

Voluntary sharing arrangements in land lease communities

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.

What is a voluntary sharing arrangement

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'.

Since 25th September 2024 new voluntary sharing arrangements cannot include an entry or exit fee. If a site agreement was entered into before 25th September 2024 then any entry or exit fee is still a valid term of the site agreement.

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

- deferred site fees, being site fees where the payment is deferred in a manner specified in the agreement
- 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 (capital share amount)
 - a specified portion of the total sale price of the home as determined in the agreement (on-sale premium)

If the home is sold to be removed from the site or the home is purchased by the operator or a close associate of the operator then the home owner is not required to pay to the operator a capital share amount or a on-sale premium.

For site agreements entered into before 25th September 2024 the voluntary sharing arrangement may also include one or more of the following:

- a specified entry fee on entry into the agreement or in any other manner specified in the agreement
- a specified exit fee that is payable if the home is sold or removed from the site

Once the home is sold the home owner is required to pay the operator any amounts owing under the voluntary sharing arrangement within 14 days of the sale being finalised. If the operator is the selling agent they can deduct any voluntary sharing arrangement amounts from the proceeds of the sale.

What is capital gain

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

"the increase, if any, between the amount the home owner paid for the home and the amount for which the home owner subsequently sells the home, without regard to site fees or other fees or charges payable under the site agreement in relation to the site on which the home is located."

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

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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 \$5,000 on your investment.

Choice of agreement

An operator must offer a rent only agreement before they can enter into a voluntary sharing arrangement site agreement. This also includes a requirement to provide the contracting party with written information about the costs under a voluntary sharing arrangement site agreement compared to the costs under a rent only site agreement and advising the contracting party to seek independent legal advice about the proposed voluntary sharing arrangement.

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 same community.

The voluntary sharing arrangement must contain a signed declaration by both parties that the operator offered a rent only site agreement and this was declined by the contracting party. In addition it must contain a declaration signed by the contracting party that they obtained independent legal advice about the voluntary sharing arrangement before entering into the agreement or they have waived their right to seek legal advice. If these signed declarations are not included in the voluntary sharing arrangement then the terms of this arrangement are void and have no effect.

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.

If an agreement is assigned a deed of assignment should be executed by the selling home owner, the incoming home owner and the operator, The deed of assignment should be attached to or kept safely with the site agreement.

See also

- [Factsheet site agreements](#)
- [Factsheet sale of homes in land lease communities.](#)

Factsheet updated 25 September 2024.

General information about land lease communities can be found at tenants.org.au/thenoticeboard
Also check out our newsletter *Outasite*.



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