

Model Goods Left Behind Policy and Procedures

Background

There has been considerable concern expressed about the number of community housing properties that are vacant at any one time. This is particularly important to address at a time of long waiting lists and rising public homelessness. The reasons for properties being vacant are varied but major contributors are slow maintenance processes, delays in filling vacancies by support organisations with nomination arrangements, and delays due to housing organisations waiting for completion of Goods Left Behind inspection reports by Consumer Affairs Victoria (CAV).

The latter is one cause that is more readily addressed. The Residential Tenancies Act (RTA) Review has recognised that the current procedures are cumbersome and outmoded (in particular, the references to placing advertisements in newspapers and arranging public auctions), and should be streamlined and modernised. They have developed options to ensure procedures for goods left behind align with contemporary communication and selling practices, and to enable tenants to recover goods left behind in a reasonable timeframe, without placing unreasonable burdens on landlords. Any changes, however, are unlikely to be in place until 2018. In the meantime landlords, including community housing organisations (CHOs) must operate according to the current legislation.

Under the current RTA:

The landlord can immediately dispose of:

- Perishable foodstuffs
 - Dangerous goods, and
 - Goods of no monetary value.
- **Personal documents** – the landlord must store personal documents for at least 90 days and take reasonable steps to notify the tenant, allowing the tenant to reclaim the personal documents after paying the landlord's reasonable costs. If the personal documents are not reclaimed after 90 days, the landlord can dispose of the documents in accordance with the law.
 - **Goods of monetary value** – the landlord may only dispose of goods of monetary value if the total estimated cost of the removal, storage and sale of all those goods is greater than the total monetary value of all of those goods combined. Landlords can request that CAV inspect and make a formal assessment of which goods must be stored.
 - **Goods that cannot be disposed of** – the landlord must store all goods that cannot be disposed of for 28 days and must notify the former tenant within seven days (by sending a prescribed notice to their forwarding address or, if it is not known, by publishing a prescribed notice in the newspaper), and must allow the former tenant to reclaim their goods after paying the landlord's reasonable costs.

If the stored goods are not reclaimed after 28 days, the landlord must arrange for the goods to be sold at public auction as soon as possible, and must notify the former tenant via any known forwarding address or, if it is not known, by advertising the auction in the newspaper at least 14 days before the auction. The landlord must deal with any proceeds from the auction, after deducting their own expenses, in accordance with the Unclaimed Money Act 2008 (lodging it with the State Revenue Office) and may appeal to VCAT for compensation from the Residential Tenancies Fund for any deficit.

The former tenant can apply to VCAT for compensation if they suffered loss because the landlord did not follow the goods left behind procedures in the RTA. If VCAT finds that a landlord is liable for goods they disposed of, but the landlord relied on a CAV assessment when disposing of the goods, VCAT can order that compensation be paid to the landlord from the Residential Tenancies Fund.

Personal documents

Under section 380 of the RTA, any personal documents identified within a rented premises must be stored for a minimum of **90 days**, or until they are collected by the owner of those documents.

Personal documents are defined in section 3 as:

- (a) official documents; or
- (b) photographs; or
- (c) correspondence; or
- (d) any other document which it would be reasonable to expect that a person would want to keep;

Normal examples of personal documents include:

- Passport; marriage certificate; birth certificate;
- Loose photographs or photos contained in albums; photographs on walls;
- Letters; accounts/bills;
- School, educational or trade certificates;

Furthermore, "Document" is defined in section 38 of the Interpretation of Legislation Act 1984 to include, in addition to a document in writing:

- (a) any book, map, plan, graph or drawing;
- (b) any photograph;
- (c) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatsoever;
- (d) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom

Consequently, USB sticks, video cassettes, tape recordings, DVDs, books and drawings are all "documents" that are to be retained by a landlord in accordance with section 380.

The **monetary value of personal documents** left behind is not a factor in determining whether those items/documents should be stored.

Handling Personal Documents

Personal documents must be stored in a secure location, safe from damage, theft or the effects of the weather. The documents can be removed from the rented premises to another location for storage purposes, e.g. the CHO's office.

Contacting the Tenant

Reasonable efforts must be made to contact the ex-tenant to notify them when and where the personal documents can be collected (s. 380(c)).

Initial contact might be by mail, email or telephone to the tenant or some person acting on behalf of the tenant. If this is unsuccessful further avenues should include:

- Next of kin
- Support worker/s (if there is one)
- Police

Disposal Of Personal Documents After 90 Days

Section 381 of the RTA details the ability of a landlord to dispose of the personal documents after the end of a **90 days** period of storage, if they have not been reclaimed by the tenant.

Note: It may be an offence under certain legislation of the State and Commonwealth to destroy certain documents.

Passports found in abandoned premises cannot be disposed of or destroyed, and must be passed to the Police, as they always remain the property of the Government pursuant to section 61A of the Passports Act 1938, which states "Australian passports to remain property of Commonwealth". Other official documents like driver's licences and other licences should also be given to the Police or the issuing authority.

The landlord who complies with section 380 (i.e. appropriately stores personal documents for 90 days etc.) is able to **recover his/her costs** if the personal documents are not reclaimed by their rightful owner (s. 381(3)).

These costs are recoverable from the **Residential Tenancies Fund** by making an application for an Order of Compensation under sections 400, 401 and 403.

"Disposal" is not defined in the Act, but has been taken to mean that the personal documents may be discarded (eg. by destroying etc.). It does not empower a landlord to keep the personal documents for themselves. Computer hard drives may be destroyed by punching a nail through them.

Reclaiming Personal Documents

The ex-tenant, or person with a right to the documents, can **reclaim** the documents by **paying the landlord's reasonable costs** of removal, storage and notification (section 382).

If there is a dispute as to who is the person who has a rightful claim against the personal documents, VCAT can hear and determine the ownership under section 397.

Goods Left Behind

The landlord can immediately dispose of:

- Perishable foodstuffs
 - Dangerous goods, and
 - Goods of no monetary value.
- **Goods of monetary value** – the landlord may only dispose of goods of monetary value if the total estimated cost of the removal, storage and sale of all those goods is greater than the total monetary value of all of those goods combined. Landlords can request that CAV inspect and make a formal assessment of which goods must be stored.
 - **Goods that cannot be disposed of** – the landlord must store all goods that cannot be disposed of for 28 days and must notify the former tenant within seven days (by sending a prescribed notice to their forwarding address or, if it is not known, by publishing a prescribed notice in the newspaper), and must allow the former tenant to reclaim their goods after paying the landlord's reasonable costs.

Impact for Community Housing Groups (CHOs)

Currently many CHOs will automatically request a CAV Goods Left Behind inspection in order to cover themselves against future claims by tenants over disposal of claimed left goods with value. The chief matter to be determined is whether the value of the goods left behind exceeds the cost of removal, storage and sale (advertising). Discussions between CAV and CHFV (now CHIA Victoria) indicate that many inspections are being done needlessly because the goods left behind do not have nearly this much value.

CAV reports the following regarding the cost of removal, storage and advertising:

Costs

- Removal: ~ \$110-140 per hour (2 removalists/truck).
- Storage: ~ \$110 (0.5 sq. m.) - \$132 (9 sq. m.) per month (storage costs will depend on geographical location and size of storage unit).
- Advertising: The Regulations prescribe three forms - Forms 13, 14 and 15, which set out the format and wording for each advertisement. Generally a landlord will only need to place two advertisements as the former tenants new address is either known or not known. The Herald-Sun (currently) charges \$16.45 per line - (26 characters which includes punctuation, spaces etc). The Age may have similar advertising costs. As an example, one 'line' on Form 13 contains in excess of 60 characters, therefore each line would cost upward of \$60.00. There are 26 lines, not including a description of the goods left behind. Based on these estimates, a landlord could potentially pay in excess of \$1500.00 for that advertisement alone (conservative estimate as there could be more than ten lines of listed goods if it is a house lot).
- Estimated total costs for the landlord (**not** including loss of rent and cleaning costs) could amount to \$3,500.00 or greater.

Obviously costs are dependent on the location and volume of goods so these figures are very general and should only be used as a guide. Independent quotes should be obtained locally. Section 384 of the Act states in part " ... (2) *If goods of monetary value have been left behind, the owner of premises may remove and destroy or dispose of those goods if the total estimated cost of the removal, storage and sale of all those goods combined is greater than the total monetary value of all those goods combined*". The tipping point between an outcome of "dispose and destroy" or "store and sell" is reliant on the estimated costs as listed above and the estimated value of the goods left behind.

Each CHO needs to make their own assessment of the threshold at which the value of left goods exceeds these costs. This will need to be based on their own local costs for removal, storage and the cost of advertising in a newspaper circulating state-wide. A figure of \$2,000 would certainly be a safe estimate to use. Goods left behind with a total value less than this could be disposed of.

Number of claims made by tenants

VCAT advises there are few claims for compensation made and that there is no differentiation between landlord or tenant applications. VCAT suggests that it is likely that the majority of these applications are made by landlords. CAV receives very few VCAT compensation orders for payment from the RT Fund, effectively mirroring VCAT's statistics. The claims that have been received to be paid from the RT Fund over the last 4-5 years are negligible - less than \$2,000 per annum. Again, it is likely that most of these claims are made by landlords.

Value of goods left behind

CAV inspectors are not valuers and do not provide a valuation, rather they provide an opinion of the value of goods. CAV inspectors attend public auctions and build knowledge through work and personal experience. The combined value of goods left behind has to be assessed in light of potential sale values at public auctions.

As a basic guide, most people would accept that broken items, soiled/used clothing, bedding, Manchester and footwear are items of little or no value. If one-off designer items or high end brands clearly in very good condition were found, they may have some value. It would require some initial research or a subsequent inspection.

Anecdotally, antiques are currently of limited value, and unless it can be proven that an item is something which has intrinsic historical merit then it can be viewed as ordinary furniture, which is worth very little at auction.

Cars, unless in good condition and mechanically sound, are usually low value or, at worst, scrap metal prices. If a possible collectable vehicle is left at a property, it should be regarded as having some significant value. Again, most people would realise that the most common vehicle brands are of limited value, particularly if they are older models, not working, have the interior removed, are full of rubbish, have panels/wheels missing etc. (as is often the case).

If a vehicle that is left behind appears, on the face of it, to be fairly good, a check can be conducted through the [Personal Property Register](#). This may assist in the collection of the vehicle expediently.

Fridges/freezers/kitchen utensils, washing machines/dryers, computers, TV's, toys and DVD/CD

players are generally of little value. A high-end fridge/washing machine/dryer that appears new(ish), and is in very good condition, may have some value. DVD's/CD's are of limited value and there are some second-hand dealers that offer minimal amounts even for large quantities.

Vinyl records have undergone a resurgence in popularity in recent times and can be expensive to purchase new. Collectors may pay large sums for old records dependent on the artist. Modern/new artists often record digitally and then put out vinyl, however it is CD quality on vinyl so of limited appeal to the audiophiles.

Disclaimers signed by Departing Tenants

Some CHOs use forms that enable a departing tenant to permit the landlord to dispose of any goods they leave behind. These are usually worded along the lines of:

I.....hereby authorise Community Housing Ltd/Inc to remove and dispose of all goods and items from the rented premises known as.....

These goods are
.....
.....

I have been given the opportunity to remove these goods but choose not to do so.

Signed.....

These can be useful but be aware that:

- Forms like this can almost give a licence to departing tenants to not clean the property as required, and to leave behind rubbish and unwanted goods that then become the CHO's responsibility to remove.
- It is still important to do an inspection and check that there are no valuable goods left behind that could add up to more than the cost of removal, storage and sale, and therefore could be subject to a later claim. Such a claim would be less likely to succeed if a form had been signed, but a claim could still be made, and in some cases may be upheld by VCAT.

Model Policies

..... Community Housing Ltd/Inc. will ensure that all its legal obligations under the Residential Tenancies Act are fulfilled when tenants leave possessions behind.

..... Community Housing Ltd/Inc. will make every effort to contact tenants who have left possessions behind so that they can be given the opportunity to retrieve them in a reasonable time frame.

When dealing with goods left behind Community Housing Ltd/Inc. will also be also take into consideration its obligation to prepare abandoned or empty properties for incoming tenants as quickly as possible and not leave properties empty for extended periods of time.

Model Procedures

Try to contact the former tenant

Where a tenant leaves or abandons a property leaving goods behind, every effort must be made to contact the former tenant using all of the methods below, if necessary:

- Telephone calls
- SMS messages
- Email
- Via next of kin
- Via support agencies (if applicable)

If a disclaimer form has been signed by the former tenant there is no need to do this.

Inspection

- If there has been no success in contacting the former tenant after 3 business days, an inspection of the property should be conducted. This should be done by two staff so that they act as witnesses for each other, and to assist each other in video documentation. If a disclaimer form has been signed by the former tenant, then the inspection can be done immediately.
- An assessment of the safety of the property should be made. If there are any dangerous substances or objects, the property should be secured and professional contractors engaged to remove these before the inspection resumes.
- Once safety has been ensured, the housing workers should take a non- stop video after they enter the property, going from the front door through every room, and opening every

drawer and every cupboard door and every box during the process. They should then take still photos of all goods left behind.

- All perishable foodstuffs should be removed.
- A search for personal documents and goods of value should be conducted, including the contents of any drawers, cupboards and boxes.
- If there are goods present that seem to be stolen or belong to someone else, report this to the Police.
- For any rental appliances (e.g. pay television equipment) ring the firm and tell them they can collect them.

Personal Documents

- Personal documents should be boxed and taken for storage. These include:
 - Passport; marriage certificate; birth certificate;
 - Loose photographs or photos contained in albums; photographs on walls;
 - Images on still and video cameras,
 - Letters; accounts/bills;
 - School, educational or trade certificates
 - USB sticks, video cassettes, tape recordings, DVDs, material on computer hard drives, books and drawings
 - “Any other document which it would be reasonable to expect that a person would want to keep”, e.g. sporting trophies, awards
- Personal documents must be stored in a secure location, safe from damage, theft or the effects of the weather.
- Reasonable efforts must be made to contact the ex-tenant to notify them when and where the personal documents can be collected.
 - Telephone calls
 - SMS message
 - Letter to last known address (usually the abandoned property, but they may have had their mail redirected)
 - Email
 - Via next of kin
 - Via support agencies (if applicable)
- The ex-tenant, or person with a right to the documents, can reclaim the documents by paying the landlord’s reasonable costs of removal, storage and notification.

- If there is a dispute as to who is the person who has a rightful claim against the personal documents, VCAT can hear and determine the ownership.
- After 90 days, the Passports found in abandoned premises cannot be disposed of or destroyed, and must be passed to the Police. Other official documents should be given to the issuing authority (e.g. driver's licences to VicRoads, bank books/cards to the bank), or should be given to the Police.
- After 90 days all other personal documents must be destroyed. Paper documents should be shredded and computer hard drives should be destroyed by punching a nail through them before disposal. "Personal documents" may not be kept by the organisation or individuals.

Other Goods Left Behind

- Staff should assess whether there are any goods of value. These could include:
 - Clothing - one-off designer items or high end brands clearly in very good condition
 - Furniture with antique value and intrinsic historical merit
 - Motor vehicles in good condition and mechanically sound, or collectible vehicles
 - New or near-new large electrical appliances
 - Jewellery with collector value
 - Vinyl records with collector value in good condition
 - Any other items with obvious value.
- If the estimated total value of the above is less than \$2,000.00¹ then all the goods in the property may be disposed of. Costs incurred for removal of goods and/or rubbish from the property can be sought from the former tenant or through VCAT via an application for a compensation order or an application for access to the bond.
- If the estimated total value of the above is more than \$2,000.00² then an inspection by CAV should be arranged using the **Request for inspection of goods left behind** form at the end of these procedures.
- A CAV inspection should also be requested if:
 - The tenant has been troublesome during the tenancy.
 - If the tenant is in jail. Attempts to deal with the left goods should also be made through the social work department of the jail.
- Before the CAV inspection remove perishable foods, soiled nappies, animal excrement and any OH&S hazards, e.g. syringes, from the property. Exterminate any vermin, fleas or other pests. Make sure that all the left goods are accessible. They should not be tightly packed into one room or garage, or stacked in a way that prevents safe access.

¹ Or the figure determined by the CHO after assessment of local costs for removal, storage and advertising in a newspaper circulating throughout the state.

² Or the figure determined by the CHO after assessment of local costs for removal, storage and advertising in a newspaper circulating throughout the state.

- If the CAV report states that the goods may be removed for destruction or disposal then the goods may be disposed of. Costs incurred for removal of goods and/or rubbish from the property can be sought from the former tenant or through VCAT via an application for a compensation order or an application for access to the bond.

- If the CAV report states that some goods must be stored and sold according to Part 9 Division 3 of the RTA, then the goods not listed may be disposed of. The goods that are listed by CAV must be stored for a minimum of 28 days.
 - If the former tenant has provided a forwarding address write to them in 7 days advising that the goods are being stored and asking them to contact to arrange collection of the goods. Use the words in Form 13³ – can be found at the end of these procedures.
 - If the former tenant has not provided a forwarding address, then place an advertisement in 7 days in a general circulation Victorian newspaper. Use the words in Form 14⁴ – can be found at the end of these procedures.
 - If there is no response from the former tenant within 28 days, arrange for the goods to be sold.
 - Any proceeds from the sale may be used to meet the reasonable costs of removal, storage, advertisement and sale of goods. This should be done through an application to VCAT for compensation.
 - Any funds remaining from the sale of goods should retained as a credit on the former tenant's vacated account and be provided to the former tenant if and when contact is made. If the former tenant makes contact with AHV after the 28 day period but prior to the sale of the goods, terminate any action to sell the goods and arrange for the former tenant to collect the goods. Any reasonable costs incurred in the collection, storage and advertising of the goods can be negotiated with the former tenant.

³ Form 13 from Schedule 1 of Residential Tenancies Regulations 2008.

⁴ Form 14 from Schedule 1 of Residential Tenancies Regulations 2008.

Request for inspection of goods left behind

Note: Enter text in spaces provided only. This form will be invalid if you remove or change any questions or other text.

1. Landlord's details

Name of landlord:	
Address:	
Postcode:	
Business telephone number:	
Mobile telephone number:	

2. Agent's details (if applicable)

Name of agency:	
Name of agent's representative:	
Business address:	
Postcode:	
Business telephone number:	
Mobile telephone number:	

3. Tenant's details

Name of tenant(s)/resident(s):

Address of tenant/resident (if known):	
Postcode:	
Home telephone number:	
Business telephone number:	
Mobile telephone number:	

4. Address of former rented premises where goods left

Postcode:	

5. Has the tenant vacated the premises?

Yes:	<input type="checkbox"/>	No:	<input type="checkbox"/>	If yes, date vacated:	/ /
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6. Supporting evidence

Has an Order of Possession been obtained from the Victorian Civil and Administrative Tribunal? (If yes, please attach a copy)

No:	<input type="checkbox"/>	Yes:	<input type="checkbox"/>	If yes, date:	/ /
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Has a Declaration of Abandonment been obtained from Victorian Civil and Administrative Tribunal? (If yes, please attach a copy)

No:	<input type="checkbox"/>	Yes:	<input type="checkbox"/>	If yes, date:	/ /
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Has the tenant returned the keys?

No:	<input type="checkbox"/>	Yes:	<input type="checkbox"/>	If yes, date:	/ /
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Has a Notice to Vacate been served on the tenant/resident? (If yes, please attach a copy)

No:	<input type="checkbox"/>	Yes:	<input type="checkbox"/>	If yes, date:	/ /
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Has the tenant/resident served a notice of intention to vacate? (If yes, please attach a copy)

No:	<input type="checkbox"/>	Yes:	<input type="checkbox"/>	If yes, date:	/ /
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Other reasons why you believe the tenancy has terminated or the tenant has abandoned the premises

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7. Contacting the tenant

What steps have you taken to contact the tenant/resident (or tenant's/resident's relatives, friends or representative) regarding the collection of the goods?

Details (including dates of contact):

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8. Signature of person requesting this inspection

Printed name:	
Date:	/ /

9. How to lodge this form

Email to: renting@justice.vic.gov.au

Post to: Consumer Affairs Victoria GPO Box 123
Melbourne 3001

Fax to: 8684 6310

FORM 13

Residential Tenancies Act 1997

(Section 386(2)(a))

RESIDENTIAL TENANCIES REGULATIONS 2008

(Regulation 17)

NOTICE TO FORMER TENANT (GOODS LEFT BEHIND)

To *(name and forwarding address of former tenant)*

1. The goods described below:

(insert description of goods)

which were left on rented premises at *(insert address)* when your tenancy agreement in respect of those premises was terminated on *(insert date)*, are being stored on premises at *(address of storage address)* for a period of 28 days from *(insert date)*.

2. The costs involved in removal and storage of the goods are \$ to date and continue to accrue at \$ per day.
3. After the end of the 28 day storage period it is intended to dispose of the goods by sale by public auction at* a.m./p.m. on *(insert date)* at *(insert place)* and the proceeds of the sale of the goods will be dealt with in accordance with section 393 of the **Residential Tenancies Act 1997**.
4. If you wish to reclaim the goods, you may do so before the public auction upon payment to the former landlord of the reasonable costs incurred for the removal, storage, notification and organising of the sale.

Signature of former landlord

Name and address of former landlord

Date:

*Delete reference to time, date and place of auction if not known to landlord at the time of giving this notice.

FORM 14

Residential Tenancies Act 1997

(Section 386(2)(b))

RESIDENTIAL TENANCIES REGULATIONS 2008

(Regulation 18)

NOTICE OF GOODS LEFT BEHIND

1. The goods described below:

(insert description of goods)

which were left by *(insert name of former tenant)* on rented premises at *(insert address)* when the tenancy agreement in respect of those premises was terminated on *(insert date)*, are being stored on premises at *(address of storage address)* for a period of 28 days from *(insert date)*.

2. The costs involved in removal and storage of the goods are \$ to date and continue to accrue at \$ per day.
3. After the end of the 28 day storage period, it is intended to dispose of the goods by sale by public auction at* a.m./p.m. on *(insert date)* at *(insert place)* and the proceeds of the sale of the goods will be dealt with in accordance with section 393 of the **Residential Tenancies Act 1997**.
4. If the former tenant or other person who has a lawful right to the goods wishes to reclaim them, this can be done before the public auction upon payment to the former landlord of the reasonable costs incurred for the removal, storage, notification and organising of the sale of the goods.

*Delete reference to time, date and place of auction if not known to landlord at the time of giving this notice.
