

Termination by operator

Residential (Land Lease) Communities Act 2013

As a home owner in a residential land lease community you have rights under the *Residential (Land Lease) Communities Act 2013* and *Residential (Land Lease) Communities Regulation 2015*. This factsheet explains the law in NSW regarding termination by the operator.

In most situations, if the operator wants to terminate your site agreement they must issue you with a termination notice setting out the ground for termination.

You can apply to the NSW Civil and Administrative Tribunal (NCAT) to resolve a dispute about a termination notice, for example, whether the notice was given in accordance with the Act. The application must be made within 28 days of receiving the notice.

A termination notice does not automatically terminate your agreement.

If you receive a termination notice you may decide to leave and provide vacant possession of the site on or before the date specified in the notice. However, you are not required to leave and you can choose to stay and dispute the termination of your agreement.

If you don't leave the operator must apply to NCAT for orders for termination and possession. You have the right to put a case to NCAT that your agreement should not be terminated. If you are successful you can stay. However, if NCAT makes orders for termination and possession you must leave in accordance with those orders.

Grounds for termination

The operator can issue a termination notice on the following grounds:

- you have seriously or persistently breached the site agreement (90 days notice).
- you are in at least 30 days in arrears with your site fees (90 days notice).
- the operator requires vacant possession of the site to comply with an obligation under an Act to carry out works within the site or community (90 days notice).

- the community is to be closed and used for another purpose (12 months notice or, if the agreement is within the fixed term, the day after the fixed term ends, whichever is the later).*
- there is to be a change of use of the site (12 months notice or, if the agreement is within the fixed term, the day after the fixed term ends, whichever is the later).*
- the site is required under an Act of the NSW or Commonwealth governments (90 days notice).
- the site is not lawfully useable as a residential site (90 days notice).
- the site has not been used as your place of residence or another person's residence for the past three years (or a longer period agreed to by the operator) (180 days notice).

*For more information see our factsheet on termination for closure or change of use available at thenoticeboard.org.au

Serious misconduct

Your site agreement can also be terminated without a termination notice if you (or anyone jointly occupying the premises) has intentionally or recklessly caused or permitted:

- serious damage to any property in the community, or
- injury to any person lawfully in the community, or
- the site to be used for an illegal purpose, or
- the operator or their agent or employee, or any resident, to be seriously or persistently threatened or abused.

The operator still needs to apply to NCAT for termination and possession orders and you do not have to leave unless those orders are made.

Abandonment

An operator can apply to NCAT for an order for possession of the site on the grounds of abandonment. NCAT can make an order declaring that you have abandoned the site and grant possession of the site to the operator.

Retaliatory conduct by operator

If you believe that you have been issued or threatened with a termination notice as a result of taking action to assert your rights you can make an application to NCAT. The application must be made within 90 days of receiving the notice.

NCAT may consider the termination notice to be retaliatory if it was issued wholly or partly because:

- you made a complaint to the Commissioner or a government agency about the operator
- you made a complaint to the operator
- you made an application to NCAT or a court
- you took action to promote the establishment of a residents committee.

FURTHER HELP

Tenants Advice and Advocacy Services

Sydney

South	9787 4679
South West	4628 1678
Inner West	9559 2899
North	9559 2899

Regional

Blue Mountains	4704 0201
Central Coast	4353 5515
Hunter	4969 7666
Illawarra & South Coast	4274 3475
Mid Coast	6583 9866
Northern Rivers	6621 1022
North West NSW	1800 836 268
South West NSW	1300 483 786

Aboriginal

Sydney	9833 3314
Northern NSW	1800 248 913
Southern NSW	1800 672 185
Western NSW	1800 810 233

Website	thenoticeboard.org.au
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NSW Fair Trading	13 32 20
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This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. The information applies to people who live in, or are affected by the law as it applies in New South Wales, Australia.

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