

mobile homes & caravan parks

Introduction

There are currently two levels of protection for the owners and occupiers of caravans stationed on protected sites. An occupier of a caravan (whether owned by the site owner or the occupier) under a residential contract has limited protection of their occupation of the caravan or the site. An owner of a mobile home (sometimes known as a "porta home"), however, who is entitled to occupy the home as their only or main residence has substantially greater protection under the Mobile Homes Act 1983 which requires the site owner to provide the occupier with a written statement of the particulars of their agreement to station their mobile home on a site, controls the terms of the agreement and provides for the devolution of the agreement to the home owner's successors. Sites which are not protected sites (usually holiday or recreational sites) are subject to more limited control and whilst they must satisfy the planning and site licensing requirements the relationship between the site owner and occupiers is a matter of contract.

Agreements

Within three months of the making of an agreement between the site owner and resident under the Mobile Homes Act 1983 in relation to a mobile home occupied as the home owner's only or main residence, the owner of the site must give to the occupier a written statement specifying the names and addresses of the parties, the date of commencement of the agreement, particulars of the land on which the occupier is entitled to station the mobile home, setting out both the express and implied terms under the Mobile Homes Act 1983 and complying with any requirements prescribed by regulations made by the Secretary of State. If the owner fails to provide such a written statement the occupier may apply to the Court for an order requiring him to do so.

Owners of caravans are not protected by the Mobile Homes Act 1983.

The Caravan Sites Act 1968 applies to caravans occupied under residential contracts on protected sites. A residential contract means any licence or contract under which a person is entitled either to station a caravan on a protected site and to occupy it as their residence. The Act provides an entitlement to a minimum period of notice and protection from unlawful eviction and harassment.

Bringing an agreement to an end (Caravans)

In respect of caravans, where a residential contract between the parties is determinable by notice given by either party to the other, to be effective the notice must be given not less than four weeks before the date on which it is to take effect.

Business Structure

If you are starting a new venture consideration needs to be given to the business structure you will use to operate it. This can be through a limited company or as a sole trader or partnership. There are advantages and disadvantages of each type of business structure as well as differing tax consequences.

Buying & Selling a Business

Where the business being sold is owned by a company then one of the key decisions to be made by the seller and buyer is whether to structure the sale as one of the company's shares or as a sale of the separate assets comprising the business. Each method has advantages and disadvantages as well as differing tax consequences.

Buying and Selling by a Resident

When buying a caravan or mobile home there is no requirement to instruct a Solicitor to act for you but it is recommended that legal advice is obtained because the purchase of a mobile home can be as complicated as the purchase of a bricks and mortar home without professional assistance. Nor is there any requirement to have the home surveyed but unless the home is relatively new then the buyer would be wise to seek one and to select a surveyor with specific expertise in surveying and valuing mobile homes.

Mobile home owners have the right to sell their home on the site and to transfer the benefit of their agreement with the site owner to the purchaser by way of an Assignment. The approval of the site owner to the sale to the purchaser is required by the site owner cannot withhold their approval unreasonably and if they do so then the resident can apply to the Court or to an Arbitrator for an Order requiring the site owner to give their approval.

The resident is free to use an Estate Agent of their choice, if they wish to do so, and they are not to sell it through any sales service that the site owner may offer on the site.

Commission payable to site owner on sale of a Mobile Home

Site owners have a statutory entitlement to claim commission of up to 10% of the sale price of mobile homes on their site. Site owners can charge a lower percentage than the legal maximum if they wish but they cannot charge a higher one.

The site owners' commission is exempt from VAT but if the site owner acts as an agent in selling a home, any charge he or she makes for such as service might be subject to VAT.

Conditions on Site

Privately owned sites must have a licence from the Local Authority, which will normally carry conditions affecting such matters as how many mobile homes or caravans that may be on site, landscape and matters affecting health and safety. The site owner has to adhere to the conditions and any complaint about the site conditions which cannot be resolved between the site owner and the residents should be made to the Local Authority.

Council Tax

A mobile home which is an individual's sole or main residence is subject to council tax and the responsibility of the bill falls on the resident. A 25% discount applies if he or she lives alone. Unoccupied mobile homes may be exempt from council tax for up to six months whether furnished or not.

Permanently sited caravans which are no-one's sole or main residence are normally subject to non-domestic rates, for which the site owners are responsible. The rates bill for the whole site is paid for by the site owner who can agree with the occupants how they can recover the appropriate amount due from the owners of individual of the caravan.

Express Terms (Mobile Homes)

In the written agreement provided by the site owner to the occupier there will be express terms included by the site owner dealing with matters relating to the site but these cannot override any of the implied terms under the Mobile Homes Act 1983. Furthermore, the express terms must not contravene the Unfair Terms and Consumer Contracts Regulations so that in particular they cannot operate so as to reduce or restrict in any way a resident's statutory or common law rights nor impose any unfair burden on the resident that is not otherwise permitted by law.

Within six months of the giving of the written statement either party may apply to the Court for an order varying or deleting any express term of the agreement on such an application the Court must make such provision as it considers just and equitable in the circumstances.

Holiday Homes

The Mobile Homes Act 1983 does not apply to people who use their mobile home or caravan for holidays. It only applies to people who have agreements to station their home on land forming part of a protected site and to occupy the home as their only or main residence. A site which has planning permission or a site with a licence granted for holiday use only, or which is subject to the condition that it must be closed for part of the year is not a protected site so the people living on such sites, even if occupying a mobile home as a main residence, do not come under the Protection of Mobile Homes Act 1983.

How long can a resident keep a mobile home on site?

In most cases residents have the right to keep their mobile homes on site indefinitely unless either they or the site owner bring the agreement between them to an end. However, if the site owner's planning permission for the site or his interest in the land are subject to a time limit (e.g. if the site owner has a leasehold interest in the land) then the resident's right to be on the site is similarly limited. The site owner must tell residents if there is a time limit and insert details in the written agreement between them. If after the agreement is entered into the time limit of the site owner's planning permission or interest in the land is extended then the residents want to stay on the site will also be extended.

How does a resident bring an agreement to an end? (Mobile Homes)

An owner of a mobile home can bring their agreement with the site owner to an end at any time provided that they give the site owner at least four week's notice in writing.

How does a site owner bring an agreement to an end? (Mobile Homes)

A site owner can only bring the agreement with a resident to an end by making an application to a Court or to an Arbitrator on one of three grounds:

- That the resident is not living in the mobile home as his or her main residence.
- That because of its age and condition the mobile home is having a detrimental effect on the amenities of the site, or is likely to have such an effect within the next 5 years;
- If a resident has broken a term of the agreement. In this case the site owner must tell the resident that they have broken a term of the agreement and provide them with a reasonable period of time in which to remedy the breach before an application can be made to the Court or an Arbitrator on this ground.

Implied Terms (Mobile Homes)

Certain terms are automatically implied into any agreement to which the Mobile Homes Act 1983 applies, notwithstanding any express terms contained in the agreement. These implied terms include terms relating to the duration of the agreement, the termination by either the owner of the site or the occupier of the mobile home, recovery of overpayments by the occupier, sale or gift of the mobile home, and re-siting of the mobile home where the owner is entitled to require that the mobile home be re-sited on the protected site for any period. The implied terms must be set out in the written statement given by the owner to the occupier.

Inheritance (Mobile Homes)

If an occupier of a mobile home dies then any other person living in the home who also entered into the agreement with the site owner is entitled to continue living in the home with the benefit (and burden) of the agreement.

If however the agreement is only between the site owner and the deceased then any person who is living with the deceased as their spouse (or civil partner) at the time of death will automatically take over the agreement and be entitled to occupy the home as their residence. The agreement will then be binding as between the site owner and the surviving person.

If there is no surviving spouse or civil partner then any member of the deceased's family who was living with them in the home at the time of their death is entitled to the benefit of the agreement. (This will include a common law partner).

If there is no surviving spouse or civil partner and there was no member of the deceased's family living with them in the home at the time of their death then the agreement will devolve on the person entitled to the home under the Will of the deceased (or under the Intestacy Rules if the owner died intestate). However, in these circumstances whilst the person inheriting the home becomes the owner of the home that does not of itself entitle them to occupy the home and they will need to obtain the consent of the site owner to do so, which consent must not be unreasonably withheld. The person inheriting the home in these circumstances will not be entitled to dispose of the home by way of a gift to another person so if they do not wish to occupy the home themselves they can only sell it. In all other respects, the agreement is binding on the person inheriting the home.

Inheritance Tax

Business Property Relief can provide a reduction of 100% (50% in limited circumstances) in the net value of relevant property for Inheritance Tax purposes. In the case of caravan sites, mobile home parks and furnished lettings careful investigation is required to determine whether BPR is applicable. The two initial tests that need to be applied are:

1. Whether the activities carried on constitute a business as required by the Inheritance Tax legislation and;
2. If they do, is relief precluded because that business is one of "wholly or mainly holding investments". The expression "investment" is not limited to stock exchange investments and is interpreted in the widest popular sense and would therefore include land and buildings.

Regard needs to be had to the level of services provided by the tax payer. In the past BPR was often allowed on caravan sites and furnished holiday letters where the lettings were short term and the owner either himself or through an agent was substantially involved with the holiday makers in the terms of their activities on and from the premises. HMRC have reconsidered their approach and will be looking more closely at the level and type of services provided. Caravan sites present more problems in view of the variety of facilities provided which may range from land on which to park caravans with minimal utilities laid on up to a full scale holiday camp where the recreational and social facilities are of primary importance and the accommodation is only secondary. Each case will need to be looked at individually and advice sought based on detailed business accounts including breakdowns of income and expenditure between investment and non-investment elements of the business and taking into account precisely what services are provided to tenants or park/site residents and how much time was spent by the tax payer or his agents or employees in providing such services. Professional advice is essential.

Legal Definition of a Mobile Home or Caravan

The legal definition of a mobile home and a caravan are the same. It covers any structure designed or adapted for people to live in which is capable of being moved from one place to another (whether by being towed or transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. It does not include tents. It includes twin units separately constructed and designed for assembly on site provided that the twin unit is physically capable of being moved when assembled and is no more than 60 feet long by 20 feet wide and a living accommodation of no more than 10 feet high.

Model Standards for Mobile Homes Sites

When issuing any new site licence or reviewing a current ones a Local Authority must have regard to the Model Standards 2008 for caravan sites which are standards laid down under Section 5(6) of the Caravan Sites and Controlled Development Act 1960 in respect of the layout and provision of facilities, services and equipment for caravan sites. The standards apply only to those sites which contain caravans that are used as permanent residential units; they do not apply to sites used exclusively for holidays or touring caravan sites, for which separate model standards have been issued.

Pitch Fees and Pitch Fee Reviews (Mobile Homes)

The written agreement between the site owner and the resident will normally include express terms relating to the pitch fee that the resident has to pay the site owner, when it is to be paid (e.g. monthly) and how it is to be reviewed each year. The pitch fee can only be increased as permitted under the agreement.

The pitch fee that a resident pays to a site owner can only be reviewed once each year. Site owners are not permitted to make

any other changes to the pitch fee during the year for which the fee has been set. Normally the pitch fee review date will be set out in the agreement and this will be the date from which any new pitch fee will be payable. If however no date for the pitch fee review is stated in the agreement then the review date will be each anniversary of the date that the agreement commenced. To start the pitch fee review process the site owner must serve on the residents notice in writing at least 28 days before the review date setting out the site owner's proposals for the proposed new pitch fee. If the notice is served late then any increase in pitch fee will only become payable 28 days after the date on which the notice was served.

The pitch fee can only be changed by a percentage equivalent to any movement up or down in the retail price index since the last review date save in certain circumstances when other matters can be taken into account. These are where the site owner has spent money on improvements to the site since the last review date which are of benefit to the residents and which the residents have been consulted on by the site owner and in respect of which the majority of residents have not disagreed in writing, or if there has been any decrease in amenity of the site since the last review date or there has been a change in the law since the last review date that has a direct bearing on the actual costs of the management and maintenance of the site.

The residents can agree the new pitch fee but if they are unhappy about it they should notify the site owner in writing that they disagree and why. A site owner cannot force a new pitch fee on residents and either party can have the new pitch fee determined by the County Court. If the Court determines the increase then that increase will be backdated to the latter of the review date or if the site owner's notice was served late then the twenty eighth day after service of the site owner's notice of the proposed new pitch fee. The resident will have to pay to the site owner any arrears then due as a consequence of the review within 28 days of the Court order.

Planning

The use of land for a caravan site can involve different forms of operation and intensity of use ranging from touring caravans restricted to a particular period of the year to static caravans which remain on site all year but are subject to planning restrictions on the period when they may be occupied, through to static caravans which are in permanent residential use (mobile homes).

The use of land for the stationing of caravans for residential use, whether it is permanent use or restricted to certain times of the year, is not only controlled under the Town and Country Planning Act (TCPA) 1990 but will also normally require a site licence under part I of the Caravan Sites and Control of Development Act 1960 (see Site Licences below). The site licence is a means of ensuring that environmental health standards are maintained on the site. A caravan site will require both a site licence and a planning consent under the TCPA before it can operate although there are certain exemptions from obtaining a site licence contained in the Caravan Sites and Controlled Development Act 1960. Tricky issues can arise both in relation to conditions which the Local Authority may wish to impose both on the planning consent and the site licence.

Park Rules

Site owners will normally have park rules in place which may for example cover permission to have pets (or not), car parking arrangements for the site and other matters regulating the day to day operation of the site. The rules should be designed for the benefit of all who live on the site. Park rules will form an integral part of the agreement between the site owner and the home owner and in most cases the mechanism for making changes to the park rules will be included in the express terms of the agreement.

Qualifying Residents Associations (Mobile Homes)

Park home owners who use their home as their permanent residence have since 2006 been entitled to form a qualified residents association to represent the owners of park homes on a particular site. It is open to all residents who own a park home on the site to form a qualifying residents association but at least 50% of the owners (the percentage being calculated on the basis that each owner is one resident) must be in favour of doing so. It also must be independent from the site owner, who together with any agent or employee of theirs is excluded from membership. The association must have a chairman, secretary and treasurer elected by and from among the members and there is a requirement to keep an up to date list of members which must be open to public inspection together with the rules and constitution of the association. The site owner must acknowledge in writing to the secretary that the association is a qualifying residents association or, where it has not been recognised by the site owner, the county court can make a ruling that the association is a qualifying residents association.

The site owner must consult a qualifying residents association about all matters which relate to the operation or management of, improvements to, the site and which will affect the park home owners either directly or indirectly.

The site owner must give the qualifying residents' association at least 28 days clear notice in writing of the matters to be consulted on, describing the proposed changes and how they may affect home owners either directly or indirectly in the long or short term, explaining when and where the qualifying residents associations can make representations and the site owner must then take into account any representations made by the qualifying residents association before going ahead with the proposed changes.

Renting a Mobile Home

The Mobile Homes Act 1983 does not apply to residents who rent their mobile homes but they might have other protection e.g. if the resident has a letting agreement with the site owner that commenced on or after 15th January 1989 they might be assured tenants or assured shorthold tenants under The Housing Act 1988.

Site Licences

Land owners must not allow their land to be used as a caravan site unless they hold a valid site licence in respect of the land made on application to the local authority in whose area the land is situated.

Mobile Home parks and caravan sites are required to be licensed under the Caravan Sites & Control of Development Act 1960. An application for a site licence is made to the Local Authority for the area within which the site is situated.

Local Authorities have powers to impose conditions in site licences and to enforce them if they are breached. The type of conditions that most Local Authorities may impose relate to the number of caravans allowed on the site, space in between the caravans and provision of amenities on the site. In attaching conditions to the licence Local Authorities will seek to ensure that general standards of environmental health are maintained.

Utilities

Residents must pay for gas and electricity used by them but these will be provided to the home through the site owner and their supply by the site owner will be regulated by OFGEM. There is a maximum price at which mains gas and electricity may be sold by a site owner which is the same price which they pay for it, including the standing charges. Site owners' reselling water or sewerage services to residents must charge for these services no more than the amount they are charged by the water company plus in addition a reasonable administration charge. Some residents may be supplied with LPG by the site owner but the prices charged by LPG are not regulated.

How can Powells with Chawner Grey help?

We can advise both site owners and occupiers on all legal issues arising from their purchase and ownership. For any advice relating to mobile home matters please contact:

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