

# TERMINATION OF A WRITTEN AGREEMENT

The Leasehold Advisory Service's **Anna Tomasik** and **Tamika Chingandu** explain the procedures a site owner must follow in order to terminate a park home owner's Written Agreement and remove them from the park.



If a single park home owner moves into a care home, for example, the property must be sold. Otherwise, the home owner is in breach of their Written Agreement

**T**he Written Agreement sets out the contractual terms between the site owner and the home owner.

The terms comprise of Express Terms and Implied Terms. Express Terms are terms that have been specifically agreed between the site owner and the home owner.

The Implied Terms cannot be varied or changed contractually, as they are defined by statutory law. The site owner's rights of termination are included within the Implied Terms.

This article looks at circumstances which can give rise to the termination of a Written Agreement and the procedure which must be followed by the site owner in the event of a breach of agreement by the home owner.

It is important for both site owners and home owners to be aware of the circumstances in which a park home agreement may be terminated.

## WHEN CAN AN AGREEMENT BE TERMINATED?

There are three instances in which an agreement between a home owner and site owner may be terminated. These are:

1. **Failure to occupy a home as only or main residence;**
2. **Breach of agreement;**
3. **The home is having a detrimental effect on the amenity of the site.**

## FAILURE TO OCCUPY A HOME AS MAIN RESIDENCE

There is a legal requirement that a park home owner must be living in their park home as their main or only residence. If the home owner decides to move from the property, it must be sold; otherwise, they would be in breach of the agreement. A typical example is a single home owner who permanently moves into a residential care home. If a park home is left unoccupied, the site owner may also apply to the court to

terminate the agreement. The site owner would need to consider factors such as the home owner's intention to sell the home. If an application is made, the court has to decide whether it is reasonable to terminate the agreement. The court will consider all circumstances including the length of time that the home has been unoccupied.

## BREACH OF TERM OF AN AGREEMENT

If a term of the Written Agreement is broken, the site owner may threaten to terminate the agreement. Site rules are also express terms of the Written Agreement and any breach may therefore result in termination.

This may be the case if a home owner fails to pay the pitch fee or if there have been complaints from other home owners relating to anti-social behaviour or if storage regulations (e.g. for gas cylinders or other potentially dangerous objects) are consistently ignored by a park home owner.

In the event of a breach, the site owner must serve a written notice, providing reasonable time to remedy the breach. There is no guidance as to what constitutes 'reasonable time', but it may be generally advisable to allow for at least 28 days, unless immediate action is required for safety reasons.

If the breach has not been addressed by the time period stated within the notice, an application for termination can be made to the court. The court will consider whether it will be reasonable to terminate the agreement before granting an order. In the case of an unpaid pitch fee, the amount of arrears and the likelihood of the arrears being paid are factors which will influence a court in determining whether an order for termination should be imposed. If there is a prospect of the arrears being paid, the court may decide to adjourn the proceedings and provide a deadline for payment. If the home owner fails to comply with the order by the deadline, the site owner may ask the court to proceed with termination.

#### DETRIMENTAL EFFECT ON AMENITY OF SITE

A site owner would be required to obtain a determination from the First-Tier Tribunal (Property Chamber) concerning the condition of the home. There is no strict definition of 'detrimental effect on amenity of site'. This is a matter of fact for the tribunal to consider. In determining this issue, they are likely to carry out an inspection of the site. The visual impact of the site and the effect on other home owners will be taken into consideration.



Certain types of anti-social behaviour may constitute a breach of a home owner's Written Agreement

If the home is having a detrimental effect on the amenity of the site, but the tribunal decides that it is possible for repairs to be undertaken and the home owner confirms that they are able to carry out the repairs, an adjournment of the proceedings will be ordered. A time period will be specified allowing the home owner to complete the works. If the home owner fails to complete the works by the set time period, the site owner can apply to court to terminate the agreement.

#### WOULD A SITE OWNER APPLY TO A COUNTY COURT OR FIRST-TIER TRIBUNAL TO TERMINATE AN AGREEMENT?

Most cases about the termination of a Written Agreement would be dealt with by a county court. This would only be different if the Written Agreement contains an arbitration clause for the matter to be dealt with by a tribunal, in line with general park home disputes. With effect from 1 July 2013, general park home disputes are dealt with by the First-Tier Tribunal (Property Chamber).

**“In the event of a breach, the site owner must serve a written notice, providing reasonable time to remedy the breach.”**



#### Info point

For more information, please contact LEASE by telephone on 020 7832 2525 between the hours of 9am to 5pm (Monday to Friday).

This article is not meant to describe or give a full interpretation of the law; only the courts can do that. If you are in any doubt about your rights and duties, please seek specific advice. The law discussed covers matters pertaining to English law only.