

5. Remarketing a residence

Applicable law

The residence contract will contain provisions for what is to occur when a resident vacates a village. Operators must have a policy outlining the procedures and the rights and obligations of each party in relation to the remarketing of the residence. Regulation 17 prescribes the steps that must be taken when remarketing a residence as well as the information which must be referred to in a village's remarketing policy.

Under the Regulations an operator must act under its remarketing policy as soon as it receives notice of the decision of a resident to vacate a residence. It is good practice to meet with the outgoing resident or their legal representative as soon as possible to explain the village's remarketing policy, how the remarketing of residences within the retirement village occurs and to clearly discuss the rights and responsibilities of each party.

When meeting with a resident or their representative in relation to remarketing of the residence it is good practice to also advise the resident or representative what charges they will have to continue to pay and for how long. This should be followed up with written confirmation of all charges.

Under the Act a resident is responsible for maintenance fees for 6 months after vacating the village. This amount is to be deducted from the exit entitlement. It should be discussed if there are separate charges which a resident will be responsible for until the residence is relicensed such as water or council rates and whether these are to be deducted from the final settlement or are to be paid on an ongoing basis.

When consulting with the resident or their representative about the village's remarketing process it is good practice to ensure that the following topics are discussed:

- > who is responsible for relicensing the residence;
- > the proposed timelines for relicensing the residence;
- > the proposed process for providing information about progress;
- > the proposed process for dealing with offers (if you have the power to accept or reject offers, this should include that an offer will not be unreasonably refused)
- > the requirement that if new residences within the retirement village are on the market at the same time, at least match the level of marketing for the residence of the outgoing resident that applies to those new residences.

After meeting with a resident or their representative to discuss the above issues it is good practice to provide follow-up confirmation in writing of the matters discussed and any agreements reached.

Monthly reports

The Regulations also require that an operator provide the resident or their representative with ongoing written reports on the progress of the relicensing of the residence at least monthly.

Good practice is for monthly remarketing reports to include:

- > what advertising has been undertaken for the residence in the past month including information about where and when the advertising appeared;
- > what comments have been received from prospective purchasers about the residence;
- > how many people have been shown the residence;
- > what other residences are currently available for relicensing at the village;
- > when did other residences become available;
- > what residences have been relicensed in the past month and how long did it take to relicense those residences;
- > how the remarketing of the residence can be improved over the next month.

If the residence is not relicensed after nine months

Section 32 of the Act provides a resident with the right to more actively participate in the remarketing of premises if it has been 9 months since the resident ceased to reside in a village or provided an operator with notice of their intention to vacate and remain in occupation under section 27(3).

Under Regulation 9 the resident is entitled to appoint their own agent in relation to the sale of a right of occupation of the residence but is liable for the agent's costs and commission.

The resident must notify the operator in writing of the agent's name and contact details, and any change to the appointment of the agent or their contact details. They must also notify the operator in writing of any offer to purchase the right of occupation.

If a resident appoints their own agent, the operator may continue to remarket the residence in accordance with their remarketing policy. The operator must not interfere with the agent's remarketing of the residence unless it would cause the operator to be in breach of their obligations under the Act or it would interfere with the peace or comfort of another resident. The resident must comply with any reasonable request of the operator in relation to the remarketing of the residence by their agent.

Good practice is to set a date to meet with the resident or their legal representative to discuss and revisit the remarketing strategy. Any problems with remarketing a residence should be confronted at an early stage.

*See also: '7. Refurbishment and reinstatement of residences' information sheet
'6. Setting the selling price' information sheet.*

For more information:

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