

Mortgagee repossession

As a tenant in NSW you have certain legal rights – this resource explains your rights if the landlord doesn't pay their loan debt, and the bank or lender (the 'mortgagee') wants to sell or take possession of your rented home.

If you receive letters or notices from someone claiming to be a mortgagee for the premises, **you should check the documents very carefully** (see more below). It is also a good idea to get advice as soon as possible – contact a [Community Legal Centre](#) or your [local Tenants' Advice and Advocacy Service](#).

What is a mortgage?

Many homes in NSW, including rented homes, are mortgaged. This means that the owner has borrowed money to buy the home. The mortgage is the security given to the borrower by the lender. If the borrower fails to make their loan repayments, the lender has the right to take control of the property.

The mortgage lender is known as the **mortgagee**. The borrower is known as the **mortgagor**.

Mortgages should be registered with [NSW Land Registry Services](#).

What happens if the landlord stops paying their loan debt?

If the landlord stops paying the loan debt, the mortgagee (lender) might:

- ask you to pay the rent to them instead of to the landlord
- take steps to evict you from your home
- take steps to sell the home

The mortgagee **must follow the proper process** if they want you to pay rent to them, end your tenancy, and/or sell your rented home. They must also provide proper documentation (see more below). **You do not have to leave your home without an order from a court or the Tribunal.**

If you have received something about the landlord's mortgage

If you receive letters or notices from someone claiming to be a mortgagee (mortgage lender) for the premises, you should **check the documents very carefully** – even if they are from a solicitor, bank, or other financial institution, or on letterhead that looks official. The sorts of documents you might receive are discussed in the sections below.

Start by **checking that they are the registered mortgagee** – do a title search at [NSW Land Registry Services](#). You may also want to check that the document you have received is actually from the lender. You can call your [local Tenants](#)

[Advice and Advocacy Service](#) for advice and for help doing a title search.

Even if they are the legitimate and registered mortgagee, there are **further steps in the process** and further documentation they must give you – see below.

Although very rare in Australia, you might receive a document about '**foreclosure**.' The legal process for this is different to the one outlined below, so get advice from your [local Tenants Advice and Advocacy Service](#) as soon as you can.

If the mortgagee demands rent

It is lawful for the mortgagee to ask you to pay the rent to them instead of the landlord in certain circumstances. This is called a '**demand for 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.

If you have received a demand for rent from the mortgagee and have started paying them rent, do not continue to pay rent to the landlord or real estate agent. It is a good idea to get receipts and keep your own records in case you need to show you have paid rent to the mortgagee.

Sometimes the landlord/agent will continue to ask you to pay your rent to them even if you have provided them a copy of the demand for rent letter from the mortgagee. Write to them outlining that you are paying rent to the mortgagee in accordance with demand for rent letter (attach it again if needed). You can contact your [local Tenants Advice and Advocacy Service](#) for advice.

If the mortgagee wants you to leave – eviction

The mortgagee may demand that you move out (give possession) of the premises, but **they cannot force you to leave without a court order**. If the mortgagee wants to end the tenancy, they must follow the correct process set out below.

(Normally, if a landlord wants you to leave they must follow the process in [Factsheet: Eviction – landlord ends tenancy](#), however in the case of mortgagee repossession, the usual rules do not apply.)

1. Notice about the Supreme Court proceedings

Tenancy matters normally take place in the NSW Civil and Administrative Tribunal (NCAT) but the process for a mortgagee ending a tenancy is different – it mostly happens in the **Supreme Court**.

For this reason, the mortgagee **must tell you** that they have applied to the Supreme Court in relation to your premises. This is called a '**notice to occupier of Supreme Court proceedings**.' You are the 'occupier.' The notice must tell you the details of the Supreme Court matter, including the court file number.

2. Court order ending your tenancy

The mortgagee needs an order from the Supreme Court to end your tenancy and ask you to move out. This is called a **mortgagee possession order**. The mortgagee **cannot forcibly evict you from the property – the next steps in the process must be handled by the NSW Sheriff's Office**.

Even though these court proceedings involve your home it is unlikely you will be required to participate in the proceedings. You can write to the mortgagee outlining your circumstances and ask for the time you need to find alternative housing. If you make an agreement, get it **in writing**. See our [negotiation tips](#) and [Sample letter to mortgagee](#).

3. Sheriff 30-day notice to vacate

Once the mortgagee possession order is made **the Sheriff must give you a 30-day notice to vacate** (move out and return the keys).

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 Tribunal for repayment of overpaid rent.
- You can leave before the date in the 30-day notice.

You can still try to **negotiate with the mortgagee to stay longer** if you have not managed to move out during the 30 days. If you make an agreement, get it in writing. If you have not been able to move out or get an agreement to stay longer, the next step is forcible eviction.

4. Forcible eviction

If the court has issued a **writ for possession**, the Sheriff is required to give possession of the property to the mortgagee. **Only a sheriff's officer can forcibly evict you**. The timing depends on their workload. You can try to contact them to find out when they are coming: [NSW Sheriff website](#) or phone 8688 4080 for your local office. It is a good idea to move important belongings to storage if you can.

If you are forcibly evicted by the Sheriff, you should fully cooperate and not resist. The Sheriff will inform you of the process and if you resist, they may use reasonable force and call for assistance from police. If you resist you risk being charged with an offence.

If you are **homeless**, call Link2Home on 1800 152 152 or see other [emergency accommodation info](#).

You still have certain rights in relation to any **goods left behind**. However, you should take any important documents with you, especially identity documents. These will also help you apply for assistance such as a crisis payment from Centrelink and/or housing assistance from a charity. See [financial assistance for renters](#) and [Factsheet: Goods left behind](#).

If the mortgagee wants to sell the property

The normal rules for sale of rented premises apply if you are still living in the property and the mortgagee/landlord wants to sell – see [Factsheet: Sale of rented premises](#).

Applying for the mortgagee to become the landlord

In a very few cases, the Supreme Court or the NSW Civil and Administrative Tribunal (NCAT) may order that the mortgagee becomes the landlord.

You can apply to the Supreme Court or the Tribunal for the mortgagee to become your landlord. However, if you have notice of Supreme Court proceedings, you cannot apply to the Tribunal and must join the Supreme Court proceedings. The Tribunal is a more accessible, less expensive, avenue for making this application. It is a good idea to get advice from your [local Tenants Advice and Advocacy Service](#) before making the application. Proceedings in the Supreme Court can be extremely expensive; get legal advice before taking this path.

If you want to leave

If you **have received a 30-day notice to vacate from the Sheriff** (see above), then you can leave at any time before the date in the notice. You do not have to give notice or pay a break lease fee. You are not required to pay rent during the 30-day notice period.

If you have **not** received a 30-day notice yet, you are required to pay rent until your tenancy ends. If you want to end your tenancy, see Factsheets: [You want to leave](#), and [Ending fixed-term tenancy early](#). It is a good idea to get advice from your [local Tenants Advice and Advocacy Service](#).

You can also **try to negotiate** with the mortgagee about when your tenancy ends. If you make an agreement, get it **in writing**. See our [negotiation tips](#).

If the landlord was aware of mortgagee repossession before the tenancy but did not disclose

If the landlord/agent **was aware** of the mortgagee's court action for possession **before** you signed the tenancy agreement, and they did not tell you, then you can give a **14-day termination notice** to end the tenancy.

In this case you can also apply to the NSW Civil and Administrative Tribunal (NCAT) for an order to end the tenancy and/or compensation for financial losses that you have suffered due to ending the tenancy – make sure you keep evidence, such as your records of moving costs.

After the end of the tenancy

When you have moved out and returned the keys, it is a good idea to **inform the landlord/agent and mortgagee in writing** that you have done so. You can return the keys to the mortgagee or their solicitor. As always when ending a tenancy, you should leave the property reasonably clean and undamaged (apart from 'fair wear and tear'). It is a good idea to take photos. See [Factsheet: You want to leave](#).

Bond

Once your tenancy agreement has ended, **the mortgagee can sign a rental bond claim form** to have your bond repaid to you. You can also claim the bond without waiting for anyone else's signature. See [Factsheet: Bond](#).

More info

Contacts: [NSW Land Registry Services](#): phone 1300 052 637

[Community Legal Centres](#)

Factsheets: [Eviction – landlord ends tenancy](#), [Sale of rented premises](#), [Privacy and access](#), [You want to leave](#), [Ending fixed-term tenancy early](#), [Goods left behind](#).

Tips: [Negotiating with the landlord](#)

NSW government: [Mortgagee repossession of a rental property](#)

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For free advice, call your local Tenants Advice & 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

WEB: tenants.org.au

NSW FAIR TRADING: 13 32 20

This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia. ©Tenants' Union of NSW