

## Mortgagee repossession

This factsheet explains what to do if you get a letter or notice about a mortgage and the premises you are renting.

### What is a mortgage?

Mortgages are used as security for borrowed money in relation to property.

The borrower is the *mortgagor* and the lender is the *mortgagee*.

Mortgages should be registered with NSW Land Registry Services.

### How the landlord's mortgage can affect you

If your landlord fails to pay back the borrowed money according to the loan contract, then the mortgagee has rights to take control of the premises to take your rent, take possession and sell the property.

If you receive letters or notices from someone claiming to be a mortgagee for the premises, contact a Community Legal Centre or Tenants Advice and Advocacy Service immediately for advice.

In most cases, the mortgagee can end your tenancy by getting an order of the Supreme Court for possession of the premises.

### If the landlord defaults on their mortgage

After your landlord has defaulted on payment of the mortgage/loan contract, there are 7 documents likely to be relevant to your situation:

- demand for rent from the mortgagee
- demand for possession from the mortgagee
- notice to occupier of Supreme Court proceedings (note the file number)
- court order for mortgagee possession (note the date for possession)
- 30-day notice to vacate, from the Sheriff
- writ for possession.

Each of these is explained below.

### Demand for rent

The mortgagee may make a demand for rent under the *Real Property Act 1900*.

You should check that the mortgagee is registered – do a title search at NSW Land Registry Services. Get advice from your local Tenants Advice and Advocacy Service before paying the rent.

If the demand is from a registered mortgagee, you should:

- provide a copy of the demand letter to the landlord/agent
- pay the rent according to the demand
- get, and keep, a receipt for every payment.

In this situation receipts from the landlord or real estate agent do not work – you owe the rent to the mortgagee.

### Demand for possession

The mortgagee may demand possession of the premises, but cannot force you to leave without a court order.

It is important that you do not leave until there is a court order otherwise you may have to pay the landlord compensation for abandoning the premises (see Factsheet 16: *Ending tenancy early*).

### Notice to occupier of Supreme Court proceedings

The mortgagee must send this notice under the *Residential Tenancies Act 2010*. It will tell you the details of the Supreme Court matter, including the court file number.

You can negotiate with the mortgagee or their solicitor for a reasonable time to leave after the court order for possession has been made.

If you make an agreement, get it in writing. If you cannot make a satisfactory agreement, write to the mortgagee or the solicitor telling them of your circumstances. See Sample letter: *Letter to mortgagee* at <https://www.tenants.org.au/sample/mortgagee-supreme-court>

### Court order for mortgagee possession

You may or may not see a copy of this document. If you disobey the order, you can be evicted by the Sheriff.

### 30-day notice to vacate

The Sheriff must give you at least 30 days written notice of the date on which they will evict you.

During the 30-day notice period:

- You are not required to pay rent.
- Any rent you paid in advance for this period must be refunded. You can apply to the NSW Civil and Administrative Tribunal for repayment of overpaid rent.
- You can leave before the 30-day notice expires.

### Writ for possession

This document from the Supreme Court requires the Sheriff to give possession of the premises to the mortgagee.

## TENANTS RIGHTS FACTSHEET 21: Mortgagees and tenants

A sheriff's officer will carry the writ when attending the premises to enforce the court order – they are the only person who can lawfully remove you. Do not resist them. Police can help them if you resist.

If you have not found somewhere else to live, try to remove your goods to storage. It can be hard to access the premises after the mortgagee has taken possession.

If you cannot remove all your goods to storage, pack daily necessities and valuable items that are easily portable.

### Special cases

Information that may be relevant to your situation includes:

- the start date of your tenancy
- the fixed term of your tenancy, including options
- the date the landlord gave the mortgage.

If the mortgage was given during your tenancy, get advice from your local Tenants Advice and Advocacy Service or Community Legal Centre.

If you receive a document about 'foreclosure' get advice from your local Tenants Advice and Advocacy Service immediately.

In a very few cases, the Supreme Court or the NSW Civil and Administrative Tribunal may order that the mortgagee becomes your landlord. Your local Tenants Advice and Advocacy Service can advise you about this.

If you have notice of Supreme Court proceedings, you cannot apply to the NSW Civil and Administrative Tribunal for the mortgagee to become the landlord – you must apply in the Supreme Court proceedings. This could mean paying the mortgagee's legal costs if you lose in that application. Get legal advice first.

### Other things to note

- The mortgagee must negotiate with you for dates and times to show the premises to prospective buyers (see Factsheet 08: *Access and privacy*).
- You can negotiate with the mortgagee for more time, or for a (new) residential tenancy agreement.
- Once your tenancy agreement has terminated, the mortgagee can sign a rental bond claim form to have your bond repaid to you, or you can claim the bond

without anyone else's signature (see Factsheet 03: *Bond*).

- You can apply to the Supreme Court or the NSW Civil and Administrative Tribunal for the mortgagee to become your landlord (see 'Special cases' above).

### Contacts

- NSW Land Registry Services: phone 1300 052 637, [nswlrs.com.au](http://nswlrs.com.au)
- Community Legal Centres: phone 02 9212 7333, [clcnsw.org.au](http://clcnsw.org.au)

### See also

- Tips: *Negotiating with the landlord* at: [tenants.org.au/resource/negotiation-tips](http://tenants.org.au/resource/negotiation-tips)

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**For free tenancy advice, call your local Tenants' Advice and Advocacy Service:**

#### SYDNEY:

- Eastern 9386 9147
- Inner 9698 5975
- Inner West 9559 2899
- Northern 9559 2899
- Southern 9787 4679
- South West 4628 1678
- Western 8833 0933

#### REGIONAL:

- Blue Mountains 4704 0201
- Central Coast 4353 5515
- Hunter 4969 7666
- Illawarra Sth Coast 4274 3475
- Mid Coast 6583 9866
- Northern Rivers 6621 1022
- Northwest NSW 1800 836 268
- Southwest NSW 1300 483 786

#### ABORIGINAL:

- Sydney 9833 3314
- West NSW 6881 5700
- South NSW 1800 672 185
- North NSW 1800 248 913

**WEBSITE:** [tenants.org.au](http://tenants.org.au)

**NSW FAIR TRADING:** 13 32 20

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