

Voluntary sharing arrangements

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 voluntary sharing arrangements.

New site agreements

New site agreements can contain terms that require a home owner to pay money to the operator on entering or leaving the community, or when the home is sold. This is called a 'voluntary sharing arrangement'.

In a voluntary sharing arrangement you agree to pay the operator one or more of the following:

- a specified entry fee on entry into the agreement or in any other manner specified in the agreement
- deferred site fees, being site fees where the payment is deferred in a manner specified in the agreement
- a specified exit fee that is payable if the home is sold or removed from the site
- a specified sale amount if the home is sold by you, with that sale amount being either (but not both) of the following:
 - a specified share of the capital gain in respect of the home
 - a specified on-site premium of the total sale price of the home as determined in the agreement

Capital gain has a specific meaning in the *Residential (Land Lease) Communities Act*. It is:

'any increase between the amount that the home owner paid for the home and the amount that the purchaser paid for the home. Site fees and any fees or charges payable under the site agreement are not to be included in the calculation of the capital gain'.

Improvements made to the home by you are not included in the capital gain calculation.

Example capital gain calculation

You purchase a home for \$200,000

You enter into a site agreement with a voluntary sharing term that requires you to pay 50% of the capital gain to the operator when you sell your home

You add a carport at a cost of \$15,000

You later sell the home for \$240,000

Under the Act the capital gain is \$40,000

You have to pay the operator \$20,000

You retain \$220,000 from the sale, a profit of only \$5000 on your investment.

Choice of agreement

In most circumstances an operator must offer you a choice of agreement. If you are purchasing the home from another home owner, or you are a current home owner who wants to enter into a new agreement and the operator has offered a site agreement with voluntary sharing terms, they must also offer you a rent only agreement.

A rent only agreement is a site agreement under which the site fees charged do not exceed fair market value and which does not contain any voluntary sharing terms.

Fair market value is the higher of:

- the site fees payable by the current home owner
- the site fees payable for sites of a similar size and location within the community.

If you are purchasing a home from the operator (or a close associate of the operator) the operator does not have to give you a choice of agreement - they can offer only a site agreement with a voluntary sharing arrangement.

A close associate of the operator is:

- their spouse or relative
- an employee or agent of the operator
- a company of which the operator is a director, employee or agent.

Assignment

As an alternative to entering into a new site agreement the selling home owner can seek the operators written consent to assign (transfer) their agreement to the purchaser.

The operator cannot unreasonably withhold or refuse consent to the assignment of a site agreement and the NSW Civil and Administrative Tribunal (NCAT) can determine disputes about whether a refusal is reasonable. Applications to NCAT must be made within 28 days of the operator refusing the assignment.

If an agreement is assigned, the deed of assignment should be attached to or kept safely with the site agreement.

For more information about site agreements and the sale of homes in land lease communities see our factsheets at thenoticeboard.org.au

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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