

Termination for closure of community or change of use

If the operator of a residential land lease community wishes to issue termination notices due to closure of community or change of use, there are certain rules they must follow, as described in the *Residential (Land Lease) Communities Act 2013* and *Residential (Land Lease) Communities Regulation 2015*.

Home owners

An operator can give you a termination notice if the community is going to close and be used for another purpose. If the other purpose requires development consent under the *Environmental Planning and Assessment Act 1979*, the termination notice cannot be given until development consent has been obtained. An operator can also give you a termination notice on the grounds that there is to be a change of use of your site, but only if the NSW Civil and Administrative Tribunal (NCAT) has authorised the notice and, if development consent is required, it has been obtained.

An operator can give you a termination notice if your site is no longer usable as a residential site and you are entitled to be paid compensation: if it was unknown to you that it was not lawfully useable at the time you entered into your site agreement, or the site became unlawfully useable after you entered into the site agreement due to some action of the operator. The compensation that applies is outlined below.

Notice period

A termination notice for closure or change of use notice must give you 12 months to vacate the site, or require vacant possession the day

after the fixed term ends if that is longer than 12 months.

Lodging of a development application (DA) with the local Council or regional planning committee does not lawfully permit a termination notice to be issued. The development consent must be obtained before the notice can be issued to you.

You can apply to NCAT for an order postponing the date you have to vacate. The application must be made within 90 days of receiving the termination notice. If you are still living in your home at the end of the termination notice period, the operator can apply to NCAT for a possession order. If NCAT agrees, it will decide the date for you to vacate. If you do not comply with this, the operator can obtain a warrant for possession and ask a Sheriff's Officer to remove you from the community. It's against the law for the operator to attempt to recover possession of the site other than by following this process and heavy penalties can be imposed.

After notice is served

Once you have received the notice of termination from the operator they are then required to use reasonable endeavours

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to obtain or make available alternative accommodation that is:

- approximately of the same standard and site fee as your current site and
- is acceptable to you or should be reasonably acceptable to you

The operator is not required to undertake this step if you notify them in writing that their assistance is not required. You cannot be forced to relocate to another community.

Compensation if your home is being relocated to another community with a different operator

If you have agreed to move your existing home to another community operated by a different operator then in advance of this move your current operator is required to pay the following reasonable costs for:

- removing your home from its current site, including disconnection of service,
- transporting the home and your possessions to the new site,
- installing your home on the new site including connection to available services,
- repairing any damage to your home caused by the relocation and
- landscaping your new site to bring it up to the condition of your old site

If you incur any other reasonable costs during the relocation process the operator is required to pay these costs once the relocation has been completed.

NCAT can make orders about compensation where there is a dispute between you and the operator. The application to NCAT must be lodged within 12 months of your home being installed on the new site.

Compensation when your home is not being relocated

If your home cannot be relocated or you don't want to relocate to another community the operator must pay you compensation.

Check your site agreement for any terms that outline amounts of compensation or method for how compensation will be calculated in these circumstances.

If your site agreement does not specify the manner for determining compensation then the operator is required to pay in advance compensation for the loss of residency and for relocation.

Compensation for loss of residency is a reasonable amount taking into account all the following factors:

- length of time remaining in your site agreement,
- original purchase price you paid,
- current onsite market value of your home valued as if redevelopment was not taking place,
- site fees you pay and
- any other relevant factor you raise

Compensation for relocation is a reasonable amount taking into account all the following factors:

- your cost of moving,
- inconvenience to yourself,
- length of time you have lived at this site and
- any other relevant factor you raise

If you don't intend to keep your home then in return for the compensation payment you must transfer ownership to the operator of your community.

If you are going to keep your home then any money you can recoup by selling the home off site is to be deducted from compensation for loss of residency. In addition when you are keeping the home the cost of transporting and moving your home needs to be regarded when calculating the compensation for relocation.

If you cannot reach agreement with the operator on the amount of compensation then you can apply to NCAT to resolve the dispute. You do not have to accept the amount of compensation offered by the operator. You must lodge your compensation dispute at NCAT within 90 days of the dispute arising.

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Tenants

Termination due to closure of the community or change of use

If you are a tenant under a Residential Tenancy Agreement then the operator is not required to pay any compensation to you when they are closing the community due to redevelopment or change of use of your site.

If you are on a **fixed term agreement** then the operator or your landlord (if you are not renting from the operator) will need to wait until your fixed term agreement has ended to issue an end of fixed term termination notice. This notice period is 30 days and it can be issued up until the last day of your fixed term agreement. The notice must be in writing.

If you are a tenant on a **periodic tenancy agreement** then the operator or your landlord (if you are not renting from the operator) can issue you with a no grounds termination notice. The notice period is required to be 90 days and the notice must be in writing.

If you are still living in your home at the end of the termination notice period, the operator or your landlord can apply to NCAT for a possession order. If NCAT agrees, it will decide the date for you to vacate. If you do not comply with this, the operator or your landlord can obtain a warrant for possession

and ask a Sheriff's Officer to remove you from the community. It's against the law for the operator or your landlord to attempt to recover possession of the site other than by following this process and heavy penalties can be imposed.

Factsheet last updated 25 September 2024.

General information about land lease communities can be found at tenants.org.au/thenoticeboard
Also check out our newsletter *Outasite*.



For free advice, call your local Tenants Advice & Advocacy Service:

SYDNEY:

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| • Eastern | 9386 9147 |
| • Inner | 9698 5975 |
| • Inner West | 9559 2899 |
| • Northern | 9559 2899 |
| • Southern | 9787 4679 |
| • South West | 4628 1678 |
| • Western | 8833 0933 |

REGIONAL:

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| • Blue Mountains | 4704 0201 |
| • Central Coast | 4353 5515 |
| • Hunter | 4969 7666 |
| • Illawarra Sth Coast | 4274 3475 |
| • Mid Coast | 6583 9866 |
| • Northern Rivers | 6621 1022 |
| • Northwest NSW | 1800 836 268 |
| • Southwest NSW | 1300 483 786 |

ABORIGINAL:

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|-------------|--------------|
| • Sydney | 9833 3314 |
| • West NSW | 6881 5700 |
| • South NSW | 1800 672 185 |
| • North NSW | 1800 248 913 |

WEBSITE:

tenants.org.au/thenoticeboard

NSW FAIR TRADING: 13 32 20

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. ©Tenants' Union of NSW

