

Site agreements



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 agreements.

All site agreements entered into after the commencement of the *Residential (Land Lease) Communities Act 2013* (the Act) must be in writing and in the standard form (prescribed in the regulation). The agreement must be signed by the parties (home owners and operator).

The operator is required to provide you with a written site agreement free of charge. If you are not given a written agreement you can apply to the NSW Civil and Administrative Tribunal (NCAT) at any time for an order that the operator provide a written agreement.

Additional terms

A site agreement can contain additional terms but they must not contravene this Act, or any other Act, or any standard terms of the agreement.

The Act provides for some terms to be prohibited and these are prescribed in the regulation. One such term is that the operator cannot require a home owner to take out any form of insurance. However, if the site agreement contains a voluntary sharing term whereby the operator is entitled to a share of the sale price or capital gain, insurance can be required. In this case the operator must share the cost of the insurance.

Fixed term

If your new agreement has a fixed term, the minimum period is three years. However, there is no requirement for there to be a fixed term and a site agreement can be a periodic agreement from the beginning.

Cooling-off period

The Act provides a 14 day cooling off period for new site agreements. You can cancel a site agreement within 14 days (from the date of signing) by serving notice in writing to the operator if:

- you are an existing home owner (with a current or previous site agreement for the site) when the new site agreement was entered into
- you are a new home owner and you have not taken up residence or had a home placed on the site

If you cancel your site agreement and you have agreed to buy a home from the operator you can also cancel that agreement within the cooling-off period. You do not have to pay any compensation for cancelling a site agreement or an agreement to buy a home from the operator.

Voluntary sharing arrangements

New site agreements can contain terms requiring you to 'share' with the operator either a percentage of any capital gain or a percentage of the overall sale price when the home is sold. Other voluntary sharing terms may require you to pay entry and exit fees or deferred site fees.

This provision applies to anyone who enters into a new site agreement. For more information see our factsheet on voluntary sharing arrangements at thenoticeboard.org.au.

Rent only agreements

Rent only agreements are site agreements that do not contain voluntary sharing terms. In most circumstances the operator must offer you a choice of agreement - a rent only agreement, or an agreement with voluntary sharing terms.

The exception to this is if you are a prospective home owner who is buying a home from the operator. In this circumstance the operator is entitled to offer only an agreement with voluntary sharing terms if they wish.

Assignment

You can assign your site agreement to someone else with the written consent of the operator. The operator cannot unreasonably refuse a request to assign an agreement.

When a site agreement is assigned, the incoming home owner takes on that agreement with exactly the same terms as the outgoing home owner, including the site fees. The right to assign adds value to your site agreement because it protects incoming home owners from immediate site fee increases, voluntary sharing terms and new fees and charges introduced in the Act.

If an operator refuses to agree to the assignment of your site agreement you can seek an order at NCAT requiring the operator to consent. The application must be made within 28 days of the operating refusing to assign the agreement.

FURTHER HELP:

Tenants Advice and Advocacy Services

Sydney

South	9787 4679
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
West NSW	6884 0969

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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