

Outasite

Residential Land Lease Communities Magazine • Issue 9 • June 2023

LESSONS FROM USA MOBILE HOME PARKS

Also in this issue:

- Solar Power should be an option for all residents
- Crown Land
- Buyer Beware
- And more...

Left to right: Paul Smyth (Land Lease Communities Solicitor), Professor Esther Sullivan (visiting expert from USA), with land lease community residents Jill Edmonds, Anne Holmes, and Jock Plimmer, at Terrigal Sands.



*By Eloise Parrab,
Land Lease
Communities
Officer at the
Tenants' Union.*

In the USA, the equivalent of residential land lease communities (RLLCs) are called mobile home parks. In 2022 the number of residents living in mobile home parks in the USA was more than twenty million. As is the case in NSW the majority of residents in these mobile home parks are home owners.

Associate Professor of Sociology at the University of Denver Colorado Esther Sullivan's book *Manufactured Insecurity: Mobile Home Parks and Americans' Tenuous Right to Place* looks at the intersection of social, legal, market and geospatial forces which create housing insecurity

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Acknowledgement of Country

We acknowledge that Aboriginal and Torres Strait Islander Peoples were the first sovereign Nations of the Australian continent and its adjacent islands, and that these lands were possessed under the laws and customs of those Nations. The lands were never ceded and always remain Aboriginal and Torres Strait Islander Country. Our office is on the Country of the Gadigal People of the Eora Nation.

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About the Tenants' Union

The Tenants' Union of NSW is the resourcing body for Tenants Advice & Advocacy Services (TAASs) and a community legal centre. We are an independent, secular not-for-profit membership-based co-operative. We receive principal funding from the TAAS Program administered by NSW Fair Trading, and the Community Legal Centres Program administered by Legal Aid NSW.

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for residents in mobile home estates in the USA. Esther spent time living in two mobile home estates that were closing and has written about the impact of the insecurity of this type of housing on the mainly low income residents.

Esther recently visited Sydney at the invitation of the City Futures Research Centre at the University of NSW. The Centre is undertaking a research project *From caravans to global capital: the financialisation of older persons' residential parks, communities and rental villages*. In the last 10 years in NSW there has been a rapid increase in the number of RLLCs that are owned by large corporations and companies are making big profits from land lease communities.

This is also the trend in the USA. Senator Elizabeth Warren has been particularly vocal in calling out Wall Street companies that are currently making big profits from mobile home parks and making housing affordability worse for seniors. At a recent US Senate Committee hearing into Affordability and Accessibility: *Addressing the Housing needs of America's Seniors*, Senator Warren said:

"Manufactured housing, however, is not just attractive to seniors. A few decades ago, manufactured housing communities were generally owned by mom-and-pop businesses. But as the population aged and our housing has dwindled, the smell of money lured new players: and those are big investors. So private equity firms, hedge funds, other Wall Street giants have scooped up manufactured home communities across the country – including those, like Sandcastle Estates and Liberty Estates in Massachusetts, that cater exclusively to seniors. Institutional investors accounted for nearly one-quarter of manufactured housing park purchases between 2019 and 2021, a 10 percentage-point jump in just two years."

The characteristics that have made mobile home parks attractive to Wall Street giants are the same characteristics that are attracting large companies to purchase RLLCs in NSW.



*Ocean Breeze Mobile Home Park, Florida, USA.
Photo by Edna Ledesma, supplied by Esther Sullivan.*

As the home owner does not own the land, the companies that buy the communities make their profits from weekly site fees, and increasing site fees means an increase in profits. Residents are in a very difficult position when they are faced with increasing site fees in their community. The cost of moving one's home can be unaffordable and for some homes impossible and the high site fees make the home less attractive for potential purchasers. Many residents are seniors and for those on fixed incomes in order to pay increasing site fees they need to spend less on basics like food and medication. As well as the prohibitive costs of moving it's also a big upheaval to sell and can mean moving away from community networks and support.

Investors in the USA have admitted that trapping tenants is one of their investment strategies. Senator Warren during the Senate Committee hearing referred to one online investor "boot camp" for those interested in manufactured housing investments that states, "the fact that tenants can't afford the \$5,000 it costs to move a mobile home keeps revenues stable and makes it easy to raise rents without losing any occupancy."

Esther's book quotes one of the USA's largest mobile home park owners summarising his industry's capacity to make profits in 2014: "We're like a Waffle house where everyone is chained to the booths."

During Esther's visit to Sydney Paul Smyth (Tenants' Union of NSW Land Lease Communities Solicitor) and I travelled to the Central Coast and met with Esther and residents at two RLLCs. Esther was surprised that many of the homes in the first community looked very permanent and unlike moveable homes she had seen in the USA. We discussed how the level of risk home owners face of having to relocate their homes in RLLCs in NSW due to redevelopment is much lower than in the USA. In many states in the USA, home owners can be given short notice to relocate and no compensation is payable. Therefore residents need to factor this in when building their homes.

Home owners who were around under the old Residential Parks Act will recall that previously home owners who had to relocate their homes in NSW due to redevelopment were entitled to minimal compensation from the operator. RLLC residents



Professor Esther Sullivan, with Paul Smyth (Tenants' Union Land Lease Communities Solicitor), visiting Terrigal Sands land lease community.

and RLLC Forum members Jill Edmonds, Anne Holmes and Jock Plimmer were at the first meeting with Esther (see picture on front cover). Jill highlighted that parks were being redeveloped in NSW but the global recession (2007-2009) slowed down this development in NSW. The provisions in the *Residential Land Lease Communities Act 2013* now also require a home owner to be given 12 months notice if the community is closing or a development application has been lodged and development consent granted by the local council for a change in the use of the land. A home owner is also entitled to far more

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compensation than under the old Parks Act. To find out more about home owners' rights see our factsheet at: tenants.org.au/the-noticeboard/factsheet/termination-closure-or-change-use

Jill also discussed how some operators have found a way around the provisions in the current legislation. If the operator is willing to be patient then when homes are put up for sale, as home owners move on, the operator can buy these homes. This also assists in getting development consent from the Local Council as if the homes are vacant the impact of the development on affordable housing is reduced.

Jock highlighted that many large local and overseas investment corporations are now becoming more attracted to buying or building RLLCs than retirement villages.

“Increasing site fees are trapping home owners and pushing some residents into housing stress.”

In retirement villages the owner makes their profits at the end when the resident either dies or moves away and pays an exit fee. In RLLC, companies make profit each week by charging site fees and they can include voluntary sharing arrangements in site agreements which means more profit for the operator when a home owner sells their home. There is also less capital required upfront by a RLLC operator as they don't have to build houses since the home owner owns the home.

The second meeting during our visit to the Central Coast with Esther was with residents from Kincumber Nautical Village. Bob Morris, a resident and member of the RLLC Forum highlighted the issues facing residents in his community. This village is a perfect example of the problem highlighted earlier in the article where increasing site fees are trapping home owners and pushing some residents into housing stress. The site fees in this community are very varied with 25 different site fees in the community. If you're on a corner site then you pay an extra \$5 per week in this community. The site fees have been increasing rapidly and are already well above site fees in other communities on the Central Coast.

In Kincumber Nautical Village there is an old part and a newer part of the community. In the old part

of the community there are many vulnerable residents living in older style homes including caravans with an annex. Twenty four of these residents have lived in the community for over 30 years. In the old section they use bottled gas, have old rusty electrical 'mushrooms,' no aerials and the internal roads are in very poor condition. In this section of the community, homes generally only sell for \$150,000 which means a home owner cannot sell their home and use that money to buy a home in another RLLC. The high site fees in the community also push down the price for home owners selling. Many are reliant on statutory income and have no other source of income and no family support. One single pensioner is currently paying 45% of his total weekly income on site fees and is about to have an increase. A 95-year-old lady who is currently paying 35% with an increase coming has been living in the park for over 30 years. They are trapped as they cannot sell their home and cannot afford unjustified site fee increases.

Just down the road there is another RLLC that has much better communal facilities. They have a heated pool, bowling green, and immaculate gardens. Their facilities could reasonably be described as providing 'resort-style' living. The site fees in that village are \$190 per week. In contrast, at Kincumber, site fees range from \$198 to

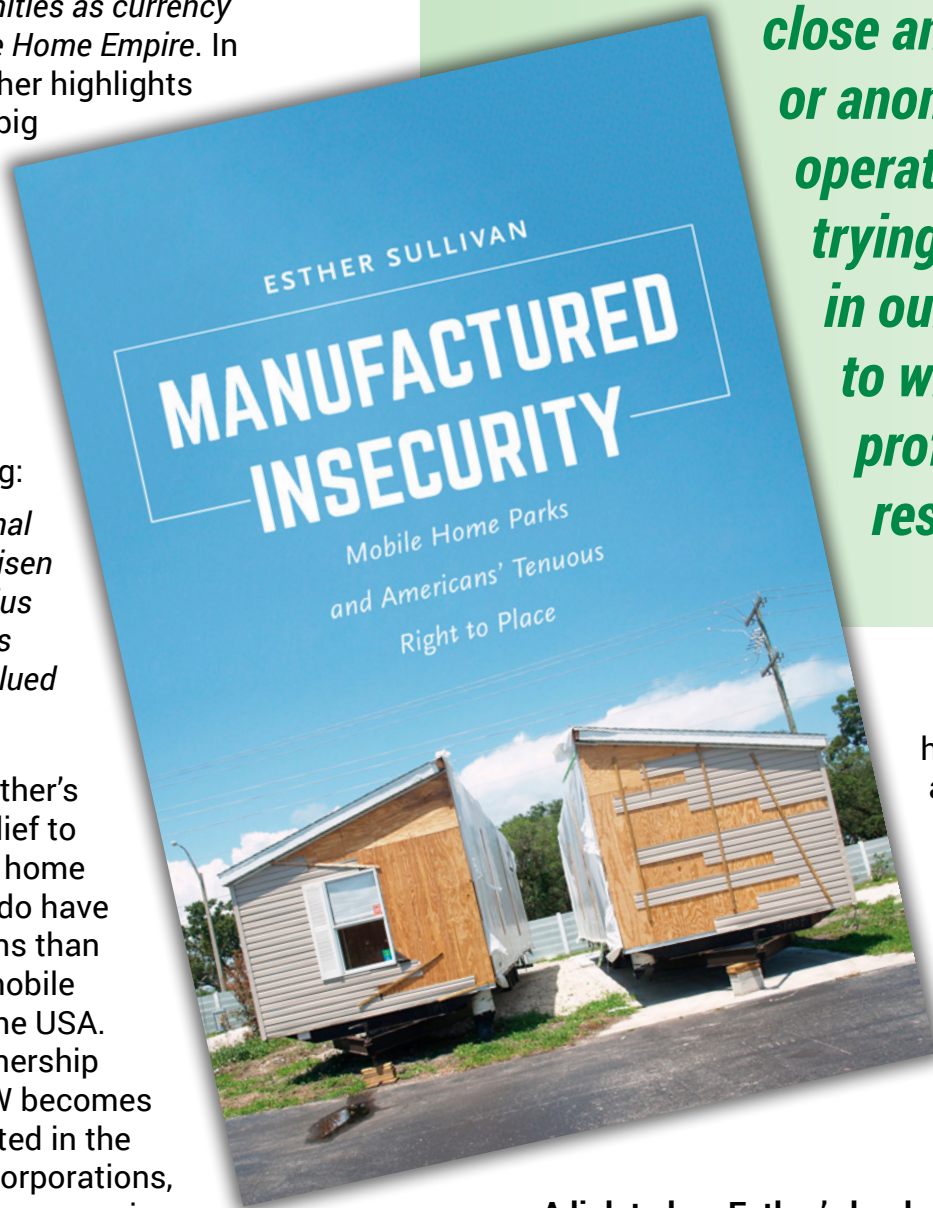
\$318 per week while the tennis courts and swimming pool are in a poor state of repair and crying out for maintenance and improvements. The roads are full of potholes and the gardens are fairly bare. The operator of Kincumber is charging very high site fees and appears to be making big profits as there is little evidence of money being spent on the community.

In the USA it's not just operators making money from the mobile home industry. The final chapter of Esther's book is titled *Communities as currency within the Mobile Home Empire*. In this chapter Esther highlights the many ways big profit is being made from the mobile home empire in the USA, while at the same time it is one of the most devalued forms of housing:

"An entire national industry has arisen to extract surplus value out of this otherwise devalued housing form."

After reading Esther's book it was a relief to know that RLLC home owners in NSW do have better protections than those living in mobile home parks in the USA. However, as ownership of RLLCs in NSW becomes more concentrated in the hands of large corporations, and in particular companies from the USA, it will be important to ensure we maintain our legislative and consumer protections and work

"As ownership of RLLCs in NSW becomes more concentrated in the hands of large corporations, and in particular companies from the USA, it will be important to ensure we maintain our legislative and consumer protections and work hard to close any loopholes or anomalies that operators may be trying to exploit in our legislation to wring bigger profits from residents."



hard to close any loopholes or anomalies that operators may be trying to exploit in our legislation to wring bigger profits from residents. ●

A link to buy Esther's book, *Manufactured Insecurity*, plus links to articles, a video talk, and more, is available on her website: www.esthersullivan.net

• SUSTAINABLE ENERGY • SHOULD BE AN OPTION FOR ALL RESIDENTS

By Eloise Parrab, Land Lease Communities Officer at the Tenants' Union of NSW

At the Tenants' Union we are increasingly receiving calls from home owners who are finding roadblocks in the way of switching their homes to renewable energy in the form of rooftop solar panels. There are government programs available in NSW at the moment that make switching to solar energy an affordable option for many home owners in land lease communities. Unfortunately it's not always an easy path if you want to have solar panels installed on your home.

Installing solar panels on your home requires the consent of the operator as it is considered an addition to the home under the *Residential (Land Lease) Communities Act 2013*. The operator's consent cannot be unreasonably withheld and when consent is refused a home owner may need to do further investigation to determine if this is reasonable or not.

In some communities there are homes that already have solar installed. Furthermore, as solar becomes more popular and more affordable, increasing numbers of home owners wish to go down this path. However many operators are finding that their electricity infrastructure cannot cope – because it is old and poorly maintained.

In those communities home owners are being refused consent to install solar panels and those that already have solar installed are being told they cannot add additional panels or repair broken panels.

“As solar becomes more popular and more affordable, increasing numbers of home owners wish to go down this path. However many operators are finding that their electricity infrastructure cannot cope – because it is old and poorly maintained.”

The operator is responsible for the community's utility infrastructure repairs, maintenance and necessary upgrades to ensure compliance with Australia Standards. Where there are solar panels being used in the community there needs to be a centralised protection system if the solar inverter capacity is to exceed 30 kW. The centralised protection system is a requirement under Australian Standard AS/NZS477.1. The 30kW capacity

applies to both an individual home owner's solar capacity and the total capacity of all solar installations in the community sharing the cabling and point of connection. In many communities we are finding that there is no centralised protection system and therefore home owners are being refused consent.

Some communities have a term in the site agreement about solar panels and in others there are community rules around the use of solar. The wording of this term or rule is often:

“If you have installed or install solar panels we will not be liable to compensate you for any electricity that the solar panels feed back into our grid. We may disconnect the solar panels from our infrastructure if we are of the view that the solar panels are contributing to a deterioration of our infrastructure or are placing an unacceptable load on our infrastructure. We must give you 7 days notice of our intention to disconnect, which disconnection cost will be at your cost unless we agree to pay for it.”

We believe these additional terms and community rules should be prohibited and the NSW Government should legislate that home owners have a right to install solar

panels on their home unless the operator can establish that this type of infrastructure is not suitable in the community. In addition there needs to be incentive programs established for operators in land lease communities to make changes to infrastructure to ensure it is friendly for sustainable energy.

Essential Energy, which is one of the 3 electrical distributors in NSW and covers the majority of regional and rural NSW customers, is looking at changes that can be made to help the system cope with the increase in the uptake of solar by their customers. Storage is crucial to allow solar energy to be stored for use during the evening when there is peak usage. One option for storage is behind-the-meter batteries, which are purchased by the household. There are two other types of batteries: batteries located on power poles and community batteries. If there is investment in power pole and community batteries then Essential Energy research shows we only need 32kmx32km of solar panels to power Australia. This is possible with batteries and large-scale energy storage schemes like pumped hydro.

Power pole and community batteries seem like viable options for land lease communities. If there were incentives for operators then these types of electricity storage options could work well within land lease communities. The NSW Government's report into the Statutory Review of *Residential (Land Lease) Communities Act 2013*

recommended that further work be done to remove the barriers for home owners wanting to switch to renewable energy.

Brand new purpose built land lease communities have the ability to build sustainable energy sources into the community at the time of development. In Melbourne there is a land lease community that is being built with integrated solar and its own centralised battery micro grid. We would like to see this as a planning requirement for any future land lease communities built in NSW. Minimum energy requirements for brand new manufactured homes should also be included.

Australian Story on ABC recently aired an episode, 'The Transformer', looking at a community in NSW where they are working on a project to electrify the whole suburb and power it with renewables. It follows Saul Griffith, an Australian that is helping shape the world's approach to managing the energy transition. If you are interested in learning more you can watch

the episode on ABC iview: iview.abc.net.au/australian-story Project Electricity 2515 also has a website with more details: electrify2515.org

Many appliances in homes in land lease communities are run on gas. Part of the switch to renewable energy also means switching from gas appliances to electric appliances. The Government currently has a program providing incentives to people to switch from gas hot water to electric heat pumps. The same program is also providing incentives to switch household lights to LED and upgrade air conditioners. You can find out more at: www.energy.nsw.gov.au/households/rebates-grants-and-schemes

If residents of RLLCs continue to face barriers in switching to renewable energy then as energy costs rise it could mean they are left with crippling energy bills. We want to see sustainable energy options available for all home owners. This will require collaboration between home owners, operators and government. ●



Solar panels on a roof at Terrigal Sands land lease community.

• CROWN LAND • IS NOT AN EXCUSE TO EVADE THE RIGHTS OF HOME OWNERS

By Eloise Parrab, Land Lease Communities Officer at the Tenants' Union of NSW

In NSW more than half of the land in the state is Crown Land. It is owned by the NSW State Government. In NSW there are many residential land lease communities which are located on Crown Land. These communities are usually managed by the operator of the land lease community as Crown Land manager under a lease, license or permit. Crown Land managers are mostly local councils or non council trustees.

Crown Land was an issue of contention in a recent case at the NSW Civil and Administrative Tribunal (NCAT). Richard lives in a community located on Crown Land. VERTO, his local Tenants Advice and Advocacy Service assisted Richard to urgently apply to the Tribunal after the operator attempted to lock him out of the community. Richard moved into the community in November 2019. He was given verbal permission to rent one of the vacant sites within the community and he set up his bus and annex on the site. There was no written site agreement in place.



Richard's home at the community located on Crown Land.

When a new operator took over the community problems started for Richard. A dispute arose over whether he was a permanent resident at the community.

The home owner sought orders at the Tribunal that his verbal agreement is a site agreement to which the *Residential (Land Lease) Communities Act 2013* (RLLC Act) applies and the

operator must enter into a written agreement with him. In response the operator argued that the community was located on Crown Land and under the lease for the land with the Reserve Trust the operator was not allowed to have permanent residents in the community.

Under the old *Residential Parks Act 1998* there were some limits on issuing of site agreements to residents living in communities located on Crown Land. When the old Act was repealed and the new RLLC Act commenced on 1 November 2015 any purported limitations on site agreements located on Crown Land ceased to have effect.

The community where the home owner lived in his bus met the definition of a community under the RLLC Act and the oral agreement between the parties met the definition of a site agreement under the RLLC Act. The Tribunal application was successful and the operator was ordered to enter into a written site agreement with the home owner Richard.

Unfortunately that was not the end of the dispute as the operator lodged an appeal of the decision. They argued that the approval to operate from the local Council only allowed them to have 4 long term casual sites in the community (to be occupied for holiday purposes only) and they were all currently occupied.

In addition the lease for the land requires the operator to comply with the *Crown Land Management Act 2016* and that legislation states no one can reside on Crown Land without approval and there are penalties for non compliance.

Legal Aid NSW assisted the home owner at the appeal and were successful in having the appeal dismissed. The Tribunal Appeal Panel agreed with the legal arguments put forward by Legal Aid. The operator's obligations under the RLLC Act apply regardless of whether they have obtained the correct approval to operate from Council. Also, the fact that the operator may be in breach of their obligations of their lease for the Crown Land does not mean the oral site agreement with the home owner is void. The Appeal Panel correctly outlined section 127 of the RLLC Act provides a remedy for the operator if there is an issue with the site not having Council approval for permanent occupation. The operator can issue the home owner with a 90 day notice of termination and importantly the home owner is entitled to compensation if they were unaware the site was not a permanent site at the time they entered into the site agreement.

The decision of the Appeal Panel confirms that the operator cannot try to evade the operation of the RLLC Act by relying on non compliance with other legislative requirements.

“The operator’s obligations under the RLLC Act apply regardless of whether they have obtained the correct approval to operate from Council. Also, the fact that the operator may be in breach of their obligations of their lease for the Crown Land does not mean the oral site agreement with the home owner is void.”

As this article went to print the Tenants’ Union is aware of two other cases that involve residents living on Crown Land where the operator of the community and trustees of the Crown Land are mistakenly of the view that they are not required to comply with operator responsibilities under the *Residential (Land Lease) Communities Act 2013*. ●

• BUYER BEWARE •

HOME OWNERSHIP IN RESIDENTIAL LAND LEASE COMMUNITIES

By Paul Smyth, Land Lease Communities Solicitor at the Tenants' Union of NSW

When someone is buying into a residential land lease community (RLLC) the home purchased is either from the current home owner (vendor/seller) or from the operator of the community selling a home. Over the past few months the Tenants' Union has received a number of queries from residents and from advocates (acting on behalf of prospective residents or for current home owners). The queries about matters particular to home ownership included the following:

- How does a home owner evidence the 'title' they have to or the ownership of their home?
- What is the legal effect of a Disclosure Statement? And questions about the content of disclosure statements including what are 'voluntary sharing arrangements' or 'shared equity' in a home.
- What should a contract for the sale of a home in a land lease community contain?

How to evidence 'title' to the home?

The purchase deed or contract for sale of a home is the best and often the only documentary proof of ownership of a home



in RLLCs. It is important that the document is kept safely, preferably together with a site agreement. There is no central register in existence in NSW for ownership of manufactured homes or other homes in RLLCs that is similar to, for example, the central registry of the Land Registry Service that has 'land title guarantee' and an assurance fund (the 'Torrens Assurance Fund') which provides compensation for any loss suffered as a result of either fraud or error in registration.

Home ownership

The majority of residents in RLLCs in NSW do own their home on the residential site.

However, you lease the land where the home is located from the operator of the community or the owner of the land on which the community is located. Your site agreement is a lease giving rise to valuable rights (as well as obligations) but it's important to remember that they are leasehold rights only. A home owner has no equity in the land itself. Homes in land lease communities are defined as 'chattels' and not real property.

The standard form site agreement under the heading of important information sets this out clearly at point 4 "occupation of the residential site is a leasehold right only.

[This] agreement may, in limited circumstances set out in the Act, be terminated”.

The contract for sale/ purchase of a home

The vendor (seller) warrants that they are the legal owner of the home on the residential site. This is the starting point for any sale procedure, particularly after a home owner has given the operator of the community a notice of intention to offer their home for sale (before actually offering it for sale).

What terms should the contract contain?

Ideally at a minimum the contract should contain the names of the parties, the date of signing, the contract price and the amount of deposit payable. The contract should provide that on payment of the balance of purchase monies (i.e. on completion date) ownership of the home shall pass to the buyer and the buyer shall be entitled to vacant possession of the home on site.

When the purchase monies is fully paid and possession of the home is handed over to the buyer; the vendor/seller has warranted that the home is provided free of all encumbrances whatsoever, whether by way of chattel mortgage, bill of sale, sub lease agreement or other arrangement, or any restriction, legal covenant, charge or lien. This provision in relation to encumbrances will protect

and indemnify the buyer or incoming resident from any adverse claims. Any encumbrance that adversely affects the use of, or ability of the home owner to transfer legal ownership of the home should be satisfied and discharged (for example by way of Deed of Discharge) at the date of settlement. Encumbrances are any burden or claim, right or legal interest in the home.

A term regarding the contents or certain fixtures of a home for example, the interior fittings, white goods (air con units, refrigerators, dryers, washing machines) and exterior items like satellite dishes, solar panels can be included in the contract for sale of a home by way of a schedule of inclusions list. An exclusions list may also need to be drawn up to provide certainty to the parties about what items are not included in the sale.

Other terms and conditions that may be included in the contract?

The Agreement (contract for sale) may be made subject to approval of the RLLC operator to the purchaser being offered a *site agreement* or an assignment of the existing site agreement between the operator and the vendor to the incoming purchaser by way of a Deed of Assignment. There can also be a cooling off period term included in the contract which would allow for the contract to be rescinded (i.e. revoked or cancelled).

“It is vitally important for any prospective home owner to get a Disclosure Statement from the operator detailing fees and charges payable including site fees, services and facilities and other important mandated information about the community. This information should be carefully checked against what is contained in the contract for sale of the home and the proposed terms of a site agreement.”

Some operators insist on the production of clean police checks from NSW Police being provided by incoming prospective home owners before approving an application for residency in their community.

It is vitally important for any prospective home owner to get a Disclosure Statement from the operator detailing fees and charges payable including site fees, services

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and facilities and other important mandated information about the community. This information should be carefully checked against what is contained in the contract for sale of the home and the proposed terms of a site agreement.

The Statutory Review Report of the RLLC Act 2013 tabled in the NSW Parliament on 29 November 2021 made a number of key

recommendations for reform of the RLLC Act including greater transparency for prospective home owners with the proposed introduction of a 'sale information sheet' for all prospective home buyers. This is a welcome development.

Obtaining an appraisal or independent valuation of the value of a home for sale on site may be recommended. In addition, getting an inspection pre-purchase for example for termites (white

ants) or other pests, and to check structural integrity of a pre-loved home is advisable. If there is a selling agency agreement you can check the agent's licence with NSW Fair Trading and get advice on the amount of commission proposed to be charged by the agent on the sale of home on site.

Part 10 RLLC Act 2013 (NSW)

This part of the RLLC Act deals with the sale of homes in RLLCs. Pay particular attention to your obligations as a home owner regarding what you need to do before offering your home for sale.

For prospective home owners and downsizers selling their bricks and mortar and considering moving to a RLLC there are many important things to think about after you have seen the glossy sales pitch or youtube videos showing the lifestyle. Under the *Real Property Act 1900* and the Torrens title system, land title is guaranteed by the NSW State Government. In effect, the State Government promises that the registered land owners recorded in the NSW land title system are the true owners of their land. There is however, no equivalent for residential land lease communities. Make enquiries, try to speak to residents or residents committees in the community you are contemplating moving to.



Properties at Palm Lake Resort – from advertising material aimed at potential buyers. pamlakeresort.com.au/fernbay

Shared equity agreements or voluntary sharing agreements

Arrangements like shared equity are an alternative to buying an expensive home outright. Parties retain an equity share in the home. The home owner however, has to fully insure the home. There is no sharing of the cost of home insurance. The home owner is also responsible for the full cost of maintenance and upkeep of the home. Shared equity agreements usually contain terms regarding entry fees payable, an exit fee and opportunity fees. Opportunity fees are where any capital gain on sale of the home on site is payable to the operator as specified in the voluntary sharing agreement or shared equity agreement. Capital gain is defined in section 110 RLLC Act 2013.

Prospective home owners are strongly encouraged to obtain independent legal advice before entering into any shared equity agreements or voluntary sharing agreements with operators, as vendor of the home.

You might be able to get some advice from your local Community Legal Centre: www.clcnsw.org.au or your local Legal Aid office: www.legalaid.nsw.gov.au

A case study

An incoming home owner entered into a Shared Equity Agreement (SEA) with a term of a \$3,000 entry fee payable by the home owner – this was offered by operator in return for a \$14 per week ‘reduction in site fees’ under site agreement for duration of the site agreement. However, some 3 years after entering into the arrangement the home owner discovered they were actually paying the same site fees as their near neighbours in the community. So in effect under the SEA the home owner paid \$3,000 to their operator for nothing in return.

Vendor finance

Some prospective home owners have confused shared equity with vendor finance or loans that are sometimes offered by operators as vendors of homes or new homes where a purchaser does not have the full purchase price up front of the home being offered for sale.

In one case we are aware of a purchaser looking at homes in a community to buy. The purchaser spoke with the operator’s representative and looked at homes in the RLLC. The discussion turned to the option of possibly buying a new home to be located on a vacant

residential site. The purchaser disclosed that their maximum budget for a new home was \$285,000. The operator had an associated manufactured home building company. There were ultimately many questions about the pre-contract disclosure and the subsequent agreement and shared equity arrangement. The operator said the agreement to build the home was between it and the builder (that was an entity in the holding group of operator companies). The new home owner was ultimately hit up for \$335,000 after she had sold her own property and was ready to move and now feared becoming homeless. During a heated discussion with the operator about the price hike the purchaser was offered shared equity. The purchaser didn’t obtain any independent legal advice on the documents given and felt pressure to agree to what the operator offered.

There are a number of important checks that any potential purchaser should carry out before buying a home. By ensuring prospective home owners are aware of what to look out for in the contract for sale, disclosure statement and site agreement hopefully they can protect themselves from some of the pitfalls we have outlined in this article. If in doubt or unsure about any terms or conditions we strongly encourage prospective home owners to seek legal advice. ●

HOLDING OPERATORS • TO ACCOUNT • WHEN ON *FIXED METHOD* SITE FEE INCREASES

By Eloise Parrab, Land Lease Communities Officer at the Tenants' Union of NSW

In our last edition of *Outasite* – available at tenants.org.au/thenoticeboard/news/outasite-magazine-8 – we discussed the trend toward fixed method site fee increases. One of the downsides to this method that we highlighted is there is less incentive for operators to spend money maintaining the community. The fixed method site fee increase cannot be challenged at the NSW Civil and Administrative Tribunal (NCAT) in the same way as the *by notice* site fee increase. There is no way to dispute the amount of a fixed method increase even if the operator has clearly not been spending money maintaining the community.

Due to this trend we wanted to ensure home owners are aware of other options open to them to ensure that repairs and maintenance are carried out by the operator in their community.

The *Residential Land Lease Communities Act 2013* outlines the operators responsibilities related to maintaining the community. They include:

- Ensuring the common areas are in a reasonable state of cleanliness and repair
- Ensuring the community is

reasonably safe and secure

- Taking reasonable steps to ensure common areas are free of vermin and weeds
- Ensuring the times they (or managers they appoint) are available to be contacted are reasonable
- Having in place emergency evacuation procedures
- Taking reasonable steps to ensure home owners always have access to their sites and common areas
- Maintaining all services and facilities required by the development consent for the community to be available for the life of the community
- Establishing and maintaining reasonably accessible and secure mail facilities for the home owners
- Ensuring that all trees in the community are properly maintained

Some common examples of an operating not complying with these obligations are:

- Tennis courts in the community are run down and the playing surface has become damaged and the nets are torn
- Internal roads in the

community full of potholes and no work being done to maintain them so a home owner can safely drive in and out of the community

- On site office/shop opening hours reduced from 4 hours to 30 minutes a day
- Weeds growing out of control in common area gardens

The first step in holding the operator accountable for their responsibility is to put your request in writing. It's a good idea to give them a deadline to do the work you have requested or to provide a response. Taking photos of the issue is also a good idea. If you can email them to the operator it helps to show exactly what the issue is you are asking them to address.

If the operator does not respond or doesn't take any reasonable steps to comply with their obligations once you have alerted them to the issue a home owner can lodge an application at the Tribunal. There are time limits for lodging applications at the Tribunal. You can speak to your local Tenants Advice and Advocacy Service (see back cover) to get advice on time limits and how to apply to

the Tribunal. If you would prefer to not make an application at the Tribunal you could contact NSW Fair Trading and lodge a complaint and request they speak to the operator on your behalf about the issue.

In addition to seeking orders for the operator to comply with their responsibilities a home owner can also seek a reduction in site fees if the standard or amenity of the community's common areas has decreased substantially since the home owner signed their site agreement. The same applies if a community service or facility has been withdrawn or substantially reduced since the home owner signed their site agreement. This reduction also applies if an operator advertised to a home owner that a particular service or facility would be provided in the community and it never eventuated. The amount that the Tribunal has reduced site fees in previous matters is relatively small but if a home owner is going to pursue orders at the Tribunal for an operator to comply with their responsibility related to maintaining the community it is worthwhile also pursuing an order for a site fee reduction.

Next time you receive your fixed method site fee increase and look around the community and see that it's not being well maintained we encourage you to write to the operator and ask them to spend some of their profits on maintaining your community. ●

● HEART AWARD ●

RECOGNISES THE WORK OF SANDY GILBERT



Sandy Gilbert at the Heart of Women Awards

Our last edition of *Outasite* featured an article co-authored by Sandy Gilbert about the impact of the floods on land lease community residents in Tweed Heads and Chinderah. Sandy had set up a community Hub in the area with the help of volunteers, local Council and community organisations to provide support to residents impacted by the floods. The Hub is still operating 12 months later but thankfully we can report they are out of the shipping containers and in a building out of the elements.

Sandy won a *Heart Award* for her volunteer work at the Chinderah Flood Hub. The *Heart of Women Awards* is an annual celebration that aims to acknowledge the women making a difference in their community. To be nominated you must provide service, support and leadership to women living in the Tweed Shire, Gold Coast, Brisbane or Byron shire.

Congratulations Sandy! ●

STAY IN TOUCH

We hope you will stay in touch – just scan the QR code to the right with your phone, then enter your email address, and **please make sure to tick 'Outasite Lite for Land Lease Communities,'** then tap Subscribe.

Alternatively, you can visit our website, or fill in the form below, or call us on 02 8117 3700. We would also love you to spread the word among fellow land lease community residents.

Subscribe – it's free!

- Send me *Outasite* print magazine (once per year). If yes, how many copies (please circle): 1 3 5 10 20 50 100 more
- Send me *Outasite Lite* email news (sent once every few months)
- Send me the general *Tenant News* email (once every two months)

Name:

Address:

Park or organisation:

Email:

Phone:

Please tick all that apply to you:

- Land lease community home owner
- Land lease community tenant
- I would like to make a donation. Please contact me.

We welcome donations, but please note that you do not need to make a donation, or be a member to access advice. All permanent residents of land lease communities are entitled to free advice (and may get Tribunal appearance assistance) from your local Tenants Advice & Advocacy Service (see contact details at right).

Please return this form to:

Tenants' Union of New South Wales
PO Box K166
Haymarket
NSW 1240



GET FREE ADVICE:



Tenants' Advice & Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	9559 2899
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
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 Tenants' Advice & Advocacy Services

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

We regularly update *The Noticeboard* – our website for land lease communities. You can find over 20 factsheets, plus sample letters, and previous newsletters:

tenants.org.au/thenoticeboard

