



Death of a Tenant

Policy Category	1. Tenancy	Policy Number	1.16
Author	Cliff Jones – Chief Executive Officer	Board Approval Date	31 August 2018
Position Responsible	Housing Services Manager	Scheduled Review Date	August 2019

Purpose:

This policy relates to the actions to be taken by Homes Out West once notified of the death of a tenant. The information applies to all tenancies managed by Homes Out West in all programs.

Policy:

The death of a tenant is always an emotional and sad time for the family and staff. Homes Out West will respond in a manner which is dignified, respectful, caring and timely.

Relevant Service Standards:	National Community Housing Standards <ul style="list-style-type: none"> • Standard 1.4 Ending tenancies Legislation <ul style="list-style-type: none"> • Residential Tenancies Act National Regulatory System for Community Housing (NRSCH) Performance Outcome and Performance Requirement <ul style="list-style-type: none"> • Performance Outcome 1: Tenant and Housing Services
Related HOW Policies:	<ul style="list-style-type: none"> • End Of Tenancy (EOT) • Employee Assistance Program
Related HOW Forms & Internal Documents	Tenant Death Notification Form

Procedure and Guidelines:

Discovery or Notification

In the event that Homes Out West staff have reason to believe a tenant may have passed away at their property, the police will be notified in order to gain access to the property to seek confirmation. If death is confirmed, police then take responsibility for notification of relatives and further immediate arrangements.

The Representative

Homes Out West will seek to promptly identify the most appropriate, available person to act as the legal representative of a deceased tenant in order to offer up vacant

possession of their property. Homes Out West will take all reasonable steps to substantiate the legitimacy of the legal representative.

The rights of a legal personal representative (LPR) in law are superior to that of a “next of kin” of the deceased. An LPR is appointed as an executor by the deceased in their Last Will and Testament (Will), or by a court which grants letters of administration to an individual so that they may act as an LPR.

Homes Out West, when contacted by next-of-kin, must take reasonable steps to identify the tenant’s LPR. In situations where two or more potential LPRs are in dispute as to who will administer the estate, Homes Out West will seek relevant legal advice.

No Representation

Where no LPR or next-of-kin of a deceased tenant is known, Homes Out West will contact the NSW Police and/or NSW Trustee and Guardian (“the Trustee”). The administration of a deceased estate vests with the Trustee in the instance that no LPR/next-of-kin exists, has not been identified or cannot be located.

The Trustee will attempt to locate an LPR, and administer the estate until such time as a more suitable administrator is located. The Trustees will be requested to provide Homes Out West with written notification of the death as soon as possible, and notify Homes Out West of their intention to act as administrators of the deceased estate.

If no LPR or next-of-kin has been identified, and the Trustee is unwilling to assist, Homes Out West must apply for an order to terminate the tenancy.

Entering the Property

Homes Out West staff may not enter the property of a deceased sole tenant until vacant possession has been offered by the identified LPR or next-of-kin, or after being granted a Termination and Possession Order by the NSW Civil and Administrative Tribunal (NCAT).

Until vacant possession has been obtained, only the LPR or next-of-kin (including the Trustee), or a person authorised by the LPR or next-of-kin (including Homes Out West staff) can enter. If neither Homes Out West nor the LPR or next-of-kin is in possession of the keys, Homes Out West will arrange a contractor to change the locks in the presence of Homes Out West staff and the keys given to the LPR or next-of-kin.

Removal of Goods From the Property

To be entitled to remove goods from the rental property and offer up vacant possession, the LPR must:

- be the executor appointed by the tenant in their Will, or
- in the absence of a Will, complete a ‘Tenant Death Notification’ form to the effect that they are the next-of-kin of the deceased, eligible to apply to the Court for letters of administration, or
- be a State Trustee, when no other legal representative is available.

If there is no estate executor, the next of kin of the tenant is regarded as the legal representative.

Where an executor has been appointed by the deceased in their Will, their rights to administer the estate supersede those of the legal representative.

Homes Out West will send the LPR a Tenant Death Notification form. If the Notification of Death form has not been returned within 7 days, Homes Out West may issue a Notice of Termination for the tenancy, pursuant to section 108 of the Residential Tenancies Act.

Rental Charges and Payments

Once notified (or becoming aware by other means) of the tenants' death, Homes Out West will reduce the tenant's rent to \$5.00 per week, effective from the notification (or discovery) date. This reduced rent amount is charged for a maximum of 28 days only. Once the 28 day period has expired, market rent is charged for the accommodation.

Any automatic rent deductions will be cancelled.

Keys Not Returned by LPR

In situations where the keys have not been returned by the date nominated by the LPR or within 28 days of the date of the death of the tenant, Homes Out West will issue a Notice of Termination under s.108 of the Residential Tenancies Act to the LPR and possession will be sought, if required, through application to the NCAT. Market rent will continue to be charged to the deceased estate until the tenancy is terminated by the NCAT.

Staff Support

All staff involved in these processes will be offered support by their Manager and/or CEO. Staff will be informed that they may seek further support through Homes Out West's Employee Assistance Program (EAP).