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| Residential Rental Agreement Terminations and Deceased Estates Operational Guidelines |
| May 2025 |
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| Residential Rental Agreement Terminations and Deceased Estates Operational Guidelines  May 2025 |
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| More Information To find out about housing options visit the [Housing website](http://www.housing.vic.gov.au) <http://www.housing.vic.gov.au> or contact your local [Housing Office](http://www.housing.vic.gov.au/contact-a-housing-office) <http://www.housing.vic.gov.au/contact-a-housing-office>.  To receive this publication in an accessible format contact [Homes Victoria](mailto:enquiries@homes.vic.gov.au) <enquiries@homes.vic.gov.au>.  This guideline contains some links to internal resources which will not be accessible for external parties reading this document.  Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.  © State of Victoria, Department of Families, Fairness and Housing, May 2025.  ISBN: 978-1-76130-822-2 (pdf/online/MS word)  Available on the Services Providers website <https://providers.dffh.vic.gov.au>. |
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# Revision history

| Version | Amended section | Effective | Detail |
| --- | --- | --- | --- |
| - | - | July 2012 | * First publication |
| 1.0 | - | September 2017 | * Incorporation of version control table * Accessible format |
| 2.0 | Throughout | May 2025 | * Template conversion to a current accessible template. * Content has been revised to incorporate changes in section numbers and provisions resulting from the 2021 reforms to the Residential Tenancies Act. To ensure consistency with the updated RTA terminology, the guideline has been renamed “Residential Rental Agreement Terminations and Deceased Estates.” * All sections have been reorganised, renamed, and updated to align with current processes. * New sections have been introduced to enhance guidance, with a key new provision focusing on the management of dual tenancies. * Policy and procedures references have been removed to conform to the standard format of current operational guidelines. |

# Overview

Terminating a Residential Rental Agreement (Rental Agreement) refers to the formal process of ending a tenancy. Department of Families, Fairness and Housing staff delegated to perform functions on behalf of Homes Victoria must ensure that the termination of a Rental Agreement is lawfully carried out in accordance with the *Residential Tenancies Act 1997* (RTA).

Lawful termination of a Rental Agreement includes:

* **Complying with legal notice periods:** Ensuring the minimum amount of time prescribed by the RTA is given to renters.
* **Meeting grounds for termination:** Ensuring the termination is legally valid as per the reasons specified in the RTA.
* **Maintaining procedural fairness**: Following fair and correct procedures throughout the termination process.
* **Giving proper consideration to human rights:** Ensuring that termination decisions carefully balance legal requirements with the renter’s human rights.

## Termination with or without agreement

Rental Agreements can terminate in two ways:

* **By agreement or consent:** Both parties agree to terminate the Rental Agreement.
* **Without agreement:** Rental Agreement termination without both parties’ mutual consent, usually by legal means in accordance with a valid legal reason specified under Part 2 Division 9 of the RTA.

The following table outlines the different termination types by scenarios.

Table 1: Termination with and without agreement scenario examples

|  |  |  |  |
| --- | --- | --- | --- |
| Category | Termination type | Description | Relevant RTA section/s |
| **By (with) agreement** | Transfer | When a renter moves to another Homes Victoria owned public housing premises. | * s91C Termination by agreement * s91D Termination by consent |
| Transfer of tenancy | A new eligible renter(s) takes over the Rental Agreement. |
| Voluntary termination | When a renter relocates from the rented premises, for example into private rental accommodation or in circumstances where a property/home is acquired by purchase. |
| Notice of Intention to Vacate | The renter gives at least 28 days’ notice of their intention to vacate the rented premises. | * s91Z Notice of intention to vacate * s91E Termination after notice to vacate |
| Deceased renter | Based on an agreement entered into between the Residential Rental Provider (Rental Provider) with the Legal Personal Representative (LRP) or Next of Kin (NoK) of a deceased renter. | * s91N Termination after death of sole renter |
| **Without agreement** | Termination without notice | When a renter ends a Rental Agreement without providing at least 28 days’ notice of intention to vacate from the rented premises after which the notice is given. | * s91Z Notice of intention to vacate |
| Notice to Vacate | When a renter leaves the rented premises after the Rental Provider serves a formal Notice to Vacate on the renter. | * s91E Termination after notice to vacate |
| Eviction | When an order from the Victorian Civil and Administrative Tribunal (VCAT) directs the renter to vacate the rented premises by the contents described in the order. Those orders provide further direction by VCAT to the principal registrar to issue a warrant of possession if requested by the person applying for a possession order within prescribed timeframes. | * s333 Contents of possession order * s334 Effect of possession order for the rented premises * s351 Issue of warrant of possession * s355 Warrant of possession |
| Deceased renter | When the Rental Provider serves a Notice to Vacate to the renters LPR or NOK, or per VCAT orders when the LPR/NOK can’t be found. | * s91N Termination after death of sole renter * s334 Effect of possession order for rented premises |
| Repudiation or abandonment | When the renter, by actions like abandoning the rented premises or engaging in subletting without consent, demonstrates by act or omission that they no longer wish to abide by their Rental Agreement and continue the tenancy. | * s91F Termination by abandonment * s91G Termination where premises are sub-let * s91K Termination by disclaimer |
| Family violence | Specific provisions that apply in cases involving family violence. | * s91V Application for termination or new residential Rental Agreement because of family violence or personal violence * s91W Tribunal orders * s70B Locks for rented premises the subject of an order under s91W(1)(b) and (1A)(b) * s91X Tribunal may determine parties' liability under terminated residential Rental Agreement * s91Y Cross-examination in a proceeding for termination or new residential Rental Agreement * s420A Order by Tribunal if renter victim of family violence or personal violence * s420B Order by Tribunal in circumstances of family violence or personal violence |

# Termination dates

The termination date is determined by the type of termination intended by the parties and whether the renter has vacated the rented premises.

The table below outlines the specific dates for each termination scenarios.

Table 2: Termination date of Rental Agreements determined by scenarios

|  |  |
| --- | --- |
| Termination type | Termination date |
| Transfer | The date the new Rental Agreement commences. |
| Transfer of tenancy |
| Voluntary termination | The date the renter provides vacant possession of the rented premises or the previous day if this occurs after business hours. |
| Notice of Intention to Vacate |
| Deceased renter | The date specified in the Notice of Intention to Vacate from the LPR or NoK. |
| The date agreed upon in writing with the Rental Provider. |
| The date determined by VCAT. |
| Termination without notice | The date the renter provides vacant possession. Backdated to the previous day if this occurs after business hours. |
| Notice to Vacate |
| Eviction | The date the warrant of possession is executed. |
| Repudiation | The date the Department accepts the repudiation. |
| Abandonment | The date it is established that the premises were abandoned as per the VCAT order. |
| Family Violence VCAT order | The date determined by VCAT. |

## Vacant possession

Vacant possession is a term used to describe a specific condition in which a rented premises is returned from one party to another in accordance with the terms and conditions specified in the standard form Rental Agreement. When a renter returns a rented premises (subject to VCAT order or otherwise) to a Rental Provider, vacant possession means that the property must be:

* **Completely unoccupied:** The renter must have physically vacated the premises, ensuring no other occupants listed on the household or any other person remains living there as a principal place of residence.
* **Free from personal belongings:** All personal goods and documents including furniture, appliances, and rubbish must be removed from the rented premises. This means the rented premises should be empty and free from any items that were not present at the commencement of the Rental Agreement.
* **Free from third-party claims:** There should be no other individuals or entities claiming an exclusive possessory right to occupy the rented premises. This ensures that the Rental Provider can take full control of the rented premises without any legal or practical obstacles.

## Termination date alteration

The Housing Integrated Information Program (HiiP) enables the update or backdating of termination dates, which should only be done in cases of error.

Termination dates can be backdated by up to 14 days through the Termination tab in HiiP, with approval from a Team Manager or higher.

Any adjustments beyond 14 days require review and approval from the Client Support and Housing Services Manager via an escalation workflow, as mandated by system rules.

## Reversal of Rental Agreement termination

A Rental Agreement termination can only be reversed if it was not in accordance with the RTA. Reversals in HiiP are only permitted if administrative error has occurred and must be actioned within five working days of the termination date.

A Team Manager or higher has the discretion to decide whether to enter into a new Rental Agreement with the renter. When making this decision, the following factors should be considered:

* The reasons the renter wishes to return to the rented premises.
* The human rights engaged in accordance with the *Charter of Human Rights and Responsibilities Act 2006* (Charter) for those household members and any potential adverse impacts, weighed against the reasons for rejection of the request for reversal of the Rental Agreement
* The status of any outstanding maintenance or reletting processes.
* Any available alternative options.

If the decision is made to reject a renter’s request to reverse termination of a Rental Agreement, they must be provided with written reasons for the rejection.

# Account balances

Homes Victoria charges rent up to and including the day before the Rental Agreement ends. Rent cannot be charged on or after tenancy termination.

### Credit balances

Upon finalising the account, if a credit balance is identified, the Department's Revenue and Accounts Receivable Section will initiate a refund. This refund is typically processed within 28 days.

### Outstanding debt

When a renter has outstanding rent or maintenance debt, staff should proactively engage in negotiations to establish a mutually agreeable repayment agreement. The repayment negotiation process should include:

* **Initial assessment and discussion:** Contacting the renter promptly to discuss the outstanding debt. This discussion should aim to understand the reason for the arrears, assess the renter's current financial situation, and explore their capacity to repay the debt.
* **Entering into a Vacated Debt Agreement:** Based on the initial assessment, enter into a Vacated Debt Agreement with the renter. If a legal agreement was in place prior to termination, a new agreement must be established. Where possible, the new agreement should maintain the same weekly repayment amount.

# Forwarding address

If a forwarding address is unavailable, the terminated rented premises should be used as the last known address. When adding forwarding addresses in HiiP, staff must do so directly from the client’s records to ensure each client receives a letter individually.

## Family violence

In cases involving family violence, the situation may require special handling to protect the safety and privacy of the victim. This may involve:

* **Confidentiality:** Ensuring that any information related to the victim's new address is kept confidential. For example, staff should consider utilising tools such as the 'Secure client' HiiP indicator, which can be enabled under the 'Sensitive client' tab. This feature prevents sensitive details such as names and addresses from being displayed on letter window envelopes.
* **Alternative arrangements:** Alternative arrangements to communicate with the victim, such as using a trusted third party, or a secure communication method such as Digital Mail through Housing Vic Online Services, can also be used. The secure communication service provides a confidential online platform via myGov, allowing clients to manage correspondence securely.

If a forwarding address is unavailable due to family violence or other safety concerns, staff should consult [Housing Business Operations](mailto:Housing%20Business%20Operations) <housingbusiness.operations@dffh.vic.gov.au> to ensure compliance with applicable laws and to prioritise the safety of the victim.

## Police Witness Protection Program

To safeguard the privacy and security of renters who are part of the Police Witness Protection Program, and to maintain the integrity of the program itself, **staff** **must** **not** do the following to renters protected by these safeguards, which include:

* Enter any forwarding address in HiiP
* Create any file notes documenting their involvement in the program, mailing address, contact number, or reasons for termination
* Link any rental accounts in HiiP, or
* Generate or send any terminated Rental Agreement correspondence.

Maintaining strict confidentiality of records is paramount, as creating a digital trail could jeopardise the program’s integrity.

# Notice of termination

## Notice of Intention to Vacate

In accordance with section 91Z of the RTA (Notice of Intention to Vacate), a renter must provide a minimum of 28 days' notice of their intention to vacate the rented premises. While this notice is typically submitted using a Notice of Intention to Vacate Form or General Notice of Termination Form generated from HiiP, notice can be provided in writing.

When staff receive a renter's Notice of Intention to Vacate, the renter should be advised:

* **General Notice of Termination Form:** A General Notice of Termination Formsigned by all co-renters is required on or before the termination date. This form includes Vacating Instructions and a Checklist to guide the process.
  + Additional information can be found online at [Moving out of your property | Housing.vic.gov.au](https://www.housing.vic.gov.au/moving-out-your-property) <https://www.housing.vic.gov.au/moving-out-your-property>
* **Rent charges:** Rent will be charged until vacant possession of the rented premises is delivered by the renter. This includes the return of the General Notice of Termination Formand keys.
* **Removal of goods and personal belongings:** The renter must remove all goods and personal belongings from the rented premises before the Rental Agreement is terminated.
* **Outstanding balances:** Any unpaid rent or maintenance charges will be reviewed and ideally settled in full before the termination date. If full payment is not feasible, a Vacated Arrears Agreement will be arranged to facilitate repayment.
* **Pre-vacating inspection:** An inspection of the rented premises must be conducted before the renter vacates to complete an end of agreement Tenancy Condition Report. If the renter has not provided sufficient notice to arrange a pre-vacating inspection, the renter should be advised that the rented premises will be inspected within two working days of termination, and they may incur charges for any necessary rubbish removal, repairs, or cleaning.

Upon receiving the renter's Notice of Intention to Vacate, the following actions should be taken in HiiP:

* Record the notice details in HiiP.
* Generate and send the following:
  + Intention to Vacate Acknowledgement Letter
  + General Notice of Termination Form (if not already provided)
  + Rental and Maintenance Account Summary Statement and Vacated Arrears Agreement (if required)
* Schedule a pre-vacating inspection to take place before the expected termination date.

### Pre-vacating inspection

Following a pre-vacating inspection, staff must:

* Complete a Moving out Tenancy Condition Report and upload this into HiiP.
* Advise the renter of any cleaning required to meet the terms of their lease agreement before termination.
* Review and discuss with the renter any outstanding rent or maintenance charges. Ideally, the debt should be settled in full prior to the termination date. If full payment is not feasible, consider arranging a Vacated Debt Agreement to facilitate a structured repayment plan.

## Cancelling a Notice of Intention to Vacate

If a renter gives notice but later changes their mind, the Notice of Intention to Vacate should be cancelled in HiiP.

## Receiving a General Notice of Termination Form and Keys

A renter may vacate a rented premises by submitting a General Notice of Termination Form and returning the keys without prior notice. In such cases, the following should be communicated:

* **Vacant unit inspection:** An inspection will be conducted within two working days following the termination of the Rental Agreement.
* **Charges:** The renter may incur charges for any necessary rubbish removal, repairs, or cleaning.

Upon termination of the Rental Agreement in HiiP, staff should:

* Ensure that the key register in HiiP is updated to reflect the return of keys.
* Confirm that HiiP successfully generates a receipt for keys returned and a Rental Agreement termination letter.

## Key returns without a General Notice of Termination Form

If keys are returned without a General Notice of Termination Form or other written confirmation, efforts should be made to contact the renter within 5 days to obtain written confirmation of their intent to terminate the Rental Agreement. While verbal confirmation may be accepted as a last resort (in all the circumstances), it is essential to inform the renter about the consequences of the termination. Staff must ensure that there is appropriate record keeping by completing detailed file notes regarding these communications with the renter(s) (as the case may be).

In cases where contact cannot be established or the renter refuses to complete the necessary form, legal action in accordance with the RTA may need to be considered to formally terminate the Rental Agreement.

# Public housing transfers – Dual Rental Agreements

When a renter transfers from one Homes Victoria owned public housing property to another, their previous Rental Agreement automatically terminates on the day the new Rental Agreement is signed (Part 3, section 8.3 of the Rental Agreement). To proactively balance the need for timely re-letting with the prevention of dual tenancies and the maintenance of property security, staff must:

* Inform the renter that their Rental Agreement has terminated and come to an end and that they have **five business days** to provide vacant possession of the rented premises and return the keys.
* Initiate a lock change request with special instructions for the contractor to complete the change **on the day following the expiration of five business days** to maintain property security.
* If the keys are not returned as agreed, contact the renter to confirm vacant possession and make a final attempt to obtain the keys.

In cases involving family violence or other exceptional circumstances, Client Support and Housing Services Managers may exercise discretion to provide additional time for the renter to return the keys.

**Note:** Lock changes are routine vacant unit maintenance and not chargeable to the renter.

# Abandonment or Repudiation

Abandonment and repudiation are two distinct concepts in contractual law that can lead to the termination of a Rental Agreement. Understanding the differences between them is important for determining the appropriate course of action.

## Abandonment

Abandonment occurs when a renter vacates a rented premises without formally notifying the Rental Provider. This typically involves the renter's physical departure from the rented premises without providing any written notice of termination. Abandonment is often characterised by the renter leaving behind personal belongings and ceasing to pay rent. In such cases, Homes Victoria will typically seek to regain possession of the rented premises through legal means, such as applying to VCAT.

## Repudiation

Repudiation involves a renter's words or actions clearly demonstrating their intention to no longer be bound by their Rental Agreement. This can include scenarios where the renter moves overseas, vacates the rented premises, removes their belongings, and refuses to pay rent despite repeated requests. Repudiation requires a clear expression of intent to abandon contractual obligations specified between the renter and Rental Provider. If Homes Victoria is satisfied that repudiation has occurred, the Rental Agreement may be terminated in accordance with section 91K of the RTA.

## Factors to consider

When assessing whether a situation involves abandonment or repudiation, consider the factors below. Whilst some of the factors in isolation may not be enough to establish abandonment or repudiation, when considered together, they may be enough to establish abandonment or repudiation by a renter. Each matter will need to be decided on a case-by-case basis.

Table 3: Factors to consider

|  |  |  |  |
| --- | --- | --- | --- |
| Factor | Description | Abandonment | Repudiation |
| Physical departure | Has the renter vacated the rented premises? | Required | Not required |
| Formal notice | Was any formal notice of termination provided by the renter? | Not required | Not relevant |
| Intent to repudiate | Are there clear actions or statements from the renter indicating an intention to abandon contractual responsibilities? | Not required | Required |
| Property condition | What is the condition of the rented premises upon departure? | Often left in disarray or with belongings | May be vacated and cleaned |
| Belongings | Have the renter's belongings been removed from the rented premises? | Often left behind | Typically removed |
| Communication | What has the renter communicated to the Department? Are there explicit statements of intent not to return or to terminate the Rental Agreement? | Clear communication not required | Clear statements of intent to repudiate required |
| Keys | Have the keys been returned? | Often not returned | May or may not be returned |
| Rent payments | Are there any missed or overdue payments, or accumulated debt, suggesting non-compliance with the terms of the Rental Agreement? | Often ceased | May be ceased or irregular |

Given the legal complexities of repudiation, staff must contact the Legal Services Branch for advice on all potential repudiation cases before taking any action to terminate the Rental Agreement. Legal Services Branch will assess the evidence and provide guidance on whether repudiation is established and the appropriate steps to take.

# Warrant of Possession

A Warrant of Possession (Warrant) is legal instrument issued by VCAT or the Magistrates Court of Victoria. A Warrant authorises Victoria Police uniform members on behalf of Victoria Police to enter a rented premises and evict a renter or resident who has not vacated the rented premises as directed by orders obtained from VCAT. The Rental Provider may be able to purchase and execute such warrant after VCAT has issued a Possession Order and the renter has not left by the specified date directed by those orders.

## Execution and termination

The warrant enables Victoria Police to enter a rented premises (by force if necessary) and compel any persons occupying the rented premises to leave and give possession to the Rental Provider. A warrant does not authorise the removal of any goods from the rented premises.

Once the warrant has been executed and Victoria Police uniform members on behalf of Victoria Police have removed the renter from the rented premises, the Rental Agreement is terminated.

Following the execution of a warrant, staff must ensure the Rental Agreement record is formally terminated within the HiiP system.

# Deceased Sole Renter

Staff will often receive notification of a deceased renter through:

* Family or friends
* Neighbouring occupiers
* Support workers
* Guardians or Administrators
* Emergency services such as Victoria Police
* Services Australia (Centrelink) Income Confirmation eService (CCeS)

A Next of Kin (NOK) is the closest living relative (e.g blood relation or by marriage) of a deceased person and a Legal Personal Representative (LPR) is usually the executor or administrator of a deceased renter’s estate under a grant of probate from the Supreme Court of Victoria.

## Record management

Managing a deceased renter's Rental Agreement requires thorough record management conducted with respect and sensitivity. This approach ensures:

* Transparency in all actions taken.
* Accountability for all decisions and communications.
* Minimisation of potential disputes during a difficult time for all parties involved.
* Provision of a clear audit trail to demonstrate responsible and ethical handling of the tenancy, and enables staff to:
  + Inform subsequent actions
  + Identify and contact relevant parties, and
  + Facilitate the goods left behind process.

As part of thorough and appropriate record-keeping practices, staff must:

* **Record all interactions:** File note all interactions, against the corresponding tenancy and/or client record in HiiP, including:
  + **Method of contact:** Email, phone, in-person.
  + **Details of the discussion:** Date of death, NOK or LPR information, preferred contact method, requests for information/documentation, and any support referrals provided.
* **Deceased renter indicator in HiiP:** Enable the ‘Deceased’ checkbox in the ‘Personal details’ tab of the clients record and enter the date of death. If the date is an estimate, also enable the 'Estimated' checkbox.
* **Update address:** Update the address to reflect ‘The Estate of [Deceased Renter's Name]’ for all future correspondence.
* **Document storage:** Ensure all received documents are scanned and accurately attached to the corresponding tenancy and/or client record in HiiP.

## Transfer applications

When a deceased sole tenancy is confirmed, staff must promptly check HiiP for any existing transfer applications with an active status to ensure all relevant records are accurately updated.

If an active transfer application is identified, staff must make a detailed file note flagging the renter as deceased, then trigger a reassessment to review and, if appropriate, remove the application.

## Identifying a NOK or LPR

When information is received that confirms the death of a renter, staff must make reasonable attempts to identify the LRP or NOK.

Reasonable attempts to identify the NOK or LPR include:

* Reviewing physical Rental Agreement files (if applicable)
* Reviewing corresponding HiiP Rental Agreement and/or client records
* Seeking information from Victoria Police
* Sending an email to the Coroner at [CAE@VIFM.ORG](mailto:CAE@VIFM.ORG), and
* Contacting State Trustees on 1300 138 627 or using email [eat@stl.com.au](mailto:eat@stl.com.au) to determine if they can locate:
  + A NOK or LPR, or
  + The Will identifying the executor or administrator of the deceased renter’s estate.

Documentary evidence to confirm the NOK or LRP may include:

* Proof of the NOK's relationship to the deceased, such as a Birth or Marriage Certificate.
* The Death Certificate, which should include the NOK's details.
* The deceased renter's Will, provided it is in writing, signed by the deceased, and witnessed by two or more individuals.
* A Grant of Probate or Letters of Administration issued by the Supreme Court of Victoria.

# Identified NOK or LPR

## Issuing a Notice of Intention to Vacate

Once a NOK/LPR is identified, under s.91N(1)(a) and s.91N(2) of the RTA staff can issue:

* A Notice of Intention to Vacate (generated in HiiP) and accompanying covering letter
* A General Notice of Termination Form (generated in HiiP)
* Rental and Maintenance Account Summary Statement (generated in HiiP)
* Schedule a pre-vacating inspection to take place before the expected termination date to:
  + Complete a Moving out Condition Report; and
  + Inspect the rented premises and advise the NOK/LPR of any cleaning required to meet the terms of the Rental Agreement before termination.

This will inform the NOK or LPR of their responsibilities, including the process to:

* Terminate the deceased renter’s Rental Agreement.
* Deliver vacant possession of the rented premises.
* Ensure all belongings are removed from the rented premises prior to termination, and that cleaning is completed to return the rented premises in a reasonably clean condition.

**Note:** Letters and notices relevant to a NOK or LPR can be located under the Intention to vacate tab in HiiP via the ‘Generate user-initiated letters button’.

### No response

If the NOK/LPR does not respond within 14 days after receiving the Notice of Intention to Vacate, staff must attempt to contact them to discuss initiating legal proceedings to terminate the Rental Agreement.

This legal process will involve issuing Notices to Vacate under section 91N(3) of the RTA.

**Note:** While it is preferable for the NOK/LPR to return the keys by the termination date specified in either the Notice of Intention to Vacate or the Notice to Vacate, the return of keys is not a requirement for formally terminating the tenancy in HiiP.

## Issuing a Notice to Vacate

As per the decision in *Kovac v Homes Victoria[[1]](#footnote-2)*, staff must serve a Notice to Vacate addressed to the deceased sole renter, as well as a second Notice to Vacate served to the NOK/LRP in order to terminate a Rental Agreement when the sole renter passes away.

To comply with sections 91N(3), 91ZZO and 506(3) of the RTA, the following details must be included in the Notices:

Notice 1: Notice to vacate to the deceased sole renter

|  |  |
| --- | --- |
| Addressee | [insert renter’s name] (reference to the term ‘*deceased’* is not required) |
| Address | [insert renter’s address] |
| Termination date | 21 calendar days after date of notice (14 days + 7 days for service of mail) |
| Written details | * I am giving this Notice to Vacate for [insert address of the rented premises] due to the death of the sole renter [name] who passed away on [Insert date]. * Homes Victoria now requires the occupant/s to vacate the rented premises ***(only when applicable).*** |

Notice 2: Notice to vacate to the NOK or LRP

|  |  |
| --- | --- |
| Addressee | * [insert name of the Next of Kin]; or * [insert name of the Legal Personal Representative], for the deceased estate of [renter’s name] |
| Address | [insert the NOK/LPR’s address or insert deceased renter’s address when the former is unknown] |
| Termination date | 21 calendar days after date of notice (14 days + 7 days for service of mail) |
| Written details | * I refer to the rented premises located at [insert address], of which Homes Victoria has a residential Rental Agreement with [insert name of the sole renter]. * I am giving you this Notice to Vacate for the rented premises due to the death of the sole renter [name] who passed away on [insert date]. * As the deceased renter’s [Next of Kin or Legal Personal Representative], I am giving you this Notice to Vacate under s.91N(3) of the *Residential Tenancies Act 1997* (Vic). * Homes Victoria now requires the occupant/s to vacate the rented premises ***(only when applicable).*** |

# Unidentified NOK or LPR

If all reasonable attempts have been made and a NOK or LPR cannot be identified, a Notice to Vacate cannot be issued. Staff may apply to VCAT under section 91N(4) of the RTA to seek an order to terminate the Rental Agreement.

If a NOK or LPR is identified at any point during the VCAT application process, the matter should be withdrawn, and a Notice to Vacate issued as per section 91N(3) of the RTA.

To ensure compliance with the RTA, the following details must be included in the VCAT application:

Table 4: Application to VCAT

|  |  |
| --- | --- |
| Addressee | Renter’s name (reference to the term ‘*deceased’* is not required) |
| Address | Renter's address |
| Written details | * An application under s.91N(4) *Termination after death of sole renter* is being made due to the death of the sole renter [name] who passed away on [insert date]. * Homes Victoria cannot locate the sole renters LPR or NoK. * Homes Victoria is seeking an order terminating the residential Rental Agreement for the rented premises located at [insert address]. * Home Victoria is seeking a possession order as there are occupants staying at the rented premises ***(only when applicable).*** * Homes Victoria now requires the occupant/s to vacate the rented premises ***(only when applicable).*** |

# Service of documents

A Notice to Vacate must be issued using one of the following methods:

* Delivering in person to the recipient
* Registered post
* Email
* In the manner ordered by VCAT

If a renter has nominated email as one of their preferred methods of correspondence, a copy must also be sent by registered post to ensure that service requirements are clearly met and to provide verifiable proof of delivery.

## Proof of service

To ensure legal compliance and demonstrate that the Notice to Vacate was properly served, staff must maintain thorough record keeping and documentation of the service process. This includes:

* Retaining:
  + The registered post service slip (and Australia post stamped copy) and tracking information obtained via Australia Post
  + A copy of the envelope front and back to support the addressing of parties (optional)
* Making reasonable attempts to contact the NOK or LPR before the termination date to confirm they have received the documentation and notice.

# Property Access

Supervised access to the rented premises may be granted to a uniform member of Victoria Police to locate paperwork that may assist in identifying or contacting the LPR or NOK.

## Requests to enter the property

Until the Rental Agreement has formally come to an end, only the LPR or NOK, or a person explicitly authorised by them in writing, at that time may enter the rented premises.

If a lock change is required to access the rented premises, the LPR or NOK, and a Home’s Victoria representative should be present. Homes Victoria’s delegated representative or contractor must not enter the rented premises unless the LPR or NOK grants permission.

## Supervised access

Homes Victoria may grant supervised access to a third party only when the LPR or NOK has provided written permission. Justifiable circumstances include:

* Retrieving clothing required for the deceased renter's funeral arrangements.
* Planning to feed, care for, and/or remove pets.
* Disposing of perishable items to prevent health hazards.

The third party must:

* Always be accompanied by a delegated Homes Victoria staff member.
* Not remove any of the deceased renter’s personal belongings.

A third party may collect their own identifiable belongings from the rented premises only when they can provide verifiable proof of ownership (e.g., a passport, driver's license, or other official personal documents).

1. *Kovac v Homes Victoria (Residential Tenancies)* [2024] VCAT 58. [↑](#footnote-ref-2)