

RESIDENTIAL TENANCIES ACT: OCCUPANCY LAW CHANGES



FACT SHEET

Changes to Occupancy Law: Residential Parks

BACKGROUND

Occupancy Laws in the ACT changed on 3 March 2021.

This Fact Sheet is designed to help you understand the changes. The information in this Fact Sheet is not legal advice. You should seek legal advice if in doubt about your individual circumstances.

The rights and obligations of the grantor and occupant depend on the *Residential Tenancies Act 1997* (the RTA) and on the individual occupancy agreement. You should always check your agreement as a starting point.

WHAT ARE THE MAJOR CHANGES TO OCCUPANCY LAW?

The changes:

- more clearly define what an occupancy agreement is and the circumstances in which they may be used
- create mandatory minimum principles for occupancy agreements
- introduce a security deposit framework for occupancy agreements
- introduce enforceable conciliation of occupancy disputes through the ACT Human Rights Commission
- introduce a requirement for smoke alarms to be fitted in occupancy agreement premises
- create specific rules in relation to occupancy agreements in residential parks, and
- create specific rules in relation to education provider occupancy agreements.

A brief overview of these changes is provided below and more detailed factsheets are also available at: <https://justice.act.gov.au/safer-communities-protection-rights/residential-tenancy-and-occupancy-reforms/reforms-tenancy-and-occupancy-reforms/reforms-tenancy-and-occupancy-reforms>

This Fact Sheet explains the changes in relation to residential parks.

WILL EXISTING OCCUPANCY AGREEMENTS BE AFFECTED?

From 3 March 2021 all occupancy agreements, (except for education provider occupancy agreements where the changes commenced on 30 January 2022) are subject to the new rules in relation to occupancy agreements. **This includes site agreements in residential parks** (sometimes called long-stay caravan parks). In addition to the general rules applying to all occupancy agreements, there are specific rule relating to residential parks. These are outlined further below.

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WHAT IS A RESIDENTIAL PARK?

A residential park (sometimes called a long-stay caravan park) is land which includes sites for mobile or manufactured homes (e.g., caravans or cabins), and the common areas and facilities for the use of people occupying those homes. It includes caravan parks and camping grounds.

WHAT IS A RESIDENTIAL PARK AGREEMENT?

A residential park agreement means an occupancy (or tenancy) agreement relating to a manufactured or mobile home already located in a residential park. A residential park agreement also includes site agreements.

WHAT IS A SITE AGREEMENT?

A site agreement is a type of residential park agreement which allows someone the right to occupy a site in the residential park, for the purpose of placing their own manufactured or mobile home upon it. In this instance, the operator owns the site on which the occupant resides, but the occupant owns the home. Under the new rules, the occupancy principles also apply to site agreements. The occupancy principles set out a number of rules relating to occupancy premises. The 'premises' of a site agreement means the land and any fixtures in the residential park provided for the purpose of the occupant placing a manufactured home or a mobile home on the land.

These rules will mean that the grantor (the park operator) will only be entitled to enter the occupant's manufactured or mobile home after providing reasonable notice of a reasonable time and by providing a reasonable ground for entering the premises.

WHAT IS THE LAW RELATING TO SHARED PARK FACILITIES?

Under the new laws, as far as reasonably practicable, an operator of a residential park must give an occupant under a residential park agreement access to shared park facilities at reasonable hours. This may include shower blocks, toilets, laundries, camp kitchens, BBQ areas, etc.

WHAT HAPPENS IF AN OCCUPANT WANTS TO GIVE SOMEONE ELSE PERMISSION TO LIVE IN THEIR HOME?

If an occupant of a manufactured or mobile home (or the site where it sits) wants to give someone else permission to live in their home, (i.e., letting someone else live in the property in their absence called an 'assignment of interest'), they can only do so with the operator's consent.

The occupant (who is called the assignor in this context) must provide the operator with the name of the new person moving in (who is called the assignee), and the same information about the new person that was required when the occupant applied to enter the park. The request for consent (to

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the assignment) must be in writing, and the operator has 14 days to consent or refuse consent in writing. However, if the operator does not respond within 14 days of receiving the request, the operator is taken to consent.

If the operator consents, the new person can move in. They now have an interest in any security deposit paid under the agreement, and are liable for any damages or other liabilities incurred once they move in. The original occupant remains liable for any damage caused while they lived there (up until the day the new person moves in / the date of assignment). The residential park agreement continues when the new person joins.

WHAT HAPPENS IF AN OWNER OF A MANUFACTURED OR MOBILE HOME WANTS TO SELL IT?

If someone owns a mobile or manufactured home that they want to sell and their home is in a residential park (under a site agreement), there are specific things they must do for the sale to occur.

If the occupant wishes to advertise the house via a 'for sale' sign (or similar), they must first tell the operator about their intention to sell the home, and the sign must comply with regulations in relation to real estate signage.¹

If the occupant complies with these obligations, the operator cannot hinder the sale. Hindering the sale may include unreasonably stopping buyers from inspecting the premises, making false or misleading statements about the residential park, or preventing the seller from displaying a sign about the sale, amongst other things.

The operators would not be considered to have hindered a sale just because they impose reasonable conditions on potential buyers entering or remaining in the residential park, or if they have reasonably refused to consent to a proposed assignment of a person's interest in the park (for example, they have refused to allow someone else to live in the mobile or manufactured home on that site because the home has been found to be uninhabitable).

Once the home is sold, the buyer must remove the home from the park within five days after the sale is completed, or a longer time period agreed by the operator. However, if the buyer wishes to remain in the park, the original occupant can transfer (assign) the site agreement to the buyer, or the buyer can enter into a new site agreement with the operator. The operator cannot unreasonably refuse to enter into a site agreement with the buyer for an appropriate site in the park.

¹ See the Public Unleased Land (Moveable Signs) Code of Practice (No 1) at <https://www.legislation.act.gov.au/View/di/2019-41/current/PDF/2019-41.PDF>

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WHAT HAPPENS IF THE OWNER OF A MOBILE OR MANUFACTURED HOME ABANDONS IT IN A RESIDENTIAL PARK?

The new laws clarify the operation of the *Uncollected Goods Act 1996* to manufactured and mobile homes in residential parks.

The *Uncollected Goods Act 1996* currently allows abandoned vehicles of low or no value to be disposed of immediately and abandoned vehicles of significant value to be disposed of after 14 days. Changes to legislation clarify that 'vehicle' does not include a mobile home in a residential park. The changes also create a new process for dealing with abandoned manufactured or mobile homes in a residential park.

If the manufactured or mobile home has been abandoned and is declared by the ACT Civil and Administrative Tribunal (ACAT) not to be fit for human habitation, it may be disposed of by other methods than by sale (for example, by taking it to landfill).

If a manufactured or mobile home in a residential park has been declared abandoned by the ACT Civil and Administrative Tribunal (ACAT) and remains in habitable condition, the home may be disposed of by public auction after 14 days from the ACAT order. Whoever sells the home (likely the operator) can recoup any costs related to the sale, but the balance must be paid to the Territory.

MORE INFORMATION AND ASSISTANCE

Tenancy Advice Service (Division of Legal Aid ACT)

Phone: 1300 402 512 **Email:** TAS@legalaidact.org.au **Website:** www.legalaidact.org.au/tasact

Legal advice from this service is free and confidential. It is not means-tested (the service is available to all occupants regardless of income).

Legal Advice Bureau (Open between 12:30pm and 2pm on weekdays)

Phone: 6274 0300

Website: <https://www.actlawsociety.asn.au/for-the-public/legal-help/legal-advice-bureau>

The Legal Advice Bureau at the Law Society is a free and confidential service and can provide advice in 15-minute consultation sessions to both occupants and grantors.

Canberra Community Law

Phone: (02) 6218 7900 **Email:** info@canberracommunitylaw.org.au

Website: <https://www.canberracommunitylaw.org.au>

If you are a tenant in public housing (from Housing ACT), or a tenant or occupant in crisis accommodation or social housing or living in a residential park (long stay caravan park), Canberra Community Law can provide you with free and confidential legal advice.

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Conflict Resolution Service

Phone: (02) 61890590 **Website:** <https://crs.org.au/>

Conflict Resolution Service (CRS) is a nationally accredited mediation service that resolves conflict professionally, competently and compassionately. CRS have experience working with neighbours, landlords and residential tenants to provide a safe, structured, and confidential environment for discussion between parties.

ACT Revenue Office (Rental Bonds)

Phone: 6207 0028 **Email:** rb@act.gov.au **Website:** <https://www.revenue.act.gov.au/rental-bonds>

The Rental Bonds Portal allows grantors to lodge occupancy agreement security deposits and request refunds online. It also has template forms for condition reports, security deposit refunds, updating details and more.

ACT Civil and Administrative Tribunal (ACAT)

Phone: 6207 1740 **Email:** tribunal@act.gov.au **Website:** www.acat.act.gov.au

Please note that the Tribunal can assist with questions about its procedures, but it cannot give legal advice on individual situations.

ACT Human Rights Commission

Phone: 6205 2222 **Email:** HRCIntake@act.gov.au **Website:** <https://hrc.act.gov.au/occupancy-disputes/>

The Commission can accept complaints about occupancy disputes arising from occupancy agreements. They will try to resolve matters informally through a conciliation process.

Legislation

You can access the *Residential Tenancies Act 1997* and other ACT legislation on the ACT Legislation Register at www.legislation.act.gov.au.