

RESIDENTIAL TENANCY ACT: OCCUPANCY CHANGES



FACTSHEET

Changes to Occupancy Law: What is an occupancy agreement and when can it be used?

BACKGROUND

Occupancy Laws in the ACT are changing on 3 March 2021.

This Fact Sheet is designed to help you understand the changes. The information in this Fact Sheet is not legal advice. You should seek legal advice if in doubt about your individual circumstances.

The rights and obligations of the grantor and occupant depend on the *Residential Tenancies Act 1997* (the RTA) and on the individual occupancy agreement. You should always check your agreement as a starting point.

WHAT ARE THE MAJOR CHANGES TO OCCUPANCY LAW?

The changes:

- more clearly define what an occupancy agreement is and the circumstances in which they may be used;
- create mandatory minimum principles for occupancy agreements;
- introduce a security deposit framework for occupancy agreements;
- introduce enforceable conciliation of occupancy disputes through the ACT Human Rights Commission;
- introduce a requirement for smoke alarms to be fitted in occupancy agreement premises;
- create specific rules in relation to occupancy agreements in residential parks; and
- create specific rules in relation to education provider occupancy agreements.

A brief overview of these changes is provided below and more detailed factsheets are also available at: <https://justice.act.gov.au/safer-communities-protection-rights/residential-tenancy-and-occupancy-reforms/reforms-tenancy-and-occupancy-reforms>

This Fact Sheet explains the new definition of occupancy agreement and the circumstances in which an occupancy agreement can be used.

CLEARER DIFFERENTIATION BETWEEN OCCUPANCY AND TENANCY AGREEMENTS

When a person pays a fee to live in a property as their home, that person will generally be either a tenant or an occupant. However, in the past, it has not always been easy to tell the difference. The new laws more clearly define the differences between a 'residential tenancy agreement' (section 6A

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of the RTA) and an 'occupancy agreement' (section 71C of the RTA) by setting out the circumstances in which an occupancy agreement can be used. This will make it easier for Canberrans to identify whether they are a tenant or an occupant and a landlord or a grantor and have a better understanding of their rights and obligations under the agreement they have signed.

DEFINING OCCUPANCY AGREEMENTS

The new definition of occupancy agreement sets out the circumstances in which an occupancy agreement can be used. An agreement will be an occupancy agreement if:

- a person (the grantor) gives someone else (the occupant) a **right to occupy a premises**; and
- the premises are for the occupant to **use as a home** (whether or not with other people); and
- the occupant **pays money to live in the property**; and
- the **agreement falls under one of the circumstances outlined below**.

The circumstances in which an occupancy agreement can be used are:

1. the premises are also the **owner's primary place of residence** (and the owner has not opted to provide a tenancy agreement);
2. the person **has exclusive access to a sleeping space or bedroom** (in a property with multiple sleeping spaces or bedrooms) **and also has access to shared facilities or receives domestic services** (such as meals and cleaning) as part of their living arrangement (for example, in a boarding house or dormitory style arrangement);
3. the person receives welfare or healthcare support as part of a **housing support program** (including those who are at risk of homelessness or who are homeless);
4. the person is provided **transitional or needs-based accommodation due to an emergency or crisis**;
5. the person is **in a residential park**, sometimes known as a 'long-stay caravan park', (and the park owner or manager has not opted to provide a tenancy agreement);
6. the person is staying there because of their membership in a club or other organisation; and
7. after 30 January 2022, the **accommodation is associated with an education provider** (such as a university).

In essence, the above criteria cover crisis accommodation, student accommodation provided by education providers, boarding and lodging arrangements, people in supported housing programs, people in accommodation provided due to their membership of a club, and people residing in caravan or residential parks.

In most of the above circumstances, to meet the definition of 'occupancy agreement', the agreement will also need to specifically state that it is an occupancy agreement provided for the particular purpose it is being used for (for example, an occupancy agreement for crisis accommodation will need to state that it is an occupancy agreement for crisis accommodation).

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WHAT RIGHTS AND OBLIGATIONS ARE ASSOCIATED WITH AN OCCUPANCY AGREEMENT?

Under the new laws, an occupancy agreement gives rise to mandatory minimum occupancy principles. While the mandatory principles apply to all occupancy agreements, there are some rules that just apply to agreements relating to residential parks and (after 30 January 2022) education providers. Occupancy agreements can also include additional terms (such as house rules) in addition to the mandatory occupancy principles so long as those additional terms are not inconsistent with the mandatory principles.

See the Fact Sheet *Mandatory Occupancy Principles* for more information.

See the Fact Sheet *Rules specific to residential parks* for more information.

See the Fact Sheet *Rules specific to education providers* for more information.

WHEN ARE OCCUPANCY AGREEMENTS EXCLUDED?

The RTA clarifies that certain types of living arrangements are not occupancy agreements; these include situations where:

1. the agreement specifically states that it is a residential tenancy agreement;
2. a person enters into an agreement with a tenant to reside at the premises that is already subject to a residential tenancy agreement (this would be a sub-tenancy rather than an occupancy agreement);
3. a person obtains a mortgage with a lender in exchange for title of the premises;
4. a person or people who have rights to occupy adjacent premises have a controlling interest in a company which owns these premises;
5. a person stays at a premises for a holiday; and
6. a person moves into a property temporarily prior to the completion of the sale or purchase of the premises (for example, if settlement on the sale of property is delayed and the seller agrees that the purchaser can move into the property prior to settlement occurring).

MORE INFORMATION AND ASSISTANCE

Tenancy Advice Service (Division of Legal Aid ACT)

Phone: 1300 402 512 **Email:** TAS@legalaidact.org.au **Website:** www.legalaidact.org.au/tasact

Legal advice from this service is free and confidential. It is not means-tested (the service is available to all occupants regardless of income).

Legal Advice Bureau (Open between 12:30pm and 2pm on weekdays)

Phone: 6274 0300

Website: www.actlawsociety.asn.au/for-the-public/legal-help/legal-advice-bureau

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The Legal Advice Bureau at the Law Society is a free and confidential service and can provide advice in 15-minute consultation sessions to both occupants and grantors.

Canberra Community Law

Phone: (02) 6218 7900 **Email:** info@canberracommunitylaw.org.au

Website: <https://www.canberracommunitylaw.org.au/>

If you are a tenant in public housing (from Housing ACT), or a tenant or occupant in crisis accommodation or social housing, or living in a residential park (long stay caravan park), Canberra Community Law can provide you with free and confidential legal advice.

Conflict Resolution Service

Phone: (02) 61890590 **Website:** <https://crs.org.au>

Conflict Resolution Service (CRS) is a nationally accredited mediation service that resolves conflict professionally, competently and compassionately. CRS have experience working with neighbours, landlords and residential tenants to provide a safe, structured, and confidential environment for discussion between parties.

ACT Revenue Office (Rental Bonds)

Phone: 6207 0028 **Email:** rb@act.gov.au **Website:** www.revenue.act.gov.au/rental-bonds

The Rental Bonds Portal allows grantors to lodge occupancy agreement security deposits and request refunds online. It also has template forms for condition reports, security deposit refunds, updating details and more.

ACT Civil and Administrative Tribunal (ACAT)

Phone: 6207 1740 **Email:** tribunal@act.gov.au **Website:** www.acat.act.gov.au

Please note that the Tribunal can assist with questions about its procedures, but it cannot give legal advice on individual situations.

Legislation

You can access the *Residential Tenancies Act 1997* and other ACT legislation on the ACT Legislation Register at www.legislation.act.gov.au.