

# Termination of a resident's right of occupation

A resident of a retirement village has a right of occupation which can only be terminated in certain situations. Section 44 of the Retirement Villages Act 2016 (SA) (the Act) covers the circumstances in which a right of occupation can be terminated. In most cases, a contract terminates because the resident has died or has otherwise vacated the residence. Sometimes it is necessary for the operator to terminate a right of occupation.

## Grounds for termination

Section 44(1) of the Act 'Termination of residents' rights' refers to the circumstances under which a resident's right of occupation can be terminated and the process for termination. It states:

1. A resident of a residence in a retirement village has a right of occupation that cannot be terminated unless -
  - a. *the resident dies; or*
  - b. *the resident terminates the residence contract or ceases to reside in the retirement village in circumstances in which there is no reasonable prospect of the resident returning to reside in the retirement village; or*
  - c. *the resident –*
    - i. *commits a breach of the residence contract or the residence rules; or*
    - ii. *acts 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, and the operator terminates the resident's right of occupation on that ground; or*

- d. *the residence becomes an unsuitable place of residence for the resident because of the resident's mental or physical incapacity and the operator terminates the resident's right of occupation on that ground; or*
- e. *the holder of a mortgage or charge that was in existence at the commencement of the Retirement Villages Act 1987 becomes entitled to vacant possession of the residence pursuant to rights conferred by the mortgage or charge; or*
- f. *circumstances exist that make it no longer appropriate for the resident to continue to reside in the residence; or*
- g. *the Supreme Court terminates the residence contract in proceedings under section 58.*

## Termination by resident during settling-in period

Under section 44(4) of the Act rights of termination may be limited under the terms of the contract, except where a resident is terminating during the settling-in period. Under section 44(5) if a resident terminates their right of occupation during the settling-in period, they are liable to pay fair market rent for the period of occupation less any amount they have already paid for services which would otherwise be included in the assessment of fair market rent. They may also be liable to pay any other amounts stipulated in the contract. These amounts may be deducted from the exit entitlement (section 44(6)). The contract must not contain a provision which has the effect of making the resident liable to pay a penalty for terminating during the settling-in period (section 44(7)).

## Termination by the operator

Section 44(3) requires that before terminating a resident's right of occupation under section 44(1)(c)(ii) you must take reasonable steps to stop the resident acting in the manner complained of by:

- > giving the resident a written notice warning the resident to stop acting in such a manner
- > conducting some form of dispute resolution process with the resident
- > or any other means appropriate in the circumstances.

You must provide clear and justifiable reasons for any decision to terminate a resident's right of occupation and all decisions are ineffective until confirmed by the South Australian Civil and Administrative Tribunal (the Tribunal). Section 44(8) requires the Tribunal must be satisfied that there are proper grounds which are serious enough to terminate the resident's right of occupation. If the Tribunal confirms the termination, the order of the Tribunal will set a period within which the resident must vacate the residence (section 44(9)).

## Procedure for termination

The following process must be undertaken when terminating a resident's right of occupation:

Provide a termination notice as required under section 44(12) of the Act to the resident. Regulation 14 requires the termination notice to be signed and dated by the operator and include the following information:

- > the name and address of the operator
- > the name and address of the retirement village
- > the name of the resident

- > that the resident is being given notice of the decision by the operator to terminate the resident's right of occupation
- > the grounds of the decision to terminate
- > a copy of the operator's dispute resolution policy
- > that the decision is not effective until confirmed by the Tribunal
- > that the decision is subject to review by the Tribunal
- > that the resident will be notified of the time and place of the hearing and will be entitled to attend and present matters related to the termination
- > that the Tribunal will set a date by which the resident must leave the village if the termination is confirmed.

Apply to the Tribunal for confirmation of a decision to terminate a resident's right of occupation. Applications are made online at [www.sacat.sa.gov.au](http://www.sacat.sa.gov.au). All relevant documentation must be attached, as well as an explanation of the grounds on which the termination was made.

Attend the Tribunal hearing and await the outcome.

Where the Tribunal confirms the termination, a date will be set by which the resident must vacate the residence.

If the resident does not vacate the residence in the time frame specified, apply to the Tribunal for an order for ejectment of the resident. This order is enforceable by a Tribunal bailiff. An EXAMPLE termination notice is on the following page.

*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:

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**Government of South Australia**  
SA Health

# NOTICE OF DECISION TO TERMINATE RESIDENT'S RIGHT OF OCCUPATION

Retirement Villages Act 2016 (SA), section 44(12)  
Retirement Villages Regulations 2017 (SA), Regulation 14

To:

.....  
*name of resident*

You are hereby given notice of the decision to terminate your right of occupation in

.....  
*name of retirement village*

.....  
*address of retirement village*

.....  
*postcode*

The reasons for this decision are as follows:

**YOU ARE ADVISED THAT THIS DECISION IS NOT EFFECTIVE UNTIL IT IS  
CONFIRMED BY THE SOUTH AUSTRALIAN CIVIL & ADMINISTRATIVE  
TRIBUNAL**

The Tribunal will conduct a hearing into the matter and you will be notified of the time and place of the hearing. You will be able to attend and present to the Tribunal any matters related to the proposed termination of your right of occupation. If the Tribunal confirms the decision, it will set a date for you to leave the retirement village.

A copy of the village's dispute resolution policy is attached.

Signed: .....  
*operator*

Date:.....

.....  
*name of operator*

.....  
*address of operator*