



New South Wales

Residential Tenancies Amendment (Mortgagee Repossessions) Act 2009 No 40

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Residential Tenancies Amendment (Mortgagee Repossessions) Act 2009 No 40

Act No 40, 2009

An Act to amend the *Residential Tenancies Act 1987* to require mortgagees who become entitled to possession of rented premises to give the tenant at least 30 days' notice to vacate the premises; and for other purposes. [Assented to 19 June 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Residential Tenancies Amendment (Mortgagee Repossessions) Act 2009*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Residential Tenancies Act 1987 No 26

[1] Section 71A

Insert after section 71:

71A Mortgagee repossessions of rented properties

(1) **Notice to vacate**

If a residential tenancy agreement is terminated because of the operation of section 53 (e), the mortgagee is not to take possession of the residential premises from the former tenant who is holding over after termination of the agreement unless the mortgagee, after becoming entitled to take possession, gives the former tenant a written notice, in accordance with this section, to vacate the premises (*notice to vacate*).

(2) **Minimum period of 30 days to vacate premises**

The notice to vacate must specify the date by which the former tenant is to vacate the residential premises (the *specified date*). The specified date must be not less than 30 days after the date on which the notice is given to the former tenant.

(3) **Former tenant may withhold or recoup rent etc**

The former tenant who is holding over after termination of the residential tenancy agreement:

- (a) is not, during the period of 30 days following the date on which the tenant is given the notice to vacate, required to pay any rent, fee or other charge to occupy the residential premises, and
- (b) is, if the former tenant has paid any rent in advance for any part of that period, entitled to be repaid the amount of that rent.

(4) **Tribunal may order repayment to former tenant**

The Tribunal may, on application by the former tenant, order the repayment to the former tenant of any such amount referred to in subsection (3) (a) or (b).

(5) **Inspection of residential premises by prospective purchasers**

The mortgagee (or any person acting on behalf of the mortgagee) is, during the period in which the former tenant is holding over after termination of the residential tenancy agreement, entitled to enter the residential premises to show the premises to prospective

purchasers on a reasonable number of occasions, but only if the former tenant:

- (a) is given reasonable notice of each such occasion, and
- (b) agrees to the date and time of the inspection.

(6) Mortgagee not prevented from doing certain things

This section does not prevent the mortgagee from:

- (a) taking possession of the residential premises before the specified date if the former tenant voluntarily vacates the premises before that date, or
- (b) changing the specified date to a later date by further notice in writing given to the former tenant, or
- (c) entering into a new residential tenancy agreement with the former tenant in respect of the residential premises.

(7) Section applies to existing agreements

This section extends to a residential tenancy agreement in force immediately before the commencement of this section.

(8) Relationship with other laws

This section has effect despite the terms of any court order, contract or other agreement.

[2] Section 72 Recovery of possession of residential premises prohibited except by order

Insert after section 72 (1):

- (1A) In the case of a residential tenancy agreement that has terminated because of the operation of section 53 (e), the mortgagee (or any person acting on behalf of the mortgagee) is not, despite subsection (1), to take possession of the residential premises before the date specified in the notice to vacate under section 71A.

[3] Section 130 Service of documents

Insert after section 130 (6):

- (7) A reference in subsection (1) to a tenant includes, in the case of a notice to vacate under section 71A, a reference to a former tenant.

Residential Tenancies Amendment (Mortgagee Repossessions) Act 2009
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Amendment of Residential Tenancies Act 1987 No 26

Schedule 1

[4] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Residential Tenancies Amendment (Mortgagee Repossessions)
Act 2009*

Schedule 2 Amendment of Landlord and Tenant (Rental Bonds) Act 1977 No 44

Section 11 Payment out of rental bonds

Insert after section 11 (18):

- (19) In the case of a lease that is terminated because of the operation of section 53 (e) of the *Residential Tenancies Act 1987*, the Board may, if authorised to do so in writing by the mortgagee who has become entitled to take possession of the premises to the exclusion of the lessee, pay out to the lessee an amount of money held by the Board on deposit in respect of that lease.

[Agreement in principle speech made in Legislative Assembly on 4 June 2009
Second reading speech made in Legislative Council on 17 June 2009]

BY AUTHORITY