

Tenancy Law Changes

With vacancy rates low and rentals high, the State Government needs to encourage more investors into the market to create more supply. But some industry professionals argue recently proposed reforms to tenancy laws will do just the opposite.

Since the tenancy laws have been in place for more than 20 years without significant change, the general consensus is that reform is necessary. The issue is; what shape the reform should take.

Essentially the industry is divided over the proposed changes and about what the changes should be.

Key points in the proposed changes:

- **'No grounds'** termination notices: Increasing the notice given to tenants who are no longer in a fixed term lease from 60 days to 90 days, and giving landlords greater certainty in the tribunal process.
- **Rent arrears evictions:** Shortening the time it takes for a landlord to get their application heard by the tribunal where the rent is behind.
- **Alterations:** Giving tenants greater flexibility to add fixtures or make alterations of a minor cosmetic nature at their own expense.
- **Security of tenure:** Including measures to encourage long-term leases and giving greater protection against eviction for tenants who have occupied the same premises for 20 years or more.
- **Tenancy databases:** Limiting the type of information that can be listed in a database and the period of time such information can be kept.
- **Co-tenant disputes:** Introducing new measures to resolve disputes between co-tenants or shared households, including domestic violence situations.
- **Goods left behind:** streamlining procedures and reducing costs for landlords when dealing with goods left behind when a tenant vacates.
- **Breaking a lease early:** Allowing tenants to break a lease early without penalty in certain situations such as when they accept an offer of public housing or need to move to a nursing home.
- **Sale of rented premises:** Requiring the tenant to be told before a rental property is placed on the market and obliging the selling agent to make reasonable efforts to agree with the tenant on the days and times the premises will be available for inspection.



Vendors to pay for building inspections

The State Government plans to shift the onus for pre-purchase inspections from buyers to vendors.

The plan is expected to be introduced later this year.

Under the new scheme, vendors would be required to produce building and pest reports before the property is listed for sale. This will be a great saving for buyers who will not have to spend hundreds of dollars on inspections of properties they fail to secure at auction.



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Title Insurance for Strata Home Buyers

When buying a property you may expose yourself to many inherent risks which could potentially affect your ownership or cause loss. Title Insurance is a specialised insurance product which provides protection for home buyers and existing home owners of residential strata properties against certain unknown and hidden risks which may exist at the time of purchase.

Cover can be provided for a broad range of risks including:

Unapproved Alterations: Alterations to the Strata Unit without the required Council and/or Body Corporate approvals of which you are unaware of at the time of purchasing the Strata Unit.

Registration Gap: Someone else lodges a dealing which prevents your interest from being registered or recorded.

Fraud, Forgery, & Identity Theft: Loss due to fraud, forgery which results in you being deprived of your ownership of the Strata Unit.

Planning & Title Defects: loss due to non compliance with zoning and develop-

ment laws, unregistered easements & covenants, lack of legal access, defects in the title to the Strata Unit of which you are unaware at the time of purchasing the property.

Outstanding Rates, Taxes, & Strata Levies: Outstanding rates, taxes, and strata levies (including special levies) on the property which you are now liable for as the current owner of the Strata Unit.

Claims Scenarios

Unapproved Alterations - Following settlement of your purchase, you find that the previous owners made renovations to the property which involved modifications to the 'common property' walls without obtaining the approval of the Body Corporate or Council. This was not disclosed by the vendor when purchasing the property. You are ordered to reinstate the common property walls and pay any damages or costs incurred by the Body Corporate, even though you were not responsible for the unapproved works. In this scenario, Title Insurance could cover the costs associated with compliance, including any loss of market value of the property.

Special Levies- Prior to settlement, the Body Corporate strikes a special levy of \$5,000 for each Lot owner to carry out major works to the Strata building. This special levy was not disclosed to you prior to settlement. After settlement, you become liable to pay the \$5,000 special levy even though it was not disclosed to you when you purchased the property. In this scenario Title Insurance could compensate you for the \$5,000 special levy for which you are now liable.

Registration Gap- After settlement but before your title documents are registered at the land title registry, somebody else lodges a caveat or writ on the title and claims and interest in your Strata Unit. Your interest in the Strata Unit is unable to be registered until the caveat or writ is removed. You face significant legal costs and a potential dispute with the third parties who lodged the caveat or writ. In this scenario, Title Insurance would defend your title, including paying all legal costs and expenses associated with the commencement of legal proceedings necessary to rectify the title and obtain registration of your interest at the Land Title registry.

CGT Traps for the average home owner

Unless you move into a property as soon as practical after settlement you could have some exposure to Capital Gains Tax (CGT).

You need to move into the property very soon after the settlement..It doesn't mean waiting weeks or months for the tenant or vendor to move out. It means the next weekend after settlement or very soon after.

There are a few exceptions. The 4 year rule allows you to back date your main residence exemption onto vacant land before you build also applies to renovating a house and it doesn't require you to live there first before the renovations take place.

This section of the Income Tax Assessment Act can help you if you need to do some work on the property before you move in but only if there is no one living or renting there after settlement.

There is also another exception with the six-months overlap rule, which allows you to exempt two properties with your main residence exemption for up to six



months. The trap here is that the six months backdates from the settlement date of the original property and that property must have been your home for at least 3 months in the past 12 months before it is sold, plus it can't have been used to produce income when it wasn't your main residence. The only way to cover your new home with your main residence exemption from day one, no matter how long your original home takes to sell, is to move into it as soon as practical after settlement

All is fine if you sell within six months but if you go over that time various problems arise. If your original home takes more than nine months to sell and you have moved straight into your new home then you'll no longer qualify for the six months overlap, not even on a pro rata basis. This is because you did not live there for at least 3 months in the 12 months before settlement.

There is no restriction on how your new home is used during the first 6 months, so it could be better to rent it out and stay in the old house if it takes up to six months to sell.