

Site fee increases

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 fee increases.

There are two methods to increase site fees for home owners in land lease communities: fixed method and increase by notice.

Fixed method

A fixed method increase must be written into the site agreement. Your site agreement should specify only one method of increase – if there is more than one, the method that results in the lowest increase is the one that applies.

A fixed method increase can apply for a specified period of time or the duration of occupancy.

Under the fixed method site fees can increase more than once a year.

The operator must provide you with a valid notice of increase at least 14 days prior to each scheduled increase.

A fixed method increase cannot be challenged as excessive under the *Residential (Land Lease) Communities Act 2013* (the Act).

Increase by notice

If you do not have a fixed method increase in your site agreement your site fees can only be increased once each year by notice.

The operator must issue a notice of increase to every home owner in the community (other than those on a fixed method increase) at the same time. The notice must:

- give you at least 60 days notice of the proposed increase, and
- include an explanation for the increase.

The effective date of the proposed increase must be the same for all home owners.

A proposed site fee increase can only be challenged as excessive if at least 25 percent (25%) of home owners who received the increase notice agree to challenge it.

Mediation

If at least 25% of home owners want to challenge a proposed site fee increase the first step is to make an application for mediation to the Commissioner for Fair Trading. Mediation is compulsory and the application must be made within 30 days of receipt of the increase notice.

This time limit cannot be later extended by NCAT.

NSW Fair Trading will appoint a mediator who will contact the parties to arrange a suitable time for mediation. Mediation usually takes place in the community or somewhere nearby.

The role of the mediator is to bring the parties together with the aim of reaching an agreement about the proposed increase. If an agreement cannot be reached home owners can then apply to the NSW Civil and Administrative Tribunal (NCAT). This application must be made within 14 days of a failed mediation and accompanied by a notice from the mediator.

NCAT

In deciding whether an increase is excessive NCAT may consider the following factors:

- the frequency and amount of past increases in site fees
- any actual or projected increase in the outgoings and operating expenses for the community
- repairs or improvements either planned or carried out by the operator since the last increase

- the general condition of the community including its common areas
- the range and average level of site fees within the community
- the value of the land, as determined by the Valuer General
- the value of any improvements to the community (including common areas) paid for or carried out by home owners
- any explanation for the increase provided by the operator by notice in writing to the affected home owners
- variations in the Consumer Price Index (All Groups Index) for Sydney
- whether the increase is fair and equitable in the operation of the community
- any other matters prescribed by the regulations.

NCAT can make an order declaring the increase is excessive, reducing the amount of increase or setting aside the increase.

NCAT cannot make an order that would result in an increase lower than necessary to cover any actual or projected increase (established to the satisfaction of the Tribunal) in the outgoings and operating expenses for the community.

The orders may apply to individual participating home owners, groups of participating home owners, or all participating home owners.

Individual application

An individual home owner can apply to NCAT only if their proposed site fee increase is substantially excessive when compared with increases for similar residential sites in the community.

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

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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