

Residential Parks Act 2007

Information notice

Section 14 of the *Residential Parks Act 2007* (the Act) provides that a park owner* must ensure that a resident is given, before or at the time the park owner* and resident enter into a residential park agreement, a copy of this information notice.

This notice sets out the general rights and responsibilities of park owners* and residents in respect of residential park agreements. For full details on your rights and responsibilities, please refer to the *Residential Parks Act 2007*. If you have a query about your rights or responsibilities, contact the Office of Consumer and Business Affairs (OCBA) Tenancies Branch on the phone number set out below, or call into the branch at Level 1, 91-97 Grenfell Street, Adelaide.

What park owners* and residents need to know ...

The Act applies to all agreements which give a person (*a resident*) a right to occupy a dwelling (*whether or not it is owned by the resident*) in a residential park as their principal place of residence for 60 days or longer. A residential park agreement is formed when a person (*park owner**) grants another person (*a resident*) a right to occupy the rented property for valuable consideration (eg. by paying rent). It applies to mobile home villages, mobile home parks, relocatable home parks, residential parks and caravan parks. It does not apply to holiday accommodation agreements.

The Act states that a residential park is an area of land used or intended to be used in either or both of the following ways:

- (a) as a complex of sites of dwellings in respect of which rights of occupancy are conferred under various residential park tenancy agreements, together with common area bathroom, toilet and laundry facilities and other common areas;
- (b) as a complex of sites in respect of which rights of occupancy are conferred under various residential park site agreements, together with common areas (which may, but need not, include bathroom, toilet and laundry facilities).

The Act is retrospective, which means that it applies to all residential park agreements, even if the agreements were entered into before the Act commenced. This does not mean that you need to negotiate or enter into a new agreement; it means that any rights or responsibilities expressed in your agreement or in the park rules (if any exist) that contravene the Act can no longer be enforced.

Some of your rights and responsibilities under the Act cannot be changed, even if there is a mutual agreement made between the parties. A person who enters into an agreement or arrangement to defeat, evade or prevent the operation of the Act (directly or indirectly) is guilty of an offence.

All residential park agreements must be in writing. However, if you are a party to an agreement that was entered into before the Act commenced, you are not required to have a written agreement. The park owner* must pay any cost associated with the preparation of a written residential park agreement. There is to be no cost to the resident.

There are certain forms that parties to residential park agreements must (*by law*) use, these are the bond forms and forms A – J. The Tenancies Branch has developed other forms, eg: notice of entry to rented property, notice of rent increase, etc as model forms which you can use if you choose.

Copies of standard residential park agreements (site and tenancy agreements) are also available free from the Tenancies Branch, Office of Consumer and Business Affairs (*at 1/91 Grenfell Street,*

How do I get more information?

Call the advice section of the Tenancies Branch
Phone: 8204 9544 8.30am – 5pm Mon - Fri
www.ocba.sa.gov.au

*Park owner means the owner OR the operator of the park

Adelaide), which you can use if you choose. All of the forms can also be downloaded from the OCBA website at www.ocba.sa.gov.au.

Park owners* rights and responsibilities ...

- The park owner* can make rules about the use, enjoyment, control and management of the park. For full details, please refer to section 6 of the Act and also the Regulations which form part of the Act.
- The park owner* can make a rule that residents are not allowed to enter into sub-tenancy agreements. For full details, please refer to sections 6 and 51 of the Act.

The park owner* is required to:

- provide the rented property in a clean and reasonable state;
- allow the resident peace, comfort and privacy;
- keep the common areas of the park and any garden or other areas in the park in a reasonable state of cleanliness;
- arrange for the regular collection of the resident's garbage and any other garbage in the park;
- maintain and repair the rented property and common areas of the park (having regard to their age, character and prospective life);
- maintain all trees in the park in a condition that does not create any unreasonable risk to the safety of residents or their property;
- provide and maintain locks and other devices to ensure the rented property is reasonably secure;
- provide the resident with 24 hours vehicular access to the rented property and other access as set out in section 33 of the Act;
- provide a copy of a key, opening device or information required to open the security device to the resident if a security device is installed which restricts access to the park;
- give proper receipts for any money received from the resident. If the resident pays rent into an account that is kept by the park owner* at an ADI (*authorised deposit-taking institution*) and the park owner* keeps a written record containing the information normally required on a receipt, a receipt does not have to be given to the resident;
- provide the resident with a copy of the agreement.
- provide a copy of this information notice to the resident at the commencement of the agreement, along with a copy of the park rules and any other information required under section 14 of the Act;

NB: The above details are not a complete list of the park owner's* rights and obligations under the Act.

Resident's rights and responsibilities ...

- Residents from at least 5 different occupied sites in a residential park can form a residents committee to represent the interests they have in common as residents of the park. Only 1 residents committee can be formed for this purpose. This does not mean that you are not allowed to form various social committees. But, for the purpose of consulting on park rules, the park owner* is only obliged to consult and consider the views of the residents committee (if the residents have established one).

The resident is required to:

- pay the rent on time;
- not give the park owner* false information about your identity or your place of occupation;
- obey the park rules;
- keep the rented property in a reasonable state of cleanliness;
- notify the park owner* of damage to the rented property and common areas;
- not intentionally or negligently cause or allow damage to be caused to the rented property;
- notify the park owner* when repairs to the rented property are needed;
- not attach fixtures, or make alterations to the rented property without the park owner's* written consent;
- not remove or alter a lock or other security device or add a lock or security device to the rented property without the park owner's* consent;

- not make any alteration or addition to the exterior of the dwelling installed or located on the site or add any structure to the site without the park owner's* written consent;
- not use or allow the rented property to be used for any illegal purpose;
- not cause or allow a nuisance or interference with the reasonable peace, comfort or privacy of another resident's use of rented property or their enjoyment of common areas in the park;
- not cause or allow a nuisance or interference with the reasonable peace, comfort or privacy of a person residing in the immediate vicinity of the park;
- give the rented property back to the park owner* in a reasonable condition and in a reasonable state of cleanliness;
- provide your forwarding address to the park owner* if they ask for it;
- ensure that you leave any keys or devices that have been provided to you at the beginning of the agreement with the park owner*.

NB: The above details are not a complete list of the resident's rights and obligations under the Act.

Park owners* right of entry to rented property ...

A park owner* has different rights of entry to the rented property which depend on whether the agreement is a residential park tenancy agreement or a residential park site agreement.

*Residential park **tenancy** agreement rights of entry:*

- in the case of an emergency (including to carry out urgent repairs or avert danger to life or valuable property);
- at a time previously arranged with the resident, but not more frequently than once every week, to collect the rent (if the resident has agreed that the park owner* can collect the rent from the rented property);
- for the purpose of reading the relevant meter, if the resident is required to pay any of the charges set out in Division 10 of the Act;
- to inspect the rented property, but not more frequently than once every 3 months, at a time previously arranged with the resident;
- to carry out necessary repairs or maintenance at a reasonable time, giving at least 48 hours' **written** notice;
- to show the rented property to prospective residents, at a reasonable time and on a reasonable number of occasions during the last 14 days of the agreement, after giving reasonable notice to the resident;
- to show the rented property to prospective purchasers, at a reasonable time and on a reasonable number of occasions, after giving reasonable notice to the resident;
- for a purpose not referred to previously and the park owner* gives the resident **written** notice stating the purpose and specifying the date and time of the proposed entry not less than 7 and not more than 14 days before entering the rented property;
- with the consent of the resident;
- the park owner* believes the resident has abandoned the rented property.

*Residential park **site** agreement rights of entry:*

- to avert danger to life or valuable property;
- for the purpose of reading the relevant meter, if the resident is required to pay any of the charges set out in Division 10 of the Act;
- to ensure compliance by the park owner with statutory requirements relating to separation distances between structures on neighbouring sites and removal of hazardous materials, at a reasonable time and on a reasonable number of occasions;
- to maintain a lawn or for grounds maintenance, at a reasonable time and on a reasonable number of occasions where the resident agreed to such an arrangement when they entered into the residential park agreement;
- with the consent of the resident;
- in accordance with the regulations.

NB: A park owner* does not have any other rights of entry to the rented property.

Resident's vicarious liability ...

The resident is responsible for the behaviour of a person on the rented property at their invitation or with their consent.

The visitor's behaviour is effectively regarded as the resident's behaviour and if that behaviour breaches a term of the agreement, the park owner can serve a notice on the resident.

Bond and rent in advance ...

The park owner* cannot ask for more than the equivalent of four weeks' rent as bond. Money received as a bond must be receipted within 48 hours. The receipt must show the date, the resident's name and the amount and address of the rented property for which the bond has been paid. All bonds must be paid into the Residential Tenancies Fund using a residential park bond lodgement form within seven days of receipt.

Besides paying a bond at the beginning of the agreement, a resident can be required to pay the first two weeks' rent. If two weeks' rent is paid at the start of the agreement, no more rent is due until those two weeks have passed. Besides a bond and two weeks' rent in advance, the park owner* cannot ask for any other money at the start of the agreement.

NB: Whether or not a bond is paid, the Act applies to all residential park agreements in South Australia.

Rent increases ...

The park owner* can increase the rent under the following circumstances:

- where the terms of the agreement allow it (eg: for fixed term agreements, provision for rent increases must be written into the agreement);
- where allowed, rent can only be increased after you have been in the agreement for twelve months or twelve months from the last rent increase;
- the resident must be given 60 days' written notice of the park owner's* intention to increase the rent.
- If specific rent increases are set out in an agreement and the date on which the increases will occur are clearly defined, 60 days' written notice is not required.

For full details about rent increases, please refer to section 21 of the Act.

Repairs and maintenance ...

It is the resident's responsibility not to cause damage to the rented property or common areas of the park. If damage does occur, the park owner* should be notified as soon as possible. If a resident intentionally or carelessly causes, or allows damage to be caused to the rented property or common areas of the park, it is their responsibility to repair the damage.

If damage or repairs to the rented property or common areas of the park are needed due to normal wear and tear, or in any way that is not the resident's fault, the park owner* should be notified immediately. It is the park owners* responsibility to repair and maintain the rented property and common areas of the park under these circumstances. A resident can have emergency repairs carried out by a licensed tradesperson, if they have been unable to contact the park owner* first, or if nothing has been done after notifying the park owner*. You must get a written report from the tradesperson if this happens.

For full details about repairs and maintenance, please refer to sections 35 and 36 of the Act.

Types of agreements ...

There are different types of residential park agreements:

- (1) a **periodic agreement** - an agreement for an indefinite period (*ie: it has a start date, but no specified end date*) until it is lawfully terminated by either party or by the Tribunal; or
- (2) a **fixed term agreement** – an agreement for a specific time which is agreed upon at the beginning of the agreement (*ie: it has a specified start date and a specified end date*).

An agreement can also be:

- (1) a residential park **tenancy** agreement, which is when the resident rents a dwelling which is located on a site in the park from the park owner*, or
- (2) a residential park **site** agreement, which is when the resident rents a site only from the park owner*.

Whilst some park owners* use the terms “tourists” and “permanents” there are only periodic or fixed term agreements under the Act. There are however, some differences in the park owners* and residents rights in relation to site and tenancy agreements, eg; rights of entry (set out previously) and ending (*terminating*) the agreement.

Notice periods for ending (terminating) the agreement ...

Termination by the park owner – site agreement:*

- breach of agreement (including rent arrears) – 28 days**;
- successive breaches – 28 days;
- serious misconduct – immediate;
- no specified grounds – **periodic** agreement only – 90 days;
- end of fixed term agreement – 28 days;
- agreement frustrated – immediate if rented property destroyed / uninhabitable or ceased to be lawfully usable for residential purposes. If the rented property has been acquired by compulsory process – 60 days.

Termination by the park owner – tenancy agreement:*

- breach of agreement (including rent arrears) – 14 days**;
- successive breaches – 14 days, or 7 days if successive rent arrears breaches;
- serious misconduct – immediate;
- sale of rented property – **periodic** tenancy only – 28 days or a period equivalent to a single period of the tenancy (whichever is longer). This means that if the resident pays rent calendar monthly, the park owner* would need to give a calendar month’s notice. A park owner* can only use this notice if they have entered into a contract for sale of the rented property and they are required, under the contract, to give vacant possession of the rented property to the new owner.
- no specified grounds – **periodic** tenancy only – 60 days or a period equivalent to a single period of the tenancy (whichever is longer).
- agreement frustrated - immediate if rented property destroyed / uninhabitable or ceased to be lawfully usable for residential purposes. If the rented property has been acquired by compulsory process – 60 days.

Termination by the resident – site and tenancy agreement:

- breach of agreement – 14 days;
- successive breaches – 14 days;
- no specified grounds – **periodic** agreement only – 21 days for a **tenancy** agreement, or a period equivalent to a single period of the agreement (whichever is longer); 28 days for a **site** agreement, or a single period of the tenancy (whichever is longer). This means that if you pay rent calendar monthly, you will need to give the park owner* a calendar month’s notice.
- end of fixed term agreement – 28 days;
- agreement frustrated – immediate.

**Where a termination notice is given for breach of agreement, if the breach is not rectified within the required period (as set out on the breach notice), the agreement terminates when the notice expires. If the resident does not give vacant possession of the rented property to the park owner* by the date specified on the notice, the park owner* can apply to the Tribunal for an order of possession.

Other than by serving the appropriate notice, neither the park owner nor the resident can terminate a fixed term agreement until the final day of the agreement, unless they both agree. If you have a fixed term agreement and you want to leave the rented property and terminate the agreement before the end of the fixed term, discuss it with the park owner* and try to come to an arrangement. It may be, however, that you will be liable to the park owner* for the costs associated with finding a new resident, reletting the rented property and for any loss of rent. If in doubt, contact the Tenancies Branch on 8204 9544 for advice.

Termination for breaching the terms of the agreement ...

Both the park owner* and the resident can give a termination notice on the approved form to the other for a breach of the conditions of the agreement. A breach of the agreement must be remedied within the period specified on the notice, or the agreement is terminated.

If the park owner* has served a valid termination notice and vacant possession is not given at the appropriate time, the park owner* can apply to the Residential Tenancies Tribunal (on a form F) for an order for vacant possession of the rented property. Only a Tribunal bailiff can enforce an order for vacant possession.

If a party (*the respondent*) disputes the termination notice, an application can be made to the Tenancies Branch for dispute resolution through conciliation or mediation. The respondent can also apply to the Residential Tenancies Tribunal (on a form F) for an order stating that they are not in breach of their agreement or that the breach has been fixed.

Termination on the grounds of hardship ...

Under the Act, if continuing the agreement would cause undue hardship to either the park owner* or the resident, an application (*form F*) can be lodged with the Tribunal for termination of the agreement. Generally 'undue hardship' does not include financial difficulties.

Termination because the park (or the rented site) is sold ...

This information applies to residents who have fixed term site agreements only.

If a residential park is sold, the new owner can, within 14 days of the date of settlement, give notice to terminate a residential park site agreement without specifying a reason. The period of notice must be no earlier than the end of the fixed term site agreement, or 12 months from the date of settlement (whichever is the **earlier**).

If the dwelling is permanently fixed to the rented site, the resident has the right to stay until the end of the fixed term site agreement.

If you have been served a form G (*notice of acquisition of park - termination of site agreement*) by the new owner of the park, you have a fixed term site agreement and there is a dispute over whether the dwelling is permanently fixed, you have the right to apply to the Residential Tenancies Tribunal for a determination of the dispute. Please be aware that the Tribunal will make a decision on whether a dwelling is permanently fixed on a case-by-case basis when determining a dispute.

Retaliatory action by the park owner* ...

Under Section 88 of the Act, the Tribunal has the power to refuse a park owner's* application for possession of the rented property if it believes that the park owner* served a termination notice because the resident complained to a Government Authority or was trying to enforce their rights under the Act.

Exclusion from the park due to a serious act of violence ...

A park owner* can give a resident, or a resident's visitor, a notice to leave the park immediately if the park owner* believes that a serious act of violence by the resident (or the resident's visitor) has occurred or the safety of any person in the park is in danger from the resident (or the resident's visitor). You must leave the park immediately if you receive an exclusion notice and you are not allowed to return to the park during the exclusion period (which will be set out on the form the park owner* gives you).

If you believe that you have not committed the alleged offence outlined on the exclusion notice, lodge an urgent application with the Residential Tenancies Tribunal (*form F*) requesting an order:

- that you be allowed to resume occupation of the rented property, and
- (*if applicable*) that the park owner be ordered to compensate you for any rent paid during the exclusion period, and
- (*if applicable*) that the park owner be ordered to compensate you for the (reasonable) expenses you incurred during the exclusion period.

For full details about serious acts of violence, please refer to sections 95 – 98 of the Act.

Refunding the bond ...

At the end of the agreement when the resident and park owner* agree how the bond should be repaid, a residential park bond refund form should be filled out and signed by both parties. (The signatures should be the same as those on the bond lodgement form). The refund form should be either posted, or brought in, to the bonds section of the Tenancies Branch. If brought in personally, a cheque will be drawn within 15-20 minutes. Alternatively, a cheque can be posted out, usually within 7 working days, or the money can be paid directly into your account by electronic funds transfer.

10 day dispute

A bond refund form seeking disbursement to the applicant without the other party's signature can still be lodged with the Tenancies Branch. The other party will be notified of the applicant's claim and given 10 working days to dispute the claim. If the claim is not disputed the bond will be paid to the applicant.

Disputed bonds

If no agreement can be reached about the refund it is possible for either party to apply to either:

- the Commissioner, for advice or assistance in the conciliation or mediation of the dispute or;
- the Tribunal, for an order seeking refund of the bond.

If a dispute arises over how the bond should be refunded, one or both parties should contact the advice section of the Tenancies Branch, on 8204 9544.

Subletting and assignment ...

- The park owner* can make a rule that residents are not allowed to enter into sub-tenancy agreements.
- If there are no park rules that allow subletting or you have not entered into a sub-tenancy managing agent agreement with the park owner*, you are breaching your agreement by entering into a subletting arrangement.
- A sub-tenancy agreement can be in writing, or it can be an oral agreement.

For full details on subletting, please refer to sections 6 and 51 of the Act.

A resident has the right, with the park owners* written approval, to assign their interest in the residential park agreement to another party. The park owner* cannot unreasonably withhold consent or charge for agreeing to or considering an assignment (other than for the reasonable incidental expenses they incurred in doing so).

To 'assign' means to transfer a residential park agreement to someone else. That does not necessarily mean, however, that the original resident no longer has responsibility for the agreement. Before assigning an agreement it is advisable to first contact the Tenancies Branch.

For full details on assignment, please refer to section 48 of the Act.

The role of the Commissioner for Consumer Affairs ...

The Commissioner for Consumer Affairs' role under the Act is to give advice and educate park owner's* and residents, to monitor compliance with the legislation and to resolve disputes. This role is carried out by officers of the Tenancies Branch. A party to a residential park dispute can contact the Tenancies Branch for assistance to conciliate the dispute. Alternatively, an application can be made to the Tribunal (*form F*) for an order of the Tribunal. The Registrar or Deputy Registrar of the Tribunal can send a matter to mediation to achieve a negotiated settlement. A Mediator has the power to make consent orders which operate as orders of the Tribunal. The Tribunal may also refer a matter to a hearing.

If you are a party to a residential park dispute, you should talk with a Tenancy Officer at the Tenancies Branch, Level 1, 91-97 Grenfell Street, Adelaide or phone 8204 9544.

Tribunal hearings ...

The Residential Tenancies Tribunal is an independent specialist Tribunal that provides a prompt and informal way of determining disputes between park owner's* and residents. Both park owner's* and residents can apply to the Tribunal (*form F*) to have disputes determined. Members of the Tribunal conduct hearings with a minimum of formality. Both parties can attend and usually present their own cases. Tribunal Registry staff cannot advise parties about their dispute. If you need advice, you should contact the Tenancies Branch on 8204 9544.

The Act provides several ways of having a dispute settled:

- negotiation and conciliation of a dispute
- mediation and a consent order being made
- decision by the Tribunal and an order being made

For full details on your rights and responsibilities, please refer to the Residential Parks Act 2007.

For more detailed information and advice about residential park matters, contact the Tenancies Branch, Level 1, 91-97 Grenfell Street, Adelaide (GPO Box 965). Telephone 8204 9544.

The Residential Tenancies Tribunal registry is located at Level 4, 100 Pirie Street, Adelaide (GPO Box 2361). Telephone 8226 8989.

For regional clients - call the 131 882 number from anywhere outside the Adelaide area and you'll be connected to your nearest Regional Office.

Offices are located at:

*30 Kay Avenue, BERRI
11 Helen Street, MT GAMBIER
9 Mackay Street, PORT AUGUSTA*

Limited bond lodgement facilities are available at Service SA offices located at:

*Northern Market Shopping Centre, Cnr Cowan & Murray Street, GAWLER
10 Digby Street, KADINA
11 Helen Street, MOUNT GAMBIER
19 Seventh Street, MURRAY BRIDGE
14 Butler Terrace, NARACOORTE
9 Mackay Street, PORT AUGUSTA
73-75 Tasman Terrace, PORT LINCOLN
Shop 7, 72 - 80 Ellen Street, PORT PIRIE
171 Nicolson Avenue, WHYALLA NORRIE*