

OutasiteLite

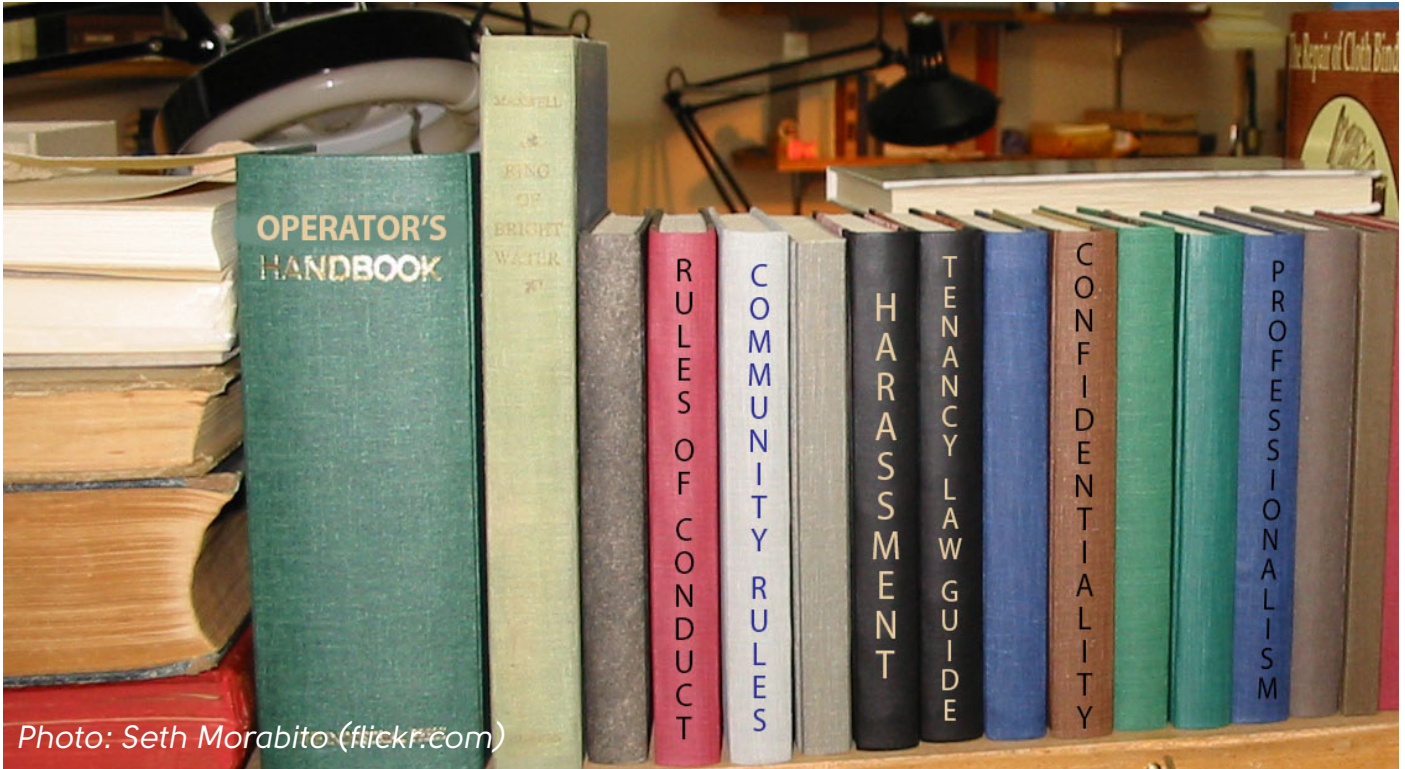


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YOU CAN'T DO THAT! OPERATOR CONDUCT IN LAND LEASE COMMUNITIES

The Tenants' Union regularly hears complaints from land lease community residents about the behavior of operators. During the review of the *Residential Parks Act 1998* the behavior of park managers and owners was also a common theme. Many residents told stories of interference in sales, harassment, intimidation and bullying.

Many operators do the right thing but when an operator behaves badly residents can take action. The *Residential (Land Lease) Communities Act 2013* (the Act) contains a number of provisions around operator behaviour, including Rules of Conduct.

In this issue of Outasite Lite we will take a closer look at these provisions.

ENTERING A SITE AGREEMENT

When entering into a site agreement with a home owner the operator, or a person acting on their behalf, must not make any representation or promise that is false, misleading or deceptive in order to induce the home owner into signing the agreement.

Operators are required to provide prospective home owners with information via a disclosure statement. The disclosure

statement must set out such things as the fees and charges payable under the proposed agreement and the services and facilities available in the community.

RETALIATORY CONDUCT

Sometimes, when home owners get advice about how to deal with an issue in their community they respond by saying that they can't take the recommended action because the operator will retaliate in some way. The Act provides that an operator (or a close associate of the operator) must not engage in retaliatory conduct against a home owner because the home owner has either made a formal complaint, applied to the Tribunal or promoted the establishment of a residents committee.

In the Act retaliatory conduct includes amending community rules to the detriment of the home owner and giving or threatening to give a termination notice, however other types of conduct can be retaliatory too.

COMMUNITY RULES

Community rules apply to all residents and occupants of a community plus the owner, the operator and their employees. The operator is required to ensure that the rules are enforced and interpreted consistently and fairly. If an operator enforces a rule against one resident but not against others it is not consistent or fair and is a breach of the Act.

INTERFERENCE WITH HOME SALES

Every home owner has the right to sell their home on site but operators' interfering with this right is probably the most common complaint the Tenants' Union hears. The Act contains a number of measures about interference, including the ability for home owners to seek compensation.

Interference with the right to sell includes:

- unreasonably restricting prospective

purchasers from inspecting the home or common areas of the community,

- making false or misleading statements about the community, and
- requiring the home owner to take compliance action regarding the home only after becoming aware that the home owner is seeking to sell.

RULES OF CONDUCT

The rules of conduct for operators set out what is expected in their management of the community and dealings with residents and prospective residents. The rules are not extraordinary and merely set out the type of behaviour that any person could expect when dealing with a professional who is providing a service.

Firstly, operators are required to have a knowledge and understanding of the relevant legislation, including the Act. An operator must not falsely represent the effect of a provision of the legislation and they must take reasonable steps to ensure that their employees comply with the legislation.

An operator must act honestly, fairly and professionally in all negotiations and transactions, and not mislead or deceive any of the parties involved.

High pressure tactics, harassment, harsh and unconscionable conduct are not to be engaged in and an operator must exercise reasonable care and diligence.

If an operator is acting on behalf of a resident, or dealing with a resident they must maintain confidentiality i.e. not disclose or use any confidential information they have obtained through the process. Disclosure can occur only with the permission of the resident or if the operator is permitted or compelled by law.

An operator acting as a selling agent for more than one home in the community must act fairly and advise prospective purchasers of the details of all homes available for sale.

Prospective residents must not be solicited through advertising or other communications that are false or misleading.

Finally, an operator must not tender a document for signature unless all material particulars have been inserted.

WHAT YOU CAN DO

The provisions around operator conduct are pretty comprehensive but they will require enforcement action in some cases. Generally there are two approaches residents can take if an operators' behaviour breaches the Act – a complaint can be made to NSW Fair Trading, or an application can be made to the NSW Civil and Administrative Tribunal (NCAT).

If a complaint is made to NSW Fair Trading their initial approach is about education – talking with the operator about what they are required to do, or not permitted to do according to the law. If an operator continues to behave badly and Fair Trading receives further complaints they may consider options such as penalties.

NCAT can make orders restraining operator behaviour or requiring an operator to do, or not do, certain things. In some circumstances, for example, interference with a home owners' right to sell, the Tribunal can also order the operator to pay compensation to the home owner.

For further advice or information about operator conduct contact NSW Fair Trading on 133 220 or your local Tenants Advice and Advocacy Service (contact details opposite).

Get advice from your local service:

NSW Tenants Advice and Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	8198 8650
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
Blue Mountains	4782 4155
Central Coast	4353 5515
Hunter	4969 7666
Illawarra South Coast	4274 3475
Mid Coast	6583 9866
Northern Rivers	6621 1022
North Western NSW	1800 836 268
South Western NSW	1800 642 609

Aboriginal services

Greater Sydney	9698 0873
Western NSW	6884 0969
Southern NSW	1800 672 185
Northern NSW	1800 248 913



The Tenants' Union of NSW is:

- A community legal centre specialising in NSW residential tenancies law.
- The main resourcing body for the NSW Tenants Advice and Advocacy Program.

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We also invite contributions.

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