

Leaving a retirement village

There may come a time when you decide to leave a retirement 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 *Retirement Villages Act 2016* (the Act) and the *Retirement Villages Regulations 2017* (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 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 South Australian Civil and Administrative Tribunal (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 make payments to the aged care facility on your behalf. Under section 30 of the Act 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.

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.

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.

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.

Your exit entitlement should be paid to you within 10 business days of you being entitled to payment of the exit entitlement (eg after settlement or when payment becomes due at 18 months in accordance with section 27).

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. Office for Ageing Well recommends that you seek your own legal advice should you require interpretation of the legislation.

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