



It will be noticed by home owners that the word license is often used to describe the site agreement; this is basically untrue and used to confuse elderly home owners. The *Manufactured Homes Residential Parks act 2003* (the Act) talks only of a site agreement. It does not specify it as a lease although the site agreement actually resembles a lease more than it does a license because of its perpetuity.

To explain further I will quote word for word from the BARRON'S DICTIONARY OF LEGAL TERMS to authenticate what is written here and any opinion is purely a lay opinion based on experience gained after living in a residential park for nearly ten years.

Agreement:

*“Mutual assent between two or more legally **competent** persons, ordinarily leading to a **contract**. In common usage, it is a broader term than contract, **bargain** or **promise**, since it includes executed **sales, gifts** and other transfers of property, as well as promises without legal obligation. While agreement is often used as a synonym for contract, some authorities narrow it to mean only mutual consent”.*

License:

“A grant of permission needed to legalise doing a particular thing, exercising a certain privilege or pursuing a particular business or occupation. License may be granted by private persons or by government authority.

*In the law of **property**, a license is a personal privilege or permission with respect to some use of **land**, and revocable at the will of the land owner. The privilege attaches only to the party holding it and not to the land itself, since, unlike an **easement**, a license does not represent an **estate** or **interest** in the land”.*

Example: “When Lyn opens a new shop in a small shopping centre, a neighbouring businessman gives her “licence” to use some of his storage space. The businessman can deny Lyn the use of that space at any time, and most importantly, if Lyn ever sells her store, she could not guarantee that storage space to the purchaser”.

Lease:

*“An agreement by the **lessor** temporarily to give up **possession** of **property** while retaining legal ownership (**title**)”.*

*“An agreement by the owner **Landlord** to turn over, for all purposes not prohibited by the terms of the lease, specifically described **premises** to the exclusive possession of the lessee for a definite period and for a **consideration** called rent”.*

Contract:

*“A promise, for the **breach** of which the law provides a **remedy**, or the **performance** of which the law recognises as a **duty**; a transaction involving two or more individuals whereby each has reciprocal rights to demand performance of what is promised”.*

The above summary of explanation has been prepared in an attempt to characterise what home owners living in residential parks understand as their site agreement and where the site agreement fits into the above summary. Also, it should be borne in mind that the existing site agreements are of a perpetual nature (as mentioned above) with the right of either party to the agreement to terminate the agreement by way of assignment by the home owner and redevelopment option by the land owner (the park operator).

The writer spent considerable time researching the term “licence” as explained here but there seems to be a very legal argument regarding a “licence in perpetuity” because it would seem that

there is much legal argument regarding the heirs of a deceased estate to enjoy the licence bequeathed or of natural inheritance. From that research it would seem that a licence in perpetuity cannot be inherited but this is a lay opinion. The only country that I could find where the possibility of inheritance was perhaps permissible was in the old communist USSR where certain lands were awarded persons for agricultural purposes only. It would seem then that the term license in relation to a site agreement under the *Manufactured Homes Residential Parks Act 2003* (the Act) is not a true description.

The term agreement seems to encompass the basics of the site agreement where it speaks of “legally competent persons” and “other transfers of property” and is often used as a synonym for contract. This ties in with “lease” because a “lease in perpetuity” is more suitable to the common vocabulary and is what is implied by the much used term of “arms length agreement” being two people with a vested interest in a property. Research also implies that many contract/leases in modern times such as our agreements are part of a Statute and included in the legislation.

Perhaps what does qualify our site agreements as perpetual lease agreements is that our heirs can inherit the leased property as is (section 8 (c) of the Act and section 94 (2) (a) the Act gives the home owner possession as per a lease under the *Property Law Act 1974* section 57A (2) (b) “*in the case of a lease---the lessee’s entry into possession under the lease*”.

It is arguable then that when a land owner (park operator) advertises the park and invites members of the public to build/own homes on sites in the park under perpetual lease agreements then the park effectively becomes public property. Taken further, each home owner with a home positioned on a site in the park has control of their site and collectively have control of the sites but not title. Add to this the fact that the common property is there for the use of home owners and their visitors then the park operator cedes total control of the land to the tenant home owners who have control within the limits of the site agreement which includes the park rules.

Therefore, a park operator cannot deny any visitor or service person with business with a home owner with lawful intent, entrance to a park, this why we pay site fees and the use of utilities and facilities which are factored into the site fees.

In effect, we are rent paying residential tenants and entitled to all the privileges bestowed on any lessee of a private home in suburbia. The only difference is we own the homes and highlights why section 70 (3) (c) of the Act is an abomination and without foundation but that will be dealt with at another time.\

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