

| Tenancy Management Manual  Chapter 14: Terminating tenancies and deceased estates  July 2012 |
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# Revision history

Department of Health

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# More information

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Available on the Tenancy Management page on our Service Providers website [Housing website](http://providers.dhhs.vic.gov.au/tenancy-management-manual) < http://providers.dhhs.vic.gov.au/tenancy-management-manual>.

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# 14 Definitions

| Term | Definition |
| --- | --- |
| Administrator | Where there is no Last Will and Testament, the next of kin or a state appointed trustee, who is granted ‘letters of administration’ and is authorised to manage the affairs of someone after death. |
| Beneficiary | A person who has an entitlement to benefit from a deceased estate. |
| Deceased estate | The total of a person’s property at the time of their death. For example, money, personal possessions, land and any other assets less any debts and liabilities. |
| Executor/Executrix of an estate | Where there is a Last Will and Testament, the person appointed to handle the affairs and administer and distribute the deceased estate. They will be named on a ‘grant of probate’ issued by the court. |
| Legal Personal Representative | Referred to as the Legal Personal Representative in the RTA (1997). For the purpose of this manual, Legal Personal Representative refers to the person with the greatest legal right to administer the deceased estate, and will be the executor or an administrator. |
| Letters of administration | Letters of administration confer on the administrator appointed by the court the powers and duties necessary to fully administer and discharge the deceased estate. |
| Next of Kin | The closest living relative (by blood or marriage) of a deceased person. |
| Occupier | A general term to refer to an individual who has taken up residence in a Departmental property. The individual may be a Tenant, Resident or other person occupying the property without the Department’s knowledge (occupant unknown to the Department). |
| Order of Abandonment | An order granted by the Victorian Civil and Administrative Tribunal declaring a rental property to be abandoned. |
| Probate | Probate is a document issued by the court certifying the Will’s validity and confirming the appointment of an Executor to administer the deceased estate. Without Probate the Executor does not have the authority to administer the estate. |
| Sole Tenant | The only tenant of a rental property, having signed the residential tenancy agreement. A sole tenant may live alone or with a resident or other occupier. |
| State Trustees Ltd | A Victorian Government owned company, which provides a range of trustee, executor, and personal financial administration services including deceased estate administration. |
| Termination of tenancy | The conclusion of a Residential Tenancy Agreement between a tenant or tenants and the Director of Housing as Landlord in relation to a rented property. |
| Vacant possession | When a property is free from occupation and free from any claim to a right to possession. |
| Administrator | Where there is no Last Will and Testament, the next of kin or a state appointed trustee, who is granted ‘letters of administration’ and is authorised to manage the affairs of someone after death. |

# 14.1 Purpose and Scope

## Purpose

The purpose of this chapter is to outline the policies and procedures by which the Department Human Services (the Department) concludes the tenancy agreement between the tenant(s) and the Director of Housing (the Director) where the tenant(s) vacates or dies.

## Scope

The policy and procedures of this chapter in conjunction with the Public Housing Customer Service Charter apply to all tenants and, where the sole tenant is deceased, the Legal Personal Representative (LPR) or Next of Kin (NOK).

## How to use this chapter

The procedures should be read in association with the policy, and where appropriate, referral should be made to other Departmental manuals and documents to ensure the intent of the policy is achieved when making decisions and administering procedures.

## Introduction

The Director of Housing as landlord enters into a Residential Tenancy Agreement with eligible clients who are to reside in public rental housing. This agreement details the rights and responsibilities of both the landlord and the tenant(s) in relation to the rented premises for the duration of the tenancy.

The termination of a Departmental tenancy ends the tenancy agreement between the tenant and the Director. A tenancy may only be terminated in accordance with one of the methods provided in the Residential Tenancies Act 1997 (RTA) and related regulations. The Department’s policy and procedures which govern this process are outlined in this chapter.

# Terminating Tenancies Policy

## Aim

The aim of the Terminating Tenancies Policy is to ensure that tenancies are terminated consistent with law, and in a timely manner to enable vacant, Director owned and managed properties to be re-tenanted as soon as possible.

## How a tenancy agreement terminates

A residential tenancy agreement only terminates in accordance with one of the methods provided in the RTA.

This section outlines the most common methods of termination arising in public housing.

## By agreement

The Director may agree to terminate a tenancy with the tenant(s) when any of the following occur:

* the tenant transfers to another public housing property, leased property or movable unit (s.217 and 218, RTA)
* a transfer of the tenancy is approved by the Director to an eligible person(s) in the household or occupying the property. The existing tenancy is terminated and a new tenancy agreement is signed with the new tenant(s) (RTA s.217 and 218)
* a mutual swap between tenants in separate properties is approved by the Director. The existing tenancies are terminated and new tenancy agreements are signed with the new tenant(s) (RTA s.217 and 218)
* the tenant moves out of public housing. For example the tenant is moving into private rental or they have purchased their own home (s.217 and 218, RTA)
* the sole tenant is deceased and the Director agrees in writing with the Legal Personal Representative (LPR) or Next of Kin (NOK) on a termination date for the tenancy (s.228(1)(c), RTA).

Where there is no agreement

A tenancy agreement can also terminate, at law, in a number of other ways. For example:

* the Director serves a notice to vacate on the tenant and the tenant vacates the rented premises on or after the termination date specified on the notice (s.219(a), RTA)
* the Director is served with a Notice of Intention to Vacate by the tenant and the tenant vacates the rented premises on or after the termination date specified in the notice (s.219(a), RTA)
* the Director obtains a possession order and the tenant voluntarily delivers up possession or a warrant of possession is executed evicting the tenant (s.334, RTA)
* the sole tenant is deceased and:
  + - the Director serves a 28 day Notice to Vacate on the LPR/NOK (s.228(1)(b), RTA)
    - the LPR/NOK provides the Director with written notice of the death of the tenant (tenancy terminates 28 days after) (s.228(1)(a), RTA)
    - the Director is unable to give a notice to vacate to the LPR / NOK (because they are unidentifiable and State Trustees Ltd is unwilling to assist), the Director applies to Victorian Civil and Administrative Tribunal (VCAT) under the RTA (s.228(2), and VCAT makes an order terminating the tenancy (s.228(1)(d), RTA)
* the tenant abandons the rented premises: the Department will usually apply to the Tribunal seeking a declaration that the premises has been abandoned (this is referred to as an order of abandonment) (s.220, 241, RTA)
* the tenant is not in possession of the rented premises because the tenant has sub-let or assigned them to someone else
  + - the Director or tenant gives a Notice to Vacate or a Notice of Intention to Vacate
    - the period (if any) between the date the notice is given and the termination date specified in the notice has expired (s.221, RTA)
* the tenant ‘repudiates’ the tenancy agreement by words or conduct - indicating they no longer wish to be bound by the agreement - and the Director accepts this (s.225, RTA)
* VCAT makes an order terminating the existing tenancy agreement and requiring the Director to enter into a new tenancy agreement with a protected person – because of a final family violence intervention order (s.233B (1), RTA). The existing tenancy agreement is terminated on the signing of the new tenancy agreement (s.233B (3)).

Note: Although a tenancy agreement may legally terminate by one of the above methods, this may not always result in the Director having vacant possession of the rented premises. For example, if the premises are occupied by a resident or other person, the Director will only be entitled to enter into possession of the premises when the occupant vacates, or after obtaining a possession order from VCAT and evicting the occupant. Staff must consider whether the person residing there is entitled to a tenancy in line with the Transfer of Tenancy Chapter and/or Occupants Unknown to the Department, Residents and Squatters Chapter.

Refer to the methods by which a Tenancy may terminate table on [page 14 section14.2.12](#_Methods_by_which)for a summary of termination of tenancy methods. This table is provided as a guide and is to be used together with the policies and procedures outlined in this Chapter.

## Tenant Vacates voluntarily

The Director enters into periodic tenancies with its tenants. Under the RTA a tenant is able to terminate a periodic tenancy agreement by serving the landlord with a Notice of Intention to Vacate, providing at least 28 days’ notice.

Although, 28 days written notice, pursuant to the RTA (s.235) is preferred, this time period is not mandatory. The Director is prepared to agree to end the tenancy at an earlier date when the tenant offers up vacant possession to the Director.

The Department requires the tenant to complete the [Tenants General Notice of Termination Form](#_Tenants_General_Notice) and hand back the keys as part of this agreement.

Other examples of when the Director agrees to terminate a tenancy include when the tenant transfers to an alternative public housing property or the department approves a mutual swap between two public housing tenants.

Notice is generally given by the tenant completing a [Tenants General Notice of Termination Form](#_Proforma_to_Reimburse) or by supplying the same information in a letter to the Housing Office.

## Tenant issued with a notice to vacate

The general position for most notices to vacate

The tenancy terminates, following the service of a notice to vacate (apart from a notice issued under (s.228(1)(b) and cases of sub-letting or assignment), when:

* the tenant vacates the rented premises on or after the termination date specified in the notice
* the tenant delivers up vacant possession to the Department following a possession order (voluntarily or following the execution of a warrant of possession). The tenancy terminates at the end of the day before vacant possession is delivered up.

Service of a notice to vacate to LPR/NOK - death of sole tenant

Termination following the service of a notice to vacate under (s.228 (1) (b) occurs 28 days after the Director gives the LPR/NOK the notice (see policy and procedure in relation to Deceased Estates).

Subletting or assignment

This can occur where the tenant is no longer in possession of the rented premises because the tenant has sublet or assigned them to someone else.

The tenancy agreement with the tenant terminates in these circumstances when:

* the Director or tenant gives a Notice to Vacate or a Notice of Intention to Vacate
* the period (if any) between the date the notice is given and the termination date specified in the notice has expired (s.221, RTA).

Although this procedure terminates the tenancy agreement between the Director and its tenant, the Director will need to determine what action to take in relation to the sub-tenant who continues to reside in the premises.

A sub-tenancy occurring without the landlord’s consent is invalid, unless VCAT has determined that consent is not required (s.81 (3), RTA). The Director may withhold consent to a tenant sub-letting or assigning the tenancy agreement on the basis that it would disadvantage people on the public housing waiting list (s.83, RTA).

The Director will need to assess what action to take in relation to such remaining occupants in accordance with the Transfer of Tenancy and Occupants unknown to the Department, **Residents and Squatters Chapters**. For example, the Director will need to decide whether to enter into a new tenancy agreement with the sub-tenant if they meet the transfer of tenancy criteria or to apply for possession under the RTA (s.344) if they are ineligible for a transfer.

## Other common examples

Other ways that the tenancy agreement may be terminated include:

## Abandonment by the tenant

If the tenant abandons the rented premises the tenancy agreement terminates.

The Department will usually apply to VCAT seeking a declaration that the premises has been abandoned (this is referred to as an ‘Order of Abandonment’) (s.220, 241, RTA). Staff should follow the Abandoned Properties and Goods Chapter in relation to cases of abandonment.

Where the tenant ‘repudiates’ the tenancy agreement

This can occur when the tenant’s words or conduct indicate that they no longer wish to acknowledge and be bound by the terms of the residential tenancy agreement. If the Director is satisfied that this is the case, then the Director may accept the repudiation of the agreement which will terminate the agreement (s.225, RTA).

For example, where a tenant has left the property because they have moved overseas, removed their goods, refuses to pay rent and refuses to complete a Notice of Intention to Vacate (despite being requested to do so) and has indicated they no longer wish to be a tenant of the Director. Here the tenant has indicated by words and by conduct that they no longer wish to be bound by the tenancy agreement. If the Director is satisfied the tenant has ‘repudiated’ the agreement, then upon acceptance of the repudiation the tenancy terminates.

In order to determine whether a tenant has repudiated an agreement, the following factors should be considered:

* whether the tenant has left the rented premises without submitting a Tenants General Notice of Termination Form, a Notice of Intention to Vacate, or a similar notice in writing that they are vacating the premises or giving up their rights to the tenancy
* whether the tenant has returned the keys for the rented premises
* whether the tenant has removed their belongings from the premises
* whether the tenant pays rent
* where contact is made with the tenant and they indicate that they will not (or do not intend to) return to reside in premises, they will not continue to pay rent and will not complete a General Notice of Termination Form or Notice of Intention to Vacate.

Staff should contact the Legal Services Branch for legal advice on whether a particular set of circumstances may amount to repudiation. In circumstances where a sole tenant has left a rented premises, but it is difficult to ascertain whether there is repudiation, the Department may instead follow the abandonment provisions of the RTA if there is evidence of abandonment.

## Effect of termination

Termination of a tenancy generally entitles the Department to take possession of the rented property free from occupation and free from any claim to a right of possession by another party. The rights and duties of each party under the tenancy agreement cease to exist.

Where a tenancy terminates but someone still resides in the property, the Department assesses the circumstances of any persons remaining in the premises before deciding whether to take steps to recover possession in accordance with the Transfer of Tenancy and Unknown Occupants to the Department, Residents and Squatters and Abandoned Properties and Goods Chapters in this manual.

## Rent

Rent is charged up to and including the day before the tenancy is terminated. Rent cannot be charged after a tenancy termination.

## Establishing the termination date

The termination date for a tenancy will depend on the method by which the tenancy terminated.

Termination following a Notice of Intention to Vacate by tenant (i.e. [Tenant’s General Notice of Termination Form](#_Proforma_to_Reimburse))

The RTA states that a Notice of Intention to Vacate must specify a termination date that is not less than 28 days after the notice is issued.

However, the tenancy does not terminate unless the tenant actually vacates the rented premises after giving a Notice of Intention to Vacate (i.e. the Tenant’s General Notice of Termination Form).

The earliest date for termination under this method is either ‘on’ the date specified in the notice, or any time after the 28 days period stated in the RTA – not before.

It is very important that staff ensure the vacating tenant signs a [Tenant’s General Notice of Termination Form.](#_Proforma_to_Reimburse)

If a tenant gives notice but later decides not to move out, the Department does not require them to move out. However, the tenant should notify the housing office immediately. In these circumstances, the tenancy does not terminate.

## Termination on a date agreed between the tenant and the Director

The Director often agrees on a termination date which is earlier than the minimum 28 days’ notice period, i.e. a tenant may return the General Notice of Termination Form indicating that they wish to terminate earlier than 28 days.

The Director will agree to an earlier termination date, but the agreement will be subject to the tenant providing vacant possession. If the tenant does not provide vacant possession on the date specified in the form, the Director agrees that the tenancy will terminate on the date that possession is returned to the Director.

If keys and a Tenants General Notice of Termination Form are returned outside of the local Housing Office’s normal business hours and not received until the next business day, the tenancy termination date is backdated to the previous day. For example, if the keys are left under the local Housing Office door on the weekend, the account is terminated from the Sunday.

## Keys returned with no Tenants General Notice of Termination Form or Notice of Intention to Vacate

If the tenant returns the keys without the [Tenants General Notice of Termination Form](#_Proforma_to_Reimburse), attempt to contact them and request they complete the form.

If the tenant does not complete the form, request the tenant to confirm that they intend to terminate their tenancy. Inform the tenant of the consequence of termination.

If the tenant cannot be contacted, or refuses to complete the form, determine whether the tenancy has ‘terminated’ in any event in accordance with one of the methods for termination under the RTA.

As part of this investigation, arrange to undertake a home visit to inspect the property to determine whether there are any signs of occupation. Also check whether rent is still being paid by the tenant. If it is reasonably clear that the premises have been vacated by the tenant, you will need to decide whether the tenant has:

1. repudiated the tenancy (see above under the sub-heading dealing with repudiation)
2. abandoned the premises (see above under the sub-heading dealing with abandonment).

The termination date in these circumstances will be when the Department:

1. accepts any repudiation by the tenant
2. concludes that the tenancy was abandoned.

If staff make an application to VCAT for a declaration that the tenant has abandoned the premises, the termination date will be determined by VCAT.

## Termination following a Notice to Vacate by Director

### The general position for most notices to vacate

In cases where a Notice to Vacate has been issued by the Director, (other than notices under s.228 (1) (b) and 253), the ‘termination date’ is as follows:

* the date the tenant vacates the rented premises - note the earliest that the ‘termination date’ can be is either ‘on’ or ‘after’ the date specified in the notice.

However, a tenant may terminate the tenancy earlier with the consent of the Director by signing a [Tenant’s General Notice of Termination Form](#_Proforma_to_Reimburse) and returning the keys.

* where a possession order is granted, the end of the day before the tenant voluntarily delivers up possession to the Director RTA (s.228 (1) (b)).
* where a possession order is granted, the end of the day before a warrant of possession is executed (which delivers up possession to the Director).

Death of a sole tenant and subletting / assignment

The termination date for cases where a Notice to Vacate has been issued under s.228 (1) (b) and 253 is as follows:

* 28 days after the Director has given a Notice to Vacate to the tenant’s LPR/NOK (s.228(1)(b), RTA)
* 14 days after the date the Director gives a notice to vacate for sub-letting without consent (s.253, 221, RTA).

Termination date in other cases

### Abandonment by the tenant

The termination date is the date it is established that the premises are abandoned by the tenant. If the Director makes an application for an order of abandonment, VCAT may determine the termination date.

### Where the tenant repudiates the tenancy agreement

The termination date is the date that the Director accepts repudiation by the tenant (rather than when the tenant repudiates).

## Terminating a joint tenancy

Where all co-tenants wish to vacate

The RTA allows a co-tenant from a joint tenancy to terminate and offer vacant possession of their property on behalf of other co-tenants.

Whilst it is preferred that all tenants subject to a joint tenancy sign the [Tenant’s General Notice of Termination Form](#_Proforma_to_Reimburse), if this is not possible, vacant possession may be offered by one tenant and the tenancy can be terminated.

However, it is important that Housing staff establish the intentions of all tenants before accepting that they also wish to terminate the tenancy. This can be done by making contact with the co-tenant.

## Where one co-tenant does not wish to vacate

If any co-tenants do not wish to vacate the property, they shall be offered a new tenancy for the premises commencing on the date that the departing co-tenant’s relinquishment of tenancy takes effect. Please refer to the **Transfer of Tenancy Chapter** for further procedural steps about this.

Where one co-tenant leaves the household without completing the General Notice of Termination or advising that they no longer intend to be part of the tenancy, the Department will consider taking action if requested by the remaining co-tenant.

If the remaining co-tenant requests that the tenancy is transferred to them in their name only, the Department will need to take steps to establish what the intentions of the departing co-tenants are; for example whether it can it be established that the co-tenant has repudiated the tenancy agreement.

Refer to the above steps in relation to ‘repudiation’ to determine whether a co-tenant has repudiated the tenancy agreement. If the Department forms the view that a co-tenant has repudiated the tenancy agreement, the Department may accept the repudiation which terminates the tenancy agreement under the RTA.

Staff should contact Legal Services Branch for further advice in relation to terminating a tenancy agreement in these circumstances.

The remaining co-tenant(s) will ordinarily be offered a new tenancy agreement once the old one has terminated, refer to the Transfer of Tenancy Chapter for the procedural steps around transferring a tenancy.

## Requests for transfer of tenancy

Where a resident or occupant unknown to the Department (not previously included in the household) remains in or occupies the property after a tenancy has terminated, determine the appropriate action and follow all of the relevant procedural steps outlined in the Transfer of Tenancy and Occupants Unknown to the Department, Residents and Squatters Chapters in this manual.

This will enable the Department to determine whether the remaining person is eligible for a tenancy agreement with the Director (under the Transfer of Tenancy Chapter), or if action is to be commenced to obtain possession of the premises (in accordance with the Unknown Occupants, Residents and Squatters Chapter).

When a tenancy is ‘transferred’ from one person to another, the first tenancy must be terminated in accordance with one of the above methods before the new tenancy can be created.

## Removal of goods from the property

It is the responsibility of the tenant to arrange removal of all goods from the property before returning the keys. Goods left behind in the property are managed in accordance with the Abandoned Properties and Goods Chapter. If the Department incurs costs for disposal, these are charged to the vacated account by way of a Maintenance Claim Against Tenant (MCAT).

## Methods by which a tenancy may terminate

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Termination reason | Section of RTA 1997 | Applies where: | Tenancy terminates when? | Evidence / Comments: |
| **By agreement between parties, or with landlord’s consent** | | | | |
| By agreement of parties; or  With consent of the landlord | S.217 Termination by agreement  S.218 Termination by consent | Transfer of tenancy by Department.  ‘Property Management’ Transfers.  Tenant delivers up vacant possession of the premises by signing termination notice and handing in keys. | **Agreement**  Where there has been an **agreement** about the day of termination, then termination will take effect on the date agreed.  **Consent**  Where the landlord provides consent for the tenant to vacate, the tenancy terminates when the tenant delivers up vacant possession of the premises. | Generally the Director requires the General Notice of Termination notice to be signed when tenant vacates and hands back keys.  The Director’s consent or agreement to terminate a tenancy is subject to the tenant providing vacant possession. If tenant does not provide vacant possession and continues to reside in the premises the tenancy does not terminate and the Director does not seek possession of the rented premises. |
| **Termination following Notice to Vacate or Notice of Intention to Vacate** | | | | |
| Landlord gives Notice to Vacate; or  Tenant gives Notice of Intention to Vacate, and  – tenant vacates *on* or *after* the termination date in the notice. | S.219 Termination after notice to vacate (or Notice of Intention to Vacate) issued under Division 1, Part 6 of the RTA.  S.235 Notice of Intention to vacate (Giving of notice by tenant issued under Division 1, Part 6 of the RTA. | The tenant vacates the property on or after the termination date in a Notice to Vacate (or Notice of Intention to Vacate) given under Division 1, Part 6 of the RTA; or  The tenant does not vacate voluntarily but the tenant is evicted following a possession order being granted and a warrant of possession being executed. | **Tenant voluntarily vacates**  On the day the tenant delivers up vacant possession of the premises either on or after the termination date referred to in the Notice of Intention to Vacate or Notice to Vacate  **Note: I**t is important to check the period of notice required for the specific notice to vacate being dealt with.  Generally, a Notice of Intention to Vacate will require the tenant to give a minimum 28 days’ notice, however, the RTA provides for circumstances when a tenant may give less notice  or  **Tenant is evicted**  If a tenant is evicted, the tenancy terminates at the end of day before possession is delivered up to the landlord through the eviction process. | If the tenant vacates before the termination date, the Director may choose to agree, or give consent, to an earlier termination date specified on the notice if the tenant delivers up vacant possession, signs the termination notice and returns the keys. |
| **Tenant abandons property** | | | | |
| Tenant abandons premises (without signing a termination notice or giving a Notice of Intention to Vacate) | S.220 Termination by abandonment  S.241(1) Application for order that tenant has abandoned premises | Tenant has left the premises without giving notice and returning keys and rent is not being paid. Investigation reveals that tenant’s whereabouts are unknown and tenant not likely to return. | Tenancy terminates when the tenant abandoned the premises.  If this date cannot be ascertained, then the tenancy may terminate on the date staff became aware of the abandonment.  In the majority of cases, the Director will apply for an order of abandonment under s 241(1) if the RTA. The termination date will be the day specified in the Tribunal order as the day the premises was abandoned. | The following is a guide only:  External inspection of property indicates it is empty,  No response to contact,  Utility services disconnected,  Uncollected mail,  Rental payments cease,  Investigation confirms tenant is living elsewhere. |
| **Termination by disclaimer** | | | | |
| Tenant disclaims the tenancy | S.225 Termination by disclaimer | Tenant disclaims the tenancy by words or conduct (e.g. by repudiation of the tenancy agreement, i.e. tenant through words or conduct indicates that they do not intend to be bound by the agreement, or acts in a way that is substantially inconsistent with their obligations under the agreement. In order for tenancy agreement to terminate, the landlord must then accept the repudiation e.g. usually by writing to the tenant outlining the basis for the repudiation and confirming the landlord’s acceptance and that the tenancy has ended) | Tenancy terminates on the day that the landlord accepts the repudiation. | Only to be used where a specific section of the RTA does not apply to address the circumstances e.g. If tenant refuses to pay rent, this won't generally amount to a disclaimer but a breach of the tenancy agreement enabling a landlord to serve a notice to vacate under s.246. If a tenant leaves the premises permanently without notifying the landlord, this would more likely amount to abandonment.  **Note:** Staff should seek advice from the Legal Services Branch on whether a set of circumstances amounts to repudiation of the agreement by the tenant. |
| **Premises occupied without licence or consent** | | | | |
| Person entitled to possession makes application claiming that the premises is occupied without their licence or consent | S.344 Application for possession order where premises occupied without licence or consent | Someone is in occupation of the premises without licence or consent of the person entitled to possession of the premises.  **Note:** If a tenancy still exists at law, then the tenant will be entitled to the possession of the property and is the person who may make such an application.  If a tenancy has terminated at law, then the landlord will be entitled to the possession of the property and is the person who may make such an application. | The tenancy must have *already* terminated in accordance with one of the termination provisions under the RTA before an application under s 344 may be made by the Director. | If a tenant no longer resides at the premises or a sole tenant has died, the Director will only be entitled to make an application for possession under s 344 if the tenancy agreement has terminated (and within the last 12 months).  Staff must investigate whether the tenancy has terminated in accordance with one of the provisions of the RTA.  If any occupants remain in the property following a termination, then staff will be required to provide the occupants with an opportunity to apply for a transfer of tenancy before deciding whether to take action to evict them under s 344. |
| **Assignment of tenancy or sub-letting without landlord’s consent** | | | | |
| Tenant has assigned their interest in the lease to another person without the landlord’s consent (i.e. tenant has signed over the existing lease to another person)  Alternatively, the tenant has sub-let (by giving that person exclusive possession) all or part of the premises | S.81 Assignment and sub-letting by a tenant *and*  S.221 Termination where premises are sub-let  S.253 Notice to Vacate for assignment or sub-letting without consent (giving NTV) | Tenant has assigned (i.e. transferred) their interest in the lease to another person (or) tenant has entered into a sub-tenancy with a sub-tenant. | **Sub-letting**  In cases of sub subletting, 14 days after the notice to vacate under s 253 is given to the tenant.  **Assignment**  In **cases, of assignment,**  when vacant possession is delivered to the landlord either on or after the 14 day notice to vacate period; or  the day before the premises is delivered up to the landlord through an eviction. | Documentation or evidence that the tenant has assigned the lease to another person.  Sub-letting agreement for all or part of the premises signed by the tenant. Can be in the form of an agreement, letter or other written document.  **Note:** S.81 of the RTA requires the consent of the landlord to be obtained before any assignment or sub-letting.  **S 83** states that it is not unreasonable for the Director of Housing to withhold consent as a landlord on the ground that assignment or sub-letting would disadvantage persons on a public housing waiting list. |
| **Someone moves into premises without consent of tenant or landlord after the tenant vacates** | | | | |
| Someone moves into premises without consent of landlord, after the tenancy has terminated and the tenant has delivered up vacant possession. | S.9 Summary Offences Act | Person in occupation moved into the premises without the landlord’s consent after the tenant left the tenancy, the tenancy has terminated and the tenant has delivered up vacant possession. | Not relevant as there is no tenancy on foot.  Such a person is considered a squatter or trespasser and this is dealt with by the criminal law. | Signs of break-in to property,  Discussion with occupant (if possible),  Reports from neighbours,  Check occupant not listed on household of former tenancy  Tenancy has terminated and the tenant had delivered up vacant possession (either voluntarily or through a warrant of eviction).  Action must be taken in line with the ‘Occupants unknown to the Department, Residents and Squatters Chapter’ a.s.a.p. to avoid the squatter claiming that the Department has given consent to the squatter remaining in the premises. |
| **Termination after death of sole tenant** | | | | |
| Sole tenant deceased | S.228 Termination after death of sole tenant | Applies where a sole tenant has died.  Non-tenants may or may not reside in the premises. | Where sole tenant is deceased, termination occurs:  28 days after written notice of the death is given to the landlord by the legal personal representative or next of kin of the tenant.  28 days after a notice to vacate is given by the landlord to the legal personal representative or next of kin of the tenant.  on a date agreed in writing between the landlord and the legal personal representative or next of kin of the tenant.  on a date determined by VCAT on an application by the landlord to terminate the tenancy. | Notification of death of sole tenant (e.g. letter from legal personal representative or next of kin)  Death notice or other document verifying death (e.g. letter from hospital, nursing home signed by person able to verify death (e.g. General Practitioner, Police Officer or authorised officer).  Consideration is given to whether there are any eligible household members who may become tenants. If any remaining household members are ineligible for a tenancy under the Department’s policy, an application for possession may be made under s.344 (Premises occupied without consent).  A notice to vacate under s.228(1)(b) is given by the landlord where notification of the death is not received in writing from the legal personal representative or next of kin  Where a notice to vacate cannot be given (e.g. where there is no legal personal representative or next of kin and State trustees are unable to assist), the landlord makes an application to VCAT under s.228 (2) to terminate the tenancy. |

# Deceased Estates Policy

## Aim

Once the Department becomes aware that the sole tenant of a public housing property is deceased, steps are taken to ensure that:

* the tenancy is terminated consistent with law
* the time a property is vacant is minimised
* the property is made available to an eligible applicant on the public housing waiting list or the property is transferred to remaining occupants/residents if they are eligible.

## The Department becomes aware the sole tenant is deceased

Upon becoming aware that the sole tenant is deceased, the Department seeks to promptly identify the Legal Personal Representative (LPR) or Next of Kin (NOK) of a deceased tenant. The LPR/NOK is the person with whom the Department makes arrangements for the tenancy to be terminated and to deliver up vacant possession of the property.

The Department takes reasonable steps to substantiate the legitimacy of a LPR/NOK, as explained below. However, before any contact is made with the LPR/NOK to terminate the tenancy, Housing staff must confirm that the LPR/NOK has been notified of the tenant’s death by the appropriate authority.

The Department may deal with either the LPR or NOK in relation to terminating the tenancy.

As for arranging the removal of goods from the property, where an executor (i.e. LPR) has been appointed the Department will deal with them, rather than a NOK (unless the Executor is also the NOK). This is because their rights to administer the estate supersede those of the NOK. If there is no Executor (or other LPR), the Department will generally deal with the NOK in relation to the removal of goods from the property.

## Identifying the LPR and NOK

A LPR is the person with the greatest legal right to administer the deceased’s estate. They may be either of the following persons:

the Executor appointed by the sole tenant in their Will: They are the person or organisation who is responsible for administering the deceased’s estate and managing all the legal and financial issues that arise from a Will

the Administrator where there is no Will. They may be the next of kin or a state appointed trustee (i.e. State Trustees Ltd), who is granted ‘letters of administration’ from the Supreme Court which authorises them to manage the affairs of someone after death.

A NOK is the closest living relative (by blood or marriage) of a deceased person. The Department requires them to produce documentary evidence that they are the NOK of the deceased (e.g. a birth certificate showing that the person is a son or daughter of the deceased tenant).

The tenancy can be brought to an end by communicating with the LPR or NOK under one of the methods described in the section **Tenancy termination** below.

Where staff are unable to establish who the LPR (Executor, Administrator) or the NOK is, the Department contacts Victoria Police to see if they can provide details of who the NOK is.

## Role of State Trustees

State Trustees may assist in locating the NOK or LPR

In cases where staff are unable to determine who the Executor or the NOK of the Will is, staff may also contact the [State Trustees website](https://www.statetrustees.com.au) < https://www.statetrustees.com.au> to obtain assistance in locating a LPR or NOK. [Referral to State Trustees.](#_Referral_to_State)

State Trustees may sometimes play another role

Under the *Administration and Probate Act 1958* (s.19) the estate of a person who dies without a Will vests in State Trustees Ltd until such time that ‘letters of administration’ are granted by the Supreme Court.

State Trustees Ltd may eventually be granted letters of administration by the court where there is no Will, in circumstances when no one else is able to be an Administrator, i.e. there is no next of kin.

In some instances, State Trustees Ltd may also be the Executor of a deceased estate, either because they are named as the Executor in a Will or because the Court has appointed them to be the Executor through a Grant of Probate. This could occur if the named Executor has died or is unwilling/unable to undertake the role of Executor.

In cases where State Trustees is the LPR of the Estate, because they are the Executor or an Administrator, Housing staff should request that State Trustees Ltd provide the Department with written notification of the death as soon as possible (if they have not already done so), and confirmation that they are the LPR (either Executor or Administrator).

If no LPR or NOK has been identified, and State Trustees Ltd are unwilling to assist, staff may apply to VCAT for an order to terminate the tenancy pursuant to the RTA (s.228(2)), [General application to VCAT if unable to serve Notice to Vacate (example)](#_General_application_to). Staff should contact Legal Services Branch prior to applying to VCAT for an order of termination if they require advice.

In some cases, the Supreme Court can make orders allowing State Trustees Ltd to deal with a deceased tenant’s property if the Executor or Administrator cannot be located and the court is satisfied that the person has died, as per APA (s.24A (1)(e)).

## Documentation

Wherever possible staff should ask the LPR/NOK to provide acceptable evidence which verifies the sole tenant’s death. This includes:

* an original or certified copy of the death certificate
* where a death certificate cannot be obtained, a formal letter (e.g. on letter-head) signed by a relevant person able to verify the date of death, for example a General Practitioner, Police Officer or authorised officer of a hospital or nursing home.

Staff should note that if evidence is not provided, this does not stop the tenancy from terminating if the LPR/NOK provides written notice of the death of the sole tenant (see below in relation to the ways a tenancy terminates following the death of a sole tenant). If staff are concerned that the sole tenant has not died, they should contact Legal Services Branch for advice on what steps to take.

## Tenancy termination

In accordance with the RTA, there are four ways a tenancy terminates after the death of a sole tenant. The termination date will be the earliest of these four methods.

1. Receiving written notice of death from the LPR or NOK

If a sole tenant dies, the tenancy terminates 28 days after receipt of written notice of the death of the tenant from the LPR or NOK, as per the RTA (s.228 (1)(a)).

Staff may receive written notice from either the LPR or NOK.

Staff should request the LPR/NOK to complete the [Notification of Death from Legal Personal Representative or Next of Kin Form](#_Notification_of_Death). However, any written notice of the death of the sole tenant by the LPR or NOK will terminate the tenancy.

1. Serving a Notice to Vacate on the LPR/NOK.

If a sole tenant dies, the tenancy agreement terminates 28 days after the Director has given a notice to vacate to the LPR or NOK of the tenant, as per the RTA (s.228 (1) (b)).

The tenancy terminates automatically upon the expiry of the Notice to Vacate.

Staff may give the notice to the LPR or NOK, [Notice to Vacate to Legal Personal Representative or Next of Kin](#_Notice_to_Vacate).

A covering letter is sent to the LPR/NOK with the notice, [Letter to accompany the Notice to Vacate under s.228 (1) (b)](#_Letter_to_accompany).

However, before a Notice to Vacate is served, steps are taken to confirm whether anyone still resides in the property and to inform any occupants/unknown residents that they may apply for a transfer of tenancy. Staff should also inform the LPR or NOK of the process for vacating.

This method should be used only if the LPR/NOK has not provided written notice of the death of the sole tenant.

1. By written agreement with the LPR or NOK

If a sole tenant dies, the tenancy agreement can terminate on a date agreed in writing between the Director and the LPR/NOK, as per the RTA (s.228 (1) (c)). See further below under the heading ‘The Department may agree to terminate earlier than the 28 day period’.

1. By applying to VCAT for an order terminating the tenancy

If a landlord is unable to give a notice to vacate to a LPR or NOK to terminate the tenancy, they may apply to VCAT for an order to terminate the tenancy as per the RTA (s.228 (2)), [General Application to VCAT if unable to serve Notice to Vacate (example)](#_General_application_to).

The termination date for the tenancy will be determined by VCAT.

This application should only be made where staff are unable to identify a LPR or NOK in order to serve a notice to vacate on them.

The Director will only enter into possession of a property if no one else is residing there when the tenancy terminates. If other people reside there, staff will need to consult the Transfer of Tenancy and Occupants Unknown to the Department, Residents and Squatters Chapters to determine what action to take.

Rent continues to be charged to the deceased estate in accordance with the rebated rent entitlement at the time of death, until the tenancy is terminated.

## The Department may agree to terminate earlier than the 28 day period

Where the Department receives a completed [Notification of Death form by the Legal Personal Representative or Next of Kin](#_Notification_of_Death) (or other written notice of the death of the sole tenant e.g. a letter signed by the LPR/NOK), the tenancy legally terminates automatically 28 days after receipt of the form or other written notification.

If the form or letter specifies that the tenancy should terminate earlier than the 28 day period of notice required (i.e. prior to the 28 day notice period provided in the RTA (s.228 (1) (a)), the Department may agree to terminate the tenancy on that earlier date. For this to take effect, the LPR/NOK should be asked to sign a letter outlining the termination by agreement. The Housing staff member should sign this letter too. This constitutes a legal termination of the tenancy by agreement in writing under the RTA (s.228 (1) (c).

However, the Department will only agree to an earlier termination date on the basis that the LPR/NOK returns the keys and delivers up possession on the day agreed. Otherwise, the tenancy agreement will terminate 28 days after written notice was given to the Director.

## 14.3.8 Remaining residents and occupants

The Department will need to decide what action to take in relation to any persons continuing to reside in the property after the tenancy with the sole tenant has terminated.

Staff should determine whether anyone else resides in the property as soon as they become aware that the sole tenant has died.

Staff must follow all of the relevant steps in the Transfer of Tenancy and Occupants Unknown to the Department, Residents and Squatters Chapters to determine what action to take. Possible action includes entering into a tenancy agreement with the remaining person(s) (Transfer of Tenancy Chapter) or taking steps to regain possession (Occupants Unknown to the Department, Residents and Squatters Chapter).

## Regaining possession of the property after the tenancy agreement has been terminated

The steps to enter into possession will be determined based on whether anyone is in occupation of the premises following termination.

If no one is occupying the property following termination, the Director may enter into possession of the premises and change the locks.

This may only occur if it is clear from all enquiries made that the property is not occupied.

If any person is residing in the property (including a resident or occupant) and the Department has rejected their transfer of tenancy application, then the Director may apply for possession of the property in accordance with the Occupants Unknown to the Department, Residents and Squatters Chapter.

Only after the tenancy has legally terminated in accordance with the earliest of the four methods described above can an application be made to VCAT for a possession order.

An application to VCAT for a possession order is under s.344 on the basis the person is occupying the property without the licence or consent of the Director of Housing. Refer to all relevant steps in the Occupants Unknown to the Department, Residents and Squatters Chapter.

In reaching any decision to seek a possession order, the full circumstances of any occupants, including their human rights recognised under the Charter of Human Rights and Responsibilities Act 2006 (the Charter), will have been considered when the Transfer of Tenancy application was assessed.

## 14.3.9 Access to the property of deceased tenants before tenancy termination

### Gaining entry

Until the tenancy has been terminated, only the LPR/NOK (including State Trustees Ltd if they are the LPR/NOK or the tenant has died without leaving a Will), or a person authorised by the LPR/NOK can enter the rented premises.

Staff may enter the premises with the permission of the LPR/NOK or by complying with the entry requirements set out in the RTA (see Access to Properties Chapter).

If neither the Department nor the LPR is in possession of the keys, the Department arranges a contractor to change the locks - at the request of the LPR - in the presence of housing staff and preferably the LPR. However, neither the contractor nor housing staff should enter the property, and the keys are given to the LPR.

When the Department does not have the keys to the property but it is keyed to a master key system, master keys may be used by housing staff under the conditions described in ‘Supervised Access’. Access may also be provided by the Department to another person under the conditions described under Supervised Access in this section.

### Supervised access

The Department contacts the LPR for verbal permission to allow access supervised by the Department (as outlined in the **Access to Properties Chapter**) in circumstances where:

* clothing of the deceased is required for the funeral
* arrangements need to be made to feed and/or remove pets, as
* perishables require disposal.

The person requesting access is advised that they will be accompanied by a staff member, and they are not to remove any personal papers or belongings of the deceased, with the exception of funeral requisites, perishables and pets.

Where a person wishes to reclaim their own belongings which are stored at the rental property and ownership can be proven as the third party’s belongings, it is appropriate to allow those items only to be taken. For example, a passport, or other personal documents.

Where a LPR has not been identified, supervised access may be given to a member of the Victoria Police to locate paperwork identifying the LPR/NOK.

For other situations where supervised access may be required (e.g. flooding within the property due to a plumbing fault), refer to the **Access to Properties Chapter** in this manual.

### Unsupervised access

Only the following people are permitted unsupervised access to the rental property, as per the **Access to Properties Chapter**:

* a LPR of the deceased estate
* or if there is no LPR, the NOK
* a property inspector for State Trustees Ltd acting as LPR
* Police Officers authorised by State Trustees Ltd to act on their behalf.

### Removal of goods from the property

It is the responsibility of the LPR of the deceased to arrange removal of all goods from the property before the tenancy is terminated. Goods left behind in the property after the LPR is given an opportunity to remove them and the tenancy has terminated are treated as abandoned goods. Staff must follow the RTA provisions which deal with goods left behind following the termination of tenancy. Staff should consult the Abandoned Properties and Goods Chapter which will guide this process.

If the Department incurs costs for storage, sale and/ or disposal of the goods, these may be charged to the deceased estate by way of a Maintenance Charge Against Tenant (MCAT) in line with the goods left behind provisions of the RTA, as dealt with in the Abandoned Properties and Goods Chapter. The MCAT should be deactivated in the event that there are insufficient funds in the estate to cover the charge.

When the estate is administered by State Trustees Ltd, they arrange payment of the MCAT from either the estate or their own funds.

# Terminating Tenancies Procedures

## Receiving a Notice of Intention to Vacate / General Notification of Termination Form

RTA (s.235)

When a tenant advises that they intend to vacate their rental property, advise them that:

Written notification, signed by the tenant, is required and they will be sent the Departmental [Tenants General Notice of Termination Form](#_Proforma_to_Reimburse). The Department requests that 28 days’ notice be given wherever possible.

* Rent will be charged until possession of the property is delivered up to the Department, including the return of the general notice of termination and keys.
* All goods and personal belongings must be removed by the tenant from the property before it is handed back.
* A condition inspection of the property will be conducted, before they vacate. Where the tenant vacates the premises without providing sufficient prior notice to inspect the property, it is inspected within two working days after the keys are returned to the Housing Office. Any repairs or cleaning required which is the responsibility of the tenant may be charged to their account.

Upon receiving verbal or written advice, record the tenant’s intention to vacate in HiiP and generate:

* an intention to vacate acknowledgement letter
* a Tenant’s General Notice of Termination Form for the tenant(s) to complete and return as soon as possible
* an account statement to show any outstanding charges that need to be repaid and a Vacated Tenancy Agreement Form.

A copy of the checklist [Vacating Instructions](#_Vacating_Instructions).

If the tenant later advises that they no longer want to move out of the property, cancel the tenant’s Intention to Vacate record in HiiP.

## Vacating inspection

When a tenant advises of their intention to vacate, arrange an inspection of the rental property in order to complete a Tenancy Condition Report, as per the **Maintenance Manual**. The inspection should occur prior to the tenant vacating wherever possible.

Once the Tenancy Condition Report is completed, record the Moving out Tenancy Condition report in HiiP.

## Terminating the tenancy and the account

## Termination of tenancy by the tenant

Terminate the tenancy in HiiP in accordance with the ‘policy section’ of this chapter. The termination date for a tenant initiated termination will generally be the date the tenant delivers up possession of the property by submitting the [Tenant’s General Notice of Termination Form](#_Proforma_to_Reimburse) and returning the keys to the housing office. Staff will need to refer to the policy section of this chapter, to determine the termination date. Record the return of keys in the key register in HiiP and provide a receipt to the tenant. If the keys are mailed to the office with a general Notice of Termination Form, send a ‘return of keys’ receipt to the forwarding address if known or the last known address (i.e. vacated premises) and record this in the key register.

Where the keys are returned to a non-controlling office, the key register should be updated to reflect the date the keys were received, and also the date that they were forwarded to the controlling office. Upon receipt of the keys, the controlling office can then confirm the actual termination date with the office that initially received the keys.

Label and retain the keys to be given to the contractor undertaking the vacant unit maintenance. Generate a tenancy termination letter via HiiP and provide this to the tenant either by hand or by sending it to their forwarding address. If the forwarding address is not known, send the letter to the rental property as the last known address.

## Termination by landlord

Determine the date the tenancy has been terminated by referring to the policy section in this chapter. Enter this ‘termination date’ in HiiP.

Once the tenancy is terminated, and no one else is residing in the premises, the maintenance contractor is authorised by Housing staff to change the locks to all external doors of the property. The property is left completely secure, including locking of windows, sheds and garages.

If the tenant has left possessions in the property they are advised to contact the Housing Office within three days to arrange for access to the property to remove their goods, as outlined in the **Abandoned Properties and Goods Chapter.**

If the tenant fails to collect their goods within the specified time, the abandoned goods policy and procedures apply.

In cases where a warrant of possession has been executed, a [Warrant Outcome Details](#_Warrant_Outcome_Details) advice is completed and copies forwarded to nominated regional staff. A copy is placed on the tenancy file together with a copy of the executed warrant.

For warrant outcomes in rental arrears cases the Ministers Office, Director - Housing Services, Director - Client Services and Programs, and the Media Unit are only informed of warrant outcomes when there are particular issues that need to be communicated.

## Other methods of termination

Staff will also need to be mindful that a tenancy can terminate because a set of circumstances has occurred, rather than by initiation by the landlord or tenant.

For example, in cases of unlawful subletting / assignment, repudiation by the tenant and abandonment. Carefully determine the termination date for the tenancy in accordance with the policy section of this chapter. File note details of the investigation and the circumstances by which termination of the tenancy has occurred. Enter the termination date in HiiP accordingly.

## Movable units

When a Movable Unit is vacated, terminate the hiring agreement in accordance with the agreement. Terminate the account in HiiP and send the labelled keys and a copy of the HiiP vacancy notice to:

Movable Units, Level 26, 50 Lonsdale Street, MELBOURNE 3000.

## Police Witness Protection Program

When a tenant vacates because they are relocating as part of the Police Witness Protection Program, do not enter a forwarding address or make file notes, in order to ensure confidentiality of their new location. If the tenant is transferring to another Departmental property, their old and new accounts must not be linked for the same reason.

## Remaining occupants when the tenant vacates

When a tenancy is terminated and a resident or occupant unknown to the Department who is not a signatory to the tenancy agreement remain in the rental property, determine what action to take in line with the Occupants Unknown to the Department, Residents and Squatters Chapter and Transfer of Tenancy Chapter.

Undertake all of the procedural steps referred to in those chapters including conducting a home visit, and interviewing persons residing in the property before making a decision in relation to their continued occupation of the premises. Referrals to support services must also be made where necessary.

Residents and occupants unknown to the Department are entitled to submit a transfer of tenancy application. If they have not done so, contact them to ensure they understand that they are entitled to do so otherwise the Department will make an assessment on the basis of the information which is currently known to the Department. Staff must follow all steps outlined in the Transfer of Tenancy Chapter and Occupants Unknown to the Department, Residents and Squatters chapter.

Where the occupant is a squatter, note that whilst the Department may consider a request to sign a tenancy agreement with them, it is often necessary and important to evict squatters in order to meet the Department’s policy aim of fairly and efficiently allocating public housing. Staff should make the assessment in accordance with the criteria outlined in the Occupants Unknown to the Department, Residents and Squatters Chapter.

If the occupant, resident or squatter is ineligible to have the tenancy transferred into their name, appropriate action is taken to terminate the tenancy and regain possession of the property in accordance with the Occupiers Unknown to the Department, Residents and Squatters Policy and Procedures.

## Account balances for vacating tenants

## Credit at the time of vacating

If vacating an account results in a credit balance, advise the tenant that this money will be refunded once the account has been finalised by Revenue and Accounts Receivable Section, Finance and Business Services Branch - Vacated Tenants Section.

## Arrears at the time of vacating

When a tenant has an outstanding debt of rent and/or maintenance (MCAT) charges at the time of vacating the rental property, check whether they have a repayment agreement in place. If not, inform them of the amount owing and request that they pay it in full. If the tenant cannot pay all charges owed, negotiate a [Vacated Arrears Agreement](#_Vacated_Arrears_Agreement). If a Legal Agreement is in place, inform the tenant that they are obliged to continue their arrears repayments as per the agreement until all the debt is repaid. Ensure that the tenant signs a [Vacated Arrears Agreement](#_Vacated_Arrears_Agreement) with the same weekly repayment amount as the Legal Agreement, to acknowledge their understanding that payments must continue after the tenancy ends, as detailed in the **Vacated Tenants Accounts Chapter.**

Make copies of any agreements for the tenant and fax them to Revenue and Accounts Receivable Section, Finance and Business Services Branch, on fax: (03) 9096 9127.

## Changing termination details

## Altering the termination date

A tenancy termination date may only be altered to rectify an error which occurred when the termination date was initially registered in HiiP, including when there is updated information as to a correct termination date.

However, as a tenancy agreement only terminates in accordance with the RTA, staff cannot alter a termination date if it is inconsistent with the method for termination which was utilised.

For example, if it is established that premises were abandoned on 10 June 2011, the tenancy agreement will have terminated on this date. Staff must not then alter the date to a date which is before or after this date.

The termination date can be altered via the HiiP termination screen and requires Housing Services Manager (HSM)/Housing Manager (HM) approval. If a termination date further than 14 days prior needs to be entered (e.g. due to a VCAT order), this is escalated to a HSM/HM for approval.

## If a tenant wishes to return to a property after they have terminated

Where tenancy has not been terminated

If the tenant has vacated, but the tenancy has not terminated in accordance with one of the methods provided in the RTA, then the tenant is free to change their mind and move back into the property.

Where tenancy has been terminated

If the tenant wishes to return to the property after they have voluntarily vacated (i.e. not following the initiation of legal action by the Department) and the tenancy has terminated in accordance with the RTA, the HSM will need to decide whether to enter into a new tenancy agreement with them. The previous tenancy will have terminated at law.

In order to make this decision, the HSM will need to consider the negative impact which non-approval may bring about for the person, their reasons for wanting to return to the property and how far the Department has proceeded down the process of re-letting the property.

The HSM will need to balance any negative impact on the person with the reasons for rejecting the request, in order to reach a decision. The HSM will also need to consider whether there are any alternative options which may be available in the circumstances.

Staff should request any information or supporting documentation from the tenant and send a request to the HSM to decide what action to take.

Where the HSM decides that a new tenancy agreement should not be signed with the former tenant, the decision and reasons are provided to them in writing. Scan this letter into HiiP and place a copy on the tenancy file.

Where a decision is made to sign a new tenancy agreement, arrange a sign up interview and follow the procedures in the Signing Residential Tenancy Agreements chapter in the Allocations Manual.

## Updating the forwarding address

If the former tenant provides new contact details for a terminated tenancy, update the details in HiiP. Advise the former tenant that any mail for this tenancy will be sent to the forwarding address provided.

# Deceased Estates Procedures

## Notifying Next of Kin of death of tenant and identifying the NOK

If the Housing office becomes aware of the death of a tenant before a NOK has been located and the tenant did not die in hospital, inform Victoria Police. The Police will make initial enquiries to determine the NOK and inform them of the tenant’s death.

If the tenant died in hospital, the hospital will inform the NOK.

Provide any relevant information from the file to the appropriate organisation which will aid their investigations in establishing who the next of kin may be.

Request that the NOK, when found and notified, be asked to contact the Housing Office. Ask that the Housing Office is also provided with the LPR/NOK’s name, address and telephone number.

It is not the role of the Department to inform a tenant’s NOK of their death. If the NOK contacts the Housing Office before they have been notified of the tenant’s death, refer them to the appropriate organisation, for example, the police or hospital.

## Identifying the NOK

Ask the NOK for the following documents:

* identification,
* a completed [Notification of Death form by Legal Personal Representative or Next of Kin](#_Notification_of_Death)
* the death certificate showing them as NOK
* If the death certificate is not available, an official document showing the relationship of the NOK to the deceased. For example a birth certificate identifying the tenant as a parent, or a marriage certificate identifying the tenant as a spouse.

## Identifying the LPR

When the NOK is in contact with the Housing Office, take reasonable steps to identify the tenant’s LPR. Ask the NOK whether the tenant left a Will, and if so, who the Executor of the Will is.

If there is no Will, ask if there is an Administrator for the deceased estate, appointed by the Supreme Court. Note: if the Housing Office becomes aware of the death of the tenant soon after their death, it is unlikely that an Administrator will have been appointed.

If you become aware that two or more LPRs are in dispute as to who should administer the estate, contact **Legal Services Branch.**

## Tenant has left a will

If the tenant has left a Will, the executor of the Will is the LPR and the only person whom the Housing Office can allow to remove goods from the property. The LPR must provide:

* identification
* a certified copy of the Will or the original to be copied by the Housing Office
* a completed Notification of Death form.

## State Trustees Ltd.’s role where staff are unable to determine LPR / NOK

If after five working days the Police have been unsuccessful in locating the NOK, request assistance from State Trustees Ltd by completing and faxing the [Referral to State Trustees Form](#_Referral_to_State) on fax: (03) 9667-6287.

State Trustees Ltd will continue the search for the LPR/NOK and inform you accordingly.

In some situations, State Trustees Ltd may be the LPR. For example, they may be named as the Executor of the Will or they may have been granted ‘letters of administration’ by the court. If this is the case, they will tell you.

If State Trustees are the LPR:

* ask them to provide you with written notification of the death of the sole tenant (thereby terminating the tenancy 28 days after) as per the **RTA (s.228)**
* send a notice to vacate to them as the LPR (terminating the tenancy thereafter).

Refer to [page 24 section 14.4.1](#_Receiving_a_Notice) for further detail.

In cases where State Trustees Ltd are the Executor or Administrator (or where someone dies without a Will) State Trustees Ltd may want to inspect the property and if there are any goods or vehicles on the property, to arrange for their removal. A property inspector contacts the Housing Office to arrange access for an inspection, which should be conducted as soon as possible to avoid delaying the vacant unit maintenance.

If a property inspection has not been conducted or arranged to be conducted within five working days of sending the referral to State Trustees Ltd, contact them to see whether they intend on undertaking an inspection.

If the Housing Office is in possession of the keys, give the keys to the property inspector after identification is sighted confirming that they are an employee of State Trustees Ltd. If the Housing office does not have keys to the property but there are master keys, accompany the property inspector to allow access to the premises. Make a time to return and secure the property when the inspection is complete.

If the Housing Office is not in possession of the keys, arrange for a contractor to change the locks, in the presence of a Housing Services Officer (HSO). Store the keys at the Housing Office on behalf of State Trustees Ltd as executor.

In some regional areas State Trustees Ltd may request the assistance of the local Police or Real Estate Agent to act on their behalf. If this occurs, confirm and file note that this authority has been given by way of a phone call to State Trustees Ltd.

## Correspondence address

When the death of a sole tenant has been confirmed, alter the correspondence address on HiiP to:

The Estate of <insert name> (Deceased) c/o

<insert number and street name of the rental address>

<insert suburb or town of the rental address>

All other correspondence relating to the deceased estate for the LPR and/or occupiers of the property should also be addressed in this way, unless another address is established for the LPR. In this case the address only is changed. Do not address mail to an individual.

If a letter is sent to an occupier in their own capacity, i.e. in relation to a transfer of tenancy application, then this should be addressed directly to them with their name.

Legal notices are not to be sent until the Housing Office has confirmed that the NOK is aware of the death.

## Tenancy termination

As outlined in the policy section above, the tenancy may be terminated in one of four ways after the death of a sole tenant. The method applied will depend on the circumstances as described below.

## (1) The Department receives written notification of death

Upon receipt of written notification of the death of a sole tenant from the LPR/NOK, establish that the author of the notice or letter is the LPR or NOK.

Once the identity of the LPR/NOK has been established, send an acknowledgement letter informing the LPR/NOK that the tenancy will terminate 28 days from when they gave the written notification. Include the relevant tenancy termination date in the letter. If they have not completed a [Notification of Death form by Legal Personal Representative or Next of Kin](#_Notification_of_Death), ask them to complete one. Note: if the form is not returned, the tenancy still terminates 28 days after the earlier written notification of the death of the sole tenant was given by the LPR/NOK.

Also indicate that all personal property will need to be removed from the property by the LPR (or authorised person) before termination, failing which the property will be handled in accordance with the ‘goods left behind’ provisions of the RTA (as outlined in the Abandoned Goods and Properties Chapter). Confirm that the rent will continue to be charged to the estate until the date of termination. Lastly, ask that they arrange for the keys to be returned.

Additionally, enclose the following documents with the letter:

* a rental account statement and indicate the ‘paid to’ date
* a [Vacating Instructions](#_Vacating_Instructions) checklist.

Terminate the tenancy in HiiP 28 days after the written notification was received (this date is outlined in the letter to the LPR/NOK). It does not matter if the keys are received from the LPR/NOK or if they have not returned the [Notification of Death form by Legal Personal Representative or Next of Kin](#_Notification_of_Death) (provided they provided some other form of written notice of the death of the sole tenant).

## (2) The Department informed of death but not in writing from LPR/NOK - Send Notice to Vacate to LPR/NOK

Upon being notified of the death of the sole tenant, you will need to establish the identity of the LPR/NOK.

Before sending any correspondence, contact the LPR/NOK to discuss the tenancy of the deceased. If necessary, arrange an interview. Ensure that the discussion is respectful and sensitive as this is likely to be a difficult time for the family/representative of the deceased.

Explain that:

* the Department has a waiting list of persons in urgent need of housing who it attempts to assist as soon as possible once a property is no longer occupied
* the Department will seek to end the tenancy by issuing a Notice to Vacate. However, also explain that the tenancy may be ended earlier with the consent of the parties, by the LPR/NOK giving notice in writing and providing documented evidence of the tenant’s death
* sending the Notice to Vacate is a legal requirement in order to bring the tenancy to an end
* under the RTA, the tenancy will automatically end 28 days after the notice is given to the LPR/NOK
* the LPR will be required to deliver up vacant possession of the property on or before the termination date specified in the notice. This includes ensuring the property is empty of all goods, possessions and fixtures, and returning the keys to the local Housing Office
* rent will continue to be charged until the termination date
* if the property is occupied by someone, they should contact the local office to discuss their future occupation of the property and submitting a transfer of tenancy application. If they are not eligible for a tenancy, they will be requested to leave.

If the tenant’s death has been confirmed and written notice of the death has not been received from the LPR/NOK, send a Notice to Vacate together with the covering letter to the LPR/NOK by registered post.

If written notice has been received, then the tenancy terminated 28 days thereafter (see above).

Record the registered post number on a copy of the documents sent and place these in the tenancy file. Enter a file note in HiiP noting that the notice was served and include the registered post number. Ensure that the termination date is recorded to follow up if vacant possession of the property is not delivered.

Make a note to follow up with the LPR/NOK a fortnight after the Notice to Vacate was served. Make a courtesy call to check how the LPR/NOK is progressing, and whether they are experiencing any difficulties. If they are having problems removing goods etc, refer them to local services which may be able to assist.

## (3) By agreement with LPR or NOK

If the keys and vacant possession are delivered to the local office by the LPR/NOK before the 28 day period, the Department may agree this date to be the date the tenancy is terminated. The agreement must be recorded in writing. This becomes a termination by agreement in writing under the RTA (s.228 (1) (c)).

The Department may reach an agreement even if the 28 day notice period has not expired (if options (1) and (2) have been utilised). However, an agreement can only be reached if the keys and vacant possession are delivered up.

The LPR/NOK should be asked to complete the Notification of Death form, if they have not already done so.

## (4) Applying to VCAT for an Order Terminating the Tenancy

This option should only be used if staff have confirmed the death of the sole tenant but are unable to identify a LPR or NOK.

The Director may apply to VCAT under the RTA (s.228 (2)) for an Order Terminating the Tenancy agreement.

Complete an application to VCAT and file it in the usual way, [General application to VCAT if unable to serve Notice to Vacate (example).](#_General_application_to) A copy of the application should also be served on the rented premises by registered post.

At the hearing, staff will need to explain to VCAT the steps they have taken to identify the LPR and NOK as well as providing evidence they have which establishes the death of the sole tenant.

The tenancy will terminate on the date provided in VCAT’s order (s.228 (1) (d)).

## Regaining possession of the property following termination of the tenancy if property is vacant

Staff should note that a tenancy can terminate (at law) in accordance with the **RTA (s.228)** without vacant possession (including keys) being delivered to the Director.

Before the tenancy is terminated, staff should inform the LPR/NOK that it is the Department’s policy to enter into possession of the premises very shortly after the tenancy is terminated at law.

Staff are required to establish whether any other persons are occupying the property upon being informed of the sole tenant’s death.

If no one is occupying the property, and the keys and vacant possession have not been delivered up when the tenancy has been terminated, the following is discussed with the LPR/NOK:

* The tenancy legally terminated under the RTA on <date>.
* The Director of Housing may now enter into possession of the premises.
* If the keys are not returned within a reasonable timeframe (e.g. 3 business days), the Director will enter into possession of the premises. The locks will be changed and any goods remaining in the property will be treated in accordance with the Department’s **Abandoned Goods** Policies.

Attempt to negotiate the return of the keys within the three day timeframe. File note the discussion in HiiP.

Arrange a date and time with the Department’s contractor to meet at the property to change the locks and secure the property.

## Regaining possession of the property following termination of the tenancy if property is occupied

If the property is occupied (by residents or occupants unknown to the Department) at the time of tenancy termination, staff must not attempt to enter possession of the premises or change the locks.

Instead staff will be required to follow all of the relevant steps outlined in the **Transfer of Tenancy and Occupants Unknown to the Department, Residents and Squatters Chapters.**

For example, residents and occupants unknown are entitled to submit a transfer of tenancy application so they may be assessed for a transfer of tenancy. Applicants assessed as eligible are granted a tenancy. Ineligible applicants will be required to vacate the premises. If they do not vacate, then an application under the **RTA (s.344)** for a possession order will be made.

Note: Staff must consult the Transfer of Tenancy and Occupants Unknown to the Department, Residents and Squatters Chapters closely.

## Removal of goods from the property

Inform the LPR that it is their responsibility to arrange removal of all goods from the property before the tenancy terminates.

Any goods remaining in the property following termination of tenancy, and not collected by the LPR shortly after termination, are treated in accordance with the goods left behind provisions of the RTA, as reflected in the Department’s Abandoned Property and Goods Chapter.

In circumstances where the deceased tenant’s goods are to be disposed of in accordance with the **RTA**, and the Director incurs costs for their disposal, inform the LPR that the deceased estate is liable to pay these charges. If the LPR later advises that there are insufficient funds in the estate to pay the charge, ask them to complete a [Legal Personal Representative Declaration regarding Outstanding Charges](#_Legal_Personal_Representative) to that effect and deactivate the MCAT.

When the estate is administered by State Trustees Ltd they will arrange payment of the MCAT from either the estate or their own funds. An MCAT against State Trustees Ltd as administrator should never be pursued at VCAT.

## Outstanding account balances for deceased tenants

## Credit balances for deceased tenants

If terminating the tenancy of a deceased tenant results in a credit balance, advise their LPR that this money will be refunded once the account has been finalised by Revenue and Accounts Receivable, Finance and Business Services Branch - Vacated Tenants Section (refer to the **Vacated Tenants Accounts Chapter** in this manual).

## Arrears for deceased tenants

Where the tenant is deceased, Revenue and Accounts Receivable Section, Finance and Business Services Branch will inform the deceased’s estate or legal representative of the amount owing and request payment in full. If there are insufficient funds available in the deceased’s estate, the debt will be written off by Finance and Business Services Branch.

# Appendix 1

## Procedural Flowchart for Terminating the Tenancy of a Deceased Sole Tenant

Text alternative for Procedural Flowchart for Terminating the Tenancy of a Deceased Sole Tenant is in Appendix 2.

[Text alternative for Procedural Flowchart for Terminating the Tenancy of a Deceased Sole Tenant is in Appendix 2.](#_Text_alternative_for)

# Appendix 2

## Text alternative for Procedural Flowchart for Terminating the Tenancy of a Deceased Sole Tenant

* 1. Department is informed of death of sole tenant.
     + - * If there are remaining household members/ occupants who believe they should be granted a tenancy, assess under the Transfer of Tenancy Chapter
         * If remaining household members or occupants in the premises are assessed as ineligible for a transfer of tenancy, advise them of decision
         * If occupants do not provide vacant possession, refer to the Occupants Unknown to the Department, Residents and Squatters chapter.
  2. Identify Legal Personal Representative (LPR) or Next of Kin (NOK).
  3. Contact or write to the LPR/NOK to inform of process for terminating the tenancy and delivering vacant possession.
  4. Has the written notice of termination under s228 (1) (a) been received from LPR/NOK?
* If ‘Yes’ - Register in HiiP and advise process for LPR/NOK to deliver vacant possession. Note: The tenancy is terminated in HiiP 28 days after the notice was received
* If ‘No’ - Contact LPR/NOK to explain termination process and send letter with Notice to Vacate under s228 (1) (b) to LPR/NOK.
  1. Has the LPR/NOK returned the keys on or before 28 days, or has the NTV expiry date lapsed?
* If ‘Yes’ - Request LPR/NOK to complete General Notice of Termination
* If ‘No’ - Terminate the tenancy in HiiP. Contact LPR/NOK to advise on what date the tenancy terminated and to arrange return of keys within reasonable time (e.g. 3 days).
  1. Have the keys been returned?
* If ‘Yes’ - Change property to vacant status and arrange vacant maintenance
* If ‘No’ - If there are no occupants in the property, enter into possession by changing the locks.