

Deceased estates



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 deceased estates.

When a home owner in a land lease community passes away ownership of the home is usually transferred to another person.

Sometimes the person who inherits the home did not live with the former home owner and is not on the site agreement. Nevertheless, a person who inherits a home becomes the home owner and has rights under the site agreement and *Residential (Land Lease) Communities Act 2013* (the Act).

Definition of home owner

In the Act the definition of home owner includes 'a person who obtains an interest in a site agreement as the personal representative, or a beneficiary of the estate, of a deceased individual who, immediately before the individual's death' was a person who owned a home on a residential site in a community that was the subject of a site agreement'.

In plain language, if the deceased person owned a home on a site in a land lease community and had a site agreement, the person who inherits the home becomes the home owner under that site agreement.

A site agreement does not terminate on the death of a home owner. Site agreements can only be terminated in certain limited circumstances under the Act.

Rights of the home owner

Like any other home owner in the community a person who inherits a home is entitled to live in it or sell it on site. Any terms in a site agreement that seek to restrict or prohibit an on site sale are invalid – every home owner has the right to sell the home on site.

If a beneficiary doesn't want to live in the home or sell it they can sub-let it for a period of up to 12 months with the operators written consent. The operator cannot unreasonably withhold consent to the request to sub-let the home.

Probate

It is common for an operator to request confirmation of ownership of the home usually evidenced by the grant of probate. Probate is a legal document from the Supreme Court that the will is the last valid will of the estate. It means that the executor is authorised to collect and distribute the assets of the deceased estate in accordance with the will.

In New South Wales it is not a statutory requirement to obtain probate in every case. If the estate is small (less than around \$15,000) and uncomplicated probate is not necessary. Also, a grant of probate can only be obtained if there is a valid will and a named executor. The executor is responsible for applying for probate.

If a person dies without a will this is known as intestacy and the person dies 'intestate'. If this occurs the Succession Act 2006 (NSW) sets out the order in which eligible relatives inherit the estate. An eligible relative can apply for Letters of Administration to enable them to administer the estate.

Proof of ownership

The Residential (Land Lease) Communities Act doesn't cover what proof of ownership an operator can require from someone who inherits a home that is the subject of a site agreement. It is arguable that the operator can't require anything. However, if there is a dispute about the persons right to occupy or otherwise deal with the home it would be prudent to provide some form of evidence, for example, a copy of the will or Letters of Administration.

FURTHER HELP:

Tenants Advice and Advocacy Services

Sydney

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South West	4628 1678
West	8833 0933
Northern	8198 8650

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
North NSW	1800 248 913
South NSW	1800 672 185
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Website	thenoticeboard.org.au
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Law Access	1300 888 529
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Fair Trading	13 32 20
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Find Legal Answers	www.legalanswers.sl.nsw.gov.au
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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. It applies to people who live in, or are affected by the law as it applies in New South Wales, Australia.

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