

# Notice of Legislative Changes and What that Means for You

This publication is intended to provide general information only and is not a substitute for legal advice.

The Alberta Rules of Court were amended in 2010 to simplify the process for recovering or taking possession of land. This resulted in updates to legislation related to residential premises, mobile home sites, member units in cooperative housing and land that is being expropriated (taken over for public use).

## WHAT IS CHANGING AND WHEN?

Writs of possession (an additional step in the possession process) will be eliminated from the following legislation:

- *Residential Tenancies Act (RTA)*
- *Mobile Home Sites Tenancies Act (MHSTA)*
- *Cooperatives Act*
- *Expropriation Act*

This change is effective **October 1st, 2011**.

This change will affect the wording of possession orders and judgments issued after October 1, 2011. Possession orders and judgments issued before that date will follow the existing process and a writ of possession will still be needed. The possession procedure will also change.

## WHO WILL BE AFFECTED BY THIS CHANGE?

Landlords, tenants, civil enforcement agencies, bailiffs, cooperatives, expropriating authorities and the lawyers representing them will be affected by this change.

## HOW WILL THE WORDING OF THE ORDERS OF POSSESSION CHANGE?

### Residential Premises and Mobile Home Sites

Possession orders and judgments, granted **after** October 1, 2011, must say that a civil enforcement agency has authority, after service of the order, to evict any occupant.

### Cooperatives and Expropriations

Possession orders and judgments under section 65 of the Expropriation Act and section 401 of the Cooperatives Act, granted **after** October 1, 2011, must say that a civil enforcement agency has authority, after service of the order, to evict any occupant of the land.

## HOW WILL THE PROCESS OF RECOVERING OR TAKING POSSESSION CHANGE?

### Enforcing the Order

The changes to the RTA and the MHSTA will allow a civil enforcement agency to evict an occupant from the residential premises or the mobile home site under the following conditions:

- A) the eviction takes place as directed in a possession order or judgment and
- B) the civil enforcement agency is satisfied that
  - the possession order or judgment has been served on the tenant(s) and
  - an affidavit of service has been filed with the Court of Queen’s Bench, or
  - the possession order or judgment says that service is not necessary.

Under the RTA and MHSTA the possession order or judgment must be served on the tenant(s). A “tenant” is a person who is permitted by the landlord to occupy residential premises or a mobile home site under a tenancy agreement, an assignment or sublease approved by the landlord. This term also includes overholding tenants.

This process is different from Rule 9.26(1)(b) of the Alberta Rules of Court, which applies to orders under the Expropriation Act and of the Cooperatives Act, and requires the possession order or judgment to be served on every occupant of the land.

### NEW DOCUMENT – NOTICE OF DEFAULT

When the RTA and MHSTA change, and the writs of possession are eliminated, the next step in the eviction process will depend on the type of

possession order or judgment granted by the Courts or the Residential Tenancy Dispute Resolution Service (RTDRS). Some possession orders or judgments will require a notice of default to be served on the tenant within a certain time after a default occurs and will also say how much time the tenant has to give up possession of the residential premises after they are served with the notice. A default occurs when the tenant does not comply with the payments ordered in the possession order or judgment.

### Unconditional Judgments or Order:

These possession orders or judgments direct the tenant(s) to give up possession of the premises on a certain date or within a certain number of days after service of the possession order or judgment. The landlord may contact a civil enforcement agency if the tenant does not give up possession as directed in the possession order or judgment.

### Conditional Judgment or Order

These possession orders or judgments will stay (put on hold) the recovery or taking possession process while payments are made to the landlord. If the tenant fails to make one of the payments on time the landlord must serve the tenant with a notice of default. This is not a request for payment. It is notice that the landlord is proceeding with the eviction process.

### Conditional Judgment or Order with No Notice of Default

These possession orders or judgments are the same as a conditional order except that the requirement for a notice of default has been waived. This would only happen in rare situations. The landlord may contact a civil enforcement agency if the tenant fails to make one of the payments.

## SUMMARY DIAGRAM

### Possession Order or Judgment

1. File at the Court of Queen's Bench
2. Serve the tenant(s)
3. File Affidavit of Service at Court of Queen's Bench

**Note:** *Affidavit of Most Recent Possession* is no longer required

## NEXT STEPS

### Unconditional Possession Order or Judgment

Contact Civil Enforcement Agency

OR

### Conditional Possession Order or Judgment

1. Serve tenant(s) with notice of default
2. Contact a Civil Enforcement Agency

OR

### Conditional Possession Order or Judgment/No Notice of Default

Contact Civil Enforcement Agency

**FOR MORE INFORMATION**

**NOTICE OF DEFAULT FORMS:**

**Residential Tenancy Dispute Resolution Service**

[www.rtdrs.alberta.ca](http://www.rtdrs.alberta.ca) >Applications and Forms tab

**Calgary office:**

230 - 7th Avenue SE  
Calgary AB T2G 0H9

(main floor Rocky Mountain Plaza)

Toll-free in Alberta: 310-0000 then 780-644-3000

**Edmonton office:**

Unit #112, 10025 - 102A Avenue  
Edmonton AB T5J 2Y8

(102A entrance of Edmonton City Centre)

Phone: 780-644-3000

**Alberta Courts**

[www.albertacourts.ca](http://www.albertacourts.ca)>Provincial Court tab>Civil  
(Small Claims Court)>Forms & Publications

[www.albertacourts.ca](http://www.albertacourts.ca)>Court of Queen's Bench>  
Forms & Publications

**Service Alberta**

[www.servicealberta.ca](http://www.servicealberta.ca)>Landlords/Tenants tab>  
Forms

**LIST OF CIVIL ENFORCEMENT AGENCIES:**

**Office of the Sheriff**

[www.albertacourts.ca](http://www.albertacourts.ca) > Court Services tab > Sheriff  
– Civil Enforcement

**LEGISLATION:**

**Service Alberta**

- Residential Tenancies Act
- Mobile Home Sites Tenancies Act
- Rules of Court Statutes Amendment Act, 2011

[www.servicealberta.ca](http://www.servicealberta.ca)>Landlords/Tenants tab>  
Legislation

- *Cooperatives Act* information

[www.servicealberta.ca](http://www.servicealberta.ca)>Consumer Information tab>  
Tipsheets - Consumer Information>Business

**Queen's Printer Bookstore**

- *Expropriation Act*
- *Cooperatives Act*
- *Alberta Rules of Court*

You may purchase these Acts and their regulations from the Queen's Printer Bookstore. These are also free for you to download in the "pdf" or "html" formats.

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