

Associated Residential Parks Queensland Inc.

HOME OWNERS ADVISORY AND ADVOCACY SERVICE

PO BOX 1124 PARK RIDGE QLD 4215 - ABN 24359567567

Phone 0407 170 937 Email secretary@arpq.org.au

ARPQ Bulletin - March 2022 - Issue 01

POSTED 2/03/2022 SECRETARY

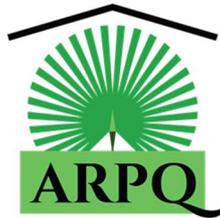
BUYING OR SELLING A MANUFACTURED HOME?

Editorial Note: *This article puts forward the ARPQ's firmly held view on how the Manufactured Home (Residential Parks) Act -2003 should be interpreted with respect to assigning the existing site agreement to the buyer when reselling a home in a residential (manufactured home) park. At the time of publishing, we are awaiting a response from the Regulatory Services Unit of the Department of Housing, Communities and Digital Economy in relation to this view not being enforced.*

If you are considering buying a home in a Manufactured Home Park from an existing home owner or selling an existing home in a Manufactured Home Park – Be Aware!

It appears that it is the current practice among some residential park owners to insist or even demand that a new contract (site agreement) be entered into by the buyer rather than the buyer accepting an assignment of the previous owner's site agreement. ARPQ believes that this practice is not allowed under the Manufactured Homes (Residential Parks) Act – 2003 (the Act).

Buying and selling a home in a residential park under the Act is quite different from selling a house and land in the residential market. While the home owner will own the home which is positioned on the land, the land (site) will continue to be owned by the park owner. The site agreement, which the home owner enters into with the park owner, or is assigned to the buyer, allows the home to be positioned on the site for a fee (the site rent) and also provides for certain obligations and privileges in using the park's facilities. The site agreement is like a lease of the land.



Part 1 – Buying an existing home

If you are buying a pre-loved home from the home owner/seller (the seller), you should take over the seller's interest in the existing site agreement – an "assignment" of the site agreement. The "assignment" requires the (reasonable) approval of the park owner. An unreasonable refusal is able to be disputed at the Queensland Civil and Administrative Tribunal (QCAT).

Be aware that a park owner might promote the idea of entering into a new site agreement between the buyer and the park owner, instead of an assignment of the seller's site agreement. While there might be some debate about the legality of this arrangement, **ARPQ** says that this practice is impractical, flawed, potentially unfair to both the seller and the buyer and believe it is contrary to the Act.

It is the view of ARPQ that the Act requires that if you are buying a pre-owned home positioned on a site in a residential park (a resale), you **must** accept the assignment of the seller's interest in the site agreement.

Buying into a residential park is a two-step process. The first step is to agree a price of the home with the seller and other sale conditions and sign a sale agreement. The second step should be to accept the assignment of the seller's site agreement. Once the sale agreement is signed by both parties, the seller is required to notify the park owner of the proposed sale and assignment using the approved Form 7 – *Notice of proposed assignment*. A home owner wishing to sell a manufactured home (seller) and assign (transfer) the seller's interest in the site agreement to the buyer **must** give this completed form to the park owner, signed by the seller. The seller must also give a notice in the approved form – Form 8 – *Form of assignment (transfer)* for the park owner to consent to the assignment.

The park owner must, within 7 days of receiving the Form 7, give the buyer a copy of the precontractual disclosure documents for the site, as set out in Schedule 1 of the Act.

If the park owner is handling the resale of the home on behalf of the seller (which is a common practice), the park owner might suggest (or even demand) that the buyer enters into a new site agreement with the park owner after the execution of the sale agreement. This may not be to the advantage of the buyer, and it can only be of benefit to the park owner. Beware - we consider this is not only contrary to the Act but gives the park owner an opportunity to increase the site rent above the rent currently being paid by the seller. The new



agreement can also introduce terms into the site agreement which are more favourable to the park owner and to the detriment of the buyer. This cannot be done on an "assignment". On the assignment, the buyer occupies the site on the same terms and conditions as the previous home owner and on the same site rent.

If the buyer is approached by the park owner to take up a new site agreement, this should be rejected and legal advice sought.

Even if the buyer could enter into a new site agreement with the park owner, which ARPQ say cannot happen, there are rights in the Act to protect the prospective buyer which might be lost or become complicated and subject to challenge. This includes a requirement for the park owner to provide disclosure documents in a fixed time frame and a right for the buyer to terminate the assignment of the site agreement during the cooling off period. A termination of the assignment of the site agreement by the buyer will automatically end the sale agreement between the buyer and the home owner/seller.

Part 2 – Selling an existing home

A home owner of an existing home positioned on a site in a Manufactured Home Park is able to sell their home to a buyer. If the home is sold for its subsequent removal from the residential park, the Act allows for this and includes the ability of the home owner/seller to terminate the site agreement, relieving the home owner of any obligations and liability under the site agreement.

The seller can also sell the home and assign the seller's interest in the site agreement to the buyer. The assignment of the site agreement effectively ends the seller's obligations and liability under the site agreement.

The two-step process for the home owner/seller selling a home to a buyer is similar to that described under "Buying an existing home" described previously.

Once the seller and buyer agree a price and other terms of a sale with the buyer, both parties sign the sale agreement.

A home owner/seller wishing to sell a manufactured home and assign the seller's interest in a site agreement to the buyer must give a completed Form 7 to the park owner.



The park owner must, within 7 days of receiving this form, give the buyer a copy of the precontractual disclosure documents, as set out in Schedule 1 of the Act, for the site.

The seller and the buyer will each need to sign 2 copies of a completed, approved *Form of assignment (Manufactured Homes Form 8)* and give both copies to the park owner to have the park owner consent to the assignment.

The park owner can sign the Form 8 and allow the transfer of the site agreement to the buyer. The transfer is subject to the provision of disclosure documents from the park owner, the provision of a copy of the existing site agreement from the home owner and the cooling off period for the buyer. ARPQ cannot see where these measures, which are for the protection of the buyer, are available to a buyer entering into a new agreement with the park owner on a resale.

The park owner must not unreasonably hinder or refuse to consent to the transfer of the seller's interest in the site agreement

Once the seller has provided the signed Form 7 advising of the seller's intention to assign the site agreement, and the signed Form 8 (Form of assignment), the park owner should not offer to enter into a new agreement with the buyer. ARPQ believe this would be considered that the park owner was unreasonably hindering the home owner/seller's from assigning their site agreement to the buyer.

In any event, we say that on a re-sale of a home, the seller **must** assign the seller's interest in the site agreement to the buyer. It is our view that the Act does not contemplate any alternative including allowing the park owner and the buyer to enter into a new site agreement.

Note: This article contains general information and opinions of ARPQ. It should not be considered as legal advice or a substitute for legal advice.

Date: 28 February 2022