



New South Wales

# Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Residential Tenancies Act 1987*:

- (a) to require a mortgagee, once they become entitled to possession of rented premises to the exclusion of the tenant, to give the tenant at least 30 days' notice to vacate the premises before the mortgagee takes possession, and
- (b) to provide that the former tenant who is given notice to vacate may withhold or recoup any rent for the period in which they are holding over after termination of the residential tenancy agreement.

The Bill also amends the *Landlord and Tenant (Rental Bonds) Act 1977* to make it clear that a mortgagee may authorise the Rental Bond Board to release the rental bond to the former tenant once the mortgagee becomes entitled to possession of the rented premises.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Residential Tenancies Act 1987 No 26**

A residential tenancy agreement terminates if a mortgagee in respect of the rented premises becomes entitled to possession of the premises to the exclusion of the tenant. **Schedule 1 [1]** provides that in these cases the mortgagee will be required to give the former tenant who is holding over under the terminated agreement a notice to vacate before the mortgagee can take possession. The notice must specify the date (being not less than 30 days after the notice is given) by which the former tenant is to vacate the premises. The former tenant will be able to withhold or recoup any rent for the period in which the tenant is holding over after termination of the agreement.

**Schedule 1 [2]** makes it clear that the right to take possession of rented premises in accordance with a court order is, in the case where the residential tenancy agreement is terminated because a mortgagee has become entitled to possession of the property, subject to the new requirement to give the former tenant at least 30 days' notice to vacate.

**Schedule 1 [3]** provides that former tenants may be served with notices to vacate in the same way as other documents or notices are given to tenants.

**Schedule 1 [4]** enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

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

**Schedule 2** makes the amendment to the *Landlord and Tenant (Rental Bonds) Act 1977* described in the above Overview.

First print



New South Wales

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New South Wales

# Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009

No. , 2009

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## A Bill for

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Residential Tenancies Amendment (Mortgagee Repossessions) Act 2009</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6

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## **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:

(a)      is not, during the period in which the former tenant is holding over after termination of the residential tenancy agreement, 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:	1
		2
	(a) is given reasonable notice of each such occasion, and	3
	(b) agrees to the date and time of the inspection.	4
(6)	<b>Mortgagee not prevented from doing certain things</b>	5
	This section does not prevent the mortgagee from:	6
	(a) taking possession of the residential premises before the specified date if the former tenant voluntarily vacates the premises before that date, or	7
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	(b) changing the specified date to a later date by further notice in writing given to the former tenant, or	10
		11
	(c) entering into a new residential tenancy agreement with the former tenant in respect of the residential premises.	12
		13
(7)	<b>Section applies to existing agreements</b>	14
	This section extends to a residential tenancy agreement in force immediately before the commencement of this section.	15
		16
(8)	<b>Relationship with other laws</b>	17
	This section has effect despite the terms of any court order, contract or other agreement.	18
		19
[2]	<b>Section 72 Recovery of possession of residential premises prohibited except by order</b>	20
		21
	Insert after section 72 (1):	22
	(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.	23
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[3]	<b>Section 130 Service of documents</b>	29
	Insert after section 130 (6):	30
	(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.	31
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**[4] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Residential Tenancies Amendment (Mortgagee Repossessions)  
Act 2009*

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**Schedule 2      Amendment of Landlord and Tenant  
                                 (Rental Bonds) Act 1977 No 44** 1  
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**Section 11 Payment out of rental bonds** 3

Insert after section 11 (18): 4

- (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. 5  
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