

# Residential communities

The following information explains how to apply to the NSW Civil and Administrative Tribunal (NCAT) to resolve a residential communities dispute.

## About NCAT

The NSW Civil and Administrative Tribunal (NCAT) is an independent, specialised and accessible service for the fair and timely resolution of disputes according to law.

## Applying to NCAT

NCAT can hear and determine a wide range of residential community disputes under the *Residential (Land Lease) Communities Act 2013*. These include:

- Entering into a site agreement and provision of disclosure statement
- Maintenance of common areas
- Dilapidated site or home
- Access to community or residential site
- Alterations and additions
- Additional occupants and sub-letting
- Mail facilities and tree maintenance
- Retaliatory conduct
- Payment of utility and other charges
- Compliance with community rules
- Termination and possession
- Abandoned site.

For orders about uncollected goods refer to the separate Uncollected goods application form.

To make an application to NCAT, complete the Residential communities application form and lodge with the relevant fee.

Residential community applications can also be lodged online on the NCAT website [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au).

### Attach a company or business name extract

If you are making an application against a business or company, please attach a recent ASIC company or business name extract with your application.

## Collective applications about site fee increases

Under the *Residential (Land Lease) Communities Act 2013*, home owners can make a collective application to NCAT about an increase in site fees by notice.

A collective application can only be made if at least 25% of the affected home owners who received the notice participated in compulsory mediation.

### Compulsory mediation

Home owners objecting to a site fee increase by notice must first participate in compulsory mediation run by NSW Fair Trading. Should the compulsory mediation fail, a collective application can be made to NCAT.

Contact NSW Fair Trading on 13 32 20 or visit [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au) for information about the compulsory mediation process.

### Making a collective application

NCAT has a separate application form for residential communities collective applications about site fee increases.

A nominated representative should complete this form on behalf of the participating home owners. The notice of failed compulsory mediation issued by NSW Fair Trading must be attached to the collective application.

## Dispute resolution at NCAT

NCAT resolves disputes in a quick, inexpensive and relatively informal way. Applications about residential communities are generally listed for 'conciliation and hearing'.



## Conciliation

Before NCAT will hear the matter, parties are encouraged to resolve their dispute in conciliation.

Conciliation is a confidential alternative dispute resolution process which brings the parties together to talk about their dispute and reach an agreement. If conciliation not be successful, the matter will proceed to a hearing.

## Hearing

The person who hears your case is called a Tribunal Member. During the hearing both parties will take turns to tell their side of the story and present any supporting evidence. The Tribunal Member may ask questions of the parties.

## When will I know the outcome?

After the hearing is completed, the Tribunal Member will, in most cases, give you an oral decision with reasons. Written orders are also issued and given to you at the end of the hearing or sent to you by email or post. In some hearings, the Tribunal Member may not make a decision on the day. The orders and reasons for the decision will be sent to you at a later date. This is known as a 'reserved decision'.

## For more information

### NSW Fair Trading

**Phone:** 13 32 20

**Website:** [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

For information about compulsory mediation **before** lodging the application to NCAT.

### NCAT Consumer and Commercial Division

**Phone:** 1300 006 228 (select option 1)

**Website:** [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)

For information and assistance about Tribunal processes or procedures **after** lodging the application.

## ORDERS under the *Residential (Land-Lease) Communities Act 2013*

You can apply to NCAT for orders under the *Residential (Land-Lease) Communities Act 2013*. The orders below are a guide only. Refer to the relevant sections of the Act for more detailed information.

### Access

Section	Orders	Who can apply?	Time limits
157(1)(i)	An order directing an operator to give a former home owner or person authorised by a former home owner access to a residential site or home on the site for the purpose of recovering goods of the former home owner.	Former home owner or person authorised by former home owner	-

### Community rules

Section	Orders	Who can apply?	Time limits
93(3)	An order that the resident comply with the community rules within a specified period and/or termination of the resident's site agreement or tenancy agreement	Operator	Within 30 days from date of end of the 30-day period that the breach of community rule was to be remedied
94(2)	An order that the operator comply with the community rules within a specified period	Resident	Within 30 days from date of end of the 30-day period that the breach of community rule was to be remedied
95(1)	An order concerning the community rules or procedure for making or amending the rules	Resident or operator	-

### Declaration

Section	Orders	Who can apply?	Time limits
9	An order declaring that: <ul style="list-style-type: none"> <li>(a) a specified place is or is not a community, or</li> <li>(b) a specified agreement is or is not a site agreement, or</li> <li>(c) a specified contract, agreement or arrangement was or was not made in good faith.</li> </ul>	Any person	-

### General orders

Section	Orders	Who can apply?	Time limits
157(1)(a)	An order that restrains an action in breach of this Act or a site agreement or collateral agreement	Any party	-
157(1)(b)	An order that requires a person to comply with an obligation under this Act or a site agreement or collateral agreement	Any party	-
157(1)(c)	An order that relieves a party to a site agreement or collateral agreement from the obligation to comply with a provision of the agreement	Any party	-
157(1)(d)	An order for the payment of an amount of money	Any party	-
157(1)(e)	An order for the payment of compensation	Any party	-
157(1)(f)	An order that a party to a site agreement perform such work or take such other steps as the order specifies to remedy a breach of the agreement	Any party	-
157(1)(g)	An order that requires payment of part or all of the site fees payable under a site agreement to the Tribunal until the whole or part of the agreement has been performed or any application for compensation has been determined.	Any party	-

Section	Orders	Who can apply?	Time limits
157(1)(h)	An order that requires site fees paid to the Tribunal to be paid towards the cost of remedying a breach of the site agreement or towards the amount of any compensation	Any party	-
157(1)(j)	An order for anything else necessary or desirable to resolve a dispute	Any party	-

## Mediation

Section	Orders	Who can apply?	Time limits
158	An order to give effect to an agreement or arrangement arising out of mediation	Any party	-

## Residents committees

Section	Orders	Who can apply?	Time limits
101(2)	An order determining which body or committee is the residents committee for the community	Operator or resident	-

## Rights and obligations

Section	Orders	Who can apply?	Time limits
37(2)(c)	An order that the operator carry out work or pay compensation due to failure to carry out work at all or to an appropriate standard to the community's common areas	Home owner	Within 90 days from date work was completed or was expected to be completed
38(2)	An order concerning the home owner's right to quiet enjoyment	Home owner	Within 6 months from date of alleged non-compliance
39(3)	An order involving entry to the residential site or home by the operator or other person	Home owner or operator	-
40(4)	An order concerning access to the community by tradespersons or service providers	Resident	-
41(2)	An order concerning access to community by emergency and home care service vehicles	Resident or representative of an emergency or home care service agency	-
42(4)	An order that an alteration, addition or replacement be carried out without the operator's consent	Home owner	-
43(2)	An order requiring the home owner to carry out work to rectify a dilapidated site or home or carry out work to rectify a health or safety risk	Operator	Within 60 days from date notice to carry out work was issued
43(3)	An order declaring that the notice to carry out work is invalid or that the period of 60 days be extended	Home owner	Within 60 days from date notice to carry out work was issued
44(4)	An order to allow additional persons to occupy the residential site without the operator's consent	Home owner	-
44(7)	An order to settle a dispute about additional occupants	Home owner or operator	-
45(6)	An order concerning the sub-letting of a residential site or assignment of site agreement	Home owner or operator	-
47(3)	An order concerning secure mail facilities	Home owner	Period during which site agreement is in force
48(4)	An order concerning the planting and maintenance of trees	Home owner	Period during which site agreement is in force

Section	Orders	Who can apply?	Time limits
48(5)	An order for the removal of a tree that has been planted without consent	Operator	Period during which site agreement entered into by the home owner responsible for the planting is in force
50(5)	An order concerning a special resolution to pay a special levy for a community upgrade	Operator or home owner	-
56(2)	An order concerning retaliatory conduct by the operator	Home owner	Within 90 days from date on which alleged non-compliance occurred

## Sale of homes

Section	Orders	Who can apply?	Time limits
110(5)	An order that the home owner pay amount owing under the voluntary sharing arrangement	Operator	-
115(1)	An order resolving a dispute concerning the sale of the home, terms of the proposed site agreement or the proposed site fees	Home owner or prospective owner or operator or selling agent	-

## Site agreements

Section	Orders	Who can apply?	Time limits
21(4)	An order requiring the operator to provide a disclosure statement	Prospective home owner	Within 14 days after request for disclosure statement was made
26(4)	An order that the operator prepare and enter into a written site agreement	Home owner	Period during which the home owner did not have a written site agreement
27(5)	An order that the operator prepare and enter into a site agreement that is in the relevant standard form	Home owner	Period during which the site agreement is in force (where agreement is not in the relevant standard form)
28(2)	An order declaring an additional term of the site agreement is void	Home owner or operator	Period during which site agreement is in force
29(4)	An order for the Tribunal to consider whether part or all of a specific term of a site agreement is void	Home owner or operator	Period during which site agreement is in force

## Site fees

Section	Orders	Who can apply?	Time limits
64(1)	An order that the site fees payable be reduced due to a withdrawal or reduction in community amenities or facilities	Home owner	During period site agreement is in force
68(1)	An order for refund of overpaid site fees on ground that increase was not compliant	Home owner	Within 12 months after notice of increase given to home owner
71(1)	An order concerning the objection to an increase in site fees by at least 25% of home owners <b>Note:</b> Please use the separate 'Residential communities collective application' form to apply for orders under this section	One or more affected home owners	Within 14 days after date compulsory mediation failed
72(1)	An order that increase in site fees is substantially excessive when compared to similar residential sites in the community	Home owner	Within 30 days after notice of increase given to home owner

## Termination of site agreement

Section	Orders	Who can apply?	Time limits
121	An order resolving a dispute about a termination notice	A party to a site agreement	-
123(4)	An order settling a dispute as to whether vacant possession is necessary for repairs and upgrading	Home owner	Within 90 days after receiving termination notice
124(6)	An order that the date for vacating the site given in termination notice on ground of community closure be postponed	Home owner	Within 90 days after receiving termination notice
125(3)	An order authorising the operator to give a termination notice because of a proposed change of use of the residential site	Operator	-
125(6)	An order that the date for vacating the site given in termination notice on ground of proposed change in use of residential site be postponed	Home owner	Within 90 days after receiving termination notice
129(1)	An order for termination on ground of serious misconduct	Operator	Within 30 days from date of alleged serious misconduct became known to the operator
130(1)	An order for termination and possession of residential site	Operator	-
138(2)	An order determining the value of the home for proposed sale of the home to the community owner or operator	Owner or operator or home owner	-
140(4)	An order concerning compensation to home owner for relocation of home	Home owner or operator	Within 12 months from date home installed on new site
141(8)	An order concerning compensation to home owner where home not relocated	Home owner or operator	Within 90 days from date of alleged non-compliance
142(1)	An order declaring that the home owner abandoned the residential site and for possession of residential site	Operator	-

## Utility and other charges

Section	Orders	Who can apply?	Time limits
78(2)	An order requiring the home owner to pay: (a) an unpaid utility charge, or (b) an unpaid fee for late payment, or (c) an unpaid fee for a dishonoured payment	Operator	-
81(3)	An order concerning a utility cost notice	Home owner	Within 30 days after receiving the notice
82(3)	An order to reduce the site fees payable on grounds that: (a) the operator did not issue the utility cost notice as per section 81(2), or (b) the home owner disputes the utility costs	Home owner	Within 30 days after receiving the notice
85(3)	An order concerning the recovery of an amount mistakenly paid	Home owner or operator	-