

Deceased estates

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 deceased estates.

Home ownership

When a home owner in a land lease community passes away ownership of the home is usually transferred to another person through a will. That person then becomes the home owner with rights and responsibilities under the site agreement and *Residential (Land Lease) Communities Act 2013* (the Act).

Definition of home owner

The Act provides a definition of home owner which 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 was a home owner with a site agreement, the person who inherits the home becomes the home owner under that site agreement.

Note: a site agreement does not terminate on the death of a home owner. Site agreements can only be terminated in certain limited circumstances and in accordance with the Act.

Wills and grants of probate

If the deceased person left a will there is usually a person or persons nominated in the will to act as executor or executors. It is the executor who is responsible for managing the estate and distributing the assets to beneficiaries. If the will does not name an executor one of the beneficiaries can apply for letters of administration to enable them to deal with the estate.

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.

A grant of probate is a legal document issued by the Supreme Court of New South Wales that authorises an executor to manage the estate of the deceased person in accordance with the will. 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 the grant of probate.

In New South Wales it is not a statutory requirement to obtain a grant of probate in every case. If the estate of the deceased person is small (less than around \$15,000) and uncomplicated probate is not necessary.

If the deceased persons' assets were jointly owned as joint tenants it is common on the death of one of the joint owners for the property to pass automatically to the other joint tenant. A grant of probate is not necessary in these circumstances.

Proof of ownership

The beneficiary should notify the community operator that they have become the home owner and advise them of their intentions regarding the home.

In most cases the operator will ask for proof of ownership and the beneficiary should comply with that request if they are able. The operator cannot insist on being provided with particular documents, for example a grant of probate.

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 not valid. Every home owner has the right to sell their home on site and the operator must not interfere or permit interference with that right.

An operator is not required to act as an agent and promote the sale of the home if probate has not been granted. They are also not legally required to agree to an assignment of the existing site agreement or enter into a new site agreement with a prospective purchaser before a grant of probate has been obtained. For this reason it is recommended to obtain a grant of probate before trying to sell the home as the sale could fall through if the prospective purchaser cannot enter into a site agreement with the operator.

If a beneficiary does not 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.

A home owner can make an application to NCAT if the operator interferes with the sale of the home or unreasonably refuses a request to sub-let. Both applications must be made within 28 days of the interference or unreasonable refusal.

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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Updated September 2022