

Govt Factsheet Sept 09 Qualifying Residents Associations QRA

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LEGAL VIEW.

A series of articles compiled by specialist Legal Expert GRAHAM WATTS LL.B (Hons) LL.M, PARK HOME LEGAL SERVICES, reproduced by PHRAA for the benefit of Park Home owners by kind permission of Graham Watts.

No. 3.…. New Government FACT SHEETS issued 2009.

No. 3.…. (4) Government Fact Sheet “QUALIFYING RESIDENTS ASSOCIATION (QRA). Grahams Verdict on the possible problem areas concerning the information contained within.

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INTRODUCTION.

“ There has been a time lag of roughly two and a half years between Schedule 1 to the Mobile Homes Act 1983 coming into force with its introduction of a QRA and the publication of this Fact sheet. One would have thought that the Government would have taken the opportunity to introduce additional notes on the practical application of establishing a QRA particularly in view of the number of cases that have passed through the courts. The increasing body of case law albeit at County Court level seems to have been ignored so I hope the reader will indulge me if I put some flesh on the very bare bones provided in this fact sheet.

Page 5... I turn first to the final paragraph on page 5 of the fact sheet under the sub-heading, ‘How does the Qualifying Residents Association seek the site owner’s acknowledgement/’?

I have always felt uncomfortable with those newly formed and aspiring residents associations intent on gaining acknowledgement by the owner as a QRA when they become adamant they will not provide the owner a list of members. It has always been my opinion that a list of members should be submitted to the owner along with the request for acknowledgement. I’ve heard all the arguments about individual members being harassed by owners in an attempt to reduce the numbers to beneath 50% of members.

A County Court recently took a quite detailed look at the issue of a QRA. So far as offering the owner a list of members is concerned, the Judge held that there had been. “…an unfortunate reticence on the part of (the secretary) to make a list of members more available…“. The Judge continued, “I would be more inclined to find that the onus lies with the QRA to prove its valid existence….. because all the provisions of paragraph 28 …. are more likely to be within the knowledge of the QRA than the owner“s“. He thought that a , “…greater degree of openness about the list of members would make good common sense…“.

In view of the foregoing, I will disagree totally with the author(s) of this fact sheet in terms of timing when they recommend that with an application to the Court, “for a ruling“ that, “The association should be prepared to provide sufficient evidence to show that it meets the necessary criteria“. Why waste a courts time by divulging the information at that point rather than when the request was made to the owner?

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I note the Government“s naivety when, on page 7, they refer to a site owner being under no legal obligation to continue to discuss, “site operations and management “ with the association if it has “dropped out“ of recognition as a result of dwindling numbers or for some other reason. I do not personally know of one acknowledged QRA that is consulted in relation to the operation and management of the park never mind one that is not. I extend this observation to the similar reference on page 9 also.

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Again on page 9, a wonderful opportunity is missed. Many QRA“s believe that they have a right to be consulted over pitch fee increases. Contractually, there is no obligation whatever on the owner to negotiate pith fee increases such as the Retail Prices Index increase with a QRA. Indeed under the legislation no responsibility to consult exists. In the County Court Case to which I refer to above, the Judge held that, “The actual raising of the pitch fee has nothing to do with the operation and management or improvements of the site although it may enable such matters to come into existence“. He went on,“…..so I firmly reject the argument of the defendants that there was any need to consult with the QRA about the potential increase in the pitch fees“. In my view, this point could have been emphasised.

Before you formulate your opinion you should read through all four (fact sheets) in their entirety. In my opinion, there can be no factual comparison between the old booklet, “Mobile Homes - A guide for residents and site owners“. and the new fact sheets which I have critically examined over these past articles. I appreciate that the law has changed significantly since the Department of Transport and the Regions updated the former back in 2000. However, the old

booklet was accurate for its time in a simplistic way. The fact sheets, on the other hand, are replete with inaccuracies to the extent that I would not personally recommend any one of them as providing essential guidance for a person contemplating either purchasing a mobile home or simply trying to establish what the law provides in relation to a particular issue.

Copies of all four fact sheets available from [www, communities.gov.uk/housing/](http://www.communities.gov.uk/housing/)

Or call 030 0123 1124 or write to: Communities and Local Government, Leasehold and Park Homes, Zone 1/C3 Eland House, Bressenden Place, London. SW1E 5DU.