

Special levies for land lease community upgrades

A home owner in a land lease community is part of a broader community sharing services and facilities. The residential (land lease) community laws introduce a new way in which home owners and the operator can work together to fund future upgrades and improvements within the community.

Why have a special levy?

A special levy may be useful to:

- give home owners a say in the services and facilities provided in the community
- provide another way to finance upgrades without permanently increasing site fees
- secure money to ensure the upgrade home owners want actually happens
- increase home value as a result of better community services and facilities.

What can a special levy be for?

Either the operator or the home owners can propose a special levy to fund a new facility, new service or other improvement in the community. For example, this could include a new swimming pool or replacing the electrical wiring within the community. Special levies are not designed for regular maintenance or recurrent operating expenses.

What must be covered in a special levy notice?

Notice of a proposal for a special levy must:

- be in writing
- clearly describe the proposed new service, facility, upgrade or improvement
- show the total amount proposed to be raised by the levy
- set out the amount or method of calculating the special levy needed from each home owner (note: it must be in equal shares for each residential site)
- state when the special levy will be due (this can be in instalments)
- explain how the home owners can vote on the proposal.

How is a special levy passed?

Notice of the proposal must be given to all home owners. The special levy cannot go ahead unless at least 75% of all home owners (1 vote per site) in the community agree within 90 days of the notice being given. Home owners who do not vote are deemed to be against the proposal.

You may wish to seek independent advice about the levy before agreeing to it.

While you may develop any levy proposal independently of the operator, you may wish to work with the operator throughout the process to help ensure the proposal is accepted. Even if the proposed special levy is passed by the home owners, the operator must also consent to the proposal. For example, if the new facility will result in ongoing expenses, a discussion about raising the site fees to cover these costs may be necessary. The operator has 90 days in which to advise of their decision.

75% of all home owners and the operator must agree with the proposal. Then the special levy becomes payable by everyone (including those who may have voted against the proposal).

Who is the special levy paid to?

All special levies are payable to the operator. Debt recovery action can be taken against any home owner who does not pay. Special levy payments are held on trust by the operator for the home owners. They can put the funds into their regular account or set up a separate account if they wish. It does not have to be in a trust account. Once special levy payments have been received, the operator must use the money for its intended purpose within a reasonable time. The funds cannot be used for anything else. Any unused amount must be refunded to the home owners in equal shares.

What if I disagree with a levy proposal that has been passed by 75% of home owners?

The NSW Civil and Administrative Tribunal (the Tribunal) can hear disputes about special levies. It has the power

to make orders to either cancel or confirm a special levy. The Tribunal cannot cancel a special levy unless there are reasonable grounds for seeking such an order.

What happens when someone leaves or moves into the community?

If the departing home owner has not fully paid their share of the special levy, the incoming home owner becomes responsible for it. This happens as part of their agreement to move into the community. However, the incoming home owner must first be advised of the outstanding special levy in the disclosure statement given to them before they move in.

Can the operator contribute to the special levy?

Yes. Nothing in the law prevents an operator from contributing to the cost of a community upgrade. For instance, they may wish to do so if the upgrade will provide benefits for them. Remember any fixture funded by way of a special levy technically will belong to the community owner/operator. In such cases it is up to the home owners and the operator to agree on the amount of their respective contributions.

What are other options instead of a special levy?

Any upgrade or improvement to the community could be solely funded by the operator. The site fees could be increased until such time as there is a sufficient surplus to pay for an upgrade or improvement. If the operator begins to receive voluntary sharing arrangements, they may choose to put some of this money towards a new community facility, service or other improvement.