours, it is unlikely that a tenancy will be created even where rent is charged.



Relationship to employment contract

- 6 A service occupancy agreement runs alongside the employee's employment contract. Both should be completed at the same time.

If an employee is dismissed but not required to vacate immediately, care must be taken to avoid a tenancy being created. Individual legal advice should be taken if continued occupation is proposed.

Health and Safety Obligations

- 8 The employer should ensure that it complies with electrical, gas and furniture regulations in providing the accommodation, equipment and furniture.

Warning

- 9 These documents are specimens only, and are not tailored for your stud's individual circumstances. Separate legal advice should be taken in each case.
- 10 Please note that these documents should not be used in cases where individuals are involved in agriculture.

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