

Policy: Leasing and Occupation of Real Property

Purpose

- To ensure effective management and accountability for the leasing of property belonging to customers
- To regulate the occupation of properties:
 - owned by directly managed customers
 - managed by NSW Trustee & Guardian on behalf of a beneficiary where parents/carers/family reside in the property without a formal lease
 - where beneficiaries require a person to occupy a property prior to sale
- To ensure uniformity in the leasing of properties in estates subject to a life tenancy

NSW Trustee & Guardian manages leased properties on behalf of directly managed customers, power of attorney customers, trusts and estates.

NSW Trustee & Guardian manages and purchases properties on behalf of customers, where the parents / carers or other family members will reside in the property. These occupation arrangements are formalised by a Deed of Agreement, which sets out the responsibilities of the parties.

In deceased estates, beneficiaries may want the property occupied while awaiting sale or there may be a person / family member in occupation at the time of death. Where there is a life tenancy, NSW Trustee & Guardian has overall responsibility, as Trustee, to ensure that the property is maintained, insured and the outgoings on the property are current. Normally under a Will, the life tenant is responsible for the payment of outgoings on the property including the council and water rates, insurance premiums, and any land tax liability. A land tax liability arises if the property is leased over the threshold and forms a charge on the land. Where this occurs NSW Trustee & Guardian is responsible for disclosing the property for land tax and will pay any liability assessed. This liability is then recovered from the life tenant.

Policy statement

NSW Trustee & Guardian will consider leasing properties that are vacant, subject to customer wishes and where applicable Financial Planning Unit Review. This is to capitalise on the investment. Local Real Estate Agents provide the leasing services. Agents nominated to provide these services by a customer, stakeholder or beneficiary are considered. Regular inspection reports are required on leased properties and reviewed at least once a year. Rent is collected and paid into the appropriate trust account.

A family member or key stakeholder can reside in the property under a Residential Tenancy Agreement or by arrangement with NSW Trustee & Guardian, where applicable. This will be fully documented with appropriate specialist advice supporting such an arrangement. For directly managed customers, this can only be considered where NSW Trustee & Guardian's Financial Planning Unit advises that it is affordable for the proposed duration and reviewed annually. Where customer circumstances change, a review of lease arrangements is required.

If a property in a deceased estate is occupied or the beneficiaries wish the property to be occupied for security reasons prior to sale, then no occupation fees or adjustments for ongoing rates can be charged. Where the beneficiaries seek payment by the occupant, a formal lease must be entered into.

NSW Trustee & Guardian will not agree to life tenants leasing the property and receiving the rent direct. NSW Trustee & Guardian will undertake the leasing of the property, receive the rents, pay the outgoings and then account to the life tenant for the net balance.

Document information

Title:	Leasing and Occupation of Real Property Policy
Owner:	Manager, Property Service Centre
Approver:	Director, Trustee Services
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