



Office for the Ageing

Retirement Villages Act 2016

Information for Retirement Village Operators



Government
of South Australia

SA Health

Disclaimer: In developing this information booklet, 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.

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1. Introduction

The Office for the Ageing (OFTA) has responsibility for administering the *Retirement Villages Act 2016 (SA)* (the Act) and the *Retirement Villages Regulations 2017 (SA)* (the Regulations).

OFTA encourages the disclosure of information to prospective and current retirement village residents. This assists prospective residents to make informed choices about their housing options and matters that affect their lifestyle. Residents of retirement villages value efficient, effective and transparent management.

Consistent good practice by retirement village operators reflects positively on the retirement village industry. Residents and prospective residents who have a positive experience are more likely to promote retirement village living as an attractive housing and lifestyle option.

Retirement village operators have statutory obligations and rights under the Act and Regulations, as well as contractual rights and obligations as per the residence contract with each resident.

OFTA has developed this booklet to assist operators of retirement villages to understand their obligations under the Act and Regulations and to encourage effective management and consistency across the retirement village industry. These documents reflect minimum content and can therefore be adapted to suit the size or style of any retirement village. These documents can also be downloaded from: <http://www.sa.gov.au/seniors/retirementvillages>

You must have a sound knowledge of the Act and Regulations to properly manage a retirement village. Operators should have on site the current version of the Act and Regulations. These can be purchased at a small cost from:

> Service SA Government Legislation Outlet
108 North Terrace,
Adelaide SA 5000
Telephone 13 23 24
Online at www.shop.service.sa.gov.au

Or

> Downloaded for free at
www.legislation.sa.gov.au

2. Retirement villages register

Under section 12 of the Act, the Registrar must maintain a register of all retirement villages in South Australia. Retirement village operators are required to provide information for the register. A copy of the register is kept by the Office for the Ageing (OFTA) and can be viewed on request.

Information required for the register

The Act specifies what information must be contained in the register. Under section 12(1)(a) for each retirement village the register must contain:

- > the name and business address of the operator
- > the name and address of the village
- > the references for the certificates of title of the land used for the village
- > the name, address and contact details of the owner of the land
- > the name, address and contact details of the village manager
- > the name, address and contact details of any senior manager
- > any other information the Registrar considers appropriate.

Under section 13 you must provide these details to the Registrar within 28 days of the first person entering into occupation of their residence. There are penalties and expiation fees for not complying with these requirements.

Registering a village

You must use the correct registration form to register a new village. You can request this from OFTA. The form must be accompanied by a fee, which is determined by the number of residences in the retirement village. The fee amounts are contained in the *Retirement Villages (Fees) Regulations 2017*.

Under section 56 of the Act you cannot enter into a residence contract until the land is endorsed for use as a retirement village on the Certificate of Title. Registration and endorsement means that the land must continue to be used as a retirement village until the retirement village scheme is terminated in accordance with section 58 or section 59 of the Act.

Changes to register details

If any of the details on the register change you must notify the Registrar within 28 days of the change (section 13(2)). Changes to registration details can be made through OFTA. An online form is available for you to use or you can print out a hard copy form. You can find links to the forms at:

www.sa.gov.au/seniors/retirementvillages

3. Documents to be provided to prospective residents

The Act and the Regulations require that operators provide prospective residents with a range of documents at least 10 business days before the person enters into a residence contract.

Section 22 of the Act states:

22—Information to be provided before residence contract entered into

The operator of a retirement village must, at least 10 business days before a person enters into a residence contract, give the person a copy of each of the following documents:

- (a) the residence contract;*
- (b) the disclosure statement;*
- (c) if the contract relates to a retirement village already established—*
 - (i) the financial statements presented at the last annual meeting of residents of the village, including a written statement of any subsequent change in the affairs of the village and the operator that may significantly affect the resident's decision to enter the village; and*
 - (ii) a copy of the minutes of the last 2 annual meetings of residents of the village (if 2 or more such meetings have been held) or of the last annual meeting (if only 1 such meeting has been held);*
- (d) the residence rules;*
- (e) the policy of the operator to be applied for the remarketing of residences (the remarketing policy);*
- (f) any code of conduct to be observed by the operator or residents;*
- (g) any other document prescribed by the regulations.*

Along with the documents required under section 22, Regulation 5(2)(g)(vii) requires the residence contract to include a copy of the surplus and deficit policy of the retirement village scheme. Under Regulation 5(2)(j) the residence contract must include procedures for the resolution of a dispute within the retirement village. An example of a checklist which you can adapt to ensure you provide prospective residents with all of the documents required under the Act and Regulations is at the back of this booklet.

4. Disclosure statement

The Act and the Regulations require an operator to provide a prospective resident with a disclosure statement before they enter into a residence contract and prescribe the form of the disclosure statement.

The disclosure statement is intended to allow a prospective resident to understand the financial arrangements relating to residents of the retirement village. Under section 22 of the Act you must provide a prospective resident with the disclosure statement and the residence contract, along with other required documents, at least 10 business days before the person signs the residence contract.

The resident must have the residence contract for 10 business days before they are able to enter into the contract. This period allows the prospective resident time to consider all the information and seek legal and financial advice.

Section 21 of the Act refers to what must be included in a disclosure statement. Regulation 6 provides that the disclosure statement must be in a set form which is provided in Schedule 2 of the Regulations. Section 21 of the Act states that the disclosure statement must provide information including:

- > all fees and charges that the person would be responsible for under the residence contract, prior to entry, during occupation and on leaving the village
- > what the operator does with the fees and charges
- > any utilities, services or facilities provided or available to residents (such as telephone or electricity provided by a third party) that the operator has an interest in or would obtain any fee or reward in relation to
- > information about the insurance arrangements in place for the village
- > the manner in which an exit entitlement will be calculated and the effect of Section 30 – arrangements if resident leaves to enter residential 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
- > a statement that the disclosure statement is not a replacement for the residence contract, the prospective resident must ensure they understand the terms of the contract and it is recommended that the prospective resident seek legal and financial advice about the residence contract;
- > any other information or statement prescribed by the regulations

It is important that you understand your obligations in preparing and providing residence contracts and associated documents. Failure to comply with legislative requirements can incur a penalty of up to \$35,000. The back of this booklet contains an example disclosure statement for reference purposes only.

5. Residence contracts

A residence contract (the contract) is arguably the most critical of all documents provided to residents since it creates the rights under which a resident occupies their residence in a retirement village. Contracts provide details about the obligations and rights of both residents and operators.

Section 20 of the Act outlines what you must include in a residence contract. Regulation 5 provides further details about what to include in your residence contract.

Section 22 of the Act and Regulation 5 also prescribe certain documents which you must provide to a resident 10 business days before a person enters into a residence contract. These documents are:

- > a copy of the residence contract
- > a copy of the disclosure statement
- > a copy of the financial statements presented at the last annual meeting of residents in accordance with section 33(6)(a) of the Act and a written statement of any subsequent change in the affairs of the Village and the operator that may significantly affect a person's decision to enter into the Village
- > a copy of the minutes of the last two annual meetings of residents of the Village, or of the last annual meeting if only one has been held (in the case of new villages)
- > a copy of the residence rules
- > a copy of the remarketing policy
- > a copy of the code of conduct to be observed by operators and residents
- > a copy of the Village's dispute resolution procedures
- > a copy of the surplus and deficit policy of the retirement village scheme.

Once the prospective resident has had these documents for 10 business days they are able to enter into the contract. This period allows the prospective resident time to consider the contract and seek legal and financial advice.

Once the prospective resident has signed the contract they are able to cool-off (rescind the contract) at any time within the period of 10 business days after the day on which the prospective resident signed the contract. If the prospective resident wants to move into the residence before the 10 business day period has ended they are able to waive the cooling-off period under section 24(4). To waive the cooling-off period the prospective resident must enter into occupation of the residence before the end of the period and sign a written waiver acknowledging that the operator has informed them of the entitlement to cool-off and they have chosen to waive the entitlement.

It is an offence for you to enter into a residence contract in respect of a retirement village (or a proposed retirement village) on any land unless the relevant certificates of title have been endorsed as a retirement village in accordance with section 56 of the Act.

It is important that you understand your obligations in preparing and providing residence contracts and associated documents. Failure to comply with legislative requirements can incur a penalty of up to \$35,000.

It is recommended that you seek legal advice in developing your residence contracts. Contracts can be very complex, legalistic documents and subsequently difficult for prospective residents to understand. While contracts are legally binding documents, minimising the use of jargon and being explicit about the terms and conditions may help to reduce any potential misinterpretation and enable residents to make informed decisions.

To ensure residence contracts are easy for residents to understand, Regulation 5 requires that a residence contract must be expressed plainly in gender neutral language, be printed in not less than 12 point type face and be set out with appropriate headings and numbered clauses.

Other matters

The Code of Conduct prohibits you from charging a fee to prepare or provide documents required to be given to prospective residents before they enter into the contract.

An example of a residence contract is at the back of this booklet and provides some direction about those items which the Act and Regulations require be included in a contract.

6. Premises condition report and vacated premises report

Section 23 of the Act requires that a premises condition report be provided to a resident not more than 10 business days after a person enters into occupation of a residence in a retirement village. For the purposes of the Act, a person enters into occupation of a residence on the day on which the person's right of occupation arises (whether or not the person chooses to exercise the right on that day)(section 4(2)(a)).

Under Regulation 16 you must complete a vacated premises report not more than 10 business days after the resident ceases to reside in a residence in a retirement village. Section 4(2) of the Act defines when a person is taken to have ceased to reside in a retirement village and when a person will have been taken to have delivered up vacant possession of a residence.

The premises condition report and vacated premises report are simply a record of the state of the residence, and do not cover the issue of who is responsible for repair or replacement of items or when they will be repaired or replaced. You are required to record these details in the residence contract (section 20(2)(d)). The contract should specify who is responsible for refurbishment costs such as re-painting, carpet replacement, kitchen upgrades and so on.

When the resident takes up occupation of their residence

The purpose of the premises condition report is to record the condition of the residence at the time the resident takes up occupation in a residence. This should be used as a document to compare with the condition at the time a resident ceases to reside in a residence. By keeping good records of the condition of the premises, there is less likelihood of disputes at the end of the occupancy.

You must complete the premises condition report within 10 business days of the resident entering into occupation of the residence. Section 23 of the Act requires you to record the condition of the fixtures, fittings and furnishings provided in the residence in writing. The report must be signed by you (or on behalf of you) and by the resident.

If possible it can be helpful if the premises condition report is completed before the resident moves their belongings into the residence as it is easier to see the condition of the property when it is empty. Although it is not required, it is also a good idea to take photographs of the residence, particularly any areas which may be the subject of dispute. Photographs on their own are not sufficient to satisfy the requirements of the Act.

When the resident ceases to reside in a residence

Within 10 business days of a resident ceasing to reside in a residence in a retirement village, you must complete a vacated premises report under Regulation 16. This records the condition of the residence at the time the resident ceased to reside, and should be compared to the premises condition report from when the resident took up occupation. The report must be signed by you and, if it is reasonably practicable, by the resident or their representative.

The premises condition report and the vacated premises report indicate whether there is any wear and tear or damage to the property. This will assist in determining responsibility for costs for any repair, replacements or refurbishment in the residence in accordance with the residence contract.

An example of a premises condition report/vacated premises report is at the back of this booklet. The example can be altered to accommodate different rooms and facilities as required.

7. Financial reporting and responsibilities

The Act and the Regulations specify an operator's obligations to residents with regard to the presentation of a village's income and expenditure.

Financial information presented at a meeting of residents

Under section 33 of the Act, operators or residents' committees may convene a meeting of all residents at any time, and operators are required to convene a meeting of all residents annually. You can convene a meeting of all residents by sending each resident, at least 10 business days before the day of the meeting, a written notice setting out the time and place of the meeting, and the business to be conducted at the meeting.

Section 33(6)(a) of the Act states that:

(6) A notice for an annual meeting (whether or not given in compliance with subsection (5)) must be accompanied by—

(a) the following information relating to the retirement village:

(i) an audited statement of accounts in respect of the previous financial year showing—

(A) the income received from residents, and expenditure of that income, for the financial year; and

(B) if, during the financial year, there was any income received into, or expenditure from, a capital fund—such income or expenditure;

(ii) a statement of estimates of income from residents, and expenditure of that income, for the current financial year;

(iii) a statement of estimates of income (from any source), and expenditure, for the current financial year in respect of any capital fund;

(iv) a list of the expenditure items covered, or proposed to be covered, by the recurrent charges for the current financial year, including a description of each general category of item (to a reasonable degree of particularity) and the amount of expenditure for each such category;

(v) if the expenditure for the current financial year includes any management expenditure—

(A) a description of each item to which the expenditure relates; and

(B) if the expenditure is apportioned between more than 1 retirement village or other businesses—the manner in which such apportionment is calculated;

(vi) any other information required by the regulations;

You must invite residents to submit written questions at least five business days before the date of the meeting and other questions at the meeting. Section 34 of the Act details proceedings at meetings. You must ensure that residents have a reasonable opportunity to ask questions at the meeting and you must also respond in reasonable detail to any reasonable question asked by a resident.

If you are unable to answer a reasonable question at the meeting, a detailed written answer must be provided within 10 business days after the meeting. If you answer a question at a meeting and the resident requests the answer to be provided in writing, you must provide a detailed written answer to the resident within 10 business days after the meeting. Regulation 11(2) requires that minutes of a meeting include written questions submitted under 33(6)(b) of the Act, questions asked at a meeting and detailed written answers to any questions.

You must also keep accurate minutes of proceedings at meetings (section 34(3) of the Act). After an annual meeting, you must provide minutes of the meeting to each resident within 10 business days of the meeting. For other meetings, minutes of the meeting must be made available for inspection by residents in a manner that is easily accessible by residents (section 34(4)).

Interim financial reports and invoices

Under section 40(1) and 40(2) of the Act, residents can request interim financial reports and as part of those reports, invoices substantiating expenditure for the 'relevant accounting period'. This period is defined as the period from the beginning of the financial year in which the request is made to the end of the last completed quarter for that financial year (as determined at the time of the making of the request).

If a resident or residents' committee request an interim financial report, you must provide such a report within 15 business days of that request. The information relates only to the relevant accounting period.

On receiving a request under this section, you may require payment of a fee for preparing the report as long as the cost is reasonable in the circumstances. If a resident requests, they must be given a reasonable opportunity to inspect an audited balance sheet for the village or operator as at the end of the previous financial year.

Standard of financial information

The information you are required to provide under section 33(6)(a) or 40(1) of the Act, must be in a form that shows specific information for the particular retirement village and if the village has more than one site, the information must specifically relate to the site at which the resident resides (regulation 10) and accord with generally accepted accounting standards. Auditing must be undertaken by a registered company auditor within the meaning of the *Corporations Act 2001* (Commonwealth).

Further, you must keep a record of outstanding payments for vacant residences which you are required to make under section 29(8) of the Act. You must identify the outstanding payments in any relevant financial statements prepared under 33(6)(a) and make the outstanding payments before another person occupies the residence.

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 section 40 of the Act.

Taxes and fees which cannot be charged to residents

Section 31 of the Act states that residents are not liable to pay the following costs:

- > costs relating to the depreciation, amortisation or writing-off of assets of the retirement village
- > costs incurred by the operator in obtaining legal advice or undertaking legal proceedings relating to the retirement village
- > fines or other penalties incurred by the operator
- > fees, charges or other monetary amounts payable by the operator in respect of newly constructed residences in a retirement village that are not yet subject to a residence contract.

The back of this booklet contains example financial statements which you can adapt to suit your own village. Residence contracts will detail the reason for recurrent charges and the purpose of each fund in the village (regulation 5 (2)(g)). The financial statements should reflect the funds as described in your residence contracts.

8. Consultation with residents

One of the Objects of the Act is to ensure that operators properly consult with residents about matters affecting their residence in the retirement village. The Act and the Regulations outline the requirements for when an operator must consult with all residents and the matters on which an operator is required to consult with a residents' committee.

When consultation with all residents is required

Before any redevelopment of a retirement village commences, section 37 of the Act requires you to convene a meeting of residents and present a plan of, and report on, the proposed redevelopment. You must also answer any reasonable questions put by a resident. You cannot commence any redevelopment without giving due consideration to a resident's rights arising from the resident's residence contract and, if relevant, reasonable arrangements have been put in place for the provision of alternative accommodation.

Under section 36, a person who is to be a new operator of a retirement village must also consult with all residents before the change in operator occurs. The person who is to be the new operator of the village must convene a meeting of all residents to present a report on any changes proposed for the retirement village and the new operator's plans for the future management and operation of the retirement village. The new operator must also answer any reasonable question put by a resident.

The Regulations, Schedule 1, Operator and Residents Code of Conduct, Clause 6, also details matters under which you must ensure there is reasonable consultation with residents of the retirement village. These matters include (but are not limited to):

- > any changes to your dispute resolution policy
- > establishing a disputes committee in connection with the dispute resolution policy
- > any changes to the residence rules
- > any changes to your remarketing policy
- > any matter that could have a significant impact on residents' financial affairs, the amenity of the retirement village or their way of life.

For the purposes of consultation with residents, under clause 6, you will be taken to have taken steps to ensure reasonable consultation with residents of the retirement village if you at least:

- > notify residents in relation to any matter that could have a significant impact on their financial affairs, the amenity of the retirement village or their way of life
- > provide residents with an opportunity to respond to such matters within a reasonable time
- > consider any response provided by residents.

Consultation with a residents' committee

The Act and Regulations also prescribe when consultation is to occur with a residents' committee. Consultation with a residents' committee should occur in addition to the consultation outlined in Clause 6, which is described on the previous page.

Consultation with the residents' committee on the annual budget

Section 39 of the Act details the mandatory consultation that must occur with a residents' committee in relation to the annual budget. Before an annual meeting is held you must convene at least two meetings with the members of the residents' committee to discuss the financial statements to be provided at the annual meeting under section 33(6)(a). The meetings, or one of the meetings, need not be convened if the residents' committee advises in writing that it does not require the meeting or meetings to be held.

To convene a meeting of the residents' committee about the annual budget, you should send to each member of the residents' committee a written notice setting out the time, place and business agenda of the meeting at least 10 business days before the date of the meeting. The meeting must be chaired by the operator or by a representative of the operator who is authorised to speak on behalf of the operator and give responses to questions put at the meeting.

Other consultation with a residents' committee

Clause 5 of the Code of Conduct outlines a range of matters on which you must undertake reasonable consultation with a residents' committee. These matters include:

- > maintenance issues raised to the residents' committee by residents
- > any proposal to alter or improve a building, fixture or fitting if residents will be expected to finance some or all of the capital or recurrent costs of the work, except if the costs have already been included in information provided at the annual meeting or the costs will not exceed \$5,000 in total
- > the distribution of information to residents
- > the establishment of social or recreational programs at the retirement village
- > the appointment of a trustee (or new trustee) for the purposes of the retirement village scheme, or any proposal to alter the functions or duties of such a trustee
- > any other matter agreed between the committee and the operator;
- > any proposed change to a service or facility provided at the retirement village that is reasonably expected to result in increased costs to residents beyond any increase shown in the financial statements provided to residents at a village's annual meeting or in a loss of amenity.

9. Residence rules

Residence rules are defined under the Act to mean ‘the rules with which residents of a retirement village are expected by the operator to comply.’ The Regulations outline the matters which residence rules must at least address.

All residents must be provided with a copy of the village’s residence rules before they enter into a residence contract (section 22 of the Act). Residents must also be provided with a copy of the residence rules applicable to the village on request (section 42(1)(b) of the Act).

Under Regulation 15 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 must at least address the following:

- > visitors to the retirement village or a residence in the retirement village, including visitors who stay in a residence in the retirement village overnight or on a short or long term basis
- > noise within the retirement village
- > the parking of vehicles within the retirement village
- > the collection and disposal of rubbish
- > pets
- > gardens and landscaping within the retirement village
- > the use and operation of services and facilities in the retirement village (including restrictions on the use and operation of services).

Having clearly written residence rules can help to ensure that all residents understand their rights and obligations in relation to living in a retirement village. Rules can also assist in avoiding unnecessary disputes as well as providing a reference point should a dispute arise. Under the Regulations, Schedule 1, Operator and Residents Code of Conduct, residents must comply with the residence rules and an operator must take reasonable steps to ensure that residents comply with residence rules.

As set out in Clause 6(2) of the Code of Conduct changes to residence rules can only occur with consultation of all residents and if an alteration is made to residence rules the operator must issue an amended set of the rules to every resident (see section 42(2) of the Act). Operators must also be aware that residence rules that are harsh or unconscionable are void under the Act (section 41).

At the back of this booklet is an example of residence rules which you might like to adapt to suit your own village.

10. Code of conduct

Retirement villages provide independent living for older persons who have retired from full-time employment, but who are able to maintain their autonomy and make decisions about their future. The Regulations contain a code of conduct for operators and residents of retirement villages, which is prescribed under section 63 of the Act.

Operator and Residents Code of Conduct

Schedule 1 of the Regulations includes information about the rights and obligations of both operators and residents of retirement villages. These rights and obligations aim to assist residents and operators to maintain a respectful and productive relationship. Section 22(f) of the Act requires that you provide residents with a copy of the code of conduct with a residence contract.

Conduct of operators

Retirement village operators must:

- > not interfere with residents' self-reliance and autonomy in their personal, domestic and financial affairs
- > take reasonable steps to ensure that the retirement village is safe and secure
- > not harass or intimidate residents of the retirement village
- > respect the peace, comfort and privacy of residents
- > take reasonable steps to ensure that residents comply with the residence rules
- > acknowledge, within a reasonable time, requests from residents for repairs and maintenance of the village
- > consult residents in relation to the financial affairs of the village
- > take reasonable steps to ensure residents have access to information held by the operator about that resident
- > allow a resident to appoint, in writing, an agent to receive notices and documents on the resident's behalf.

Conduct of residents

Retirement village residents must:

- > respect the peace, comfort and privacy of other residents and persons in the retirement village
- > not harass or intimidate other residents and persons in the retirement village (including the operator and any person employed in the retirement village)
- > not act in a manner that may place the safety of other residents or persons in the village at risk of harm
- > comply with the residence rules.

Among other matters, the Code of Conduct also deals with a village's surplus and deficit policy, consultation with a residents' committee and consultation with residents. The information sheets 'Consultation with residents' and 'Transitional provisions' contain more information about these topics.

11. Resolving disputes

In most situations, issues that arise between operators and residents can be resolved quickly and effectively if clear communication lines are established. The best way to avoid a dispute is to deal with the problem at an early stage before it escalates into a major issue.

Dispute resolution policy

Pursuant to section 45 of the Act and Regulation 18 you are required to develop a written dispute resolution policy for a retirement village.

A document setting out the policies and procedures that are applied by you in the event of a dispute must be provided to a resident on request within five business days (section 45(3)).

It should also be noted that an internal dispute resolution process does not diminish a resident's right to subsequently lodge a complaint with the Office for the Ageing, or the South Australian Civil and Administrative Tribunal. Under section 46 of the Act, an application should not be made to the Tribunal unless the parties have made reasonable attempts to resolve the dispute in accordance with the village dispute resolution policy and such attempts have failed to resolve the dispute.

What should your dispute resolution policy include?

By law, all South Australian retirement villages must have a dispute resolution policy and it must be provided with a residence contract (regulation 5(2)(j)).

Regulation 18 requires that for the purposes of section 45(2) of the Act, a dispute resolution policy must include or address at least the following matters:

- > the name of the person representing the operator of the retirement village that a resident may contact in the event of a dispute
- > the manner in which a complaint may be made by a resident
- > how a dispute will be handled once a resident makes a complaint, including that an operator will respond within a time that must be specified in the dispute resolution policy
- > the manner in which a resident may resolve a dispute with another resident
- > the persons or bodies from whom a resident may seek advice in the event of a dispute
- > that a resident may apply to the Tribunal if a resident is not satisfied with a response to a complaint
- > a requirement that the operator keep a written record of—
 - > the complaint made by the resident; and
 - > any response to the complaint provided by the operator; and
 - > any resolution of the dispute agreed by the operator and the resident; and
 - > any other correspondence received or sent by the operator relating to the dispute;

-
- > the manner in which the operator will communicate with a resident in response to a complaint
 - > that the resident has the right to be accompanied by a person chosen by the resident at any meeting held to resolve the dispute
 - > procedures for variation of the dispute resolution policy which provide that variation will only occur with the agreement of a majority of the residents in the retirement village.

The Office for the Ageing mediation service

The Office for the Ageing can provide a mediation service, where assistance from an independent third party may help in resolving a dispute. The mediator can provide advice to the parties concerning their rights and obligations under the Act and Regulations.

The mediation process can assist disputing parties reach agreement by mutual consent. Resolution is preferable because it is not a forced compromise; therefore parties are more likely to be satisfied with the result and to fulfil any agreed outcomes of mediation.

South Australian Civil and Administrative Tribunal (the Tribunal)

If a dispute arises between you and a resident of the retirement village, either party is entitled to apply to the Tribunal for resolution of the matter. However, you must have sufficient evidence to support your allegation. This legal avenue is more formal than the voluntary dispute resolution processes described above. The Tribunal is limited by section 46 of the Act as to what determinations it can make and it is worthwhile considering what you are seeking from the Tribunal before an application is made.

Visit www.sacat.sa.gov.au for details about how to make an application to the Tribunal including information about costs.

Role of the Tribunal

The Act and Regulations enable disputes between operators and residents to be resolved by the Tribunal. The Tribunal is a separate and independent body providing a prompt and low cost way of resolving disputes. The Tribunal has the authority to make orders that are legally binding and enforceable.

The Tribunal can hear disputes concerning (but not limited to):

- > breaches of the residence contract
- > breaches of the Act
- > harsh or unconscionable conduct by the operator
- > full or part payment of an exit entitlement

The Tribunal cannot hear disputes between residents, or any dispute which is not related to the Act and Regulations or the residence contract.

The Tribunal may also decline an application if it considers it appropriate to do so. Reasons for this may be:

- > the matter could be more adequately dealt with under the village's dispute resolution policy
- > the matter is more appropriately dealt with by another court or other tribunal
- > the matter is frivolous or involves a trivial issue or amount
- > or for some other reason, it is not appropriate to proceed with the matter.

Legal representation

If you want a lawyer to represent you, you must seek leave from the Tribunal. Lawyer involvement is only allowed under certain circumstances (see the Act, Schedule 1, clause 3(3)). If one party to the dispute is granted approval for legal representation, the other is automatically granted the same opportunity. A resident is able to have a person of their choosing to accompany them to any meeting held to resolve the dispute.

The Aged Rights Advocacy Service (ARAS) provides an advocate for retirement village residents who may assist the resident at any stage of the dispute resolution process.

Tribunal hearings

Hearings are usually held at Level 4, 100 Pirie Street, Adelaide.

A Tribunal Member will conduct the hearing in a reasonably informal atmosphere. Hearings are open to the public and are electronically recorded.

At the preliminary hearing the Tribunal Member will:

- > decide whether there is a case to answer
- > determine whether leave for legal representation is applicable
- > ascertain if further information is required from either party.

If the matter is to proceed, a full hearing date will be set. Witnesses will be required to attend the full hearing and the Tribunal will send out further notices advising all parties involved of that date and time. If a witness is reluctant to attend, the Tribunal may issue a summons if necessary.

The Tribunal is not bound by the rules of evidence, but still needs to assess the reliability of the evidence. The Tribunal will consider relevant written statements from witnesses. However, it is useful to be aware that evidence may be more persuasive if given in person on oath or affirmation, and subjected to questioning by the other party and the Tribunal.

In most hearings the Tribunal Member questions both parties to clarify the issue and what each party has to say about the matter. Any supporting evidence will be considered on merit. The parties are entitled to question each other and any witnesses giving evidence.

Once all evidence has been presented, the Tribunal makes a determination and may issue an order which is binding and enforceable. In most retirement village matters, this determination is reserved to a later date. This allows the Tribunal Member time to consider all the evidence in detail.

A written copy of the order is forwarded to the parties.

If a party to the proceedings fails to attend the hearing and the Tribunal is confident that notice of the hearing has been sent to the correct address, then the matter may proceed in the absence of that party. If for some good reason a party is unable to attend at the appointed time, the Tribunal Registry should be notified immediately. It may be possible to arrange another hearing date.

Interpreter

If needed the Tribunal Registry will arrange for an independent interpreter to attend the hearing. It takes time to do this, so if you are aware that any party to the proceedings needs an interpreter, you should inform the Tribunal Registry at the time the application is lodged.

Withdrawal of Application

If the hearing listed is no longer required, the Tribunal Registry must be notified as soon as possible, so that all parties can be notified and the scheduled time can be reallocated to another case.

12. 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 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. 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 at the back of this booklet.

13. Resident leaving a village to go into aged care

It may be necessary for a resident to move out of a retirement village to go into an aged care facility. Section 30 of the Act contains provisions relating to a resident who leaves a village for aged care. Where a resident meets eligibility requirements, they can apply to have the operator make payments to the aged care facility on their behalf. These payments can be deducted from the exit entitlement.

Eligibility requirements

To be eligible for payments to be made, the resident 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 their 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.

Under Regulation 8 the operator is entitled to request evidence of the value of the resident's income and assets as determined in accordance with the *Aged Care Act 1997* (Commonwealth) - for example, Centrelink's income and assets assessment.

Requesting the payment

Section 30 of the Act requires the resident to make the application for payment within 60 days of being approved for entry into a facility or of leaving the village, whichever is the later. Office for the Ageing provides a Notice of Intention to Vacate form which can be used by the resident to provide notice that they will vacate and that they are seeking aged care payments.

Within 30 days of receiving an application, you must commence making payments to the aged care facility for the daily accommodation payment applicable to the resident. You must continue to make payments until the resident's exit entitlement is paid to the resident or payments have reached 85% of the operator's reasonable estimate of the exit entitlement. It is an offence to fail to make payments as required under section 30.

14. Remarketing policy

Under the Act operators must have a policy outlining the procedures and the rights and obligations of each party in relation to the remarketing of a residence. It must be provided to prospective residents at the same time as the residence contract.

Under section 22 of the Act you are required to provide the village's remarketing policy to a resident. Regulation 17 describes the minimum requirements for a remarketing policy as outlined below:

- > as soon as you receive notice of the resident's decision to vacate the residence, you must act in accordance with the remarketing policy
- > you must make arrangements to meet with the resident or their representative to view the residence and explain and discuss the remarketing process
- > you must outline the procedures to identify any work that needs to be undertaken to ensure the residence is in reasonable condition for remarketing and determining when and how any work will be undertaken, who will be responsible for organising the work and for the cost of the work
- > the fixing of the price at which the 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 in relation to marketing of the residence
- > who will be responsible for any costs associated with the valuation of the residence, any advertising and other relevant matters and how any such costs will be calculated or determined
- > what will be required of the resident 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 to be followed if the resident gives notice to vacate but remains in the residence under section 27(3) of the Act, including:
 - > how inspections will be managed
 - > requirements for the presentation of the residence for inspections
 - > a date on which the resident must vacate the residence prior to settlement if the residence is relicensed before the period of 18 months has elapsed since the resident gave you notice
 - > any other matter which is reasonable to include in the guidelines
- > what steps you and the resident must take if the residence is relicensed
- > settlement procedures including the fees and charges that will be deducted at the time of settlement, and the provision of a settlement statement

-
- > a requirement that the operator provide the resident with a monthly report about:
 - > 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
 - > that you must at least match the level of marketing for any new residences which are also on the market at the same time

In accordance with Regulation 17(2) any fees charges and costs set out in a remarketing policy must not be inconsistent with the fees, charges and costs set out in the contract and disclosure statement. An example of a remarketing policy which you might like to adapt to suit your own village is at the back of this booklet. Please remember it is an example only and it in no way represents the only form of remarketing policy applicable. Other example forms relating to termination of a resident's occupancy are also at the back of this booklet.

If the residence is not relicensed after nine months

Section 32 provides a resident with the right to more actively participate in the remarketing of a 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 you 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 you in writing of any offer to purchase the right of occupation.

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

Liability for recurrent charges

Section 29 of the Act provides where a resident ceases to reside in the retirement village, you are responsible for the payment of any recurrent charge in respect of the vacated residence. If the resident will be receiving an exit entitlement, you may recover an amount equal to what would have been the resident's liability for these charges.

There are limits on this:

- > you cannot recover that amount until the exit entitlement is due to be paid (and it may then be recovered as a deduction from the exit entitlement payable to the resident)
- > the amount to be recovered cannot exceed the amount of the exit entitlement due to the resident
- > you may only claim recurrent charges that would have been payable by the resident over a prescribed period, that is
 - > until the residence is resold or relicensed or occupied by another resident
 - or
 - > 6 months from the date on which the resident ceased to reside in the village, whichever is earlier.

You may apply to the South Australian Civil and Administrative Tribunal (the Tribunal) for a determination that the prescribed period should, in the circumstances of the particular case, be longer than six months. The Tribunal will only extend the period where it would be harsh and unreasonable to limit the prescribed period to six months. Applications to the Tribunal can be made online at www.sacat.sa.gov.au.

If the residence is not relicensed after 18 months

If the residence has not been relicensed after 18 months and the resident becomes eligible to receive the exit entitlement under section 27, you may be required to pay the exit entitlement based on the current market value of the licence. Further information about exit entitlements can be found in the 'Exit entitlements' section of this booklet.

15. 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 Act) and 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(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 the Ageing 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 is at the back of this booklet.

16. Organisations to contact for advice

Independent information and advice

The Office for the Ageing

The Office for the Ageing is responsible for administering retirement village legislation and is able to provide general information and assistance on retirement village matters, clarify areas of concern and provide a mediation service to help resolve disputes between residents and operators.

Level 10, 11 Hindmarsh Square,
Adelaide SA 5000

Telephone: (08) 8204 2420

Email: RetirementVillages@sa.gov.au

Internet: <http://www.sa.gov.au/seniors/retirementvillages>

Catalyst Foundation

Catalyst Foundation (formerly Seniors Information Service) is the leading provider of community information in South Australia. Catalyst Foundation can provide information and support on retirement villages, independent living units, serviced apartments, community housing, residential parks and residential aged care facilities.

149 Currie Street,
Adelaide SA 5000

GPO Box 1645 Adelaide 5001

Telephone: (08) 8168 8776

Freecall: 1800 636 368

(SA country callers)

Email: information@catalystfoundation.com.au

Internet: www.catalystfoundation.com.au

Aged Care Alternatives

Aged Care Alternatives is a free information service that assists the older person, their carers and families to find and understand information about aged care services. Aged Care Alternatives can provide information through personal consultations or by telephone or email about My Aged Care - the Commonwealth Government entry point to aged care services. Aged Care Alternatives can support people through the registration process and initial screening interview.

1/445 Fullarton Road
Highgate SA 5063

Telephone: 8271 3888

Email: info@agedcarealternatives.net.au

Internet: www.agedcarealternatives.net.au

Consumer organisations

South Australian Retirement Villages Residents Association (SARVRA)

SARVRA's members are residents of retirement villages. The Association's goals are to provide information and advice to, and advance the interests of, retirement village residents.

Contact via Council on the Ageing (COTA) 16 Hutt Street
Adelaide SA 5001

Telephone: (08) 8232 0422

(COTA Switchboard)

Freecall: 1800 182 324

(from outside Adelaide metropolitan area)

Internet: www.sarvra.asn.au

Email: secretary@sarvra.com

17. Transitional provisions

The Act and the Regulations will commence on 1 January 2018. Below is information about transitional provisions applicable to the commencement of the Act and Regulations.

Residence contracts

- > Any contract entered into before the commencement of the Act and the Regulations continues to be in force as if it were a contract entered into in compliance with the Act.

Surplus and deficit policy

- > The Act and the Regulations require you to have a surplus and deficit policy in relation to the village accounts for recurrent charges. Regulation 5 (2)(g)(vii) requires a copy of the policy to be included in a residence contract.
- > Schedule 2 of the Act, Part 4 – Transitional provisions, requires that if there is any residence contract in force that does not contain a surplus and deficit policy, there must be a policy adopted within six months of the commencement of the Act. This must occur by holding a meeting of residents and approving the policy by special resolution (where at least fifteen business days written notice of the meeting has been given and a majority of not less than three quarters of the number of residents who were entitled to vote at the meeting pass the resolution). The policy will then apply to all contracts which do not already have a surplus and deficit policy as though the new policy formed part of the contract. If a village fails to adopt a policy within the six months as required, Schedule 3 of the Regulations stipulates that a surplus or deficit must be accounted for in the statement of accounts for the following financial year.

Exit entitlements

- > Section 27 introduces an 18 month repayment period for exit entitlements where a residence has not been relicensed. Where a resident has ceased to reside in their residence prior to the commencement of the Act, section 27 will apply and the 18 month period will begin when the Act commences.

Remarketing

- > Under the Regulations, Schedule 4, a remarketing policy given to a resident before the commencement of the Act will continue to apply unless the resident agrees to changes to the policy. The Code of Conduct in the Regulations stipulates the consultation requirements which are necessary before a remarketing policy can be changed.

Exemptions

- > Any exemptions granted under the *Retirement Villages Act 1987* will carry over under the *Retirement Villages Act 2016*.

Lease of land

- > Under the Regulations, Schedule 4, if you have any land in a village which is leased outside of the retirement village scheme that lease will continue to operate under the new legislation.

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Documents provided to prospective resident(s)

In accordance with the Retirement Villages Act 2016 (SA) and Retirement Villages Regulations 2017 (SA), (name of operator) has provided (name of prospective resident) with the following completed documentation.

	Document	Date provided
1	Residence contract	
2	Disclosure statement	
3	Financial statements presented at the last annual meeting of residents of the village, including a written statement of any subsequent change in the affairs of the village and the operator that may significantly affect the resident's decision to enter the village.	
4	A copy of the minutes of the last two annual meetings of residents of the village (if two or more such meetings have been held) or of the last annual meeting (if only one such meeting has been held)	
5	The village's residence rules	
6	The village's remarketing policy	
7	Any code of conduct to be observed by the operator or residents (see Retirement Villages Regulations 2017 (SA), Schedule 1, Operator and Residents Code of Conduct).	
8	A copy of the surplus and deficit policy of the retirement village scheme	
9	Procedures for resolution of a dispute within the retirement village, including a statement of the provisions in section 45 of the Act	

Signed by or on behalf of the operator

..... / / 20.....
print name *signature*

Signed by the resident or their agent

..... / / 20.....
print name *signature*

Retirement Villages Act 2016 (SA) – Section 21

Disclosure statement

- (i) the disclosure statement is not a replacement for the residence contract but is intended only as a summary of certain information contained in the contract; and
- (ii) prospective residents must ensure that they understand the terms of the residence contract; and
- (iii) it is recommended that prospective residents seek legal and financial advice in relation to the residence contract.

Name of operator:	<i>[insert name]</i>
Name and address of retirement village:	<i>[insert name and location of the retirement village]</i>
Name of prospective resident:	<i>[insert name of prospective resident or residents]</i>
Description of residence:	<i>[insert description of the particular residence to be occupied by the resident including unit number. A copy of a unit layout may be included.]</i>
Residence completion date:	<i>[if residence is to be constructed or is under construction, insert anticipated completion date of the construction]</i>
Insurance arrangements in place for the retirement village:	<p><i>[insert name of insurer and type of insurance]</i></p> <p>For example:</p> <ul style="list-style-type: none"> • Name of insurer: • Type of insurance: We have comprehensive insurance on the village which includes: public liability, building insurance etc. • You are required to organise your own contents insurance for your residence.
FEES AND CHARGES PRIOR TO OCCUPATION	
Ingoing contribution: Due on	<p><i>[include a description of the fee, the amount or manner of calculation of the fee and what is to be done with the fee]</i></p> <p><i>[insert date or dates on which fees and charges are due]</i></p> <p>For example:</p> <ul style="list-style-type: none"> • The ingoing contribution is \$..... • Deposit of \$..... to be paid on • Remainder of \$..... to be paid on <p>The ingoing contribution will be held in trust until you enter into occupation of your residence.</p> <p>Following occupation, the ingoing contribution is paid to the operator.</p>

Other fees and charges: Due on	<p><i>[include a description of the fee, the amount or manner of calculation of the fee and what is to be done with the fee]</i></p> <p><i>[insert date or dates on which fees and charges are due]</i></p> <p>For example: Fee of \$.... To be paid by This fee will be used for</p>
FEES AND CHARGES DURING OCCUPATION	
Recurrent charges:	<p><i>[include a description of the fee, the amount or manner of calculation of the fee and what is to be done with the fee]</i></p> <p>For example: Maintenance fee of \$.... per fortnight. This will be paid into the Maintenance Fund. See clause ... of the residence contract for details of the maintenance fee.</p>
Fees and charges for additional or personal services and facilities:	<p><i>[include a description of the fee, the amount or manner of calculation of the fee and what is to be done with the fee]</i></p> <p>For example: Personal service fee of \$... per fortnight. This will be paid into the Maintenance Fund. See clause ... of the residence contract for details of the personal services you will receive.</p>
Other fees and charges under the contract:	<p><i>[include a description of the fee, the amount or manner of calculation of the fee and what is to be done with the fee]</i></p>
Utilities, services or facilities provided or available to residents in which the operator has an interest or in relation to which the operator would obtain a fee or reward:	<p><i>[eg. electricity, Internet or telephone]</i></p> <p>For example: We have an interest in the following utilities, services or facilities which are available or provided to residents of the village:</p> <ul style="list-style-type: none"> • XYZ Internet services • XYZ Building services
Other fees and charges relating to occupation of the residence for which the resident is responsible:	<p><i>[eg. electricity, council rates, water or gas for which the resident is responsible, in addition to recurrent charges]</i></p> <p>For example: You will also be responsible for the following costs which are arranged by and billed to you directly.</p> <ul style="list-style-type: none"> • Telephone connection, calls, maintenance • Electricity & Gas consumption • Council rates • Contents insurance
<p>Note— A resident may be required to pay a fee, charge or other amount to the operator to enable the operator to recover an unforeseen expense of the retirement village (a special levy).</p>	

FEES AND CHARGES ON VACATING THE RETIREMENT VILLAGE

Manner of calculation of exit entitlement

Manner of calculation of amount from which exit fees will be deducted:	<p><i>[eg. whether the repayment is based on the ingoing contribution, the ingoing contribution of the next resident or on some other basis, and whether the resident will share in any capital gain or loss]</i></p> <p>For example: The exit entitlement is calculated by: Your ingoing contribution plus ...% of any capital gain or minus ...% of any capital loss. The capital gain or loss will be calculated by subtracting the ingoing contribution from the current market value of the residence.</p>
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FEES AND CHARGES (exit fees)

Termination during settling-in period

Amount of fair market rent determined under section 44(5)(a) of the Act:	<p><i>[insert amount]</i></p> <p>For example: Fair market rent for your residence is \$... per week.</p>
Any other fees or charges:	<p><i>[include a description of the fee, the amount <u>or</u> manner of calculation of the fee and what is to be done with the fee]</i></p> <p>For example: Any outstanding fees for personal services. Repair and refurbishment costs if there is damage to the residence beyond fair wear and tear.</p>

Termination after settling-in period

Exit fees:	<p><i>[including, for example, any deferred management fees, refurbishment costs and remarketing costs. Include a description of the fee, the amount or manner of calculation of the fee and what is to be done with the fee]</i></p> <p>For example: Deferred management fee: You will be charged a deferred management fee which is retained by us. The fee will be a percentage of the current market value of your residence based on your length of occupation:</p> <ul style="list-style-type: none"> • Six months to one year: ..% of the current market value. • More than one year to two years: ...% of the current market value. • More than two years and less than three years: ...% of the current market value. • More than three years and less than five years: ...% • More than five years: ...% of current market value. <p>See clause ... of the residence contract.</p>
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Exit fees:	<p>This will be paid to the operator.</p> <p>Refurbishment costs: You will be responsible for the costs of refurbishing your residence to as new condition, fair wear and tear excepted. See clause of residence contract.</p> <p>This will be paid into the Capital Fund.</p> <p>Remarketing fee: \$.... See clause ... of residence contract.</p> <p>This will be paid to the operator.</p> <p>Capital Replacement Fund Contribution: Calculated at ...% of your ingoing contribution for each year you reside in the residence to a maximum of X years.</p> <p>This will be paid into the Capital Replacement Fund.</p> <p>Recurrent charges: For up to 6 months after ceasing to reside in the residence. See clause of residence contract.</p> <p>These will be paid into the Maintenance Fund.</p>
Any other fees or charges:	<p><i>[including, for example, fees which a resident remains responsible for after the resident ceases to reside in the retirement village. Include a description of the fee, the amount or manner of calculation of the fee and what is to be done with the fee]</i></p> <p>For example: After you leave the retirement village you will be responsible for the following fees and charges:</p> <ul style="list-style-type: none"> • Any outstanding charges for personal services • You will be responsible for payment of electricity costs until the residence is relicensed or your exit entitlement has been repaid to you to enable us to undertake refurbishment work to the residence and show the residence to prospective purchasers.
<p>Note—</p> <p>Exit fee means the amount of money that is, under a residence contract, payable by a resident of a retirement village on the resident ceasing to reside in the retirement village or on the sale of the resident's right to reside in the retirement village.</p>	

TIMING OF PAYMENT OF EXIT ENTITLEMENT

Timing of payment under residence contract:

[when a resident will be entitled to payment of an exit entitlement, eg. on relicensing of the residence sale of the resident's right to reside in a residence at the retirement village or some other event]

For example:

- We will pay you the exit entitlement within 10 business days of the next resident paying an ingoing contribution for the licence to occupy the residence, unless required earlier by legislation. (See Note below). OR – No exit entitlement is payable

Note—

Section 30 of the Act provides that if a resident leaves to enter residential aged care, the resident may apply to the operator for daily accommodation payments to be made to the relevant aged care facility (up to a limit determined under the section), if the resident meets the requirements set out in that section. If this occurs, the operator may recover the amounts paid by deducting them from the exit entitlement.

Section 27 of the Act provides for the circumstances in which a resident may recover the amount of an exit entitlement as a debt from the operator, including if a period of 18 months has elapsed since the resident has ceased to reside in the retirement village.

Acknowledgement of receipt of disclosure statement

Signature of operator

Date

Signature of resident

Date

Residence Contract

STATEMENT TO PROSPECTIVE RESIDENT

You should seek independent legal advice about your rights and duties under the residence contract.

The Retirement Villages Act 2016 and associated Regulations sets out various rights that a person has on entering into a residence contract that cannot be excluded by the contract.

You have the right to cool-off (that is, to rescind the residence contract) within a period of 10 business days after you sign the contract.

A contract is rescinded by notice in writing, given personally or by post, to the operator. All monies paid towards your ingoing contribution will be refunded to you within 10 business days of the receipt of your notice to rescind.

(Note: A person must, at least 10 business days before entering into a residence contract, be given a copy of each of the documents outlined in Section 22 of the Act.)

1. PARTIES TO THE RESIDENCE CONTRACT

This residence contract (the contract) is between

.....
name of operator

of

.....
address of operator

and

.....
name of prospective resident(s)

of

.....
current address of prospective resident(s)

Describe any limitation(s) on who may, in the future, become a party to the contract and details of the limitation(s) (for example, this document is personal to the prospective resident and without the Operator's consent which can be refused at the Operator's absolute discretion, the rights cannot be assigned). The residence contract should be signed and dated by all parties to the contract.

A party to this contract can only be changed with the approval of the Operator. Approval will be granted on the following conditions:

.....
.....

2. DEFINITIONS and INTERPRETATION

A residence contract must include definitions of words and phrases used in the contract (including relevant words and phrases defined in the Act).

For example:

'Ingoing Contribution' means the amount you pay to enter the Village

'The Act' means the Retirement Villages Act 2016 (SA)

'The Regulations' means the Retirement Villages Regulations 2017 (SA)

'Us/We' means the operator of the retirement village

'You/Resident' means the person(s) named as resident(s) in the contract

'Scheme' means the Retirement Village Scheme

'Operator' means the person by whom or on whose behalf the retirement village scheme is administered

'Village Manager' means the person responsible for the day to day management of the retirement village

The singular includes the plural and vice versa

A gender includes other genders

Any words defined in the Act or Regulations shall have the same meaning in this Contract

Note: If there are changes to who is the operator of the retirement village a meeting of all residents will be held in accordance with section 36 of the Act before the change is effected.

3. EXEMPTIONS

Detail any ministerially conferred exemptions from provisions of the Act in relation to the retirement village including any conditions imposed by the exemption.

For example:

Financial statements presented pursuant to section 33(6) of the Act may be prepared in a consolidated format for all retirement villages administered by (name of company).

If no exemptions have been granted, state 'no exemptions apply'.

4. THE RETIREMENT VILLAGE SCHEME

Insert the name and location of the retirement village and details of the Certificate(s) of Title for the land on which the retirement village is situated. Details should include:

- *The volume and folio numbers*
- *The name of the owner in fee simple of the land registered on the certificates of title*
- *If the land is subject to a mortgage or charge – the name of the holder of the mortgage or charge*
- *The endorsement on the certificate(s) of title as required by section 56 of the Act*
- *Any other endorsement on the certificates of title*

Also note the form of tenure that will apply to the resident and any conditions of that tenure (eg licence to occupy, lease, community title).

For example:

4.1
name of retirement village

4.2
address of retirement village

4.3
name of owner in fee simple

Volume #Folio #

CT endorsed for use as retirement village yes ☐ no ☐

Volume # Folio #

4.4 The land on which the Village is located **is not** subject to a mortgage or charge
OR

The land on which the Village is located is subject to a mortgage or charge to

.....
name of mortgage or charge holder

4.5 Other endorsements recorded on the Certificate(s) of Title are

.....

4.6 You will receive a community title **OR** strata title **OR** lease **OR** licence to occupy
OR some other form of tenure (*full description*).

In consideration of your Ingoing Contribution we grant you the right of occupation and the right to use communal property within the retirement Village, until that right is terminated in accordance with this contract or the Act.

5. SETTling-IN PERIOD

Provide information about when the settling-in period begins and ends, the fees and charges for which the resident will be responsible and, if not covered in clause 12.3 above, the charges and/or costs which will be deducted from the refund.

For example:

- 5.1 Your settling-in period begins on the date on which you enter into occupation of your residence or the date which you sign your residence contract, whichever is later.
- 5.2 Your settling-in period will end 90 days after the day referred to in 5.1.
- 5.3 The fees and charges associated with leaving the Village during the settling-in period are described in section 12.3 of this contract.

NOTE: No provision in a contract between the operator and the resident can have the effect of making the resident liable to pay an amount by way of a penalty if he or she terminates a right of occupation during his or her settling in period (and any such provision is void to the extent that it would have such an effect).

6. YOUR RESIDENCE

Provide a description of the features of the residence in reasonable detail, a plan of the residence showing significant dimensions and a plan of the Village showing the location of the residence in the Village and any separate facilities allocated to the resident.

For example:

- 6.1 In consideration of the payment of the Ingoing Contribution outlined in this contract, you are granted:
 - 6.1.1 a licence to use and reside in the nominated residence; and
 - 6.1.2 the right to use all Communal Facilities within the Village.
- 6.2 Your residence is number # and features 2 bedrooms, bathroom, toilet, laundry, kitchen, dining and living room including floor coverings, built-in kitchen cupboards and wardrobes, linen, broom & pantry storage.
- 6.3 A plan of your residence showing significant dimensions is attached (Attachment #).
- 6.4 A plan of the Village showing the location of your residence and any separate facilities allocated to you (eg storage facility) is attached (Attachment #).

7 YOUR FACILITIES AND SERVICES

Provide information about the facilities and services available in the retirement village. This includes communal facilities available to all residents; any separate facilities allocated to the resident; additional facilities provided or to be provided to the resident. If additional facilities are to be provided include any work that is to be undertaken in relation to the provision of those facilities and the cost of any work to be undertaken together with who is responsible for those costs.

Provide information about services available to residents in the retirement village including services provided to all residents (payment for which is by recurrent charge) and optional personal services available to residents (payment for which would be by an additional recurrent charge), specifying any such services to be provided to the resident.

For example:

7.1 All residents have access to:

7.1.1 a communal centre which provides tables and chairs, a meeting area, library and billiards table

7.1.2 BBQ area and gazebo with outdoor furniture

7.1.3 a bowling green.

7.2 You have been provided with a garden shed located adjacent to your residence.

7.3 The following additional facilities will be provided to you (*detail what the facilities are, if any work is to be undertaken to provide those facilities and at whose cost*).

7.4 The following services are provided to residents, the payment for which is deducted from your recurrent charges (list all services to be provided, for example):

7.4.1 upkeep of public gardens, lawn and landscaped areas

7.4.2 maintenance, inside and outside your residence

7.4.3 general insurance for the Village

7.4.4 repair or replacement of fixtures and fittings

7.4.5 estate lighting and rubbish removal.

7.5 The following optional personal services are available to residents for an **additional** recurrent charge (specify any such services to be provided to the resident):

7.5.1 cleaning of the residence

7.5.2 laundry (personal)

7.5.3 meals – lunch &/or dinner.

8 YOUR INGOING CONTRIBUTION

Provide financial information in relation to the retirement village scheme including the Ingoing Contribution to be paid by the resident; the basis on which the Ingoing Contribution is to be paid and the date (or dates, in the case of progress payments) on which the Ingoing Contribution is payable.

For example:

8.1 You will pay the Ingoing Contribution to us on the following terms and conditions:

8.1.1 The amount of the ingoing contribution payable is \$.....

8.1.2 It is acknowledged that the deposit of \$..... paid by you towards the ingoing contribution, has been received on /

- 8.1.3 The balance of the ingoing contribution is required to be paid by bank cheque or electronic funds transfer on the date you enter into occupation of your residence.
- 8.1.4 You will only take up occupation after the cooling-off period has ended.

9 RECURRENT CHARGES

Provide information on all recurrent charges payable by the resident including; the amount of each recurrent charge and how the amount is calculated; the reason for each recurrent charge and when it is payable and if it can be varied by the operator; when it was last varied; estimated date of when it will next be varied; the period of notice given before it is varied. You must stipulate when the financial year begins and ends for the scheme.

Also include recurrent charges (if any) that will continue to be payable if the resident is absent or leaves the retirement village which may include maintenance charges or charges for additional personal services provided to the resident (such as a cleaning service or the provision of meals).

For example:

9.1 Maintenance Fee

- 9.1.1 You are responsible for paying us a maintenance fee which is a weekly amount of \$....., being for the total operating costs** (see 9.2).
- 9.1.2 This amount is calculated on being one equal share of the number of residences. This amount is payable by direct debit every two weeks starting on/.....
- 9.1.3 This charge was last varied on/...../.....
- 9.1.4 It is estimated that this fee will next be varied on/...../.....
- 9.1.5 We will provide you with notice of the variation 10 business days before the variation will come into force.
- 9.1.5 Please note, this fee is payable for a maximum of 6 months from the date you cease to reside in your residence or until your exit entitlement is paid to you, whichever occurs earlier.
- 9.1.6 Your contribution will be used for the total operating costs as detailed below (and where applicable the sinking fund if you have a sinking fund contribution in the maintenance fee).

9.2 Total operating costs

The total operating costs in relation to the Village means all outgoings payable in relation to the Village and all costs, charges, expenses, fees and other outgoings paid or payable by, or on behalf of us, in managing, supervising, operating, cleaning, painting, maintaining and keeping secure the Village and will include in particular, the following:

- 9.2.1 All rates, taxes (excluding land tax), charges and assessments of every kind (whether Federal, State, Municipal or otherwise).
- 9.2.2 All premiums for insurance of the Village, including the business associated with the operation of the Village, in case of fire, lightning, storm and tempest, earthquake, malicious damage, explosion, riot or civil commotion and public risk and liability.

- 9.2.3 The cost of all services provided or to be provided to the Village in relation to the operation of the Village, including all charges for communal electricity, gas, telephone, and all sewerage, water, garbage and trade waste disposal services.
 - 9.2.4 The costs of all services provided by the Village for residents and other occupants in the Village and visitors to the Village including cleaning, lighting and heating of the Village,(including communal areas).
 - 9.2.5 All costs for or in connection with the maintenance, operation, renovation and upkeep of the Village excluding the cost of any structural work.
 - 9.2.6 Repairs and maintenance to each residence.
 - 9.2.7 x% of the total operating costs as a provision to the sinking fund.
 - 9.2.8 All auditing expenses.
 - 9.2.9 Management fees including the cost of providing accounting, book keeping and secretarial services for the Village and all aspects of the administration of the Village.
 - 9.2.10 Pest control and eradication.
 - 9.2.11 Repair and maintenance of all common garden and landscaped areas.
- 9.2 Other fees and charges relating to occupation of the residence
- 9.2.1 In addition to the maintenance fee as outlined in 9.1 you will also be responsible for the following recurrent costs relating to residing in your residence which will be charged directly to you by the service provider:
 - 9.2.1.1 Water costs
 - 9.2.1.2 Council rates
 - 9.2.1.3 Electricity costs
 - 9.2.1.4 Contents insurance

9.4 Financial year

The financial year relating to the retirement village scheme commences on 1 July and ends on 30 June of each year.

10 FUNDS TO WHICH YOU ARE REQUIRED TO CONTRIBUTE

Describe the purpose, the amount required to be contributed and when the resident will be required to contribute for each fund.

For Example

10.1 Sinking fund

- 10.1.1 You are responsible for contributing x% of your maintenance fee to the sinking fund each year.
- 10.1.2 This fund will be used for the upkeep of the grounds. This may include road surfaces, painting, security and salt damp repairs. It may also be used for the repair and replacement of the gazebo, bowling green and recreational amenities.

10.2 Capital replacement fund

- 10.2.1 You will be responsible for contributing x% of your Ingoing Contribution for each year or part year of your occupancy fixed to a maximum of x years. This contribution will be deducted as an exit fee when you leave the Village.
- 10.2.2 This fund will be used for the purpose of replacing hot water services, carpets, window dressings, all fixtures and fittings within the residence

and undertaking structural work or fixing external water/sewerage problems.

10.3 Maintenance fund

10.3.1 See clause 9 above.

11 FIXTURES, FITTINGS AND FURNISHINGS

Include detailed information about who will be responsible for repairing and replacing the fixtures, fittings and furnishings provided in the residence and how the cost of repairing and replacing such fixtures, fittings and furnishings is to be funded.

Your residence:

11.1 Fixtures: Kitchen units, sinks, toilets, bath, light fixtures, built-in wardrobes, cupboards, heating and cooling systems.

11.1.1 Responsibility for repair or replacement: The operator is responsible for the replacement or repair of fixtures due to fair wear and tear. You are responsible for any damage beyond fair wear and tear. You are responsible for any accidental damage you cause to the fixtures.

11.1.2. How the cost of repair or replacement will be funded: The cost of repair or replacement due to fair wear and tear will be funded through the Capital Replacement Fund. You are responsible for the cost of repair or replacement beyond fair wear and tear.

11.2 Fittings: Carpet, curtains, kitchen appliances, mirrors.

11.2.1 Responsibility for repair or replacement: The operator is responsible for the replacement or repair of fittings due to fair wear and tear. You are responsible for any damage beyond fair wear and tear. You are responsible for any accidental damage you cause to the fittings.

11.2.2 How the cost of repair or replacement will be funded: The cost of repair or replacement due to fair wear and tear will be funded through the Capital Replacement Fund. You are responsible for the cost of repair or replacement beyond fair wear and tear.

11.3 Furnishings: Kitchen table and chairs, clocks, lounge suite, microwave oven.

11.3.1 Responsibility for repair or replacement: The operator is responsible for the replacement or repair of fittings due to fair wear and tear. You are responsible for any damage beyond fair wear and tear. You are responsible for any accidental damage you cause to the furnishings.

11.3.2 How the cost of repair or replacement will be funded: The cost of repair or replacement due to fair wear and tear will be funded through the Capital Replacement Fund. You are responsible for the cost of repair or replacement beyond fair wear and tear.

11.4 Details of the condition of the fixtures fittings and furnishings will be provided to you in the premises condition report following your occupation at the Village.

11.5 We will use our discretion to determine when an item is due for repair or replacement. In making this determination we will take into account the condition of the particular item and refer to general standards for the lifespan of the particular fixture, fitting or furnishing and the cost of repair versus replacement.

11.6 Refurbishment costs: When you cease to reside in your residence, the residence is to be refurbished with the fixtures, fittings and furnishings in the residence to be made good subject to fair wear and tear. The cost for refurbishment will be in accordance with clauses 11.1, 11.2 and 11.3.

12 PAYMENT OF EXIT ENTITLEMENT

Provide information on the terms and conditions under which the exit entitlement will be paid how it will be calculated including the formula for calculating the payment; the fees and charges that may be deducted from the payment; the conditions that must be met before the payment will be made and when, how and to whom the payment will be made.

12.1 Subject to this Agreement and the Act, payment of the exit entitlement will fall due and become payable after the licence has been terminated and you have ceased to reside in the Village and we have received a subsequent ingoing contribution in relation to your residence.

OR

12.2 Payment of the exit entitlement will fall due and become payable after the licence has been terminated and you have ceased to reside in the Village and within 21 days if we decide the residence is not available for relicensing. We will advise you within 14 days of receiving your notice to vacate of whether the residence will be available for relicensing.

12.3 If you occupy the residence for 90 days or less, we will repay you the full Ingoing Contribution less reasonable market rent for the period of occupation. No other exit fees will be charged.

12.4 If you occupy the residence for more than 90 days, we will refund you a percentage of the next Ingoing Contribution received from the next resident, which will be calculated on the following basis:

- up to 12 months – 90% of next ingoing contribution
- from 12 months up to 18 months – 85% of next ingoing contribution
- from 18 months up to 24 months – 80 % of the next ingoing contribution
- after 24 months – 75% of the next ingoing contribution

NOTE: Also see section 27 and section 30 of the Act for other circumstances which may impact the timing of payment of your exit entitlement. For example, a resident may be eligible to receive their exit entitlement 18 months after ceasing occupation, even if the residence has not been relicensed. Also, if a resident meets certain criteria, they can apply for the operator to make certain payments to the aged care facility on their behalf.

13 EXIT FEES TO BE DEDUCTED

13.1 The following exit fees will be deducted from the exit entitlement.

13.1.1 Remarketing Fee. An amount of x% of the Ingoing Contribution from the next resident for the Unit will be deducted for the remarketing of the residence. (Refer to remarketing policy for details about the remarketing of the residence)

13.1.2 Capital Replacement Fund contribution: Please see clause 10.2.

13.1.3 Maintenance fee: Please see clause 9.1.5 for your ongoing obligations to the maintenance fee.

13.1.4 Refurbishment costs: Please see clause 11.6 above.

13.1.5. Other fees: Outstanding maintenance fees or personal service fees.

14 FUTURE DEVELOPMENT

Provide information about any development of the Village which is being undertaken or planned at the date the contract is signed. This includes the number of residences under construction or planned for construction and the estimated completion date; any communal facilities under construction or planned for construction and the estimated completion date; any landscaping being undertaken or to be undertaken and the estimated completion date; if development approval is required under the Planning, Development and Infrastructure Act 2016 (SA), details of the approvals granted and any conditions of the approvals; a statement of the provisions in section 37 of the Act including details of consultation with residents that must occur before any future redevelopment of the retirement Village may commence.

For example:

The following information includes best estimates regarding work yet to be completed in the Village. There is no guarantee that this work will be completed as planned. In making your decision as to whether or not to live in this Village, you are advised to consider that we may, at a future date, not be in the position to complete all the work described in this section.

If this occurs, there may be no legal way it can be forced to proceed and you may be left without the level of facilities you expected.

In addition to facilities already completed at the time you inspected the Village, the following facilities are under construction or are planned.

14.1 Independent Living Units under construction

No of units	Est. completion date/...../.....
No of units	Est. completion date/...../.....

14.2 Independent Living Units planned for construction

No of units	Est. completion date/...../.....
No of units	Est. completion date/...../.....

14.3 Communal facilities under construction

.....Est. completion date/...../.....

14.4 Communal facilities planned for construction

..... Est. completion date/...../.....

14.5 Landscaping being undertaken

..... Est. completion date/...../.....

14.6 Landscaping planned

..... Est. completion date/...../.....

14.7 Development consent

The following information describes any development approval required under the *Planning, Development and Infrastructure Act 2016* and provides details of the approvals granted and any conditions of the approvals.

.....

.....

14.8 Future Development

In accordance with section 37 of the Act, before any redevelopment of the Village commences, we will call a meeting of all residents at which we will present a plan of and report on the proposed redevelopment and answer any reasonable question put by a resident.

If you are to be relocated we will ensure you are not financially disadvantaged.

15 DISPUTE RESOLUTION POLICY

Attach the procedures for the resolution of a dispute within the retirement village including a statement of the provisions in section 45 of the Act.

In accordance with section 45 of the Act we must have a written policy in relation to resolution of disputes between the operator and residents of the retirement village. Requirements for the dispute resolution policy are outlined in Regulation 18.

We must provide you with a copy of the dispute resolution policy on request within five business days of you making the request.

The dispute resolution policy in effect at the time of this residence contract is Attachment #.

16 TRUSTEE

If applicable, provide information about the trustee including the name and address of the trustee; the terms and conditions on which the trustee has been appointed for the purposes of the scheme (insofar as any such trustee is involved in holding money paid by the resident on trust or is available or responsible to represent the interests of the resident); the assistance available for residents from the trustee and how the trustee's fees are to be paid.

For example:

16.1
name of trustee

16.2
address of trustee

16.3 The terms and conditions upon which the trustee is appointed are:

- 16.3.1 To represent residents of the estate.
- 16.3.2 To act as trustee in relation to deposits paid under the scheme.
- 16.3.3 (*any other conditions*).

16.4 Residents may seek assistance from the trustee in relation to the financial management of the scheme.

16.5 The trustee will be paid from the Maintenance Fund.

17 TERMINATION OF CONTRACT

Describe the action to be taken to terminate the contract, the steps (if any) that a party agrees to undertake after a termination and a statement of the provisions in section 44 of the Act.

For example:

- 17.1 You will have the right at any time, by providing not less than # days' notice in writing to us, to terminate your Contract. However, you may also provide us with a written request to remain in occupation until the amount due to you under this Contract is paid to you.
- 17.2 Your Contract will automatically terminate upon your death or the death or the last survivor of you.
- 17.3 Subject to the provisions of the Act, we may terminate this contract on one of the following grounds:
 - 17.3.1 the committing of a breach of the residence contract or the residence rules; or
 - 17.3.2 acting 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; or
 - 17.3.3 the residence becomes an unsuitable place of residence for you because of your mental or physical capacity.
- 17.4 Our decision to terminate your right of occupation under clause 17.3 is ineffective unless the South Australian Civil and Administrative Tribunal (**SACAT**) is satisfied on our application that the breach is sufficiently serious to justify termination or that proper grounds exist for the termination.
- 17.5 If we decide to terminate your right of occupation under clause 17.3, we must give you, personally or by post, a notice which:
 - 17.5.1 sets out the grounds for our decision;
 - 17.5.2 informs you that the decision is subject to review by SACAT; and
 - 17.5.3 informs you of your rights with regard to such a review.
- 17.6 Where SACAT confirms our decision to terminate your right of occupation, the Tribunal must fix a period within which you must vacate the residence.
- 17.7 SACAT may make an order for the ejectment of a resident who has not vacated a residence at the expiration of the period referred to above.

NOTE: You may also provide us with a notice that you intend to cease to reside in your residence but wish to remain in occupation of the residence until the exit entitlement becomes payable in accordance with section 27 of the Act.

OTHER INFORMATION

If applicable, provide any other information that has been agreed to between the parties to this contract.

For example:

18.1 Any alterations and/or additions to your residence will become our property.

18.2 We have approved the following variations, alterations or additions to your residence.

18.2.1 Erection of a 3.5m x 3m cream coloured Stratco Outback Verandah at the rear of your residence. All maintenance and repairs of the verandah during your occupation will remain your responsibility.

18.3 When you cease to reside in the residence any additions or alterations will be taken into consideration in setting the remarketing price.

18.4 While we will initially attempt to remarket the residence with the additions and/or alteration we may remove the addition or alteration and restore the residence to its original condition at your expense if it will assist in remarketing of the residence.

18 SURPLUS AND DEFICIT POLICY

Include a copy of the surplus and deficit policy of the retirement village scheme. Please note this relates to surplus and deficits in the accounts in relation to recurrent charges.

For example:

The surplus and deficit policy in effect at the date of the residence contract is Attachment #.

A special resolution of residents in accordance with the Act is required to change our surplus and deficit policy. If this occurs, a copy of the new policy will be provided to you within 10 business days of the meeting of residents approving the changes.

19 OTHER VILLAGE POLICIES AND RULES

The following policies and residence rules for the Village are attachments to the residence contract.

The attached documents are the policies and rules in effect as at the date of the residence contract. Please note that these policies may be changed in consultation with residents as outlined in the Act. If these policies are changed in accordance with the Act, a copy of the new policy will be provided to you within 10 business days of the changes being made.

- Dispute resolution policy (Attachment #)
- Remarketing policy (Attachment #)
- Residence rules (Attachment #)

20 DATE OF CONTRACT

Dated theday of20.....

.....
Signature of operator

.....
Resident signature

.....
Name and address of operator

.....
Name and address of resident

.....
Witness signature

.....
Witness name and address

EXAMPLE

21 ATTACHMENTS TO RESIDENCE CONTRACT

- # Plan of your residence.
- # Plan of Village showing location of your residence and any separate facilities allocated to you.
- # Dispute resolution policy. *(See separate information sheet)*
- # Surplus and deficit policy. *(See separate information sheet)*
- # Remarketing policy. *(See separate information sheet)*
- # Residence rules. *(See separate information sheet)*
- # Financial statements as presented at the last annual meeting of residents of the Village. *(See separate information sheet)*
- # A copy of the minutes of the last two annual meetings of residents of the Village.
- # Operator and Residents Code of Conduct.

Premises condition report and vacated premises report

Retirement Villages Act 2016 (SA) (section 23) and Retirement Villages Regulations 2017 (SA) (Regulation 16)

Residence: Address of residence

The premises condition report reflects the condition of the premises at the time a resident(s) takes up occupation of a premises. We are required to complete this report within 10 business days of a resident entering into occupation. The report must be signed by the resident and the operator or a representative of the operator.

The vacated premises report reflects the condition at the time a resident(s) ceases to reside in a residence. We are required to complete the vacated premises report within 10 business days of a person ceasing to reside in a residence.

For information about responsibility for the cost of repair and replacement of fixtures, fittings and furnishings in the residence during your occupation refer to Clause x.x of the residence contract. For information about responsibility for the cost of repair and replacement of fixtures, fittings and furnishings when you cease to reside refer to Clause x.x of the residence contract.

Describe premises condition. Include general condition and if there is any damage. You may want to use a code to indicate the condition of the premises. For example, C = clean D = dirty F = fair G = good B = broken/damaged S = scratched/marked

N = not working

	Premises condition report: Condition and comments at occupation	Vacated premises report: Condition and comments when resident has ceased to reside
	Date of inspection:/.../....	Date of inspection:/.../...
KITCHEN		
Walls		
Doors/doorway frames		
Windows/screens		
Ceiling/light fittings		
Blinds/curtains		
Lights/power points		
Skirting boards		
Floor coverings		
Cupboards/drawers		
Benchtops/tiling		
Sinks/taps		
Stove tops/hot plates		

Oven/griller		
Exhaust fan/range hood		
Dishwasher		
Other		
LOUNGE ROOM		
Doors/doorway frames		
Ceiling/light fittings		
Blinds/curtains		
Lights/power points		
Skirting boards		
Floor coverings		
Other		

Signed at occupation

Resident

Date

Date

Signed

Operator

Date

Signed

Operator

Date

Signed at end of occupation

Resident (or representative)

Name of Village or Letterhead

Statement of Income and Expenditure

RECURRENT CHARGES (MAINTENANCE) FUND

This fund most commonly includes any amount (including rent) payable to the operator of a retirement village on a recurrent basis.

**Income and expenditure for the financial year 20...../20..... and
proposed budget for the financial year 20...../20.....**

	Proposed 20...../20..... (last financial year)	Actuals 20...../20..... (last financial year)	Variance 20...../20..... (last financial year)	Estimates 20...../20..... (coming financial year)
INCOME				
Recurrent charges - resident	\$	\$	\$	\$
Recurrent charges - operator	\$	\$	\$	\$
Recurrent charges outstanding - resident	\$	\$	\$	\$
Recurrent charges outstanding - operator	\$	\$	\$	\$
Interest received	\$	\$	\$	\$
Other income (specify) (eg bus trip)	\$	\$	\$	\$
Plus/minus surplus/(deficit)	\$	\$	\$	\$
TOTAL	\$	\$	\$	\$

	Proposed 20...../20..... (last financial year)	Actuals 20...../20..... (last financial year)	Variance 20...../20..... (last financial year)	Estimates 20...../20..... (coming financial year)
EXPENDITURE				
Occupancy				
Council rates	\$	\$	\$	\$
Emergency Services Levy	\$	\$	\$	\$
Insurances				
Property	\$	\$	\$	\$
Public liability	\$	\$	\$	\$
Garbage disposal	\$	\$	\$	\$
Village security	\$	\$	\$	\$
Utilities				
Water rates/charges	\$	\$	\$	\$
Electricity	\$	\$	\$	\$
Gas	\$	\$	\$	\$

	Proposed 20...../20..... (last financial year)	Actuals 20...../20..... (last financial year)	Variance 20...../20..... (last financial year)	Estimates 20...../20..... (coming financial year)
Repairs & Maintenance				
Wages (incl on-costs)				
Handyperson	\$	\$	\$	\$
Contractors/Casuals	\$	\$	\$	\$
Maintenance materials	\$	\$	\$	\$
Plumbing	\$	\$	\$	\$
Electrical	\$	\$	\$	\$
Guttering	\$	\$	\$	\$
Air conditioning	\$	\$	\$	\$
Village emergency system	\$	\$	\$	\$
Cleaning of common areas	\$	\$	\$	\$
Pest control	\$	\$	\$	\$
Cleaning of common areas	\$	\$	\$	\$
Ground care				
Wages (incl on-costs)				
Gardener/s	\$	\$	\$	\$
Contractors/Casuals	\$	\$	\$	\$
Soil	\$	\$	\$	\$
Gardening materials	\$	\$	\$	\$
Fertiliser	\$	\$	\$	\$
Pesticides	\$	\$	\$	\$
New flowers/shrubs	\$	\$	\$	\$
Management & Administration				
Management fee	\$	\$	\$	\$
Management fee costs consist of:	<p>Office rent, IT, staff, board costs, staff training, records management, long service leave, insurance.</p> <p>The management fee is calculated by dividing the management costs across all villages we manage based on number of residences.</p> <p>XYZ village is charged: X% of management costs.</p>			
Accounting fees	\$	\$	\$	\$
Audit fees	\$	\$	\$	\$
Name of auditor				
Bank fees & charges	\$	\$	\$	\$
Printing	\$	\$	\$	\$
Postage	\$	\$	\$	\$
Stationery	\$	\$	\$	\$
Telephone	\$	\$	\$	\$
Petty cash	\$	\$	\$	\$
Vehicle	\$	\$	\$	\$
Resident Bus/Vehicle				
Registration	\$	\$	\$	\$
Insurances				
Comprehensive	\$	\$	\$	\$
Public liability	\$	\$	\$	\$
Fuel	\$	\$	\$	\$
Maintenance	\$	\$	\$	\$
TOTAL	\$	\$	\$	\$

OTHER FUNDS (SPECIFY)

Income & Expenditure for the financial year 20...../20..... and Proposed Budget for the financial year 20...../20.....

SINKING FUND (Longer Term Maintenance) <i>This fund is most commonly used for the upkeep of grounds and buildings. This may include road surfaces, painting, security and salt damp repairs. It might also be used for the repair of recreational facilities such as spas and swimming pools.</i>				
Balance brought forward <i>(from actuals of last financial year)</i>	\$			
	Proposed 20...../20..... <small>(last financial year)</small>	Actuals 20...../20..... <small>(last financial year)</small>	Variance 20...../20..... <small>(last financial year)</small>	Estimates 20...../20..... <small>(coming financial year)</small>
Income				
Interest received	\$	\$	\$	\$
Funds transferred from/to maintenance fund	\$	\$	\$	\$
Sinking fund provisions	\$	\$	\$	\$
Outstanding contributions	\$	\$	\$	\$
Less expenditure				
Bank & Govt Charges	\$	\$	\$	\$
Painting	\$	\$	\$	\$
Electrical	\$	\$	\$	\$
Pool repairs	\$	\$	\$	\$
Surplus/(deficit) for the year				
Balance	\$	\$	\$	\$

OTHER FUNDS (SPECIFY)

Income & Expenditure for the financial year 20...../20..... and Proposed Budget for the financial year 20...../20.....

CAPITAL REPLACEMENT (Fixtures) <i>This fund is most commonly used to replace major items or to fund a planned maintenance program. For example, if carpet in the units needs replacing, the money could come from this fund. Structural work or the replacement of major appliances such as stoves, hot water services and air conditioners may also come out of this fund.</i>				
Balance brought forward <i>(from actuals of last financial year)</i>	\$			
	Proposed 20...../20..... <i>(last financial year)</i>	Actuals 20...../20..... <i>(last financial year)</i>	Variance 20...../20..... <i>(last financial year)</i>	Estimates 20...../20..... <i>(coming financial year)</i>
Income				
Interest received	\$	\$	\$	\$
Funds transferred from/to maintenance fund	\$	\$	\$	\$
Capital replacement fund provisions	\$	\$	\$	\$
Deferred fees recouped	\$	\$	\$	\$
Deferred fees outstanding	\$	\$	\$	\$
Less expenditure				
Bank & Govt Charges	\$	\$	\$	\$
Hot water systems	\$	\$	\$	\$
Carpets	\$	\$	\$	\$
Curtains	\$	\$	\$	\$
Gutters	\$	\$	\$	\$
Surplus/(deficit) for the year				
Balance	\$	\$	\$	\$

OTHER FUNDS (SPECIFY)

**Income & Expenditure for the financial year 20...../20..... and
Proposed Budget for the financial year 20...../20.....**

NAME OF FUND <i>Definition of purpose</i>				
Balance brought forward <i>(from actuals of last financial year)</i>	\$			
	Proposed 20...../20..... (last financial year)	Actuals 20...../20..... (last financial year)	Variance 20...../20..... (last financial year)	Estimates 20...../20..... (coming financial year)
Income				
Interest received	\$	\$	\$	\$
Funds transferred from/(to) maintenance fund	\$	\$	\$	\$
Other fund provisions	\$	\$	\$	\$
Deferred fees recouped	\$	\$	\$	\$
Deferred fees outstanding	\$	\$	\$	\$
Less expenditure				
Bank & Govt Charges	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
Surplus/(deficit) for the year				
Balance	\$	\$	\$	\$

Name of Village or Letterhead
Residence Rules as at *(insert date)*

These following rules have been made to maintain a peaceful, comfortable and enjoyable village environment for all residents, staff, visitors and guests.

1. Definitions

In the following rules

- a) *we, our*** and ***us*** means the operator of the village, and includes employees, agents or representatives of the operator, and
- b) *you*** and ***your*** apply to any resident of the village, and
- c) *common areas*** means any part of the village other than the residences (eg community centre, gardens).

2. Visitors and guests

We encourage residents to keep links with relatives, friends and other people from outside the village. Visitors or short-stay guests are welcome any time, and there is no need for you to get our consent or let us know they are coming. A visitor or short stay guest is somebody who visits during the day or stays overnight for up to 10 calendar days.

You are asked to obtain consent from us if you would like to have a guest live with you on a temporary basis.

A guest is somebody, other than a new spouse or de facto (see your residence contract), who intends to stay for more than 10 calendar days. We will not unreasonably refuse such a request.

You must take all reasonable steps to see that your visitors or guests (including tradespeople) comply with the residence rules.

Please note: Any visitor or guest who seriously or repeatedly breaks the rules may be asked to leave the village immediately.

3. Noise

As with any other residential complex, a level of noise within the village is to be expected. However, you must not make any noise likely to unreasonably interfere with the quiet enjoyment of others in the village. This rule applies whether you are inside your residence or in common areas.

When listening to music or a radio, or playing computer games, or watching television, you should not have the volume turned high enough to be heard from outside your residence. Residents with hearing difficulties are encouraged to use headphones or other aids.

4. Parking

As parking spaces are limited within the village, you may park a vehicle only in your own garage, driveway, carport or other parking area allocated specifically to you. You must not park or stand a vehicle on any other part of the village.

This rule does not prevent you from stopping to allow passengers to get out of or enter your vehicle. However, under no circumstances may a vehicle be parked or driven on grassed areas. In this rule 'vehicle' means a car, caravan, trailer, boat or other motorised vehicle.

In the interests of safety, drivers within the village must obey speed limits and other traffic signs at all times.

'Visitor parking' spots are available for use only by visitors, tradespeople, visiting doctors, emergency vehicles or other people just visiting the village. They are not to be used by residents, guests staying overnight or longer, tenants or staff (delete if there is no 'visitor parking').

5. Pets

Note: No single model applies to pets. Select option A, B or C.

Option A – no dogs or cats allowed

You may keep fish or a small caged bird (eg a canary, budgerigar) in your residence at any time, without the need to let us know or get our consent. For the safety of other residents, no other animals (including cats or dogs or larger birds such as galahs) are to be kept in your residence or brought into the village.

Option B – cats permitted but no dogs

We recognise the important role pets play in the lives of many older people. You may keep fish or a small caged bird (eg a canary or budgerigar) in your residence at any time, without the need to let us know or get our consent.

Cats

If you want to keep a cat as a pet you must obtain our prior consent. We will consider each case on its merits, and we will not unreasonably refuse such a request. If we permit you to keep a cat, it must be de-sexed, kept inside your residence after dark and wear a bell on a collar at all times. Cats are not allowed in any other building or any enclosed common area in the village.

If we permit you to keep a cat, you must ensure that you comply with the *Dog and Cat Management Act, 1995*. We may revoke our permission only if your cat creates an unreasonable noise or nuisance, attacks or threatens people or other animals within the village, causes damage to village property, or if the rules set out above are broken.

You must appropriately wrap and dispose of any cat litter or pet waste in your own bin and not put in communal bins.

Dogs

For the safety of other residents, dogs must not be kept as pets or brought into the village.

Option C – cats and dogs permitted

We recognise the important role pets play in the lives of many older people. You may keep fish or a small caged bird (eg a canary or budgerigar) in your residence at any time, without the need to let us know or get our consent.

If you want to keep a cat or a dog as a pet, you must obtain our prior consent. We will consider each case on its merits, and we will not unreasonably refuse such a request. Known dangerous breeds of dogs, will not be allowed.

If we permit you to keep a cat or dog, you must ensure that you comply with *the Dog and Cat Management Act, 1995*. Additionally, cats must be kept inside your residence after dark and wear a bell on a collar at all times. Dogs must be kept on a leash or under effective control when in common areas.

Regardless of these requirements, cats and dogs are not allowed in any other building or any enclosed common area in the village.

If we permit you to keep a pet, we may withdraw our permission only if your pet creates an unreasonable noise or nuisance, attacks or threatens people or other animals within the village, causes damage to village property, or if the rules set out above are broken.

You must appropriately wrap and dispose of any pet waste in your own bin and not put in communal bins.

Pet waste in communal areas must be disposed of immediately.

Where the village does not allow dogs or cats

Our village has a 'no dogs or cats allowed' policy. However, we recognise the important role pets play in the lives of many older people and if we allow you to bring your dog or cat into the village, we do so on the understanding that

- ☐ it is kept in accordance with (insert the policy that will apply, eg Option C,) and
- ☐ on its death, the following policy will apply (eg Option A).

6. Gardening and landscaping

The state of the grounds is important to the overall appearance of the village for residents and visitors. It is our responsibility to maintain all the lawns and gardens on common areas in a presentable condition.

However, if you want to assist, such as by watering or weeding the common area near your residence, you are welcome to do so. You must not prune or remove plants, take cuttings or pick flowers from the common area gardens without our consent. You must not use any part of common areas as your own garden without our consent. If we give consent, it is your responsibility to keep the area in a presentable condition, until you tell us you are no longer able or willing to garden.

If your residence has its own garden, it is your responsibility to keep it in a presentable condition. Care should be taken when buying new plants for your garden. You must avoid plants that grow rapidly or commonly cause allergic reactions. Trees, shrubs or vines with the potential to grow in excess of 2 metres (that is approximately 6ft 6in) in height must not be planted without our consent.

7. The collection and disposal of rubbish

For health and safety reasons, you must ensure that your garbage is securely wrapped before placing it in a bin.

You must not litter or leave rubbish on village property, other than in the bins provided.

Under no circumstance is the burning of garden waste permitted within the village.

Any pet waste must be appropriately wrapped and deposited in your own bin and not put in communal bins.

You are responsible for placing your rubbish bins in the allocated area for collection. We will provide residents with a copy of the current rubbish collection schedule.

8. Common area restrictions

The common areas are provided for the use and enjoyment of all residents. Signs posted on common areas, about such matters as hours of use, form part of these rules and must be obeyed.

You must not place objects which obstruct or permit obstruction of walkways, entrances, stairways, corridors, fire escapes, lights, windows or other parts of the common areas (for example, pot plants, hoses, brooms, rakes and other items may present a hazard if left on common areas).

When in common areas you and your visitors and guests must be adequately clothed and must not use language or behave in a manner likely to cause offence or embarrassment to another person.

Smoking is not permitted in any building other than your residence or designated areas. It is our job to maintain and clean the common areas. You may assist by sweeping or vacuuming the pathway or corridor immediately outside your residence.

You must not use any part of the common areas as your own garden without our consent.

9. Use and operation of services and facilities

In addition to the common areas provided for your use and any services and facilities, including services and facilities specific to you which are outlined in your residence contract, the following services and facilities are available for your use:

- Community centre
- BBQ area and gazebo with outdoor furniture
- Bowling green

These facilities and services are for the enjoyment of all residents and the rules relating to the use of common areas should also be observed.

Residents shall not permit children to play in common areas or common facilities unless accompanied by an adult exercising effective control.

Community centre

There is a community centre available for the use of all residents. You are able to reserve one of the rooms in the community centre for a private function, such as a birthday party, however you must seek permission from village management to make the booking. Approval is at the discretion of management but will not be unreasonably withheld.

BBQ area and Gazebo with outdoor furniture

A BBQ area and gazebo is available for the use of all residents. You should clean the BBQ after use and dispose of all rubbish in the bins provided.

Bowling Green

The Bowling Green is available for use of residents through the Bowling Club or social bowling activities which will appear in the monthly social planner. When using the bowling green we ask that you treat it with care by observing the following rules:

- Flat soled shoes, socks or bare feet only on the playing surface
- Do not sit on the surrounding edge of the green
- Do not drop your ball when playing
- Smoking, drinking and eating are not permitted on the playing surface
- Driving is not permitted by players who are not members of the Bowling Club.

10. External appearance of residences

We respect your right to privacy and autonomy over your possessions and domestic affairs. However, you must only hang washing, towels, bedding, clothing or other articles in the rear/side areas of your residence (or areas designated for this purpose).

In the interests of safety, you must not place objects which may fall, such as pot plants, on any ledge, sill or elevated surface.

11. Internal appearance of residences

We expect that your residence will be kept clean and tidy to our reasonable satisfaction.

12. Village security

It is our job to ensure that the village is generally secure. In particular, we will maintain locks or other security devices provided to ensure your residence is reasonably secure.

You must not change locks on doors without our approval.

You must not interfere with the self-closing mechanisms of exterior doors that are designed to maintain security.

To help prevent theft, you must ensure that all windows, doors and other openings are closed and securely fastened when your residence is not occupied.

13. Emergencies

You must familiarise yourself and any visitors with the village's emergency/evacuation procedures. If the emergency alarm sounds or you are advised to evacuate your residence, you must follow the village procedures.

In the event of an emergency, it is important for us to know who should be in the village. Consequently, you should advise us if you intend to be absent from your residence for an extended period of time. An extended period of time is

You are also required to advise us of a contact person. In the event of sudden illness or medical emergency, we may engage medical assistance or arrange for an ambulance to transfer you to a hospital (at your expense). In either circumstance, we will advise your nominated contact person.

14. Important notes about these rules

It is our job to enforce the rules fairly and equitably.

If you believe that a rule is harsh or unconscionable (Retirement Villages Act 2016, section 41), you should, in the first instance, discuss your concerns with us and/or attempt to resolve any matter according to the village's dispute resolution process.

If you do not comply with these rules, we may apply to the South Australian Civil and Administrative Tribunal for an order that you comply or, in serious or persistent cases, an order to terminate your right of occupation.

From time to time, we may amend these rules in consultation with residents. When this occurs, an amended set of rules will be issued to you.

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

Name of village or letterhead
Running sheet for the remarketing of residence

Re
name of resident(s) & address

Date of notice to vacate / / 20.....

Date	Name & ph number	Comments	Follow up
Example entry			
16 Aug 2017	Mrs J Citizen 8555 6666	Saw advert in Advertiser. Just started looking, likes residence, is within her price range & will keep it in mind	Do f/u call on 24 Aug

Price being sought for the residence \$

Name of Village or letterhead
Settlement statement to resident or their agent

To
name of resident or their agent

re
address of residence

Date of Notice of Intention to Vacate..... / / 20.....

Date residence was relicensed / /20.....

Payment date after settlement will be on or before / /20.....

DETAILS OF SETTLEMENT

Ingoing contribution (*as described in your residence contract*) \$.....

Capital Gain/Loss (*current market value minus ingoing contribution*) \$.....

Your share of capital gain/loss (X%) \$.....

Amount from which exit fees will be deducted \$.....

EXIT FEES

Outstanding recurrent fees (*e.g. Xwks @ \$X fortnight*) \$.....

Refurbishment as per 'advice to resident' dated/...../20..... \$.....

Retention as per clauseof your residence contract \$.....

(*e.g. X% of next ingoing contribution received*)

Retention for capital replacement as per clause of your residence contract \$.....

(*e.g. X% of ingoing contribution received x X yrs occupancy*)

Re-marketing costs (*e.g. X% of next resident's ingoing contribution*) \$.....

Total deductions from exit entitlement \$.....

Exit entitlement payable (*ingoing contribution less total deductions*) \$.....

..... / / 20.....
name of operator

Name of Village or letterhead
Monthly remarketing report to resident or their agent

To
name of resident or their agent

re
address of residence

Date of Notice of Intention to Vacate / / 20.....

(complete if early refund is sought) You applied for aged care payments and as a consequence we paid \$..... to the residential aged care facility on / / 20..... The next payment of \$..... is due on ... / ... / 20....

The price at which the residence is being remarketed is \$.....

In the past month the village has continued to advertise as per our village remarketing policy.

Over the past month, we have shown interested parties your residence and receivedinquiries.

The feedback we have received is

.....

Example comments

- one couple wanted a bigger main bedroom
- liked it but have just started looking, will keep it in mind
- not what they are looking for

No offers have been made **OR**offers have been made.

There are other residences in the village being remarketed.

The number of residences relicensed in the last month is.....

Unless your residence is relicensed, the next remarketing report is due on ... / ... /20.....

We will continue to actively remarket your residence as per our policy. If you have any queries or would like to discuss any changes to the remarketing process or residence price, please contact me on *phone*

Your residence has now been on the market for days. We will continue to remarket as per our policy. It is not our intention to reduce the price at this stage. However, if you want to discuss the remarketing process or want to increase advertising effort at your own expense, please contact me to discuss alternative arrangements on*phone*

.....
name of operator / / 20.....

Name of Village or letterhead
Advice to resident or their agent re vacating village

To
name of resident or their agent

re
address of residence

Date of Notice of Intention to Vacate / / 20.....

Further to our meeting on / / 20....., I advise and confirm the following

- the current estimated value of the residence is \$.....
- settlement will be based on the ingoing contribution, as per clause of your residence contract, minus deductions, including% which will be retained by us
- as per the vacated premises report (..... / / 20.....) the following work is required at your expense to ensure your residence is in a reasonable condition to remarket
.....
- as per the vacated premises report (..... / / 20.....) the following work is required at our expense to ensure your residence is in a reasonable condition to remarket
.....
- this work will be undertaken by / / 20.....
- access to your residence to undertake work or show prospective residents is unlimited / limited to (delete whichever is not applicable)
.....
- I confirm that you have/have not requested additional advertising (if additional advertising has been requested, describe)
.....
- the village has contacted people from our waiting list who have indicated a prior interest in this style of residence.
- your firstly monthly report will be provided on / / 20.....

Should you have any further queries or want to discuss the re-marketing process, contact me onphone

..... / / 20.....
name of operator

Name of Village or letterhead

Remarketing Policy

Statement about the village's approach to advertising

In order to maintain a high public profile and generate interest in our village, we place a standard advertisement in the Advertiser on a bi-monthly basis. We also have ongoing village advertising in realestate.com.au's retirement village section and on villages.com.au. We are also listed on Catalyst Foundation's retirement village database.

The advertisements describe the village, its facilities and the lifestyle opportunities available. We do not identify any one residence. This assists in keeping advertising costs to a minimum and is equitable, particularly if there is more than one residence vacant at any given time. A percentage of the relicensing price is retained for remarketing costs which includes advertising. The percentage is itemised in your residence contract. Any other form of advertising must be approved by us and will be at your own expense.

When you want to leave your residence, you must provide us with a written Notice of Intention to Vacate (Attachment #). A form is available from our office for your convenience. This contains all the information that we need to commence the remarketing process for your residence. As soon as you give us the Notice of Intention to Vacate, we will take action under this remarketing policy.

On receipt of a Notice of Intention to Vacate, we endeavour to undertake the following:

1. Within two business days of receiving a notice of intention to vacate, we will make an appointment with you or your agent to meet and view the residence and we will explain and discuss the remarketing process.
2. Within 10 business days after you have ceased to reside in the residence, we will meet with you or your representative and complete the vacated premises report.
3. Within five business days from viewing the residence we will provide written advice (Attachment #) to you or anyone you may have nominated to receive information about;
 - any work required to ensure the residence is in a reasonable condition to remarket
 - when this work will be undertaken, by whom and at whose expense
 - the current valuation of the residence
 - if there are any expressions of interest in your style of residence from prospective residents on our waiting list
 - confirmation of when the residence is accessible for us to show prospective residents and
 - confirmation of any additional advertising you have requested.
4. At the end of each month we will provide you or your agent with a report that includes the following information (Attachment #)
 - what advertising we have undertaken
 - how many people viewed or inquired about your residence
 - any relevant comments
 - the number of other residences for sale in the village and the number of other residences sold in the village in the previous month and any offers made.

5. If you give notice and stay in the residence under section 27(3) of the Retirement Villages Act 2016, we will give you 48 hours' notice of an inspection of the residence by prospective residents. You must keep the residence clean and tidy, and co-operate with any reasonable request we make in relation to the remarketing of the residence. This may include asking you to vacate your unit to allow refurbishment work. **[NOTE: This is to allow sufficient time to conduct any refurbishment that may be required]** If the residence is re-licensed, you will be required to vacate at least four weeks before the settlement date.
6. If you do not agree with our valuation of the residence, you must notify us in writing. We will ask an independent body to appoint an independent licensed valuer to determine the resale value. You must pay half the costs associated with this valuation. We will deduct this amount from your exit entitlement.
7. If there are new residences being marketed at the same time, the marketing level of your residence will at least match the marketing for those residences.
8. If the residence has not been relicensed after nine months, you may appoint an agent of your choice to market the residence at your own cost. You must notify us in writing of the name and contact details of the agent, and of any changes to those details. You must also notify us in writing of any offers made to purchase your right of occupation. If you appoint your own agent, we will continue to remarket your residence and you will have to pay the remarketing costs as already specified. We reserve the right to determine who purchases a licence to occupy a residence in the village.
9. At the time you provide your notice of intention to vacate, we will provide you with an estimate of your exit entitlement within 5 business days and we will provide you with a final settlement statement at a reasonable time before payment of your entitlement.
10. You will receive your exit entitlement within 10 business days of our receipt of the next resident's ongoing contribution.
11. If the residence is relicensed after the death of the occupant, we will only release the funds once we have received a written request and direction as to payment, and sufficient written proof of authorisation to receive monies. Producing a will, or a copy of a will, alone will not constitute sufficient proof. A certified copy of a grant of probate or letters of administration, together with the Registrar of Probates' certificate, certifying disclosure has been made of the asset (ie the exit entitlement) to the Registrar of Probates, will generally constitute sufficient proof.

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 the Ageing on 8204 2420 or at retirementvillages@sa.gov.au.

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

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
www.sa.gov.au/seniors/retirementvillages

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www.ausgoal.gov.au/creative-commons

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