

# Termination of agreement

Under the law a home owner generally has the right to live in their home on the rented site for as long as they like. It does not matter if the fixed term period of the site agreement (if there is one) has expired. A site agreement can only be terminated (ended) in the limited situations allowed under the law.

## When may a site agreement be ended?

You can only seek to end a site agreement for the following reasons:

- the home owner has seriously or persistently breached a term of the site agreement
- the home owner is at least 30 days behind with site fees
- you need vacant possession in order to carry out repairs or an upgrade ordered by the local council or some other authority
- the community is to be closed and used for something other than a land lease community
- the NSW Civil and Administrative Tribunal (the Tribunal) accepts that a particular site needs to be used for another purpose
- a particular site, or the whole community, is to be compulsorily acquired by a Government agency (for example, to be a road)
- a site is not lawfully useable as a residential site
- nobody has used a site as a residence for at least 3 years or there is good evidence that the home has been abandoned
- serious misconduct by a home owner. Examples include using the site for an illegal purpose (for example, manufacturing drugs) or causing injury or serious damage to people or property in the community.

## How does the eviction process work?

To evict a home owner from their site, you must usually give the home owner a termination notice. This notice must be in the approved Notice to terminate form (available for download from the Forms page of the Fair Trading website).

The termination notice form sets minimum notice periods for different circumstances and you need to comply with these.

If the home owner has not vacated at the end of the termination notice period you may apply to the Tribunal for a possession order. If the Tribunal agrees that such an order should be given, they will decide a new date on which the home owner must vacate. If the home owner does not comply with this order you can obtain a warrant for possession and ask a Sheriff's Officer to remove them from the community. It is against the law for you to attempt to recover possession of the site other than by following this process and heavy penalties can be imposed.

## Can a home owner dispute a termination notice?

If a home owner disputes the notice itself, or how it was served, they can apply at any time to the Tribunal to resolve the matter. A home owner can also apply to the Tribunal if they believe that the notice was given as retaliation for exercising their rights.

If you apply to the Tribunal after the termination notice period ends the home owner will be given an opportunity to put a case to the Tribunal as to why their agreement should not be ended.

## Are there any alternatives to termination?

Yes. You and a home owner can agree to relocate a home to another site in the community or to another land lease community within a reasonable distance (and operated by you). To start this process you can give a 'relocation notice' suggesting a proposal and giving the home owner 90 days to think about it. If the home owner agrees to be relocated the costs of the relocation are payable by you. A new site agreement under generally the same terms must be entered into. If the home owner does not agree to relocate within the time specified, you can then go ahead and issue a termination notice.

## Can a home owner be forced to relocate?

No. It is entirely their choice whether they want to relocate to another site or to another land lease community.

**Must I pay compensation to the home owner?**

You must pay compensation if a site agreement is terminated for any of the following reasons:

- closure
- change of use
- repairs and upgrading
- compulsory acquisition  
or
- no authority for use as a residential site (unless the home owner knew this from the beginning).

**How much compensation must I pay?**

This will depend largely on what the home owner chooses to do with their home.

If the home owner moves their home to another land lease community owned by a different operator, you must pay them in advance the likely reasonable costs of:

- removing the home from the site and disconnecting any services
- transporting the home and possessions to the new site
- installing the home on the new site and connecting services
- repairing any damage to the home caused by the move
- landscaping the new site to the same standard as the current site
- after the relocation is complete, any reasonable extra costs not covered by the above.

If a home owner cannot or does not want to relocate to another community you are still required to pay compensation. The site agreement may specify what compensation is payable in the event that this occurs. If the agreement is silent on this matter then you must pay compensation for the loss of the home owner's residency and for their relocation expenses.

If a home owner decides to keep their home and sell it off site or use it for another purpose, the value of the home should not factor into the compensation. However, if they

do not wish to keep the home, they will be required to transfer ownership of the home to you in return for being compensated for the value of the home. This would generally be the current on-site market value of the home determined as if the closure or change of use was not occurring.

If you are unable to agree on an appropriate amount of compensation, either you or the home owner concerned can apply to the Tribunal for an order to settle the dispute.

**Do I need to help home owners find another site?**

If you have given a termination notice for closure or change of use, you are obliged to use reasonable endeavours to help any affected home owners find alternative accommodation, unless they tell you that they do not need your help. This alternative accommodation must be of approximately the same standard and cost as the current residential site and be acceptable to the home owner. It could be a vacant site in another land lease community. The Tribunal will look at your efforts to help home owners in any termination proceedings.

**Who must I notify if the community is to be closed?**

You must notify the Commissioner for Fair Trading at least 7 days before issuing any termination notices to home owners. Download Notice to Commissioner of intended closure of residential (land lease) community from the Forms section of the NSW Fair Trading website.