

Mortgagee re-possession

When your landlord defaults on their loan

When a landlord is unable to pay back a loan taken out to purchase a residential property as an investment, the mortgagee (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.

On Thursday 18 June 2009, the *Residential Tenancies Amendment (Mortgagee Repossessions) Act 2009* was passed by the NSW Parliament, and commenced on Friday 19 June 2009.

The new requirements will apply to all existing tenancies unless the mortgagee obtained a possession order before 19 June 2009.

Minimum 30 day notice period

Mortgagees must give tenants a minimum of 30 days notice in writing, before taking possession of the property.

Rent free period

Tenants are not required to pay any rent for 30 days after being given a notice to vacate by a mortgagee. This provision offers some financial relief for tenants and can help cover the cost of finding a new place to live and moving.

If advance rent has been paid covering any part of this period, the tenant is entitled to have that rent refunded. Refund applications may be made to the Consumer, Trader and Tenancy Tribunal.

While a tenant is still occupying the premises the mortgagee can show the property to possible buyers. The tenant must be given reasonable notice and agree to the times and dates of the inspections.

What happens next?

Mortgagees and tenants can agree to reach a solution that meets the needs of both parties.

Delay or extend the notice period

The mortgagee may decide that re-possession is not required immediately. They may hold off on giving notice or extend the time already given to the tenant to vacate. Tenants should negotiate directly with the mortgagee if more time to vacate is needed.

Enter into a new tenancy agreement

The mortgagee may decide not to re-possess and sell the property at all. Instead, they may offer the tenants the opportunity to enter into a new residential tenancy agreement.

Tenants decide to leave early

If the tenant finds a new place to live before the end of the 30 day notice period, they may move out immediately if they wish.

Bond refund

Mortgagees are now able to authorise the release of the tenant's rental bond once they take over the premises from the landlord.