

Mortgagee re-possession

Information for tenants

When a landlord is unable 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 NSW Civil and Administrative 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.