

Termination by operator



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 of site agreements 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. 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 can opt to leave in accordance with the notice. However, you are not required to vacate and you can choose to stay and dispute the termination.

If you do not vacate 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 vacate in accordance with those orders.

Grounds for termination

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

1. You have seriously or persistently breached the site agreement (90 days notice).

2. You are in at least 30 days in arrears with your site fees (90 days notice).
3. 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).
4. 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).*
5. 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).*
6. The site is required under an Act of the NSW or Commonwealth governments (90 days notice).
7. The site is not lawfully useable as a residential site (90 days notice).
8. 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 the need to issue 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 asserting your rights you can make an application to NCAT. The application must be made within 90 days of receiving the notice.

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by the law as it applies in New South Wales, Australia.

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FURTHER HELP:

Tenants Advice and Advocacy Services

Sydney

South	9787 4679
South West	4628 1678
West	8833 0933
Northern	8198 8650

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
North NSW	1800 248 913
South NSW	1800 672 185
West NSW	6884 0969

Website	thenoticeboard.org.au
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Law Access	1300 888 529
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Fair Trading	13 32 20
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Find Legal Answers	www.legalanswers.sl.nsw.gov.au
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