

# Ending Tenancy Policy

## 1. Purpose

The purpose of this policy is to explain the circumstances and action to be taken when a tenant ends a tenancy or HOME in PLACE ends a tenancy.

## 2. Scope

This policy applies to all tenancies managed by HOME in PLACE.

## 3. Policy Statement

This policy covers ending a tenancy within the legal requirements of the *Residential Tenancies Act 2010*. The aim of this policy is to:

- Ensure that the legal requirements for ending a tenancy are understood and adhered to by HOME in PLACE employees and tenants;
- Ensure that the end of a tenancy is fair, efficient and effective for all;
- Adhere to our legal obligations as landlord and tenant under the Residential Tenancies Act 2010;
- Ensure the principles of natural justice are applied; and
- Have efficient administration and record keeping at the end of tenancy

HOME in PLACE recognises that tenancies end for a variety of reasons. This includes where a tenant indicates they wish to leave their tenancy and move into the private rental market, interstate relocation or into home ownership. On other occasions it may be necessary for HOME in PLACE to initiate ending a tenancy due to the sale or termination of a leasehold property, renovations, disposal or redevelopment.

HOME in PLACE may also initiate a termination of a tenancy where there is a breach of the *Residential Tenancies Act 2010*. Where a tenant has breached a term of their Residential Tenancy Agreement, they will be advised in writing and given every opportunity to remedy the breach. HOME in PLACE is committed to ensuring the long-term sustainability of tenancies within the context of maintaining the viability of the organisation. HOME in PLACE will always endeavour to effectively resolve any breaches and disputes relating to the tenancies. HOME in PLACE views legal proceedings as an action of last resort when all possible avenues, both internal and external, of resolving a breach or dispute have been exhausted.

## Guiding principles

HOME in PLACE will:

- Advise our tenants of their rights and responsibilities when a Notice of Termination is issued and when action is taken at the NSW Civil and Administrative Tribunal (NCAT) that may result in their tenancy being terminated;

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- Ensure tenants have access to tenancy advice, interpreters and support if their tenancy is threatened or is ending;
- Only issue Notices of Termination in accordance with the Residential Tenancies Act 2010;
- Advise tenants what is required of them to meet their legal obligations when their tenancy ends, regardless of the reason for the tenancy ending; and
- Ensure abandoned goods at the end of a tenancy are managed in accordance with the requirements of the Residential Tenancies Act 2010.

## Reasons for ending a tenancy

### *Tenancy ended by tenant*

If a tenant wants to end a residential tenancy agreement, they are required to provide the landlord with a termination notice giving the following notice periods in accordance with the *Residential Tenancies Act 2010*:

- Fourteen days' notice before the end of the fixed term to end the agreement on or after the end of a fixed term;
- Twenty one days' notice to end a continuing agreement;
- Fourteen days' notice if the landlord has breached the residential tenancy agreement;
- Fourteen days' notice to end a fixed term agreement without compensation if the tenant:
  - has accepted an offer of social housing accommodation;
  - Has accepted a place in an aged care facility, or
  - Has been notified by the landlord of their intention to sell the property and was not notified of this before entering into the residential tenancy agreement, or
  - A co-tenant, occupant, former co-tenant or occupant is prohibited by a final apprehended violence order from having access to the property.

HOME in PLACE may, at its discretion, agree to lesser periods of notice. All such decisions will be made by the relevant Executive Manager.

### *Tenancy terminated by HOME in PLACE*

Circumstances leading to a tenancy being ended by HOME in PLACE include, but are not limited to:

- Breaches of the Residential Tenancy Agreement (RTA);
- Management objectives;
- Abandonment by the tenant;
- The making of an apprehended violence order;
- Death of a tenant;
- Tenant has reached/exceeded the maximum term of tenure or no longer meets the specific eligibility criteria for the relevant program;
- Sale of the property
- Property is uninhabitable or destroyed.

## *End of tenancy for a breach of the Residential Tenancy Agreement*

- HOME in PLACE takes action to end a tenancy for a breach only after all other options have been fully explored;
- When HOME in PLACE takes action at the NCAT as the landlord, the objective is to maintain the tenancy whenever an acceptable specific performance agreement can be reached with the tenant;
- An order terminating a tenancy agreement, when a tenant is willing to make an agreement, will only be sought in cases of repeated unresolved breaches.

## *End of tenancy for management objective*

A tenant may be asked to relocate from their property for management reasons, this may include:

- Over or under occupation
- Needing the property for another tenant, for example, an applicant with special needs and the current occupants of the property do not require that feature;
- Redevelopment of the site;
- Renovation of the property;

If HOME in PLACE terminates a tenancy for management purposes, a tenant will be made two reasonable offers of alternative housing.

HOME in PLACE is committed to transferring tenants by consent and avoiding legal action. However, if a tenant declines two reasonable offers of alternative housing, HOME in PLACE will terminate the tenancy in accordance with section 148 of the *Residential Tenancies Act 2010*. If a tenancy is ended under these provisions, HOME in PLACE will follow the process required by the *Residential Tenancies Act* and the procedures approved by the Minister.

## *When a landlord terminates a leasehold tenancy*

Where a tenancy agreement is legally terminated by the property owner, and the end of tenancy is not due to the action of the tenant, HOME in PLACE will seek to rehouse the tenant in general social housing before the notice expires.

In these instances, HOME in PLACE will work with tenants to locate a new property. As the property must be handed back to the owner within a defined timeframe, tenants will only be made **one** valid offer of housing. If this offer is declined, tenants will need to resolve their own housing need.

## *End of tenancy due to abandonment*

If a property has been abandoned HOME in PLACE may take immediate possession of the property or make an application to the NCAT to have the tenancy terminated.

Goods and belongings left at the premises will be managed in accordance with the Residential Tenancies Act 2010.

## *End of tenancy due to an apprehended violence order (AVO)*

If an AVO prohibits a tenant or co-tenant from having access to the property, the tenancy of that person under the residential tenancy agreement is terminated. Such a termination does not affect the tenancy of any tenants/co-tenants that are not subject to the AVO.

## *Death of a sole tenant*

When a sole tenant dies, the tenancy does not immediately end. Either HOME in PLACE or the person responsible for the deceased tenant's estate can give a termination notice to the other person to end the tenancy in accordance with section 108 of *Residential Tenancies Act 2010*. The termination date can be before the end of the fixed term for fixed term agreements.

The legal personal representative of a deceased tenant who is given a Termination Notice by the landlord may give vacant possession of the residential premises at any time before the termination date specified in the Termination Notice. The estate of the deceased tenant is not liable to pay any rent for any period after the legal personal representative gives vacant possession of the residential premises and hands back the keys before the termination date.

HOME in PLACE recognises that there may be cultural or religious reasons why the person responsible for the deceased tenant's estate needs to keep possession of the property for a period following the tenant's death. HOME in PLACE will consider such requests on a case by case basis. Rent must be paid until the property is returned to HOME in PLACE.

Where there are other members of the household, they may be eligible for Succession of Tenancy.

## *Mortgagee repossession*

A tenancy may end in circumstances where a landlord defaults on their loan and the lending institution (mortgagee) becomes entitled to possession of the premises. A notice to vacate is given by the Sheriff and must give the former tenant not less than 30 days to vacate the premises.

### *End of a tenancy due to sale of property*

A landlord may give a termination notice on the ground that the landlord has entered into a contract for the sale of the residential premises. The termination notice must specify a termination date not earlier than 30 days after the day the notice was given. A notice cannot be given before the end of a fixed term agreement.

## *Transitional housing tenancies*

Transitional housing tenancies are fixed term, temporary and established as part of a partnership with a support provider. HOME in PLACE and the support provider make it clear at the start of the tenancy that the tenancy is for a fixed term and that a notice of termination will be issued to coincide with the last day of the tenancy. HOME in PLACE ensures that tenants are provided with written confirmation of the transitional housing requirements. Both the support provider and HOME in PLACE will assist the tenant in finding long term accommodation.

## Relinquishing a tenancy

A tenant may relinquish their tenancy when they are unable to continue living in the property. This may occur when a tenant goes into a rehabilitation program, prison or refuge accommodation.

In these situations, a tenant will receive confirmation that their tenancy has ended and, where appropriate, will be given information on the circumstances in which they can apply for tenancy reinstatement.

## Service of notices

HOME in PLACE will service notices in accordance with the requirements of the *Residential Tenancies Act 2010*.

A notice to a person must be in writing and may be served by:

- Posting the notice to the person's residential address or business address or, if an address is not specified, the person's last known residential or business address., allowing seven (7) working days for postal delivery;
- Hand delivering the notice to the person or a person believed to be 16 years of age or older at the person's residential or business address;
- Delivery the notice in an envelope addressed to the person and leaving it in the person's mailbox at their residential or business address;
- A notice may also be served by email if a tenant has given consent to receive notices by this means.

If the tenant has not vacated by the date specified on the notice, HOME in PLACE will make application to the NSW Civil & Administrative Tribunal (NCAT) for orders terminating the agreement and possession of the property.

## Legal minimum notice periods

- Fourteen days' notice if the tenant or landlord has breached the agreement (if the breach relates to rent areas, the rent must be at least 14 days in arrears at the time the notice is issued);
- Thirty days' notice to end the agreement on or after the end of a fixed term. The termination notice must be given before the end of the agreement;
- Thirty days' notice in a continuing tenancy if the premises are being sold with vacant possession;
- The NCAT may terminate a tenancy without a notice of termination being issued if the tenant, other household members or visitors threatens, abuses, intimidates or harasses the landlord, landlord's agent or employee/contractor of the landlord;
- If a tenant is given notice of termination from the landlord, the tenant may leave the residential premises at any time before the termination date and not be liable to pay rent unless the termination notice is for the end of a fixed term and the tenant leaves before the end of the fixed term.

## HOME in PLACE responsibilities

When a tenancy ends the tenant can expect HOME in PLACE to:

- Conduct a property inspection and identify any repairs and maintenance, which are identified as the responsibility of the outgoing tenant;

- Give the tenant, where practicable, the opportunity to do any cleaning, minor repairs, garden maintenance;
- Carry out any repairs or maintenance on the property that are essential for re-letting the property or that are best carried out on a vacant property;
- Finalise tenant's end of tenancy account, repay any credits, rental bond or take steps to collect outstanding debt;
- Negotiate with the tenant for settlement of identified rent arrears or maintenance/repair charges;
- Take action through the NCAT for any outstanding rent arrears, debts or end of tenancy charges as required;
- Record a forwarding address on the ex-tenant file (if known) and details of any unpaid debts and/or payment plans
- Dispose of any belongings left in the premises in accordance with the Residential Tenancies Act 2010.
- HOME in PLACE will seek feedback from tenants at the end of their tenancy. The information obtained will be used to assist with HOME in PLACE commitment to continuous improvement.

## Tenant responsibilities

### *Rent arrears and end of tenancy charges*

A tenant is required to pay rent until the date the property is handed back. If a tenant vacates a property with outstanding rent arrears and/or other tenancy charges, HOME in PLACE will contact the tenant to discuss payment options and/or apply to the NCAT for orders to pay.

### *End of tenancy cleaning and repairs*

A tenant is responsible for returning the property to the landlord in the condition that it was in at the start of the tenancy, excluding fair wear and tear. HOME in PLACE will, where possible, conduct a pre vacate inspection to identify any cleaning, damage or unauthorised works issues, the tenant will be asked to rectify prior to vacating.

Following the final inspection, post vacate, a tenant may be given the opportunity to return to the property to complete any identified cleaning or repairs. If a tenant declines to remedy the outstanding issues, HOME in PLACE will engage a contractor to carry out the work and the costs will be charged to the tenant.

### *Goods left on the premises*

A tenant is responsible for removing all goods and belongings from the property at the end of the tenancy.

HOME in PLACE will dispose of any rubbish and perishable items that are left at the property. For non-perishable goods of value and personal documents, HOME in PLACE will give the former tenant notice that the goods will be disposed of after 14 days (for non-perishable goods other than personal documents) and 90 days (for personal documents).

If goods are not collected within the timeframe specified in the 'notice of disposal', HOME in PLACE will dispose of the goods in accordance with the Residential Tenancies Act 2010.

## Review of Decisions

If a tenant disputes HOME in PLACE decision to end a tenancy they should first discuss their concerns with a Tenancy Relations Officer. When a tenant does not vacate the property in accordance with a Notice of Termination, HOME in PLACE may take action in the NSW Civil & Administrative Tribunal, if HOME in PLACE takes this action, tenants are notified and provided with the opportunity to formally dispute the decision to end the tenancy.

## 4. Responsibilities

All HOME in PLACE workers have an obligation to:

- familiarise themselves with and ensure they have a clear understanding of HOME in PLACE policies and procedures,
- observe and implement such policies, and associated procedures in delivering services to HOME in PLACE clients,
- inform HOME in PLACE's clients of the impact of this policy on them and assist them to understand their rights and obligations, as required,
- identify issues that require amendment to this policy document and complete the relevant documentation to propose any amendments, and
- report breaches of HOME in PLACE's policies or procedures.

The relevant Group Executive Manager is ultimately responsible to:

- ensure all stakeholders within their area of responsibility are informed about HOME in PLACE Policies and Procedures,
- ensure appropriate processes and controls are implemented to enable the correct application of and adherence to relevant policies and procedures, and
- ensure appropriate processes and controls are implemented to enable breaches of approved HOME in PLACE's Policy and Procedures to be reported and managed.

## 5. Implementation and Review

This policy is listed on HOME in PLACE's Controlled Documents Register and is a controlled document requiring approval of any changes. It may not be amended or shared outside HOME in PLACE without approval. The policy is reviewed regularly and published on HOME in PLACE's SharePoint intranet once approved. Employees receive communications and training on new and reviewed policies and procedures.

HOME in PLACE complies with relevant contractual compliance obligations and jurisdictional laws and regulations when implementing this policy. Confirmation of internal compliance with this policy is undertaken regularly.

It is the responsibility of HOME in PLACE Group Executive Services ([GESAdmin@homeinplace.org](mailto:GESAdmin@homeinplace.org)) to maintain and update the HOME in PLACE's Master Policy Document, Policy Directory and the Policy Review Register, administer the review and approval process and inform and distribute new and amended policies and procedures once approved (refer PROC-011 Policy and Procedure Development Approval).

HOME in PLACE Workers should refer to [SharePoint Company Documents Policy and Procedure site](#) for the latest version which takes precedent over any uncontrolled version. If this document is printed, downloaded, or saved elsewhere from this site it becomes an uncontrolled version.

For further information contact the Responsible Officer listed under Document Information.

## 6. Resources and related documents

### *Related documents*

- Absence from Property Policy
- Access to Property Policy
- Alterations to Properties Policy
- Arrears & Debt Management Policy
- Domestic & Family Violence Policy
- Occupancy of Property Policy
- Rental Bonds Policy
- Starting a Tenancy Policy

### *Related legislation/standards*

- Housing Act 2001 (NSW)
- Residential Tenancies Act 2010 (NSW)
- Residential Tenancies Regulations 2010 (NSW)
- Community Housing Providers Nations Law (NSW)
- Community Housing Providers (Adoption of National Law) Act 2012 (NSW)
- Any jurisdictional housing and tenancy Acts and Regulations as may apply
- The terms of the residential tenancy agreement
- HOME in PLACE policies

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## 7. Definitions

Please refer to HOME in PLACE Glossary of Definitions for Policies and Procedures. Terms and definitions identified below are specific to this policy and are critical to its effectiveness:

Term	Definition
<b>Abandonment of a property</b>	When a tenant leaves the property without giving notice and the property is found to be vacant
<b>Appeal</b>	A request for a review of a decision made by HOME in PLACE that the tenant is dissatisfied with
<b>Appeals</b>	A Community housing appeal is defined as ‘any expression of dissatisfaction with a decision made by a social housing provider to provide or not provide a service (such as housing, transfer or priority on the housing register) or, a decision relating to a tenant or service user’s dissatisfaction of a decision made by the organisation.’ An application for a decision to be reversed or overturned. Includes but is not limited to: • Allocation decisions; • Level of rent or rent subsidy; • Eligibility for a housing transfer; • Permission to undertake modifications; • Permission to keep pets; • Calculation of water charges;
<b>Approved occupant</b>	A person who is approved to reside at the property with the tenant
<b>Compass</b>	Compass Housing Services Co. Ltd. Trading as HOME in PLACE and includes its related body corporate (as defined by section 9 of the <i>Corporations Act 2001</i> (Cth)) and as a charity with the <a href="#">Australian Charities and Not-for-profit Commission (ACNC)</a> .
<b>Complainant</b>	Person with a Complaint ongoing with HOME in PLACE.
<b>Complaints</b>	An expression of dissatisfaction with an aspect of the services provided by [Organisation], where the complainant is unhappy with the standard or type of service. Types of Complaint include: <ul style="list-style-type: none"> <li>• Where HOME in PLACE have failed to provide or there has been a delay or problem in providing a service;</li> <li>• Where HOME in PLACE have failed to follow or have been unfair or inconsistent in applying our policies or procedures.</li> <li>• Where HOME in PLACE have failed to keep Tenants informed, through lack of or insufficient information</li> <li>• Where there has been inappropriate behaviour or attitude from a HOME in PLACE Employee or contractor.</li> </ul>
<b>Director</b>	Has the same meaning as defined in the <a href="#">Corporations Act 2001 Part 1.2 Division 1 Section 9 Dictionary</a> in Australia and as defined in the <a href="#">Companies Act 1992 Part 1 Section 2 Interpretation</a> .
<b>Employee</b>	A person engaged under an employment agreement or award by any company in the HOME in PLACE Group.
<b>Executive Manager</b>	Many positions within HOME in PLACE include the title “Executive Manager”. Regardless of whether an Executive Manager heads a Business Unit, the delegated authority of each Executive Manager depends on the functions and reporting relationship of the Business Unit for which the Executive Manager is responsible. Executive Managers should refer to the document HOME in PLACE Organisational Chart in Terms of Levels of Delegated Authority for confirmation of the band of authority they hold.
<b>HOME in PLACE</b>	Compass Housing Services Co. Ltd. Trading as HOME in PLACE and includes its related body corporate (as defined by section 9 of the <i>Corporations Act 2001</i> (Cth)). This includes Compass

Term	Definition
	Housing Services Co (Queensland) Ltd Trading as HOME in PLACE and Compass Housing Services Co (Victoria) Ltd Trading as HOME in PLACE both of which are a wholly owned subsidiary of Compass registered in Australia.
<b>HOME in PLACE (New Zealand)</b>	HOME IN PLACE (NEW ZEALAND) LIMITED (formerly Compass Housing Services (NZ) Co Ltd) is registered in New Zealand under the Companies Act and as a charity registered with Charities NZ under the Charities Act
<b>HOME in PLACE Group</b>	The corporate structure that includes HOME in PLACE (as the Parent Company) and the boards of Subsidiary Companies, Governance Committees and advisory groups as created from time to time.
<b>Independent contractor</b>	means a party engaged directly by HOME in PLACE pursuant to a contract for services. In the context of workforce engagements, this includes sole traders, companies, or partnerships with whom HOME in PLACE enters into an agreement for the provision of specified individuals to supply specific skills, services, or consultancy arrangements. It does not include individuals engaged through labour hire agencies. Independent contractors are not employees of HOME in PLACE.
<b>Non-rent charges</b>	Any charges that are not for rent, for example, water usage charges or maintenance charges.
<b>NSW Civil &amp; Administrative Tribunal (NCAT)</b>	An independent statutory body that resolves disputes including tenancy disputes. Orders made by the NCAT are enforceable
<b>Officer</b>	Has the same meaning as defined in the <a href="#">Corporations Act 2001 Part 1.2 Division 1 Section 9 Dictionary</a> in Australia and as defined in the <a href="#">Companies Act 1992 Part 1 Section 2 Interpretation</a> in New Zealand
<b>Parent Board</b>	The current directors of HOME in PLACE.
<b>Parent Company</b>	HOME in PLACE
<b>Rental bond</b>	Money paid by a tenant at the start of the tenancy and lodged with the Rental Bond Board.
<b>Stakeholder</b>	person or organisation that can affect, be affected by, or perceive themselves to be affected by a decision or activity, may also be called 'interested party'.
<b>Subsidiary Boards</b>	The appointed board of directors of a Subsidiary Company.
<b>Subsidiary Company</b>	A company in which HOME in PLACE owns all or at least a majority of the shares.
<b>Tenant</b>	A person who signs the Residential Tenancy Agreement with HOME in PLACE.
<b>Termination notice</b>	A notice to end the tenancy given by the tenant or landlord under the Residential Tenancies Act 2010
<b>User</b>	any person or entity that use HOME in PLACE Information or ICT Assets.
<b>Worker (HOME in PLACE)</b>	has the same meaning as defined in the <a href="#">NSW Work Health and Safety Act 2011 No 10 Subdivision 2 Part 7 Meaning of 'worker'</a> (1) A person is a worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as: <ul style="list-style-type: none"> <li>• an employee, or</li> <li>• an independent contractor or subcontractor, or</li> <li>• an employee of a contractor or subcontractor, or</li> <li>• an employee of a labour hire company who has been assigned to work in the person's business or undertaking, or</li> <li>• an outworker, or</li> <li>• an apprentice or trainee, or</li> <li>• a student gaining work experience, or</li> </ul>

Term	Definition
	<ul style="list-style-type: none"> <li>• a volunteer, or</li> <li>• a person of a prescribed class.</li> </ul>
<b>Worker (HOME in PLACE QLD)</b>	is 'a person who works under a contract and, in relation to the work, is an employee for the purpose of assessment for PAYG withholding under the Taxation Administration Act 1953 (Cwlth), schedule 1, part 2-5'. This applies to a person for whom PAYG tax instalments are required or would be required to be withheld by their employer.
<b>Worker (HOME in PLACE VIC)</b>	<p>A worker is defined as an individual:</p> <ul style="list-style-type: none"> <li>• who <ul style="list-style-type: none"> <li>– performs work for an employer or</li> <li>– agrees with an employer to perform work</li> </ul> </li> <li>• at the employer's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise or</li> <li>• who is deemed to be a worker by the legislation.</li> </ul>

*End of document.*