Agency agreements

for the sale of residential property

Selling a home is something many people do only once or twice in a lifetime, so it pays to do some homework before signing up with an agent to sell your property for you.

When you sign up with an agent, you enter into a legally binding contract. This fact sheet explains what your rights and responsibilities are under that contract.

You have a cooling–off period of 1 day starting from when you sign the agreement. You can cancel the agreement in this time if you are not happy with it (more information over the page).

Choosing a real estate agent

To sell a home in New South Wales, an agent must have a real estate agent’s licence issued by NSW Fair Trading. You should check the licence details of all agents you are thinking of using before signing up with your preferred choice. You can do a licence check online through the Fair Trading website or by calling 13 32 20.

To find the right agent for your needs, you should shop around. If possible, get the names of one or two agents from other home owners in your area who have recently sold. We suggest you talk to at least three agents and:

- make sure they have a valid licence
- get a list of all their fees
- find out if they have a good knowledge of your area
- ask if they adhere to a code of ethics.

Signing up with an agent

Before the agent can market your property, they must sign a contract with you, called an ‘agency agreement’. An agency agreement is a legally binding contract and it is important that you read and understand it.

If you are not sure about the agreement terms you should get legal advice.

Signing an agency agreement means that you authorise an agent to do certain things for you in relation to the sale of your property, such as arranging advertising and inspections and receiving deposits from buyers. The agreement must specify what the agent is authorised to do for you and must state all commissions and any other costs you may be liable to pay.

What is in the agency agreement

The agency agreement must state:

- the services the agent will provide for you
- the amounts of any fees or commission you agree to pay for those services
- the circumstances in which the agent is entitled to payment – for example, commission is usually payable only when the property is sold
- how and when payment is to be made – for example, whether the agent can deduct their commission from the deposit money paid by the buyer
- warnings about circumstances in which you might have to pay commission to more than one agent (see information on page 2 about the different types of agency agreement)
- the extent of the agent’s authority to act for you – for example, whether the agent is permitted to exchange a sale contract on your behalf or make changes to the sale contract
- the agent’s estimated selling price or price range for the property.

You have the right to negotiate with the agent about the terms and conditions of the agreement and to ask for any legally permitted changes to be made. Alterations made to the agreement need to be signed by all parties.

Commission, fees and expenses

The amounts charged by agents are not set by law. You can negotiate with the agent about the amounts of any commissions, fees or other expenses that you may be required to pay. Before signing an agreement, it is a good idea to talk to a few agents and compare their prices. Ask
each agent for a printed list of their fees and commission rates and the expenses they charge.

Disclosure of rebates and discounts

The agency agreement may require you to pay the agent for certain expenses in relation to the sale of your home, such as advertising, auctioneer’s fee, or any other services the agent may arrange for you, such as cleaning, decorating or landscaping.

Sometimes the amount the agent has to pay for the service is less than what you are being asked to pay. This can occur if the agent receives a commission or discount from the provider of the service for being a regular customer – for example, some newspapers pay a commission to the agency at the end of the year based on how much advertising was placed.

The agency agreement must state the amounts or estimated amounts of any such commissions or discounts and from whom they are received. You can negotiate with the agent about whether you should pay the full amount.

Ending the agreement

The agency agreement usually has a specified period (a ‘fixed term’) during which the agreement cannot be ended unless you and the agent both agree. If the agreement is open ended (that is, it does not have a fixed term) it must state how the agreement can be ended.

The length of any fixed term is negotiated between you and the agent, there is no minimum or maximum set term. The fixed term will depend on how long you and the agent think it will take to sell the property.

If the fixed term is longer than 90 days, you can give the agent 30 days written notice to end the agreement after 90 days. Of course, if the fixed term has less than 30 days left to run, you can just give notice to end the agreement at the end of the fixed term – check your agreement to see how much notice you need to give. If you are not sure how to end the agreement, you should seek legal advice.

If you are not happy with an agent’s services, it is important to properly end your agreement with them before signing up with another agent. Otherwise both agents may charge you commission when the property is sold.

Types of agency agreements

There are several different kinds of agency agreements for the sale of residential property. It is important to be aware of the kind of agreement you sign, because it affects your rights and the amount of commission you may have to pay. You should discuss the agreement with a legal adviser if you are not sure about your rights. The following is an overview of the different types of agreements.

Exclusive agency agreements

Exclusive agency agreements are commonly used for the sale of residential property. In this kind of agreement, you give exclusive rights to one agent to sell your property. This may entitle the agent to be paid commission if the property is sold during the fixed term of the agreement, even if the property is sold by you or by another agent. The agent may also be entitled to commission if the property later sells to a person who started negotiating for the property with the original agent.

Sole agency agreements

This is similar to an exclusive agency agreement. You give rights to one agent to sell the property but you may find a buyer yourself. If you find a buyer who has not been introduced by the agent, then no commission is payable to the agent.

General listing / Open agency agreement

This lets you list your property with a number of agents. You pay a commission to the agent who finds the buyer.

Multiple listing

This occurs when you deal with an agent who is part of a network of agents working together to sell your home. It covers both auction and private treaty. You pay a commission to the agent you signed up with.
Auction agency agreement

This is effectively an exclusive agency agreement where the property is listed for auction.

Cooling–off period

The agency agreement becomes binding when the principal (that is, you as the owner/s of the property, or someone who is legally acting for you) and the agent have signed it. There is then a cooling–off period of 1 business day during which you can cancel (or ‘rescind’) the agreement. Saturday is included for the purposes of the cooling–off period, but public holidays are not.

The cooling–off period starts when you sign the agreement and ends at 5pm on the next business day or Saturday. For example, if you sign the agreement on a Friday, the cooling–off period ends at 5pm on Saturday. If you sign up on Saturday, the cooling–off period would usually end at 5pm on Monday, unless that is a public holiday, in which case it will end at 5pm on Tuesday.

The cooling–off period gives you time to read the agreement, consider the terms you have agreed to, including the agent’s fees, and get independent advice if you have concerns about any aspect of the agreement. Talk to the agent – they may be willing to change things in the agreement that you are not happy about.

Cancelling the agreement during the cooling–off period

If you decide to cancel (or ‘rescind’) the agreement during the cooling–off period, you need to deliver a ‘notice of rescission’ to the agent.

This simply means giving the agent a written notice or letter which:

- is addressed to the agent (use their name as given in the agency agreement),
- states that you are rescinding the agreement, and
- is signed by you (and any other person named on the agreement as a principal) or by your solicitor/s.

You can hand the notice to the agent in person, deliver it to or leave it at the agent’s office or the agent’s address as given in the agency agreement, or fax it to the agent. Make sure to keep a copy for your records.

The agent cannot charge you any fees or costs in relation to an agreement that has been rescinded correctly. Any money you have already paid to the agent must be refunded to you.

Waiving your cooling–off rights

If you are sure that you wish to go ahead with the agency agreement, you can waive, or forego, your right to a cooling–off period by signing a separate waiver form when you sign the agreement.

The cooling–off period can be waived only if the agent gave you the following documents at least 1 business day before you signed the agency agreement:

- a copy of the proposed (unsigned) agency agreement, and
- a copy of this fact sheet.

For example, on Thursday morning the agent gives you a copy of the unsigned agreement and this fact sheet, which you read and consider carefully. On Friday afternoon you sign the agency agreement and the waiver form. The agency agreement immediately becomes binding and the agent can get to work on selling your home.

The Contract of Sale

A residential property cannot be advertised for sale until a Contract of Sale has been prepared. The contract must contain a copy of the title documents, drainage diagram and the Zoning Certificate (s 149) issued by the local council. Property exclusions must also be included and a statement of the buyer’s cooling off rights must be attached. The draft contract must be available for inspection at the agent’s office. It is important that you consult your solicitor or conveyancer about preparing the contract to make sure that everything is in order.
Exchange of contracts

The contract exchange is a critical point in the sale process:

- The buyer or seller is not legally bound until signed copies of the contract are exchanged.
- Buyers of residential property usually have a cooling-off period of 5 working days following the exchange of contracts during which they can withdraw from the sale.
- If the agent arranges exchange of contracts, the agent must give copies of the signed contract to each party or their solicitor or conveyancer within 2 business days.
- The cooling-off period can be waived, reduced or extended by negotiation.
- There is no cooling-off period for sellers. Once contracts have been exchanged, sellers are generally bound to complete the agreement.
- There is no cooling-off period when purchasing at auction.

If you encounter problems

If an issue arises during the sale process that you are unhappy with, check your copy of the selling agency agreement to clarify your rights and obligations.

Try to sort out the problem by talking to the agent.

Make certain that any instructions you give the agent are in writing, and keep a copy. If you think the agent has charged a fee to which they are not entitled, or believe the fee charged is excessive, you can apply to the Consumer, Trader and Tenancy Tribunal to settle the matter.

Other tips

If you need further assistance to resolve a problem, consider the following:

- If your agent is a member of a professional association, contact that association. They can be helpful in resolving disputes.

You can also seek legal advice from a solicitor or the Chamber Magistrate at your nearest Local Court.

If your complaint concerns your solicitor, you can lodge a complaint with the Office of the Legal Services Commissioner.

If your complaint concerns your conveyancer, you can lodge a complaint with NSW Fair Trading.

More information

NSW Fair Trading can give you more information about the laws applying to property sales and agents. Contact Fair Trading on 13 32 20 or visit the Fair Trading website.
Auction laws

Information for real estate agents, stock and station agents and auctioneers

On 1 September 2003, the Property, Stock and Business Agents Act 2002 and the Property, Stock and Business Agents Regulation 2003 came into effect. The laws changed the way that auctions of residential property and rural land are conducted in New South Wales.

The changes were introduced in response to home sellers’ and buyers’ concerns about auctions. There are five main areas of change designed to increase consumers’ confidence in buying and selling residential and rural property at auction:

1. Bidders must be given a copy of the Bidder’s guide fact sheet.
2. Bidders must be registered and display a bidder number.
3. Sellers are limited to one bid only.
4. Falsely understating the expected selling price to buyers is prohibited.
5. Auctions can only be conducted by accredited auctioneers.

Registering bidders

Bidder’s guide

NSW Fair Trading’s fact sheet the Bidder’s guide provides information for bidders including how to register, the kinds of proof of identity required, privacy rights and auction conditions.

The selling agent must try to ensure that all bidders receive a copy prior to the auction. Distribution to prospective buyers could take place at inspections.

The Bidders Record

For each auction, a Bidders Record must be made of the persons registered to bid at the auction. Each bidder must be given a bidder’s number to display. The Bidders Record can be made by:

- the selling agent, or
- another agent engaged to act in respect of the sale or acting for or on behalf of the auctioneer.

Entries may only be made in the Bidders Record by the agents involved and their employees.

IMPORTANT – The selling agent must try to ensure that all potential bidders receive a copy of the Bidder’s guide prior to auction.

Details to be included in the Bidders Record

The Bidders Record must be in English and must include:

- the date and place of the auction
- the address of the property or properties being auctioned
- the name of the owner of the property at the time of the auction
- the names and licence numbers of the selling agent and the auctioneer
- each bidder’s name, address, the identifying number of their proof of identity (see next page for more information) and the bidder number allocated to the person for the auction
- if the person registering is a licensed agent acting for a buyer – their licence number
- if the bidder is bidding on behalf of someone else, the other person’s name, address and the identifying number of their proof of identity. This requirement does not apply if the person registering has a power of attorney to act for the other person – they can simply register to bid in their own right
- the highest bid accepted and vendor bid (if any).

A person who intends to bid on behalf of someone else will need to show the agent a letter of authority to bid for that person (unless they have power of attorney). The letter must include the person’s name, address and identifying number of their proof of identity. The agent does not have to keep a copy of the letter. This also applies to ‘telephone bidding’. Where a licensed person acting as a buyer’s agent registers to bid, they may show their agency authority instead of a letter.
If the person is bidding for a company, the ABN must be recorded. The letter authorising the person to bid should be on the company letterhead.

If a couple is registering to bid and would be buying the property together, only one of them needs to register. This applies to any group of two or more people bidding to buy the property together.

If the hopeful buyer has brought a friend or family member to bid for them, the buyer should sign a letter authorising the other person to bid for them.

**IMPORTANT** – Details in the Bidders Record cannot be shown to anyone, including the seller.

**Proof of identity**

The proof of identity requirements have been made as flexible as possible.

The basic requirement is that the proof of identity must show the bidder’s name and address and must be issued by a government authority or a financial institution. An Australian passport is an example of acceptable proof.

If the bidder does not have proof of identity which meets that requirement, they can provide two kinds of card or document, at least one of which was issued by a government authority or a financial institution and one which shows their address.

For example, if the bidder has a Medicare card, a birth certificate, ATM card or overseas document such as passport or driver’s licence as their main proof of identity, they will also need something that shows their address, such as a utilities bill or a rental agreement. If they don’t have anything showing their address, the regulations allow them to complete a statutory declaration stating their address.

**IMPORTANT** – If a couple is registering to bid and would be buying the property together, only one of them needs to register.

**The bidder number**

There are no set requirements about the form of the bidder numbers – this is left up to agents to decide.

The number could, for example, be printed or written on a paddle with a handle, or on a piece of cardboard or plastic or laminated paper.

The basic requirement is that the number can be clearly seen by the auctioneer. It is also important to make sure that each bidder has a different number.

**Preregistering bidders before the auction day**

Agents can pre-register bidders in advance of the auction to save time on the day.

This could be done when prospective buyers are inspecting the property, or any time prior to the auction. Agents could encourage prospective buyers to drop in or telephone the selling agent’s office to register their intention to bid by giving their name and address.

Many of the details on the Bidders Record can also be filled out in advance, such as the property address and owner’s name.

When pre-registered bidders arrive at the auction, agents will need to confirm it is the same person by checking their proof of identity. The prospective buyer can then be given their bidder number.

**IMPORTANT** – Each bidder must be given a different number.

**Late arrivals**

Potential buyers who arrive at the auction late are not prevented from bidding – but they will need to have a bidder number before the auctioneer can take their bids.

While it is up to agents to decide how they wish to deal with registering late bidders, the following suggestions may be helpful:

- a sign could be placed near the entrance to inform bidders that they need to register
- a registration table could be set up near the entrance
- agency staff could carry registration forms on a clipboard and approach late arrivals.
If a bidder arrives at the auction at the crucial point where it is necessary for their bid to be made immediately, they should be advised to raise their hand to indicate to the auctioneer that they wish to make a bid. It should only take a moment for an agency staff member to note the person’s details from their proof of identity and hand them a bidder’s number.

**Multi-property auctions**

The laws provide for several options for creating the Bidders Record for auctions which involve more than one property and/or multiple agents.

Where more than one property is offered for sale at an auction, a single Bidders Record may be created which lists the required details for each of the properties. Bidders would only need to register once, get one bidder number and would be able to bid for any of the listed properties.

Where a multi-property auction involves more than one selling agent:
- one Bidders Record may be created for all of the properties being auctioned, or
- each agent may create their own Bidders Record for the properties they are selling.

Depending on the size of the auction, it may be necessary to set up a number of registration tables.

The person responsible for organising the auction will need to make sure that only one series of bidder numbers is used for the auction.

**Privacy of bidders’ details**

The Bidders Record is subject to strict confidentiality requirements.

Details in the Bidders Record can only be shown to NSW Fair Trading. An authorised investigator would make a written request to the agent to see the Bidders Record. It cannot be shown to the seller.

The information in the Bidders Record must not be used for any other purpose – it cannot be used to contact bidders and the details it contains cannot be disclosed to anyone else, including the seller.

**Keeping the Bidders Record**

The Bidders Record is subject to the general record keeping requirements of the Act.

After a Bidders Record is created, the agent who was responsible for creating it must keep it in a secure place for at least 3 years and must keep all their Bidders Records together, in the form of a Register of Bidders Records.

The Bidders Record may be made directly on to computer at the auction or may be transferred to a computer later. Records may be kept on computer or on disks, as long as a hard copy can be given to NSW Fair Trading if required.

Where a single Bidders Record is made for an auction involving multiple agents, each agent’s records will need to note the details of the agent who made and keeps the Bidders Record for that auction.

**Auctioneers**

An auctioneer must not accept a bid from a person unless they are registered in the Bidders Record for the auction and have been given a bidder number.

Auctioneers are not liable to the seller or any other person for refusing a bid from an unregistered person.

To protect sellers and buyers, a bid taken from an unregistered person, whether inadvertently or deliberately, is deemed to be valid. However, the auctioneer may be subject to disciplinary action by NSW Fair Trading and a fine of up to $11,000.

It is an offence for an auctioneer to invent bids.

Only one bid may be made on behalf of the seller by the auctioneer. The seller’s bid by the auctioneer cannot be used unless notice of the right to bid is notified in the conditions of sale, which must be clearly displayed and be available for inspection before the auction commences. When the seller’s bid is made by the
auctioneer, the auctioneer must state that it is a 'vendor bid'.

A co-owner, executor, administrator or someone bidding on their behalf, may make more than one bid as long as:

● this is outlined in the auction conditions
● the auctioneer has announced this before the start of bidding at the auction
● the auctioneer announces the bidder registration number of any co-owner, executor, administrator, or someone bidding on their behalf.

**IMPORTANT** – Only one bid may be made by or on behalf of the seller. When the seller’s bid is made, the auctioneer must state that it is a seller’s bid.

**Auctioneer licence accreditation**

The law prohibits a real estate or stock and station agent from conducting property auctions unless their licence is accredited to authorise them to act as an auctioneer. The Director General may accredit an agent's licence if satisfied that the holder is qualified and competent to conduct auctions in accordance with the legislation.

For more information about auctioneer accreditation, call the Licensing Unit of NSW Fair Trading on 9619 8733.

**More information**

For more information about the laws applying to property auctions and agents call NSW Fair Trading on 13 32 20 or go to www.fairtrading.nsw.gov.au
Frequently asked questions

Audit Requirements – Property, Stock and Business Agents

Who has to lodge a trust account Auditor’s Report or statutory declaration?
The Property, Stock and Business Agents Act 2002 (the Act) administered by Fair Trading, requires all licensees to lodge either a trust account Auditor’s Report or a statutory declaration.

Lodgement must be within 3 months of the end of the audit period which is 30 June each year, or within 3 months of any separate audit period applicable. You still need to lodge even if you ceased trading during the period or only traded for part of the period.

When does it have to be lodged?
The due date for lodgement is 30 September each year or within 3 months of any separate audit period applicable.

How do I know whether to lodge an Auditor’s Report or a statutory declaration?
If you held any money in a trust account during the audit period, you must engage an auditor and lodge an Auditor’s Report form.

If you did not hold or receive any money for or on behalf of any person during the audit period, you must lodge a statutory declaration form to this effect.

Where do I get the forms?
The Auditor’s Report / statutory declaration is not being posted to licensees for the financial year ending 30 June 2011.

The Auditor’s Report or statutory declaration form that you require to complete the above obligations is available to download from the Trust account audit requirements page of the Fair Trading website from Friday 1 July 2011. You can access that:

- By clicking the link in the What’s new area on the top right, or
- Going to the Property Agents & Managers section and navigating to Agency responsibilities, Trust accounts, Trust account audit requirements, or
- By using the search feature and searching for ‘Trust account audit’.

You may not have received any notification of these changes if you changed your address and did not notify Fair Trading.

For the purpose of being notified about audit requirements, if you change your registered address, mailing address or residential address and associated contact numbers, you must notify this in writing within 14 days to: The Co-ordinator, Property Services Licensing, NSW Fair Trading, PO Box Q164, QVB Post Shop, Sydney NSW 1230, or by fax to (02) 9372 9060. Your records can then be updated.

Failure to notify of a change of registered address can incur a penalty of up to $5,500.
If you have an alternative audit year than the 2010/2011 financial year you will be advised of your audit requirements at the appropriate time.

What if I am in partnership with other licensees?
Only one licensee in a partnership has to lodge an audit for the partnership.

How do I lodge a statutory declaration?
Licensees, including licensee corporations that have not held money in trust during the applicable audit year must instead lodge a statutory declaration.

Complete the form for either an individual licensee or a corporation before a Justice of the Peace or a solicitor, sign it, have it witnessed and post it to the Fair Trading Locked Bag mailing address on the form.

A Justice of the Peace may be available at a Chamber Magistrate office, court house or police station.

How do I lodge an Auditor's Report?
Your auditor must be a currently registered company auditor with the Australian Securities and Investments Commission (ASIC) or be qualified under s.115(1)(b) of the Act.

You can find a registered auditor by family name or organisation through the ASIC search website, www.search.asic.gov.au/pro.html.

Before engaging an auditor, inform that the report must be lodged by 30 September and confirm that the auditor will be able to complete the report in time for you to lodge it by the due date.

Give the auditor access to all records and documents relating to money held in a trust account for the audit period, as soon as possible after the end of the audit period. You do not need to wait until you obtain a report form to provide access.

Monitor the progress of your report with the auditor on a regular basis. Do not just leave the report with the auditor and forget about it. If your auditor cannot complete the report within the agreed timeframe due to some unforeseen circumstance preventing on time lodgement, you should immediately engage another auditor.

Who is responsible for lodging the Auditor’s Report correctly and by the due date?
When the report is completed you should ask your auditor to deliver the report to you so you can sign it and lodge it with Fair Trading. Do not rely on your auditor to lodge the report.

The Act makes it quite clear it is the licensee’s responsibility to ensure the report is lodged by the due date. A licensee cannot pass this responsibility on to an auditor or an auditor’s employees.

The Auditor’s Report must be posted to Fair Trading at the Locked Bag address on the form. If it is sent by surface mail, a minimum of four working days should be allowed for delivery.

Can the lodgement deadline be extended?
All licensees are required to lodge by the due date. The deadline will only be extended in exceptional circumstances which existed over a period of time and can be supported by evidence.

Reasons such as not receiving or misplacing forms, being unaware of the requirement to lodge, forgetting to provide access to the auditor, allowing insufficient time for the auditor to complete the report, forgetting to lodge the report, the auditor was too busy to get it done in time or the auditor forgot to lodge the report, are not acceptable.
What happens if the Auditor’s Report or statutory declaration is not lodged by the due date?

If you do not lodge an Auditor’s Report or a statutory declaration by the due date or fail to lodge it at all, and you do not have an acceptable reason, Fair Trading will contact you and take action based on your circumstances.

Failure to lodge by the due date makes an individual or corporation a disqualified person under the Act and liable to disciplinary action.

Alternatively, Fair Trading could issue a $550 fine for a late lodged audit by an individual or $1,100 for a corporation. A $1,100 fine applies for a late lodged statutory declaration by an individual or corporation.

Failure to lodge an Auditor’s Report or statutory declaration means you will not be able to renew your licence until you lodge.

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Section 72 of the *Property Stock and Business Agents Act 2002* prohibits an agent from making false representations with respect to the agent’s true estimate of the selling price of a property to either a seller or prospective seller of residential property.

Section 73 prohibits an agent, by any statement made in the course of marketing a property pursuant to an agency agreement for the sale of a residential property, falsely understating the estimated selling price of the property.

The effect of these provisions is to require agents to act reasonably and fairly in their dealings with sellers or prospective sellers of properties and with buyers or prospective buyers of properties.

Section 73 of the *Act* also contains some substantive considerations that agents need to be aware of which could trigger an offence:

- An agent or employee is considered to falsely understate the estimated selling price of residential property if the agent or employee states as his or her estimate of that selling price a price that is less than his or her true estimate of that selling price.

- For the purposes of the section, a statement is considered to be made in the course of marketing residential property if the statement is made:
  
  (a) in an advertisement in respect of the property that is published or caused to be published by an agent, or
  (b) to a person (orally or in writing) as a prospective purchaser of the property.

- Section 75 of the *Act* extends the provisions of sections 72 and 73 to estimated price range in the same way as it applies to estimated price.

A statement in the agency agreement of the agent’s estimate of the selling price of residential property is evidence for the purposes of these sections of the agent’s true estimate of that selling price. Regulations to the *Act* require that both an estimated price, and the price at which the property is to be offered for sale, must be recorded in the agency agreement.

The maximum penalty for a breach of the provisions of sections 72 and 73 is 200 penalty units – presently $22,000. The Commissioner for Fair Trading may also take disciplinary action against the agent.

**What if the eventual sale price is substantially different from the estimated price?**

The price at which a property ultimately sells will be a factor to be considered by Fair Trading in relation to the reasonableness of the agent’s estimate.
Estimated Selling Price Guideline for Agents

However, it is not the only factor, and without more it is not determinative of whether an agent’s estimate was fair and reasonable.

The Office of Fair Trading recognises that a significant number of external factors can affect the final selling price. Prevailing economic conditions, interest rate movements, the level of interest in a specific property, the marketing program and method of sale used in a particular case and seasonal factors all play a part in determining the final selling price of a property.

But the situation is this: an agent must act fairly and reasonably in their dealings with buyers and sellers. When estimating a selling price they should do so in a manner that can be substantiated by the agent. An agent must not dishonestly tell a buyer or potential buyer one (lower) price and a seller or potential seller another (higher) price.

Good agents will be able to develop practices that ensure that they make fair estimates of a selling price and will be able to demonstrate what information they relied on to make their estimate. This is good practice for agents and good service for consumers.

The requirement to substantiate selling price estimates – residential property

Section 74 of the Act empowers the Commissioner for Fair Trading to require an agent to substantiate an statements made by an agent with respect to the selling price of a property.

The Commissioner may, by a notice in writing, require an agent to provide evidence of the reasonableness of any estimate of the selling price of residential property made by the agent in a statement.

The Act provides a maximum penalty of 200 penalty units – presently $22,000 for failing to comply with such a notice.

Estimates of the selling price in a statement that would be affected by this provision include the following:

(a) orally or in writing to a seller or prospective seller of the property, or
(b) in an advertisement in respect of the property that is published or caused to be published by the agent, or
(c) orally or in writing to a person as a prospective purchaser of the property.

Likely scenarios where an estimated selling price could be given orally would include “open house” inspections; at auctions, prior to the commencement of the auction, and estimates given when an agent is attempting to sign up a prospective vendor to an agency agreement.
Estimated Selling Price Guideline for Agents

Agents need to be particularly alert in relation to the use of price guides in advertisements promoting the auction or sale of residential properties. Careful consideration should be given to the use of the following two styles:

**Specified Range**

These advertisements display the anticipated property price as falling within a range, eg. $600,000 to $650,000.

**Non-specific Range**

These advertisements display the anticipated property price as falling within a low, mid or high range of a fixed dollar amount, eg. Low $500,000; Mid $500,000, or where the anticipated property price is shown as a fixed dollar amount followed by a plus sign, eg. $550,000+

Representations such as these are taken to be estimated selling prices for the purposes of the legislation. Therefore, agents must be able to justify any price range if they use this form of advertisement. If a range is used, it must be consistent with the agent’s estimated price recorded in the agency agreement.

**What does the Office of Fair Trading require of agents?**

When an agent provides an estimated price they must be able to demonstrate that their estimate of the selling price of a property was reasonable in all the circumstances and that they took due regard of those matters that should be included in determining an estimated selling price.

Matters that should be considered when an agent is determining an estimated selling price include:

- Features of the property which would affect the value of the property in the market, such as recreational facilities or special architectural features.

- Future use of the property (such as zoning, rights of way, redevelopment, resumption by public authorities, historical preservation orders, covenants or restriction of user, development approvals)

- Market demand in the area

- Sales of comparable properties

- Likely level of demand for the particular property

- Recent valuations of the property

- The circumstances of the vendors (are they under pressure to sell, how much time is available to develop a marketing plan, are they limited in
Estimated Selling Price Guideline for Agents

terms of the way they wish to exhibit the property or in respect of their desired method of sale

• Seasonal factors (does demand traditionally fall away or increase at the time of year the property is being marketed)

• Economic factors (the level of demand for property, whether interest rates on the move, whether the authorities warning about overheated markets).

Agents when determining the estimated selling price of a property should ensure that any information that is relied upon to determine the price is retained in the Sales File for the particular property. Agents should also ensure that any notes they made of their inquiries are also retained. A copy of the sales inspection report should also be retained on the file as it forms part of the agency agreement. This will ensure that if the Commissioner for Fair Trading requires an agent to substantiate the reasonableness of an estimated selling price, they will be able to do so quickly and with confidence.

Whilst an agent who provides an estimated selling price is responsible for its reasonableness, the licensee-in-charge of the agency is responsible for the supervision of all staff and their conduct. Licensees-in-charge must ensure that they have sufficient management and control mechanisms in place in the office to ensure that agents comply with the requirements of the Act.

These provisions are in addition to the general obligation on agents not to engage in misleading or deceptive conduct. Agents should particularly note the requirements of sections 51 and 52 of the Property Stock and Business Agents Act, 2002 which address the publishing of false or misleading advertisements, and misrepresentations by licensees or registered persons.

Agents must also note the requirements placed upon them by the rules of conduct which are prescribed in the schedules to the Property, Stock and Business Agents Regulation 2003. These rules must be observed in the course of the carrying on of business or the exercise of functions under a licence or certificate of registration.

These provisions, and others in the Act and regulations, extend the requirements in relation to estimated price to the sale and purchase process for rural and commercial transactions.
Deciding to use an agent

Information for landlords

Once you have decided to rent out your property, one of the first decisions you will need to make is whether to find a tenant and manage the property yourself or employ a real estate agent to do it for you.

It needn’t be all or nothing. You can decide just to use an agent to go through all the applications, find a suitable tenant and do the necessary paperwork. Once this is done, you can then take on the day-to-day management. However, it’s not as easy as just collecting the rent.

Managing the property yourself can save you the cost of the agent’s fees and help build a more direct relationship with your tenant. This may be an option to consider if you live nearby, have a good knowledge of the tenancy laws and have the spare time to do all the work (such as inspecting the property, organising repairs or going to the Consumer, Trader and Tenancy Tribunal when needed).

If you don’t live near the property, are busy or don’t know the laws very well, then using an agent may be a better and more practical option.

If you decide to use an agent to let and/or manage the tenancy on your behalf, check that they are properly licensed. All property managers must either hold a licence or have a certificate of registration and work under the supervision of a licensed agent. In a large block of units, the agent may be an on-site residential property manager. If you have any doubt that the agent you are interested in using is properly licensed, you can do a licence check on the Fair Trading website or call 13 32 20.

Selecting an agent

You don’t have to engage the services of the real estate agent from whom you purchased the property. The choice is completely yours. It is worth putting some time and effort into choosing the right agent to manage your property. Speak to at least three different agents before you decide. Don’t just base your decision on who is the cheapest. You should also think about what services they are going to provide and how well your investment will be looked after. Choosing the wrong agent may cost you a lot of money if they don’t do their job properly.

Consider asking the following questions before you decide:

- How long have they been a property manager?
- How many properties do they currently manage themselves?
- How long has the property manager been with that particular agency?
- How do they handle requests for repairs from tenants?
- Do they check repairs once they have been carried out?
- What systems are in place for locating and screening prospective tenants?
- What steps do they take if the tenant is late with the rent?
- How many times have they been to the Tribunal and what is their success rate?
- How much are the management fees and what is included and excluded?

Agency agreement

When you engage an agent you will need to sign a written contract called a management agency agreement. The fees and conditions of the agreement are negotiable.
Make sure all matters you want the agent to handle, and any specific conditions, are listed clearly in the agreement to help avoid misunderstandings between you and the agent. For instance, you should consider these questions:

- How often do you want inspections to take place?
- Do you want a copy of inspection reports and other documents to be forwarded to you?
- Do you want to be contacted about all repairs or should the agreement say only repairs costing more than a nominated amount (e.g. $200) require your prior approval?

Management agency agreements usually contain a clause stating that a notice period applies if either party wants to end the agreement (e.g. 30 days or 60 days written notice).

**What to expect of an agent**

A managing agent's responsibilities include:

- finding suitable tenants
- ensuring the tenancy agreement is correctly completed and signed
- lodging the rental bond
- managing the tenancy for you on a day-to-day basis, including:
  - arranging repairs
  - collecting the rent and maintaining rent records
  - conducting regular property inspections
  - handling disputes that may arise
  - paying bills on your behalf (e.g. water and council rates).
- paying the rent to you, less any costs and agency fees, either into your nominated bank account or by cheque. This is usually done monthly.

**Agency fees**

Most agents charge a letting fee (e.g. 1 week's rent) and a management fee based on a percentage of the gross weekly rental (usually between 5 – 12%) plus other fees set out in the agreement. This could include advertising costs, preparing the tenancy agreement and representing you at the Tribunal in the event of a dispute.

**Changing arrangements**

If you choose to manage the property yourself and things do not work out, you can always decide to go with an agent instead. If you use an agent and you are not satisfied with their services, you can choose to either take over managing the tenancy or find another agent. There may also be a change of agent if the property is sold to a new landlord. Naturally, the tenant needs to be advised of the change and NSW Fair Trading notified so that the bond records can be updated.

**At a glance**

There are no changes in this area of the law between the old Act and the tenancy laws that began on 31 January 2011.
Completing a tenancy agreement

Information for landlords

A residential tenancy agreement (also called a lease) is an agreement between you and the tenant to live in your premises in return for payment of an agreed rent. The agreement is a legal contract which sets out the terms and conditions of the arrangement.

You need to complete and sign a written tenancy agreement at the start of each tenancy. Before the tenant signs the agreement they must be given a copy of the New tenant checklist.

Types of agreement

There are two types of tenancy agreement.

Fixed term agreement

This is where the agreement is for a fixed period of time (such as for 6 or 12 months or other agreed period) and specifies an end date. A fixed term agreement is used at either the start of a tenancy or when the parties are renewing the agreement once the original fixed term period has ended.

Periodic (continuing) agreement

This is a tenancy for an indefinite period. You automatically move to a periodic agreement when a fixed term agreement ends, if the tenant remains and no new agreement is signed. You can have a periodic agreement from the beginning but this is uncommon. In a periodic agreement, you and the tenant must follow the rules set out in the original agreement (or in the prescribed standard agreement if there wasn’t a signed agreement).

The rights and obligations under both types of agreements are generally the same. However, there are differences in relation to terminating the tenancy and rent increases.

If you fail to have a written agreement in the proper form at the start of a tenancy, penalties can be imposed. In addition, you are unable to evict the tenant without a reason or put the rent up during the first 6 months.

Additional terms

There are forty mandatory terms in the standard form of tenancy agreement. There are also two optional additional terms about 'break fees' and 'pets'. You need to decide if you want these two terms to stay in the agreement. If not, they will need to be deleted before anyone signs.

Other additional terms may be added to the agreement so long as they:

- do not conflict with the tenancy laws or any other laws and
- do not conflict with the standard terms of the agreement
- however, there are a number of terms which are prohibited from being added to a tenancy agreement.

These are terms which would:

- require the tenant to have the carpet professionally cleaned, or pay the cost of such cleaning, at the end of the tenancy (except as part of a separate arrangement to allow the tenant to keep a pet on the premises)
- require the tenant to take out any form of insurance, such as home contents or public liability insurance
- exempt the landlord, agent or any other person from legal liability for any negligent act or omission
- require the tenant to pay a higher rent, a penalty or some other form of damages if they breach the agreement
- give the tenant a reduced rent or rebate for not breaching the agreement or
- require the tenant to use the services of a particular person or business to carry out their obligations under the agreement, such as a nominated lawn mowing or pool cleaning company.

Any additional terms which are prohibited or conflict with the law or the standard terms are void and
unenforceable. Penalties can be imposed for including prohibited terms in a tenancy agreement.

**Giving the tenant a copy**

You, or your agent, must give a copy of the tenancy agreement to the tenant at the time they sign it. If that copy has not been signed by the landlord, a fully signed copy must be given to the tenant as soon as possible. If the agreement is for a period of more than 3 years and needs to be registered with the Land and Property Management Authority, you should provide the tenant with a copy of the agreement as soon as possible after it has been registered.

**Cost of agreement**

The tenant cannot be charged any fee for their copy of the agreement or the costs associated with filling it in. If you are using an agent, you can negotiate whether or not they will charge you for preparing and supplying the agreements, and how much, when entering into the agency management agreement. Stamp duty is no longer payable on residential tenancy agreements. However, if the agreement term is for more than 3 years, the tenant can be requested to pay the cost of registering it with the Land and Property Management Authority.

**Agreements of 20 years or more**

If you are willing to offer a fixed term agreement of 20 years or more, the Act provides a large degree of flexibility. You are able to omit or vary most of the mandatory terms of the standard agreement. For instance, your agreement may provide for the tenant to take on the responsibility of maintaining the premises in return for a cheaper rent. The only things which you cannot alter in an agreement of 20 years or more are:

- the responsibility of the landlord to pay rates, taxes and charges
- the limit of no more than one rent increase per year
- access to the Consumer, Trader and Tenancy Tribunal to resolve disputes and
- the grounds on which the agreement may be terminated.

Be mindful though that the tenant can apply to the Tribunal if they believe a term you have included in the agreement is in their view unconscionable, unjust, harsh or oppressive. The Tribunal has the power to strike out such terms if it agrees.

**At a glance**

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>$15 agreement preparation fee could be charged to tenants</td>
<td>No agreement preparation fee payable by tenants</td>
</tr>
<tr>
<td>Terms and conditions of all agreements the same, regardless of length</td>
<td>Flexibility given to parties of agreements of 20 years or more to vary or omit standard terms of the agreement</td>
</tr>
<tr>
<td>Additional terms could be added to an agreement so long as they did not conflict with any laws or the standard terms of the agreement</td>
<td>Same limitation on additional terms, but some terms are now specifically prohibited from being added to an agreement, including compulsory carpet cleaning</td>
</tr>
</tbody>
</table>
Ending a tenancy, information for landlords

This is a collection of fact sheets for residential landlords on topics related to ending a tenancy:

- Giving a termination notice (pages 2 – 3)
- Making a bond claim (pages 4 – 5)
- Goods left behind by your tenant (pages 6 – 7)
- Using tenancy databases (pages 8 – 9)

All the fact sheets in this document can also be accessed as individual pages on the Fair Trading website in the Being a landlord, Ending a tenancy section.

June 2011
Giving a termination notice

Information for landlords

When you want to end the tenancy it is important that you follow the correct procedures. If you don’t do this you run the risk of causing an unnecessary delay in getting back possession of your property or having to start the process all over again.

Amount of notice required

If you want the tenant to vacate you must give them a termination notice. The notice must:

- be in writing
- be signed and dated by you or your agent
- be properly addressed to the tenant
- give the day on or by which the tenant is requested to vacate
- where appropriate, give the grounds/reason for the notice.

You can write your own notice or use the model termination notice provided by Fair Trading.

The minimum period of notice you can give the tenant to vacate is:

- 14 days – if the tenant is 14 days or more behind with the rent or has committed some other breach of the tenancy agreement
- 30 days – if the fixed term of the agreement is due to end
- 30 days – if the premises have been sold after the fixed term has ended and vacant possession is required by the buyer under the terms of the sale contract
- 90 days – if the fixed term period has expired and no new agreement has been signed.

These notice periods are designed to give tenants reasonable time to find another rental property. If they can find a property sooner they can move out at any time without having to give you any formal notice. Except where notice has been given for the end of the fixed term, the tenant’s responsibility to pay rent ends from the date they hand back possession, not the end of the notice.

There is no minimum notice period required if notice is given on the grounds of:

- the premises being destroyed or wholly or partly uninhabitable
- ceasing to be legally usable as a residence
- being acquired by compulsory process (e.g. by the RTA)
- on the death of the sole tenant.

After you issue a notice you can issue another notice on a different ground if necessary. For example, if you issue 90 days notice to terminate a periodic tenancy without a reason, and the tenant then doesn’t pay rent for 14 days, you can issue a non-payment of rent notice.

Counting days and other rules

It is important to count the days accurately when working out the termination date for the notice and to add extra days to allow for delivery.

There are specific rules which need to be followed when serving a termination notice or any other notice to your tenant. Go to the Serving notice page on the Fair Trading website for more information.

Tribunal possession orders

If you give notice and your tenant does not vacate by the due date the only action you can take is to apply to the Consumer, Trader and Tenancy Tribunal for a possession order. You cannot forcibly evict the tenant yourself or take action such as changing the locks or cutting off the water or power supply. Heavy penalties and compensation could be payable if you do.

You need to apply to the Tribunal within 30 days after the date to vacate specified in your termination notice. Whether you obtain a possession order is up to the Tribunal to decide, based on the evidence you and
the tenant present at the hearing. In the case of notice 'without a reason' the Tribunal must make a possession order if the notice was served correctly, unless the tenant can prove it was retaliatory.

If the Tribunal makes an order it will give the tenant a date to move out. If the tenant still does not vacate you will need to obtain a warrant for possession from the Tribunal's Registry and have it enforced by the Local Court Sheriff's Office.

You can apply direct to the Tribunal for a possession order, without giving the tenant notice, in the following circumstances:

- serious damage to the premises or any neighbouring property
- injury to the landlord, agent, employee or one of the tenant’s neighbours
- use of the premises by the tenant for illegal purposes such as drug manufacture
- threat, abuse, intimidation or harassment by the tenant
- undue hardship faced by the landlord
- if the tenant has occupied the same premises for 20 years or more.

At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>14 days from landlord at end of fixed term</td>
<td>30 days minimum</td>
</tr>
<tr>
<td>60 days from landlord for periodic tenancy</td>
<td>90 days minimum</td>
</tr>
<tr>
<td>Tribunal considered ‘circumstances of the case’ if notice given without a reason</td>
<td>Tribunal must give a possession order if satisfied notice was given correctly</td>
</tr>
</tbody>
</table>

Could give notice without reason to long term tenants of 20 years or more

Landlord must satisfy Tribunal that termination is warranted

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

Tel: 13 32 20  www.fairtrading.nsw.gov.au

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Making a bond claim

Information for landlords

When the tenancy has ended and the tenant owes you money you can make a claim against the tenant's bond.

Reasons for claiming

The main reasons a claim can be made against the bond are:

- unpaid rent
- the reasonable cost of repairing damage to the premises, beyond fair wear and tear
- unpaid water usage charges, so long as you had requested payment within 3 months of receiving the bill
- any 'break fee' or other charges payable as a result of the tenant breaking the tenancy agreement early
- the reasonable cost of cleaning any part of the premises not left reasonably clean, having regard to how clean the premises were at the start of the tenancy
- the reasonable cost of having the barrel of the locks changed or other security devices replaced, if the tenant has failed to return all keys and security devices they were given.

This is not an exhaustive list. There may be other legitimate reasons for making a claim against the tenant's bond, such as the cost of disposing of goods left behind by the tenant. The claim must relate to a breach of the tenancy agreement by the tenant.

Fair wear and tear

Your tenant is not responsible for fair wear and tear to the premises. Fair wear and tear means the deterioration that occurs over time with the use of the premises even though the premises receive reasonable care and maintenance. Such deterioration could be caused by exposure, time or just by ordinary use. The tenant is only liable for negligent, irresponsible or intentional actions that cause damage to the premises.

These examples may help to explain the difference.

<table>
<thead>
<tr>
<th>Fair wear and tear</th>
<th>Damage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Faded curtains or frayed cords</td>
<td>Missing curtains or torn by the tenant’s cat</td>
</tr>
<tr>
<td>Furniture indentations and traffic marks on the carpet</td>
<td>Stains or burn marks on the carpet</td>
</tr>
<tr>
<td>Scuffed wooden floors</td>
<td>Badly scratched or gouged wooden floors</td>
</tr>
<tr>
<td>Faded, chipped or cracked paint</td>
<td>Unapproved or poor quality paint job</td>
</tr>
<tr>
<td>Worn kitchen bench top</td>
<td>Burns or cuts in bench top</td>
</tr>
<tr>
<td>Loose hinges or handles on doors or windows and worn sliding tracks</td>
<td>Broken glass from one of the tenant’s children hitting a ball through the window</td>
</tr>
<tr>
<td>Cracks in the walls from movement</td>
<td>Holes in walls left by tenant removing picture hooks or shelves they had installed</td>
</tr>
<tr>
<td>Water stain on carpet from rain through leaking roof or bad plumbing</td>
<td>Water stain on carpet caused by overflowing bath or indoor pot plants</td>
</tr>
<tr>
<td>Paint worn off wall near light switch</td>
<td>Damage to paint caused by removing posters stuck with blu tack or sticky tape</td>
</tr>
</tbody>
</table>

This means, for instance, you can lodge a claim against the bond for the cost of cleaning the carpet if it has been stained or left dirty. You should not lodge a claim if the carpet is clean and unstained, even if the carpet was new or professionally cleaned before the tenant moved in.

Paperwork required

If you intend to make a claim for part or all of the bond, you will need to fill out a claim form and lodge it with Fair Trading. Alternatively, call Fair Trading on 13 32 20 or
visit any Fair Trading Centre and ask for a form. The form sets out the different ways it can be lodged.

It is best if you can get the tenant to agree with your claim and sign the form as well. That way, the bond can be paid without delay. If this is not possible, you should lodge the form without the tenant's signature as soon as possible with Fair Trading and send evidence of the claim to the tenant (see below).

Fair Trading will send a notice to the tenant giving them 14 days to either settle the matter with you or contest your claim by applying to the Consumer, Trader and Tenancy Tribunal. That is why it is important that the claim form include the tenant's forwarding address (if known) or other contact details. If they do not apply to the Tribunal the bond will then be paid out as per your claim. If the tenant applies to the Tribunal the bond will be held by Fair Trading until the dispute is settled. You will then need to attend a hearing at the Tribunal and present evidence to back up your claim.

If the tenant lodges a claim for refund first without your signature, Fair Trading will send you a notice advising of the claim. You can either try to resolve it with the tenant or apply to the Tribunal within 14 days if you disagree. Make sure to notify Fair Trading that you have applied to the Tribunal, so that the bond can be held until after the hearing.

If you and the tenant reach a different agreement after one of you has lodged a claim, then a new claim form will need to be lodged with Fair Trading with both your signatures. Otherwise, the first claim lodged will be paid out after 14 days.

Once the bond has been paid out either you or the tenant can still apply to the Tribunal. There is a 6 month time limit to do this.

**Providing evidence to the tenant**

If you lodge a claim relating to the condition of the premises, without the tenant's signature, within 7 days you must send copies of the following to the tenant.

- the documents to their forwarding address (if known) or the rented premises address:
  - the final condition report, and
  - estimates, quotes, invoices or receipts for the work.

Copies of these documents also need to be sent to Housing NSW if that Department paid the whole or part of the bond. Failure to provide these documents within the time period required can lead to penalties being imposed, if you do not have a reasonable excuse.

**Note:** Do not send these documents or anything else except the claim form to Fair Trading.

**At a glance**

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

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<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>No requirement to supply evidence to tenant supporting claims</td>
<td>New obligation to supply final condition report and copies of receipts, quotes etc</td>
</tr>
<tr>
<td>No guidance on what can be claimed from a bond</td>
<td>Non exhaustive list of matters which can be subject to a bond claim</td>
</tr>
<tr>
<td>No timeframe for bond disputes</td>
<td>Timeframe of 6 months from when bond paid out</td>
</tr>
</tbody>
</table>
Goods left behind by your tenant

Tenants are responsible for ensuring that all of their belongings are removed from the premises at the end of the tenancy. However, from time to time, tenants leave things behind for various reasons. It may be a genuine oversight or a deliberate or unavoidable act by the tenant. Regardless of the circumstances, landlords and agents must follow the correct process when goods have been left behind.

Tenancy must have ended

Before you take any action you must be certain the tenancy has ended. This is particularly important if you or the tenant have not given notice to end the agreement. The premises may look abandoned but the tenant may have gone on holiday, away for work, or be in hospital. Check with the neighbours, the tenant's workplace or try contacting their mobile phone or email address if you have those details. If you have doubts about whether the premises have been abandoned, you can apply to the Consumer, Trader and Tenancy Tribunal. If no doubt exists, you do not need a Tribunal order. You can simply change the locks to secure the premises and deal with any goods that have been left behind.

Rubbish and perishable items

You can dispose of any rubbish or perishable items left behind by the tenant immediately. For example, a broken chair and a pile of old newspapers, perishable food left in a cupboard or dying pot plants in the yard. You do not have to notify the tenant or get their consent to dispose of such items. However, you must be reasonably sure that what you are disposing of is in fact rubbish. If you have any doubts it is advisable to treat the items as goods of value.

Notice required

If items other than rubbish have been left behind you have to attempt to notify the former tenant. You need to try to tell them that you have their goods and they will be disposed of after a certain time if they are not collected. This can be done in writing (mailed to a forwarding address if known or to the property in case the tenant is having their mail redirected), in person or over the telephone. If after 2 days you have not been able to contact the former tenant you can leave a notice in a prominent position somewhere on the premises (e.g. stuck to the front door). If the goods are obviously leased you should also contact the rental company.

Storage of goods

Goods of value could include such things as furniture, electrical items and clothing. If these goods have been left behind by your tenant they need to be stored in a safe place. This could be either on the premises or somewhere else. Goods of value need to be kept for at least 14 days from the day you notify the tenant to come and collect them.

Personal documents

Different rules are in place when dealing with personal documents left behind by a tenant. Personal documents are defined under the Act as being:

- a birth certificate, passport or other identity document
- bank books or other financial statements or documents
- photographs and other personal memorabilia (e.g. medals and trophies)
- licences or other documents conferring authorities, rights or qualifications.

Personal documents left behind by a tenant need to be kept in a safe place for at least 90 days from the day you give notice to the tenant. This longer period recognises the importance or sentimental value of such items.

Tenant reclaiming goods

The former tenant, or anybody else with a legal interest in the goods (e.g. the tenant's ex-housemate or a goods hire company) can reclaim the goods at any time they remain in your possession. A suitable time and day for collection needs to be agreed upon. You cannot refuse to return the belongings, even if the former tenant owes rent or money for some other reason.

Generally, goods left behind can be reclaimed free of charge. However, you can charge an 'occupation fee' to
the person claiming the goods if enough goods were left to prevent you from renting the premises. An occupation fee (equal to a day’s rent) can be charged for each day the goods are held, whether they are stored on the premises or elsewhere, up to maximum of 14 days, even if you choose to hold the goods for longer.

Disposal of unclaimed items

If the former tenant fails to reclaim the goods within the 14 days you can choose to:

- donate the goods to charity (e.g. leave clothes in a clothing bin or arrange for furniture etc to be collected), or
- dispose of the goods in a lawful manner (e.g. take them to the tip or organise a council collection if such a service is available in your area), or
- keep the goods in the property if they are useful fixtures and fittings (e.g. curtains), or
- sell the goods for fair value and give the proceeds to the tenant (less the occupation fee and reasonable costs of the sale) or send it to the Office of State Revenue after 6 years as unclaimed money.

Unclaimed personal documents can be disposed of after the 90 days in an appropriate manner, such as by returning to the issuing authority (wherever possible) or by shredding.

If you have followed the law correctly, you are protected if the tenant comes back to you later about the goods. However, if the law was not followed you could be ordered by the Tribunal to pay compensation to the tenant. This could include any damage to the items while they were in your possession.

Tribunal orders

You can apply for an order from the Tribunal as to what to do with the goods if the tenant abandons the premises or dies. However, this may take a few weeks and the Tribunal may tell you just to follow the same process set out above. You can apply for an order if there is a dispute about payment of the occupation fee.

At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disposal of perishable items after 2 working days</td>
<td>Immediate disposal of perishable items and rubbish</td>
</tr>
<tr>
<td>Advertisement in state-wide newspaper</td>
<td>Advertisement no longer required</td>
</tr>
<tr>
<td>Storage period: minimum 30 days</td>
<td>14 days minimum storage period for ordinary goods 90 days for personal documents</td>
</tr>
<tr>
<td>No dispute resolution</td>
<td>Any party can seek Tribunal orders</td>
</tr>
</tbody>
</table>
Using tenancy databases
A guide for landlords and agents of rental properties

Tenancy databases are a legitimate business tool which, if used correctly, help to decide a tenant’s suitability when assessing tenancy applications. The Residential Tenancies Act 2010 sets out who, when, and why a person can be listed. The Consumer, Trader and Tenancy Tribunal can resolve disagreements over proposed and existing listings.

What is a tenancy database?
Tenancy databases are run by private companies, not by the Government or the Tribunal. They collect and hold information about tenants and can only be used by members (mostly agents) who pay membership fees. Members can list tenants on the database for certain reasons and can check the database to see if a prospective tenant has been listed by another member. There are a number of tenancy databases which operate in NSW, including TICA, National Tenancy Database and Trading Reference Australia. Tenancy databases are sometimes referred to as ‘blacklists’ or ‘bad tenant databases’.

Files kept by an individual landlord or agency for internal use (hard copy or computerised) are not databases for the purposes of the legislation.

Listings - why
Listings can only be made for one, or both, of these reasons:

1. The tenant has vacated owing an amount more than the rental bond for a breach of the tenancy agreement, and the amount is still outstanding at the time of listing
2. The Tribunal has made an order terminating the tenancy agreement because of something the tenant has done wrong and the tenancy has ended.

A tenant cannot be listed on a tenancy database for any other reasons apart from those above. Listing on a database can seriously impact on a person’s ability to rent a property in the future, so care should be exercised before taking such a step.

Any information recorded on a database must identify the reason for the listing in an accurate, complete and unambiguous way. For example, ‘eviction order given on grounds of rent arrears, tenant owes $500 in rent above the bond’.

Notice if listing found
If, when checking a prospective tenant on a database, you find out they have been listed by another person you are required to advise them in writing within 7 days. This should include the contact details of who has listed them and how they can go about checking what the listing says and having it removed or amended (if need be). You do not have to advise the person of the reason for the listing. They can get this information from either the person who listed them (free of charge) or direct from the database operator in writing or by phone.

Notice required before listing
You must not list or arrange for a tenant to be listed on a tenancy database unless you have advised the tenant in writing and given details of the proposed listing, or taken reasonable steps to try to advise them. This
would involve sending a letter to the tenant’s forwarding address (if known) or to the address of the rented premises (in case they are having their mail redirected). You must give them at least 14 days to object before you list them.

You should also be aware that under the national privacy principles tenants must give their consent before you can check their rental history or pass on information for ‘secondary purposes’ such as database listings. Such consent authorisation could be included on your tenancy application form.

Removing or updating listings

All listings older than 3 years must be removed from a database. Listings under 3 years must also be removed if they are ‘out-of-date’. This is where the amount owed above the bond has been repaid to the landlord within 3 months or if the termination order obtained from the Tribunal was not enforced.

Listings need to be amended if you discover that the information is inaccurate, incomplete or ambiguous. For example, if the listing just says the tenant was evicted but does not identify the nature of the breach.

Any changes to the database records need to be done within 7 days, if you can do it yourself, or within 14 days if you need to notify the database operator to have it done. The new laws apply to all existing listings as well as future listings. All existing listings need to be reviewed to ensure they comply with the new laws, by 1 May 2011.

Disputes about listings

A tenant who believes that a listing, or proposed listing, about them is incorrect, out-of-date or unjust can apply to the Tribunal if they cannot get it removed or amended.

Examples of listings that may be unjust include:

- a tenant who left the property to escape domestic violence and their former partner was responsible for damage after they left
- a tenant who was in hospital after a car accident and fell behind with their rent.

The Tribunal can order information about a person in a database to be wholly or partly removed, amended in a certain way or not listed at all if it was a proposed listing. Be mindful that the Tribunal also has the ability to award compensation if a person suffers a loss as a result of inaccurate, ambiguous or out-of-date information being listed about them.

At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only applied to agents</td>
<td>Apply to agents, landlords and database operators</td>
</tr>
<tr>
<td>No dispute provisions</td>
<td>Tribunal given broad range of order making powers to resolve disputes</td>
</tr>
<tr>
<td>3 year maximum listing period</td>
<td>Same</td>
</tr>
</tbody>
</table>

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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Tel: 13 32 20 www.fairtrading.nsw.gov.au
Taking a bond

Information for landlords

A rental bond is money you can request the tenant to pay as a form of security in case they breach the tenancy agreement. A bond should not be treated as a substitute for careful selection of prospective tenants. All bonds must be lodged with Fair Trading and you can make a claim against the bond for certain reasons after the tenancy ends.

Most tenants do the right thing and get their bond back at the end of the tenancy. However, sometimes a bond is not enough to cover the damage and rent owed by a tenant. If you are concerned about this risk you could consider taking out landlord insurance.

Amount of rental bond

Rental bonds are not compulsory, but it is highly recommended that a bond be taken unless there is a good reason not to.

No more than four weeks' rent can be charged as a rental bond. This applies to all rental properties in NSW, whether furnished or unfurnished. Higher bonds cannot be charged for tenants with pets, children or for any other reason.

A rental bond must be in money, and cannot be in any other form, such as personal goods or a written guarantee from the tenant's friends or relatives. The only exception is for Tenancy Guarantees issued by Housing NSW. These guarantees (of up to $1000 over and above any bond paid) help those with a limited or poor rental history to rent a place in the private rental market.

A rental bond can only be accepted when the tenant signs the tenancy agreement. Bonds cannot be taken before the agreement is being entered into, such as from applicants for the tenancy or from those who have paid a holding fee. You can only take one bond for a tenancy. That is, if there is more than one tenant, you cannot take a separate bond from each of them.

Rent in advance

At the beginning of the tenancy, the tenant can be required to pay the first two weeks' rent. This is not another form of bond. The tenant is simply paying their rent in advance, meaning that no rent is due until two weeks have passed. Besides a rental bond and two weeks' rent in advance, you cannot ask the tenant for any other money at the start of a tenancy.

Bond lodgement

When you take a bond from a tenant you must give a receipt or record the payment details on the tenancy agreement. The bond must be lodged with NSW Fair Trading. You cannot keep the money yourself or put it into an account in the tenant's name.

You need to fill out and get the tenant to sign a Rental Bond Lodgement form. These forms are available from any Fair Trading Centre or by calling 13 32 20. Lodgement forms cannot be downloaded from this website as each form has a unique barcode.

Bonds can be lodged by posting the Lodgement Form along with a cheque/money order for the amount of the bond to the address on the form or in person at any Fair Trading Centre.

If you are letting and managing the property yourself you have 10 working days in which to lodge the bond with Fair Trading. You will receive confirmation (with the bond number) from Fair Trading once the bond is processed.

If you have employed an agent they will lodge the bond and handle the paperwork. Agents have 10 working days from the end of each month in which to lodge all bonds received during that month. These are maximum timeframes and you can lodge a bond sooner.

It is advisable to only accept bond payments in the form of cash, bank cheque or bank transfer from the tenant's account.
Fair Trading does not accept liability for a tenant's dishonoured personal bond cheque. If the cheque bounces this means you have no bond or security. You will need to try to collect the money again and re-lodge the bond or issue a termination notice for breach of the tenancy agreement.

**Bond instalments**

Most landlords request the tenant to pay the bond in one lump sum before handing over the keys to the property. However, landlords may sometimes allow a tenant to pay the bond in instalments.

In these situations you can keep the part payments until the whole bond is paid then lodge the bond with NSW Fair Trading in one amount. However, if this takes more than 3 months, you will need to lodge what you have received in 3 monthly cycles.

**Bond top-ups**

You cannot request or receive additional bond payments (also known as 'top-ups') during the course of a tenancy. The maximum amount of bond that can be charged is the amount equivalent to the first 4 weeks' rent at the start of the tenancy.

**Penalties apply**

Fair Trading can take you to court or issue fines if you do not follow the bond rules. This includes taking more than 4 weeks' rent as a bond or not lodging a bond on time.

**Updating bond records**

If the name or contact details of the landlord, agent or co-tenants changes during the tenancy, a Change of Shared Tenancy Arrangement or Change of Managing Agent/Owner form will need to be completed and lodged with NSW Fair Trading.

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**At a glance**

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum bond for unfurnished premises is 4 weeks' rent</td>
<td>Same</td>
</tr>
<tr>
<td>Higher bond permitted for furnished premises</td>
<td>Maximum is 4 weeks' rent</td>
</tr>
<tr>
<td>7 calendar days to lodge bond</td>
<td>Landlords have 10 working days</td>
</tr>
<tr>
<td></td>
<td>Agents have 10 working days from the end of each month</td>
</tr>
<tr>
<td>Bond top-ups unclear</td>
<td>Bond top-ups not permitted</td>
</tr>
<tr>
<td>Maximum 2 weeks rent in advance if weekly rent is $300 or less, one month if weekly rent exceeds $300</td>
<td>Maximum 2 weeks rent in advance regardless of rent amount. The tenant can choose to pay more if they wish, but cannot be required to do so.</td>
</tr>
</tbody>
</table>
Discrimination in the rental market

Information for landlords

Everybody should be given a 'Fair Go' when renting or trying to rent a property. The view that 'it's my property so I can choose who I like' only goes so far. You have the right to choose the most suitable tenant provided no unfair discrimination occurs.

Anti-discrimination laws

The law states that you, or your agent, must not discriminate against anyone, or harass them, because of their:

- race (colour, nationality or descent)
- sex (male or female)
- pregnancy
- marital status (e.g. singles or unmarried mothers)
- disability (physical, intellectual or psychiatric disability)
- homosexuality (gay men and lesbians)
- age (both young or old)
- transgender (transsexual).

It is also against the law to discriminate against a person because of the race, sex, pregnancy, marital status, disability, homosexuality, age or transgender of their relatives, friends or associates.

As long as you are not discriminating on one of the above listed grounds you may rent to whoever you like. If you do not want smokers in your premises or tenants with pets, or if you reject an application because of a poor tenancy history or do not think the tenant can pay the rent there is no law to stop you from declining an application for that reason.

You should be aware that you may be liable for discriminatory acts by your agent. For example, if you tell the agent not to rent the property to 'foreigners' and the agent carries out those instructions. In that case both you and the agent may be liable. It is no defence for the agent to say she or he was simply carrying out your instructions.

Direct and indirect discrimination

Direct discrimination is when a person is treated less favourably than another person because of their race, sex, marital status etc. One example of direct discrimination would be refusing to rent to people with children.

Indirect discrimination is where there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal effect on particular groups (for example, women, people of certain races, young people). Unless this requirement is 'reasonable having regard to the circumstances of the case' (Anti-Discrimination Act) it is likely to be indirect discrimination.

These are examples of possible indirect discrimination:

- setting more restrictive standards, such as a higher than necessary income
- requiring all younger tenants to have one of their parents sign the lease as a co-tenant when you know that they do not intend to live in the premises
- having an across the board 'no pets' policy which also excludes the needs of disabled tenants, such as those with a guide dog
- requiring all applicants to have a proven rental history for a minimum number of years, which, for example, could exclude young people trying to rent their first home
- placing unrealistic restrictions on the number of occupants permitted which, for example, could exclude those who are pregnant, or
- having a complicated and long application form which may, for example, deter recently arrived migrants from applying.

One fair selection process is to rank people in order of when they lodge their application and then assess each application in turn for their capacity to pay the rent and maintain the property.
Fair trading laws

Fair trading laws state that you must not engage in conduct that is, in the circumstances, misleading in connection with the supply of goods and services to a customer.

The following is an example that may be both discrimination and misleading conduct.

An Aboriginal person rings the real estate agent about a rental property. On the phone the agent tells the caller that the property is available. When the Aboriginal person goes to the office to lodge an application, the agent informs them that it is no longer available. Then a non-Aboriginal person asks the same agent and is told that the property is still available.

In an actual case like this, the Administrative Decisions Tribunal ruled that the real estate agent was liable under anti-discrimination law and awarded $6,000 damages against the agent.

Promote your good practices

It's good practice to tell tenants why they were unsuccessful with a tenancy application. If you don't give a legitimate reason, people may assume discrimination occurred. Giving reasons may help people to better understand your decision-making process.

If you are an agent it's also a good idea to develop a letting policy for your office. It should explain that your agency will not discriminate. Display the policy to show your clients and prospective clients that you will provide a fair and equal service. The Real Estate Institute of NSW Letting Policy (produced in association with the Anti-Discrimination Board) is one example you may wish to use.

You should also make sure that everybody who works in your business is aware of the law and does not themselves discriminate in their dealings with tenants or prospective tenants. If they do, you may be legally liable for their unlawful actions unless you can show you took all reasonable steps to prevent them doing so.

At a glance

There are no changes in this area of the law between the old Act and the tenancy laws that began on 31 January 2011.

More information

NSW Anti-Discrimination Board
Tel: 9268 5555 or 1800 670 812
Filling out a condition report

Information for landlords

At the start of every tenancy you need to fill out a condition report. This records the general condition of the property, on a room by room basis, including fittings and fixtures. Fill it out with as much detail and accuracy as possible. The report will be a key piece of evidence at the end of the tenancy if there is a dispute about replacing missing items, paying for cleaning or damages.

Completing the report

The condition report needs to be filled out before the tenant moves in. You need to give two copies of the report to the tenant either before or at the time they sign the tenancy agreement. Follow the ‘How to complete’ instructions on the first page of the report.

It is often minor damage which causes disputes so make sure all damage, however minor, is noted and suitably described. You may wish to take photos or videos and date these, to back–up the written condition report.

You should complete the report by doing a physical inspection, not by memory. The report should reflect the age and state of the premises. For example, if the property is not new and not recently renovated, existing damage or wear and tear needs to be noted.

The report may be adapted to suit individual premises, eg by adding extra rooms for larger properties. If required, attach more pages and be sure to sign and date them. Note the number of extra pages on the original report.

A condition report must be completed whether or not a rental bond is taken. However, a condition report is not needed if the same parties renew a tenancy agreement or if a new co-tenant or occupant moves in.

Returning the report

The tenant must complete their part of the condition report and return a copy to you within 7 days of receiving it. If the tenants have added anything you disagree with, you can apply to the Consumer, Trader and Tenancy Tribunal for an order to amend the comments.

If the tenant fails to return a copy, you may send them a reminder letter or you can apply to the Tribunal for an order directing the tenant to complete and return the report. If they still do not return it, in the event of a bond dispute, the Tribunal will most likely accept your report unless the tenant has other evidence to the contrary.

Keep the condition report for the duration of the tenancy as you will need to complete it when the tenancy ends. Place it where it won’t be accidentally lost or destroyed.

At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition report was part 2 of standard agreement</td>
<td>Condition report not part of standard agreement</td>
</tr>
<tr>
<td>Prescribed form of condition report</td>
<td>Improvements include:</td>
</tr>
<tr>
<td></td>
<td>● No references to washing machines and refrigerators</td>
</tr>
<tr>
<td></td>
<td>● Adding dishwashers, air-conditioners and built-in wardrobes</td>
</tr>
<tr>
<td></td>
<td>● Emphasis on security and health issues</td>
</tr>
<tr>
<td></td>
<td>● Space for water efficiency devices.</td>
</tr>
</tbody>
</table>
Smoke alarms
In residential premises

To enhance safety and minimise loss-of-life in building fires, the NSW Parliament enacted the Building Legislation Amendment (Smoke Alarms) Act in July 2005. The Act allows regulations to be made to require smoke alarms to be installed in existing buildings in which people sleep.

A smoke alarm is an effective early warning device designed to detect smoke and alert building occupants to the presence of a fire. Installed in the correct location, it increases the time available for safe escape.

From 1 May 2006, when the Environmental Planning and Assessment Amendment (Smoke Alarms) Regulation 2006 came into effect, owners of residential property are responsible for ensuring smoke alarms are installed.

The Smoke Alarms Regulation specifies which types of buildings need smoke alarms installed, the types of alarms, where they are to be located and other matters. Contact details for more information about the requirements under the Regulation are listed in this fact sheet.

Changes to fair trading laws
Several fair trading laws were amended as a result of the smoke alarm laws and this information summarises these changes for the people that are affected.

Landlords and tenants
Under the Residential Tenancies Act:

- Landlords are responsible for the installation of smoke alarms in rented premises.
- Landlords have the right of access to rented premises to fit or maintain smoke alarms after giving the tenant at least 2 days notice.
- Neither the landlord nor the tenant are, except with reasonable excuse, permitted to remove or interfere with the operation of a smoke alarm fitted in the rented premises.

- Where a smoke alarm is of the type that has a replaceable battery, it is recommended that the landlord put a new battery in at the commencement of a tenancy.
- After the tenancy begins, the tenant is responsible for replacing the battery if needed. Fire and Rescue NSW can assist elderly tenants or those physically unable to change a smoke detector battery.
- The condition report includes a specific reference to smoke alarms so that tenants and landlords are able to note and comment on the presence of smoke alarms at the beginning and end of the tenancy.

IMPORTANT – Owners of residential property who rent out their premises as holiday accommodation are responsible for installing smoke alarms and replacing batteries.

Owners and residents of residential parks
Under the Residential Parks Regulation:

- Park owners who rent out on-site accommodation under tenancy agreements are responsible for installing smoke alarms in rented premises.
- Park owners have the right of access to rented premises to fit smoke alarms after giving the tenant at least 2 days notice.
- Neither the park owner nor the resident is, except with reasonable excuse, permitted to remove or interfere with the operation of a smoke alarm fitted in the rented premises.
- Where a smoke alarm is of the type that has a replaceable battery, the park owner must put a new battery in at the commencement of a tenancy.
- After the tenancy begins, the resident is responsible for replacing the battery if needed. However, if the resident is physically unable to change the battery the resident should notify the park owner as soon as practicable after becoming aware of the need for it to be replaced.
● The resident is not responsible for the replacement of batteries in 'hard-wired' smoke alarm systems that have battery back-up. This is the responsibility of the park owner.

● The condition report section of the tenancy agreement must include a specific reference to smoke alarms so that residents and park owners are able to note and comment on the presence of smoke alarms at the beginning and end of the tenancy.

The above obligations on park owners equally apply to residents who sub-let their moveable dwellings.

**Strata scheme lot owners**

In a strata scheme:

- Owners of lots can install smoke alarms in their lots without having to obtain approval of the owners corporation.
- There is an obligation on lot owners to repair any damage to common property caused by the installation of a smoke alarm.

Lot owners who rent out their strata scheme residential property should note their responsibilities as landlords in relation to smoke alarms under the *Residential Tenancies Act 2010*.

**Operators and residents of retirement villages**

Under the Retirement Villages Regulation:

- Operators are responsible for the installation of smoke alarms and the replacement of all required batteries in premises occupied by residents.
- Operators, or persons authorised by operators, have the right of access to premises occupied by residents to install smoke alarms and to replace batteries after giving the resident at least 2 days notice.
- The condition report section of the occupancy agreement must include a specific reference to smoke alarms so that residents and operators will be able to note the presence of smoke alarms at the beginning of the occupancy.

**At a glance**

There are no changes in this area of the law between the old Act and the tenancy laws that began on 31 January 2011.

**More information**

For more information about the type, location and number of smoke alarms that are required to be fitted to the various classes of residential premises, contact:

- Fire and Rescue NSW
  www.fire.nsw.gov.au
- Department of Planning
  www.planning.nsw.gov.au
  Tel: 1300 858 812
Getting repairs done

Information for tenants

When you rent a place to live the landlord must ensure it is in a reasonable state of repair, taking into account the age and remaining life of the property and the amount of rent payable.

If something in the premises breaks down, leaks or needs fixing you should contact the landlord or agent as soon as possible. Unless the repairs are urgent, it is best to make the request in writing. Tell them what needs fixing and when you would like it done by. Remember that the landlord is not always obliged to fix every small thing in the property. They only need to keep the premises in a reasonable state of repair considering the age of the property, the amount of rent you are paying and the prospective life of the premises. They also need to comply with building, health and safety laws.

You are responsible for doing things like replacing light bulbs, changing the smoke detector batteries, cleaning windows, dusting, removing cobwebs and routine garden maintenance such as watering, mowing and weeding.

Urgent repairs

The law distinguishes between urgent (emergency) repairs and those which are not so urgent. Urgent repairs are:

- a burst water service or a serious water service leak
- a blocked or broken toilet
- a serious roof leak
- a gas leak
- a dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage
- a failure or breakdown of the gas, electricity or water supply to the premises
- a failure or breakdown of the hot water service
- a failure or breakdown of the stove or oven
- a failure or breakdown of a heater or air-conditioner
- a fault or damage which makes the premises unsafe or insecure.

If urgent repairs are needed you should notify the landlord or agent right away. The landlord or agent must arrange for the repairs to be done as soon as possible. If you cannot reach them, check your tenancy agreement for the details of a nominated tradesperson to contact.

If urgent repairs are not done within a reasonable time you may be able to arrange for the work to be done and be reimbursed by the landlord (but only up to $1000). However, you must be able to show that:

- the need for the urgent repair was not your fault
- you contacted the landlord or agent about the problem or made a reasonable attempt to do so
- you gave the landlord or agent a reasonable opportunity to get the repairs done
- the repairs were carried out by a licensed tradesperson (if appropriate).

You must give the landlord written notice setting out the details of the repair and copies of all receipts. The landlord is required to pay you back within 14 days of receiving your notice. If they do not you can apply to the Consumer, Trader and Tenancy Tribunal for an order.

If urgent repairs are likely to cost more than $1000 or you cannot afford to pay, you can apply to the Tribunal for an urgent hearing order for the landlord to get the repairs done.

Doing repairs yourself

You cannot arrange for non-urgent repairs to be carried out unless the landlord or agent has agreed. If they agree, make sure you get it in writing before the work is done, including any agreement about reimbursing your costs.

If repairs are not done

You should never stop paying the rent because the landlord has failed to do repairs. Withholding rent will put you in breach of your agreement and will not help to
resolve the repairs problem. Withholding rent places you at risk of having your tenancy terminated.

**Getting orders from the Tribunal**

You can apply to the Tribunal for orders relating to repairs. These include:

- an order that the landlord do repairs
- an order that you can pay your rent to the Tribunal until the repairs are done
- an order that your rent be reduced until the time it is fixed
- an order to compensate you for losses (e.g. damage to your belongings from a leaking pipe after you told the landlord the pipe was leaking).

**Damage caused by you**

You must notify the landlord as soon as possible if the property is damaged. If you or somebody you invited to your home caused damage, you may have to pay for the repairs or arrange for the repairs yourself.

**At a glance**

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<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord responsible to maintain premises in reasonable repair</td>
<td>Same</td>
</tr>
<tr>
<td>Tenant can apply to the Tribunal to resolve disputes about repairs</td>
<td>Same</td>
</tr>
<tr>
<td>Urgent repairs listed</td>
<td>Same, plus new items about serious water leaks and broken airconditioners</td>
</tr>
</tbody>
</table>
New tenant checklist
What you must know before you sign a lease

At the start of every tenancy you should be given the following by the landlord or agent:

- a copy of this information statement
- a copy of your lease (tenancy agreement)
- 2 copies of the premises condition report (more on that later)
- a bond lodgement form for you to sign, so that it can be lodged with NSW Fair Trading
- keys to your new home.

The first thing you should do before you sign the lease is read it thoroughly. If there is anything in it which you don't understand, ask questions.

Remember, you are committing to a legally binding contract for which there is no cooling–off period. You will want to be certain you understand and agree to what you are signing.

Only when you can respond with a Yes to the following statements, should you sign the lease.

**The lease**

☐ I have read the lease and I asked questions if there were things I didn’t understand.

☐ I know the length of the lease is negotiated before I sign, which means it can be for 6 months, 12 months, or some other period.

☐ I know that I must be offered at least one way to pay the rent which does not involve paying a fee to a third party.

☐ I know that any additional terms to the lease are negotiated before I sign.

☐ I have checked that all additional terms to the lease are legal, for example, the lease does not include a term requiring me to have the carpet professionally cleaned when I leave, unless I have agreed to that as part of a condition to allow me to keep a pet on the premises.

**Promised repairs**

In relation to any promises by the landlord or agent (for example, replace the oven, paint a room, clean up the backyard etc):

☐ I have made sure these have already been done, or

☐ I have an undertaking in writing (before signing the lease) that they will be done.

**Upfront costs**

I am not being required to pay:

☐ more than 2 weeks rent in advance, unless I freely offer to pay more

☐ more than 4 weeks rent as a rental bond.

I am not being charged for:

☐ the cost of preparing my lease

☐ the initial supply of keys and security devices to each tenant named on the lease.

**After you move in**

Make sure you:

- Fill in your part of the condition report and don’t forget to return a copy to the landlord or agent within 7 days. This is an important piece of evidence. If you don’t take the time to complete it accurately money could be taken out of your bond to pay for damage that was already there when you moved in.

- Get a letter from Fair Trading sometime during the first 2 months saying that your bond has been received and advising you of your Rental Bond Number. If this doesn’t arrive call Fair Trading to make sure it has been lodged.
Top tips for problem–free renting

Follow these useful tips to help avoid problems while you are renting:

- Photos are a great way to record the condition of the property when you first move in. Take pictures (that are date stamped) of the property, especially areas that are damaged or unclean. Keep these in case the landlord objects to returning your bond at the end of your tenancy.
- Keep a copy of your lease, condition report, rent receipts, Rental Bond Number and copies of letters/emails you send or receive in a designated ‘tenancy’ file folder and put it somewhere you can easily find it later.
- Never stop paying your rent, even if the landlord is not complying with their side of the agreement (eg. by failing to do repairs) – you could end up being evicted if you do.
- Keep a diary of your dealings with the landlord or agent – record all the times and dates of conversations, who you spoke to and what they agreed to do. If repairs are needed, put your request in writing to the landlord or agent and keep a copy. This type of evidence is very helpful if a dispute arises which ends up in the Consumer, Trader and Tenancy Tribunal.
- Comply with the terms of your lease. In particular, never make any alterations, keep a pet or let other people move in without asking the landlord or agent for permission first.
- Consider taking out home contents insurance. It will cover your belongings in case of theft, fires and natural disasters. The landlord’s building insurance, if they have it, will not cover your things.
- If the property has a pool or garden be clear about what the landlord or agent expects you to do to maintain it.

- Be careful with what you sign relating to your tenancy, and don’t let anybody rush you. Never sign a blank form, such as a Claim for refund of bond.
- If you are happy in the place and your lease ends, consider asking for the lease to be renewed for another fixed term. This will remove the worry about being unexpectedly asked to leave, and helps to lock in the rent for the next period of time.

Further information

Go to the Fair Trading website, call 13 32 20 or visit a Fair Trading Centre for more information about your renting rights and responsibilities.

The NSW Government funds a range of community based Tenants Advice and Advocacy Services across NSW to provide advice, information and advocacy to tenants. Go to the Tenants Union website at www.tenants.org.au for details of your nearest service or check your local phone directory.

Landlords and agents must give a copy of this information statement to all new tenants before they sign a residential lease. Fines can be imposed if this is not done.
During a tenancy, information for tenants

This is a collection of fact sheets for people who rent on topics related to during a tenancy:

- Privacy when renting (pages 2 – 3)
- Getting repairs done (pages 4 – 5)
- Safety and security (pages 6 – 7)
- Rent increases (pages 8 – 9)
- Paying water charges (pages 10 – 11)
- Falling behind with your rent (pages 12 – 13)
- Asking to make an alteration (pages 14 – 15)
- Sharing a rented home (pages 16 – 17)
- Domestic violence in a rented property (pages 18 – 19)
- Mortgagee re-possession (pages 20 – 21)
- Natural disasters (pages 22 – 23)

All the fact sheets in this document can also be accessed as individual pages on the Fair Trading website in the Renting a home, During a tenancy section.

November 2011
Privacy when renting

Information for tenants

You have a right to privacy and quiet enjoyment of the premises you are renting. Your landlord, agent or anybody else acting on their behalf must not interfere with your reasonable peace, comfort and privacy.

For this reason, the law restricts the access a landlord or agent can have to the rented property while you are living in it. They are only allowed to enter the premises at certain times for certain reasons and in most cases have to give you notice first.

Notice before entry

The amount of notice the landlord or agent must give you depends on the reason for entering the premises.

<table>
<thead>
<tr>
<th>Reason</th>
<th>Notice required</th>
</tr>
</thead>
<tbody>
<tr>
<td>To inspect the premises (up to 4 times per year)</td>
<td>At least 7 days written notice</td>
</tr>
<tr>
<td>To do ordinary repairs or carry out maintenance</td>
<td>At least 2 days notice</td>
</tr>
<tr>
<td>To carry out urgent repairs, such as fixing burst water pipes,</td>
<td>None</td>
</tr>
<tr>
<td>dangerous electrical faults, gas leaks or blocked toilets</td>
<td></td>
</tr>
<tr>
<td>To comply with health and safety obligations, such as installing</td>
<td>At least 2 days notice</td>
</tr>
<tr>
<td>smoke alarms</td>
<td></td>
</tr>
<tr>
<td>To obtain a property valuation (once in a 12 month period)</td>
<td>At least 7 days notice</td>
</tr>
<tr>
<td>To show a prospective tenant (in the last 14 days before your tenancy</td>
<td>Reasonable notice on each occasion</td>
</tr>
<tr>
<td>is due to end)</td>
<td></td>
</tr>
</tbody>
</table>

In an emergency

None

If they have tried to contact you and been unable to do so and have reasonable cause for serious concern about your health or safety or other occupants

None

If they reasonably believe the premises have been abandoned by you

None

To show the premises to prospective buyers

As agreed with you, or no more than 2 inspections per week with 48 hours notice

In accordance with a Consumer, Trader and Tenancy Tribunal order

As ordered by the Tribunal

In addition to all of the above reasons you can consent to the landlord, agent, or any other person acting on their behalf to enter the property at any time for any reason.

Limits on access

In most circumstances, access is not permitted on Sundays, public holidays or outside the hours of 8am to 8pm. Where practical, you should be notified of the approximate time when access will be required.

If a person wishes to enter the property without the landlord or property manager (e.g. a selling agent, valuer or tradesperson) they must have written consent from the landlord or managing agent which they must show to you. The person who comes must not stay on the premises longer than is necessary to achieve the purpose.
These limits do not apply in an emergency, for urgent repairs, if the premises are abandoned, if the Tribunal so orders or if you agree.

**Entry when you are not home**

If correct notice has been given, you do not need to be at home for the landlord or agent or authorised person to enter. If the time does not suit you, you can try to negotiate a different time with the landlord or agent.

**Unlawful entry**

If these requirements have not been followed you do not have to allow access to your home. It is an offence for a landlord or someone on their behalf to enter the premises without following the correct procedures. If the problem is serious or persistent, you may apply for an order from the Tribunal.

If your goods are damaged or stolen during the access visit you can apply to the Tribunal for compensation.

**At a glance**

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limits on reasons for accessing property</td>
<td>Same, plus new access rights for valuations and concerns over tenant’s wellbeing</td>
</tr>
<tr>
<td>Reasonable access to show prospective buyers if reasonable notice given</td>
<td>Requirement for schedule of access to be agreed on, or no more than 2 inspections per week with 48 hours notice</td>
</tr>
<tr>
<td>7 days notice for general inspections</td>
<td>7 days written notice for general inspections</td>
</tr>
</tbody>
</table>
Getting repairs done

Information for tenants

When you rent a place to live the landlord must ensure it is in a reasonable state of repair, taking into account the age and remaining life of the property and the amount of rent payable.

If something in the premises breaks down, leaks or needs fixing you should contact the landlord or agent as soon as possible. Unless the repairs are urgent, it is best to make the request in writing. Tell them what needs fixing and when you would like it done by. Remember that the landlord is not always obliged to fix every small thing in the property. They only need to keep the premises in a reasonable state of repair considering the age of the property, the amount of rent you are paying and the prospective life of the premises. They also need to comply with building, health and safety laws.

You are responsible for doing things like replacing light bulbs, changing the smoke detector batteries, cleaning windows, dusting, removing cobwebs and routine garden maintenance such as watering, mowing and weeding.

Urgent repairs

The law distinguishes between urgent (emergency) repairs and those which are not so urgent. Urgent repairs are:

- a burst water service or a serious water service leak
- a blocked or broken toilet
- a serious roof leak
- a gas leak
- a dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage
- a failure or breakdown of the gas, electricity or water supply to the premises
- a failure or breakdown of the hot water service
- a failure or breakdown of the stove or oven
- a failure or breakdown of a heater or air-conditioner
- a fault or damage which makes the premises unsafe or insecure.

If urgent repairs are needed you should notify the landlord or agent right away. The landlord or agent must arrange for the repairs to be done as soon as possible. If you cannot reach them, check your tenancy agreement for the details of a nominated tradesperson to contact.

If urgent repairs are not done within a reasonable time you may be able to arrange for the work to be done and be reimbursed by the landlord (but only up to $1000). However, you must be able to show that:

- the need for the urgent repair was not your fault
- you contacted the landlord or agent about the problem or made a reasonable attempt to do so
- you gave the landlord or agent a reasonable opportunity to get the repairs done
- the repairs were carried out by a licensed tradesperson (if appropriate).

You must give the landlord written notice setting out the details of the repair and copies of all receipts. The landlord is required to pay you back within 14 days of receiving your notice. If they do not you can apply to the Consumer, Trader and Tenancy Tribunal for an order.

If urgent repairs are likely to cost more than $1000 or you cannot afford to pay, you can apply to the Tribunal for an urgent hearing order for the landlord to get the repairs done.

Doing repairs yourself

You cannot arrange for non-urgent repairs to be carried out unless the landlord or agent has agreed. If they agree, make sure you get it in writing before the work is done, including any agreement about reimbursing your costs.

If repairs are not done

You should never stop paying the rent because the landlord has failed to do repairs. Withholding rent will put you in breach of your agreement and will not help to
resolve the repairs problem. Withholding rent places you at risk of having your tenancy terminated.

**Getting orders from the Tribunal**

You can apply to the Tribunal for orders relating to repairs. These include:

- an order that the landlord do repairs
- an order that you can pay your rent to the Tribunal until the repairs are done
- an order that your rent be reduced until the time it is fixed
- an order to compensate you for losses (e.g. damage to your belongings from a leaking pipe after you told the landlord the pipe was leaking).

**Damage caused by you**

You must notify the landlord as soon as possible if the property is damaged. If you or somebody you invited to your home caused damage, you may have to pay for the repairs or arrange for the repairs yourself.

**At a glance**

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord responsible to maintain premises in reasonable repair</td>
<td>Same</td>
</tr>
<tr>
<td>Tenant can apply to the Tribunal to resolve disputes about repairs</td>
<td>Same</td>
</tr>
<tr>
<td>Urgent repairs listed</td>
<td>Same, plus new items about serious water leaks and broken airconditioners</td>
</tr>
</tbody>
</table>
Safety and security

Information for tenants

When you are renting a place to live, the landlord must provide premises that are in a reasonable state of repair and are reasonably secure. There are a number of safety and security matters that you may need to think about.

Window and balcony safety

Every year in Australia, approximately 50 children fall from a window or a balcony and are injured. In some cases these injuries are fatal. There are a number of simple, commonsense steps you can take to reduce this risk. For example, move furniture away from windows and from balustrades on balconies and decks, and fit locks or guards to windows so that they cannot be opened more than 10cm, except by an adult.

Falls occur more often in the warmer months when families leave windows and doors to balconies open during the day and at night. Do not rely on flyscreens to prevent your child from falling out of a window.

The New South Wales strata and tenancy laws provide a range of options for parents of young children. The tenancy laws require landlords to provide and maintain locks and security devices to make sure the premises are reasonably secure. Landlords cannot unreasonably refuse permission for tenants to make minor changes to rental premises, such as installing child safety window locks. The model strata by–laws allow individual strata owners to install locks or other devices on common property areas such as windows and balconies to prevent harm to children, without needing approval from the owners corporation.

Low–cost, simple options for making windows safer for children without altering the premises are available at most hardware stores.

Further information on window and balcony safety is available from NSW Health or the Westmead Children’s Hospital.

Swimming pools

Swimming pools can pose a number of safety hazards. The main hazard is young children drowning because of faulty or inadequate pool fencing. The maintenance of pool fencing is extremely important, even if you do not have young children living at your home. Children are most at risk of drowning within six months of moving into a new property with a swimming pool, or when visiting the home of a friend, family member or neighbour with a pool. If the property you are renting has a swimming pool, you need to check that the pool fence is in good, working condition. Landlords must meet the standards in the Swimming Pools Regulation 2008. This requires pools built after 1 August 1990 to generally be surrounded by a fence that separates the pool from the house.

Smoke alarms

A smoke alarm is an effective early warning device designed to detect smoke and alert you to the presence of a fire, and increase the time available for safe escape. Your landlord is required by law to have installed at least one smoke alarm in a hallway outside a bedroom or other suitable location in each storey of your rented home. You are not allowed to remove or interfere with smoke alarms, without a reasonable excuse. If a smoke alarm is battery operated you are responsible for replacing the batteries and testing that it is working. It is recommended this be done once each year. For information about the type, location and number of smoke alarms that are required call the Smoke Alarms Helpline on 1300 858 812 or go to the Fire and Rescue NSW website, where can also find information to help you conduct a fire safety audit of your home.

Gas water heaters

Gas water heaters that have not been properly maintained have been responsible for deaths and serious injuries. If your property has a gas bath heater or flued instantaneous water heater in the bathroom, or a flueless
water heater in the kitchen, it could be a source of danger.

The Australian Gas Association recommends that all gas water heaters are serviced regularly by approved service agents and when replaced are installed externally to reduce the risk of an accident.

Always ensure:

- the bathroom and kitchen heaters have unobstructed ventilation
- heater flue pipes are free from all restrictions and holes
- there is no evidence of the heater creating soot deposits
- there are no signs of discolouration on or around the heater and flue.

Flueless water heaters using natural or LPG gas are designed to work without a flue pipe. However, if the ventilation is obstructed poisonous fumes such as carbon monoxide can be forced back into the room and contaminate the air. As carbon monoxide is colourless, odourless and tasteless, it is virtually undetectable. Inexpensive carbon monoxide detectors can be purchased from most hardware stores.

For further information, contact the gas retailer, or the Master Plumbers Association of NSW toll free on 1800 424 181.

**Security**

Your landlord must provide and maintain locks or security devices to ensure that the premises are reasonably secure. What is reasonably secure will vary in different situations.

The potential risk (that is, the likelihood the premises may be broken into) will have a bearing on the type and standard of locks needed to make a property reasonably secure. This will depend largely on the area in which the premises are located. The level of security needed for a ground floor unit may be greater than for a unit on an upper level.

Your landlord does not have to make the property so secure that the premises can never be broken into. The requirements of insurance companies are not the sole test of what is ‘reasonably secure’, but are merely one factor to be taken into account in deciding what level of security is appropriate for the premises.

You can change or add locks or security devices if you get the landlord's consent, or if it is reasonable to do so, such as in an emergency (for example if the premises have been burgled and keys are missing or if your key breaks off in the lock). You will need to give the landlord a copy of the new key within seven days. If the premises are not reasonably secure, you should raise this matter with the landlord or agent as soon as possible.

**Rural properties and dams**

Around 20 children are fatally injured on Australian farms every year and many more are hospitalised. Drowning accounts for around 35-40 percent of all child farm deaths, with farm dams being by far the most common site. Apart from dams, children can find their way into creeks, troughs, dips and irrigation channels. Children under five are at most risk.

For more information on how to protect children living or visiting farms, go to the Farmsafe website.

**Rainwater tanks**

Rainwater tanks are used widely for drinking water in rural areas. It is important that the water is free of harmful microorganisms or harmful levels of chemicals. Good quality water depends on proper maintenance of the rainwater tank and catchment area (such as the roof and gutters if the tank is connected to the roof). This means responsibilities for both landlords and tenants of premises that use rainwater tanks as a source of drinking water.

It is good practice to flush rainwater taps used for drinking or cooking for 2-3 minutes at the start of each day. Before renting out a property the landlord should ensure that the tenant is informed that rainwater is the source of drinking water and that maintenance responsibilities have been discussed. More information on the installation and maintenance of rainwater tanks is available from the NSW Health website.
Rent increases

Information for tenants

There are certain rules that a landlord or their agent must follow if they wish to put the rent up.

Notice of a rent increase

If the fixed term period of your lease has ended and you are on a continuing (periodic) tenancy the landlord may increase the rent by giving you at least 60 days notice in writing before the date the increased rent becomes payable. The notice must:

- specify the proposed new amount of rent (not the amount of the increase) and
- specify the date from which the increased rent is payable and
- be signed, dated and properly addressed to you.

If you have entered into a tenancy without having a written agreement in place, the rent cannot be increased during the first 6 months.

If you are renewing a tenancy agreement for a further fixed term, the rent cannot be increased automatically. You must still be given 60 days written notice before the rent increase can take effect.

During the fixed term

During a fixed term agreement of 2 years or less the rent cannot be increased, unless a term has been added to the agreement saying it can. The agreement must spell out the amount of the increase or the method of calculating the increase (e.g. a dollar amount or %). It cannot be unclear like ‘in line with the market’ or ‘by the rate of inflation’. Even where you have agreed to the increase in the agreement, you still have to be given 60 days written notice before it can take effect.

During a fixed term agreement of more than 2 years the rent can be increased at any time (so long as 60 days written notice is given) but cannot be increased more than once in any 12 month period. After receiving a rent increase notice, you have the option to give 21 days notice to terminate the agreement. The notice must be given before the increase becomes payable. If you take this option you are not considered to have broken the agreement early.

Negotiating with the landlord

If you receive a rent increase notice, you can ask to discuss it with the landlord or agent. They may be willing to reduce the amount of the increase, especially if you are a long standing and reliable tenant.

If the landlord agrees to a smaller increase you do not have to be given another 60 days notice. The lower increase simply becomes payable from the same day as stated in the original notice. Make sure any agreement you reach is put in writing and signed by yourself and the landlord or agent. In addition, you could ask to sign a new lease for a new fixed period. That way you will lock in the rent for at least the length of the new lease.

Challenging an increase

If you think a rent increase is excessive you can apply to the Consumer, Trader and Tenancy Tribunal. You must apply within 30 days of receiving the rent increase notice. The Tribunal will consider:

- rents for similar premises in the same area or a similar area (i.e. the ‘market rent’)
- the landlord’s costs associated with the tenancy agreement
- the value and nature of fittings, appliances and other goods, services and facilities provided with the premises
- the state of repair of the property
- the accommodation and amenities of the premises
- any work you have done to the premises
- when the last increase occurred
- any other relevant matter, except your income or whether you can afford the increase.

While all these factors are important, the main consideration for the Tribunal is the market rent.
If you are thinking about challenging the increase at the Tribunal, contact your local Tenants Advice and Advocacy Service. They can give you assistance on the type of evidence you will need. Newspaper clippings of other properties for rent will not be enough.

If the Tribunal decides that the rent increase is excessive it can order that the rent not be increased or that it be increased by a smaller amount. It can also set the maximum rent for a period of up to 12 months.

If the rent increase comes into effect before your case is heard by the Tribunal you should pay the increased amount until the Tribunal has made its decision. If the Tribunal decides in your favour it can make an order for a refund.

Applying to the Tribunal is the only way to challenge a rent increase. If you have been given proper notice and you do not pay the increase, you will fall behind with the rent over time. This can lead to you being evicted.

If you are not given proper notice you do not have to pay the increase. If you have already started paying the increase you can ask the landlord to refund the extra payments and apply to the Tribunal if they refuse.

**At a glance**

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum 60 days notice of rent increase</td>
<td>Same</td>
</tr>
<tr>
<td>Rent could only increase during a fixed term agreement, however long, if stated in the agreement</td>
<td>Rent can be increased in fixed term agreements over 2 years without needing to specify in the agreement</td>
</tr>
</tbody>
</table>

| Tribunal considers general market level of rents and other relevant factors if tenant claims increase is excessive | Similar factors considered, with the addition of when the last increase occurred. |
Paying water charges

Information for tenants

Your landlord can only ask you to pay water usage charges provided all the minimum criteria have been met.

**Minimum criteria**

The minimum criteria for passing on water usage charges is:

- the rental premises must be individually metered (or water is delivered by vehicle, such as those with water tanks on rural properties) and
- the charges must not exceed the amount billed for water usage by the water supplier and
- the rental premises must meet required ‘water efficiency’ standards.

**Water efficiency standards**

A rental property is only considered water efficient if it meets these standards.

<table>
<thead>
<tr>
<th>Water efficiency devices</th>
<th>Minimum standard required</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal cold water taps and single mixer taps for kitchen sinks and bathroom hand basins</td>
<td>A maximum flow rate of nine litres per minute</td>
</tr>
<tr>
<td>Showerheads</td>
<td>A maximum flow rate of nine litres per minute</td>
</tr>
<tr>
<td>No leaking taps</td>
<td>No leaking taps anywhere on the premises at the start of the tenancy or when the other water efficiency measures are installed</td>
</tr>
</tbody>
</table>

The requirement for sink and basin taps to have a maximum flow rate of nine litres per minute does not apply to other taps in the premises such as bathtub taps, laundry taps, outside taps for the garden, or taps which supply washing machines and dishwashers.

The landlord does not necessarily need to change the showerheads and tap fittings. The water efficiency measures can be achieved simply by installing aerators or regulators to existing taps and showerheads and fixing any leaking taps on the premises.

**Proving water efficiency**

It is important to note the presence of the water efficiency measures on the condition report for the premises.

If you are unsure if the taps and showerheads in your property meet the required standards ask the landlord or agent to provide some evidence. You could carry also out a simple bucket and stop watch test to see if, when fully turned on, the flow rate is less than nine litres in a minute.

**Timeframe for installing water efficiency measures**

If you are entering into a new agreement from 31 January 2011 the landlord needs to ensure the premises are water efficient in order to pass on water usage charges.

For all tenancies in place before 31 January 2011, the landlord has 12 months to make the premises water efficient. You can continue to be asked to pay water usage charges during the transitional period even if the premises are not water efficient. After 31 January 2012, you can only be asked to pay if the premises have been made water efficient.

**Charges limited to water usage**

You are only responsible to pay water usage (volume) costs. Other costs on the water bill such as water service or sewerage services are payable by the landlord and you cannot be asked to pay them. The landlord or agent...
cannot charge you an administration fee for passing on the bill, late fees or other additional amounts.

**Time to pay**

You only have to be pay if the landlord or agent gives you a copy of the part of the water bill setting out the water usage charges payable, or some other evidence showing how your usage was calculated, within 3 **months** of getting the bill. You must be given 21 days to pay the amount owing. So long as they request your payment within the 3 months, if you don’t pay they can still take action to recover the money later on (e.g. making a claim against your bond or getting an order from the Consumer, Trader and Tenancy Tribunal).

**Things to know**

Some important points to remember include:

- If you remove or tamper with the water efficiency devices you still have to pay for water usage and you may have to pay to replace them.
- If you think your water bill is too high, it may be helpful to contact your local water provider about average water consumption. A large increase in water usage may indicate a water leak on the property. You should let the agent or landlord know as soon as possible.
- Water billing periods are unlikely to align with tenancy agreements. It is important that the water meter reading be noted on the condition report at the start and end of each tenancy to ensure you are not paying for another tenant’s water consumption.
- Social housing tenants may have a different system applied for calculating and paying water usage. Contact Housing NSW for further information.
- These provisions apply to all tenancies, regardless of the terms of any existing leases.

**At a glance**

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>No water efficiency standards in place</td>
<td>Minimum water efficiency standards now required</td>
</tr>
<tr>
<td>No time periods</td>
<td>Time periods included for how long tenant has to pay and when requests for payment must be made</td>
</tr>
</tbody>
</table>

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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Tel: 13 32 20 www.fairtrading.nsw.gov.au
Falling behind with your rent

Information for tenants

If you have fallen behind with your rent it is important to take action as soon as possible, as your landlord can give you notice to end the tenancy if your rent is more than 14 days overdue.

If you are behind with your rent

One of the terms of your tenancy is that you agree to pay your rent on time. If the rent is late you are in breach of this term. It is important to pay the outstanding rent as soon as possible.

If you are unable to pay all of the overdue rent immediately, you should contact your landlord or agent to talk about a repayment plan.

Repayment plans

A repayment plan is a plan for the outstanding rent to be paid over a period of time, in addition to your normal rent payments. You and the landlord both need to agree on the plan, including the payment amounts and dates. The repayment plan should be put in writing and signed by both parties to avoid misunderstanding or disputes over what was agreed. If you cannot agree on a repayment plan the Consumer, Trader and Tenancy Tribunal may help set one up.

Can I be asked to leave?

If the rent is 14 days behind or more, the landlord can serve you with a termination notice, giving you 14 days to vacate the property.

The notice must be in writing, signed by your landlord or agent and explain the reason for the notice and the date by which you must vacate.

What if I do not vacate within 14 days?

The landlord can apply to the Tribunal for an order to end your tenancy. They can do this at the same time as giving you notice or up to 30 days after the notice ends. If they apply to the Tribunal you will receive a notice from the Tribunal to attend a hearing. You cannot be evicted until the Tribunal makes a termination order and gives you a date to leave.

The law provides a general guarantee that a tenancy can continue if you catch up with the rent or a repayment plan is agreed to by the landlord and you stick to it. This applies before or after the Tribunal hearing, unless the Tribunal orders differently because the rent has frequently been late (see below for more information).

At the Tribunal

It is important that you attend any Tribunal hearings.

The Tribunal member may first conciliate to try to get you to agree with your landlord on a repayment plan for the overdue rent. At this meeting, make sure that you do not offer to pay more than you can afford because if you fail to make the repayments, the landlord can take you back to the Tribunal and the tenancy may be terminated. If you cannot come to an agreement, your case will be decided by a Tribunal member.

At the hearing, you can:

- ask for time to bring your rent up to date and allow you to continue your tenancy
- give evidence of how much extra you can afford to pay and when.

When do I have to move out?

Termination order

If the Tribunal issues a termination and possession order, you are required to vacate the premises on the date specified unless you pay your overdue rent or comply with a repayment plan agreed to by the landlord. Otherwise, the Sheriff may enforce the warrant for possession and evict you. However, refer to the information below about frequent late payments.
Frequent late payers
If you have a history of frequently paying the rent late, your landlord can apply to the Tribunal for you to be evicted even if you pay all the rent you owe.

The law does not state what is considered to be frequently late. Whether the Tribunal makes such an order is up to the Tribunal to decide based on the evidence you and the landlord present at the hearing.

Rent records
If you are told that you are behind in your rent and you disagree, check your rent receipts and other records (such as bank statements) to see if this is correct. Ask the landlord or agent to give you a copy of your rent ledger so you can see if your records match theirs.

Late fees
The landlord can only ask you to pay the cost of replacing any rent deposit books or rent cards you have lost and the amount of any bank fees for dishonoured rent cheques, insufficient funds for direct debit rent payments and the like.

Your landlord cannot charge you for Tribunal application fees, or costs involved in enforcing a warrant or charge a penalty (e.g. interest) for late payments.

At a glance
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<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tenant must be 14 days late before 14 days termination notice given</td>
<td>Same</td>
</tr>
<tr>
<td>Landlord had to wait until notice ended before applying to Tribunal for possession order</td>
<td>Landlord can apply to the Tribunal at the same time or up to 30 days after the termination notice ends</td>
</tr>
</tbody>
</table>

Once notice had been served, payment of rent did not stop the tenancy from ending

General guarantee of tenancy continuing if rent owing is paid or is being paid off under a repayment plan agreed to by the landlord.
Asking to make an alteration

Information for tenants

From time to time, you may wish to add to the comfort or security of your home by making minor changes at your own expense. It is important that you follow the proper process otherwise action can be taken against you for breaching the terms of your lease.

Consent

You must first seek the landlord's written consent before you add a fixture or make any renovation, alteration or addition to the premises. If an agent is managing the property you can put your request to them. It is best to put it in writing so you have a record of your request.

When submitting your request, you should try to provide as much information as you can about the change you wish to make to the property. For example, if you wish to install pay television, you should first find out exactly what is required to be done to the property. A landlord may also be more likely to agree to your request if you use a qualified tradesperson to carry out alterations.

Agreement is essential

Before you make any changes, you should agree with your landlord as to who will pay the costs and what will happen to any fixture you add at the end of the tenancy.

Rules on costs

Generally, an added fixture or change made by you is at your own expense unless your landlord offers to pay. For example, your landlord may offer to share or cover the cost of materials or reduce some rent. It is entirely up to the agreement between you and your landlord. You are not able to go to the Consumer, Trader and Tenancy Tribunal seeking to get back money for improvements so make sure that this is agreed upon well in advance.

Removal at the end of the tenancy

If you pay for any fixtures in the premises, you are allowed to remove them at the end of the tenancy, as long as you notify your landlord or your agent of any damage this causes.

You must then either pay for the cost of repairs, or arrange to repair any damage to a satisfactory standard.

If your landlord pays for the fixture in some way, then you are not allowed to remove it without their consent. Your landlord has the right to apply to the Tribunal for an order that prohibits you from removing a fixture, or an order that you pay for repairs to any damage you have caused in removing a fixture.

If you do not remove a fixture you have added by the time you hand back possession, you cannot come back and get it later on. It ceases to belong to you and forms part of the premises.

When can a landlord refuse my request?

Your landlord cannot unreasonably refuse to give you consent to add a fixture or to make a change that is of a minor nature.

The law gives some guidance as to the types of reasons where it would be reasonable for your landlord to say no to your request.

These include work which:

- involves structural changes (e.g. knocking out a wall)
- is not reasonably capable of being rectified, repaired or removed
- is not consistent with the nature of the property (e.g. installing modern fixtures in a heritage property)
- is prohibited under a law (such as a strata by-law).

This is not an exhaustive list. There may be other reasons to decline your request. If you think that the reason for your landlord’s refusal is not reasonable, you can apply to the Tribunal for permission to make the change.
Painting the premises

It is up to the landlord to decide whether you can paint the premises (inside or out) and the Tribunal cannot give permission if the landlord refuses. If the landlord does consent, you should make sure they are aware of the colour, brand of paint and how many coats you are planning to do before you begin, to avoid any disagreements later on. Make sure these details are included in the landlord's written consent.

Minor alterations

The law does not define what is a change of a 'minor nature'. This will depend on the property and the circumstances. It is for you and your landlord to agree on or for the Tribunal to resolve if a dispute arises.

Examples of the types of changes that may be considered reasonable include:

- installing window safety devices for small children
- installing additional security features
- having a phone line connected
- connecting to the National Broadband Network
- putting a reasonable number of picture hooks in the wall
- planting some vegetables or flowers in the garden
- connecting to pay television
- replacing the toilet seat
- installing a grab rail in the shower for elderly or disabled occupants.

Remedies for unsatisfactory work

Your landlord can apply to the Tribunal for order against you for the cost of rectifying work you have done or arranged if:

- they can show the work was not done to a satisfactory standard or
- it is likely to adversely affect the landlord’s ability to rent the premises in the future to other tenants.

Such an application can be made whether or not your landlord gave you consent to add the fixture or to make the change.

At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord consent to alteration requests</td>
<td>Same</td>
</tr>
<tr>
<td>required</td>
<td></td>
</tr>
<tr>
<td>Landlord had final say on whether the tenant</td>
<td>Same</td>
</tr>
<tr>
<td>can paint the premises</td>
<td></td>
</tr>
<tr>
<td>Landlord could unreasonably refuse requests</td>
<td>Landlord must not unreasonably refuse</td>
</tr>
<tr>
<td>from a tenant to add any fixture or to make</td>
<td>requests to add a fixture or make a change of</td>
</tr>
<tr>
<td>any sort of change to the premises</td>
<td>minor nature</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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Sharing a rented home

Information for tenants

There are a number of ways to share a rented home and each arrangement means you have different obligations and processes to follow.

The different arrangements

Sub-letting

This involves you entering into a formal agreement with somebody else to rent part of the premises to them (e.g. the garage or granny flat) or the whole premises. In effect you are taking on the role of landlord for the sub-tenant. You remain the landlord's tenant at the same time. There is no contractual arrangement between the landlord and the sub-tenant. For example, the sub-tenant would pay their rent to you not the landlord or agent. You continue to be responsible for the tenancy, including the actions of the sub-tenant. If, for instance, the sub-tenant caused damage to the premises you would need to fix it or pay for the repairs. You may be able to recover the cost from the sub-tenant.

Transferring or assigning the lease

This is different to sub-letting and is where you wish to transfer the whole tenancy to a new tenant or only part of the tenancy (i.e. by taking in a new co-tenant). There is no ongoing landlord and tenant relationship once the tenancy is transferred as there is with sub-letting. The new tenant is either jointly responsible to comply with the lease (in the case of a new co-tenant) or wholly responsible to the landlord if the whole tenancy is transferred. The existing lease agreement, including any remaining fixed term period and the rent payable, is transferred to the new tenant or co-tenant. There is no need to sign a new lease although it is best to put the arrangement in writing to avoid any disputes later on.

Additional occupants

This arrangement falls outside the sub-letting and transferring rules. This is where you wish to have somebody stay with you in the premises on an informal basis. This could be a family member, friend or stranger and it may be a temporary or permanent arrangement. Exclusive use or possession of part of the premises is not granted. All areas of the premises are simply shared. The new person is just an additional occupant even though they may be paying you rent to stay there. You are responsible for the actions of any occupants or guests you allow in the premises.

Consent of the landlord

You must first seek the landlord or agent's written consent before you sub-let or transfer any part of the premises. If you do this without consent you are breaching the terms of the agreement. The landlord can apply to the Consumer, Trader and Tenancy Tribunal to order you to comply with the lease.

The landlord has total discretion if you ask to sub-let or transfer the whole premises. If they say no, you cannot apply to the Tribunal.

However, if you want to only sub-let part of the premises or take on a new co-tenant the landlord cannot unreasonably say no. They can ask for information about the prospective sub-tenant or co-tenant such as their name and details of their rental history. They can ask that an application for tenancy form be filled out. They could also meet and interview the person, as they would with a new tenant.

If you just want to have an additional occupant you do not need to tell the landlord or agent who they are, or get their consent. However, you must not exceed the maximum number of permitted occupants stated on the lease.

Reasonable refusal

As mentioned above the landlord cannot unreasonably say no to requests from you to sub-let part of the premises or take on a new co-tenant. The law gives
Some examples as to when it is reasonable for the landlord to say no. These are:

- if the total number of occupants permitted under the lease would be exceeded
- if the total number of occupants would exceed any local council rules and regulations
- if the person being proposed is listed on a tenancy database
- if they reasonably believe it would result in the premises being overcrowded.

This is not an exhaustive list. There may be other situations where it would be reasonable to decline your request.

### Challenging a refusal

If your request to sub-let part of the premises or to add a co-tenant is refused, and you believe the decision is unreasonable, you can apply to the Tribunal which will arrange for a hearing and consider evidence from you and the landlord before making an order about whether to allow you to sub-let or add a co-tenant.

### Costs

You cannot be charged by the landlord or agent for allowing a transfer or sub-letting, other than any reasonable expenses incurred. In most situations there is unlikely to be any expense involved.

While the new sub-tenant or co-tenant may mean there is extra income in the household it does not mean that the landlord can automatically increase the rent. The same rules for putting the rent up still apply.

### Changing bond records

Where a bond has been paid and co-tenants subsequently change, co-tenants can pass bond money between themselves from the incoming to the outgoing person. A Change of Shared Tenancy Arrangement form will need to be signed and lodged with Fair Trading so that the bond records can be updated. You can get a copy of the form from the Fair Trading website, a Fair Trading Centre or by calling 13 32 20.

### Social housing providers

The need to be reasonable when considering requests to add a co-tenant or sub-let part of the premises does not apply to social housing providers, such as Housing NSW. Who can live in the premises is determined by the social housing provider's own policies and procedures.

### At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Landlord consent to sub-letting or transfer requests required</td>
<td>Same</td>
</tr>
<tr>
<td>Landlord had sole discretion to decide if whole premises could be sub-let or transferred</td>
<td>Same</td>
</tr>
<tr>
<td>Landlord could unreasonably refuse requests from tenant to sub-let part of the premises or add a co-tenant, with no avenue of appeal for the tenant</td>
<td>Landlord must not unreasonably refuse requests to sub-let part of the premises or add a co-tenant, with the tenant being able to apply to the Tribunal if they do</td>
</tr>
</tbody>
</table>
Domestic violence in a rented property
What tenants and occupants need to know

If there is violence in your rented home you should contact the Police or an advice service. There are also steps you can take under the tenancy agreement to improve your safety.

Changing the locks
If you obtain an Apprehended Violence Order (AVO) which prohibits a person from accessing the rented premises where you were both living, you can immediately change the locks. This applies if the AVO is a provisional, interim or final order.

You do not need the landlord’s or agent’s consent to change the locks as you would normally do. However you must give them a key for the new lock within 7 days unless they agree not to have a key. The cost of changing the locks is your responsibility. If you do give a key to the landlord or agent, they cannot pass it on to the person who has been excluded from the property.

If the excluded person is named on the tenancy agreement as a tenant, your action in changing the locks does not end their tenancy or make you a tenant instead. All it does is prevent them from using their keys to enter the property while the AVO remains in force.

Changing the tenancy agreement
If the person excluded from the premises was named as a tenant on the agreement, a final AVO made by a magistrate terminates that person’s tenancy. If you were named on the agreement as a co-tenant the tenancy simply transfers to your name. There is no need for you to sign a new agreement or do anything else. Any share of the bond owing to the excluded person does not have to be paid back until you vacate.

If your name is not on the agreement, you can ask the landlord or agent to have the agreement put into your name. If they refuse you can apply to the Consumer, Trader and Tenancy Tribunal for an order to do this.

If you are an occupant of social housing premises (eg. Housing NSW) the Tribunal can only make such an order if you meet any eligibility requirements. Contact the social housing provider to find out what you can do.

Ending the lease early
Tenants cannot usually break a fixed term agreement early without paying a penalty or compensation. However, if you are a tenant and you obtain a final AVO which prohibits a co-tenant or occupant from accessing the premises, you have the option to end the lease early without having to compensate the landlord. This may be helpful if you cannot afford the rent on your own. You must give the landlord or agent 14 days notice in writing of your intention to leave.

Tenancy database listings
If you are listed on a tenancy database due to damage to the property caused by a co-tenant or occupant during an incident of domestic violence, there are steps you can take. You can ask for the information about you to be removed or changed and you can apply to the Tribunal for orders. More information can be found on the Tenancy databases page on the Fair Trading website.

Further advice and support
Domestic Violence Legal Advice Line
Tel: 8745 6999
Toll free: 1800 810 784
Website: www.womenslegalnsw.asn.au

Women’s Legal Contact Line
Tel: 8745 6988
Toll free: 1800 801 501
At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>Current laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Locks could not be changed without landlord’s consent</td>
<td>Consent to change locks no longer required if AVO excludes a tenant or occupant from the premises</td>
</tr>
<tr>
<td>No specific right to take over a lease after an AVO is made excluding the tenant</td>
<td>An occupant can seek to become a tenant in these circumstances</td>
</tr>
<tr>
<td>Domestic violence victim who left during a fixed term lease liable to pay compensation to landlord</td>
<td>Lease can be ended early without penalty with 14 days notice to landlord</td>
</tr>
</tbody>
</table>
Mortgagee re-possession

Information for tenants

When a landlord is unable to keep up with their loan repayments the mortgagee (i.e. the lender, normally a bank or other financial institution) usually wants to take possession of the property in order to sell it and recover their money. This is what is referred to as mortgagee re-possession.

Legal process of re-possession

To take back possession of the premises, the mortgagee needs to obtain an order from the Supreme Court. You should get notice of the proceedings. Sometimes the landlord and the mortgagee are able to resolve the matter and you will not have to move out. If the court makes an order for possession you should be notified. However, the court can make an order even if you were unaware of the proceedings.

Before the order is given the mortgagee may send you a written demand that you pay the rent to them instead of the landlord or agent. If you receive such a letter you should pay the rent according to the demand.

Notice to vacate

Supreme Court orders for possession are enforced by the NSW Sheriff's Office. A Sheriff's Officer will serve you with a notice giving you at least 30 days to vacate the property. If you do not move out the Sheriff can remove you from the premises. There are no further extensions to this time unless this is agreed to by the mortgagee and the Sheriff's Office. If you find a new place to live before the end of the 30 day notice period you may move out at any time.

Rent-free compensation

Regardless of how much time (if any) remains on your fixed term agreement the court order for possession will end your tenancy earlier than expected.

As a form of compensation you do not have to pay any rent for 30 days after being given the official notice to leave by the Sheriff. This may help to cover the cost of finding a new place to live.

If advance rent has been paid covering any part of this period, you are entitled to have that rent refunded. You can apply to the Consumer, Trader and Tenancy Tribunal if the landlord or agent does not pay the money back.

Access to show buyers

While you are still occupying the premises the mortgagee can show the property to possible buyers, but only if you have been given reasonable notice and you agree to the times and dates of the inspections.

Refund of rental bond

The mortgagee can authorise NSW Fair Trading to release the bond to you once they take over the premises from the landlord. They can even do this while you are still living in the premises so you can use the money to help pay the next bond.

Staying in the property

If the mortgagee had previously been notified of your tenancy agreement, they are bound by it when they take over from the landlord, under the Real Property Act 1900. However, most residential tenancy agreements are for less than 3 years which means that they are not registered on the title. In most cases the landlord would have taken out the mortgage before finding you as the tenant. Consequently, it is unlikely that the mortgagee will have had prior notice and be bound to honour your agreement.

This does not stop you from approaching the mortgagee, or somebody acting on their behalf, and requesting to stay on in the premises at least until it is sold. It is possible that the premises will be bought by another investor who may want you to stay as a tenant.
Court or Tribunal ordered tenancies

You can seek to have a tenancy established between you and the mortgagee. You can apply to either the Supreme Court, if the proceedings have not been finalised, or to the Tribunal if the possession order has already been made. These orders can be difficult to obtain as you need to show that there are special circumstances in your particular case. You need to apply before the Sheriff enforces the order. If you are considering taking this option it may be best to first obtain legal advice.

Disclosure by landlord

Before you sign a tenancy agreement, the landlord or agent is required to tell you if they know that court action to recover possession has already been commenced by the mortgagee. If this information was not disclosed you can apply to the Tribunal for compensation. You may also seek to end lease early without paying the usual penalties.

At a glance

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mortgagee gives notice to tenant once court order for possession is given</td>
<td>Notice will now come from the Sheriff's Office</td>
</tr>
<tr>
<td>30 day minimum period to tenants to vacate</td>
<td>Same</td>
</tr>
<tr>
<td>30 day rent free period as compensation</td>
<td>Same</td>
</tr>
<tr>
<td>No disclosure requirements</td>
<td>Requirement to inform prospective tenants if mortgagee has commenced court proceedings</td>
</tr>
</tbody>
</table>
Natural disasters

Information for tenants

As a tenant it is vital you know what your renting rights and responsibilities are if you have been affected by a natural disaster, such as a flood, bushfire or storm damage.

What happens with the tenancy

This will depend on the extent of the damage and what you and the landlord want to do about the situation.

If the premises are destroyed or become totally or partly uninhabitable, this does not automatically end your tenancy. Either you or the landlord can give a termination notice in writing to end the tenancy. The notice, once served, can take effect immediately or can specify a later date. If the landlord serves you with a notice and you do not want the tenancy to end you should let them know. You cannot be evicted without a Consumer, Trader and Tenancy Tribunal order.

If the premises are only partly uninhabitable, such as one room not being usable as a result of hail damage to the roof, you may wish to stay on in the premises while the repairs are being carried out. You should only consider doing this if the damage is relatively minor and there is no ongoing safety risk to you or your family. Follow any instructions from emergency personnel and talk to the landlord to see if they agree.

If the premises have been more seriously damaged or have become totally uninhabitable another option is to move out temporarily and return once the premises are liveable again. This may be for a few days or weeks or however long it takes. If this is what you want to do you should talk to the landlord or agent as soon as possible. While the landlord or agent can try to help you as an act of goodwill they are not obliged to find or pay for your temporary accommodation.

You and the landlord/agent can also decide to formally end the agreement and re-sign a new agreement after the repairs are complete. However, be aware that a higher rent could be included in the new agreement.

What happens about the rent

If the tenancy is ended permanently, no rent is payable from the day you move out. Any rent already paid in advance must be fully refunded.

If you move out temporarily or continue living in the partially damaged premises the rent should be waived or reduced. Whether any rent is payable at all and, if so, the level of reduction will depend on the extent of the damage and the amount of use you have of the premises. Any agreement in these situations about the rent, how long you may be away from the premises and what will happen to your possessions while you are away is best put in writing.

Repairs

If the tenancy is to continue, the first step is for the landlord or agent, preferably with you being present, to inspect the premises and document the repairs needed. You should discuss with the landlord or agent the timetable for repairs, recognising that there may be unavoidable delays because of the demand for insurance assessments and qualified tradespeople in the area. A landlord is not obliged to compensate you for any damage to your furniture or personal belongings arising from a natural disaster.

Serious storm, fire or flood damage are all considered to be urgent repairs. Such repairs should be done as soon as possible. If you believe the landlord or agent is not acting quickly enough on needed repairs you can apply to the Tribunal or arrange for the work yourself and be reimbursed.

Access

After a natural disaster most repairs needed are likely to be classed as urgent repairs. The landlord or agent does not have to give you any minimum period of notice before sending tradespeople to do this work.
In normal situations you must be given at least 2 days notice if tradespeople need to access the premises to carry out non-urgent repairs. It may be in your best interest to talk to the landlord or agent and agree on a shorter period of notice in order to get the work completed as soon as possible.

**Disclosure of previous disasters**

The landlord or agent must tell you before you sign the tenancy agreement if the premises have been subject to flooding or bushfire in the previous 5 years. This only applies where they know of the event. If this information was not disclosed before you signed the agreement and it happens again you may be entitled to compensation.

**Disputes**

Any tenancy related disputes following a natural disaster can be taken to the Tribunal.

**At a glance**

The table below lists the key differences between the old Act and the tenancy laws that began on 31 January 2011.

<table>
<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>No disclosure requirements</td>
<td>Prospective tenants must be told if premises affected by flood or bushfire in past 5 years</td>
</tr>
</tbody>
</table>
Privacy when renting

Information for tenants

You have a right to privacy and quiet enjoyment of the premises you are renting. Your landlord, agent or anybody else acting on their behalf must not interfere with your reasonable peace, comfort and privacy.

For this reason, the law restricts the access a landlord or agent can have to the rented property while you are living in it. They are only allowed to enter the premises at certain times for certain reasons and in most cases have to give you notice first.

Notice before entry

The amount of notice the landlord or agent must give you depends on the reason for entering the premises.

<table>
<thead>
<tr>
<th>Reason</th>
<th>Notice required</th>
</tr>
</thead>
<tbody>
<tr>
<td>To inspect the premises (up to 4 times per year)</td>
<td>At least 7 days written notice</td>
</tr>
<tr>
<td>To do ordinary repairs or carry out maintenance</td>
<td>At least 2 days notice</td>
</tr>
<tr>
<td>To carry out urgent repairs, such as fixing burst water pipes, dangerous electrical faults, gas leaks or blocked toilets</td>
<td>None</td>
</tr>
<tr>
<td>To comply with health and safety obligations, such as installing smoke alarms</td>
<td>At least 2 days notice</td>
</tr>
<tr>
<td>To obtain a property valuation (once in a 12 month period)</td>
<td>At least 7 days notice</td>
</tr>
<tr>
<td>To show a prospective tenant (in the last 14 days before your tenancy is due to end)</td>
<td>Reasonable notice on each occasion</td>
</tr>
</tbody>
</table>

In addition to all of the above reasons you can consent to the landlord, agent, or any other person acting on their behalf to enter the property at any time for any reason.

Limits on access

In most circumstances, access is not permitted on Sundays, public holidays or outside the hours of 8am to 8pm. Where practical, you should be notified of the approximate time when access will be required.

If a person wishes to enter the property without the landlord or property manager (e.g. a selling agent, valuer or tradesperson) they must have written consent from the landlord or managing agent which they must show to you. The person who comes must not stay on the premises longer than is necessary to achieve the purpose.
These limits do not apply in an emergency, for urgent repairs, if the premises are abandoned, if the Tribunal so orders or if you agree.

**Entry when you are not home**

If correct notice has been given, you do not need to be at home for the landlord or agent or authorised person to enter. If the time does not suit you, you can try to negotiate a different time with the landlord or agent.

**Unlawful entry**

If these requirements have not been followed you do not have to allow access to your home. It is an offence for a landlord or someone on their behalf to enter the premises without following the correct procedures. If the problem is serious or persistent, you may apply for an order from the Tribunal.

If your goods are damaged or stolen during the access visit you can apply to the Tribunal for compensation.

**At a glance**

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<thead>
<tr>
<th>Old laws</th>
<th>New laws</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limits on reasons for accessing property</td>
<td>Same, plus new access rights for valuations and concerns over tenant’s wellbeing</td>
</tr>
<tr>
<td>Reasonable access to show prospective buyers if reasonable notice given</td>
<td>Requirement for schedule of access to be agreed on, or no more than 2 inspections per week with 48 hours notice</td>
</tr>
<tr>
<td>7 days notice for general inspections</td>
<td>7 days <strong>written</strong> notice for general inspections</td>
</tr>
</tbody>
</table>
Safety and security

Information for tenants

When you are renting a place to live, the landlord must provide premises that are in a reasonable state of repair and are reasonably secure. There are a number of safety and security matters that you may need to think about.

Window and balcony safety

Every year in Australia, approximately 50 children fall from a window or a balcony and are injured. In some cases these injuries are fatal. There are a number of simple, commonsense steps you can take to reduce this risk. For example, move furniture away from windows and from balustrades on balconies and decks, and fit locks or guards to windows so that they cannot be opened more than 10cm, except by an adult.

Falls occur more often in the warmer months when families leave windows and doors to balconies open during the day and at night. Do not rely on flyscreens to prevent your child from falling out of a window.

Swimming pools

Swimming pools can pose a number of safety hazards. The main hazard is young children drowning because of faulty or inadequate pool fencing. The maintenance of pool fencing is extremely important, even if you do not have young children living at your home. Children are most at risk of drowning within six months of moving into a new property with a swimming pool, or when visiting the home of a friend, family member or neighbour with a pool. If the property you are renting has a swimming pool, you need to check that the pool fence is in good, working condition. Landlords must meet the standards in the Swimming Pools Regulation 2008. This requires pools built after 1 August 1990 to generally be surrounded by a fence that separates the pool from the house.

Smoke alarms

A smoke alarm is an effective early warning device designed to detect smoke and alert you to the presence of a fire, and increase the time available for safe escape. Your landlord is required by law to have installed at least one smoke alarm in a hallway outside a bedroom or other suitable location in each storey of your rented home. You are not allowed to remove or interfere with smoke alarms, without a reasonable excuse. If a smoke alarm is battery operated you are responsible for replacing the batteries and testing that it is working. It is recommended this be done once each year. For information about the type, location and number of smoke alarms that are required call the Smoke Alarms Helpline on 1300 858 812 or go to the Fire and Rescue NSW website, where can also find information to help you conduct a fire safety audit of your home.

Gas water heaters

Gas water heaters that have not been properly maintained have been responsible for deaths and serious injuries. If your property has a gas bath heater or flued instantaneous water heater in the bathroom, or a flueless
water heater in the kitchen, it could be a source of danger.

The Australian Gas Association recommends that all gas water heaters are serviced regularly by approved service agents and when replaced are installed externally to reduce the risk of an accident.

Always ensure:
- the bathroom and kitchen heaters have unobstructed ventilation
- heater flue pipes are free from all restrictions and holes
- there is no evidence of the heater creating soot deposits
- there are no signs of discolouration on or around the heater and flue.

Flueless water heaters using natural or LPG gas are designed to work without a flue pipe. However, if the ventilation is obstructed poisonous fumes such as carbon monoxide can be forced back into the room and contaminate the air. As carbon monoxide is colourless, odourless and tasteless, it is virtually undetectable. Inexpensive carbon monoxide detectors can be purchased from most hardware stores.

For further information, contact the gas retailer, or the Master Plumbers Association of NSW toll free on 1800 424 181.

Security

Your landlord must provide and maintain locks or security devices to ensure that the premises are reasonably secure. What is reasonably secure will vary in different situations.

The potential risk (that is, the likelihood the premises may be broken into) will have a bearing on the type and standard of locks needed to make a property reasonably secure. This will depend largely on the area in which the premises are located. The level of security needed for a ground floor unit may be greater than for a unit on an upper level.

Your landlord does not have to make the property so secure that the premises can never be broken into. The requirements of insurance companies are not the sole test of what is ‘reasonably secure’, but are merely one factor to be taken into account in deciding what level of security is appropriate for the premises.

You can change or add locks or security devices if you get the landlord's consent, or if it is reasonable to do so, such as in an emergency (for example if the premises have been burgled and keys are missing or if your key breaks off in the lock). You will need to give the landlord a copy of the new key within seven days. If the premises are not reasonably secure, you should raise this matter with the landlord or agent as soon as possible.

Rural properties and dams

Around 20 children are fatally injured on Australian farms every year and many more are hospitalised. Drowning accounts for around 35-40 percent of all child farm deaths, with farm dams being by far the most common site. Apart from dams, children can find their way into creeks, troughs, dips and irrigation channels. Children under five are at most risk.

For more information on how to protect children living or visiting farms, go to the Farmsafe website.

Rainwater tanks

Rainwater tanks are used widely for drinking water in rural areas. It is important that the water is free of harmful microorganisms or harmful levels of chemicals. Good quality water depends on proper maintenance of the rainwater tank and catchment area (such as the roof and gutters if the tank is connected to the roof). This means responsibilities for both landlords and tenants of premises that use rainwater tanks as a source of drinking water.

It is good practice to flush rainwater taps used for drinking or cooking for 2-3 minutes at the start of each day. Before renting out a property the landlord should ensure that the tenant is informed that rainwater is the source of drinking water and that maintenance responsibilities have been discussed. More information on the installation and maintenance of rainwater tanks is available from the NSW Health website.