

**A GUIDE TO LEASE ASSIGNMENT
IN LAND LEASE COMMUNITIES**
HOA Website <https://scahomeowners.com>

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This document is intended to provide an overall understanding of lease assignment for those unfamiliar with the subject and detailed information for those for whom it is of immediate interest; i.e. residents who are considering, or are in the process of, selling their home. In what follows relevant items of law are printed in blue. All other material is either explanatory or comment based on actual experience. The information provided is believed to be correct as of the above date but both the Law and Landlord practices may change from time to time.

What is Assignment? Quite simply the lease in effect for the current home owner is transferred to a purchaser without a new lease being drawn up.

Is Assignment permitted in Land Lease Communities? Yes under the rules laid down in the Residential Tenancies Act [RTA].

What are the consequences of Assignment? Section 95 (8) of the RTA states as follows:

(8) If a tenant has assigned a rental unit to another person, the tenancy agreement continues to apply on the same terms and conditions and,

(a) the assignee is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord any of the landlord's obligations under the tenancy agreement or this Act, if the breach or obligation relates to the period after the assignment, whether or not the breach or obligation also related to a period before the assignment;

(b) the former tenant is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord any of the landlord's obligations under the tenancy agreement or this Act, if the breach or obligation relates to the period before the assignment;

(c) if the former tenant has started a proceeding under this Act before the assignment and the benefits or obligations of the new tenant may be affected, the new tenant may join in or continue the proceeding

Does the lease type change this permission? No - Section 95 (9) of the RTA states as follows:

(9) This section applies with respect to all tenants, regardless of whether their tenancies are periodic, fixed, contractual or statutory, but does not apply with respect to a tenant of superintendent's premises.

Why should you think about Assignment? If there is no Assignment the Landlord creates a new lease and is free, within the rules of the RTA, to increase rent and any other charges, to add new charges and to discontinue services and facilities. This may well mean loss of the sale concerned, negotiation of a lower price or delay in closing. Please note that the RTA allows the Landlord a rent increase currently set at \$50 per month on Assignment. Please also be aware that in certain situations the discontinuation of services or facilities may arise during the Assignment process and this is discussed in a separate document.

What are the RTA Rules? There are two parts: general rules that apply to all leases and those that modify or add to the general rules when applied to Land Lease communities.

The General Rules: These are in Section 95 of the RTA as follows:

(1) Subject to subsections (2), (3) and (6), and with the consent of the landlord, a tenant may assign a rental unit to another person.

Landlord's options, general request

(2) If a tenant asks a landlord to consent to an assignment of a rental unit, the landlord may,

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- (a) consent to the assignment of the rental unit; or
- (b) refuse consent to the assignment of the rental unit.

Landlord's options, specific request

(3) If a tenant asks a landlord to consent to the assignment of the rental unit to a potential assignee, the landlord may,

- (a) consent to the assignment of the rental unit to the potential assignee;
- (b) refuse consent to the assignment of the rental unit to the potential assignee; or
- (c) refuse consent to the assignment of the rental unit.

(5) A landlord shall not arbitrarily or unreasonably refuse consent to an assignment of a rental unit to a potential assignee under clause (3).

(6) Subject to subsection (5), a landlord who has given consent to an assignment of a rental unit under clause (2) (a) may subsequently refuse consent to an assignment of the rental unit to a potential assignee under clause (3) (b). 2006, c. 17, s. 95 (6).

Rules for Land Lease communities: PART X of the RTA refers specifically to Mobile Home Parks and Land Lease Communities. Because of the language used in this part it is important to be aware of Section 152 (2) below which specifically includes such communities even where not so stated.

(2) This Part applies with necessary modifications with respect to tenancies in land lease communities, as if the tenancies were in mobile home parks.

Assignment Differences for Land Lease communities: Section 159 of the RTA states as follows – note that Board means Landlord and Tenant Board:

(1) If a tenant has sold or entered into an agreement to sell the tenant's mobile home and the tenant asks the landlord to consent to the assignment of the site for the mobile home to the purchaser of the mobile home,

- (a) clause 95 (3) (c) does not apply; and
- (b) the landlord may not refuse consent to the assignment unless, on application under subsection (2), the Board determines that the landlord's grounds for refusing consent are reasonable.

(2) The landlord may apply to the Board, within 15 days after the tenant asks the landlord to consent to the assignment, for a determination of whether the landlord's grounds for refusing consent are reasonable

(3) The landlord shall set out in the application the landlord's grounds for refusing consent.

(4) If the landlord does not apply to the Board in accordance with subsections (2) and (3), or the Board determines that the landlord's grounds for refusing consent are not reasonable, the landlord shall be deemed to have consented to the assignment.

SUMMARY: In a Land Lease community, provided the application for Assignment is made for a specific purchaser of the home, a Landlord cannot refuse assignment unless the Landlord and Tenant Board approves; It is important that the application be in writing – keep a copy - and that it be made as soon as possible once an offer to purchase is in place. Often this will be submitted by your realtor. If the Landlord states that Assignment is refused one should ask to see the Board's notice so ruling. This may be delicate if privacy issues such as credit status are involved but it should be possible for the Landlord to show that the Board did permit refusal by covering the details. A word of caution – at the time of writing it is not known what the time frame is for the Board to make their decision. This could therefore affect the sale.