

# Residential Parks Industry Best Practice Guide Working Group

## ARPQ Notes re Dispute Resolution

What is a Residential Park Dispute :-

The MH Act provides 10 options of what represents a Park Dispute . These are:-

- a) A dispute about changes to park rules
- b) A dispute about a park owners refusal to consent to assignment of a sellers site agreement
- c) A dispute about the parties rights and obligations under a site agreement or the Act
- d) A dispute about the day to day running or operation of the park
- e) A dispute between 2 or more homeowners
- f) A dispute about the rights and obligations between a seller, buyer or park owner in relation to assignment of a site agreement
- g) A dispute about whether a person is entitled to have a park owner enter into a site agreement
- h) A dispute about whether a park owner is entitled to have a person enter into a site agreement
- i) A dispute about whether a seller is entitled to assign their interest in a site agreement
- j) A dispute about whether a buyer is entitled to be assigned a sellers interest in a site agreement

Comment;

It appears that under the terms of the Act a homeowner can only enter into a dispute with the park owner in relation to the parties' rights and obligations under a site agreement or the Act or about the operation of the park if no HOC has been established.

It also seems that a HOC can not enter into a dispute with the park owner in relation to a homeowner's rights under a site agreement.

Further, a Home Owners Committee can initiate a dispute in relation to the day to day running or operation of the park but can not apply to QCAT for mediation or arbitration. This must be done in the name/names of homeowners.

The purpose of Clauses g) & h) is unclear.

### **How is a dispute resolution conducted**

The Manufactured Homes Act set out a 3 step process to resolve residential park disputes. These are:-

Negotiation, Mediation and a Tribunal Hearing (Arbitration).

#### **NEGOTIATION-**

In the event of a dispute as described a homeowner or HOC would need to prepare and submit to the park owner a Dispute Negotiation Notice (Form 11) setting out details of the dispute and providing a time and place for a negotiation meeting.

This proposed date must be no sooner than 14 days nor more than 28 days from the date of the notice.

The park owner must within 7 days of the date of the notice, accept the proposed time and place or offer an alternative which is within 7 days of the original proposed date.

At this meeting the parties should attempt to resolve the issues in dispute.

In the event of a dispute involving an increase in site rent the Form 11 must be served on the park owner within 28 days of receipt of the increase notice.

#### MEDIATION-

If the negotiation meeting does not result in a satisfactory resolution the complainant can apply to QCAT for a mediation meeting.

As there is no approved form of application the applicant is required to submit a letter to the Registrar setting out details of the dispute and the relevant parties details. This application attracts a fee of \$352.00. This meeting will be controlled by a QCAT appointed Mediator who will attempt to assist the parties to reach a compromise agreement. The mediator does not concern himself/herself with the rights or wrongs of the dispute and is only concerned with the parties reaching a satisfactory agreement to resolve the dispute.

Mediation proceedings are confidential and cannot be used in any subsequent proceedings nor relayed to any other party.

#### TRIBUNAL HEARING-

Again, if mediation is unsuccessful, a further application can be made by the complainant to QCAT for a formal hearing and determination of the dispute. This application requires much more detail than for the Mediation Meeting and should include all evidence and documentation relied on to prove the case.

A further fee of \$352.00 is payable for filing this application.

At this hearing both parties have the opportunity to present their case and the Tribunal Member will make a determination based on the evidence presented.

Appeals are possible but are very time consuming and costly.

#### PRINCIPLES –

ARPQ believe that comments under this heading will be very subjective and will vary depending on ones' experiences and outlook and may not be relevant for this current project but we believe them to be important in the context of any review of the process. Our comments here will encompass what we believe are practices prevalent in the dispute resolution process and the principles we believe should apply.

What is a residential park dispute :-

Although the descriptions set out in the Act might cover matters which are most likely to give rise to a dispute it is possible there could be other matters. Under this current project, shouldn't we give some advice on other mediation or legal services available.

Negotiation:-

The primary principle which should apply to any negotiation meeting is that the parties enter into the negotiation in good faith with a genuine desire to achieve an equitable outcome.

From our knowledge and experience this is often not the case and some park owners appear to treat this aspect of the process with disdain and leave homeowners with no option but to go through the lengthy, complicated and expensive process of a QCAT application. It is our understanding that in the majority of cases these negotiation meetings are seldom successful.

Keep in mind this negotiation often involves unsophisticated seniors in dispute with large well resourced corporate entities. ARPQ are aware of instances where park owners representatives have been accompanied by a Lawyer which can be very intimidating to some residents. Many of our members find the whole dispute process very complicated and stressful and shy away from commencing action or following-up if negotiation is unsuccessful.

Mediation:-

Again, from our experience mediation is more likely to produce a result than negotiation where an experienced mediator can control the proceedings and provide alternative approaches to the issues. The matter of Lawyers appearing with park owners is a concern and one which should have more clarity.

The draw-back to these mediation meetings is that they often result in a settlement which is based on compromise rather than the facts of the matter and further that the proceedings and settlement terms are confidential and can't be relied on in any other disputes over the same or similar circumstances.

Although we would like to see the QCAT mediation and arbitration roles streamlined, they are what they are, and a result is eventually achieved. It is our belief that the way the Act is currently drafted is directly responsible for the QCAT requirement for 2 separate filing fees to be applied.

It appears to ARPQ that a park owner can do or not do something whether right or wrong whether legal or illegal and it becomes incumbent on homeowners to challenge this through this resolution process. All power is with the park owner with homeowners scrambling to protect their rights or to correct a perceived inequity.

QCAT hearing:-

At this point in the dispute resolution process the matter becomes extremely legalistic requiring detailed submissions of evidence and rebuttal of the park owner's responses. It will also probably require attendance at one or more compulsory conferences.

These processes are clearly beyond the capability of most homeowners and even some HOC's. We acknowledge the assistance provided by QRVPAS but at the end of the day the decisions and attendance come back to the individual homeowner who will often opt to not continue with their dispute because it is too expensive, too hard, too stressful and with the fear that they may not be successful which has been suggested to them throughout the process.

Noel Wright

Secretary ARPQ

31<sup>st</sup> May 2021

