

sch 4/3/3

Before: Ms Michelle Howard, Member

Date: 7 March 2011

IT IS THE DECISION OF THE TRIBUNAL THAT:

1. The applicant is granted leave to withdraw the application in respect to [REDACTED]

BY CONSENT OF THE PARTIES IT IS THE DECISION OF THE TRIBUNAL THAT:

2. The application is dismissed.

Signed



Ms Michelle Howard
Member
Queensland Civil and Administrative Tribunal

Date: 7 March 2011

FORM 1

QUEENSLAND

MOBILE HOMES ACT 1989 (Section 4)

MOBILE HOMES REGULATION 1994 (Section 5)

IMPORTANT – PLEASE READ THIS STATEMENT CAREFULLY AND KEEP IT IN A SAFE PLACE. IT SETS OUT THE TERMS ON WHICH YOU ARE ENTITLED TO KEEP YOUR MOBILE HOME ON SITE AND TELLS YOU ABOUT YOUR LEGAL RIGHTS. IF THERE IS ANYTHING YOU DO NOT UNDERSTAND YOU SHOULD GET ADVICE, PREFERABLY FROM A SOLICITOR OR THE CARAVAN AND MOBILE HOME RESIDENTS’ ASSOCIATION (CAMRA).

PART 1

WRITTEN STATEMENT

To:
(insert name and address of occupier)

1 As a result of a relevant agreement (“the Agreement”) made by you with

the owner/owners of a mobile home site located at

on the FOURTH day of JULY 2002

you are entitled to position a mobile home on the site the particulars of which are as follows:-

Site

(insert particulars sufficient to identify the position of the mobile home. A sketch plan may be annexed and referred to for ease of identification).

- 2 The duration of the owner's entitlement to use the land as a site is unlimited and your right to position a mobile home on this site shall subsist until the Agreement is duly terminated in accordance with the Act.
- 3 Pursuant to section 5(1) of the Act, the terms specified in Part 1 of Schedule 1 of the Act are implied into every agreement and take effect, even though they may conflict with some of the terms agreed to between you and the site owner. These implied terms are set out in Part 3 of this Form.
- 4 The express terms of the Agreement are set out in Part 4 of this Form

PART 2

INFORMATION

- 1 Because you have an agreement with a site owner which entitles you to keep your mobile home on a site and live in it as your home, the *Mobile Homes Act 1989* gives you certain rights, affecting in particular your security of tenure and the sale of your mobile home.
- 2 These rights include the implied terms set out in Part 3 of this Form which apply automatically and cannot be overridden so long as your agreement continues to be one to which the Act applies.
- 3 If you are not sure what any of the terms of your agreement mean or how they will work in future or what your rights are under the Act, you should seek advice at once, preferably from a solicitor or CAMRA.
- 4 If you are not happy with any of the express terms of your agreement (as set out in Part 4 of this Form), you should discuss them with the site owner who may agree to change them. But if you are still not satisfied, you may try to amend the Agreement in two ways, as explained in paragraphs 5 and 6 of this Part.
- 5 Subject to the time limitation referred to below, an application can be made to a Small Claims Tribunal. You can –
 - a) apply for an order that any of the express terms of the Agreement (those set out in Part 4 of this Form) be varied or deleted;
 - b) ask for further terms to be included in the Agreement concerning the matters set out in Part 11 of Schedule 1 to the Act (see paragraph 7 of this Part).

The site owner can also go to a Small Claims Tribunal to ask for the Agreement to be changed in these two ways.

An application for an order that an express term of the Agreement be varied or deleted may only be made **within six months from the date on which the written statement in this Form is given to you.**

- 6 Except where a site owner fails to give a mobile home occupier a statement in Form 1, the Small Claims Tribunal is given power to hear and determine all applications under the *Mobile Homes Act 1989*.

An order of a Small Claims Tribunal is final. No appeal can be instituted from a Small Claims Tribunal.

A Small Claims Tribunal will not make an order permitting the site owner to terminate the Agreement unless –

- a) the Tribunal is satisfied that the ground on which the application for the order is based has been made out; and
- b) the Tribunal is satisfied that the making of the order is reasonable and just in the circumstances

You should get advice from a solicitor or from CAMRA if you wish to apply to the Small Claims Tribunal for a change to the Agreement as outlined in paragraph 5 of this Part.

- 7 The following matters are set out in Part 11 of Schedule 1 of the Act –

- a) the right of the occupier to quiet enjoyment;
- b) the sums payable by the occupier pursuant to the Agreement and the times at which they are to be paid;
- c) the review at yearly intervals of the sums payable by the occupier pursuant to the Agreement;
- d) the provision or improvement of services available to occupiers on the site and the use by the occupier of such services;
- e) the preservation of the amenity of the site;
- f) the maintenance and repair of the site by the owner and the maintenance and repair of the mobile home by the occupier;
- g) g) access by the owner to the land on which the occupier is entitled to position the mobile home;

8. The Agreement you have entered into with the site owner is also binding on any future site owner.

In addition, in the event of your death, should you at that time have been occupying the mobile home as your principal place of residence, then the Agreement continues to apply for the benefit of –

- a) your spouse; or
- b) a member of your household;

provided they were living with you at the time of your death.

If none of these persons is living with you at the time of your death, your beneficiary is entitled to dispose of your mobile home but not to reside on the site unless an agreement is reached with the site owner.

9. Certain unfair practices are prohibited by the *Mobile Homes Act 1989*. In particular –

- a) a site owner is not permitted to limit occupancy of a site to persons who have purchased or have been provided with a mobile home by a person specified by the site owner. This prohibition does not apply to new sites not previously occupied by mobile home;
- b) a site owner is not permitted to restrict or interfere with your efforts to sell your mobile home. However, your right to sell is subject to certain restrictions – see clause 7 of Part 3 of this Form; and
- c) a site owner is not entitled to charge a fee in connection with the sale or attempted sale of your mobile home unless the site owner has rendered some service with respect to the sale or attempted sale and has an agreement with you to be paid a fee for such service.

10 can be contacted at -

provides advice and assistance over the telephone from 9.00am to 2.00pm, Monday to Friday. The office is open from 8.30am to 5.00pm, Monday to Thursday and from 8.30am to 3.00pm on Friday by appointment.

PART 3

IMPLIED TERMS

The implied terms specified in Part 1 of Schedule 1 of the Act are as follows –

Duration of Agreement

- 1 Subject to clause 2 of this Part, the right to position a mobile home on the site shall subsist until the Agreement is duly terminated in accordance with the *Mobile Homes Act 1989*.
- 2 (a) if the owner's entitlement to use the land as a site is of limited duration by reason of any town planning scheme or an approval or permission of the relevant Local Authority, the period for which the right subsists shall not extend beyond the duration of the owner's entitlement

(b) if before the expiry of the period for which the right would subsist pursuant to subclause (a) there is a change in circumstances that allows for a longer duration of the right, account shall be taken of that change.

Termination by occupier

- 3 The occupier is entitled to terminate the Agreement by written notice given to the owner not less than four weeks before the date on which termination is to take effect.

Termination by owner

- 4 The owner is entitled to apply to a Small Claims Tribunal for an order that permits the termination of the Agreement and, subject to the order being made, is entitled to terminate the Agreement on any of the following grounds -
 - a) the occupier has committed a breach of a term of the Agreement and, after service on the occupier of a notice to remedy the breach, has not complied with the notice within a reasonable time;
 - b) the occupier has unlawfully assaulted or threatened to unlawfully assault, or has procured another to unlawfully assault or threaten to unlawfully assault the owner of, or other person lawfully on, the site, or has willfully destroyed or damaged or threatened to destroy or damage, or has procured another to destroy or damage property, other than property of the occupier, on the site;
 - c) the occupier is not occupying the mobile home positioned on the site as the occupier's only or principal place of residence;
 - d) the recurrent behaviour on the site of the occupier, or of any person residing with or associated with the occupier, interferes with the quiet enjoyment of the site by any other occupier;
 - e) the mobile home positioned on the site, having regard to its age and condition, is having a detrimental effect on the amenity of the site;

- f) the relevant Local Authority has granted its approval of the use of the site for a purpose other than as a site;

Recovery of overpayments by occupier

- 5 Where the Agreement is terminated pursuant to clause 3 or 4 of this Part, the occupier is entitled to recover from the owner so much of any payment made by the occupier pursuant to the Agreement as is attributable to a period after the termination.

Sale of mobile home

- 6 (1) The occupier is entitled –
 - a) to sell the mobile home; and
 - b) to assign the occupier's rights and obligations under the Agreement to a person approved by the owner
- (2) The owner must not unreasonably refuse to approve a proposed assignee.
- (3) If the occupier gives the owner a written request to approve a proposed assignee, the owner must, within 1 month of receiving the request –
 - a) give the occupier written notice of the owner's decision; and
 - b) if the owner refused the request – give written reasons for the refusal;
- (4) In the occupier's efforts to sell the mobile home, the occupier shall not engage in, or permit others on the occupier's behalf to engage in, acts that affect the environment of the site or the quiet enjoyment of the site by other occupiers.

Gift of mobile home

- 7 (1) The occupier is entitled to give the mobile home and to assign the occupier's rights and obligations under the Agreement to a member of the occupier's family approved by the owner, who shall not unreasonably withhold approval.
 - i. for the purposes of this clause, the reference to a member of the occupier's family includes –
 - 1. the spouse of the occupier; and
 - 2. a child, grandchild or step-child of the occupier;

- 8 If the owner is entitled to require the occupier to position the mobile home on another part of the site –
- a) that other part of the site shall be broadly comparable to the part of the site on which the occupier was originally entitled to position the mobile home; and
 - b) all expenses incurred in consequence of the requirement shall be paid by the owner;

PART 4

EXPRESS TERMS OF THE AGREEMENT

This Part sets out the terms of the Agreement settled between you and the site owner in addition to the implied terms.

The terms of the Agreement between you and the site owner made on the

..... FOURTH day of JULY, 2002, are as follows: (day)
(month) (year)

1 "DEFINITIONS"

Unless otherwise provided in this Agreement, unless there is something inconsistent in the subject matter, the expressions following (whether appearing with or without capital letters) have the meanings assigned to them in this clause.

- a) "Act" means the *Mobile Homes Act 1989*. (as amended)
- b) "API" means the Australian Property Institute (Inc) Queensland Division.
- c) "CPI" means the Consumer Price Index (All Groups) Nationally published by the Australian Bureau of Statistics. If that Index no longer exists "CPI" means an Index that the President of the API decides best reflects changes in the cost of living in the relevant city or region in which the Resort is located.
- d) "GST" means the goods and services tax payable by the owner under A New Tax System (Goods and Services Tax) Act 1999 (cth) in respect of the rent of for services or facilities provided by the owner to the occupier under this Agreement.
- e) "home" means, if the site has not previously been occupied by a mobile home, the mobile home sold to the Occupier by Trevine Pty Ltd CAN 006 308 587. In all other cases, "home" means the mobile home positioned on the site.

- f) "occupier" means the party whose name is inserted in the relevant section on page 1 of this Agreement.
- g) "owner" means
- h) "rent" means the amount in Schedule A as varied under this Agreement.
- i) "Resort" means
- j) "site" means the site within the Resort marked for identification purposes on the Plan contained in Schedule A.

2 INTERPRETATION

- a) The terms "the Agreement" and "this Agreement" mean this Agreement together with any annexures and schedules and any agreement expressed to be supplemental to this Agreement and all amendments to those documents.
- b) References in this Agreement to any clause, subclause, paragraph, or Schedule without further designation will be construed as a reference to the clause, subclause, paragraph or Schedule of this Agreement so numbered.
- c) Reference to:
 - i. the singular includes the plural and the plural includes the singular:
 - ii. a person includes a Body Corporate
 - iii. a party includes the party's executors, administrators, successors and permitted assigns
- d) If a party consists of more than one person, this Agreement binds them jointly and each of them severally.
- e) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- f) The terms "the parties" or "party" mean the owner or the occupier.
- g) A reference in this Agreement to an Act of Parliament or any section of an Act are to be read as though the words "or any statutory modification or re-enactment of it or any statutory provision substituted for it" were added to the reference.
- h) The headings in this agreement are included for convenience only and do not affect construction of this Agreement.

3 RIGHT TO THE SITE

The owner hereby grants to the occupier the right to keep the home on the site and occupy it as the only or principal place of residence for the term stipulated in Schedule A.

4 *RENT*

The occupier will pay to the owner (by way of direct debit to the owner's bank account) the Rent at the times and in the amount specified in Schedule A.

5 *RENT REVIEWS*

Subject to giving the occupier one (1) calendar month prior notice in writing, the owner may as from the first day of January in any year during the term of this Agreement, increase the rent to an amount represented by A where:

$$A = \frac{B}{C} \times D$$

Where -

B = the CPI for the quarter ending the previous September:

C = the CPI for the quarter one year before the quarter in B; and

D = the rent under review

6 *INTEREST ON ARREARS*

If the occupier is late in paying the owner the rent, the owner may charge the occupier interest on any late payments calculated at the percentage interest rate per annum equal to the prime lending rate charged by the owner's bank plus two percentum (2%) from the time of the rent falling due, to the day of payment.

7 *MAINTAINING VACANT HOME*

Subject to the owner and the occupier agreeing on an amount the owner may charge the occupier by additional rent, the occupier will on being requested by the owner maintain the home in a state of repair at all times whilst it is unoccupied.

8 *RESORT FACILITIES*

The occupier may use the facilities of the Resort provided by the owner for the use of residents and occupiers of the Resort.

9 *BYLAWS*

The owner may from time to time promulgate by laws governing the conduct of occupiers of the Resort and of their guests. Consistent failure by the occupier or guests of the occupier to

comply with those by laws will subject to the provisions of the Act, entitle the owner to terminate this Agreement.

10 *CLEANING*

The occupier is to maintain the home and the site in a good and tidy condition at all times.

11 *PESTS AND VERMIN*

The occupier will keep the home and the site free from pests and vermin and will have them treated at the expense of the occupier by a recognized pest control company when required by the owner to do so.

12 *ILLEGAL PURPOSES*

The occupier is not to use the home or the site or permit the home or the site to be used for any illegal or immoral purpose.

13 *SHEDS AND CARPORTS*

The occupier will not erect garden sheds, without the owner's written permission, on the site and acknowledges that any carport or garage on the site has been designed to facilitate use as a light work area and for some storage.

14 *INDEMNITY*

Without limiting the generality of the preceding Clause, the occupier indemnifies and holds indemnified the owner and it's agents, employees and contractors from and against all actions, claims, losses, damages and costs from or in respect of which the owner may sustain or incur or for which the owner it's agents, employees and contractors become liable in respect of or arising from injury to any person in or about the Resort from or contributed by the neglect or default of the occupier to observe or perform any of the provisions of this Agreement or by reason of any act or negligence of the occupier or the negligent use or misuse of the site, the home or water, gas, electricity or PABX phone system supplied to the site or the fittings in relation to those services by the occupier or any member of the family household of the occupier or by any guest or invitee of the occupier.

15 *ANNOYING OR INJURIOUS CONDUCT*

The occupier will not do any act or thing or permit any family member, guest or invitee to do any act or thing which through noise, odours, vibrations or otherwise may be or grow to the annoyance, nuisance, grievance, damage, hazard or disturbance of the owner or of the occupiers of neighbouring sites. Without limiting the generality of this prohibition, the occupier is not to play or permit the playing of any musical instrument or system of sound amplification nor sing nor permit any singing on the site or in the home (or in or upon any part of the Resort) between the hours of 11.00pm and 8.00am, nor use or permit or be used any radio or television set at any times so as to cause annoyance to the owner or the occupiers of neighbouring sites.

16 *USE OF THE HOME*

The occupier is not to carry on any trade, profession or business in the home or from the site or to use the home or the site as an address for any trade, profession or business or the use of circulars, pamphlets or advertisements or to take in lodgers or boarders, but is to use the home and site as a private residence for the accommodation of the occupier, the spouse of the occupier and the persons whose names are set out in Schedule A only.

17 *PARKING*

The occupier will not park or allow guests or invites to park any motor vehicle within the Resort except at locations approved for that purchases by the owner. No vehicle is allowed to park on any roadway within the Resort.

18 *NOT TO MAKE VOIDABLE INSURANCE POLICIES*

The occupiers will not do or permit anything to be done on the site or bring or keep anything on the site or in the Resort that may in any way make void or voidable any policy of insurance applicable to the Resort or conflict with any laws or regulations or with any insurance policy applicable to the Resort or whereby the amount of premium payable in respect of any insurance policy may be liable to be increased.

19 *AUCTION SALES*

The occupier will not hold or permit to be held any auction or sale in or about the site.

20 *REFUSE*

The occupier will correctly sort and place all rubbish, refuse and other like material in appropriate receptacles with tight fitting lids or tops and keep such receptacles closed and at such designated positions as the owner or the owner's representatives may direct and in a clean and odourless condition. Bins must be kept in an area not visible from the road. Residents are responsible for cleaning of their bins.

21 *PROHIBITION ON HANGING CLOTHES*

The occupier will not permit any clothes or other articles to hang from or be placed on the outside of the home or within the site except in areas or places expressly provided for that purpose.

22 *MAINTENANCE AND REPAIRS*

Except as provided in this Agreement, the Occupier must keep the landscaping, fencing and driveway in good repair and condition.

23 INSPECTION BY OWNER

Upon giving the occupier reasonable notice, the owner or it's agents (or both) may enter the site to view the state of the site and to repair and maintain any improvements of the owner on the site and to carry out the requirements of any public authority in relation to the site. In an emergency, the owner may enter at any time without giving the occupier notice.

24 WATER CONSERVATION

The occupier acknowledges that conservation of water can be an important factor in the village economy and further acknowledges that the owner reserves the right to charge the occupier for excess water consumption. The occupier will immediately notify the landlord of any damage to defect or disrepair in the water or other services to the site. Water meters read monthly and a maximum of 13 kilolitres per month applies water is then charged at council water rates.

25 GST

- a) The owner will pay the GST at the rate applicable on 1 July 2000.
- b) Should the rate be increased after 1 July 2000, the occupier will pay to the owner upon demand the amount of GST representing the difference between the rate as at 1 July 2000 and the increased rate.

26 REPOSITIONING

The owner is entitled to require the occupier to position the home on another site in the Resort provided that:

- a) That other site is broadly comparable to the site; and
- b) All expenses incurred in consequence of the requirement are paid by the owner;

27 FENCING AND DRIVEWAYS

The resident is responsible for repair and replacement of all fencing and driveways on the site.



SCHEDULE A

The occupier pays the owner the weekly site fee of \$95.00 per week. The procedure of collection is by the way of the Direct Debit System.

The Direct Debit System occurs every Thursday fortnight on the Social Security Pension fortnight.

PABX

Line fee charged as per the PABX agreement. Monthly account charged as per the PABX agreement and is collected by way of direct debit.

The occupier agrees to having received a copy of the [redacted]

Signed by occupier of site

Name in full: Date: ... 4-7-02 ...

Witness: sch 4/3/3 Date: ... 4-7-02 ...

for and on behalf of [redacted]

Signed.. Date... 15-7-02

Witness Date... 15-7-02

[redacted]

TENANCY

The agreement is a legal document and contracted by Act of the State Government. It is administered through the Residential Tribunal and established the Rights and Obligations of the Management and Residents of all relocatable home villages.

The company [redacted] is a registered, private, limited liability company and trades as [redacted] [redacted] has 20 years experience in planning, construction and operation of manufactured home villages. They are fully aware of the vital importance of creating the best possible environment and conditions within [redacted]

SECURITY

Security surveillance cameras are situated in key areas. Early advice to management of any trespassing, vandalism or neglect of Resort premises will be appreciated.

RESORT ENVIRONMENT

Please do not:-

- a. use your site for any purpose which is illegal or interferes with the "peaceful" enjoyment of your neighbours. Carrying out trade activities, vehicle repairs, or excessive use of power tools into this category.

- b. park or allow visitors to park any motor-vehicle in locations other than those provided for parking. Please do not allow any vehicles to be parked in any roadway in the Resort.

PETS

Our policy allows pets in All pets MUST be properly controlled or looked after.

- a. Permission in writing must be obtained from Management before any per can be allowed to live in the Resort.
- b. Dogs must not be allowed outside the owner's site unless on a leash and permitted on sites located on all property boundaries. Droppings must be picked up and disposed of by the person in control of the dog.
- c. Cats cannot be allowed to roam freely, especially at night.

- d. The total number of pets, animals and birds must be kept within reasonable limits. Cats and dogs should be de-sexed. A pet which is lost or has died cannot be replaced without permission from Management.

GENERAL MAINTENANCE

All residents take justifiable pride in the appearance of their own sites. If anyone, due to illness absence or incapacity, are unable to look after their gardens, Management on request will ensure adequate garden maintenance at a reasonable cost.

All residents must sort and place all rubbish and refuse etc. in the council rubbish bins for removal or dispose of appropriately to provide a clean and odourless environment for all residents.

AMENITIES

The community halls, recreation areas, swimming pools, tennis courts, boats and boat shed, are key amenities, rules for their use are prominently displayed and should be observed at all times. A host resident must be present if visitors wish to use these facilities. Amenities – these areas are pet free areas.

Pools will be open until 9.00pm. The community hall will be open until around 9.30pm unless a pre-organised function is on.

BILLIARD TABLES

Visitors wishing to play on the billiard tables must be accompanied by a host resident at all times. No person under 16 will be permitted to play on the tables. These tables must not be monopolized by any group if others are waiting to play. Residents have precedence over visitors at all times.

WATER USAGE

Conservation of water can be an important factor in the village economy. Sensible usage and the reporting of leakages or other malfunctions will be appreciated. The right to charge extra for excess water is reserved. The annual limit is 160kl, with meters read monthly.



VISITORS AND GUESTS

Visitors are most welcome for overnight or short stays of less than 30 days in a row and less than 12 weeks in a year, without extra cost.

Residents are asked to make sure that their visitors or guests are aware of the Resort rules and regulations and observe them. In particular, those respecting the legal rights of other residents to “quiet enjoyment”.

Visitors are required to use the designated car-parks, observe the vehicle speed regulations (15K/PH FOR EVERY VEHICLE) and generally act so as to preserve the peace, quiet and security of the Resort.

Children must have resident supervision at all times when in the Resort. We must stress the danger which exists for un-supervised children, especially in the vicinity of the swimming pool. No children’s bikes, skates, skateboards etc. are to be used on the Resort roads or car-parks.

COMPLIANT PROCEDURE

As a policy, we prefer to deal with all complaints on a personal basis and as rapidly and efficiently as possible.

VERMIN AND INSECTS

It is the responsibility to keep dwellings free of infestation by vermin or insect. An inspection by the resident should be carried out two times a year.

RULES

The owner of may introduce new rules for the Management of the Resort and the conduct of persons anywhere in the estate to ensure the legal right of all residents to "quiet enjoyment".