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Property law

## New residential tenancy laws in Queensland

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The *Residential Tenancies and Rooming Accommodation Act 2008* (**the new Act**) comes into effect on 1 July 2009. The new Act updates existing tenancy laws for Queensland and will replace the *Residential Tenancies Act 1994* and the *Residential Services (Accommodation) Act 2002*.

### Changes affecting residential tenancies

The new Act, whilst very similar to existing tenancy laws, proposes important changes in relation to:

#### Before a tenancy

##### *New requirements for advertisement and offerings*

Landlords and agents are required to state a fixed price when advertising or offering rental properties.

This means rent ranges (e.g. 'from \$250-\$275 per week'), advertising without a price, 'rent bidding' and 'auction-style application processes' are prohibited. However, this requirement will not be breached by the placing of a 'For Rent' sign on or near the rental property without stating a fixed price.

If a rental property was advertised or offered without a fixed price, landlords and agents are prohibited from accepting a bond for the property. However; if bond was accepted, the Residential Tenancies Authority must refund it to the tenant and the landlord or agent cannot claim any of the bond.

#### Tenancy agreements

##### *New tenancy agreements*

Tenancies starting from 1 July 2009 are required to use new 'General Tenancy Agreement' (Form 18a) for houses and units and 'Moveable Dwelling Tenancy Agreement' (Form 18b) for caravans and other moveable dwellings.

Existing tenancies will not have to enter into new agreements because the new Act will apply to all agreements.

##### *New notice period for 'without ground' terminations*

The notice periods for 'without ground' terminations will be:

- For periodic agreements by landlords – 2 months (which is unchanged);
- For fixed term agreements by landlords – the later of 2 months or the end of the fixed term (which is an increase from the later of 14 days or the end of the fixed term);
- For periodic agreements by tenants – 2 weeks (which is unchanged); and
- For fixed term agreements by tenants – the later of 14 days or the end of the fixed term (which is unchanged).

Landlords for caravan or moveable dwellings must give tenants 3 months notice for 'without ground' terminations.

##### *Challenging significant changes between agreements*

Tenants can challenge 'significant changes' between agreements for the same property by applying to the Small Claims Tribunal for an appropriate order.

The ability to do so will exist if at least 1 of the tenants in the earlier agreement continues as tenant, regardless of whether there has been a change in the landlord between agreements.

A 'significant change' to an agreement means a change to any of the following:

- The special terms for the tenancy agreement;
- The rent amount, and whether it must be paid weekly, fortnightly, or monthly;

- The way rent must be paid;
- Any services supplied to the rental property, other than water, for which the tenant must pay;
- Whether the tenant must pay for water supplied to the rental property;
- The number of occupants allowed to reside in the rental property, if there is such a limit;
- Whether pets are allowed; and
- Any other matter prescribed under legislation.

### ***Notice period for periodic tenants when selling rental property***

If a contract of sale is signed when the tenants are on a periodic agreement, landlords and agents must give the tenants a 'Notice to Leave' (Form 12) with a minimum notice period of 4 weeks.

## **Rent and rent increase**

### ***Payment of rent***

Under the new Act, rent must be paid by an 'approved way', including by cash, cheque, direct deposit, credit card, EFTPOS or deduction from pay, pension.

If a landlord or agent wants rent to be paid by another way, they must first give the tenant a choice of at least 2 other approved ways to pay rent and advise the tenant of associated costs such as bank fees.

### ***Limited rent increase***

Landlords and agents are prohibited from increasing the rent within 6 months of the last increase. Notice of a future rent increase can be given within the 6 month timeframe; however, the increase must not take effect until after 6 months of the last increase.

This prohibition will apply:

- Whether the increase is to take effect during an existing agreement or to the next agreement;
- Provided at least 1 tenant responsible for the current rent will be responsible for the future rent; and
- Regardless of whether there has been a change in the landlord since the last increase.

### ***New notice period for rent increase***

Landlords and agents are required to give 2 months notice of a rent increase to tenants under fixed term or periodic agreements. However, this requirement does not apply to public housing tenants and employee housing where the State is the landlord.

Rent under fixed term agreements can only be increased before the term ends if the agreement provides for a rent increase and states the increased amount.

## **Entry to the property**

### ***New entry requirements when selling rental property***

Landlords and agents must now also state on the 'Entry Notice' (Form 9) a 2 hour time period during which they intend to enter the property and can stay in the property past the 2 hour period to complete the job.

Entry to the rental property can only be made at a reasonable time but must not be made on a Sunday, public holiday or before 8:00 am and after 6:00 pm without the tenant's agreement.

Landlords or agents are not permitted, without the tenant's consent, to use a photo or other image of the rental property in an advertisement if the photo or image shows something belonging to the tenant. Further, landlords or agents are not permitted to conduct an onsite auction or open house without the tenant's consent.

### ***Other grounds for entry***

In addition to permitting entry to make routine repairs and carry out maintenance of the rental property, landlords and agents may enter the property within 14 days to inspect the repairs or maintenance.

Landlords and agents are also permitted to enter a rental property within 14 days from giving the tenant a 'Notice to Remedy Breach' (Form 11) to ascertain whether a significant breach is remedied.

## **Changes affecting rooming accommodations**

The new Act also covers providers who own or manage rooming accommodation and residents who live in rooming accommodation. However, the new Act does not apply to residents:

- Where the provider lives on the premises and there are less than 4 rooms available for rent;
- In aged care, mental health service, private hospital accommodation;
- In accommodation for school students provided with a school, university or non-profit organisation or with

financial assistance from the Department of Education; or

- In holiday letting, retirement village or other arrangements where the accommodation is not the resident's main place of living.

Accommodations starting from 1 July 2009 are required to use new 'Rooming Accommodation Agreement' (Form R18) and providers can now make rules about smoking and guests.

Further, providers and residents can now apply straight to the Small Claims Tribunal through an 'urgent application', for e.g., if a resident fails to leave by the date on a 'Notice to Leave' (Form R12).

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- property developments
- liquor licensing
- commercial and retail leasing
- body corporate scheme registration and community management statements
- portfolio acquisitions and divestments for residential, commercial and industrial properties
- due diligence put and call option agreements

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