

Residential (Land Lease) Communities Regulation 2015

[2015-448]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Authorisation

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Residential (Land Lease) Communities Regulation 2015



New South Wales

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Residential (Land Lease) Communities Regulation 2015



New South Wales

1 Name of Regulation

This Regulation is the *Residential (Land Lease) Communities Regulation 2015*.

2 Commencement

This Regulation commences on the commencement of the *Residential (Land Lease) Communities Act 2013*.

3 Definition

(1) In this Regulation:

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

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Publication of particulars of enforcement and disciplinary action

(1) For the purposes of section 19 (1) (c) of the Act, any of the following particulars, in respect of a community or its operator, that are contained in the Register are authorised to be included for publication on the internet:

(a) the following particulars in relation to a person who has been convicted by a court of an offence under the Act or this Regulation:

(i) the name of the person,

(ii) whether or not the person, at the time of the offence, is or was the operator or a member of staff of the community,

(iii) a description of the nature and circumstances of the offence, the decision of the court and the penalty imposed,

- (b) the following particulars in relation to a person who is or was an operator of the community against whom disciplinary action has been taken under Division 3 of Part 13 of the Act:
 - (i) the name of the person,
 - (ii) a description of the grounds on which the disciplinary action was taken,
 - (iii) a description of the disciplinary action taken.
- (2) Particulars relating to an offence are not to be included for publication on the internet until after the last day on which an appeal may be made against the conviction.
- (3) If an appeal is made against the conviction, the particulars are not to be included for publication on the internet unless a final order has been made on appeal confirming the conviction.
- (4) Particulars relating to disciplinary action are not to be included for publication on the internet until after the later of the following dates:
 - (a) the date on which any application may be made for an administrative review under the *Administrative Decisions Review Act 1997* of the Commissioner's decision in respect of the disciplinary action,
 - (b) the date on which any proceedings for judicial review in respect of that decision may be commenced.
- (5) If an application for an administrative review is made, or proceedings for judicial review are commenced, the particulars are not to be included unless the disciplinary action is in accordance with a final decision consequent on the review.
- (6) Particulars that are authorised by this clause to be included for publication on the internet are to be removed from the information published on the internet as soon as practicable after the Commissioner becomes aware that:
 - (a) in the case of particulars relating to an offence:
 - (i) the conviction has been quashed or annulled, or
 - (ii) an appeal has been made against the conviction, or
 - (b) in the case of particulars relating to disciplinary action:
 - (i) the decision in respect of the disciplinary action has been set aside or quashed, or
 - (ii) an application for an administrative review has been made, or proceedings for judicial review have been commenced, in respect of the decision.
- (7) Without limiting subclause (6), particulars that are authorised by this clause to be

included for publication on the internet are to be removed from the information published on the internet as soon as practicable after a period of 5 years has elapsed since they were first published on the internet.

- (8) In a case where particulars relating to an offence are removed from the information published on the internet because an appeal is made against a conviction for the offence, the Commissioner may arrange for those particulars to be republished on the internet if satisfied that any such appeal was unsuccessful.
- (9) In a case where particulars relating to disciplinary action are removed from the information published on the internet because an application for administrative review is made, or proceedings for judicial review are commenced, the Commissioner may arrange for those particulars to be republished on the internet if satisfied that any such application or proceedings were unsuccessful and that the decision is final.
- (10) For the purposes of this clause, an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in relation to an offence is taken to be a conviction for an offence.

5 Publication of information about residents committee

For the purposes of section 19 (1) (d) of the Act, the Commissioner is to arrange for information contained in the Register about whether a Community has a residents committee to be published on the internet for public access.

6 Standard form of site agreement

The standard form of site agreement is the form set out in Schedule 1.

7 Form of site condition report

- (1) A site condition report, in the form set out in Schedule 2, must be:
 - (a) completed by the parties to a site agreement at or before the time the agreement is given to the home owner for signing, and
 - (b) annexed to the agreement.
- (2) The parties are not required to complete and annex a further condition report to any site agreement that replaces another site agreement between the parties in relation to the same residential site.

8 Prohibited terms of site agreement

- (1) The following types of terms are prohibited in a site agreement:
 - (a) a term for, or with respect to, the indemnification of the operator or owner of the community against any liability (including vicarious liability) of the operator or owner for damage, loss or injury arising from an act or omission of the operator or owner (or the operator's or owner's employees or agents) in relation to the

- occupation or use of the residential site,
- (b) a term requiring the home owner who is a party to the agreement to take out any form of insurance, other than a term permitted by subclause (2),
 - (c) a term providing that, if the home owner breaches the agreement, the home owner is liable to pay:
 - (i) an increased amount of site fees (or other charges payable by the home owner under the agreement), or
 - (ii) any amount as a penalty, or
 - (iii) any amount as liquidated damages,
 - (d) a term providing that, if the home owner does not breach the site agreement:
 - (i) site fees (or other charges payable by the home owner under the agreement) are or may be reduced, or
 - (ii) the home owner is to be or may be paid a rebate of site fees (or other charges payable by the home owner under the agreement) or other benefit.
- (2) For the purposes of subclause (1) (b), a term requiring a home to be insured is permitted in a site agreement if:
- (a) the site agreement provides for a voluntary sharing arrangement only of a kind referred to in section 110 (2) (c) of the Act, and
 - (b) the term requires the operator to share the cost of the insurance with the home owner in the same proportion as the capital gain is shared, or as the on-site premium is calculated in relation to the total sale price, as the case requires.
- (3) A reference in this clause to a **home owner** includes a reference to a prospective home owner.

9 Retaliatory conduct

For the purposes of paragraph (c) of the definition of **retaliatory conduct** in section 56 (3) of the Act, the withdrawal or withholding of a service or use of a facility (whether or not provided for in a site agreement) is prescribed.

10 Sewerage charges payable by home owner

- (1) This clause applies to residential sites:
- (a) at which water and sewerage services are provided to the operator by a water supply authority, and
 - (b) at which water use is separately measured or metered but at which sewerage use

is not separately measured or metered,

but only where:

- (c) the water supply authority charges for water and sewerage services separately, and
- (d) the water supply authority specifies a sewerage discharge factor to calculate the sewerage use (however described) either in the bill or in another reasonably accessible way.

(2) If, for a particular period, the operator of a community has paid or is liable to pay the charges levied by the water supply authority for sewerage services in respect of residential sites to which this clause applies, those sites are exempt from the operation of section 77 (2) (a) of the Act, subject to the condition set out in subclause (3).

(3) The condition is that the operator:

- (a) may only charge the home owner of a residential site to which this clause applies an amount for sewerage use calculated by multiplying the volume of water used during the particular period as indicated by the water meter reading for the residential site by the relevant discharge factor, and
- (b) must not require payment of an amount for sewerage use in respect of the period concerned that is not calculated in accordance with paragraph (a).

11 Maximum service availability charge generally

(1) The maximum service availability charge payable, in respect of any period, by a home owner to the operator for the provision of a utility (other than electricity) at a residential site is the service availability charge for the period billed to the operator by the utility service provider or regulated offer retailer for the provision of the utility to the community in which the residential site is located divided by the number of residential places in the area of the community.

(2) In this clause, **residential places** in the area of the community means all the following sites which are located in that area and in relation to which the operator is billed:

- (a) residential sites as defined in the Act,
- (b) other sites (if any) connected to the relevant utility which:
 - (i) are used or are ordinarily used for accommodation, or are intended to be used for accommodation, or
 - (ii) are, or ordinarily are, or are intended to be, the subject of any arrangements

referred to in section 7 of the Act.

12 Maximum service availability charge—water and sewerage

Despite clause 11, the service availability charges payable by a home owner to an operator of a community for both water and sewerage must not exceed \$50 in total for all those service availability charges payable by the home owner in any calendar year.

13 Maximum service availability charge—electricity

- (1) The maximum service availability charge payable, in respect of any period, by a home owner to the operator for the supply of electricity at a residential site is the amount that would have been payable for the period if the electricity had been supplied to a small customer under a standard retail contract of the applicable local area retailer at standing offer prices.
- (2) Despite subclause (1), the service availability charge payable by a home owner to an operator of a community for supply at a residential site of less than 60 amps of electricity is to be discounted in accordance with subclause (3).
- (3) The maximum service availability charge payable by a home owner to an operator for supply at a residential site of less than 60 amps of electricity is:
 - (a) if less than 20 amps of electricity is supplied to the residential site—20 per cent of the service availability charge that would apply if the home owner were a small customer under a standard retail contract of the applicable local area retailer, or
 - (b) if 20 amps or more but less than 30 amps of electricity is supplied to the residential site—50 per cent of that service availability charge, or
 - (c) if 30 amps or more but less than 60 amps of electricity is supplied to the residential site—70 per cent of that service availability charge.
- (4) In this clause, **local area retailer**, **small customer**, **standard retail contract** and **standing offer prices** have the same meanings as in the [National Energy Retail Law \(NSW\)](#).

14 Maximum service availability charge—offence

The operator of a community must not request a home owner to pay, or receive from a home owner, more than the maximum service availability charges provided for in this Regulation.

Maximum penalty: 10 penalty units.

15 Cases where a residential site has 2 or more home owners

- (1) The purpose of this clause is to ensure that regard is to be had to only one home owner for each residential site for the particular purposes mentioned in subclause (2).

- (2) This clause applies for the purposes of the following matters, in cases where there is more than one home owner for a particular residential site:
- (a) determining the percentage of home owners—in connection with a resolution under section 50 (3) of the Act that is to be passed by a certain percentage of home owners in relation to a special levy,
 - (b) determining the percentage of home owners—in connection with an application under section 69 (2) of the Act for mediation that is to be signed by a certain percentage of home owners.
- (3) All but one of 2 or more home owners for such a site are excluded from the definition of **home owner** in section 4 (1) of the Act for those purposes only.

Note—

The definition of **home owner** authorises the exclusion by the regulations of persons or classes of persons from the definition.

16 Applications to Tribunal

For the purposes of section 156 (2) of the Act, an application to the Tribunal under a provision referred to in Column 1 of Schedule 3 must be made within the period specified opposite in Column 2.

17 Penalty notice offences and penalties

- (1) For the purposes of section 177 of the Act:
- (a) each offence created by a provision specified in Column 1 of Schedule 4 is an offence for which a penalty notice may be served, and
 - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of that Schedule.
- (2) If the reference to a provision in Column 1 of Schedule 4 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

Schedule 1 Standard form of residential site agreement

(Clause 6)

Standard form residential site agreement

Residential (Land Lease) Communities Regulation 2015, Schedule 1

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.

Details of the parties

Operator name/s:

Operator contact phone number/s:

Trading name and address of residential community:

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

Email address of operator (if any):

Does the operator accept notices via email? Yes No

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

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):

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

Does the home owner accept notices via email? Yes No

Site fees

Your site fees are: \$_____ or _____% of the age pension

Payable: Weekly Fortnightly Monthly Starting on: / /

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:

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: _____

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*)

Or:

Site is vacant

Note—

For greater certainty about what is currently on the site, photographs may be attached.

CONDITION OF RESIDENTIAL SITE

| | Clean (yes/no) | Undamaged (yes/no) | Comments |
|---------------------------------|-----------------------|---------------------------|-----------------|
| Landscaping/Garden | | | |
| Driveway | | | |
| Lawn area | | | |
| Site slab (concrete) | | | |
| General appearance | | | |
| Other (<i>specify</i>): | | | |
| Comments about condition | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Note—

If the parties do not agree on whether or not an item is clean or undamaged, this should be noted as a comment.

Has any rubbish or have any goods been left behind on the site? No Yes—*give details (photographs may be attached)*:

How many trees are growing on the site? (*photographs may be attached*)

Utilities

| | Connected (yes/no) | Separately measured/ metered (yes/no) | Meter reading (if applicable) | Is the operator the supplier? (yes/no) | Maximum amps supplied to site |
|-------------|---------------------------|--|--------------------------------------|---|--------------------------------------|
| Electricity | | | | | |
| Gas | | | | | |
| Water | | | | | |
| Sewerage | | | | | |
| Telephone | | | | | |
| Internet | | | | | |

Comments about utilities

| |
|--|
| |
| |
| |
| |

Specific work to be undertaken by operator**(cross out if not needed)**

The operator agrees to undertake the following work during the agreement (eg cleaning, repairs or additions):

The operator agrees to complete that work by:

| Operator | Home owner |
|-----------------|-------------------|
| Name: | Name: |
| Signature: | Signature: |
| Date: | Date: |

Schedule 3 Period for making application to Tribunal

(Clause 16)

| Column 1 | Column 2 |
|-----------------------------|---|
| Provision of the Act | Period |
| Section 21 (4) | The period of 14 days starting with the date of request for a disclosure statement |
| Section 26 (4) | The period during which the site home owner did not have a written site agreement |
| Section 27 (5) | The period during which the site agreement is in force (where the agreement is not in the relevant standard form) |
| Section 28 (2) (a) | The period during which the site agreement is in force |
| Section 29 (4) | The period during which the site agreement is in force |
| Section 37 (2) (c) | The period of 90 days starting with the date the work was completed or was expected to be completed |
| Section 38 (2) | The period of 6 months starting with the date of the alleged non-compliance |
| Section 43 (2) | The period of 60 days starting with the date the notice was issued under section 43 (1) of the Act |
| Section 43 (3) | The period of 60 days starting with the date the notice was issued under section 43 (1) of the Act |
| Section 47 (3) | The period during which the site agreement is in force |
| Section 48 (4) | The period during which the site agreement is in force |

| | |
|-----------------|--|
| Section 48 (5) | The period during which the site agreement entered into by the home owner responsible for the planting is in force |
| Section 56 (2) | The period of 90 days starting with the date on which the alleged non-compliance occurred |
| Section 64 (1) | The period during which the site agreement is in force |
| Section 123 (4) | The period of 90 days starting with the date the notice was received |
| Section 129 (1) | The period of 30 days starting with the date the alleged serious misconduct became known to the operator |
| Section 140 (4) | The period of 12 months starting with the date the home was installed on the new site |
| Section 141 (8) | The period of 90 days starting with the date of the alleged non-compliance with section 141 |

Note—

An application under section 9, 138 (2) or 158 of the Act may be made at any time.

Schedule 4 Penalty notice offences

(Clause 17)

| Column 1 | Column 2 |
|-------------------------------|---|
| Provision | Penalty |
| Offences under the Act | |
| Section 16 (5) | \$1,100 (in the case of a corporation) \$550 (in any other case) |
| Section 17 | \$440 (in the case of a corporation) \$220 (in any other case) |
| Section 21 (1) | \$1,100 |
| Section 26 (1) | \$220 |
| Section 26 (3) | \$220 |
| Section 29 (2) | \$1,100 |
| Section 30 (1) | \$220 |
| Section 32 | \$220 |
| Section 52 (2) | \$110 |
| Section 53 | \$110 |
| Section 55 (3) | \$550 |
| Section 57 (1) | \$110 |

| | |
|---|---------|
| Section 57 (2) | \$110 |
| Section 58 (1) (to the extent that the alleged offence involves the giving of a receipt that does not conform to section 58 (3)) | \$220 |
| Section 58 (2) (to the extent that the alleged offence involves the provision to the home owner concerned of a receipt that does not conform to section 58 (3)) | \$220 |
| Section 59 (1) | \$220 |
| Section 66 (3) | \$550 |
| Section 76 (3) | \$220 |
| Section 84 (1) (to the extent that the alleged offence involves the giving of a receipt that does not conform to section 84 (3)) | \$220 |
| Section 84 (2) (to the extent that the alleged offence involves the provision of a receipt that does not conform to section 84 (3)) | \$220 |
| Section 91 (3) | \$1,100 |
| Section 124 (3) | \$550 |

Offences under this Regulation

| | |
|-----------|-------|
| Clause 14 | \$220 |
|-----------|-------|

Schedule 5 Savings and transitional provisions

1 Sale of homes—existing agreements

- (1) This clause applies to a residential tenancy agreement that is referred to in the [Residential Parks Act 1998](#) and that is in force immediately before the commencement of the [Residential \(Land Lease\) Communities Act 2013](#) (referred to in this Schedule as the **new Act**).

Note—

Clause 5 of Schedule 2 to the new Act provides for the continuation in force of agreements entered into under the repealed Act that have not been terminated.

- (2) Any restrictions or prohibitions on the sale of a relocatable home or other moveable dwelling set out in the agreement, as contemplated by the [Residential Parks Act 1998](#), cease to have effect on and from the commencement of the new Act.
- (3) In this clause, **moveable dwelling** and **relocatable home** have the same meanings as they have in the [Residential Parks Act 1998](#).

2 Rental bonds—existing agreements

- (1) This clause applies to a residential tenancy agreement that is referred to in the [Residential Parks Act 1998](#) and that is in force immediately before the commencement

of the new Act.

Note—

Clause 5 of Schedule 2 to the new Act provides for the continuation in force of agreements entered into under the repealed Act that have not been terminated.

- (2) A claim may be made by a home owner for the payment of a rental bond paid under the agreement, and payments may be made in respect of the claim in accordance with the *Residential Tenancies Act 2010*, in the same way as if the agreement were terminated on the commencement of the new Act.

3 Increase of rent—existing agreements

- (1) This clause applies to a residential tenancy agreement that is referred to in the *Residential Parks Act 1998* and that is in force immediately before the commencement of the new Act (an **existing agreement**).

Note—

Clause 5 of Schedule 2 to the new Act provides for the continuation in force of agreements entered into under the repealed Act that have not been terminated.

- (2) An existing agreement is taken to provide for an increase of rent by notice, and accordingly the rent may be increased in accordance with section 67 of the new Act, if the existing agreement does not set out a method for calculating the amount of an increase in rent.
- (3) If an existing agreement creates a tenancy for a fixed term and does not set out a method for calculating the amount of an increase in rent, the rent payable under that agreement cannot be increased during the currency of the fixed term.
- (4) Nothing in this clause prevents a resident under an existing agreement and an operator from entering into an agreement for increases in rent by a fixed method under section 66 of the new Act.