

Standard form Residential site agreement

Residential (Land Lease) Communities Regulation 2015, Schedule 1



Fair
Trading

IMPORTANT INFORMATION

1. This site agreement applies to a site in a residential community that is to be used as a residence by a home owner. Do not use this agreement for homes owned by long-term casual occupants or homes owned by the operator that are to be let to tenants.
2. You have the right to be given time to read this agreement and to obtain independent legal, financial or other advice before signing it.
3. This is a residential community, not a retirement village, and this site agreement is regulated by the *Residential (Land Lease) Communities Act 2013*.
4. Occupation of the residential site is a leasehold right only. This agreement may, in limited circumstances set out in the Act, be terminated.
5. If this agreement specifies a fixed term, your lease does not expire when that fixed term ends and you may continue to live at the residential site until this agreement is terminated in accordance with the Act.
6. The Act gives you a 14-day cooling-off period from when you enter into this site agreement during which time you may rescind the agreement for any reason without penalty or compensation being payable to any person. See the standard terms of this agreement for further details.
7. You should make sure that the details contained in the disclosure statement are the same as in this agreement, where relevant.
8. You are entitled to receive a copy of this agreement free of charge, once it has been signed by both parties.
9. Information about your rights and responsibilities under this agreement or the Act is available at www.fairtrading.nsw.gov.au or by calling NSW Fair Trading on 13 32 20.

Name of community:

DETAILS OF THE PARTIES

Operator name/s:

Operator contact phone number/s:

Trading name and address of residential community:

Postcode:

Address for service of documents to operator (if different from community address):

Postcode:

Email address of operator (if any):

Does the operator accept notices via email? Yes No

Registered office address (if the operator is a company):

Postcode:

Name of owner/s of the community
(if different from operator):

Home owner name (1):

Home owner name (2):

Home owner contact phone number:

Site number: Site dimensions: (attach plan if necessary)

Address for service of documents to home owner/s (if different from site address):

Postcode:

Email address of home owner/s (if any):

Does the home owner accept notices via email? Yes No

TERM OF AGREEMENT

Your right under this agreement to occupy the residential site continues until this agreement is terminated in accordance with the Act, whether or not the fixed term period specified below (if any) has expired.

Fixed term (if any): years **Note:** If a fixed term is specified it must be for more than 3 years.

Starting on: / / and ending on: / /

SITE FEES

Your site fees are: \$ OR % of the single/couple age pension

Payable: Weekly Fortnightly Starting on: / /

Payment methods

Your site fees must be paid using any of the following methods (tick all those available):

by cash / cheque / EFTPOS / credit card to the office located on-site (cross out any method that is not available)

by deposit / transfer into the following account:

BSB: Account number:

Account name: Payment reference:

by direct debit

Centrepay

BPAY Biller Code: Payment reference:

other (specify):

FUTURE SITE FEE INCREASES

We may increase your site fees as follows (*select only ONE option*):

Fixed method:

Your site fees will be increased (*select only ONE option*):

in proportion to variations in the CPI

by \$ _____

by _____%

by _____% of the increase to the single / couple (*cross out whichever is not applicable*) age pension, each time the pension increases

Note: If your site fee increases are linked to increases in the age pension, your site fees will increase **ONLY** by the percentage of the age pension increase specified above.

other (*specify*) _____

Note: The methods listed above are negotiable.

The first increase will be on: / /

For any method other than increases linked to the age pension, after the first increase, increases will occur every:

months / years (*cross out whichever is not applicable*)

We are required to give you at least 14 days' written notice of any increase using this method.

This fixed method will apply for (*select only ONE option*):

the duration of your occupancy

_____ years – after which the "Notice (non-fixed) method" will apply, unless another fixed method or a new site agreement is agreed between you and us.

Notice (non-fixed) method:

We may propose an increase to your site fees from time to time (no more than once in any 12-month period).

We are required to give you, and all other home owners not on fixed method increases, at least 60 days' written notice of the proposed increase with an explanation for the increase.

We may cancel or reduce the proposed increase by a later notice that takes effect on the same day as the original notice.

If 25% or more of affected home owners oppose the proposed increase the dispute will go to compulsory mediation and, if that fails, to the Tribunal to decide what the site fees should be.

Standard Terms

Right to occupy the residential site

1. We grant you the right to occupy the residential site specified in this agreement.
2. Your right to occupy begins on the day your site fees are first due, or as otherwise agreed between you and us.
3. We agree:
 - 3.1 to ensure that the residential site is in a reasonable condition and fit for habitation, so that you can move in on the date agreed, and
 - 3.2 to take all reasonable steps to ensure that, at the time of signing this agreement, there is no legal reason why the residential site cannot be used as a residence.

Cooling-off period

4. We agree that:
 - 4.1 you are entitled to rescind this agreement by serving on us notice in writing to that effect within 14 days of signing this agreement (the **cooling-off period**), subject to clause 5 of this agreement, and
 - 4.2 on service of notice of rescission, this agreement is taken to be rescinded from the commencement of the agreement, and
 - 4.3 you are entitled to rescind any collateral agreement between you and us, such as a contract for sale of a home, within the cooling-off period.
5. You agree that your right to rescind this agreement within the cooling-off period ends if you start to reside in a home located on the residential site, or cause a home to be placed, installed or erected on the residential site, before the end of the cooling-off period.

Site Fees

6. You agree to pay:
 - 6.1 your site fees on time and in advance, and
 - 6.2 any increase in site fees in accordance with this agreement and the Act, from the due date.

7. We agree:
 - 7.1 to provide you with at least one means of paying your site fees for which you do not incur a cost (other than bank fees or other account fees usually payable by you for your transactions) and that is reasonably available to you, and
 - 7.2 not to require you to pay more than 2 weeks' site fees in advance or to pay site fees (other than the first payment) for a period of this agreement before the end of the previous period for which site fees have been paid, and
 - 7.3 not to use site fees paid by you to cover utilities or any other amount payable by you other than site fees, and
 - 7.4 to give you a receipt without delay for site fees paid in person or to give you a receipt at your request for site fees not paid in person, and
 - 7.5 not to increase your site fees otherwise than in accordance with this agreement and the Act.

Utilities

Where we are the supplier or re-supplier of a utility to your residential site, clauses 8-10 apply.

8. You agree to pay to us utility charges in connection with the site where either or both of the following apply:
 - 8.1 your use of a utility (other than for sewerage) is separately measured or metered,
 - 8.2 a charge for your use of a utility for sewerage is calculated in accordance with the regulations.
9. We agree:
 - 9.1 to give you an itemised account of utility charges due and payable and allow you at least 21 days to pay the charges, and
 - 9.2 to discount the service availability charge payable by you for electricity if less than 60 amps are supplied to the residential site, in accordance with the regulations, and

- 9.3 to comply with all obligations placed on us under the *Retail Exempt Selling Guideline* of the Australian Energy Regulator, and
- 9.4 to give you reasonable access to bills or other documents in relation to utility charges payable by you to us, and
- 9.5 to give you a receipt, without delay, for utility charges paid in person, or at your request for utility charges not paid in person.

10. We agree not to charge you any of the following:

- 10.1 an amount for the use of a utility that is more than the amount charged by the relevant utility service provider for the quantity of the service supplied to, or used at, the residential site,
- 10.2 a service availability charge that is more than would be charged by the relevant utility service provider, if the service was supplied directly to you by the relevant utility service provider, divided by the number of sites in the community (subject to clauses 10.3 and 9.2 of this agreement),
- 10.3 an amount more than \$50 in total each calendar year for both water and sewerage service availability.

Payment of other charges

11. We agree to pay:

- 11.1 all rates, taxes and other charges payable by us or the owner of the community, and
- 11.2 the cost of installing any measuring devices or meters to measure the use of utilities.

12. You agree to pay:

- 12.1 a refundable deposit of \$_____ (maximum \$25) for a key or any opening device issued to you to access the community, and
- 12.2 the cost of registering or recording this agreement under the *Real Property Act 1900*, where this agreement has a fixed term of more than 3 years, and
- 12.3 any other fees, charges and deposits required to be paid by you by the Act or the regulations.

Quiet enjoyment

- 13. We agree that we will not unreasonably restrict or interfere with, or permit any unreasonable restriction or interference with, your privacy, peace and quiet, or proper use and enjoyment of the residential site and the community's common areas.
- 14. You agree not to interfere with, and to ensure as far as practicable that other occupants living with you, or your guests, do not interfere with, the reasonable peace, comfort or privacy of the community's residents.

Use of residential site and common areas

15. You agree:

- 15.1 to use the residential site only as a place of residence, except so far as we consent to its use for another, or an additional, purpose, and
- 15.2 to use the community's common areas only for a purpose associated with your use of the residential site, and
- 15.3 not to use, or allow other occupants living with you, or your guests, to use, the residential site or the community's common areas for an illegal purpose.

Access to residential site

16. We agree, while this agreement is in force, to only enter the residential site or your home in the following circumstances:

- 16.1 with your consent, so long as that consent is given at the time of entry or no more than 14 days before entry,
- 16.2 in an emergency, so long as entry is needed to avert danger to life or valuable property,
- 16.3 in a case where electricity, water or gas is supplied to you by us – to inspect, read, service, repair or replace any electricity, water or gas meter located on the residential site,
- 16.4 to comply with an obligation under the Act or other legislation, so long as (subject to the legislation concerned) at least 2 days' notice has been given to you,
- 16.5 for the purpose of lawn or grounds maintenance, so long as you agree and entry is made at a reasonable

time and on a reasonable number of occasions,

16.6 in accordance with an order of the Tribunal.

17. We agree when exercising a right of entry:

17.1 not to act in an unreasonably intrusive manner, and

17.2 not to enter a part of the residential site or home to which entry is not reasonably required for the purpose for which the right of entry is being exercised, unless we have your consent, and

17.3 not to remain on the residential site or in your home longer than is reasonably necessary for the purpose for which the right of entry is being exercised, unless we have your consent.

Access to the residential community

18. We agree to take all reasonable steps to ensure that:

18.1 you always have access to the residential site and reasonable access to the community's common areas, and

18.2 we are, or a representative of us is, available to be contacted at reasonable times, having regard to all the circumstances, including the utilities supplied by us, and

18.3 tradespersons and service providers have access to your home to provide goods and services arranged by you, and

18.4 emergency and home care service personnel have unimpeded vehicular access to your home at all times, and

18.5 the roads and residential sites in the community are signposted, or a map is placed at each entry to the community, in a way that provides adequate information to enable emergency and home care personnel to locate your home.

Maintenance of residential site and common areas

19. You agree:

19.1 to maintain (subject to fair wear and tear) the home located on the residential site in a reasonable state

of cleanliness and repair, and so as to be fit to live in, and

19.2 to keep the residential site tidy and free of rubbish, and

19.3 not to intentionally or recklessly damage or destroy, or allow other occupants living with you, or your guests, to intentionally or recklessly damage or destroy, the community's common areas, and

19.4 to notify us as soon as practicable of any damage to the residential site or any damage to the community's common areas caused or permitted by you, other occupants living with you, or your guests, and

19.5 not to plant a tree, or authorise a tree to be planted, in the community without our consent.

20. We agree:

20.1 to ensure that the community is reasonably safe and secure, and

20.2 not to intentionally or recklessly damage or destroy any of your property, or property of other occupants living with you, or of your guests, and

20.3 to ensure, to the extent within our control, the continuity of supply of utilities to the residential site, and

20.4 to maintain the community's common areas in a reasonable state of cleanliness and repair, and so as to be fit for use by you, and

20.5 to take reasonable steps to keep the community's common areas reasonably free of noxious weeds and vermin, and

20.6 to ensure that all trees in the community are properly maintained and take reasonable action if you or another home owner report that a tree has caused or is likely to cause injury to a person or damage to property.

Alterations and additions

21. Unless we give our written consent or unless this agreement otherwise provides, you agree:

21.1 not to make any alterations to the exterior of the home (other than painting or minor repairs), and

- 21.2 not to add a fixture to the residential site, and
- 21.3 not to replace your home with another home.
- 22. We agree not to unreasonably withhold or refuse consent for any request to do any of the things set out in clauses 21.1 – 21.3 but we reserve the right to give consent with reasonable conditions.

Sub-letting

- 23. We agree that you may, with our written consent, enter into a tenancy agreement for, or otherwise sub-let, your home.
- 24. We agree not to unreasonably withhold or refuse consent for any request to enter into a tenancy agreement for, or otherwise sub-let, your home, so long as any such agreement is proposed to be entered into or granted once only during any 3-year period in which the site agreement has effect and is for a term of 12 months or less.

Services and facilities

- 25. We agree:
 - 25.1 to maintain all services and facilities required by the development consent for the community to be available for the life of the community, and
 - 25.2 to give you or the residents committee (if there is one) 30 days' notice if we propose to remove or substantially restrict a facility or service required by the development consent or otherwise available for the community or if we propose to provide a new facility or service for the community.

Sale of home

- 26. We agree:
 - 26.1 to allow you to sell your home while it is located on the residential site, and
 - 26.2 to allow you to display a "for sale" sign in or on your home, provided you notify us of your intention to offer the home for sale, and
 - 26.3 not to cause or permit interference with, or any attempt to interfere with, your right to sell your home or your right to display a "for sale" sign in or on your home, and

- 26.4 to enter into a new site agreement with the purchaser of your home, unless we have a reasonable excuse not to (for example, if we and the purchaser do not agree on the terms of the proposed agreement), and
- 26.5 not to unreasonably delay, or refuse to enter into, a new site agreement with the purchaser.
- 27. You agree:
 - 27.1 to give us notice of your intention to offer your home for sale before offering it for sale, and
 - 27.2 to only display a "for sale" sign in or on your home and not anywhere else in the community unless we consent, and
 - 27.3 to ensure that a genuine purchaser of your home is advised to contact us about the proposed sale before a contract for the sale of the home is entered into.

General obligations

- 28. We agree:
 - 28.1 to establish and maintain reasonably accessible and reasonably secure mail facilities, and
 - 28.2 not to access or interfere with your individual mail facilities, except with your consent, and
 - 28.3 to have in place emergency evacuation procedures and take reasonable steps to ensure that you are aware of these procedures, and
 - 28.4 to comply with all legislative obligations relating to the community, including but not limited to any regulations under the *Local Government Act 1993*.
- 29. You agree:
 - 29.1 to respect our right to work in an environment free from harassment or intimidation, and
 - 29.2 not to act in a manner that adversely affects the health and safety of persons working in the community, and
 - 29.3 to notify us before the residential site is to be left unoccupied for more than 30 days or, if you are not able to give notice before leaving the residential site, as soon as is reasonably practicable after leaving it.

Change in operator details

30. If our name or address changes, we agree to give you a notice stating the new name or address within 14 days after the change.

Definitions, interpretation and operation of this agreement

31. In this agreement:

age pension means the age pension payment made under the *Social Security Act 1991* of the Commonwealth.

regulations means the regulations made under the Act.

the Act means the *Residential (Land Lease) Communities Act 2013*.

Tribunal means the Civil and Administrative Tribunal of New South Wales.

we, us or **our** refers to the operator and where the context allows, its employees and agents. If there is more than one operator, the words “we”, “us” or “our” apply jointly to the operators and to each of them.

you or **your** refers to the home owner and includes his or her executors, administrators or agents but only to the extent necessary to enable them to discharge their duties, and where the home owner is more than one person, the words “you” or “your” apply jointly to the home owners and to each of them.

Words that are not defined in this agreement but which have a defined meaning in the Act have the same meaning in this agreement as they do in the Act.

32. This agreement operates as follows:

32.1 this agreement has effect subject to the Act and the regulations,

32.2 any term of this agreement is to be read and interpreted in the context of, and subject to, any relevant provision of the Act and the regulations,

32.3 this agreement gives way to the Act and the regulations to the extent of any inconsistency between this agreement and the Act and the regulations.

33. If the Act or the regulations are amended after this agreement was entered into, the amendment applies in relation to this agreement, unless the legislation making the amendment provides otherwise. This extends to the repeal and substitution of the Act or the regulations.

Notes – Termination of agreement

1. You may terminate this agreement by giving us at least 30 days’ written notice, and may move your home off the residential site at any time after giving us that written notice, in accordance with the Act.
2. We may only terminate this agreement in one or more of the following circumstances and in accordance with the Act:
 - (a) if you seriously or persistently breach this site agreement,
 - (b) if we require vacant possession of the residential site in order to comply with an obligation imposed by or under legislation to carry out works (including works in the nature of repairs or upgrading) within the residential site or community,
 - (c) if the community is to be closed,
 - (d) if there is to be a change in the use of the residential site,
 - (e) if the residential site is appropriated or acquired under legislation of the State or Commonwealth by compulsory process authorised by that legislation,
 - (f) if the site is not lawfully useable for the purposes of a residential site,
 - (g) if the residential site has not been used for the past 3 years (and any further period not exceeding 3 years agreed to by you and us) as your place of residence or another person’s place of residence (with our prior consent),
 - (h) for serious misconduct, following an application to the Tribunal.
3. In certain circumstances, if we terminate your agreement you may be entitled to compensation as prescribed by the Act.

ADDITIONAL TERMS

NOTE: ANY ADDITIONAL TERMS ARE NOT REQUIRED BY LAW AND ARE NEGOTIABLE BEFORE YOU SIGN THIS AGREEMENT.

Additional terms may be inserted below, but only if:

- (a) they do not contravene the Act or regulations or any other law, and
- (b) they are not inconsistent with the standard terms contained above.

WARNING. It is against the law to insert any terms in this agreement which operate to annul, vary or exclude any provisions of the Act or the regulations (see section 12 of the Act). Terms prohibited by the regulations also cannot be added to this agreement.

Signed by or on behalf of the operator

Name of operator/person signing on their behalf:

Signature of operator/person signing on their behalf:

Date: /

Acknowledgment by home owner

The home owner acknowledges that they have been given a copy of each of the following documents.
Do not sign this agreement if you have not been given all of the required documents.

The home owner must initial each box below to indicate they have received the document:

Disclosure Statement (at least 14 days before entering into this site agreement)

Site Condition Report

A current copy of the Community Rules (if any)

Moving into a Land Lease Community? brochure published by NSW Fair Trading

Legal Advice (select only ONE)

I have obtained independent legal advice before signing this agreement

I have decided not to obtain independent legal advice before signing this agreement

Signed by home owner (1)

Name of home owner (1):

Signature of home owner (1):

Date: /

Signed by home owner (2)

Name of home owner (2):

Signature of home owner (2):

Date: /