

A large, light purple outline of a house with a gabled roof and a chimney on the right side, set against a dark purple background. The text is overlaid on the house shape.

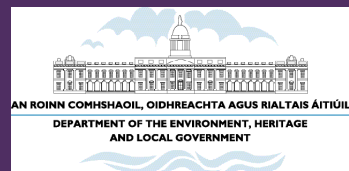
*Private Rented Sector
Tenants of 20 or more years Occupancy*

*Private Rented Sector
Tenants approaching 20 years Occupancy*

*Successor Tenants in the
Formerly Rent Controlled Sector*



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Important Information on changes applying from 1st September, 2009

Please note: This leaflet is not a statement or interpretation of the law and has been prepared for information purposes only. It is not intended as a substitute for professional legal advice.

What is this leaflet about?

It is about changes to the long occupation equity provision in the Landlord and Tenant (Amendment) Act 1980 brought about by the enactment and commencement of the Residential Tenancies Act 2004. In the case of successor tenants in the formerly rent controlled sector, it is a follow up to the information leaflet produced in 2002 to advise them of the changes associated with the expiry of protection under the Housing (Private Rented Dwellings) Act 1982. It is relevant to all tenants who, themselves, or in conjunction with their predecessors in title, will have completed 20 years tenancy of a dwelling by 1st September 2009, and to their landlords.

What is the long occupation equity provision in the 1980 Act?

It is an entitlement to claim a renewable long occupation equity lease of up to 35 years (or whatever shorter term the tenant nominates) under the Landlord and Tenant (Amendment) Act 1980 that applies to tenants who (themselves or in conjunction with their predecessors in title) have occupied the dwelling for more than 20 years.

What distinguishes long occupation equity lease tenancies from other tenancies?

Such a lease entitles a tenant who complies with its terms to retain possession of the dwelling except in the limited circumstances outlined in the 1980 Act. The tenant specifies the length of the lease (up to 35 years) and, as the lease is renewable, the right is potentially perpetual. The tenant may assign or sub-let the tenancy. Unless the landlord and tenant agree a rent, the rent will be set by the Circuit Court at market rate reduced by the letting value of improvements carried out by the tenant or his/her predecessors. Where the rent is set by the court, it applies for at least 5 years and a successor tenant may be eligible for a means tested rent allowance from the Department of Social and Family Affairs applicable to formerly rent controlled tenancies only. The Residential Tenancies Act does not apply to long occupation equity lease tenants or to applicants for such leases whose applications are still before the courts and not yet heard.

What are the changes to this provision in the Residential Tenancies Act?

The Residential Tenancies Act abolishes, with effect from 1st September 2009 (the 5th anniversary of the commencement of Part 4 of the Act), the right to apply, for the first time, for a long occupation equity lease of up to 35 years under the 1980 Act, except where the tenant has (before the 5th anniversary referred to) served notice on the landlord of his/her intention to claim such a lease under section 20 of that Act. The abolition only applies in the case of those tenants who have never previously claimed such a lease and those who have done so will continue to be able to keep renewing their long leases as each one expires. In the meantime, for that period of five years, tenants will be able to renounce their right to a long occupation equity lease under the 1980 Act. This means that a tenant facing the termination of a tenancy (e.g. if coming close to 20 years of occupancy), because the landlord wants to prevent such a right accruing, will be able to renounce the right in return for being allowed by the landlord to continue the tenancy.

Why have these changes been made?

The well-intentioned long occupation equity provision has proved counter-productive, prompting eviction of tenants approaching 20 years of occupancy. It has also discouraged institutional investment in private rental accommodation, particularly since the controversy surrounding the termination of tenancies in Mespil Estate in Ballsbridge in the early 1990s. A Working Group established in 1994 in the wake of the Mespil Estate controversy recommended the amendment of the 1980 Act to provide an opt-out from the entitlement but this was not implemented. The Commission on the Private Rented Residential Sector recommended the abolition of the entitlement after a transitional period of 5 years and recommended the availability of an opt-out from the entitlement for that 5-year period. The Government decided to implement the Commission's recommendations.

What is the significance of this for successor tenants?

Successor tenants are entitled to apply for long occupation equity lease tenancies since they have all completed the 20 year occupation requirement by virtue of their own tenancies and that of the rent controlled tenants from whom they succeeded to the tenancy. Any successor tenant who has not yet applied for one of these leases may do so only until 1st September 2009. After that date the entitlement to apply will be gone. A successor tenant who has not applied for a long occupation equity lease before 1st September 2009 will be no different to tenants in the general private rented sector and the provisions of the Residential Tenancies Act will apply.

What is the significance of this for other tenants?

After 1st September 2009 no significance will attach to a tenancy having lasted for 20 or more years. Where a tenancy has lasted 20 years before that date, the tenant will be entitled to apply for a long occupation equity lease only until 1st September 2009 and then the entitlement will be gone. Where the tenancy has lasted less than 20 years but could reach 20 years before 1st September 2009 if not terminated before then, the tenant will be able to irrevocably renounce his/her entitlement to claim a long occupation equity lease in return for being allowed to continue as tenant of the dwelling.

How do I apply for a long occupation equity lease?

The procedure laid out in the Landlord and Tenant (Amendment) Act 1980 must be followed. You must first serve a notice of intention to claim relief on the landlord. While this can be done at any time up until 1st September 2009, if the landlord has served a notice to quit on you so as to terminate your tenancy, then a notice of intention to claim relief may only be served on the landlord within three months of the service of the notice to quit.

The notice of intention to claim relief is a 'prescribed form' available from solicitors or from the Civil Office, Dublin Circuit Court, Áras Uí Dhálaigh, Inns Quay, Dublin 7 or the Circuit Court for the county in which the dwelling is located. It is this notice, which starts the long occupation equity lease process, that may be served on the landlord only if done before 1st September 2009.

Whether or not the landlord is prepared to grant the lease, once a month has passed since the notice of intention to claim relief was served, you may, at any time thereafter, apply to the Circuit Court to decide on your entitlement to a long occupation equity lease. If you do not make the application to the Circuit Court within three months of serving the notice of intention to claim relief, the landlord may instead apply to the Court to decide on your entitlement. Note: a long occupation equity lease is not an automatic entitlement - the Court decides on the entitlement by reference to the relevant provisions of the 1980 Act and the circumstances of the case.

Does the Residential Tenancies Act apply to long occupation equity lease tenancies?

The Residential Tenancies Act does not apply to any tenancy governed by a long occupation equity lease as the provisions of the Landlord and Tenant (Amendment) Act 1980 apply instead. The Residential Tenancies Act also does

not apply in the case of any tenancy where the tenant or landlord has applied to the Circuit Court to decide on the entitlement of a tenant who has served notice of intention to claim a long occupation equity lease, for so long as the case has not been decided by the court. The Residential Tenancies Act does apply where the tenant has not served notice of intention to claim a long occupation equity lease or, has served such a notice, but neither the tenant nor the landlord has applied to the Circuit Court to decide on the tenant's entitlement.

I may be eligible for a long occupation equity lease – should I apply for it?

This is a matter for you to decide and on which you may need to obtain legal advice. A long occupation equity lease, if granted, provides a level of security of tenure that landlords would be unlikely to willingly offer and that is not available to tenants in the general private rented sector. However, all leases involve responsibilities as well as rights and you need to consider your own personal circumstances before making such a decision. The important thing to remember is that you have only until 1st September 2009 in which to make an application should you so decide. After that the opportunity to avail of such a lease will be gone for good. It should also be noted that successor tenants who have not applied for a long occupation equity lease are ineligible for the means tested rent allowance from the Department of Social and Family Affairs applicable to certain formerly rent controlled tenancies.

Where can I get further information?

The means tested Free Legal Aid Scheme covers applications for long occupation equity leases under the 1980 Act. Enquiries to establish eligibility for aid should be addressed to:

Legal Services Section
Legal Aid Board
Quay Street
Cahirciveen
Co. Kerry

Telephone: (066) 9471000

Threshold, the housing information and advice agency, at 21 Stoneybatter, Dublin 7 and the Citizens Advice Centres located throughout the country are other potential sources of information.

Enquiries about the special means tested rent allowance payable by the Department of Social and Family Affairs where the Circuit Court has granted a

long occupation equity lease tenancy under the 1980 Act, or has yet to decide on the tenant's application for such a tenancy and the rent paid by the tenant has not changed since 25 July 2002, should be made to:

Rent Allowance Section
Social Welfare Services Office
Government Buildings
Ballinalee Road
Longford
Telephone: (043) 40018 / 40133 (mornings only)

Queries about the Residential Tenancies Act 2004 or about the content of this leaflet should be made to;

Private Housing Section
Department of the Environment, Heritage and Local Government
Custom House
Dublin 1

Telephone: (01) 8882707

The relevant legislation is available from the Government Publications Sales Office, Molesworth Street, Dublin 2 – telephone (01) 6793515 or from the website of the Irish Government at [www.gov.ie\oireachtas](http://www.gov.ie/oireachtas).