



Paul Smyth of the Tenants' Union and Len Hogg from Tweed Residential Parks Homeowners Association discuss the law

NEW LAW FOR RESIDENTIAL PARKS

On 1 November 2015 the laws governing the relationship between park owners and park residents changed. In fact, parks are not even called parks any more - the *Residential (Land Lease) Communities Act 2013* renames them 'residential communities.' So, what does this mean for residents of these communities?

The first big change, as we have already highlighted, is the terminology. Park owners are now operators; people who own their dwellings are home owners; rent is now site fees; and electricity and water are generically known as utilities.

People who rent homes in residential communities are still called residents, but their rights and responsibilities are now largely covered by the *Residential Tenancies Act 2010*, plus one or two sections of the *Residential (Land Lease) Communities Act 2013*. This is a big change for renters and it means that their rights are significantly different in some areas. For example, water charges – residents cannot be

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charged for water unless the home they rent has been fitted with water-saving devices.

Home owners' rights and responsibilities are all contained within the *Residential (Land Lease) Communities Act 2013* and Residential (Land Lease) Communities Regulation 2015 and this brings huge changes for both home owners and operators.

SITE FEE INCREASES

The Act sets out two different methods for site fee increases: fixed method and increase by notice. Fixed method is written into the agreement and cannot be challenged as excessive.

Increases by notice can only be done once a year and must be for the whole community (excluding those on fixed method increases) at the same time.

To challenge an increase by notice as excessive, 25% of those facing the increase are required to sign up and there is now a compulsory mediation process. If mediation fails the NSW Civil and Administrative Tribunal (NCAT) can make a determination. The factors that the Tribunal must consider have also changed.

COMMUNITY RULES

Community rules no longer form part of the agreement but everyone in the community, including the operator and their employees as well as guests in the community, are required to abide by the rules.

For the first time residents (home owners & renters) can take enforcement action against the operator if someone in the

community is breaking the rules and the operator is not doing anything about it.

VOLUNTARY SHARING ARRANGEMENTS

The *Residential (Land Lease) Communities Act 2013* introduces new opportunities for operators to seek a share in any capital gain a home owner makes when selling their home on site, or to receive a percentage of the sale price. Entry and exit fees can also be charged for the first time.

SPECIAL LEVY

This is another new provision whereby home owners can vote to pay for improvements or new facilities within the community. If the vote is passed by 75% of home owners (and agreed to by the operator) then every home owner must pay the levy.

ADDITIONAL OCCUPANTS

The legislation now recognises that family structures and the needs of home owners change over time. New provisions make it easier for additional occupants to move in. Spouses, partners and carers have an automatic right to live with a home owner and the operator cannot unreasonably refuse consent for other people to move in.

THE SALE OF HOMES

The Act is stronger on interference by operators in the sale process. There is a specific provision for compensation where there is interference.

There is a new 14-day cooling-off period for prospective home owners signing new site agreements.

CONTINUATION OF AGREEMENTS

The principal place of residence test has been removed and once a site agreement is signed it continues until it is terminated under the Act. This means that home owners can leave the park for a period of up to three years without having their agreement terminated due to not occupying the premises.

Home owners can now also be assured that their heirs and executors will be able to sell the home on-site in the case of deceased estates.

UTILITIES

There is a new sewerage usage charge for home owners (renters cannot be charged) and operators can now charge late fees for overdue utility accounts. However, these new charges apply only to home owners who enter into new site agreements after the commencement of the Act.

Operators can no longer apply money paid as site fees towards payment of utility accounts.

OPERATOR CONDUCT

There are a number of new provisions requiring operators to behave in a professional, honest, fair and reasonable manner, including new rules of conduct.

This is a brief overview of some of the most significant changes that the *Residential (Land Lease) Communities Act 2013* brings. The following pages provide a more in-depth explanation of how some of the new provisions will work.



Park Residents...

Get informed!

There is a **new law** covering residential parks. We will be visiting parks and holding information sessions in locations throughout NSW to provide residents with information about the new law.

Come along to a **free** community information session to find out how this affects you.

For more information visit
thenoticeboard.org.au



**TENANTS'
UNION**
OF NEW SOUTH WALES

RENTING A HOME IN A RESIDENTIAL COMMUNITY



From 1 November 2015 people who rent a home in a residential community (residential park) will have rights and responsibilities under both the *Residential Tenancies Act 2010* and the *Residential (Land Lease) Communities Act 2013*. This applies whether they rent from the operator or someone else.

RESIDENTIAL TENANCIES ACT

The Residential Tenancies Act was written for premises in the general community, so on the whole the content refers to that situation. In residential communities the landlord may be the operator or it could be another person who owns the home and rents it out. The person who rents the home is the tenant.

In some respects the Residential Tenancies Act provides better protection and improves the rights of those renting

in residential communities. The first example of this is the tenancy agreement.

In residential communities it is not uncommon for operators (landlords) to issue residents (tenants) with short fixed-term agreements, or to fail to provide a written agreement at all thereby giving no fixed term. Under the Residential Tenancies Act, if there is no written agreement the landlord is not able to increase the rent or issue a 90-day no-grounds termination notice within the first six months.

As mentioned in our introductory article, water charges are also different under the Residential Tenancies Act. Tenants can only be charged for water usage if the premises are separately metered and they have been fitted with water efficiency measures. In addition tenants cannot be charged late fees on overdue utility accounts.

RESIDENTIAL (LAND LEASE) COMMUNITIES ACT

COMMUNITY RULES

Rules can be more wide ranging under the *Residential (Land Lease) Communities Act 2013*, and whilst they no longer form part of the tenancy agreement everyone in the community is nonetheless required to comply with the rules.

The operator is required to ensure that rules are enforced fairly and consistently throughout the community. Operators and residents can make applications to the NSW Civil and Administrative Tribunal (NCAT) for enforcement action against anyone in the park who is breaking the rules.

The Tribunal can make a range of orders including requiring someone to comply with the rules, or terminating an agreement.

ACCESS TO THE COMMUNITY

The operator is required to take all reasonable steps to ensure that tradespeople and service providers have access to homes in the community.

The operator must also take all reasonable steps to ensure that emergency and home care services have unimpeded vehicular access to all homes in the community at all times. This means that ambulances, for example, need to be able to drive up to the home.

An application can be made to the Tribunal if the operator fails to comply with the above requirements.

RESIDENTS COMMITTEES

Many communities have residents committees and all residents (including tenants) have the right to be a member of these. The main purpose of a residents committee is to represent the interests of residents in the community.

RULES OF CONDUCT FOR OPERATORS

The rules of conduct for operators apply when dealing with tenants as well as home owners. These rules require the operator to: act honestly, fairly and professionally; not to deceive or mislead; and not to engage in high-pressure tactics or harassment.

If the operator fails to comply with the rules of conduct a complaint can be made to NSW Fair Trading. The operator can be fined for non-compliance with the conduct rules.

Tenants Advice and Advocacy Services can provide individual advice to tenants living in residential parks. A list of services can be found on the back page.

GET THE FACTS! FREE INFORMATION ABOUT THE NEW LAW

The Tenants' Union of NSW (TU) has entered a partnership with the Law & Justice Foundation of NSW (LJF) to ensure that people living in residential parks, or land lease communities as they are called in the new Act, are provided with quality resources and information about the new law.

FACTSHEETS

The parks team at the TU has produced a set of factsheets for people who will be affected by the *Residential (Land Lease) Communities Act 2013*.

The factsheets have gone through a rigorous process to ensure that they are accessible as well as legally accurate. We have consulted with residents and Tenant Advocates who are familiar with the new Act and the factsheets have then been checked and signed off by the Tenants' Union Residential Parks Legal Officer.

COMMUNITY EDUCATION

In November 2015 we are embarking on a state-wide education program that will continue into the first half of 2016.

The community education project will involve visits to residential parks to meet with residents and drop off information, plus more formal information sessions at local venues. The dates and times of the education sessions will be announced via local media, the internet and posters. These sessions will follow the park visits.

Parks and communities that we are not able to visit won't miss out – we will be sending information by mail to as many parks as possible to inform residents about the education sessions and where they can get further information about the new law.

NEW WEBSITE

The TU has also set up a new website **thenoticeboard.org.au** where residents will find all of the new factsheets, and past and current editions of *Outasite* and *Outasite Lite*.

The TU parks team and LJF encourage all residents to come along to our information sessions, chat with us when we visit parks, and check out **thenoticeboard.org.au** to find out how the new law will affect you.

YOUR SITE FEES AND HOW THEY CAN BE INCREASED

The *Residential (Land Lease) Communities Act 2013* introduces a new possibility for the setting of site fees in new site agreements. The standard form agreement provides for site fees to be set at a percentage of the Age Pension. This is an interesting inclusion because the percentage will be accurate only for a short time and it therefore appears to be unnecessary. It also has the potential to confuse.

The first question is what is meant by Age Pension? The definition in the site agreement says it's 'the age pension payment made under the *Social Security Act 1991* of the Commonwealth' but it is unclear whether it includes the energy and pension supplements.

Secondly, the Age Pension increases twice a year in March and September but this does not mean that the site fees automatically increase. Site fees can only be increased according to the Act and this does not include automatic increases.

If you are entering into a new site agreement under the *Residential (Land Lease) Communities Act 2013* and are considering setting your site fees at a percentage of your pension you should consider getting independent advice before you sign.

Another new provision is that operators are now required to ensure that home owners are able to pay their site fees by at least one method for which the home owner does not incur a

cost (other than bank fees) and which is reasonably available.

And remember, the operator cannot demand that you pay your site fees more than two weeks in advance.

SITE FEE INCREASES

The Act provides for two methods by which the site fees of home owners can be increased – fixed method and increase by notice.

FIXED METHOD

Fixed method site fee increases are not new and there are many examples in existence throughout NSW. Fixed method increases are written into site agreements, which set out when and how the site fees will be increased. The Act says that the site agreement should specify only one method of calculation for an increase; where there is more than one method included, then the one that results in the lowest increase is the one that applies.

For many years there have been different opinions about whether increases written into site agreements continue after the fixed term ends. The new Act provides clarity by enabling the fixed method to apply for the duration of occupancy or a set number of years. The number of years can be equal to the length of the fixed term or it can be for a longer period.

If you have been offered a site agreement with a fixed

method increase you should carefully consider how the prescribed increase will affect your site fees over a number of years. Percentage increases compound over time; that is, the increase gets larger each year because the calculation is based on a percentage of a figure that continues to grow (like compound interest).

EXAMPLE

Site fees start at \$160 with an annual fixed method increase of 5%.

In year 2 the site fees will increase by \$8.00 to \$168 (\$160 + 5%).

In year three the site fees will increase by \$8.40 to \$176.40 (\$168 + 5%).

By year five the site fees will be \$194.48.

In year ten the site fees will have reached \$248.19, which is an increase of almost \$90 a week on the original cost.

A fairly common method of site fee increases is a Consumer Price Index (CPI) increase. The CPI has been stable recently but it can vary considerably and this could happen if the term applies for a long period. Again, it is important to consider the possible future impact before entering into a site agreement with a fixed method CPI increase that continues for a long number of years.

Neither the Act nor the agreement specify which CPI is to be used in relation to the fixed method and should a dispute arise it could result in a determination that the term is void because it is uncertain. The Tribunal has found on many occasions that methods for calculating site fee or rent increases must be clear and understood by the parties to the agreement.

The new Act also allows for fixed method increases to be linked to increases in the Age Pension. The increase is expressed as a percentage of the pension increase. If this method is agreed to it is then the only way the site fees can be increased.

There is no limit on the number of fixed method increases each year but the agreement must set out how often they are to occur (except for increases linked to the Age Pension, which will occur each time the pension increases).

The operator is still required to provide a home owner with 14 days notice of a fixed method increase.

Remember - fixed method increases cannot be challenged as excessive under the *Residential (Land Lease) Communities Act 2013*.

INCREASE BY NOTICE

Home owners who are not on the fixed method of increase can only have their site fees increased once each year. The operator must issue a notice of increase to each home owner in the community at the same time. The notice of increase must also give at least 60 days notice and it must provide home owners with an explanation for the increase.



An increase by notice can only be challenged as excessive if at least 25 percent of home owners who received the notice of increase agree to challenge it. If this is the case the first step is to make an application for mediation to the Commissioner for Fair Trading. This application is a compulsory part of the process and must be made within 30 days of receipt of the notice of increase.

A mediator will bring the parties together with the aim of reaching an agreement about the increase. If agreement cannot be reached then the home owners can apply to the NSW Civil and Administrative Tribunal (NCAT). This application must be made within 14 days of the mediation failing.

In determining the level of increase the Act sets out a number of factors that the Tribunal can consider. Of greatest concern are the 'projected increase in the outgoings and operating expenses' and 'any repairs or improvements to the community planned by the

operator'. These are problematic for two reasons: home owners could end up paying for work or improvements that never eventuate; and they remove any requirement on the operator to provide evidence to support part of the proposed increase.

To compound the unfairness the Act also takes away the Tribunal's discretion in setting site fee increases: 'The Tribunal cannot make an order that would result in an increase lower than that needed to cover any actual or projected increase (established to the satisfaction of the Tribunal) in the outgoings and operating expenses for the community'.

Other factors that the Tribunal may consider are in many ways similar to the factors currently in the *Residential Parks Act 1998*.

INDIVIDUAL APPLICATION

A single home owner can apply to the Tribunal only if their increase is substantially excessive when compared with increases for similar residential sites in the community.

EMERGENCY ACCESS IN YOUR PARK

It is an operator's responsibility to ensure that emergency service vehicles can access a park. We spoke to a park resident about the emergency access issues he faced in his park.

Can you tell me a little bit about the access issues you were having in your park?

We had problems for a while, and by a while I mean a number of years. Different resident committees over the years had asked our operator for street signage and proper maps. We also had concerns about how our after hours access worked. At our park we had an after hours bell that was meant to be monitored 24 hours a day, but it wasn't.

After hours access was the key concern, because the issue is access for emergency services. In our park, access for emergency services is really important because probably around 80% or 90% of the residents are elderly. You also have residents with babies and if an emergency happens you need the ambulance, or whatever service, to be there quickly – you want to have that immediate access.

What was the operator's response to your concerns?

The operator kept saying he was going to get street signs and do this and do that, but he was doing nothing.

The issue really came to a head when a resident in the park had



a heart attack. The ambulance couldn't get in, and the resident had to wake up her neighbour and ask her to go up to the front of the park to open the gate and let the ambulance in.

At that point our residents committee sat down together again because we all felt 'this is now beyond a joke'.

We wrote our operator a letter explaining that we had asked him over a number of years for street signage and maps. We'd asked him to do something about after hours access and he'd done nothing. And now there had been a serious emergency that could have resulted in death. We explained that if somebody died, we felt he may be liable.

What happened next?

The incident and the letter we wrote acted as a bit of a trigger. Our operator must have realised then that he had a problem because we now have street signs. We also have a new manager and that probably helped too, because she takes this sort of thing pretty seriously.

In terms of the after hours access – they discussed lodging a security card with emergency services. In the end the operator installed a little lock box on the wall which has an emergency code to allow access through the boom gate.

The emergency code has now been shared with emergency services.

So has the problem of access been resolved?

We still do have some concerns, – although we have street signage and street names, they haven't really re-numbered all the houses. And the numbering in our park is complicated!

There is absolutely no continuity of numbering. There is a traditional start at the front with number 1 which then goes through to 52. But then

the second area the operator developed starts at 1A and goes to whatever... So it's hard to follow.

For emergency services, who would normally use a GPS system, the address just doesn't come up in their mapping system because we don't have normal street numbering.

That really shows the importance of having a community map at the main

entrance as well as street signage.

Yes, emergency services really rely on a good community map at the entrance to the park - it's essential!

Is there anything else you want to add?

Just that you want to think about emergency access, and do something about it before anything happens.

ACCESS UNDER THE RESIDENTIAL (LAND LEASE) COMMUNITIES ACT

There are three key sections in which access rights are set out in the new *Residential (Land Lease) Communities Act 2013*:

1. Section 39 Access to residential site by operator

In some circumstances the operator is able to enter a residential site and any home on the site but generally only with your consent or in an emergency.

2. Section 40 Access for tradespersons and service providers

The operator must take all reasonable steps to ensure that tradespeople are able to access a resident's home to undertake work. An operator cannot restrict which tradespeople you hire, or require you to use a certain tradesperson or service.

3. Section 41 Access to community by emergency services (emergency and home care service vehicles)

It is the responsibility of the operator to ensure that emergency and home care services have unimpeded access to all homes in a community at all times. They are required to consult with residents and emergency services about access arrangements, and keep them informed of any changes. Finally they must also signpost a community (with street signage etc.) or have a map placed at the entry to the community.

ADDRESSING ACCESS ISSUES

The *Residential Parks Act 1998* did not provide for a remedy to emergency access problems through the Tribunal. This made it virtually impossible to compel a park owner to provide or improve access for emergency vehicles. Fortunately under the *Residential (Land Lease) Communities Act 2013* this has changed. Residents are now able to go to the Tribunal to resolve disputes about access issues with the operator.

If you're having a dispute with your operator about access issues it's a good idea to give your local Tenants Advice and Advocacy Service a call (see last page for contact details). They provide free advice and advocacy to all residents of caravan parks and manufactured home estates (residential communities), and are able to look at your specific circumstances and help you decide on your best course of action.

SELLING YOUR HOME

The *Residential (Land Lease) Communities Act 2013* (the Act) introduces some new and necessary rights for home owners in the area of home sales. Selling a home on-site without interference should be a basic and easily enforceable right but this has not always been the case. Hopefully the new provisions will change this.

Under the Act every home owner has a right to sell their home on-site. The *Residential Parks Act 1998* (Parks Act) enabled park owners to prohibit on-site sales or place restrictions on sales by inserting additional terms into site agreements. On-site sales cannot be prohibited or restricted under the Act and any terms in old site agreements relating to this are now void.

“On site sales cannot be prohibited or restricted under the Act and any terms in old site agreements relating to this are now void.”

Under the Parks Act the sale of homes in parks on land within a Crown reserve or dedicated under the *National Parks and Wildlife Act 1974* were often restricted due to special provisions. The right to sell on-site now also applies to home owners in these parks.

The Act also attempts to improve the flow of information between a home owner and operator during the sale process. There is a new requirement for home owners to provide a ‘notice of intention’ to the operator before offering a home for sale. A for sale sign can be displayed on the home only after the operator has been notified.

Home owners are now also required to refer genuine purchasers to the operator before entering a contract for sale but, a failure to do so does not invalidate the sale.

INTERFERENCE

It was an offence under the Parks Act for the park owner to interfere in the sale of a home but for many residents this provision offered little or no protection. Some residents sought orders at the Tribunal to prevent interference but such orders were virtually impossible to enforce and Tribunal Members often acknowledged this.

The Act provides that ‘the operator of a community must not cause or permit any interference with, or any attempt to interfere with’ a home owner’s right to sell a home. It then goes on to specify some actions that constitute interference including unreasonably restricting prospective purchasers from inspecting and making false or misleading statements about the community.

A common tactic in the past was park owners claiming that

homes couldn’t be sold because they didn’t comply with the local government regulations. The Act states that interference includes the operator taking any action to require the home owner to comply with the regulations after becoming aware that the home owner is seeking to sell the home.

COMPENSATION

The new provisions are stronger than those under the Parks Act but the real strength lies in the new Tribunal powers. The NSW Civil and Administrative Tribunal (NCAT) can now make an order requiring the operator to take all necessary steps to facilitate the sale of the home to a specific purchaser and award compensation to the home owner if the operator has interfered in the sale through either action or inaction.

SITE AGREEMENTS

When a home was sold under the Parks Act there was nothing to compel a park owner to enter into a site agreement with the purchaser and no system to resolve this issue other than by assignment. The Act has provisions related to this situation but they don’t actually resolve the problem.

If requested, an operator is required to enter into a site agreement with a prospective home owner unless the operator declines the request on reasonable grounds, or the operator and prospective home owner do not agree on the proposed terms of the

“The Tribunal can now make an order requiring the operator to take all necessary steps to facilitate the sale of the home to a specific purchaser and award compensation to the home owner if the operator has interfered in the sale.”

site agreement. This gives the operator a range of ways out of entering an agreement and thus enables back-door interference with the sale of the home.

The saving grace for home owners is access to the Tribunal. The Tribunal can determine disputes about the whether an operators refusal to enter into a new site agreement with a prospective home owner is reasonable.

A home owner also has the right to assign their agreement to a purchaser and this may remain the safest and simplest option.

SELLING AGENTS

A home owner has the right to appoint any person they choose as their selling agent.

The selling agent must enter into a written agreement with the home owner setting out the sale commission, incidental expenses and the services to be provided. Without a written selling agency agreement the selling agent is not entitled to claim any fees from the home owner for the sale of the home.

A HOME UNDER THE GUM TREES

Everyone loves a big, beautiful, shady tree in the backyard or by the side of the road ... except, of course, when that tree's overhanging branches threaten to fall during a storm and cause personal injury or damage to a home.

There have been many disputes in residential parks over who is responsible for looking after trees and tending to those unwieldy looking branches.

WHO IS RESPONSIBLE?

It is up to the operator to look after and maintain the trees in a residential community. This has always been the case, but the new *Residential (Land Lease) Communities Act 2013* makes this clearer and provides for a slightly broader responsibility for operators than under the *Residential Parks Act 1998*.

The operator has always been required to take action on trees if they posed a danger to the safety of residents, or to homes or other property. For example, if a branch requires lopping, it is up to the operator to organise this and pay costs.

The new Act also provides that the operator must ensure that all trees in a community are 'properly maintained'. Hopefully this will mean operators are quicker to act when residents voice concerns ... and happier, healthier trees in communities.

Another change worth noting (in s48 of the new Act) is that as a homeowner you are now required to get permission before planting trees in the community. Without the operator's consent you may be liable for any costs involved in removing the tree.



IT'S GOLD!

THE VALUE OF YOUR SITE AGREEMENT

One of the most concerning changes in the new *Residential (Land Lease) Communities Act 2013* is the introduction of 'voluntary sharing arrangements'. Under the voluntary sharing arrangement provisions an operator can offer new site agreements that include entry and exit fees and entitle the operator to a share in the sale price, or in any future capital gain on a home when it is sold.

Operators are not obligated to offer site agreements containing voluntary sharing terms and where they do, in most circumstances they must also offer a 'rent only' agreement. This is the case for current home owners who choose to enter into new site agreements, and prospective home owners who purchase a home from a current home owner.

However, if a prospective home owner buys a home from the operator, the operator may choose to only offer a site agreement containing voluntary sharing terms.

In the debate on voluntary sharing terms operators and the Government took the position that they are a positive change because they will provide home owners with a choice – but is it a real choice?

Let's look at a couple of possible scenarios.

SCENARIO ONE

You own your home, and have been living in the park for the last five years. The operator approaches you, asking you to sign a new site agreement containing voluntary sharing terms now that the Residential (Land Lease) Communities Act is the law.

To tempt you, the operator offers you a reduction in your current site fees (from \$170 to \$160) in return for a 10% share of the sale price when you sell your home.

How can you confidently predict how much longer you will stay in the park and therefore calculate whether this is a good deal or not?

SCENARIO TWO

You want to sell your home, and have lined up a keen potential buyer. The buyer talks to the operator about entering into a site agreement.

The operator presents the new buyer with two options: they can enter into a rent only agreement with higher site fees than you are currently paying; or they can enter into an agreement with voluntary sharing terms and keep paying the same site fees as you pay.

The voluntary sharing term is a \$10,000 entry fee. Is this a real choice for the home owner?

“One of the most concerning changes in the new *Residential (Land Lease) Communities Act 2013* is the introduction of voluntary sharing arrangements.”

YOU DON'T NEED A NEW AGREEMENT

You do not have to sign a new site agreement just because the law has changed. Your existing agreement continues to apply under the new Act. If you are considering entering into a new agreement, it is important to seek independent advice before you sign.

PROVIDE A REAL CHOICE - ASSIGN YOUR EXISTING SITE AGREEMENT

Under section 45 of the *Residential (Land Lease) Communities Act 2013* you (as the home owner) have the right to assign your site agreement to someone else. If you assign your agreement to the purchaser of your home they take over the agreement on the same terms.

You need the written consent of the operator to assign your site agreement, but they cannot unreasonably refuse to give consent. If they do, you can apply to the NSW Civil and Administrative Tribunal (NCAT) and the operator can be ordered to consent to the assignment.



You should think of your existing agreement as an asset, because there is real value in being able to assign it to someone. In practice it means that when you are selling your home you can confidently assure a potential buyer that they can continue to pay the same site fees you have been paying. Additionally the buyer will not have to agree to voluntary sharing terms.

NEW FEES AND CHARGES

The *Residential (Land Lease) Communities Act 2013* introduces a number of new fees and charges including a sewerage usage charge and late fees on utility accounts that are not paid on time. However, the savings and transitional provisions protect current

residents from these new fees and charges.

Schedule 2 clause 15(2) provides:

‘Any new fee or charge permitted by this Act does not apply to any agreement entered into before the commencement of the relevant provisions of this Act.’

If you do not enter into a new site agreement you do not have to pay the new fees and charges.

Remember, you do not need to sign a new agreement. Your current site agreement is still valid under the new Act.

NEVER GIVE UP!

THE CAMPAIGN TO KEEP ASSIGNMENT

When the draft Residential (Land Lease) Communities Bill was first released in April 2013 one of the big concerns residents and advocates had was that under the new Act residents would lose the right to assign their site agreements. The draft Bill seemed to favour operators, providing weaker assignment provisions than those available in the *Residential Parks Act 1998*.

WHAT IS ASSIGNMENT, AND WHY IS IT IMPORTANT?

When you sell your home, assignment allows you to transfer (or assign) your site agreement to the buyer. This means that the buyer can take over your existing site agreement with the same terms and conditions, including the current site fees that you pay.

Assigning a site agreement is not complicated. Under the *Residential Parks Act 1998* the home owner had to get the operator's permission and the operator could not unreasonably refuse consent. Consent did not have to be in writing (although this was better) but the Residential Parks Regulation helpfully provided a 'Deed of assignment' to assist.

Assignment has always provided some protection for residents against operators interfering in the sale of homes. For example, where an operator was not offering a fair agreement or simply refusing to enter into a new agreement with a buyer, a home owner could assign their

existing site agreement and the sale could proceed.

Residents and advocates knew that with the introduction of voluntary sharing arrangements in the proposed new Act, assignment would be more necessary than ever. Retaining strong assignment rights would ensure that prospective buyers had choice between an assigned agreement, and a new agreement containing voluntary sharing terms or increased site fees being offered by the operator.

CAMPAIGNING FOR ASSIGNMENT

The assignment provision in the draft Bill was worrying. It restricted assignment to the fixed term of the agreement and gave the operator an absolute right to refuse consent. The drafting of this provision effectively annulled assignment rights and took

away the protection assignment offered to home owners against interference in the sale of their home.

On release of the draft Bill park residents and advocates quickly shifted into gear. Their written and oral submissions to the review of residential park legislation strongly argued the case for retaining the existing right to assign. Once it was clear that this would not be enough, residents together with advocates began to meet with key members of State Parliament face-to-face to convince them of the need to amend the Bill.

Not all of these meetings took place at Parliament house. The Port Stephens Park Residents Association (PSPRA), for example, organised a forum for their members and invited along politicians to hear first hand how the draft Bill might impact on residents. At that meeting they

RESIDENTIAL (LAND LEASE) COMMUNITIES ACT 2013 - SECTION 45

Sub-letting residential site or assignment of site agreement

- (1) A home owner may, with the written consent of the operator of the community:
 - (a) enter into a tenancy agreement for, or otherwise sub-let, the residential site or the home located on it, or
 - (b) assign the site agreement.

“The campaign actually helped increase awareness of residents’ right to assign. The operators obviously don’t mention it and too many purchasers enter a village unaware they can actually have the vendors’ site agreement assigned to them.”

got a commitment from their local member to support an amendment on assignment.

Christina Steel, President of PSPRA, feels that the real-life examples shared in submissions were persuasive. As she explains, “The case histories that were cited helped to demonstrate how powerless the residents are when taking on a park owner. I don’t think anything can change the lopsided power balance that favours the park owner, but this campaign certainly brought out into the open some of the truly despicable tactics used by park owners when dealing with residents”.

The residents’ hard work paid off. The Bill passed the lower house without any change in October 2013 but before it was passed by the upper house an amendment was put and accepted. The amendment removed the restriction on assignment being allowed only during a fixed term and reintroduced the qualification that operators cannot unreasonably refuse a request to assign an agreement.



Christina Steel
President of the Port Stephens Park Residents Association.

THE OUTCOME

Under the *Residential (Land Lease) Communities Act 2013* home owners have the right to assign their agreements with the written consent of the operator.

Importantly the operator cannot unreasonably withhold or refuse consent and if they do, the homeowner can make an application to the Tribunal to settle the dispute.

Another positive result of the campaign for assignment, as Christina Steel points out, was that it increased residents’ understanding of their rights. “The campaign actually helped increase awareness of residents’ right to assign. The operators obviously don’t mention it and too many purchasers enter a village unaware they can actually have the vendors’ site

“Never give up, one person can make a difference, especially when the one becomes many!”

agreement assigned to them. For that matter, many vendors don’t know either.”

Keeping the right to assign in the new Act is a great outcome, but it did not come easy. Residents and advocates won it through determined effort.

So what is the takeaway lesson from the residents’ campaign for assignment? Christina Steel says it is about perseverance. “Never give up, one person can make a difference, especially when the one becomes many!”

NEW RULES IN COMMUNITIES

Community rules (previously called park rules) are about the use, enjoyment, control and management of a community. Unlike the *Residential Parks Act 1998*, the *Residential (Land Lease) Communities Act 2013* does not set specific subject matter for rules so they can be about anything that fits into these general themes.

Rules can be made and amended by operators. However, they have no effect unless each resident has been given written notice of the rule or an amendment to a rule at least 30 days before it is due to take effect. If there is a residents committee in the community then the operator must also consult with it before giving notice to the residents.

DISPUTES ABOUT COMMUNITY RULES

Residents can make applications to the NSW Civil and Administrative Tribunal (NCAT) about whether new or amended rules comply with the Act, or whether the correct procedure to introduce a rule was followed. In the past there were very few Tribunal applications about park rules. It will be interesting to see whether that continues under the new Act or whether there is an increase now that the restrictions on subject matter have been removed.

WHO HAS TO FOLLOW THE RULES?

There are a number of improvements in the area of rules under the *Residential (Land Lease) Communities Act 2013*. One of these is the requirements regarding



compliance. Under the new Act everyone in the park must comply. For residents this means that the rules not only apply to them but also to their guests and anyone living with them, and they are responsible for ensuring the rules are followed.

For operators, as well as having to comply themselves they must also ensure compliance by any employees; people invited into the community by the operator; and all residents and occupants. In addition the rules must be enforced fairly and consistently.

A BREACH OF THE RULES

Another major difference under the new Act is that residents

can now issue the operator with a written notice to take action regarding a breach of a community rule.

This could be a breach by the operator, an employee, another resident or anyone else in the community, who must be given at least 30 days to remedy (fix) the breach. If the breach is not remedied within the specified period then the resident has 30 days to make an application to the Tribunal for enforcement.

Rules are no longer terms of the agreement but there can still be consequences for non-compliance including the termination of a tenancy or site agreement.

NEW RULES FOR OPERATORS

During the review of the *Residential Parks Act 1998* one of the key issues raised by residents was the conduct of operators. Many stories were told about interference with the sale of homes, harassment and intimidation by operators. The *Residential (Land Lease) Communities Act 2013* contains a number of new provisions in relation to operator behaviour, including new rules of conduct.

The first new provision relates to site agreements. An operator must not induce anyone to enter into an agreement by making any statement, representation or promise that they know to be false, misleading or deceptive. A home owner who is so induced by the promise of a facility or service (in writing) that is not provided can seek to have their site fees reduced by the Tribunal.

In relation to trades people and service providers, an operator must not require a resident to purchase or lease goods or services from a particular person or restrict a resident's right to purchase or lease from a person of their choice. However, an operator can place reasonable restrictions on trades people or service providers if they have previously caused problems in the park.

An operator or close associate must not engage in retaliatory conduct against a home owner if the retaliation is due to: the home owner making a complaint to a government agency about the operator; the home owner making an application to the Tribunal; or the home owner taking action

to promote the establishment of a residents committee.

Retaliatory conduct includes amending community rules to the detriment of the home owner, giving or threatening to give a termination notice and withdrawing or withholding a service or use of a facility.

The Act has stronger and more detailed provisions relating to interference with the sale of homes.

Schedule 1 of the Act sets out rules of conduct, setting out ten requirements for operators.

The Act requires operators to observe the rules of conduct and creates an offence for contravention of the code without reasonable excuse. The maximum penalty for corporations is \$11,000 and \$5,500 in any other case.

NSW Fair Trading is responsible for enforcement action and residents can and should make complaints when operators do the wrong thing.

Details of any enforcement or disciplinary action will be published in the Residential Parks Register.

RULES OF CONDUCT FOR OPERATORS

1. The operator must have knowledge and understanding of all of the relevant legislation.
2. An operator must act honestly, fairly and professionally with all parties in a negotiation or transaction and must not mislead or deceive any party.
3. An operator must exercise reasonable skill, care and diligence.
4. An operator must not engage in high pressure tactics, harassment or harsh or unconscionable conduct.
5. An operator must not disclose confidential information about a resident unless the resident authorises it, or the law permits or compels it.
6. An operator must take reasonable steps to ensure that people employed in the community comply with the law.
7. When acting as a selling agent for more than one home in a community the operator must act fairly and advise prospective purchasers about all available homes.
8. An operator must not put out false or misleading information in order to attract residents to the community.
9. An operator must not request a signature on any incomplete document.
10. An operator must not make false representations about the legislation or site and tenancy agreements.

UNDERSTANDING THE INS AND OUTS OF UTILITY CHARGES

In the *Residential (Land Lease) Communities Act 2013* electricity, gas, water and sewerage service are dealt with under the generic term 'utility'.

Home owners are only required to pay the operator for use of a utility if the use is separately metered or measured and the operator provides an itemised account (except sewerage – see below).

The new Act requires an operator to give home owners at least 21 days to pay a utility account. The operator can charge a home owner a late fee if the account is not paid on time, but only if the home owner entered into a new site agreement after the Act commenced.

The Act provides for a reduction in site fees if a utility that was not separately measured or metered becomes so, or if the utility is no longer available for the home owner's use. So, if for example water charges are included in site fees and the operator installs water meters, affected home owners are eligible for a reduction in site fees. The operator must notify the home owners of the change and the new site fees payable. Any site fees overpaid as a result of the change must be refunded.

The operator is required to provide home owners with reasonable access to bills and documents related to utility charges and provide receipts at the time of payment or if requested by a home owner.

ELECTRICITY

A Service Availability Charge (SAC) still applies to the supply of electricity to residential sites.

The Residential (Land Lease) Communities Regulation 2015 (the regulation) sets maximum SAC for electricity supplied by the operator where the supply to the site is less than 60 amps. These charges reflect the current charges prescribed by the NSW Fair Trading 'Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks'.

The operator cannot charge a greater rate than that charged by the local area retailer and where supply is less than 60 amps the maximum rate for the SAC is as follows:

- Less than 20 amps – 20% of the SAC
- 20 amps to 29 amps – 50% of the SAC
- 30 amps to 59 amps – 70% of the SAC

Since 1 July 2013, the National Energy Customer Framework (NECF) has applied to the supply and sale of energy to retail customers. Operators supply electricity to home owners as exempt sellers under this framework and they are required to comply with the 'Exempt Selling Guideline'.

WATER

The only change to water charges is that the Act now says that water usage must be 'measured or metered' whereas

the Residential Parks Act only referred to metered usage.

The combined service availability charge for water and sewerage is calculated by dividing the service availability charge payable by the operator to the service provider by the total number of sites connected to the utility (including holiday sites) in the community. However, the maximum combined service availability charge for water and sewerage is \$50 per calendar year.

SEWERAGE

The Residential Parks Act did not permit operators to charge residents for sewerage 'usage' because it is not separately metered. This is not the case under the new Act because the regulation provides an exemption to the requirement for separate metering for sewerage services and a method to calculate the charges.

The regulation enables operators to pass on sewerage usage charges only if:

- water and sewerage services are supplied to the operator by a water supply authority
- the water supply authority charges for water and sewerage services separately
- the water supply authority specifies a sewerage discharge factor either in the bill or in another reasonably accessible way

- water usage at the residential site is metered or measured
- sewerage usage at the residential site is not metered or measured

If all of these circumstances apply then the following calculation is used for sewerage usage:

Volume of water used at residential site multiplied by relevant sewerage discharge factor.

EXAMPLE

John uses 20 kilo litres (kl) of water over a 12 week period.

The relevant sewerage discharge factor is 25%.
 $20 \text{ kl} \times 25\% = 5 \text{ kl}$.

John can be charged for 20kl of water usage and 5kl of sewerage usage at the rate charged by the operator's water and sewerage service provider.

Water supply authorities set sewerage discharge factors and they are not all the same so home owners who are required to pay sewerage usage charges will be differently affected.

REMEMBER

Only home owners who sign new agreements under the *Residential (Land Lease) Communities Act 2013* have to pay sewerage usage charges.

And, if you start paying sewerage usage charges the operator must reduce your site fees.

WHAT IS A SPECIAL LEVY?

Under the new Act if home owners want a new facility or an improvement to the community and the operator refuses to fund it, the home owners can vote to pay for it. This is a special levy.

HOW THE VOTE WORKS

All home owners in the community must be advised that a vote is to be taken on a special resolution for a special levy. The resolution has to specify what the levy is for, how it was calculated, and when it is to be paid by home owners.

The vote on the levy must take place within 90 days of home owners being notified. Only 75% of home owners are required to agree to the resolution for it to be passed.

The operator of the community must also consent to the new facility or community upgrade. The operator must write to all home owners in the community confirming agreement with the special levy either before, or within 90 days of the resolution being passed.

Once passed the special levy must be paid by every home owner in the community in equal shares (with each residential site counting as a single share).

PAYING THE LEVY

Home owners must pay the levy in accordance with the resolution and the operator can recover the money as a debt owing from any home owners who do not pay their share.

When a home is sold the home owner is no longer liable for payment of the levy but there

is no refund of any portion already paid. The new home owner becomes responsible for paying the levy but only if they were advised of the requirement in the disclosure statement provided by the operator.

The operator can also contribute to the new facility or upgrade for which the special levy is in place.

USE OF THE LEVY

The operator will hold levy payments until they are used or refunded. Refunds should be made if for any reason the project doesn't go ahead, and any unused funds are also to be refunded (if the project comes in under the estimated cost). The Act does not set out how or when refunds are to be paid.

There is no set timeframe for the operator to use the levy when all payments have been received. The Act only provides that the money must be used within a reasonable time for the purpose for which it was collected.

The Act does not set out what records the operator is required to keep about the levy or whether home owners are entitled to inspect such records.

IF YOU HAVE CONCERNS

What the Act does provide is access to the NSW Civil and Administrative Tribunal (NCAT) for the operator or any home owner with concerns about the special resolution. The application must be made within 28 days of the resolution being passed and the Tribunal can make orders quashing or confirming it in whole or in part.

STAY IN TOUCH

The Tenants' Union of NSW is a membership-based co-operative and a community legal centre specialising in NSW residential tenancies law. We're also the peak body for the Tenants Advice & Advocacy Services.

The Tenants' Union has represented the interests of all tenants in NSW since 1976. We have a proven track record of improving tenancy laws and providing legal assistance and training.

The parks team at the Tenants' Union specialises in residential parks law and provides information and resources to residents through our publications and website.

To stay in touch and up to date fill in this form, tick the appropriate boxes and return to:

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