

Negotiating a Rent Reduction

GET ADVICE

The information contained in this factsheet is for general information only and should not be relied upon as advice. It is important to get legal advice that is specific to your circumstances, particularly before you commence any kind of legal action. The Queensland Retirement Village and Park Advice Service (QRVPAS) at Caxton Legal Centre provides free information, advice and assistance to home owners and home owners committees about the law relating to manufactured homes. Call (07) 3214 6333 to request an appointment with this service.

DISPUTE RESOLUTION

As a manufactured home owner living in a residential park, your rights and obligations are governed by the terms of your site agreement (including the park rules) in conjunction with the *Manufactured Homes (Residential Parks) Act 2003* (Qld) (Act).

For more information on the dispute resolution process see our factsheet *Dispute Resolution*.

NEGOTIATING A RENT REDUCTION

Under the Act, a home owner may make an application to the Queensland Civil and Administrative Tribunal (QCAT) for a site rent reduction in certain limited circumstances.

The Act says you can apply for a site rent reduction if:

- the amenity or standard of the park's common areas and facilities have decreased

substantially since your site agreement was entered into

- a communal facility or service provided at the park when you initially entered into your agreement has been withdrawn
- a community facility or service described in advertising or promotional documents before you moved in has not been provided at the park.

Before commencing proceedings in QCAT, there are informal dispute resolution steps you should consider:

1. Attempt informal negotiation by informing the park owner of the issue by writing to them and asking for a response within 21 days.
2. Alternatively, if you are uncomfortable directly approaching the park owner, or you are part of a group of home owners seeking a rent reduction, you may wish to ask the home owners committee to raise the issue.

If you are not able to resolve the dispute through informal dispute resolution, you can take the following formal dispute resolution steps under the Act:

3. Issue a Form 11 Dispute Negotiation Notice to the park owner after which the preliminary negotiation meeting will be held.
4. Apply for mediation in QCAT.
5. If you are still unable to resolve the dispute, apply for a QCAT Hearing.

These steps are set out in more detail in our *Dispute Resolution* factsheet.

The purpose of this factsheet is to provide tips on how to negotiate a rent reduction with your park owner, including at the preliminary negotiation meeting (step 3 above).

PREPARING FOR A PRELIMINARY NEGOTIATION MEETING

Preparation is critically important.

Gather materials and documents

Your first step should be to gather materials and documents relevant to your matter.

If you have had any communications with the park relevant to the rent reduction, for example correspondence about the amenity or standards of the common areas or communal facilities in the park, you should collate these.

The following documents may be considered by QCAT in a rent reduction application, so you should make sure you have gathered these in one place:

- the site agreement
- the home owners information document for the residential park (for site agreements entered into before 1 September 2019) or the Initial Disclosure Document and Supplementary Disclosure Document (for site agreements entered into after 1 September 2019)
- any relevant advertising material made available to you by the park owner before the site agreement was entered into
- other relevant materials, for example the park rules if they refer to the common areas or community facilities.

Prepare your Form 11

Dispute Negotiation Notice

You should then draft the Form 11 Dispute Negotiation Notice. For detailed information on how to prepare the Form 11 see *Dispute Resolution* factsheet.

You should consider getting legal advice before providing this to the Park.

Get legal advice, know your legal position

Your next step should be to obtain legal advice so that you can understand your legal position. You can seek free advice from QRVPAS or contact a private lawyer.

Understanding your rights and obligations under the Act will give you an idea of the strength of your legal argument, how much bargaining power you will have in

negotiations, and assist you to put forward a reasonable resolution to your dispute. It will also assist you to make offers and consider any offers made by the park owner during negotiations.

Be clear on what outcome you want to achieve through the negotiation

Once you understand your legal position, it is important to think about what outcome you want from the negotiation.

Generally, it is advisable to have a range of outcomes in mind before commencing a negotiation. You should identify any areas in which you are able to be flexible and any alternatives or options that may be available.

You should decide on the range that is acceptable to you, based on the legal advice you have received and be prepared to negotiate within that range.

You should also think about whether you are prepared to accept alternative offers to resolve the dispute such as an improvement in park facilities or services, or a lump sum payment from the park owner. Put some time into thinking about what the park owner's capacity to negotiate might be and consider whether you can work collaboratively to find a solution that is mutually agreeable.

HOW TO CONDUCT YOURSELF AT THE NEGOTIATION MEETING

Normally, it is highly beneficial to prepare a brief opening statement for the preliminary negotiation. This can simply state that you are seeking a rent reduction, and why you believe you are entitled to one with reference to the site agreement and/or the Act. There is no need to present detailed legal arguments, rather it would be better to focus on your interests and what you want to achieve.

It is important to be courteous and polite during the course of the negotiations. Avoid aggression or disrespectful comments. Listen to what the park owner has to say, and try not to interrupt them while they are speaking.

After you and the park owner have spoken about the rent reduction, you should explain the outcome you are seeking.

Offers, counter offers and agreement

When you make your opening offer, the park owner may choose to accept it, reject it or make an offer of their own, called a counter offer.

If the park owner **accepts your offer**, you will have reached agreement. In order for there to be a binding agreement between you and the park owner to resolve the dispute, there must be both an offer (by you or the park owner) and acceptance by the other party. Additionally, as discussed under Resolution and Settlement below, to be a binding variation to your site rent under the site agreement, the agreement must be in writing and signed by you and the park owner.

If the park owner **rejects the offer**, and does not make a counter offer, the dispute negotiation will be finished and you will need to consider other dispute resolution steps for example mediation or a hearing in QCAT. You should seek legal advice before taking these steps.

The park owner may **make a counter offer** to resolve the dispute, for example a rent reduction lower than the one you have asked for. You should not feel pressured to accept a counter offer straight away. You can request some time to think about it. If you accept the counter offer, you will have reached agreement and you should formalise it in writing.

You can also choose to make a further counter offer to any offer put to you by the park owner, and this negotiation may continue back and forth in this way until the parties are in agreement or an offer has been rejected.

You should be aware that if you make a counter offer to the park owner, you are effectively rejecting their offer. This means that if they do not accept your counter offer, you cannot then go back to your original offer or an earlier offer made by the park owner. This is why it is important to have a clear understanding of the possible outcomes you are prepared to accept before commencing negotiations, and take time to consider a counter offer that is made.

If you or the park owner have asked for more time to think about an offer, you should agree on a timeframe for a response. After this date the offer will lapse, and it can no longer be accepted unless the party making the offer agrees to extend it. If the offer is accepted within the

appropriate timeframe it becomes a binding agreement, provided it is in writing and signed (for a rent variation under the Act).

Negotiating on a without prejudice basis

Sometimes, in a negotiation, a party will make an offer on a 'without prejudice' basis. This means that the terms of the offer are private and cannot be used as evidence in any future court or tribunal proceedings. This is usually done where the parties want to reach a quick resolution but do not want to go on record that they are willing to accept less than they might ask for before a court or tribunal.

You should think carefully about whether or not you want to make your offer on a without prejudice basis. Generally, where the dispute progresses under the Act, it is likely to be in your best interests to later freely refer back to genuine efforts to resolve the dispute through reasonable offers you have made during negotiations.

We recommend seeking legal advice about whether or not you should make your offer on a without prejudice basis.

If you want to make a without prejudice offer verbally, you should say 'this offer is made without prejudice'. If the without prejudice offer is made in writing, it should be clearly marked with the words 'without prejudice' above the offer.

RESOLUTION AND SETTLEMENT

Once a resolution has been reached, the agreement should be recorded in writing, particularly where there is a variation of your site agreement. The Act says that for a site agreement to be lawfully varied, for example by decreasing the site rent amount, the agreement must be in writing and signed by you and the park owner. Without written agreement you would still be obliged to pay the site rent stated in your site agreement.

The site agreement variation may be a simple document that states the parties names, the agreed rent variation and duration.

The park owner may also wish to provide a more formal document called a Settlement Agreement or a Deed of Settlement. A formal agreement is likely to contain a number of standard terms such as:

- full and final settlement—by signing the agreement you are agreeing that the matter is at a close and that you will not take any further legal action in relation to the dispute.
- confidentiality—the park owner will usually require that you keep the terms of the agreement confidential. This means that you will not be able to talk about the dispute or how it was resolved other than to say that it has been resolved on confidential terms.
- non-disparagement—often there is a requirement that neither you nor the park owner do or say anything to disparage or bring the other into disrepute.

You may wish to obtain legal advice before signing any written agreement so that you understand your rights and obligations under it.

If you reach a settlement that includes a sum of compensation, you may wish to discuss any tax implications with your accountant. If you receive any money from Centrelink, you should contact Centrelink and discuss the resolution with them. You should ensure that the written agreement allows you to take these steps. Again, seek legal advice if you are unsure.

It is important to respect and keep the terms of any agreement you have signed, as it will be a legally enforceable contract between you and the park owner.

OTHER THINGS TO CONSIDER

Generally speaking, it is advisable to try and reach an informal, amicable resolution with the park owner before considering more formal or public methods of resolving the dispute.

Proceedings in QCAT are likely to be lengthy, stressful, time consuming and require the payment of filing fees (unless you are able to apply for a fee waiver).

You may wish to consider a complaint to Regulatory Services if the dispute negotiation is unsuccessful. See our *Making a Complaint to Regulatory Services* factsheet for more information.

If other home owners are also considering asking for a rent reduction, you may wish to engage in any dispute resolution as a group. This may be an informal and less public way of improving your bargaining position. See our *Dispute Resolution as a Member of a Group* publication for more information.

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