

## HOME OWNERS COMMITTEES AND ASSOCIATIONS EXPLAINED

### Introduction

There is much confusion among Home Owners in Residential Parks regarding the formation of Home Owners' Committees (HOCs) and Associations. This confusion is hardly surprising, because although the Manufactured Homes (Residential Parks) Act (the Act) places certain obligation on HOCs, it provides minimum guidance on how they should be established and operate, or what they should do to satisfy those obligations.

These guidelines aim to clarify and expand the legislation as outlined in Act with respect to HOCs and provide advice on their function and operation.

### Background

In accordance with Part 15, Sections 100-103 the Act, Home Owners in a Residential Park *may* (see ARPQ Advisory 1 below) establish a Home Owners Committee (HOC), subject to the following conditions:

1. Members of the HOC must be elected at a general meeting of Home Owners (see ARPQ Advisory 2 below);
2. Only 1 HOC can be established for each Residential Park;
3. Members of the HOC hold office for not more than 1 year, but may be re-elected;
4. Members of the HOC can be removed at any time by 'special resolution' adopted at a general meeting of Home Owners;
5. Park Owners (or their representatives) cannot interfere with, or be involved in, the establishment and operation of HOCs, and can only attend HOC meetings if invited.

**ARPQ Advisory 1** – it is strongly recommended that Home Owners in all Residential Parks developed under the Act exercise their legal rights and elect a HOC to protect and represent their interests. Acting together is always better than acting alone.

**ARPQ Advisory 2** - the Act is silent on any minimum number of all Home Owners in a particular Residential Park that required in attendance at a general meeting to elect a HOC, but to maintain credibility it is recommended that this be no less than 40-50%.

### Role of the HOC

Under the Act the function of a HOC is to deal with the Park Owner on behalf of Home Owners about:

- The day to day running of the Park;
- Any complaint or proposal about the operation of the Park raised by Home Owners.

To effectively operate on Home Owners' behalf in accordance with the Act, it is recommended that HOCs:

1. Fully familiarise themselves with the Act, the Manufactured Homes (Residential Parks) Regulation, the Fair Trading Act, any other pertinent legislation and the terms of their of relevant site agreement(s);
2. Establish an effective working relationship with the Park Owner and Park Manager;
3. Hold regular structured meetings with all Home Owners at which matters of concern about the running of the Park may be raised and freely discussed;
4. Advise and assist individual Home Owners with problems they have encountered, or perceive to exist, concerning the Park's operations;
5. Represent and safeguard Home Owners interests in dealings with the Park Owner on any matter that the majority of Home Owners request the HOC to do so;

6. Provide a channel of communication for individual Home Owners in their dealings with the Park Owner/Manager, without the stress and anxiety often associated with face-to-face meetings;
7. Make suggestions to the Park Owner/Manager about operation of the Park that would benefit Home Owners in general;
8. Communicate with the Park Owner/Manager on behalf of Home Owners about any complaints it may receive about running of the Park with a request that the issue be addressed;
9. Where required, insist that the Park Owner/Manager responds in writing to said communication within 21 days as required by Section 103 of the Act;
10. Where considered necessary, initiate any internal dispute resolution process on behalf of Home Owners as specified in Form 1, Part 3 of the relevant Site Agreement.

### **Constitution and Operating Rules**

According to the Act, if a HOC is established for a Residential Park, a majority of Home Owners *may* (see Advisory 3 below) adopt (at a general meeting of all Home Owners) a constitution governing performance and operation of the HOC. Little further guidance is given except that the constitution:

- Must not be inconsistent with the Act and provide for any matter prescribed by regulation;
- Is binding on all members of the HOC;
- Can only be amended by a 'special resolution' at a general meeting of all Home Owners.

**ARPQ Advisory 3** – although a constitution is not mandatory under the Act, it is strongly recommended that one be produced based on the 'Model Rules' published by the Office of Fair Trading. This provides proper procedures for the operation of the HOC and a degree of transparency and accountability governing its performance.

### **Role of Social Committees**

The confusion about the role and operation of HOC's, often goes hand in hand with confusion about the role of and interaction with Social Committees. In this respect, the Act is silent on Social Committees and they therefore have no status under it. Consequently, a Social Committee has no official standing within a Park and cannot therefore act on behalf of Home Owners in dealings with the Park Owner. However, whilst Social Committees cannot act as HOCs, there is no legal impediment preventing properly established HOCs from also acting as Social Committees.

Alternatively, Social Committees can operate totally separate from the HOC with their own elected officers and constitutions to organise social activities with control of their own funds, or co-ordination of the two can take place through a Home Owners Association with shared (consolidated) funds (see ARPQ Advisory 4 below).

**ARPQ Advisory 4** – although there is no mandatory requirement under the Act it is recommended that to avoid potential conflict, wherever possible the activities of both HOCs and Social Committees be co-ordinated through a Home Owners Association (see below).

### **Incorporation under the Associations Incorporation Act**

The Act under Part 14, Section 88 makes reference to a 'Home Owners Organisation' but gives no clarification on what that means (ie whether it means the HOC or some umbrella Homes Owners' Association).

However, in a significant number of Residential Parks, Home Owners have taken matters into their own hands and organised themselves as incorporated associations with the Management Committee of the association elected as per the requirements of the Associations Incorporation Act, also acting as the HOC.

This has a number of advantages and is especially important in larger Residential Parks where Home Owners jointly start accumulating money and assets.

The benefits of incorporating a Residents/Home Owners Association include (among others depending on a Residential Park's individual circumstances)):

1. It establishes the Association as an autonomous legal entity subject to a well defined legal framework covering the governance and management of its affairs;
2. It formalises and clarifies the objectives of the Association, these needing to be laid out in the Constitution and Operating Rules;
3. It formalises and clarifies the scope of operations of the Association, thereby reducing potential areas of conflict with other Home Owner's Groups (eg social and special interest groups) within the Residential Park that may, or may not, choose to be part of the Association and operate as sub-committees to it;
4. It clearly sets out the rules and procedures for how the Association will function and operate especially in areas relating to conflicts of interest, fairness, accountability, transparency and reporting on the activities of the association;
5. It clarifies how any association funds are to be managed and accounted for including expenditure approval;
6. It clearly establishes those regular tasks that need to be undertaken to comply with the law, such as the keeping of appropriate records, the calling of open meetings, the holding of elections, and the preparation and submitting of various reports;
7. It provides some legal and financial protection for the Management/Home Owners Committee who otherwise might be personally liable for damages and contractual obligation of the Association.

**ARPQ Advisory 5** – although incorporation is not absolutely essential, it is considered that the advantages clearly outweigh the disadvantages and it is therefore recommended that Home Owner/Resident's Associations take this important step as soon as they feel able to do so.