

The Property Owners Association of NSW

Quarterly Journal

August 2009

The Property Owners' Association of New South Wales



www.poansw.com.au

The Property Owners' Association of New South Wales



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MEETINGS FOR 2009

The property owners' Association of New South Wales committee will be meeting on the following dates:

Wednesday 5th August 2009 - POA NSW Committee Meeting

Wednesday 2nd September 2009 - PHBH sub Committee

Wednesday 7th October 2009 - POA NSW Committee Meeting

Wednesday 2nd December 2009 - POA NSW Committee Function

The PHBH division sub committee meetings will be as required plus on Wednesday 6th May 2009, and Wednesday 2nd September 2009.

The Property Owners' Association of New South Wales



President Report April 2009

POA Activities April, May, June, July 2009

Land Tax

I attended a public meeting (land tax steering committee) in Balmain this small local property group are looking at ways to challenge land tax I extended the POA's assistance if needed to help in their battle.

The association's land tax sub-committee is working on our ongoing fight to have land tax amended our stance is NO land tax on residential rental property we are using sitting MPs throughout Australia to bring this issue with a solution to the federal arena.

Property investors paid approx \$1.1 billion in 2008-09 for land tax. In the coming year it looks like a 35% increase in land tax revenue will be collected in a time of financial downturn and values for business.

The Property Council chief executive Peter Verwer says (It hurts Government because it is volatile; and hurts the private sector because it is inconsistent and uncertain)

The POA view is the state Government is increasing housing non affordability and rental crisis problems due to their system of land tax on rental property.



Working with Government

I recently attended a small meeting with the NSW Treasurer I took this opportunity to express the POA concern over land tax and planning issues on property.

The POA has been invited to meet again to put forward our solutions to several issues due to the POA extensive knowledge of rental property & development of new stock.

This is the time for smart ideas that fast tract rental property availability. Ideas that promote changes of existing buildings say from commercial to residential and reworking of planning codes to facilitate improvement and expansion of existing rental buildings.

I invite any POA member who wishes to participate in these bold new initiatives to contact me directly at chris@poansw.com



The Property Owners' Association of New South Wales



Residential Tenancy Act Review

The current amendments will be pushed through very soon the POA still has serious concerns about 3 issues in the review and we are lobbying both sides of politics to get some sort of sense to prevail. If passed into law rental property owners will have 3 new unworkable rules to contend with which will only end up in conflict by all parties. To remind you again what these issues are

1. Allowing tenants to change / do building works to your property and you not being able to object.
2. Sub-letting without the landlords consent
3. No grounds eviction extended time frames for notice.



These issues are a wish a list and will go straight to the tribunal in most cases what a waste of money & time if implemented and a clear indication that there is a serious problem in planning in the Department Of fair Trading if they become law it will not provide tenants with anything but less properties to let.

MAKING YOUR PROPERTY ENERGY EFFICIENT

The POA has been contacted to participate in the start up of the Department of Environment and Climate Change's (Energy Efficiency Action Plan) this means we would help distribute information to low cost renters and land lords.

We will negotiate to have a Green site referral spot on our web site which will direct users to a site with all the up to date grants and schemes for property owners to apply for. ie: Solar hot water rebates, insulation, water wise systems and energy assessments for owners and tenants.



OPERATIONAL GRANTS

The POA is looking at and applying for grants from the state government to help us provide a better service to owners of property in NSW this would be based around the POA having an up-graded information service /

referral point for assistance in areas of say CTTT problems and other ongoing compliance issues involved with property ownership.

NSW AFFORDABLE HOUSING PLAN

The NSW government has invited the POA to be involved with their affordable housing policy and education systems this is a great opportunity for our Peak industry organisation to be involved at grass roots planning levels with particular reference to Boarding houses / low cost rental properties.

The POANSW is going full steam ahead on all these issues and further into this issue you will find the update on the pooled insurance scheme which will over time be a step up for POA property members towards gaining cheaper insurance



Chris Young

President of POANSW

The Property Owners' Association of New South Wales



Private Hotel and Boarding House Sub-Committee

ARE YOUR INSURANCE COSTS TOO HIGH ? WANT TO SAVE THOUSANDS ?

If you own or operate a Private Hotel and/or Boarding House, alas you are probably too well aware of the high cost of your public liability and building insurance.

In fact if you compared a typical residential house rented out to tenants, with that same building let out as a Private Hotel or Boarding House, the insurance costs could be some 10 times higher for the Private Hotel or Boarding House operator.

This is despite the fact that Private Hotel and Boarding Houses have been required to; comply to tougher Building Code of Australia fire compliance standards, are generally inspected more regularly, and are often managed more closely than a normal residential tenancy.

The POA NSW is well aware of these excessive burdens. We through the Private Hotel and Boarding House Sub-Committee are currently examining ways to reduce insurance cost burdens on Private Hotel and Boarding House operators.

One plan, which would be available exclusively to POA NSW members, is a pooled insurance scheme. It would be endorsed by the POA NSW, and backed by a large Australian based insurance broker with strict protocols on Insurer Security such as security ratings by S & P or A M Best .

It would operate in a similar way as pooling insurance schemes that operates in other industries, such as for the Master Plumbers. Note that a similar scheme has been operating for The NSW Office of Community Houses for some 10 years !

Insurance pooling for industries has its advantages. Cheaper premiums can be achieved by economies of scale. While risks can be mitigated by better collation of information and education programs for operators, which would lead to better risk management strategies, generating lower claims, lower risks and thereby benefits members with lower premiums. Everybody wins, and the bigger the scheme, the greater the potential benefits.

It has been estimated that insurance costs in a pooled scheme could generate premium savings of around 25 % and possibly as high as 50%. For a typical small Private Hotel or Boarding House this represents a potential saving of thousands of dollars each and every year.

If you own or operate a Private Hotel and/or Boarding House, or you know someone who does, please register you interest as soon as possible by sending your email contact details to peter@poansw.com.au.

Note that this scheme would only be made available to you, the members of the POA NSW.

Australian Government Phasing out Electric Hot Water Systems

The Australian Government is phasing out electric hot water systems to reduce Australia's carbon emissions.

The systems available to replace them will be:

- Gas hot water systems
- Solar hot water systems (electrically or gas boosted)

There is no obligation to replace existing functioning hot water systems, however, staged phasing out will commence in less than 12 months.

If however, you choose to replace your existing electric hot water system with one of the above, you may be eligible for a \$1,600 rebate. This rebate is currently available, but I am not sure how long it will be available for. Details are at the following website.

<http://www.environment.gov.au/settlements/energyefficiency/hot-water-systems.html>



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Australian Tax Office offering to postpone tax in the form of interest free 1 year loan.

The ATO has announced new measures to help small business who are struggling to manage their tax debts in the current economic climate. The ATO is offering small business a twelve month interest free loan for 12 months and deferring tax payment for the activity payments.

Businesses need to contact the ATO as quickly as possible to negotiate a sustainable interest free payment arrangement.

CALL the ATO on 1311 42.



POA NSW applauds the NSW Government for encouraging housing by cutting stamp duty.

Mr Chris Young NSW president of the Property Owners Association in New South Wales said that the cut in the stamp duty as making a very positive step for construction of new homes & units in NSW. Mr Young said his association was very pleased that the stamp duty reduction also included property investors. Mr Young said that the POANSW believe that this initiative would help landlords expand and improve the quantity and quality of their rental housing stocks.

Increased housing stock and better quality stock was a strong positive for the States tenants

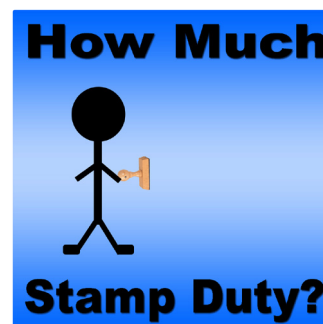
The Housing construction Plan announced by the State Government provides for a 50% stamp duty cut. Properties under \$600,000 will not attract stamp duty.

Mr Young pointed out that Private Rental Property Industry provides a staggering 85% of all NSW residential property for rent, lease or occupation.

Any incentive for investors to buy new housing stock for the rental market is definitely welcome news.

Mr Young said his association was hopeful that the Government had now realised that rental property owners play a major role in the huge task of housing the states tenants.

Mr Young said his association looked forward to the Government providing additional incentives as this was a major key in containing tenants rents at affordable levels.



Future direction of green buildings

The federal budget announcements are good news for Australia's green building industry, says the Green Building Council of Australia (GBCA).

According to Romilly Madew, Chief Executive of the GBCA, the \$3.3 million allocation over four years to increase the energy efficiency requirements for commercial buildings will have a positive impact on greenhouse gas emissions reduction.

"We've advocated changes to the Building Code of Australia for some time, and welcome the Australian Government's decision

to increase the stringency of energy efficiency requirements for all classes of commercial buildings in the Building Code of Australia from 2010," Ms Madew said.

The GBCA is also pleased with the Australian Government's commitment to spend \$5.3 million over four years to accelerate and expand a national regime for the mandatory disclosure of commercial building energy efficiency at the point of sale or lease to improve awareness of building energy performance.

The new national regime will commence in 2010 for office buildings larger than 2,000 square metres, with coverage to expand to a wider range of commercial buildings by 2012.

"Australia's commercial and residential buildings are responsible for 23 per cent of the nation's greenhouse gas emissions. We must take swift and decisive action to ensure we address climate change. Delivering higher energy efficiency standards in both new and existing buildings is a positive step forward to reduce Australia's carbon footprint," Ms Madew added.





Rental Vacancies at their Lowest

Sydney's rental vacancy rate is at its lowest level in 12 months, according to the latest data released today by the REINSW.

In May 2009, the percentage of available rental properties across Sydney slumped by half a percent to 1.0%.

"This is the lowest result recorded since May last year and is extremely disappointing," said REINSW President Steve Martin.

In May 2009, the percentage of available properties in suburbs more than 25 kilometres from the CBD fell 0.4% to 1.0%.

In Sydney's 'middle' suburbs, between 10 and 25 kilometres from the CBD, rental vacancies fell 0.2% to 1.5%.

The only parts of Sydney not to record a fall in available rental properties were suburbs within 10 kilometres of the CBD, which recorded a vacancy rate of 1.4% - unchanged compared to the previous month.

These results are a double-edged sword: great news for landlords but grim news for tenants," said Mr Martin.

In the Hunter, rental vacancies fell 0.2% to 1.7%, with vacancies in Newcastle also falling 0.2% to 1.5%.

In the Illawarra, overall vacancies dropped 0.3% to 1.6%, whilst in Wollongong, the percentage of available properties fell a full 1% to 1.2%.

"The results for Sydney and Wollongong are concerning and show that despite falls in interest rates and additional first home buyer incentives, the rental market remains extremely fragile," said Mr Martin.



	May 2009	April 2009	March 2009	February 2009	January 2009	December 2008
SYDNEY	1.0%	1.5%	1.2%	1.3%	1.4%	1.4%
Inner (0-10km from CBD)	1.4	1.4	1.2	1.3	1.3	1.3
Middle (10-25km)	1.5	1.7	1.5	1.3	1.3	1.5
Outer (>25km)	1.0	1.4	0.9	1.1	1.7	1.4
HUNTER	1.7	1.9	1.9	1.7	2.0	1.7
Newcastle	1.5	1.7	2.2	1.3	2.2	2.1
Other	1.9	2.1	1.6	2.2	1.8	1.4
ILLAWARRA	1.6	1.9	2.0	1.9	2.6	2.9
Wollongong	1.2	2.2	1.6	1.5	2.4	3.0
Other	2.7	1.4	2.7	2.7	3.0	2.9
Central Coast	1.6	1.7	2.2	2.6	2.3	2.0
Albury	2.3	2.1	1.7	3.4	2.7	3.1
Central West	2.2	2.9	3.1	3.1	2.5	3.6
Coffs Harbour	3.3	1.8	3.6	2.7	2.5	3.5
Mid-North Coast	1.8	2.1	1.4	2.0	1.8	2.0
New England	1.9	1.8	2.0	2.1	2.4	2.6
Northern Rivers	2.2	2.7	2.2	2.0	2.3	1.8
Orana	1.6	1.6	1.6	2.9	3.3	3.3
Riverina	2.0	2.3	2.2	3.0	2.6	3.1
South Coast	3.5	3.7	2.3	3.3	2.6	2.5
South Eastern	2.5	1.5	3.5	2.6	2.4	2.3

Source:REINSW vacancy rate survey.



Tax tips for landlords

It's that time of year again when you have to start thinking about getting your tax information together and seeing your accountant. Landlords are in a unique tax situation as they have a bit more control over their tax refunds than taxpayers who only have group certificate income.



The following tips can help you legally maximise your tax refund and bring you one step closer to buying that next rental property:

- If you are receiving a sizeable tax refund at the end of the year due to negatively geared rental property, consider varying the amount of Pay As You Go Withholding Tax that your employer deducts from your wage each pay period. This will increase your net wage each pay period and smooth out your cash flow during the year.
- It's possible to pre-pay the interest on your investment property loan up to 12 months in advance. This is a strategy that can be employed towards the end of the financial year to boost your tax refund at year end. There may be other expenses that you can prepay such as insurance and repairs that will further inflate your year-end tax refund.
- New landlords need to remember to provide the solicitor's settlement statement on the purchase of their rental property to their accountant, as well as the loan establishment documents. These documents will contain items that can be claimed in the year of purchase and other items – such as borrowing costs which include loan establishment fees and mortgage insurance – that need to be claimed over five years.
- Remember if you are thinking of selling your rental property, you can offset the capital gain against any capital losses you may have recently made on the sale of shares or if you have carried forward capital losses from previous years. This is especially relevant with the currently losses experienced by shareholders. The timing of the sale of shares and property are important, make sure you ask your accountant before making a sale.
- Don't forget to claim travel to your property to inspect it. You may also need to make trips to repair the property if you are not engaging a tradesman to do so.
- If you have multiple rental properties and need to sell one, check if any of your properties were purchased prior to 20 September 1985. These are known as "pre-capital gains tax assets", and as the name suggests are not subject to capital gains tax (CGT). There are special rules surrounding CGT and if you have made major improvements to a pre-CGT property this may affect the CGT exemption. Again, it is important to consult your accountant.
- Depreciation is often overlooked by property investors. If the building is relatively new or has had recent capital improvements it could be prudent to consult a quantity surveyor to see whether you are missing out on significant depreciation expenses.
- These are merely the tip of the iceberg when it comes to deductible expenses for landlords. If you want to learn more, it is advisable to consult a qualified accountant before making any major decisions.



Property prices up 4 per cent this year

House and unit prices climbed 3.9 per cent over the first five months of 2009, all but cancelling out the losses incurred last year, according to figures from RP Data and Rismark International.

Values climbed in every mainland capital city except Perth during the five months to the end of May, the RP Data-Rismark Hedonic Index suggests.

The national median price for all dwellings sits at \$468,819 as of the end of May 2009, just 0.1 per cent or \$520 shy of its peak in February 2008.

“These latest results herald a national residential market recovery,” says RP Data head of research Tim Lawless.

“It’s important to note that it has taken just 15 months for values to recover (to) the February 2008 peak.”

Melbourne is the top performer in terms of house price growth over the first five months of 2009, with the median climbing 5.9 per cent to \$469,357.

Darwin tops the growth charts for units for the same time period, with its median price climbing 7.1 per cent to \$342,724.

Rismark International managing director Christopher Joye says housing finance approvals, auction clearance rates and other independent house price data all confirm the remarkably resilient condition of the Australian housing market.

“The recovery in Australia’s housing market, which has defied countless doomsayers, has in turn been the cornerstone of the Australian economy’s stability in 2009,” Joye says.

Looking at each of the mainland capital cities, RP Data and Rismark report that over the first five months of 2009:

- Sydney’s median house price rose 5.1 per cent to \$582,543, while the city’s median unit price climbed 5.4 per cent to \$442,994.
- Melbourne’s median house price rose 5.9 per cent to \$469,357, while its median unit price jumped 6.7 per cent to \$377,077.
- Brisbane’s median house price climbed 3.1 per cent to \$458,748, while its median unit price fell 0.3 per cent to \$327,982.
- Adelaide’s median house price fell 0.2 per cent to \$412,516, while its median unit price climbed three per cent to \$345,466.
- Perth’s median house price fell 0.5 per cent to \$475,481, and its median unit price was down 0.3 per cent to \$440,783.
- Darwin’s median house price climbed 4.8 per cent to \$493,430, and its median unit price jumped 7.6 per cent to \$342,724.



Poorly installed insulation poses fire risk

Ceiling insulation must be professionally installed to strict safety guidelines or it may become a serious fire hazard, the West Australian Commissioner for Consumer Protection has warned.

The commissioner, Anne Driscoll, says the Federal Government’s energy efficiency subsidies have boosted the number of households having ceiling insulation installed.

She fears the increased demand may attract inexperienced installers to the industry, thereby exposing some homes to a greater fire risk if the product isn’t installed properly.

“We’re finding in some cases the insulation is too close to electric cables, ceiling fans, downlights and their transformers, creating a serious fire danger in the home,” Driscoll says.

“Although most ceiling insulation is fire resistant to some extent, there’s still a possibility of ignition if the insulation covers these electrical devices in the roof space or is exposed to the heat generated by them.”

WA’s Fire and Emergency Services Authority reports an average of at least one roof space fire every week in the state, and fire investigation officer John Haddon says these fires are particularly dangerous as the smoke is above smoke alarms.

“Often people only know their house is on fire when flaming material comes through air conditioning vents or the ceiling collapses,” Haddon says.

Driscoll emphasises that there’s no concern if insulation is installed correctly and in accordance with safety standards.



The Property Owners' Association of New South Wales



What Gen Y wants

For property investors, Gen Y's (18-27 year olds) preferences are a source of opportunities.

When they are in the news, much of the press about Gen Y tends to be less than flattering. Not only do they job hop, show little loyalty to their employers and have three second attention spans, they also want to have everything now.

While Gen Y might be criticised for their short-termism – take what you can get when it is there – who can blame them? Often they are employed under contract, which comes with its own insecurities, such as the prospect of having to scout for new employment once the current contract ceases. Most know that buying a home, in their location of choice, is a remote possibility. Even finding a place to rent is becoming increasingly difficult, with rents skyrocketing and competition with dozens of other potential tenants to secure a place to live. In the face of this doubt about the future, 'live well and in the present' becomes the ethos.

For property investors, this is good news. An increasing number of Gen Y's are actually happy to be renting so that they don't feel tied down, despite the challenges with the current rental market. This provides property investors with a greater pool of potential tenants than has existed in the past.

There is also high demand for rental properties in areas close to where Gen Ys want to work and congregate.

And what sorts of properties do Gen Y's want to live in? Apartments where the kitchen might be small but there is DSL cabling and capacity for technology upgrades, there's a garage or car space, a lap pool if room allows and clever use of storage.

With rising rents, low vacancies and a generation of young renters looking for a place to live, there are currently some great opportunities for property investors to enter the market.



Do you have a holiday or short-term rental property?

Holiday rental properties in Australia typically used to be rented by families, who would often come back for their holiday by the coast every year.

The internet has significantly changed the accommodation market and it can no longer be taken for granted that the same family will return to the same property year after year.

With increased competition in the tourism market, real estate property managers have broadened their focus from just providing property management services to the landlord, they now put time and effort into delivering a professional tourism experience to holidaymakers in order to achieve repeat and referral business for you.

You also need to bear in mind that with the internet reaching a wider market than ever before, more and more visitors are coming from different cultural backgrounds or from overseas and may require a higher level of assistance.

Here's a few tips that can improve the experience and ensure that visitors have a great time.

- Ensure the property is clean and well-presented.
- Provide maps and tourist guides about the local area, including cafes, restaurants and interesting places to visit.
- Provide written instructions for using appliances such as televisions and DVD players, air conditioning and heating, washing machines, alarms and barbecues.
- Americans often request coffee percolators or cable TV.
- English will often request tea pots and cups with saucers (not mugs).
- Some customers really appreciate rice cookers and microwaves for their cooking.
- Business customers often require an internet connection.





DEFINING A BOARDING HOUSE

What defines a boarding house is usually based on some idea of what, historically, some boarding houses provided. However, any definition should be general in nature and not too limited, specific or narrow, as each particular form of accommodation and the facilities provided tends to change over time. In an historic sense, the difference between a boarding house and other rental property is more related to how the accommodation is managed. A boarding house is a building that has accommodation for a number of lodgers who are under a license agreement with the property owner who provides management of services.

In providing services to lodgers the property owner must have unrestricted access to and use of the premises. Lodgers do not have a lease for exclusive use of the premises as defined under a common 5A Lease Agreement and lodgers are bound by house rules specified by the owner of the boarding house premises. It is irrelevant whether particular facilities are shared or how self contained the accommodation is.

For boarding houses to evolve governments should be more flexible in its definitions. Residents of boarding houses do not prefer to share facilities such as bathrooms, kitchens and common rooms. Especially when men and women share facilities, significant conflict can be generated. When common rooms are provided for lodgers, it has been the experience of boarding house owners that the rooms are not used. The more self contained the accommodation in a boarding house is then the more successful it is likely to become as it is more attractive to residents. The main objective of Government should be to achieve more low cost accommodation and not specify the form of accommodation.

Governments should allow boarding house owners to upgrade their business by allowing more self contained facilities without a preconceived notion of what a boarding house is, in specifying building requirements such as shared common rooms, dining rooms, recreation areas, kitchens and bathrooms etc.

Councils in defining boarding houses in Local Environmental Plans (LEPs) have generally made them broad in nature such as the following :

City of Sydney LEP 1996 - Boarding house means a building or part of a building let in lodgings or a hostel, but does not include a hotel.

Randwick LEP 1998 - Boarding house means a building or place :

- (a) where permanent accommodation facilities are provided to the residents of the building or place, and
- (b) where meal and laundry facilities may be provided, and
- (c) which is not licensed to sell liquor within the meaning of the Liquor Act 1982.

Ashfield LEP: "boarding-house" includes a house let in lodgings or a hostel but does not include a motel. State Government Department of Planning (SEPP 10) boarding-house means a building :

- (a) that is wholly or partly let in lodgings, and
- (b) that provides lodgers with a principal place of residence for 3 months or more, and
- (c) that generally has shared facilities, such as a communal bathroom, kitchen or laundry, and
- (d) that has rooms with one or more lodgers, and includes a hotel (not being premises to which a hotelier's license under the Liquor Act 1982 relates).

However, in their DCP controls most councils have specified planning and design guidelines that require shared common rooms, indoor and outdoor recreation areas, sleeping rooms, kitchen areas, bathrooms etc.



Reforms to the Residential Tenancies Act 1987

Later in 2009, draft reforms to the Residential Tenancies Act 1987 will be available for community consultation. The POA of NSW will certainly be making a submission to the minister of The Office of Fair Trading on the proposed changes to the Act. Hot topic items will include:

- The "no grounds" notice proposed extension from 60 to 90 days.No no no!!!
- Shared tenancy disputes,why should the landlord suffer???
- Keeping control of alterations & structural additions to premises by the tenant
- The eviction process to be more stringent via C.T.T.T.

Comment on proposed legislation

New South Wales' fair trading laws are kept up to date and relevant through regular reviews that involve the community and other stakeholders. As circumstances change, new laws may be introduced or older ones repealed.

When new or amended legislation is proposed we seek the broadest possible comment. The list below shows current topics open for comment. If comment has been invited on a published paper, you can view or print a copy from this page or contact us to have a hard copy posted.

Landlord and Tenant Regulation 2009 - comments close 5 August 2009

Consumer, Trader and Tenancy Tribunal Regulation 2009 - comments close 5 August 2009

Review of NSW electricity network contestable services - comments close 7 August 2009

Reforms to the Residential Tenancies Act 1987

Landlord and Tenant Regulation 2009 - comments close 5 August 2009

The existing Landlord and Tenant Regulation 2002 is due for automatic repeal under the sunset provisions of the Subordinate Legislation Act 1989. It is proposed that the Regulation be replaced with the proposed draft Landlord and Tenant Regulation 2009, to commence on 1 September 2009.

The proposed draft Regulation remakes the existing Regulation with some minor modifications such as: a modified statutory form; a CPI adjustment to the fees prescribed under the Act; and the monetary amount that determines a 'wealthy tenant' for the purposes of determining fair rent.

Have your say

You are invited to comment on the proposed draft Regulation by Wednesday 5 August 2009.

Please e-mail (preferred), mail or fax your comments or submissions to:

E-mail: policy@oft.commerce.nsw.gov.au

Address: Landlord and Tenant Regulation 2009

Policy & Strategy Division

Office of Fair Trading

PO Box 972

PARRAMATTA NSW 2124

Fax: (02) 9338 8918



CORRECTING SOME MISCONCEPTIONS

(As indicated by questions from our members)

1. That parties to a residential tenancies agreement must be natural persons i.e. cannot be companies or similar organisations

INCORRECT - Both landlords and tenants may be companies and other incorporated organisations, as either landlords or tenants. The tribunal hears dozens of such cases each month.



2. That having a bank guaranteed for the payment of rent, attached to a residential tenancy agreement invalidates such an agreement and that the tribunal will not hear a case having such a bank guarantee attached to it. This question arose when a tenant who was temporarily going overseas for a period, offered such a bank guarantee, to ensure that the rent will be paid during his absence.

INCORRECT – The residential tenancy agreement is a contract between the landlord and the tenant. It is enforceable by the tribunal; it does not need the support of a bank guarantee. The bank guarantee is a separate document between the tenant and a bank. It is provided by the tenant to the landlord. If the rent is not paid and falls into arrears, the landlord may demand that the bank should pay the rent by virtue of the guarantee. If the bank refuses to pay, the rent will fall into arrears and the landlord may then apply to the tribunal to obtain vacant possession. This is likely to be granted.

If the bank has failed to meet the guarantee it issued, then the landlord or the tenant may sue the bank for its failure to carry out the guarantee. Such action may be taken through a local court. As a bank guarantee is not part of the residential tenancy agreement, remedial action is not part of the jurisdiction of the tribunal (as defined by the residential tenancies act).

A Blast from the Past

This is an extract from a letter received by a member of The POANSW some years ago from the relevant minister. She wrote to the minister complaining about the funding by the government of tenancy advisers, also about a series of unfavourable decisions received in cases before the tribunal.

“The government established the tribunal in 1989 to allow landlords and tenants inexpensive and prompt access to dispute resolution. It would be contrary to the spirit of the legislation if this principle of accessible justice was being diminished the government’s aim has always been to promote harmonious relations between landlord and tenant.”

“For this reason the tenant’s advice and advocacy program has been established recently. Its aim is to ensure that tenants understand their obligations and rights when they contract with a landlord through a residential tenancy agreement. This is not done to benefit one group over another. In fact, landlords, agents and other industry groups will now become the focus for assistance from the office of real estate services so that all sections of the industry can be mutually developed.”

The office of real estate services mentioned above was dissolved many years ago and was absorbed into the department of fair trading. That department is now the office of Fair Trading under the department of commerce. The funds provided to the tenants advice and advocacy program has grown several times too many millions. Offices and branches of government are reshuffled, departments are re-named, ministers come and go but the basic pro-tenant policies remain unchanged. The POA does not receive any government funding.

Many challenges lie ahead for the POA.

Your continued support in being a member assists us to remain active and strong.

We thank you for your support.

POA Committee