

# Site agreements

## *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 site agreements.

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### Form of agreement

All site agreements between a home owner and operator must be in writing and be in the standard form prescribed in the *Residential (Land Lease) Communities Regulation 2015* (the Regulation).

The operator cannot charge a home owner a fee for preparing or entering into a site agreement and the home owner must be provided with a copy of the agreement free of charge.

If you are not given a written site agreement you can apply to the NSW Civil and Administrative Tribunal (NCAT) at any time for an order that the operator provide a written agreement.

### Additional terms

A site agreement can contain additional terms but they must not contravene the *Residential (Land Lease) Communities Act* (the Act), or any other Act, or any standard terms of the agreement.

Some terms are prohibited from being terms of a site agreement and those are prescribed in the Regulation. They include:

- any term that seeks to indemnify the operator or owner of the community against any liability for damage, loss or injury arising from an act or omission of the operator or owner (or one of their employees or agents) in relation to occupation or use of the residential site
- a term requiring a home owner to take out any form of insurance. However, if the site agreement contains a voluntary sharing term whereby the operator is entitled to a share of the sale price or capital gain, insurance can be required. In this case the operator must share the cost of the insurance.

### Cooling off period

The Act provides a 14 day cooling off period for new site agreements. You can cancel a site agreement within 14 days (from the date of signing) by serving notice in writing to the operator if:

- you are an existing home owner (with a current or previous site agreement for the site) when the new site agreement was entered into
- you are a new home owner and you have not taken up residence or had a home placed on the site.

If you cancel your site agreement and you have agreed to buy a home from the operator you can also cancel the sale agreement within the cooling-off period. You do not have to pay any compensation for canceling a site agreement or an agreement to buy a home from the operator.

### Fixed term

If your new agreement has a fixed term, the minimum period is three years. However, there is no requirement for there to be a fixed term and a site agreement can be a periodic agreement from the beginning.

### Voluntary sharing arrangements

New site agreements can contain terms requiring you to 'share' with the operator either a percentage of any capital gain or a percentage of the overall sale price when you sell the home.

Other voluntary sharing terms may require you to pay: a specified entry fee when you enter into the site agreement; a specified exit fee when you sell your home; deferred site fees; or any combination of these.

This provision applies to anyone who enters into a new site agreement. For more information see our factsheet on voluntary sharing arrangements available at [thenoticeboard.org.au](http://thenoticeboard.org.au)

## Rent only agreements

Rent only agreements are site agreements that do not contain any voluntary sharing arrangements. In most circumstances the operator must offer you a choice of agreement - a rent only agreement, or an agreement with one or more voluntary sharing arrangements.

If you are a prospective home owner purchasing a home from the operator, the above doesn't apply. In this situation operator can choose to offer only an agreement containing one or more voluntary sharing arrangements.

## Assignment

One home owner can assign (transfer) their site agreement to someone else with the written consent of the operator. The operator cannot unreasonably refuse a request to assign an agreement.

When a site agreement is assigned, the incoming home owner takes on that site agreement with exactly the same terms as the outgoing home owner, including site fees. The right to assign adds value to a site agreement because it protects incoming home owners from immediate site fee increases, voluntary sharing arrangements and in some cases, new fees and charges.

If an operator refuses to agree to the assignment of a site agreement the home owner seeking to assign can ask NCAT to make an order requiring the operator to consent. The application must be made within 28 days of the operator refusing to assign the agreement.

## FURTHER HELP

### Tenants Advice and Advocacy Services

#### Sydney

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

#### Regional

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

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

<b>Website</b>	<a href="http://thenoticeboard.org.au">thenoticeboard.org.au</a>
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<b>NSW Fair Trading</b>	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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