



Retirement Villages

Information for residents and prospective residents

The information contained within this booklet provides a guide to understanding and interpreting the *Retirement Villages Act 2016* and *Retirement Villages Regulations 2017*



Government
of South Australia

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Disclaimer: The information in this booklet relates to the *Retirement Villages Act 2016* and the *Retirement Villages Regulations 2017*, which commenced on 1 January 2018.

In developing this booklet, every effort has been made to ensure that the information reflects the intent of the legislation and/or represents examples of best known practice. The information contained in these resources does not constitute legal advice. Office for Ageing Well recommends that you seek your own legal advice should you require interpretation of the legislation.

Introduction

Retirement village living usually involves significant financial commitment and lifestyle changes.

The following information covers details of the law and your rights as a resident in a retirement village, and the things to consider when moving to, living in, or leaving a retirement village.

A checklist has been provided at the back of this booklet to assist you in making a choice about moving into a retirement village. The checklist is not definitive, but is intended to assist you in making an informed decision about this housing and lifestyle option.

You may also visit a number of villages so it is worthwhile taking notes. If you are uncertain about any aspects of a particular retirement village or the documents and information you receive, it will be to your advantage to seek further advice.

The more information you have and understand **BEFORE** you make a move, the smoother your transition is likely to be and the less likely you will be to experience problems in the future.



Before moving into a retirement village

If you are considering retirement village living, you need to think about what type of village you want to live in and seriously consider what you can afford on a continuing basis.

In South Australia, retirement villages are most commonly owned and/or operated by private developers or non-government/charitable organisations.

Once you have decided on a village that you want to live in, you will be provided with a disclosure statement, residence contract and a number of other documents required under legislation. The residence contract sets out your rights and obligations and ultimately governs the relationship between you and the operator of the retirement village. The disclosure statement provides a summary of important information contained in your residence contract including fees and charges for which you will be responsible.

You should be aware that you do not own the residence in which you live, but rather have a lease or licence which gives you the right to occupy that residence. In some instances, you may have a proprietary interest in the residence (e.g. a community title). You may not be able to transfer your interest in the residence and you may not be able to borrow money against the property.

You will also not usually be able to allow others to stay in your residence while you are away travelling or otherwise absent from the village.

If you need to sell your current home before moving into a retirement village, it is wise to ensure any contract you enter into is subject to conditions that meet your sale needs. If you do not receive the amount that you need or are expecting from the sale of your home, then your financial position can be seriously compromised.

Shared equity deals may be offered by some villages. This generally occurs when the organisation allows a resident to pay less to enter the village but will recoup this amount when the resident leaves. It is important that prospective residents are aware of the consequences of such equity deals and the possible financial impact when they leave the village.

Making a move under uncertain financial conditions can create additional pressure and stress and diminish the positives about moving into a new environment. You also need to consider what else you may need or want to purchase in the near or long-term future (e.g. new car, holiday, new furnishings, air conditioning/heating, appliances etc).

It is very important that you fully understand what you are agreeing to and what the legal and financial implications are for entering, living in and leaving a village, and the implications for any spouse or partner you may have.

As part of the moving in process, you will be presented with several documents. These can be lengthy and quite daunting. Nonetheless, it is critical that you read and understand these documents. The residence contract will be a legally binding document for both you and the operator.

Many people consider moving into a retirement village as their last residential move and do not concern themselves about leaving the village. However, you may want or need to leave for a number of reasons.

Consider, for example, what you might want to do if family members move interstate and you want to be closer to them or you need a higher level of care. You will also need to consider what will happen to your spouse or partner should you cease to reside in the village.

It is important to remember that, like any financial transaction, the buyer beware principle applies. The value of doing your homework and seeking legal and financial advice before you enter into a contract cannot be over-emphasised.

Your rights and responsibilities

The *Retirement Villages Act 2016* (the Act) and *Retirement Villages Regulations 2017* (the Regulations) describe the rights and statutory obligations of retirement village operators and residents. The Act and Regulations can be purchased from:

Service SA Government Legislation Outlet

EDS Centre

108 North Terrace, Adelaide, SA 5000

Telephone: **13 23 24**

There is an online shop at www.service.sa.gov.au or South Australian Acts and Regulations can also be accessed free of charge at www.legislation.sa.gov.au



Documents required to be provided to residents

Before signing the residence contract, you must be provided with a copy of the following documents, some of which will indicate items not applicable and have comments added where required:

- > residence contract
- > disclosure statement
- > residence rules
- > dispute resolution procedures
- > remarketing policy
- > Operator and Residents Code of Conduct
- > financial statements presented at the last annual meeting of residents, including a written statement of any subsequent change in the affairs of the village and the operator that may significantly affect your decision to enter the village
- > a copy of the surplus and deficit policy of the retirement village
- > a copy of the minutes of the last two annual meetings of residents of the village.

If you are uncertain on any point in any document, highlight it and seek further written clarification from the operator prior to signing the residence contract. Once signed, your residence contract cannot be altered without the consent of both parties.

The disclosure statement

A disclosure statement must be provided to you at the same time as the residence contract and other required documents. The format for the disclosure statement is prescribed in the Regulations and aims to ensure that potential residents better understand their contracts by highlighting the financial arrangements applicable to the retirement village.

The disclosure statement is required to contain the following information:

- > all fees and charges that you will be responsible for:
 - prior to entering a village
 - while residing in a village
 - upon leaving a village
- > definitions of fees, charges and funds
- > what the operator does with the fees and charges
- > any interest an operator has in services used within the village (i.e. electricity or internet services)
- > information about the insurance arrangements in place for the village
- > the manner in which an exit entitlement will be calculated
- > information about arrangements if a resident leaves a village to enter aged care
- > a statement advising that a resident may be required to pay a special levy to the operator to recover an unforeseen expense of the retirement village.

The residence contract

All information and contracts relating to a retirement village must:

- > as far as possible, be written in clear, plain English, avoiding vague statements
- > fully disclose the arrangements which will apply in relation to your occupation
- > be inclusive of and consistent with verbal assurances or representations
- > comply with the provisions of the Act and Regulations.

If the residence contract contravenes the Act and/or Regulations, the Act will take precedence over the contract.

Under Section 20 of the Act and Regulation 5 your residence contract should include information about:

- > your right to cool-off
- > any exemptions the village might have under the Act
- > the parties to the contract and any associated conditions
- > the certificates of title on which the village is situated
- > the form of tenure which applies to you (e.g. whether it is a strata title, a lease, a licence or other type of tenure)
- > your residence (e.g. its location, type, layout plan and size)
- > detailed information about repair and replacement of fixtures, fittings and furnishings in the residence including responsibility for costs
- > details of facilities available in the retirement village including communal facilities and/or separate or additional facilities allocated to you

- > details of services available to residents in the village including services provided to all residents and optional personal services (e.g. cleaning, laundry, meals etc)
- > your ingoing contribution i.e. the amount, how and when it is to be paid
- > any recurrent charges including the amount and reason for each recurrent charge and how it may be varied
- > when the village's financial year begins and ends
- > funds established by the operator to which you contribute, and the purpose of those funds
- > the terms and conditions under which the exit entitlement will be paid and the manner in which it will be calculated (if applicable)
- > any fees which may be payable in relation to remarketing of the residence
- > a copy of the village's surplus and deficit policy
- > information about your settling-in period
- > procedures for the resolution of a dispute within the village
- > if the village has a trustee, information about the trustee
- > the action required to terminate a contract
- > any current or planned development of the village - proposed expansions and extra facilities to be offered
- > other information agreed to between the parties.

Please note: There is no guarantee that proposed developments to retirement villages will be completed as planned, nor may there be any legal redress should this be the case

When speaking with an operator or their sales representative, take note of verbal promises about additional services, or exemptions which are not contained in the advertising material that you have seen about the village. When checking your contract, make sure that these verbal promises have been included or ask for them to be made in writing.

Code of Conduct

The Regulations contain an Operator and Residents Code of Conduct, which sets out some important information about the operation of retirement villages. The Code of Conduct applies to all dealings between operators and residents. The Code of Conduct aims to assist residents and operators to maintain a respectful and productive relationship.

Other matters in the Code of Conduct are requirements about a village's surplus and deficit policy, consultation with a residents' committee and consultation with residents.

It is a term of a residence contract that the operator and residents will abide by the Code of Conduct. An operator can be fined up to \$2,500 or be required to pay an expiation fee of \$210 for breaching the Code.

Residence rules

You must be provided with a copy of a village's residence rules before you enter into a residence contract. An operator must also give you a copy of the residence rules on request.

The residence rules must relate to the use of the retirement village to ensure the enjoyment of the retirement village by all residents. Residence rules are required to at least address the following:

- > visitors to the retirement village including short-term or long-term visitors
- > noise
- > parking
- > collection and disposal of rubbish
- > pets
- > gardens and landscaping
- > the use and operation of services and facilities in the village (including restrictions on the use and operation of services).

Prior to signing your residence contract

You have ten business days after receiving the required documents before you are able to sign the residence contract.

It is strongly recommended that during this time you seek the advice of:

- > a lawyer, to ensure that your understanding of the financial and legal implications of the contract is correct
and/or
- > a financial adviser, to ensure that you are able to afford to remain at the village on a long-term basis.

It is also a good idea to discuss your move with family, friends and/or the donee(s) of your enduring power of attorney. Let them read the contract, as they may think of something you have overlooked. Often, it is one of these people who will be assisting you at a later stage and if they are already familiar with your contractual obligations, it will make their job much easier.

If you have any concerns about the interpretation of a specific clause in the contract, get a written explanation from the operator that clearly reflects your understanding of that clause and attach this to your contract.

Ensure that you fully understand what fees you will be responsible for when leaving a village. This can include a percentage for the capital replacement fund in addition to deferred management and other fees. These may be capped at a maximum percentage or uncapped. You need to consider what the implications are if the fees are capped or uncapped.

Cooling-off

Once you have signed the residence contract there is a ten business-day cooling-off period.

During this period you can rescind the contract and receive a refund of any money paid by you under the contract. Some administrative charges may be incurred.

The Act enables you to waive the cooling-off period if you wish to take up occupation of your residence prior to the completion of the ten business days. To waive the cooling-off period you

must sign a written waiver acknowledging that the operator has informed you about the entitlement to cool-off and that you have chosen to waive this entitlement.

Settling-in

You are entitled to a settling-in period, which is 90 calendar days after the date of the contract (or longer if specified in your contract) or the date on which you enter into occupation of your residence, whichever is later.

During this period, you may decide that you wish to leave the village. If so, you may be required to pay costs and fair market rent for the period of occupancy, as detailed in your contractual documents. If you leave a village during the settling-in period the exit entitlement will usually not be repaid until the residence is relicensed. You cannot be required to pay any monetary penalty for termination during this period.

Premises condition report

Once you have taken up occupation of your residence, a premises condition report should be completed within ten business days. The premises condition report is a written report which records the condition of the fixtures, fittings and furnishings provided in the residence at the time you take up occupation.

The report must be signed by you and the operator. You should ensure that you are satisfied with the information contained within the report before you sign it.

Living in a retirement village

Living in a retirement village incurs several costs, such as those associated with the maintenance of property and the grounds and personal/additional services provided to residents. Funding for these items is generated in a variety of ways.

Each retirement village has its own set of fees and charges. The most commonly established or referred to fees and funds in villages are recurrent charges, capital replacement and long-term maintenance (sinking fund).

All village funds and their purpose are required to be outlined in your residence contract. All fees and charges which you are responsible for should also be included in your disclosure statement.

Recurrent charges

Recurrent charges are a fee, charge or other amount which you are required to pay to the operator of a retirement village on a recurrent basis. Recurrent charges are usually payable at regular intervals e.g. fortnightly or monthly. This fee may also include a contribution towards other village funds which are used to meet capital replacement and/or long-term maintenance costs. Recurrent charges for which you are responsible must be described in your residence contract and disclosure statement.

Recurrent charges might cover expenses such as:

- > **administration** (e.g. stationery, office equipment, phone use)
- > **wages, salaries and related costs** (e.g. village manager, office person, maintenance person/gardener)
- > **property management** (e.g. council rates, insurance)
- > **food and catering.**

Recurrent charges may also include costs such as electricity, water and council rates. However, this can vary between villages and it is important to know whether you will be responsible for these charges in addition to your recurrent charges.

Absence from the village

If you are absent from a retirement village for a continuous period of at least 28 days, payment for any personal/additional services will cease after the 28 days have elapsed.

You should clarify with the operator what proportion of your recurrent charges are for personal/additional services (e.g. where meals are provided, you will not be charged for food but you will be expected to pay a salary component for the provision of meals).

Capital fund

Under the Act a capital fund means a contingency, sinking or other reserve fund or account established for the purposes of capital replacement or improvements, long-term maintenance or other similar items in respect of a retirement village. Some of the most common types of capital funds which you may be required to contribute to are described on the following page.



Capital replacement fund

A capital replacement fund is most commonly used to replace capital items or to fund a planned maintenance program. Replacement of carpets or major appliances such as stoves, hot water services and air conditioners may be paid for out of this fund.

Long-term maintenance fund (sinking fund)

A long-term maintenance fund is usually set up to meet non-budgeted, unplanned expenses or to cover the cost of long-term maintenance. This may include the cost of repairs to road surfaces, downpipes and gutters, painting, security and salt damp repairs. It could also be used for the repair of recreational facilities such as spas and swimming pools.

Personal/additional service charges

These charges relate to services specifically provided to you on a personal needs basis, such as cleaning of your residence, care services, separate meals or meals which meet special dietary requirements.

Increases in recurrent charges

All fees and charges are subject to increases. However, recurrent charges cannot be increased beyond a level deemed to be reasonable. Copies of the financial statements presented at the last annual meeting of residents are required to be provided with the residence contract and can give you an indication of previous increases in recurrent charges.

When increases in recurrent charges can occur

An operator is required to hold a meeting of all residents annually. At the annual meeting, audited financial statements relevant to all village funds for the previous year are presented to the residents, who then have an opportunity to question the statements. Recurrent charges cannot be increased beyond a level shown to be reasonable in view of those accounts. The annual meeting must be held within four months of the end of the village's financial year. An operator may require the payment of the increase in the recurrent fee to be backdated to the beginning of the financial year.

Finance committees

The operator is required to undertake reasonable consultation with a residents' committee on a number of issues, including holding two meetings on the preparation of an annual budget for the village. To undertake this role, some residents' committees establish a finance sub-committee made up of residents who are knowledgeable and/or interested in accounting practices and willing to be involved. This may vary from village to village, depending on its size and the needs of residents and operators.

Special levies

On rare occasions, a special levy may be charged by a retirement village. A special levy is a fee, charge or other amount which a resident is required to pay an operator to enable the operator to recover an unforeseen expense of the retirement village. For example, a special levy may be charged for budget shortfalls due to an unexpected event in a particular financial year e.g. to cover costs associated with road resurfacing due to tree root damage.

Special levies may only be imposed if authorised by a special resolution passed at a meeting of residents. This can only occur under the following circumstances:

- > at least 15 business days written notice of the meeting, containing a statement of the proposed resolution, must have been given to all residents
- > the resolution must have been passed by a majority of not less than three-quarters of the number of residents who were entitled to vote at the meeting (i.e. one vote per residence either in person or by absentee vote).

Meetings

The best way for both residents and operators to keep the lines of communication open in a retirement village is through village meetings.

Operators or residents' committees may convene a meeting of all residents by notifying all residents, at least ten business days prior to a meeting, of the time, place and business of the meeting. Within ten business days of a meeting, the convenor of the meeting must make accurate minutes of the meeting available for inspection by residents in a manner which is easily accessible by residents.

All retirement village residents have the right to participate in resident meetings. However, if there are two or more residents who live in the same residence, only one of them may vote on any matter to be decided at the meeting. A resident may also exercise an absentee vote on a question arising for decision at a meeting by giving the operator written notice of the proposed vote at least 24 hours before the time of the meeting.

Annual meetings

Operators are required to convene a meeting of residents annually. Along with the notice for this meeting, the operator must provide residents with:

- > an audited statement for the previous financial year of income received from residents and other sources and expenditure of that income for the previous financial year (for all funds)
- > a statement of estimated income from residents and other sources and proposed expenditure of the income for the current financial year (for all funds)
- > if the expenditure for the current financial year includes any expenditure towards management fees or administrative costs the statements must include a description of each item to which the expenditure relates. If the expenditure is apportioned between more than one retirement village or other businesses, how this is calculated.

Operators must invite residents to submit their questions in writing at least five business days before the date of the meeting, although residents can choose to raise their questions at the meeting.

The representative of the operator attending the meeting must give residents a reasonable opportunity to raise questions and must respond to any reasonable question to provide information and/or clarification of financial statements or proposals presented.

If the operator is unable to answer a question at the meeting, a written answer must be provided within ten business days of the meeting.

Accurate minutes of the annual meeting must be provided to each resident within ten business days of the meeting.

Consultation with all residents

There are a number of matters within the Act and Regulations which require an operator to consult with all residents of a retirement village.

Before any redevelopment of a retirement village commences an operator is required to convene a meeting of residents and present information about the proposed redevelopment. The operator must also answer any reasonable questions put by a resident. An operator cannot commence redevelopment without giving due consideration to a resident's rights arising from a contract.

There are a number of matters within the Act and Regulations which require an operator to consult with all residents of a retirement village, these include:

- > a new operator of a retirement village must consult with all residents before the change in operator occurs
- > changes to the village's dispute resolution policy
- > establishing a disputes committee in connection with the dispute resolution policy
- > changes to the residence rules
- > changes to a village's remarketing policy
- > any matter that could have a significant impact on residents' financial affairs, the amenity of the village or residents' way of life.

An operator will be taken to have taken steps to ensure reasonable consultation with residents if they:

- > notify residents about any matter that could have a significant impact on their financial affairs, the amenity of the retirement village or their way of life
- > provide residents with an opportunity to respond to such matters within a reasonable time
- > consider any response provided by residents.

Residents' committees

Section 38 of the Act refers to residents' committees. The function of a residents' committee is to consult with the operator of the retirement village in relation to matters of interest to residents and to represent the interests of residents.

The basic structure and functions of a residents' committee are:

- > only one residents' committee may be established in a retirement village
- > only a resident of the village may belong to a residents' committee
- > members are elected by the other residents and hold office for a term of one year but can stand for re-election
- > if the need arises, a member can be removed from office by a special resolution of residents
- > a residents' committee must provide the operator with information about the membership of the committee including contact information
- > a residents' committee can determine its own procedures and appoint sub-committees
- > a residents' committee must undertake reasonable consultation with residents before determining or amending its procedures
- > it is an offence for an operator to deliberately discourage or prevent residents from forming a residents' committee or to obstruct a committee in the performance of its functions
- > the operator does not need to be involved in the conduct of the residents' committee but can meet with the committee
- > the operator must ensure reasonable consultation with the residents' committee on significant village issues
- > both the operator and the residents' committee must, on a reasonable written request, meet with the other party.

A residents' committee is required to convene a meeting of all residents annually. A statement of accounts showing the committee's income and expenditure for the previous financial year must be provided along with the notice of the meeting. A residents' committee must make accurate minutes of this annual meeting available for inspection by residents within ten business days of the meeting.

A residents' committee is also required to make minutes of its residents' committee meetings available for residents to inspect and provide a copy to the village operator. Minutes of a residents' committee's meetings must be retained for at least seven years.

Dealing with disputes

From time to time complaints and problems may arise between operators and residents.

As in other situations, the best way to avoid a dispute is to deal with the problem at an early stage before it escalates into a major issue. You may choose to discuss the problem informally with another resident or your residents' committee before deciding to take the matter further.

The Regulations require that each village has in place a policy which is applied in the event of a dispute. If any alteration is made to the policy all residents must be provided with the revised version.

A village's dispute resolution policy must include or address at least the following:

- > who a resident may contact in the event of a dispute
- > how a resident can make a complaint
- > how an operator will handle a dispute once a resident makes a complaint, including the timeframe in which an operator will respond
- > how a resident may resolve a dispute with another resident
- > where a resident may seek advice in the event of a dispute
- > that a resident may apply to the South Australian Civil and Administrative Tribunal (the Tribunal) if a resident is not satisfied with a response to the complaint
- > a requirement that an operator keeps a written record relating to the dispute
- > how an operator will communicate with a resident in response to a complaint
- > that the resident has the right to be accompanied by a person chosen by the resident at any meeting held to resolve the dispute
- > procedures for varying the dispute resolution policy which provide that variation will only occur with the agreement of a majority of the residents in the retirement village.

The Act does not cover disputes between residents. If you have an issue with another resident, you should deal with it in accordance with the relevant provisions of your village's dispute resolution policy.

Office for Ageing Well mediation

Office for Ageing Well can provide a mediation service, where assistance from an independent third party may help in resolving a dispute. The mediator can provide advice to the parties concerning their rights and obligations under the Act/ Regulations, or assistance in preparing an application, should the matter proceed to the Tribunal.

The mediation process can assist the disputing parties to reach agreement by mutual consent. Resolution is preferable because it is not a forced compromise, therefore parties are more likely to be satisfied with the outcome and to fulfil their agreement obligations.

The Tribunal

If a dispute arises between you and the operator of the retirement village, either party is entitled to apply to the Tribunal for resolution of the matter. This legal avenue is more formal than the voluntary dispute resolution processes described above. You must have sufficient evidence to support your allegation and you must also have attempted to resolve the dispute in accordance with the operator's dispute resolution policy. An application must not be made to the Tribunal in relation to an act or omission which occurred more than four years before the day on which the application is made.

The Act, Schedule 1, describes "Proceedings before the Tribunal".

Role of the Tribunal

The Tribunal is a separate and independent body providing a prompt and low cost way of resolving disputes.

The Tribunal has the authority to make orders that are legally binding and enforceable. The Tribunal can hear disputes concerning (but not limited to):

- > breaches of the residence contract
- > breaches of the Act
- > harsh or unconscionable conduct by the operator
- > full or part payment of an exit entitlement.

The Tribunal cannot hear disputes between residents, or any dispute which is not related to the Act/Regulations or the residence contract.

The Tribunal may refuse to determine an application if it considers that it is appropriate to do so for any reason. The Tribunal is likely to suggest mediation before it will hear a matter.

Preparing for a hearing as an applicant

If you believe that you have adequate evidence to support your dispute, you will need to apply to the Tribunal in accordance with the Tribunal's requirements.

For information about applying to the Tribunal, and application forms, you can contact the Retirement Villages team during office hours on (08) 8204 2420 or check the website:

www.sa.gov.au/seniors/retirementvillages

Useful information about hearings and preparation is available on the Tribunal's website:

<http://www.sacat.sa.gov.au>

A non-refundable payment is required when you lodge your application. A copy of your residence contract (including the supporting documentation) and residence rules must be attached to your application.

Once you have lodged your application, the Tribunal will send you a notice advising of the preliminary hearing date.

Preparing for a hearing as respondent

If you receive a notice that an application has been made to the Tribunal by the operator, you will also receive a copy of that application. You will need to prepare a response to answer the allegation(s) made and you may call witnesses if necessary.

Legal representation

If you want a lawyer to represent you, you must seek leave from the Tribunal. Lawyer involvement is only allowed under certain circumstances. If one party to the dispute is granted approval for legal representation, the other is automatically granted the same opportunity.

Tribunal hearings

Hearings are usually held at:

The South Australian Civil and Administrative Tribunal
4th Floor, 100 Pirie Street, Adelaide

One of the Tribunal members will conduct the hearing in a reasonably informal atmosphere. Hearings are open to the public and are electronically recorded. You will be required to make an oath or affirmation at the commencement of the proceedings.

At the preliminary hearing the Tribunal member will:

- > decide whether there is a case to answer
- > determine whether 'leave' for legal representation is applicable
- > ascertain if further information is required from either party.

If the matter is to proceed, a full hearing date will be set. Witnesses will be required to attend the full hearing and the Tribunal will send out further notices advising all parties involved of the date and time. If a witness is reluctant to attend, the Tribunal may issue a summons if necessary.

The Tribunal is not bound by the rules of evidence, but still needs to assess the reliability of the evidence. The Tribunal will consider relevant written statements from witnesses. However, it is useful to be aware that evidence may be more persuasive if given in person on oath or affirmation and subjected to questioning by the other party and the Tribunal.

In most hearings, the Tribunal Member questions both parties to clarify the issue and what each party has to say about the matter. Any supporting evidence will be considered on merit.

Once all evidence has been presented, the Tribunal makes a determination and may issue an order which is binding and enforceable.

In most retirement village matters, this determination is reserved to a later date. This allows the Tribunal Member time to consider all the evidence in detail. A written copy of the order(s) is forwarded to the parties. The Tribunal must give a written statement of reasons for its order/decision if requested by a person affected by that order/decision.

If a party to the proceedings fails to attend the hearing and the Tribunal is confident that notice of the hearing has been sent to the correct address, then the matter may proceed in the absence of the person. If for some good reason (e.g. medical illness) a party is unable to attend at the appointed time, the Tribunal Registry should be notified immediately. It may be possible to arrange another hearing date.

Interpreter

If needed, the Tribunal Registry will arrange for an independent interpreter (i.e. a person not known to either party, to attend the hearing). It takes time to do this, so if you are aware that any party to the proceedings needs an interpreter, you should inform the Tribunal Registry at the time the application is lodged.

Withdrawal of application

If the hearing listed is no longer needed, the Tribunal Registry must be notified as soon as possible, so that all parties can be notified and the scheduled time can be reallocated to another case.

Group applications

Each application to the Tribunal deals with an individual residence agreement. If more than one resident has a dispute with the operator it may be possible for the Tribunal to hear these disputes together. Each dispute must be on exactly the same matter and each resident must make his or her own application to the Tribunal and pay the prescribed fee. Within the application residents should request that the matters are heard at the same time.

Leaving a retirement village

There may come a time when you decide to leave the village or you may have to leave for medical reasons. The following information relates to leaving the village and to the relicensing of your residence.

Your residence contract will contain provisions for leaving the village. These provisions must comply with the Act and the Regulations. If you want to leave the village, check the remarketing policy to establish exactly what you are required to do. It is likely that you (or your nominated agent) will need to advise the operator of your intent to leave in writing.

If you are entitled to payment of an exit entitlement when you leave the village, this will be paid to you on leaving the village in keeping with the provisions in your residence contract. How the exit entitlement is calculated is determined by the residence contract, but how and when you receive payment of your exit entitlement may be affected by legislation.

In ordinary circumstances, payment of your exit entitlement will depend on the relicensing of your residence. After the relicensing of your residence, the operator must repay your exit entitlement within 10 business days after settlement. Some villages offer payment of an exit entitlement within a stated period of time, so check your contract for details.

Terminating the contract

You can terminate your residence contract at any time by providing written notice to the operator.

The circumstances under which an operator can terminate your right of occupation include:

- > breaching the residence contract and/or rules
- > you act in a manner that adversely affects the health and safety of persons working in the retirement village or that seriously disturbs the peace or comfort of other residents of the retirement village
- > your residence becoming an unsuitable place of residence for you due to physical or mental incapacity
- > circumstances exist that make it no longer appropriate for you to continue to reside in the residence.

An operator's decision to terminate on any of the above grounds is subject to confirmation by the Tribunal.

When terminating a contract, any limitations or qualifications that may arise from the original contract must be considered.

If the operator decides to terminate your right of occupation, you must:

- > receive written notice of the grounds for termination
- > be informed that the decision is subject to review by the Tribunal
- > be informed of your rights with regard to such a review.

Both parties will have the opportunity to present their case to the Tribunal. Where the Tribunal confirms the operator's decision to terminate, it must set a timeframe within which you must vacate your residence.

Moving to a residential aged care facility

At some stage it may be necessary for you to move in order to access a level of care not available at your village.

If you need to leave your residence to move into a residential aged care facility, it is possible for you to apply for the operator to make payments to the aged care facility on your behalf. These payments will be deducted from your exit entitlement.

To be eligible for payments to be made, you must fulfil the following criteria:

- > be approved under the *Aged Care Act 1997* of the Commonwealth to enter into residential care at an aged care facility provided by an approved provider under that Act
- > choose to pay a refundable accommodation deposit under that Act
- > not have ready access to funds to make the payment, or your personal finances would be seriously affected by any such payment
- > will be entitled, on conditions specified in the residence contract being fulfilled or otherwise in accordance with section 27, to payment of an exit entitlement.

A written application to the operator would need to occur within 60 days after being approved for entry to the facility or leaving the village (whichever is later). Subsequently, the operator must, within 30 days of receiving an application, commence making payments to the aged care facility for the daily accommodation payment. An operator must continue to make payments until your exit entitlement is paid to you or payments have reached 85% of the operator's reasonable estimate of the exit entitlement.

The operator can request evidence of your income and assets as determined in accordance with the *Aged Care Act 1997* (Commonwealth). For example, this evidence may be a copy of your income and assets assessment undertaken by Centrelink.

Any amounts paid to the aged care facility on your behalf will be deducted by the operator from your exit entitlement.

Staying in the residence after providing notice to vacate

You may decide to leave the village but would like to stay in the residence until it has been relicensed. The Act allows you to provide an operator with a notice of your intention to vacate the village, but to remain in occupation of the residence while it is being remarketed. A village's remarketing policy will include guidelines which you will be required to comply with if you choose this option. These guidelines will include:

- > how inspections of the residence by prospective residents will be managed by the operator
- > requirements relating to the presentation of the residence for inspection
- > when a resident is required to provide vacant possession of the residence.

Vacated premises report

Within ten business days of a resident ceasing to reside in a retirement village, an operator must complete a vacated premises report. This report will record the condition of the residence at the time the resident ceased to reside and should be compared to the premises condition report from when you took up occupation. The report must be signed by the operator and by you or your representative if it is reasonably practicable.

This report, used in conjunction with the premises condition report will indicate whether there is any wear and tear or damage to the property and assist in determining responsibility for costs for any repair, replacements or refurbishment in the residence in accordance with the residence contract.

Remarketing

Under the Regulations, each village is required to have its own remarketing policy which clearly outlines the rights and obligations of both the operator and the outgoing resident.

Once you have decided to terminate your contract and provided notice, the operator can take preliminary steps to remarket your residence.

The operator must act in accordance with the village's remarketing policy. The policy will refer to processes such as:

- > the operator meeting with you or your agent to discuss and explain the remarketing process
- > determining if refurbishment is needed to ensure that your residence is in a reasonable condition for remarketing, if necessary how/when work will be undertaken, who is responsible for organising the work and for associated costs

- > the fixing of the price at which your residence will initially be remarketed and when/how changes to that price will be considered and made
- > the type, level and frequency of advertising that will be undertaken
- > who will be responsible for any costs associated with the valuation of your residence, any advertising and other relevant matters and how any such costs will be calculated or determined
- > what will be required of you in relation to the remarketing and the extent to which the resident may or will assume responsibility for remarketing if the residence has not been relicensed after nine months
- > guidelines you are required to follow if you have chosen to remain living in your residence while it is being remarketed
- > what steps you and the operator undertake when the residence is relicensed
- > settlement procedures including the fees and charges that will be deducted at the time of settlement, and the provision of the settlement statement
- > what fees, charges and costs will be deducted by the operator in relation to the relicensing of your residence at settlement
- > that an operator will at least match the level of marketing for any new residences which are also on the market at the same time.

The operator must also provide you with a written progress report (at least monthly). These monthly reports are required to include at the minimum:

- > what advertising has been undertaken in relation to the residence and the village
- > the number of inquiries received about the residence

- > the number of people who have viewed the residence
- > the number of other residences for sale in the retirement village
- > the number of residences in the village sold or relicensed in the previous month.

Any fees, charges and costs set out in a remarketing policy must not be inconsistent with the fees, charges and costs set out in your contract and disclosure statement.

Participation in remarketing after nine months

Where the payment of your exit entitlement is based on the relicensing of the residence you are entitled to participate in the remarketing of the residence. This right arises if the residence has not been relicensed nine months after you have left the village or provided the operator with notice of your intention to leave the village and remain in occupation of your residence while it is being relicensed.

After nine months, Regulation 9 entitles you to appoint your own agent to remarket the residence. The operator is able to continue to also remarket the residence. If you take up this option an operator cannot interfere with the agent's remarketing of the residence however you and the agent will be required to comply with any reasonable request made by the operator in relation to the remarketing of the residence by the agent.

If an exit entitlement has not been paid after 18 months

If a residence has not been relicensed 18 months after you have vacated a village, or provided an operator with a notice of your intention to vacate but remain living in your residence, you may be eligible to receive payment of your exit entitlement. The different ways in which payment of your exit entitlement may arise are:

- > if you cease to reside in a village and your residence is not relicensed after 18 months, then the operator will be required to pay you your exit entitlement in accordance with the residence agreement
- > if you have provided the operator with notice of your intention to vacate and have chosen to remain living in your residence while it is being remarketed, you will be required to provide the operator with vacant possession of the residence 15 months after providing notice, in order to receive payment of your exit entitlement at 18 months
- > if a residence contract requires payment of an exit entitlement earlier than 18 months, the provision of the contract will apply
- > if a residence is relicensed earlier than 18 months, then the exit entitlement should be paid to you within ten business days of settlement
- > you may elect not to receive payment of an exit entitlement at 18 months but to wait for the residence to be relicensed. If you choose this option, you are required to notify the operator of this 15 months after vacating your residence or providing the operator with your notice of intention to vacate but remain in occupation.

Payment of your exit entitlement

Once your residence has been relicensed, you will receive a settlement statement which provides details related to payment of your exit entitlement (if applicable). This statement should outline the exit fees you are required to pay and the final exit entitlement payable to you.

These exit fees may include:

- > any outstanding recurrent charges
- > costs associated with refurbishment
- > an amount indicating a percentage retained by the operator (their profit) usually called a deferred management fee
- > an amount retained for capital replacement (often calculated on your length of stay in the village eg x% for period of occupancy)
- > sales commission.



Organisations to contact for advice

If you require further information or want to discuss any aspect of retirement villages, contact the appropriate organisation listed below.

Independent information and advice

Office for Ageing Well

Office for Ageing Well is responsible for administering retirement village legislation and is able to provide general information and assistance on retirement village matters, clarify areas of concern and provide a mediation service to help resolve disputes between residents and operators.

Level 10, 11 Hindmarsh Square, Adelaide SA 5000

Telephone (08) 8204 2420

Email retirementvillages@sa.gov.au

Internet www.sa.gov.au/seniors/retirementvillages

Catalyst Foundation

Catalyst Foundation (formerly Seniors Information Service) is the leading provider of community information in South Australia. Catalyst Foundation can provide information and support on retirement villages, independent living units, serviced apartments, community housing, residential parks and residential aged care facilities.

149 Currie Street, Adelaide SA 5000
GPO Box 1645 Adelaide 5001

Telephone (08) 8168 8776

Freecall 1800 636 368 (SA country callers)

Email information@catalystfoundation.com.au

Internet www.catalystfoundation.com.au

Aged Care Alternatives

Aged Care Alternatives is a free information service that assists the older person, their carers and families to find and understand information about aged care services. Aged Care Alternatives can provide information through personal consultations or by telephone or email about My Aged Care - the Commonwealth Government entry point to aged care services. Aged Care Alternatives can support people through the registration process and initial screening interview.

1/445 Fullarton Road, Highgate SA 5063

Telephone (08) 8408 4600

Email info@agedcarealternatives.net.au

Internet www.agedcarealternatives.net.au

Consumer organisations

South Australian Retirement Villages Residents' Association (SARVRA)

SARVRA's members are residents of retirement villages. The Association's goals are to provide information and advice to, and advance the interests of, retirement village residents.

Contact via Council on the Ageing (COTA)
Level 1, 85 Hutt Street, Adelaide SA 5001

Telephone (08) 8232 0422 (COTA Switchboard)
Freecall 1800 182 324 (from outside Adelaide metropolitan area)

Web www.sarvra.asn.au
Email secretary@sarvra.asn.au

Aged Rights Advocacy Service (ARAS) – retirement village resident advocacy program

The Aged Rights Advocacy Service (ARAS) has a Retirement Village Advocacy Program providing advocacy support and assistance for residents of retirement villages in South Australia.

175 Fullarton Road, Dulwich SA 5065
Telephone (08) 8232 5377
Country Toll Free 1800 700 600

Email aras@agedrights.asn.au
Internet www.sa.agedrights.asn.au

Retirement villages checklist

General issues

- Have you discussed your decision to enter a retirement village with family, friends, your financial or legal adviser or organisations such as Catalyst Foundation (formerly Seniors Information Service) or the South Australian Retirement Villages Residents Association (SARVRA)?
- Is the village in close proximity to family, friends, activities that are important to you?
- What public, community or village transport is available and how easy is it to access?
- Is there a residents' committee? (ask the operator for the name and phone number of the chairperson so that you can contact them and ask questions about the village e.g. have they found the operator supportive; are issues responded to quickly, what do they see as the good/bad points of the village, are residents actively involved in making village rules?) etc.
- Does the operator or the residents' committee have a copy of the minutes of the residents' committee's last annual meeting? If so, could a copy be given to you?
- Does the village have other types/levels of accommodation available at the same site e.g. serviced apartments, supported care or residential aged care facilities? What are the requirements and associated costs of accessing these other accommodation options?

Financial matters

- If the residence in which you are interested has not yet been built, is the price fixed, regardless of when building commences?
- To what are you entitled if you pay a deposit?
- Will you be charged any costs if you withdraw from the contract?
- What type of ingoing contribution will you be paying i.e. will you receive a payment when you leave the village or is the ingoing contribution a donation?
- Can you afford to pay the ingoing contribution?
- How much will you have to pay in recurrent charges? What other charges can be imposed?
- If you move in as a couple, will you be able to remain or afford to remain at the village in the event that something should happen to one of you e.g. can you meet living costs on a single rather than double pension?
- If you form a new partnership or remarry while living in the village and want your new partner to live with you – what is the village’s policy on this and what are the financial and contractual implications?
- Does your financial situation allow for future increases in recurrent charges? Will you still have enough money left to enjoy the quality of life to which you are accustomed?

- What will happen if you cannot meet future recurrent charge increases?
- What costs will be involved when you leave the village e.g. remarketing, refurbishment?
- What are your exit fees calculated on e.g your ingoing contribution or the price paid when the residence is relicensed?
- Do you receive any reimbursement if you make improvements to the residence e.g. building a veranda, installing a security alarm?

Legal implications

- Do you fully understand what the proposed residence contract and associated documents mean and what your rights and responsibilities are?
- Do you need to seek further clarification on any part of the contract? (If so, seek independent legal and/or financial advice).
- Will you be affected if the village is sold?

Building and construction

- Have the community facilities been built? If not, what guarantee do you have that they will be constructed? Is this noted in your contract?
- If construction of your residence is not completed, do you have a say in the design and furnishing of it?

- Are the grounds pleasant and well tended? Who maintains the gardens and who pays?
- Do you have a private garden area? If so, will you be able to manage the upkeep required? What happens if you are no longer able to maintain your garden?
- Which way does the residence face? Where will morning or afternoon sun shine?
- Is there adequate street lighting?
- Is there adequate parking for visitors?
- Do you have a letterbox outside your residence or is there a communal mail box area?
- Do the pathways provide clear access and are they level? If they appear cracked or unsafe, when are they being repaired and is there a written statement supporting this?
- Does the residence have steps or stairs? How steep are they? Have handrails been fitted?
- How is garbage collected? Do you have your own bin? Where do you put it for collection? Is it close by?
- Is there a recycling system available? How does it work?
- Is there noticeable noise from road traffic, aircraft, trains or the surrounding area e.g. factories, schools, shops, other homes?
- What is the zoning for the area surrounding the village?
- Is the residence well located in relation to other residences and community facilities? Will emergency services be able to reach it?

- Is the residence designed to suit the use of a shower chair, walking aid or wheelchair should you have or need one in the future? Are doorways and passageways wide enough to accommodate your changing needs? If not, can the residence be modified easily? Who would pay?
- Does the bathroom have a bathtub and/or shower? How deep is the bathtub? Will you be able to manage getting in and out without assistance?
- Does the residence have safety rails in the bathroom and toilet? Will the operator allow them to be fitted?
- Does the residence run on gas, electricity or both?
- Does the residence have heating installed? What type is it and what are the approximate running costs?
- Is the residence air-conditioned? If not, can you install an air conditioning unit? Are there any restrictions on the type of system which can be installed? Who covers the cost of purchase, installation and/or maintenance?
- Does the residence come with any appliances supplied e.g. washing machine, fridge? If so, whose responsibility is it to maintain and/or replace them?
- Does the residence have security doors and/or windows fitted? If not, can they be fitted and at whose expense?
- Have you checked that all windows and doors open and close easily?
- Are there any cracks in the walls?

- Is the exterior and interior paintwork in good condition?
- Who maintains it?
- Do you like the colour scheme? Can it be changed?
- Are the floor coverings in good condition?
- Do you like the curtains/light fixtures? Can you change them?
What do you do with the existing fixtures?
- Are the rooms large enough to accommodate your existing furniture e.g. lounge suite, wardrobes, bed and side tables, fridge/freezer, dining table? (Measure to make certain).
- Is the telephone connected? Where is the outlet and is there an additional outlet beside the bed? If not, can one be installed and at whose expense?
- What storage cupboards are there e.g. pantry, linen press, built-in wardrobes?
- Can you reach the cupboards without needing to stand on something?
- Does the residence have a laundry or is the laundry communal?
- Do you have your own clothesline or is it communal?
- Is there an intercom system fitted in the residence?

Health and welfare

- Is there any assistance or facility available if you get sick?
- What happens if you are no longer able to care for yourself?
- Is the village in a location where you can still easily access your own doctor?
- Can you access community services e.g. Meals on Wheels?
- Does the village have an emergency alarm system fitted to each residence? How is it answered and are there penalties for false alarms?
- Does the village have written emergency procedures e.g. for accessing ambulance, fire evacuation or police attendance?
- Is there easy access to your residence for emergency vehicles or persons?



Activities and amenities

- Will the village rules affect your existing lifestyle?
- Can you have friends and grandchildren stay with you?
Are there any restrictions?
- Will you be able to continue your hobbies e.g. music, gardening, swimming, bowling, games, craft work, woodwork?
- Are any pets permitted and if so, what type of pets?
- Does the village have regular resident functions and/or outings?
- How close and accessible are public transport facilities?
- How close is the village to your church, medical centre, library etc?
- How close are other community facilities to the village?
Is the local shopping centre within walking distance?
- Has the village arranged for a community bus for shopping trips and if so, how often is it available? Is there any other village transport available at other times?
- Do you have any doubts about the village? (If so, list them and discuss them with family, friends, financial or legal adviser or the residents' committee).

For more information

**Office for Ageing Well
Retirement Villages Unit
PO Box 196 Rundle Mall
Adelaide SA 5000
Telephone: 08 8204 2420
Email: retirementvillages@sa.gov.au
www.sa.gov.au/seniors/retirementvillages**

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