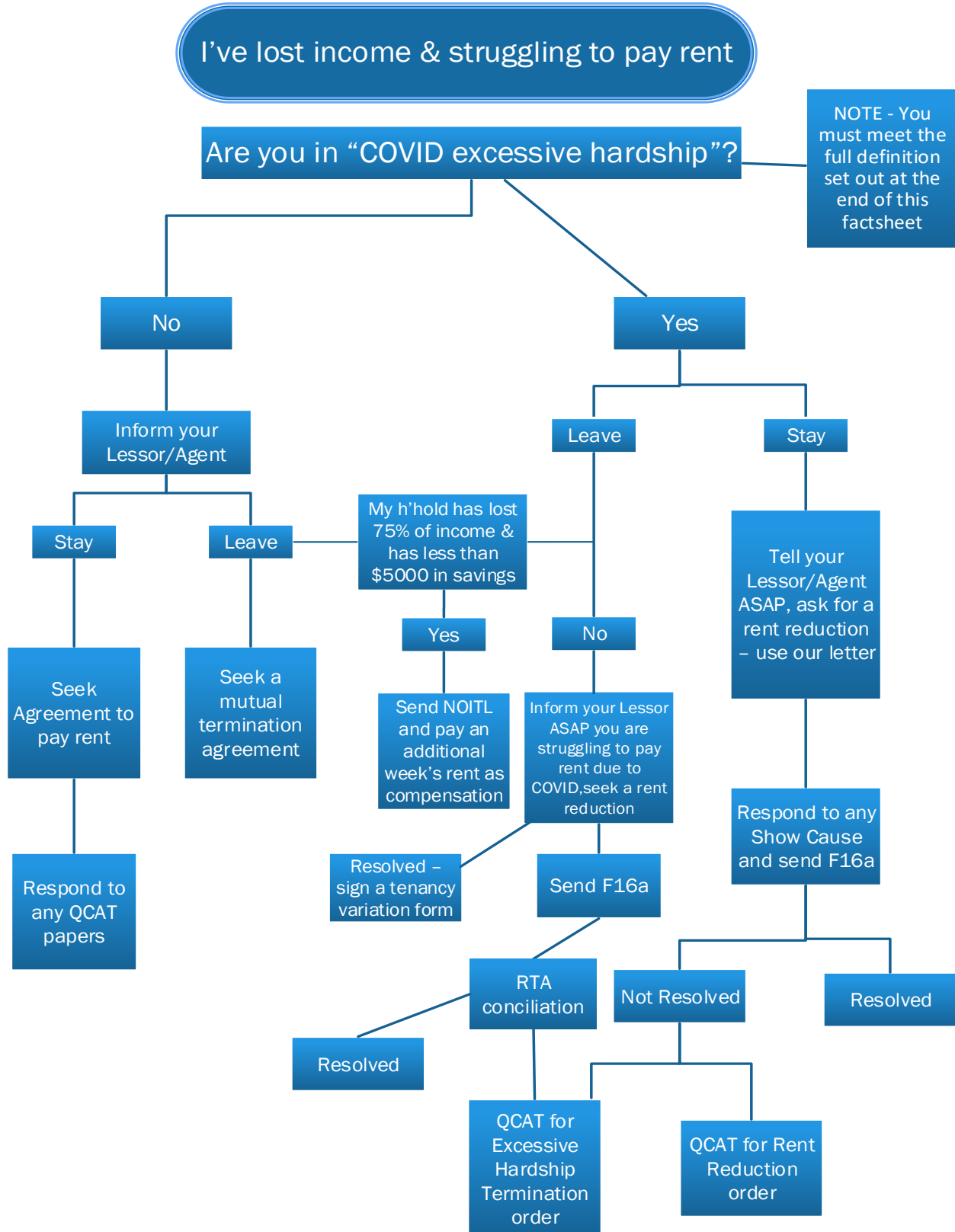


Excessive hardship due to COVID-19 - Rent arrears, reductions and terminating your tenancy

This fact sheet provides information for tenants and rooming accommodation residents seeking a rent reduction or tenancy termination because they have lost income due to COVID-19. It provides information on the recent *Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020* in effect until September 29 2020.



If you're struggling to pay rent because of an impact from COVID-19, you may wish to request a rent reduction or terminate your agreement. To understand your options, first you need to work out whether you are covered by the definition of "*when person suffers excessive hardship because of COVID-19*". In this factsheet, we'll refer to that definition as 'COVID excessive hardship'. We've set the definition in full at the end of this factsheet.

Whenever you're struggling to pay rent – COVID affected or not - you should talk to your lessor or agent as soon as you can because if you fail to pay your rent on time, it's considered a breach of your tenancy agreement.

If you fall into the definition of 'COVID excessive hardship' and fail to pay your rent, there are new processes which your lessor, agent or provider must follow as long as you have informed them of your circumstances.

Rent arrears

If your rent is seven days late (in a general tenancy) or four days late (in rooming accommodation where you've lived for longer than 28 days), your lessor can issue you with a Residential Tenancies Authority (RTA) Notice to Remedy Breach with 7 days to remedy the breach. However, if you are in 'COVID excessive hardship' and your lessor knows, or ought to know your situation, you cannot be issued with a Notice to Remedy Breach but the lessor can issue a '**show cause notice**' instead.

If you receive a show cause notice, within 14 days you must either pay the unpaid rent or inform your lessor that you cannot pay because you are in 'COVID excessive hardship'. If you don't do either of these things, the lessor can then issue a Notice to Remedy Breach and then a Notice to Leave and apply to QCAT for a termination order if you do not remedy the breach within the required 7 days.

I'm in 'COVID excessive hardship'

If you're in 'COVID excessive hardship' first try to negotiate a suitable and agreed outcome with your lessor. This might include, for example, seeking reduced rent for a specified period and or a plan to pay back any unpaid rent when you receive income support. If you reach an agreement, it should be recorded on the new RTA COVID-19 Variation Agreement forms (General Tenancy Form 18d; Rooming Accommodation Form 18e; Moveable Dwelling Form 18f). Be careful to read the whole document before signing so you know fully understand if the rent is reduced or deferred and don't sign anything you don't agree with.

If you cannot reach an agreement, request dispute resolution from the RTA by using the new COVID-19 Dispute Resolution Request Form 16a. Conciliation is free and confidential.

If the dispute is not resolved, the RTA will issue a Notice of Unresolved Dispute and you can then apply to the Queensland Civil and Administrative Tribunal (QCAT) for a decision on the unpaid rent or a rent reduction or to end your agreement for excessive hardship because you are in 'COVID-19 excessive hardship'.

The evictions moratorium

Between 29 March and 29 September 2020, tenants who cannot pay some of all of their rent because they are in 'COVID excessive hardship', are protected from eviction under the new regulations. If your lessor issues you

TIPS IF YOU CAN'T PAY YOUR RENT

1. If you're struggling to pay rent, inform your lessor or agent as soon as possible about your situation.
2. Attempt to negotiate a mutually acceptable solution.
3. If you discuss the issues verbally follow up your conversation in writing so you have evidence of notifying your situation and the attempts to negotiate.
4. Request dispute resolution from the RTA as soon as possible if you can't resolve the issues.
5. Keep all agreements in writing
6. Check any written agreements carefully before signing.

with a notice to leave for rent arrears during this period, and you have notified them that you are in 'COVID excessive hardship', you can dispute the notice by sending the RTA a Dispute Resolution Request Form 16a to have the notice withdrawn. Make sure you have let your lessor know in writing and provided evidence of your circumstances.

If you are not in 'COVID excessive hardship' as defined in the regulations, the evictions moratorium does not apply to you, however, you may still try and negotiate your circumstances with the lessor and use the RTA dispute resolution process (by issuing a Form 16). You may also request your lessor provide you with the most recent rent ledger to assist you in your negotiation for a repayment plan or to dispute any outstanding rent.

Ending your agreement

Excessive hardship termination in QCAT

You may think it's a better option for you to try to end your agreement. If you're on a fixed term agreement, one option is to apply to QCAT for an excessive hardship termination. You must show that your circumstances have changed significantly from the time you signed the current tenancy agreement.

If you do not fit the definition of 'COVID excessive hardship', and can't successfully negotiate a mutual termination of the agreement with your lessor, you can use a QCAT Form 2 to apply directly to QCAT requesting a termination order for excessive hardship.

However, if you are in 'COVID excessive hardship' you must use the RTA's dispute resolution before applying to QCAT for an excessive hardship termination. If you are in 'COVID excessive hardship' you will need a Notice of an Unresolved Dispute whether you are applying for a rent reduction or an excessive hardship termination.

Ending your agreement with a Notice of Intention to Leave

In addition to the option of an excessive hardship termination in QCAT, if you're a tenant or resident and you can show that:

- you lost 75% of your income; and,
- you have less than \$5,000 in saving,

You can end your fixed term agreement by giving the lessor a Notice of Intention to Leave, any compensation requested should be capped at the equivalent to one week's rent. However, the income and savings of all the named tenants (or residents in rooming accommodation) on the agreement will be taken into account. If you use this option, you should also keep good evidence of your circumstances in case the lessor disputes your Notice of Intention to Leave or seeks additional compensation.

Can I be listed on a tenancy database?

You must not be listed on a tenancy database for rent arrears or for ending a tenancy, if this occurred during the COVID- 19 emergency and you were in 'COVID excessive hardship' or you were complying with a public health direction.

Unless the person who made the listing didn't know of your circumstances when you were listed, it is an offence for them to list you. So keep your lessor or provider informed of your circumstances. Be aware that you can only be listed after the tenancy has ended, you must be first advised in writing that they are going to list you, and, given details about the proposed listing. If you are notified about a proposed listing and you do not agree with the listing you can lodge a Dispute Resolution Request with the RTA or apply directly to QCAT for an order not to list.

Further advice

If you need further advice, please contact Tenants Queensland's free tenancy advice service on 1300 744 263. Tenants Queensland Inc delivers QSTARS, the Queensland Statewide Tenancy, Advice and Referral Service

Definitions

'COVID excessive hardship'

Section 6 of the new regulations describe when a 'person suffers excessive hardship because of COVID-19 emergency' (we've referred to this in the factsheet as 'COVID excessive hardship').

To meet the definition, during the COVID-19 emergency period:

- You, or another person under your care, suffers from COVID-19, or;
- You are subject to a quarantine direction, or;
- Your place of employment is closed in compliance with a public health direction, or;
- Your place of employment is unable to continue to operate because of a loss of trade or business resulting from a public health direction, or;
- You are in self isolation due to self- vulnerability, live with a vulnerable person; or you are the primary carer for a vulnerable person, or;
- There is a restriction on travel preventing you from working or returning home or;
- You cannot leave or enter Australia.

AND

- You suffer a loss of income of **25% or more** or rent payable is 30% or more of your income.
Note: If there is **more** than 1 person named as a tenant or resident on the agreement, the combined total net weekly income of all those named is taken into account.

'Vulnerable person'

If you fall into one of the following categories, you are considered a vulnerable person:

- a. An individual over 70 years of age.
- b. An individual over 65 years of age who has an existing health condition or comorbidities.
- c. An Aboriginal or Torres Strait Islander individual over the age of 50 who has an existing health condition or comorbidities
- d. An individual whose immune system is compromised.