

Exit entitlements

There may come a time when a resident decides to leave the village or has to leave for other reasons. The following information relates to leaving the village and to the relicensing of the residence. A resident's residence contract will contain provisions for leaving the village. These provisions must comply with the *Retirement Villages Act 2016* (SA) (the Act) and the Retirement Villages Regulations 2017 (SA) (the Regulations).

There are a number of different circumstances under which a resident may be leaving the village, and these could change the resident's rights when it comes to payment of the resident's exit entitlement. How the exit entitlement is calculated is determined by the terms of the residence contract, but when and how the resident receives their exit entitlement may be affected by legislation.

Section 27 of the Act requires that a resident's exit entitlement must be repaid to the resident when the first of the following provisions occurs:

- > When the specified conditions of the residence contract are fulfilled, or when either;
- > a period of 18 months has elapsed since the resident ceased to reside in the retirement village; or
- > a period of not less than 18 months has elapsed since the resident gave the operator a notice in accordance with section 27(3) of the Act that they intend to cease to reside in the retirement village but wish to remain in occupation of the residence until the exit entitlement becomes payable.

You and a resident are also able to negotiate for payment of the exit entitlement prior to the above situations occurring.

More detail about the various situations under which a resident may be repaid their exit entitlement under section 27 of the Act and associated Regulations follows.

Staying in the residence after giving notice to vacate

A resident may decide to leave the village but stay in the residence until it has been relicensed. Section 27(3) of the Act allows a resident to give you a written notice of their intention to vacate, but to remain in occupation of the residence until the exit entitlement becomes payable. In this case, you are able to remarket the licence to occupy while the resident is still living in the residence. Under Regulation 17(1)(h) a remarketing policy must include guidelines about remarketing a residence while the resident is still in the village. These guidelines must include how inspections of the residence by prospective residents will be managed and requirements relating to the presentation of the residence for inspection.

If the residence is relicensed

A resident's residence contract must specify when a resident is entitled to receive their exit entitlement (regulation 5(2)(g)(iv)). This may be when the next resident pays an incoming contribution for a licence to occupy the residence. In this case, the current resident will need to cease to occupy their residence, and will be eligible to receive their exit entitlement within 10 business days of the new resident paying their incoming contribution (section 27(15)). A village's remarketing policy should cover when the resident is to cease to reside if the residence is relicensed (regulation 17(1)(h)(iii)).

If a resident has not received the exit entitlement within 18 months

Section 27 specifies the circumstances in which a resident may receive their exit entitlement even if it has not yet become payable under a residence contract. If the residence has not yet been relicensed, a resident may be eligible to receive their exit entitlement after 18 months. However, there are a number of things which a resident must do under section 27 to be eligible.

- > A resident must provide written notice to you that they intend to vacate and that they will stay in the residence after giving notice. Office for Ageing Well provides a form residents may use for this purpose, or you may have your own form. The notice of intention to vacate will not be valid if a resident has served a similar notice already within the previous six months and later withdrawn it (section 27(3)(c)). The 18 month period does not commence until 10 business days after the resident gives you their notice of intention to vacate (section 27(3)(b)).
- > Under section 27(2)(b)(ii) if a resident remains in the residence after giving notice to vacate, and the residence is not relicensed, a resident cannot receive their exit entitlement until three months after they cease to reside in the residence. This means that in order to receive their exit entitlement at the earliest possible time - 18 months - the resident must move out 15 months after providing a notice of intention to vacate.
- > The exit entitlement will be calculated in accordance with the residence contract. If the residence contract requires an amount payable to be calculated based on the consideration paid on sale of the right to reside in the village then you are to use the current market value of the right to reside in that residence (section 27(5)(e)).

- > A resident may decide they would rather wait and receive their exit entitlement in accordance with their contract, for example when the residence is relicensed. They may decide this if they feel waiting longer could give them a higher relicensing price (section 27(5)(d)). In this case, a resident must notify the operator in writing of their decision at least three months before they are due for payment (regulation 7(2)(a) and (b)). This would generally be within 15 months of giving notice to vacate or ceasing to reside in a residence.

If a resident receives payment at 18 months it is full and final payment and not subject to any adjustment when the residence is relicensed (section 27(6)).

A residence contract may specify that an exit entitlement will be paid earlier than 18 months, even if the residence is not relicensed. If that is the case, a resident will be paid in accordance with their contract (section 27(2)). If a resident is still in occupation of the residence, they will need to cease to reside in the residence.

Please note, this is a transitional provision under the Act and will have application for existing residents. For example, if a resident ceased to reside in a retirement village before the commencement of Section 27 of the Act, that section applies in relation to the resident as if the period of 18 months referred to in the Act were the period of 18 months after the commencement of that section.

Giving notice and moving out

A resident may give you notice that they intend to cease to reside in their residence. The residence contract will specify how much notice the resident needs to give and the conditions for receiving their exit entitlement (regulation 5(2)(g)(iv)(C)). If the resident has not already been paid their exit entitlement, they will be eligible to receive the payment 18 months after they cease to reside in the village in accordance with section 27(2)(b)(i) of the Act.

Withdrawal of notice

A resident may withdraw a notice of intention to vacate at any time before they vacate, with the agreement of the operator (section 27(4)(b)). If a resident does withdraw a notice of intention to vacate, they will be liable for all remarketing costs incurred between the time they gave the notice and when they withdrew the notice (regulation 7(1)).

Payment of exit entitlement

You should provide the outgoing resident with a settlement statement which provides details related to their exit entitlement (if applicable) (regulation 17(1)(l)). This statement should outline the fees, charges and costs to be deducted from the exit entitlement and the final amount subsequently payable to the resident.

These deductions may include (see section 4 – definition of ‘exit fee’):

- > any outstanding recurrent charges
- > costs associated with refurbishment and remarketing
- > an amount indicating a percentage of the ingoing contribution retained by the operator (usually referred to as a deferred management fee)
- > an amount retained for capital replacement (often calculated on the length of stay in the village e.g. x% for period of occupancy)

If a resident is due to receive an exit entitlement, you must pay this to the resident within 10 business days of receiving the ingoing contribution from the next resident (section 27(15)).

Extension of 18-month period

Under section 27(7) you may apply to the South Australian Civil and Administrative Tribunal (the Tribunal) for an extension of the 18 month timeframe for payment of an exit entitlement if special circumstances exist.

In considering the application, the Tribunal must have regard to the financial hardship likely to be suffered by you if the order were not made and whether you have taken reasonable steps to fulfil the conditions specified in the residence contract for the payment of the exit entitlement (section 27(8)).

What constitutes special circumstances is not defined in the Act and the Tribunal will make a decision based on the facts of the application as to whether such circumstances exist and what is an appropriate amount of time for the extension.

Deduction of recurrent charges and capital fund contributions

Liability for recurrent charges

When a resident ceases to reside in the retirement village, under section 29(2)(b) you are responsible for the payment of any recurrent charge in respect of the vacated residence. If the resident is subsequently entitled to a refund of an exit entitlement (or otherwise payable by the resident in connection with the village), then you are entitled to recover an amount equal to what would have been the resident’s liability for these charges. The limits on this are:

- > you cannot recover the amount until the exit entitlement is due to be repaid (and it can then be recovered as a deduction from the exit entitlement repayable to the resident) (section 29(4)(b))
- > the amount to be recovered cannot exceed the amount of the exit entitlement payable to the resident (and if it would exceed that amount, the amount recoverable must be reduced so as to equal the amount of the exit entitlement payable to the resident) (section 29(4)(a))
- > you can only claim recurrent charges that would have been payable by the resident over a prescribed period, that is until the residence is re-licensed or occupied by another resident, or 6 months from the date on which the resident ceased to reside in the village, whichever is earlier (section 29(3) and (5)).

Importantly, you cannot recover the outstanding payments by increasing the recurrent charges payable by other residents (section 29(8)(c)). You may apply to the South Australian Civil and Administrative Tribunal for an extension of this period. However, an extension will only be granted if the Tribunal is satisfied that in the circumstances it would be considered to be 'harsh and unreasonable' to limit the period to 6 months (section 29(6)).

You must keep a record of outstanding payments and identify them in any relevant financial statements prepared under section 33(6)(a) of the Act (section 29(8)(a)). Any outstanding payments must be made before any other person enters into occupation of the residence (section 29(8)(b)).

Payment of capital fund contributions deducted from exit entitlement

Under section 28 if an amount is deducted from an exit entitlement as a contribution to a capital fund you must pay that amount into the relevant fund or account within 10 business days after making the deduction. If the residence will not be subject to another residence contract then you must pay the amount to the relevant fund at any time before the end of the financial year in which the exit entitlement was paid or at any time before another person enters into occupation of the residence. You must keep a record of any outstanding payments under this section and identify them in any relevant financial statements prepared under section 33 or 40 of the Act.

An EXAMPLE of a notice to vacate form which a resident could use to inform an operator that they intend to leave the village follows.

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.

For more information:

Office for Ageing Well and Department for Health and Wellbeing

T: 08 8204 2420

E: retirementvillages@sa.gov.au

www.sa.gov.au/seniors/retirementvillages

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Government of South Australia
SA Health

Notice of Intention to Vacate

Retirement Villages Act 2016 (SA)

Please complete this form in pen in BLOCK LETTERS

To:

(name of retirement village operator)

I/we give you notice that I/we intend to vacate the residence at:

..... Postcode.....

(Address of residence)

in:

.....

(Name of retirement village)

Please tick appropriate box:

☐ I/we wish to remain in occupation of the unit until the exit entitlement becomes payable (*see important information overleaf*)

or

☐ I/we will provide vacant possession of the residence on...../...../..... (insert date on which you will vacate the residence. You should check your contract to see how much notice you are required to give).

or

☐ I am entering aged care and am seeking payments under section 30 of the *Retirement Villages Act 2016* (*see important information overleaf*)

...../...../.....

(signature of resident/s or representative)

(date delivered/posted)

Name of resident/s.....

SERVICE OF NOTICE

Notice given by:

- ☐ Delivering it to the operator in person
- ☐ Mailing it to the operator (allow 6 working days for service)
- ☐ Faxing/emailing it to the operator

Received by the operator:(date)

YOU SHOULD KEEP A COPY OF THIS NOTICE

Important information for the resident

1. You must give the operator your notice of intention to vacate in writing.
2. You must continue to comply with the terms of your residence contract.
3. You may withdraw this notice at any time with the agreement of the operator.
4. If the residence has not already been relicensed, you may be entitled to payment of your exit entitlement after 18 months (See information sheet 'Exit Entitlements' for details).
5. Your contract may have a shorter repayment period or you and the operator may agree to alternative conditions for the payment of your exit entitlement.
6. If you intend to remain in occupation of the residence, the 18 months will commence 10 business days after you serve this notice.
7. If you intend to remain in occupation of the residence, this notice will be invalid if you have previously served a notice of intention to vacate that was withdrawn within the last 6 months.
8. If you remain in occupation of the residence, you will not be entitled to receive the exit entitlement until 3 months after you vacate the residence, unless your contract allows for earlier repayment if the residence is relicensed.

For example:

If you give this notice to the operator and remain in the village, you must vacate the residence 15 months later in order to receive the exit entitlement after 18 months.

9. If you remain in occupation of the residence, you must comply with the remarketing policy in relation to the presentation of the residence for inspections and making the residence available for viewing by prospective residents.
10. You may give the operator notice in writing that you elect not to receive the exit entitlement after 18 months, but in accordance with your contract instead. You must give this notice to the operator at least 3 months before you are eligible for repayment ie no more than 15 months after giving notice to vacate if you are eligible for repayment at 18 months.
11. If you have been approved for residential care at an aged care facility under the Aged Care Act 1997 (Cth), you may be eligible to have the operator of the retirement village make daily accommodation payments to the aged care facility on your behalf. These payments will be deducted from your exit entitlement.

Important information for the operator

1. You should advise the resident when you have received this notice.
2. You may apply to the South Australian Civil and Administrative Tribunal for an extension of the 18 month period if you believe that there are special circumstances.

For information about your rights and obligations as a retirement village resident, contact the Office for Ageing Well on 8204 2420 or at retirementvillages@sa.gov.au.

For further information also see the information sheet 'Exit Entitlements'.