



The Secretary
Statutory Review of the Residential (Land Lease) Communities Act 2013
Policy and Strategy Division
Department of Customer Service
4 Parramatta Square
12 Darcy Street
Parramatta, NSW 2150

Dear Secretary

Re: Statutory Review of the Residential (Land Lease) Communities Act 2013

Thank you for the opportunity of providing AICNSW's observation and comments in relation to the Statutory Review of the Residential (Land Lease) Communities Act 2013 (RLC).

The recent increasing trend in the value of property through NSW together with the increasing demand for affordable property as social demographic trends change challenges the development of fair and appropriate management and regulation of this important property segment.

We agree that this legislation needs to ensure it is fit for purpose, effective and practical but most importantly it must effectively balance the rights and interest of homeowners and operators particularly as the social demographic demands for affordable property increase at the same time as the value of properties impacted by this legislation.

Larger RLC 'schemes' appear to be taking on the sophistication of the Community Titles Schemes with gated estates, shared community services and architectural designs and landscaping. In recent years, the sale of these homes, especially in coastal areas of NSW, has surpassed the \$500,000 mark and in the present property market even greater sums have been or will be paid for these homes.

Importantly these properties provide important social housing as many homes are owned by retirees, over 55s and in many instances the owners are single women and men, same sex couples or people, who have in later years of their lives entered a 'partnership' for the purpose of purchasing a home in a residential community. Indeed, for many people it is the sole means of securing an affordable home and pleasant and sustainable lifestyle. The purchase of these homes often represents life savings, superannuation or the sale of assets

that have been accumulated over a lifetime of work and the security of these funds, in the “personal property” of a home, is essential to their quality of life.

AICNSW believe that there are several areas that warrant consideration for the development of legislation which achieves the objective of the Act but also builds into the legislation scope to cover growth in this market in the future.

1. What form of contract and who am I contracting with?

The proposed RLC substantially deals with the leasing and legislating of the rights of the residential site agreement.

However, notwithstanding the increasing value of many of the “structures” being maintained on the leased site, there is no provision to connecting the structure to the site agreement. Proprietors of such chattels have no assurance that the home seller is the owner of the home or that the form of the contract for the sale of the home provides adequate and fair protections to the seller and the purchaser through linking the sale of the home to the granting of a new site agreement.

Though the act offers protection with respect to the leasing of the site upon which the home ‘stands’, there is no security of ownership of the home which is most likely the most valuable asset of the homeowner and the prospective purchaser.

Unlike property transacted under the Real Property Act there is no ‘Register’ upon which a prospective purchaser can search to confirm the ownership of the home and consequently whether the owner is entitled to transfer that ownership.

In addition, if the home has been used as a security for a loan or debt, it appears that buildings under such contracts are excluded from the Personal Properties Securities Register. Accordingly, there is no way of a purchaser determining if the home is being held as security and is therefore unencumbered by a loan.

2. Legislative vagaries:

There is no legislative provision as to the form of contract for the sale of the “home” subject to a lease under the RLC.

The Conveyancing Act 1919 provides parties to Real Property contracts with certain prescribed terms including:

- Section 52A that a contract must provide for certain disclosures and warranties.
- Section 54 - requires the contract must be in writing.
- Section 66U - provides cooling off rights.

There are no obligations on a seller of the home and no protections for the buyer in a contract for the sale of a home under the RLC.

Quoting the published advice from NSW Fair Trading the contract of “some form” is essentially connected to the site agreement and merely provides for a “fourteen day cooling off period.”

Accordingly, a transaction for a property under the RLC is subject to a lack of evidence as to the form of registration of the ownership and there are no regulatory provisions as to what form the contract that the sale of the home should take.

This is analogous to the situation with Retirement Village contracts in NSW of some years ago in which a multitude of “contract “variations existed within a single retirement Village property.

3. NSW Fair Trading current advisories for Sellers and Buyers of Homes in Residential Land Lease Communities?

We refer to the current NSW Fair Trading publication Residential Land Leases Communities Selling Your Home”: which advises:

“All current homeowners in any land lease community have the right under the law to sell their home onsite. If you move out but still own a home, you keep this right of sale. If you pass away, your executor, administrator or a beneficiary of your estate can exercise this right.”

And when purchasing, NSW Fair Trading website, Residential Land Leases Communities Buying into a Community Before Entering into An Agreement advises:

“Buying a home in a land lease community usually involves buying an existing home from an outgoing homeowner or buying a home directly from the operator. To buy a home you will need to agree on a price and sign some form of contract for sale. Before you sign anything, remember that:”

The publication then explains the Disclosure Statement requirements (for the site agreement) and at dot point 3 states that.

“Buying a home in a community is a major legal and financial commitment – visit it at least once.”

And at Signing Documents

“Once you have decided to buy a home in a land lease community, the next step is to sign a contract for sale to buy the home from the seller and a site agreement to rent the site from the operator. Make sure you understand all the terms and conditions and read the fine print before you sign. Ask questions and think about negotiating any terms that are negotiable. You can take the documents away and bring them back later. Once you have signed the site agreement the law gives you a 14-day cooling-off period if you change your mind. You can cancel the arrangement without penalty during this period as long as you have not started living in the home (or have not put a home on the site). If you are buying the home from an outgoing homeowner (rather than the operator), you should check the terms of your Contract for Sale to ensure you can also cancel that contract.”

Is this, in 2021, adequate consumer regulation and protections for properties that may be valued at more than \$500,000?

4. The Conveyance

Under the RLC what is usually classified as a conveyance, comprises two essential parts:

1. The transfer of the residential site agreement with the parties being the Site Owner, the Registered Proprietor of the land in which all the sites are contained, governed by the Residential Parks Regulation and the seller (owner of the home), the purchaser of which is advised by NSW FT to sign and:
2. The contract for the sale of the home or **'A contract in some form'**, for the sale of the home.

In respect, of the site agreement, the purchaser is protected by the Disclosure Requirements and the cooling off provisions contained in the RLC.

However, though the completion of the site agreement and contract for the home are interdependent upon each-other, the site agreement offers protection to the purchaser, whereas the contract for home is seen as something separate from the site agreement.

In this respect NSW FT advises the purchaser.

"If you are buying the home from an outgoing homeowner (rather than the operator), you should check the terms of your Contract for Sale to ensure you can also cancel that contract."

These two aspects of the sale are interdependent however, the site agreement, provides a legislative scheme that includes disclosure and a "Cooling Off" period whereas the contract for the home, provides no legislative disclosure requirements or "Cooling Off" Provisions.

Whilst, in most instances, particularly where the owners are the original purchasers of the home from the Developer/Park Owner, it might not be difficult to provide evidence as to the question of ownership after several transfers.

Estate transfers on the death of an owner particularly when the home is held as 'tenant in common' form of ownership, determining ownership of the whole of the home may become difficult. In the case of the death of one of the owners, some prudent purchasers might require a copy of Probate or letters of Administration to evidence ownership of the home.

However, that may be, or develop, most purchasers are presently requesting a declaration from the vendor warranting as to ownership of the home and that the home is free from debt and not held as security. Indeed, 'as time goes by', home ownership in RLC might become like "Old System Title" where there may be a need to establish a 'chain of conveyance' in order for a purchaser to be satisfied that the owner has a "good title" to the home.

Irrespective of the consideration for a home being \$50,000.00 or \$650,000.00, when the contract involves the life savings or superannuation of a retiree, the question must be asked, is a declaration of ownership and the home free from being a security for a debt enough?

5. Options for consideration:

- **A register of home ownership and/or encumbrance.**

Whilst it would seem a positive consumer protection measure to create a 'Register' of homeownership, if a register of homeownership for RLC were to be created for it to be successful it would need to be compulsory and there would need to be a central point of registration and regard as to what information might be contained on that register. How would the register be searched and notifications such as change of ownership made and removed?

Perhaps at the present time there are not enough RLC communities to warrant or support a 'Register' of homeowners. However, the RLC has many benefits and more people, will in the future, buy homes on RLC sites. As such it may be opportune to undertake a cost-benefit analysis of the establishing and ongoing maintenance of a Register. We would recommend requesting feedback from the Office of the Registrar General and NSW Land Registry in this regard.

- **An appropriate form of Contract.**

The fact that the RCA prescribes for a "cooling off" period for the site agreement and no "cooling off" right to purchasers, when both the site agreement and the purchase of the home are essential to a transaction in RCA, appears to be a regulatory gap.

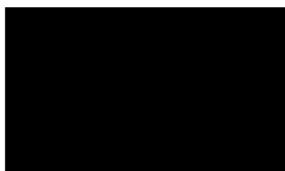
A prescriptive inclusion providing for the contract to be in writing and a "cooling Off" period in the same terms as the Site Agreement, in a contract for the home purchase, would provide a remedy for this gap.

Other prescriptive inclusions that should be considered are warranties as to ownership and that the home is not being held as security for debt or sub-leased should be considered.

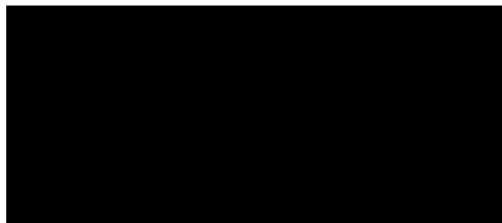
As a further protection consideration should be given to the Site Agreement and the Contract being interdependent upon each-other for the completion of the transaction.

We trust the above observations and comments are beneficial in your review of the proposed legislation and we would welcome any opportunity to participate in further consultation in this regard.

Yours faithfully



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AIC NSW



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