

Special levy for community upgrade

Residential (Land Lease) Communities Act 2013

As a home owner in a residential land lease community you have rights under the *Residential (Land Lease) Communities Act 2013* and *Residential (Land Lease) Communities Regulation 2015*. This factsheet explains the law in NSW regarding special levies.

How is a special levy introduced?

Home owners in a land lease community may, by a special resolution, agree to pay a special levy to enable the operator to provide a specified new facility or service for the community, or to make a specified improvement to the community (a community upgrade).

The special resolution must set out the proposal and include the amount or method of calculation of the special levy, and when it is to be paid by home owners.

All home owners in the community must be given notice of the special resolution. Within 90 days of the notice being issued a vote must be taken. The special resolution is passed if 75 percent (75%) of home owners vote in favour.

The operator must also agree to the community upgrade by notice in writing to all home owners either before or within 90 days of the special resolution being passed.

A home owner can dispute a special resolution by making an application to the NSW Civil and Administrative Tribunal (NCAT). The application must be made within 28 days of the resolution being passed.

NCAT can make any of the following orders:

- an order that quashes the special resolution in whole or in part
- an order that confirms the special resolution in whole or in part
- an order that determines whether or not the special resolution has effect
- any ancillary order the Tribunal thinks is appropriate in the circumstances.

The Tribunal can only make an order quashing the resolution in whole or in part if it is satisfied the home owner has reasonable grounds to seek the order.

How is a levy divided?

Once a special resolution has been passed and the operator has also agreed all home owners in the community are required to pay the special levy in accordance with the special resolution.

The special levy is split equally between residential sites in the community with each site counting as one share no matter how many people live in the home on that site.

The operator can recover the special levy as a debt owing from any home owner who fails to pay their share.

If a home owner sells their home, they are no longer required to pay the special levy but any amounts already paid are not refunded. The new home owner takes over payment of the special levy if they were advised of this requirement by the operator in the disclosure statement.

The operator can contribute to the cost of the community upgrade but is not required to do so.

Management of the levy

The operator must hold the proceeds of the special levy on trust until the money is used for the service or facility, or is refunded to home owners. There is no requirement for the special levy to be held in a separate account.

Once all payments of the special levy have been received the operator must, within a reasonable time, use the money for the purpose specified in

the special resolution. Any unused money must be reimbursed to home owners in equal shares (one share per residential site).

Change of operator

If another person becomes the operator of the community while a special levy is in place the new operator becomes responsible for the special levy and community upgrade.

FURTHER HELP

Tenants Advice and Advocacy Services

Sydney

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| South | 9787 4679 |
| South West | 4628 1678 |
| Inner West | 9559 2899 |
| North | 9559 2899 |

Regional

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| Blue Mountains | 4704 0201 |
| Central Coast | 4353 5515 |
| Hunter | 4969 7666 |
| Illawarra & South Coast | 4274 3475 |
| Mid Coast | 6583 9866 |
| Northern Rivers | 6621 1022 |
| North West NSW | 1800 836 268 |
| South West NSW | 1300 483 786 |

Aboriginal

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| Sydney | 9833 3314 |
| Northern NSW | 1800 248 913 |
| Southern NSW | 1800 672 185 |
| Western NSW | 1800 810 233 |

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| Website | thenoticeboard.org.au |
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| NSW Fair Trading | 13 32 20 |
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This factsheet is intended as a guide to the law and should not be used as a substitute for legal advice. The information applies to people who live in, or are affected by the law as it applies in New South Wales, Australia.

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