

# SA retirement village information for residents and prospective residents

## Moving into a retirement village – disclosure statement and residence contract

### Documents required to be provided to residents

At least ten business days before signing a residence contract the *Retirement Villages Act 2016* (the Act) requires that you are to be provided with a copy of the following documents:

- 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 *Retirement Villages Regulations 2017* (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
- what the operator does with the fees and charges
- definitions of fees, charges and funds
- any interest an operator has in services used within the village (i.e. electricity or internet services)

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- 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 ongoing 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)



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- 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.

**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 administration 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:



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- 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 enter into (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.



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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 reasonable 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.

*Disclaimer: In developing this information sheet, 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. The Office for the Ageing recommends that you seek your own legal advice should you require interpretation of the legislation.*

## For more information

Office for the Ageing  
Department for Health and Ageing  
PO Box 196, Rundle Mall Adelaide 5000  
Telephone: (08) 8204 2420  
Email: [retirementvillages@sa.gov.au](mailto:retirementvillages@sa.gov.au)  
[www.sa.gov.au/seniors/retirementvillages](http://www.sa.gov.au/seniors/retirementvillages)

Public-I2-A1, Jan 2018

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