

Selling and Moving Out

This factsheet explains the rights and obligations of a home owner who is selling their home and moving out of a manufactured home park. It covers the two legal agreements that are required when selling the home (i.e. the sale agreement and site agreement).

This content is designed for general information only, and it is important to obtain legal advice that is specific to your circumstances.

All the forms that are mentioned in this factsheet are available from the [Department of Communities, Housing and Digital Economy website](#) or by calling 13 74 68.

NOTE ...

This kit is aimed at home owners who are ending a site agreement after 1 September 2019. Before that date, the precontractual disclosure documents and applicable cooling-off periods were different.

COMMON TERMS EXPLAINED

Act: the *Manufactured Homes (Residential Parks) Act 2003 (Qld)* contains the law that regulates the operation of manufactured home parks and the obligations of home owners and park owners in Queensland.

Cooling-off period: The cooling-off period starts after the buyer signs a new site agreement, or from the date the park owner agrees to assign an existing site agreement. A buyer may terminate the site agreement within the cooling-off period without penalty and be refunded any money they have paid to the park owner and seller.

Disclosure documents: These are the documents the park owner is legally required to give to the buyer before entering into a site agreement.

Disclosure period: The disclosure period is the time between when the buyer is given disclosure documents and when they can lawfully enter a

site agreement. The buyer can choose to reduce the disclosure period, but only after getting advice from a lawyer.

Home owner: A home owner owns a manufactured home that is on, or will be on, a site in a residential park where there is a site agreement.

Park owner: A park owner owns the manufactured home park where manufactured homes are located. Park owners may be represented by their agents (such as a manager) during the sale process.

Sale agreement: A sale agreement is a contract between the seller and buyer of a manufactured home that, when completed, transfers ownership of the home to the buyer.

Site agreement: The site agreement between the home owner and park owner allows the home owner to rent the site the manufactured home is positioned on from the park owner.

SELLING AND MOVING OUT

When you decide to sell your manufactured home, it is not the same as selling a house in the general community. This is because while you own the home, the park owner owns the land that your home is on.

There are two parts to the sale process, first you and the buyer enter a sale agreement and then the buyer and park owner enter a site agreement. Provided both parts of the process are followed correctly, you can move out of the park, the buyer will own the home and will have taken over renting the land that the manufactured home is sitting on.

The price you are able to ask for your home will depend on market factors such as location, style, standard and demand. You may wish to speak to some local real estate agents or search real estate websites to get an idea of the value of your home.

You can ask the park owner to sell your home. To do this you need to complete and sign the Manufactured Homes [Form 9 Selling Authority](#). This form appoints the park owner as your agent during the sale process. The park owner's fee cannot exceed the maximum commission stated in [reg 4 of the *Manufactured Homes \(Residential Parks\) Regulation 2017 \(Qld\)*](#), which is:

- 5% of the sale price if the home sells for less than \$18 000
- 2.5% of the sale price plus \$900 if the sale price is over \$18 000.

The park owner can only charge you this fee if they were the effective cause of the sale, and cannot charge you any other fee when your home is sold. The park owner is prohibited from engaging in fraudulent, misleading, harassing or unconscionable conduct when acting as your agent.

You can also ask a real estate agent to sell your home, or you can sell it yourself. If you choose to enter an agency agreement with a real estate agent you should make sure you understand the terms of the agreement, the commission being charged and the circumstances in which you will be charged. You should also check that the agent is aware of the sale process under the Act.

Regardless of who sells your home, the park owner must not hinder the sale. The Act says that you have a right to sell your home positioned on a site at the park. The park owner must not prevent people from viewing your property, although there may be some restrictions put in place about when inspections can take place, particularly if your park is a gated community.

NOTE ...

The [Queensland Retirement Village and Parks Advice Service \(QRVPAS\)](#) is unable to provide legal advice on agency agreements between home owners and real estate agents. You can find some general information in our [Buying, Selling and Building a Home](#) chapter of the *Queensland Law Handbook*. If you require legal advice or assistance, another community legal centre or a private solicitor may be able to assist. We maintain a private solicitor list for the greater Brisbane area, available on our [Caxton Legal Centre website](#). Contact details for other private solicitors can be obtained from the Queensland Law Society via phone (1300 367 757) or their ['Find a Lawyer' website](#).

SELLING—A TWO-PART PROCESS

Selling involves two separate legal transactions: the sale of your manufactured home to the buyer, and the buyer's entry into a site agreement with the park owner. As the seller, you will have obligations in both legal processes.

You must give the park owner notice that you are selling your home. You must do this before placing a 'for sale' sign on your site, and you can only display a for sale sign if your site agreement permits you to do this. You can give notice by writing to the park owner or, if you are assigning your interest in the site agreement to the buyer, by giving the park owner a notice in the required form as discussed under 'Part 2' below.

Part 1: Sale agreement for the home



Part 2: Site agreement for the site

Part 1: Sale agreement for the home

Once you have found a buyer you will need to enter into a contract (a sale agreement) for the sale of your home. The sale agreement is a separate document to the site agreement and concerns only the transfer of ownership of the home.

There is no standard form sale agreement because the sale of a manufactured home is not regulated by the Act. Instead, it will be up to you to negotiate the sale agreement with the buyer.

To be a legally binding contract, you need to ensure the sale agreement includes:

- an offer made and accepted (e.g. you make an offer to sell the home at a set price and this is accepted by the buyer)

- an agreement about the essential features of the sale agreement (e.g. you and the buyer agree about the sale price, what is being bought and sold, when payment is due and when you will give the buyer ownership)
- consideration (e.g. the buyer promises to pay the sale price and you promise to give them ownership of the home)
- the intention by you and the buyer to create the contract.

Whilst there is no legal obligation to confirm the sale in writing, it is generally advisable to do so. Whilst it is possible to commence legal proceedings to enforce a verbal agreement, enforcing a written contract of sale will be much more straightforward. If you are asked to sign an agreement that has been drafted by a lawyer, or contains clauses that you do not understand, you should get legal advice.

Our [Queensland Law Handbook chapter Consumers and Contracts](#) provides more information about entering into contracts, and our [factsheets regarding disputes](#) describe the negotiation process.

NOTE ...

QRVPAS is unable to assist with negotiations or contracts for the sale of a manufactured home. If you require legal advice or assistance, you can try another community legal centre or a private solicitor.

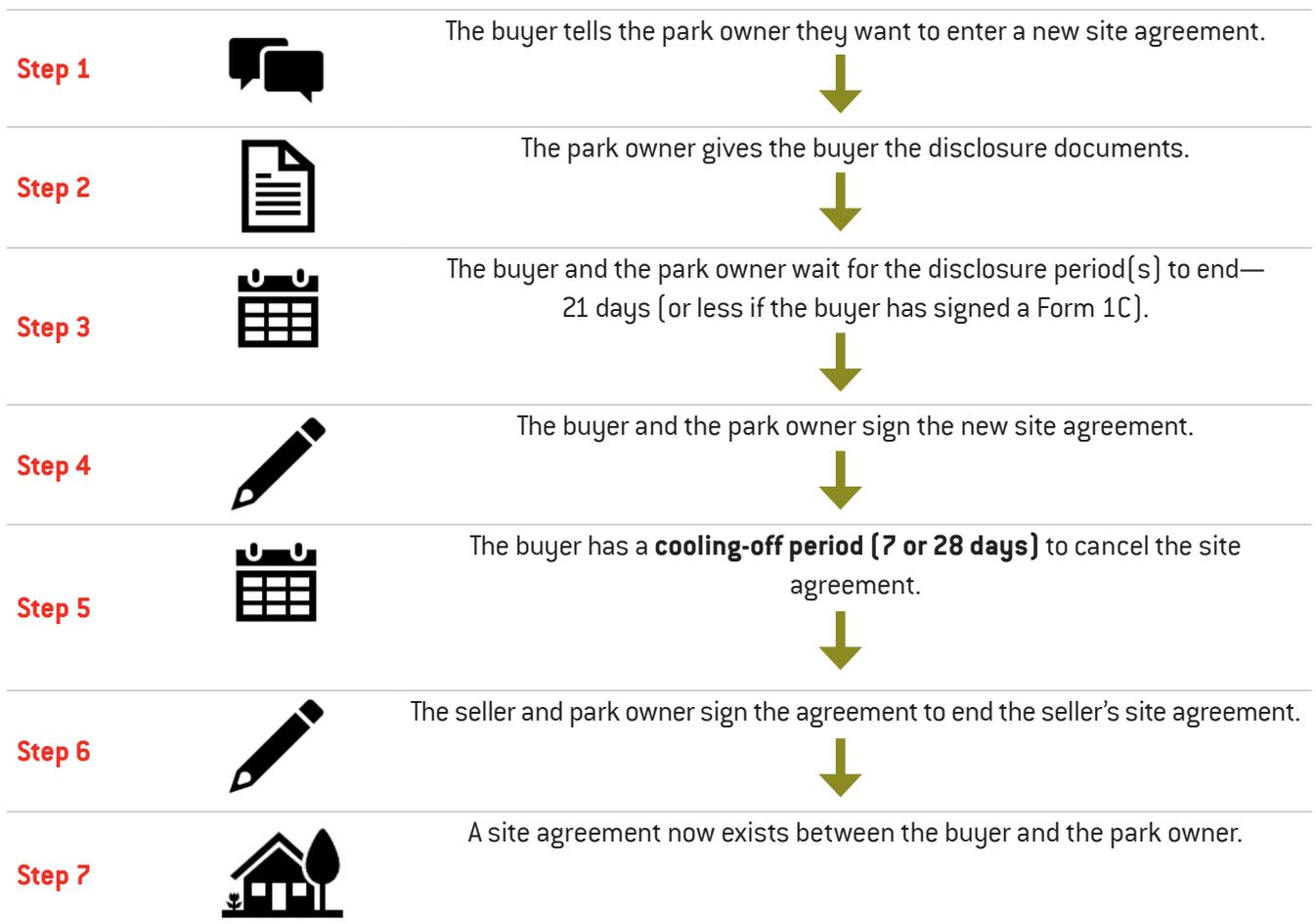
Part 2: Site agreement for the site

The sale of your manufactured home also requires transfer of the rights under the site agreement from you to the buyer. This is the second part of the sale process. Once complete, the buyer will have a site agreement with the park owner, and your site agreement will have ended.

The buyer of your manufactured home can decide whether to take over your current site agreement or they can negotiate a new site agreement with the park owner. It is the buyer's choice.

This process and your obligations will differ depending on whether the buyer chooses to enter a new site agreement or ask to take over your current site agreement.

Buyer enters a new site agreement



If the buyer wants to enter into a new site agreement, the following steps should be taken by you, the buyer and the park owner:

Step 1. The buyer needs to tell the park owner they are buying your home and want to enter a new site agreement for the site.

Step 2. Before entering into the site agreement, the park owner must give the buyer the following disclosure documents:

- a copy of the [Manufactured Homes Form 1A Initial Disclosure Document](#)
- current park rules and information about any proposed changes to the park at least 21 days before they enter into the site agreement.

The park owner must also provide:

- a copy of the [Form 1B Supplementary Disclosure Document](#)
- two copies of the proposed site agreement at least 14 days before entering into the site agreement.

Step 3. The 14 to 21 day disclosure periods give the buyer an opportunity to consider the disclosure documents and seek advice before entering into the site agreement. The buyer can apply to reduce the disclosure period to no less than 7 days by providing a [Form 1C Precontractual Disclosure Waiver](#) after receiving advice from a lawyer.

Step 4. After the disclosure periods have ended, the park owner and buyer can sign the new site agreement.

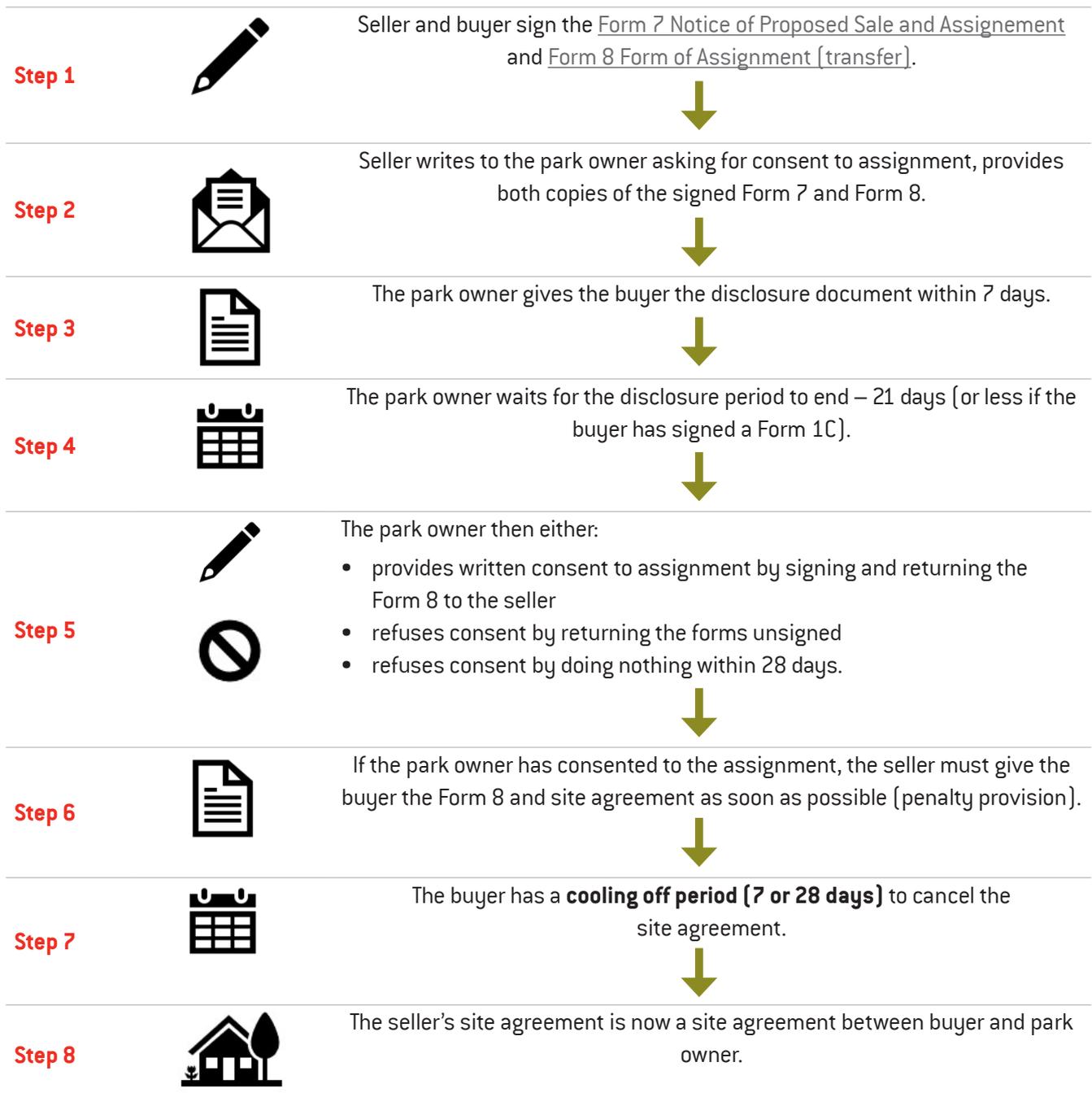
Step 5. The buyer then has a cooling-off period within which they can terminate the site agreement without penalty. The cooling-off period commences the day the last person (the buyer or park owner) signs the new site agreement. The **cooling-off period will be:**

- 7 days, if the buyer was given the disclosure documents and did not sign the site agreement before the end of the disclosure period
- 28 days if not.

Step 6. To end your site agreement, you will need to provide the park owner with a [Manufactured Homes Form 4 Termination Notice—by Mutual Agreement](#). Once signed by you and the park owner, your site agreement will be terminated by mutual agreement on the termination date.

Step 7. Provided the buyer has not terminated within the cooling-off period and the park owner has signed the Termination Notice—by Mutual Agreement, your site agreement will end and the buyer's will commence at the end of the cooling-off period.

Buyer asks for assignment of your site agreement



If the buyer wants to take assignment of your site agreement, the following steps should be taken by you, the buyer and the park owner:

Step 1: You should complete the Manufactured Homes Form 7 Notice of Proposed Sale and Assignment and two copies of the Form 8 Form of Assignment (transfer) and sign it. The buyer will also need to sign both copies of the Form 8.

Step 2: You should write to the park owner asking for the park owner's consent to the assignment of the site agreement. Give the park owner the Notice of Proposed

Sale and Assignment and the completed and signed copies of the Form of Assignment (transfer).

Step 3: Within seven days of receiving the Notice of Proposed Sale and Assignment, the park owner must give the buyer a copy of the following disclosure documents:

- the Initial Disclosure Document
- the Supplementary Disclosure Document
- the existing site agreement
- the current park rules, along with information about any proposed changes to the park rules.

The park owner must ensure the buyer receives these documents at least 21 days before they agree to the assignment of the site agreement.

This 21-day disclosure period gives the buyer an opportunity to consider the disclosure documents and seek advice before entering into the site agreement. The buyer can apply to reduce the disclosure period to less than 21 days, but at least 7 days, by providing Form 1C Precontractual Disclosure Waiver after receiving advice from a lawyer.

Step 4: The park owner must then either consent or refuse to consent to the assignment request. The park must provide written consent to the assignment of your site agreement for it to be valid. The park owner can:

- consent to the assignment by signing both copies of the Form of Assignment (transfer). They must then keep one copy of the Form of Assignment (transfer) and return the other one to you
- refuse to consent to the assignment by returning both copies of the Form of Assignment (transfer) to you without signing them
- refuse to consent to the assignment by doing nothing. If the park owner does not decide about the assignment within 28 days after receiving the Form of Assignment (transfer), they are taken to have refused to consent to the assignment.

Step 5: If the park owner consented to the assignment, you must give the signed Form of Assignment (transfer) to the buyer together with your copy of the site agreement as soon as possible. Failing to do this contravenes the Act, and carries the risk of a financial penalty.

Step 6: The buyer then has a cooling-off period within which they can terminate the site agreement without penalty. The cooling-off period commences when the park owner consents to the assignment by returning the signed Form of Assignment (transfer) to you, the seller. The **cooling-off period** will be:

- 7 days, if the buyer was given the disclosure documents and did not sign the site agreement before the end of the disclosure period
- 28 days if not.

Step 7: Provided the buyer has not terminated within the cooling-off period, your site agreement will transfer to the buyer at the end of that period.

Sellers obligations on sale and assignment

Where you are both selling your home and assigning your site agreement, the Act prohibits you from completing the sale agreement unless:

- the park owner has consented to the assignment of your interest in the site agreement (by returning the signed Form of Assignment (transfer))
- the buyer has been given the disclosure documents.

Accordingly, you must ensure that these steps have been taken by the park owner before you finalise the sale agreement for the home.

ISSUES THAT MAY ARISE

What if the park owner is making it difficult to sell my home?

The Act prohibits the park owner from:

- restricting you from placing a suitable 'for sale' sign on the site (but only if this is allowed under your site agreement)
- unreasonably hindering the sale of your manufactured home (e.g. by stopping potential buyers from inspecting your home)
- unreasonably hindering the proposed assignment of your site agreement
- charging a fee for the sale of your manufactured home, unless they are appointed as the selling agent and were the effective cause of the sale
- restricting your and the buyer's rights to get independent legal advice.

The Act also places broad obligations on a park owner not to unreasonably restrict your rights to autonomy and to exercise self-reliance over your personal and financial affairs.

If you believe the park owner has breached these obligations, in addition to commencing dispute resolution under the Act, you may wish to make a complaint to Regulatory Services. See our [dispute resolution factsheets](#) and [Making a Complaint to Regulatory Services factsheet](#) for more information.

What if the park owner refuses to consent to the assignment of my site agreement to the buyer?

A park owner can refuse to consent to assignment of the site agreement if there is a good reason for the refusal.

The park owner must give you written notice setting out the decision and reasons for the refusal.

You can use the dispute resolution under the Act to try and resolve the dispute, including by making an application to the [Queensland Civil and Administrative Tribunal \(QCAT\)](#). You should seek legal advice before commencing this process.

See our [dispute resolution factsheets](#) for practical guidance about how to resolve disputes that relate to manufactured homes.

What if the buyer terminates during the cooling-off period?

The buyer can terminate a site agreement that they have signed during the cooling-off period. The following process applies:

- The buyer can terminate the site agreement during **the cooling-off period within 7 days** of entering the site agreement if they received the precontractual disclosure documents within the prescribed timeframes, or **28 days** if they did not.
- To terminate the site agreement during the cooling-off period, the buyer will need to complete either:
 - the [Manufactured Homes Form 3A Termination Notice for Site Agreement – by Home Owner in Cooling-off Period](#) to terminate a new site agreement
 - a [Form 3B Termination Notice of Assignment Agreement – by Home Owner in Cooling-off Period](#) to terminate the assignment of an existing site agreement and give it to the park owner.

The buyer will need to state on the Form 3A or 3B the date that the agreement is to be terminated from. This date must be within 28 days of the date they sign the form.

If the buyer terminates the site agreement during the cooling-off period, they do not have to pay any money to the park owner, and the park owner must refund any money that the buyer has paid within 14 days of the date the agreement is terminated.

The following consequences may also arise from termination during the cooling off period, where the buyer has agreed to purchase your manufactured home.

Where the site agreement has been assigned

If the buyer has entered into an agreement to purchase the manufactured home from you or the park owner

(where they have also agreed to the assignment of your site agreement), the ownership of the manufactured home will revert to the owner on the date the site agreement is terminated.

This means that where you have assigned your interest in the site agreement to the buyer and they have also agreed to buy your home, the sale agreement will end and you will own the home again if they terminate during the cooling-off period.

Where a new site agreement has been entered

Where the buyer has entered into a new site agreement, the sale agreement for the manufactured home does not end automatically if they terminate during the cooling-off period.

This means that, where the buyer has entered a new site agreement and purchased your home, they will still own it even if they cancel the site agreement during the cooling-off period.

However, if the buyer was not given the precontractual disclosure documents and allowed the disclosure period before signing the site agreement, they can apply for compensation from the park owner to cover the reasonable cost of removing, transporting, positioning the home on another location and repairing any damage to it caused by the relocation. They must make this application within six months of terminating the site agreement.

What if another dispute arises during the sale and assignment?

If a dispute arises between you, the buyer or the park owner during sale and assignment, you should try to use informal dispute resolution (e.g. by writing to the park owner or attempting mediation).

The Act also says you can use formal dispute resolution for a range of disputes that may arise during sale and assignment, including about:

- the park owner's failure or refusal to consent to assignment
- whether you are entitled to assign your interest in the site agreement to the buyer
- the rights and obligations under the Act, including a complaint that the park owner has not complied with an obligation during sale or assignment.

See our [dispute resolution factsheets](#) for further information.

CONTACTS

QUEENSLAND RETIREMENT VILLAGE AND PARK ADVICE SERVICE

This service, situated at Caxton Legal Centre, provides information, advice and assistance about the law relating to manufactured home parks.

Caxton Legal Centre
1 Manning Street
South Brisbane Qld 4101

Tel.: (07) 3214 6333
www.caxton.org.au

ASSOCIATED RESIDENTIAL PARKS QUEENSLAND

Associated Residential Parks Queensland (www.arpq.org.au) provides advocacy services for current and prospective manufactured home owners in Queensland.

PO Box 1124
Park Ridge Qld 4125
Tel.: (07) 3040 2344
email: membership@arpq.org.au
www.arpq.org.au

MANUFACTURED HOME OWNERS ASSOCIATION INC.

This association provides advocacy services for current and prospective manufactured home owners in Queensland.

Tel.: 0492 588 149
www.mhoa.com.au

THE RESIDENTIAL SERVICES UNIT

This unit regulates the *Manufactured Homes [Residential Parks] Act 2003 [Qld]*. This includes investigating complaints and alleged breaches of the Act.

Tel.: (07) 3008 3450.

TENANTS QUEENSLAND

This service provides advice and advocacy for manufactured home owners and owners of converted caravans.

Tel.: 1300 744 263
www.tenantsqld.org.au

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Know Your Rights! www.queenslandlawhandbook.org.au

This information is current at February 2021.

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