

Selling your home

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 selling your home.

Right to sell on site

The *Residential (Land Lease) Communities Act 2013* (the Act) gives you the right to sell your home on site. This right applies to:

- current home owners
- home owners who have left the community but still own a home, and
- an executor, administrator or beneficiary of the estate of a deceased home owner.

This right also applies to home owners who have a site agreement signed under an earlier Act that restricted or prohibited on site sales. Those terms are now invalid and do not apply.

For sale sign

Before putting your home on the market you must provide the operator of the community with a notice of intention to offer your home for sale. See also sample letter selling your home.

Once you have given the operator a notice of your intention to sell, you are entitled to display a 'for sale' sign in or on your home. You cannot display a 'for sale' sign anywhere else in the community without the operator's consent.

Selling agents and agreements

You are entitled to sell the home yourself or you can appoint a selling agent of your choice. This can be the operator or another person, for example a real estate agent. The operator cannot require you to appoint them or any other person as your agent.

You can be required to pay commission and incidental expenses to the agent in connection with the sale of your home. However, you are not required to pay unless there is a written selling

agency agreement between you and the agent that sets out how much you have to pay or how the charges will be calculated and what the agent will do in return for payment. The agreement must be entered into before the home is sold.

You, the operator or the selling agent, can take disputes about incidental expenses and commission to the NSW Civil and Administrative Tribunal (NCAT). The application must be made within 28 days of the dispute.

Interference with sale

The operator of a community must not cause or permit any interference with your right to sell on site, or to display a 'for sale' sign on your home. Interference includes:

- unreasonably restricting prospective purchasers from inspecting your home or the community
- making false or misleading statements about the community
- taking any action to require you to comply with any requirement under the *Local Government Act 1993* after becoming aware that you intend to sell your home (unless the compliance issue raised has been the subject of previous action).

If the operator interferes with your right to sell on site you can make an application to NCAT. The application must be made within 28 days of the interference occurring. NCAT can make orders to prevent further interference and can also order the operator to pay compensation to you in some circumstances.

Referral to operator

You must advise any genuine prospective purchaser of your home to contact the operator

before you enter into a contract of sale. However, if you do not refer, or if the purchaser does not contact the operator as advised, the sale contract is still valid.

Assignment and new site agreements

When you sell your home you have the right to assign (transfer) your site agreement to the purchaser. You need the operator's permission in writing but they cannot unreasonably refuse or withhold consent. If the operator refuses to agree to the assignment you can make an application to NCAT. The application must be made within 28 days of the refusal.

Assignment enables the purchaser to take over your site agreement on exactly the same terms that you had. This means that the operator cannot for example charge the purchaser higher site fees than you were paying at the time you sold the home.

If a site agreement is not assigned then the buyer must seek to enter into a new site agreement with the operator. A new site agreement may have different terms to your agreement but site fees must be set at fair market value. Fair market value is the higher of:

- the site fees currently paid by you, or
- the site fees payable for sites of a similar size in a similar location to your site.

Disputes about the terms of a new agreement, including the level of site fees can be taken to NCAT. The application must be made within 28 days of the dispute.

See also

Sample letter selling your home at:
<https://www.tenants.org.au/thenoticeboard/sample/selling-your-home>

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 Western NSW	1800 836 268
South Western NSW	1300 483 786

Aboriginal

Sydney	9833 3314
Northern NSW	1800 248 913
Southern NSW	1800 672 185
Western NSW	6881 5700

Website	tenants.org.au/thenoticeboard
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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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