

Voluntary sharing arrangements



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.

New site agreements

New site agreements entered into after commencement of the *Residential (Land Lease) Communities Act 2013* (the Act) can contain terms that require a home owner to pay money to the operator on entering or leaving the community, or when their home is sold. This is called a 'voluntary sharing arrangement'.

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

- a specified entry fee on entry into the agreement or in any other manner specified in the agreement
- deferred site fees, being site fees where the payment is deferred in a manner specified in the agreement
- a specified exit fee that is payable if the home is sold or removed from the site
- 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
 - a specified on-site premium of the total sale price of the home as determined in the agreement

Capital gain has a very specific meaning in the Act. It is defined as:

'any increase between the amount that the home owner paid for the home and the amount that the purchaser paid for the home'.

Improvements made by you after you purchased it are not included in the calculation.

Example capital gain calculation

You purchase a home for \$100,000

You enter into a site agreement with a 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 \$10,000

You later sell the home for \$115,000

Under the Act the capital gain is \$15,000

You have to pay the operator \$7,500

You retain \$107,500 from the sale, a loss \$2,500 on your investment.

Voluntary sharing arrangements can be terms of every new site agreement, including those offered to current home owners.

Choice of agreement

In most circumstances operators cannot insist that either current or prospective home owners sign a site agreement with voluntary sharing terms. Operators must offer you a choice of a rent only agreement or an agreement containing voluntary sharing terms, unless you are purchasing a home from the operator – in that case they can just offer you a site agreement containing voluntary sharing terms.

If you are buying a home from a current home owner they can assign their agreement to you. This may be advantageous if their agreement does not contain any voluntary sharing terms.

If you are selling your home you can assign your agreement to the prospective home owner. This may add value if your agreement does not contain voluntary sharing terms.

If an agreement is assigned, the deed of assignment should be attached to or kept safely with the site agreement.

The operator cannot unreasonably withhold or refuse consent to the assignment of a site agreement and the NSW Civil and Administrative Tribunal (NCAT) can determine disputes about whether a refusal is reasonable. Applications to NCAT must be made within 28 days of the operator refusing the assignment.

For more information about site agreements and the sale of homes in land lease communities see our factsheets at thenoticeboard.org.au

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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