Other Accommodation Options

CHAPTER CONTENTS

Introduction

People choose alternative living arrangements to independent residential housing for various reasons. Older people with high care needs may opt for residential aged care, while others may choose retirement villages for extra security and a relatively maintenance-free lifestyle. Moving into a granny flat or a manufactured home park offers yet another avenue to adjust to the changing needs and living expectations. All of these arrangements can be very complex and may have serious legal implications, hence it is recommended to seek expert legal and financial advice before entering into any agreements.

The Queensland Aged and Disability Advocacy Inc. service will:

- assist people to exercise their rights including information, representation, education, advice and support
- promote the rights of consumers and potential consumers of aged care.

Residential Aged Care

Our Residential Aged Care System

For older people who are unable to care for themselves or who need assistance in daily living activities, the option of residential care in an aged care facility may become necessary. While most of us would prefer to stay in our own home as we age, frailty or other conditions such as dementia, may leave us with little choice but to find assistance and full-time care in residential aged care.

The aged care system in Australia is primarily regulated by the *Aged Care Act 1997* (Cth) (Aged Care Act) and the associated Aged Care Principles.

The system provides for Commonwealth funding of aged care places, complemented by some level of 'user pays' and a regulatory framework designed to ensure high-quality care for residents by aged care providers.

People entering care are generally required to contribute to their accommodation and are means tested to ensure they make a reasonable financial contribution to their care. The Commonwealth Government provides additional funding to subsidise aged care providers for the cost of providing care.

Please note:

On 1 July 2014, significant changes were made by the government to the aged care system, and this chapter deals with the new system that applies from that date. Some aspects of the previous system may still apply to residents who entered residential aged care before that date.

There are special transition provisions that apply to residents who may have lived in a facility before 1 July 2014 and subsequently moved out of that facility and into a new one.

The Structure of Residential Aged Care

Each person who enters a facility is assessed as to their financial circumstances and their care needs, and that will determine the services they receive and how much they have to pay.

Providers of aged care include a cross-section of not-for-profit, community-based, church and for profit organisations.

Most residents in aged care are government subsidised, and the subsidy is provided to aged care providers for ‘approved places’ in an aged care facility.

Sometimes, however, a provider has more than the approved places in their facility and these are known as ‘unfunded places’. They are more expensive than the usual approved places. Financially it is important that, in choosing a place in a facility, you determine if it is an approved place or an unfunded place. While much of the aged care law applies to unfunded places as much as approved places, there are differences that need to be understood. In particular, an unfunded place does not attract any government subsidy to contribute to the aged care fees, making the cost of aged care significantly higher.

Currently, aged care also features a variety of entities, which have discrete roles in regulating various aspects of aged care including the following services.

The Department of Social Services

Its role is to effectively administer the delivery of aged care including the payment of subsidies and grants, industry assistance and training, and general regulation of the aged care sector.

The Department of Human Services

Through Centrelink, the department assesses all residents’ financial circumstances and sets the fees required to be paid by residents in aged care.

The Department of Veterans’ Affairs

It provides additional assistance to veterans in aged care.

The Aged Care Commissioner

The commissioner reviews decisions and processes of the Aged Care Complaints Scheme and the Aged Care Quality Agency.

The Aged Care Pricing Commissioner

The commissioner’s role is to approve accommodation payments that are higher than the maximum amounts approved by the minister and to approve extra service fees.

The Australian Aged Care Quality Agency

All aged care providers who wish to receive government subsidies for approved places must be accredited to do so by the agency who also undertakes audits of facilities to ensure they are complying with relevant standards.

The Aged Care Financing Authority

The authority’s responsibility is to oversee the aged care system by providing advice to the government on the financing and funding of the aged care sector.

Subsidised places in aged care are only provided to people who are an 'approved aged care recipient'. This means they have been assessed as eligible by an Aged Care Assessment Team. An assessment can be arranged through the My Aged Care website, and for more information on eligibility criteria see also *Approval of Aged Care Recipients Principles 2014* (Cth).

This part deals only with residential aged care (aged care) delivered in an aged care facility and does not address the other options for people who wish to stay in their own home and receive home care from a home care provider.

Legal Arrangements in Aged Care

The residential care agreement

An aged care facility must, if it is government funded, offer every prospective resident a written residential care agreement before the resident enters the facility. Residents, however, have the right to choose not to sign an agreement if they do not want to.

The agreement is required to be in plain English and be easy to understand. Section 59(1) of the Aged Care Act outlines what issues need to be covered.

When entering into an agreement, the care provider must make sure that the care recipient understands the agreement, in particular the terms relating to:

- the care recipient's rights and responsibilities
- the services to be provided to the care recipient
- the fees and other charges to be paid under the agreement (s 14 *User Rights Principles 2014* (Cth) (User Rights Principles)).

In addition to the residential care agreement, and depending on the circumstances, a person may be asked to sign:

- a respite agreement (where a person is entering the facility on a temporary basis for respite only)
- an extra services agreement, where the provider is providing additional services over and above the standard services set out in the residential care agreement.

Signing agreements

Where the resident is unable to sign the agreement, because of physical or mental impairment, another person may sign on their behalf as the resident's representative (s 96(5) Aged Care Act).

'Another person' is not defined in the legislation, but if a person has lost capacity and cannot understand or sign the agreement, another person, such as an informal decision maker, enduring power of attorney, guardian or administrator could sign on the person's behalf.

Where a person does not have an attorney, guardian or administrator, these orders can be made by application to the Queensland Civil and Administrative Tribunal (for further information about instances of a person lacking legal capacity and the relevant laws see the chapter on *Laws Relating to Individual Decision Making*).

Information for Aged Care Residents

When a resident enters a facility, the provider must give the resident or their representative information about the resident's rights and responsibilities as set out in the *Charter of Residents' Rights and Responsibilities* contained in the User Rights Principles.

The Charter is like a Bill of Rights for residents, but it also includes a list of the resident's responsibilities as life in an aged care facility requires residents to respect the rights of other residents and staff.

Aged care costs

Calculating what, and how much, you have to pay for your aged care is complex. For people who are proposing to enter aged care, it is crucial to receive appropriate financial advice on the cost and the implications before committing themselves.

Broadly speaking, a person can be expected to pay three types of costs:

- basic daily fee
- means-tested care fee
- accommodation payment
- other payments for optional personal services (e.g. hairdressing, Foxtel).

The government regulates the maximum that can be charged for these costs except for the optional personal services.

Basic daily fee

This fee covers the cost of daily living expenses in the facility such as meals, power and laundry.

At the time of writing, this fee can be up to a maximum of $47.86 per day. This fee increases on 20 March and 20 September each year, and the maximum is calculated at 85% of the single person age pension. A person entering aged care will be advised how much this fee will be by the Department of Human Services.

There are general rules in relation to daily care fees set out in the Aged Care Act:

- Fees cannot be charged more than one month in advance (s 1).
- A pre-admission fee, waiting list fee, booking fee (except for respite care) or any administrative fee cannot be charged.
- Any fees paid in advance must be refunded when the resident leaves.
- Overdue fees may be deducted from a resident's accommodation bond balance.
- Interest may be charged on overdue fees.

The fees are calculated based on the financial information given by a resident to Centrelink at the time of entry. If a person does not wish to give such financial information, they will be charged the maximum fees that can be charged.

Means-tested care fees

People with sufficient financial means can be asked to pay a care fee as well as the basic daily fee above.

Your financial circumstances will be assessed by Centrelink as a result of the Income and Assets Assessment form lodged by most people before they enter aged care. If you are over the threshold for the relevant tests, you will be required to pay a means-tested care fee.

Currently the maximum daily fee is $28.05 but this will change over time either because of the increase in the maximum or because your financial circumstances improve.

It is important to understand, however, that the government has placed a yearly cap of $25 731 and a lifetime cap of $61 754 on the amount you may have to pay for this fee.

You cannot be asked to pay more than the yearly amount or, ultimately the lifetime amount however long you may reside in the facility. Bear in mind, however, that the caps themselves are indexed and will increase each year. Centrelink will tell you when you have reached the respective caps.

A person is not required to pay an income-tested fee if they:

- are a full means-tested pensioner
- are a respite resident
- are an Australian ex-prisoner of war
- were receiving permanent residential care before 1 March 1998
- have a dependent child.

As fees change at least every quarter in every year, you should consult the Department of Social Services (the Department) website for the latest maximum fees payable.

Accommodation payment

If a person is required to pay or contribute to their accommodation costs, they are able to choose to pay it in the following ways:

- an upfront lump sum payment, called a Refundable Accommodation Deposit (RAD) if the person is paying for the cost of their accommodation or a Refundable Accommodation Contribution (RAC) if they are contributing to the cost of their accommodation
- a Daily Accommodation Payment (DAP) if the person is paying for their accommodation or a Daily Accommodation Contribution (DAC) if they are contributing to their accommodation. These payments are paid up to a month in advance, as agreed with the service provider
- a combination of the above.

The lump sum payments are like an interest-free loan to the aged care home. When a person leaves the home, the balance of the deposit is refunded less any amounts that they have agreed to having deducted. On the death of a resident in aged care, a provider must refund the RAD or RAC (and DAPs or DACs if paid in advance) within 14 days of being shown the Grant of Probate (or Letters of Administration) of a deceased resident's estate.

Aged care homes wishing to charge more than $550 000 as a lump sum, or as rental-type payments based on a daily rate, must have their prices approved by the Aged Care Pricing Commissioner.

Some other relevant legal rules to know about these accommodation payments:

A person cannot be charged an accommodation payment that would leave them with less than $46 000 in assets (as increased from time to time).

A provider has up to 28 days to enter into an accommodation agreement. This can be extended if a legal process has begun for a person to be appointed by a tribunal (e.g. the Queensland Civil and Administrative Tribunal) as the decision maker for a resident who has impaired capacity and, in that event, the agreement must be signed within seven days of any such appointment or if no appointment is made or the process comes to an end.

A person may apply for a hardship determination so that, even if they are required to pay an accommodation payment, the obligation can be waived by the Department (s 44.30 Aged Care Act).

Protection of Aged Care Residents' Information

Providers are governed not only by the Aged Care Act but also the *Privacy Act 1988* (Cth) in relation to residents' personal information.

Generally, personal information must not be used for any purpose other than relating to the provision of aged care services to the resident by the provider or for the purpose for which the resident gave the information.

Security of Tenure in Aged Care

A provider can ask a resident to leave only if (s 6(2) User Rights Principles):

- the facility is closing
- they can no longer provide the accommodation and care suitable for the resident
- the resident no longer needs the care being provided
- the resident has not paid an agreed fee within 42 days after the due date
- the resident has intentionally caused serious damage to the facility or serious injury to an employee or another resident
- the resident is away from the facility for a continuous period of at least seven days other than for a permitted reason (as set out in the Aged Care Act).
- The provider has to give notice in writing if a resident is required to leave the facility (s 7 User Rights Principles). The notice must be given at least 14 days before the resident is required to leave, and it must also contain the following information:
- the decision to require the resident to leave
- the reasons for the decision
- when the resident is required to leave

- the resident's rights about leaving, including the right of access to the complaints resolution mechanisms, independent complaints processes and an advocacy service.

Importantly, a provider must not take any action to make the resident leave before suitable, affordable, alternative accommodation is available that meets the resident's long-term care needs (s 6(3) User Rights Principles).

Security of a bed in the facility

A resident may be moved to another bed or room within the facility only if (s 10 User Rights Principles):

- the move is at the resident's request
- the resident agrees to the move after being fully consulted and without any pressure
- the move is necessary on genuine medical grounds as assessed by an aged care assessment team or at least two medical or other health professionals
- the place becomes an extra service place and the resident elects not to pay the extra service fee
- the move is necessary because of the need to carry out repairs or improvements to the facility.

Complaints About an Aged Care Facility

There are two systems operating for people to make a complaint about a facility:

- an internal system within the facility
- an external system through the Aged Care Complaints Scheme.

Generally, you are encouraged to attempt to resolve your concern using the provider's internal system of complaint handling. If not successful then anyone can raise a complaint about an aged care provider or about anything concerning the operation of the facility with the Aged Care Complaints Scheme. The scheme only covers government-subsidised aged care facilities. The scheme is managed by the Aged Care Complaints Commissioner and the legislation gives it wide powers to investigate complaints including such things as the quality of care being received by aged care residents, the choice of activities, personal care, catering, communication and physical environment.

If you are not happy with the outcome or decision of the complaints scheme process, then you can seek a review of a decision of the scheme by the Aged Care Complaints Commissioner. Care should be taken in this regard as strict time limits apply:

- If you are not satisfied with a decision of the Aged Care Complaints Commissioner, you have 28 days after receiving the decision letter to seek a review.
- If you have a concern about the complaints process, you must raise it with the commissioner within 12 months of the completion of the process.

The complaints scheme can refer a complaint to another agency, such as the police or the Aged Care Quality Agency, which can assess and review a facility's accreditation as an approved facility as a consequence of the complaint. Similarly, you can complain to the Aged Care Complaints Commissioner about a decision by that agency to accredit a facility.

Mandatory Reporting of Assaults in Aged Care Facilities

The approved provider of a government-funded facility must report certain types of assault or the suspicion of certain types of assaults to police and to the Aged Care Complaints Scheme. They must also keep records of these incidents.

Reportable assaults are:

- unlawful sexual contact with a resident of an aged care facility whether perpetrated by a staff member, resident or visitor on a resident
- unreasonable use of force or assault on a resident of an aged care facility whether perpetrated by a staff member, resident or visitor on a resident.

All approved providers must encourage staff to report alleged or suspected reportable assaults, and the provider must act to protect staff members from any victimisation or recriminations.

An approved provider has discretion not to report a reportable assault by a resident when the resident has already been diagnosed as suffering from a mental illness such as dementia and they have put in place, and documented, arrangements to manage the resident’s behaviour.

Approved providers are also required to ensure that all staff, including those provided by employment agencies and some volunteers undergo regular police checks and hold a national police certificate as to their suitability to work in aged care.

Retirement Villages

What are Retirement Villages?

Retirement villages can be described in different ways or even be called different names, but essentially they are communal, self-contained, relatively secure housing environments for older people. They offer a wide range of living options including high-rise apartments, medium-density housing, townhouse developments and even luxurious, resort-style complexes with extensive facilities and services.

These villages are generally designed for older people who still enjoy some independence, but at the same time feel the need for some physical security and a low-maintenance lifestyle.

People considering a move into a retirement village should carefully think about many issues such as security of tenure, the return on their investment and the anticipated fulfilment of lifestyle and retirement needs, including long-term nursing care. Increasingly, retirement villages are also offering varying levels of personal care and assistance in recognition of the fact that older people do not transition to an aged care facility until their care needs exceed what can reasonably be delivered through in-home care.

Some retirement village operators are for-profit commercial developers, while others are church or not-for-profit operators. All run different schemes and some are more complicated than others. Some villages have nursing homes or hostels attached, allowing for what is known as 'ageing in place'. There are varying types of tenure, and the contracts and supporting documents can be complex.

Choosing the village that suits the person (and their family) means understanding:

- the lifestyle a person wants
- the legal and financial arrangements they will be required to enter into
- the rights and obligations while living in the village
- what happens when the time comes to leave the village
- what financial return a person will receive when they leave the village.

Whichever factors a person needs to take into account, there is no substitute for proper forward planning and getting expert legal and financial advice. For example, entering into a retirement village can have significant consequences for a person's pension entitlements.

The Retirement Villages Act

Retirement villages in Queensland are governed by the *Retirement Villages Act 1999* (Qld) (Retirement Villages Act).

The overriding aim of the Retirement Villages Act is to require greater transparency and accountability of each retirement village scheme both in respect to current and prospective residents. It creates extensive obligations for disclosure of information by operators (through a public information document) and sets up comprehensive requirements as to:

- how people enter into a retirement village
- the registration of retirement village schemes
- the regulation of the relationship between the operator and the residents
- the control of weekly fees
- the establishment of funds for maintenance and capital replacement of the village
- a dispute resolution process
- the process for people leaving a retirement village.

Title to a Unit in a Retirement Village

The current Retirement Villages Act does not prescribe how a resident holds title to their unit in the village. Instead, it refers to a concept called a 'right to reside'.

- As a consequence, there are various arrangements devised by operators to record a resident's right to reside in a unit including:
- freehold titles
- lifelong (or 99-year) leases
- lease and loan arrangements

- licence and loan arrangements
- share scheme arrangements.

Although a freehold title may offer the best security of tenure, often the security can be complicated by body corporates, lease backs, mortgages or caveats securing maintenance levies and the various powers of attorneys. Leasehold tends to be the most common tenure used and is relatively secure as the lease of the unit is generally registered on the village’s title. The licence structure is the simplest but not necessarily the most secure, and was popular in older-style villages. It remains the most common tenure used by not-for-profit operators.

Whichever way the village is structured, a person needs to understand how they hold their right to live in the unit and that, generally, it is not the same as owning their own home, even if they have freehold title to their unit. The security of tenure is ultimately controlled by the Retirement Villages Act and the terms of the agreement with the operator.

It is important to understand any change made by the Retirement Villages Act to residents who hold a lease of their unit. Under the previous legislation, a statutory charge was registered on the title deed of the retirement village land. This charge was meant to secure the repayment of monies owing to residents. Under the Retirement Villages Act there is no such charge registered on the title deed for new leasehold villages. New villages, where residents are given a licence of their unit, will still have a statutory charge registered on the title deed, but operators who can establish that they have a good record as an operator can apply for an exemption.

Purchasing an Interest in a Retirement Village Unit

When a person has found a village where they want to live, depending on the type of tenure in the village, the operator will give them a Public Information Document (PID) and a residence agreement (s 44 Retirement Villages Act). The PID is a government template which is completed by the village operator.

The residence agreement may be called a licence agreement or a lease. The intending resident may also receive an application for residence document, which requires them to complete personal details.

If purchasing a new or yet to be completed unit in a village, a person may also receive another document which might be called an agreement to lease. This is simply a document whereby the person agrees to take up residence of the unit when it is completed and to sign the relevant residence agreement at that time.

The most important document is the PID (s 74 Retirement Villages Act). This document sets out the essential details about the village and the resident’s rights and obligations and should be read carefully. While it can contain lots of information, it should contain a copy of:

- the residence agreement
- any service agreement (i.e. to provide personal services to the resident)
- any by-laws applying in the village
- a budget for the operating costs of the village

- the certificate of registration of the village
- a pool safety certificate if the village has a pool
- details of how bulk electricity is on-sold to residents and how the system works if applicable.

Particular notice should be taken of the following issues:

- the communal facilities available for use in the village
- the ingoing contribution (purchase price)
- the maintenance and capital replacement funds maintained by the operator
- the insurance the operator has in place and what insurance obligations rest with the resident
- the weekly fees
- the village's dispute resolution process.

The PID must be given to the resident before they sign any other documents.

It is highly advisable to obtain legal and financial advice on all documents provided by the operator of the retirement village scheme. This is also important in case special conditions need to be inserted into the documents, such as making the residence agreement subject to the sale of the resident's existing home outside the village.

Apart from getting appropriate advice in relation to the documents, it may also be wise to take the time to talk to other residents in the village to both get a feel for the village and to see how well the village is run, as well as answering the crucial question of 'Could I live here?'.

Cooling-off period

Under the Retirement Villages Act, a person has a 14-day cooling-off period starting from the day that the residence contract is signed or, if the residence contract is subject to a later event happening or another contract being entered into, the day the later event happens or the other contract is entered into. Once the residence contract has been signed, an intending resident can terminate the contract at any time during the cooling-off period.

No reasons are required for terminating the contract, and a person is entitled to be refunded all the money they may have already paid to the operator. It is important that an intending resident ensures that they are aware when the 14-day period starts and finishes, and how to give notice of the termination if they wish to terminate the contract during the cooling-off period.

Payment of monies in a retirement village

There are various financial obligations on both parties when they enter into a residence agreement. These obligations arise at various times but particularly on signing the agreement, on moving in and while living in the village.

Signing the agreement and moving into the village

When a person moves into a village, they will be asked to pay an ingoing contribution, which is the price for purchasing the interest in the unit (s 14 Retirement Villages Act).

When a person initially signs the residence agreement, they will probably pay a deposit which will represent part of the ingoing contribution. This deposit must be held in a solicitor's or real estate agent's trust account until the cooling-off period has expired, or when any special conditions in the residence agreement have been satisfied. It can then be paid to the operator.

There is no law in relation to how much the ingoing contribution should be. This is very much a matter of the price being set by the operator and how much a person is prepared to pay to purchase the right to live in the unit. The price will of course be determined by the standard of the units, the location and the facilities available within the village.

In some retirement villages, a resident can also be asked to pay the operator's legal costs or even an administration cost when a resident moves into the retirement village. For leasehold schemes, residents may also be asked to pay the cost of a surveyor to prepare a survey plan of the unit being purchased and to register the lease in the Titles Office. Stamp duty is not normally payable on a resident's agreement.

If a resident wishes to make any changes or additions to the unit before moving in, those changes should be discussed with the operator and an agreement should be reached on the changes as well as who will pay for the costs of the changes. Given the obligations placed on the resident to reinstate the unit on departure from the village, it can be important to take an inventory of its condition when the resident first moves in.

Retirement Villages General Services Charge

Once a resident takes up occupation of the unit, they will be liable to pay a general services charge and a personal services charge (if applicable).

The general services charge has two main components:

- the resident's contribution to the costs of operating the village
- the maintenance reserve fund levy.

The general services charge is normally made up of the resident's contribution to costs of the operator in relation to management and administration, gardening, minor maintenance, the shop or other facilities for supplying goods to residents, and recreation and entertainment facilities. The basis for this charge is set out in an annual budget, which the operator is required to prepare (s 102A Retirement Villages Act. These charges are distinct from personal services charges, which are charges for services provided to an individual resident. They may include charges for services such as laundry, meals, cleaning and other personal services.

While there are no restrictions on the operator to increase personal services charges, the Retirement Villages Act does restrict the increase in general services charges. Specifically, the total general services charges cannot increase in any year by more than the Consumer Price Index unless the increase relates to (s 106 Retirement Villages Act):

- rates, taxes or charges levied on the village itself
- salary or wages of persons employed in the village
- insurance premiums or insurance excesses paid in relation to the village
- maintenance reserve fund contributions.

Under the goods and services tax (GST) legislation, the operator is entitled to impose GST on general services charges or personal services charges where it is required by the GST legislation.

In freehold retirement village schemes, residents may also have to pay an administration fund levy to the Body Corporate as well as rates on the unit.

Residents are usually also required to pay for their own services such as electricity, gas and telephone.

The operator is required to have a maintenance reserve fund that is to be used for maintaining and repairing (but not replacing) the retirement village's capital items, such as communal facilities and the units themselves (s 97 Retirement Villages Act).

Residents are responsible for contributing to this fund, which is done by way of a maintenance reserve fund levy that forms part of the general services charge referred to above.

Payments are made into the maintenance reserve fund from:

- the residents' contributions
- interest from investment of the fund
- any amount which the operator held in a similar fund before the commencement of the Retirement Villages Act.

The amount to be held in the maintenance reserve fund and the consequential levy on the residents is determined each year by a quantity surveyor. The surveyor produces a report that sets out the likely maintenance costs for the village over a 10-year period that must be revised yearly. A full report was mandatory in 2009 and must be obtained in every third financial year after that, as well as in any financial year in which substantial changes are made to the village (s 98 Retirement Villages Act). In every other financial year, an update of the previous report is sufficient. The operator uses this report to determine the appropriate levy on each resident.

There are no restrictions on increases in the maintenance reserve fund levy as there are with the general services charge, but the levy itself must be determined based upon the quantity surveyor's report. It is important to bear in mind that it is likely for the maintenance reserve fund levy to be higher in older villages than it will be in newer villages.

The operator is also required to have a capital replacement fund, which is used for the replacement of the village's capital items. Operators themselves are solely responsible for contributions to this fund (s 91 Retirement Villages Act). Capital items would normally include:

- the buildings and structures owned by the scheme operator, such as communal facilities, amenities and the accommodation units
- plant, machinery and equipment
- roads, paths, drainage, sewerage mains and landscaping.

Again, the amount required to be held in the capital replacement fund is determined by a quantity surveyor's report, which must be updated on the same basis as the report for the maintenance reserve fund.

Payments are made into the capital replacement fund from:

- payments from any insurance policies arising from the destruction of any capital items
- interest from investment of the fund
- a capital replacement fund contribution which is either:
    - a percentage of the ingoing contribution paid by the resident as set out in the PID
    - the amount determined by the quantity surveyor's report.

Freehold retirement villages may also keep a sinking fund under *the Body Corporate and Community Management Act 1997* (Qld) for the capital replacement of items owned by the Body Corporate.

Insurance

The operator must take out general insurance for the retirement village, and residents themselves are required to contribute to the costs of that insurance through payment of their general services charge (s 110 Retirement Villages Act). The insurance cover must be for reinstatement of any of the capital items in the village including the accommodation units.

Residents themselves are required to insure any items that they own in their units and are advised to take out their own contents insurance and even public liability insurance within their unit.

Disputes with the Operator of a Retirement Village

The Retirement Villages Act has extensive provisions in relation to resolution of disputes in a retirement village. These provisions relate only to disputes between a resident and the operator. They do not apply to disputes between residents. For disputes between residents, recourse must be had to usual laws affecting neighbours (see chapter on *Neighbours*).

The Retirement Villages Act sets up a dispute resolution process as detailed below.

Preliminary negotiation

If a dispute has arisen between a resident and the operator, the parties must try to resolve the dispute by giving a notice to the other, stating the matters in dispute and nominating a date for a meeting to talk about it. The day nominated must be at least 14 days after giving the notice.

Within seven days of receiving the notice, the other party must give a written response. The parties must then meet to attempt to resolve the dispute (s 154 Retirement Villages Act).

Mediation

If the dispute is not resolved in the preliminary negotiations, a party may apply to the Queensland Civil and Administrative Tribunal (QCAT) for the appointment of a mediator to assist the parties to resolve the dispute. The current application fee is $55.

The registrar will then appoint a mediator to attempt to resolve the dispute, and any party can have a lawyer or agent represent them at a mediation conference unless the mediator thinks that a lawyer or other person should not represent the party. The mediation is held in private and no official record is kept of the discussion (ss 158–160 Retirement Villages Act).

While a party cannot be forced to come to mediation, it can be a very successful way of resolving disputes.

Queensland Civil and Administrative Tribunal

If the dispute is not resolved in the preliminary negotiation or mediation stage, an application can be made to QCAT to determine the dispute between the parties. A fee of $55 is also payable in respect of these applications.

A party to a dispute may apply to QCAT if (ss 167–168 Retirement Villages Act):

- the parties cannot reach agreement
- one party does not attend mediation
- the dispute is not settled within four months
- a party claims that another party to a mediation agreement has not complied with it
- a party is threatened with removal or is removed from the retirement village
- a party is threatened with deprivation or is deprived of the right to reside in the village
- a party is threatened with restriction or is restricted in the use of the retirement village facilities.
- A party can conduct their own case or be represented by a lawyer or agent if they apply to be represented and QCAT allows it.

The tribunal can make the following general orders (s 191 Retirement Villages Act):

- ordering a party to do or not to do something
- ordering a party to refund monies to another party
- other orders which may be appropriate in the circumstances.

In particular, it should be noted that a resident can ask QCAT:

- to have their contract set aside if the scheme operator has given false or misleading documents, and the resident is materially prejudiced by it
- that the scheme operator pay the resident's exit entitlement if the scheme operator does not comply with the provisions of the Retirement Villages Act relating to the resale of the unit, and the resident is materially prejudiced.

Rights to Financial Information in Retirement Villages

An operator must keep separate accounts for the retirement village's capital replacement fund and maintenance reserve fund (s 111 Retirement Villages Act). The operator must then ensure that a quarterly financial statement about the income and expenditure of the capital replacement fund, maintenance reserve fund and general services account is given on request to any resident (s 112 Retirement Villages Act).

The operator must also ensure that a financial statement showing the relevant particulars about the retirement village's operation is given on request to a resident within five months after the end of each financial year. The relevant particulars are (s 113 Retirement Villages Act):

- income and expenditure during the financial year
- amounts received for insurance claims relating to the village
- the assets and liabilities relating to the village
- interest, mortgages and other charges affecting the village's property.

The statement must be audited, and a copy of the report must also be given to the Chief Executive of the Office of Fair Trading within five months after the end of each financial year.

Leaving a Retirement Village

When a resident wishes to leave the village, it will normally entail the termination of the residence agreement.

A resident has a right to terminate the agreement by giving a one-month written notice to the operator (s 52 Retirement Villages Act). An operator has the right to terminate a resident's right to reside in the village by giving the resident a two-month written notice but only if (s 53 Retirement Villages Act):

- the resident has committed a material breach of the residence agreement
- the scheme operator believes reasonably that the resident has abandoned the unit
- the unit is no longer suitable for the resident, following assessment of the resident's needs under the Aged Care Act.

The scheme operator may also terminate a resident's right to reside in the unit by giving 14 days written notice if the resident has, or is likely to, intentionally or recklessly:

- injure a person while the person is in the retirement village
- seriously damage the resident's accommodation unit
- seriously damage another person's property.

Resale of a Retirement Village Unit

Once termination has occurred, the process for resale of the resident's unit starts.

The Retirement Villages Act contains extensive provisions in relation to reselling the right to reside in the unit. The resident and the operator must agree in writing within 30 days of the termination on the resale value of the unit. If they cannot agree on a resale value, the operator must obtain a valuation from a valuer within a further 14 days (s 60 Retirement Villages Act).

When the right to reside in the unit is being sold, certain reinstatement work may have to be done to the unit. The unit must be reinstated to a marketable condition taking into consideration the condition of the unit when the resident moved into it and the general condition of other units in the village that are comparable to the resident's unit.

If the operator and the resident cannot agree on the work to be done, an itemised quote has to be obtained from a qualified tradesperson.

If the resident caused deliberate damage or accelerated wear to the interior of the accommodation unit, the resident pays for the reinstatement work.

In all other cases, who pays for any reinstatement work will depend on when the resident entered into their residence agreement with the operator (for more information see s 62 of the Retirement Villages Act).

If the scheme operator must pay the cost of reinstatement work, it is to be paid out of the capital replacement fund.

Selling the unit

If the unit is not sold within six months from termination, the resident may engage a real estate agent to sell the right to the unit (s 64 Retirement Villages Act). In that case, the resident must pay the costs and commission of the real estate agent.

The operator is to inform the former resident of each offer to purchase promptly and, if requested by the resident, the operator must provide monthly information about sales enquiries, steps taken to promote the sale and details about all other units for sale in the retirement village.

The costs associated with the sale of the unit are to be paid by the operator and the resident in the proportion which they each share in the sale proceeds. If the scheme operator accepts an offer that is less than the agreed value, the exit entitlement (the amount paid to the outgoing resident) is based on the agreed resale value. If a resident accepts an offer that is less than the agreed value, the resident's exit entitlement is calculated on the amount of the offer (ss 66, 68 Retirement Villages Act).

In any event, an operator may refuse to accept an offer if the scheme operator believes that the unit is not suitable for the prospective resident (s 69 Retirement Villages Act).

It should be noted that there is no compulsory buy-back provision within the Retirement Villages Act. This means that the operator is not obliged to buy back the outgoing resident's unit, and, unless the residence contract provides otherwise, a resident will have to wait until the unit is sold before they are entitled to receive monies owing to them.

It is not uncommon for not-for-profit or church-based operators to include in their residence agreements a provision which states that they will pay out the resident's entitlements after a certain period even if the unit has not been sold. A careful reading of the residence agreement will tell if this is the case.

Monies payable on termination or resale of the unit

When a resident has terminated the residence agreement and the unit has been resold, the resident will normally be required to pay an exit fee to the operator from the sale proceeds (s 15 Retirement Villages Act). The method used to calculate the fee must be set out in the PID and the residence agreement.

The exit fee (which used to be called a deferred management fee) is typically calculated as a percentage of either the ingoing contribution originally paid by the resident or the ingoing contribution that a new resident pays with the percentage increasing with the length of time that the resident has resided in the unit.

There is no regulation of the amount of the exit fee and it varies considerably between villages. However, the application of the exit fee calculation must comply with s 53A of the Retirement Villages Act. Section 53A applies to all residence contracts that require the resident to pay an exit fee that is calculated having regard to the length of time the resident resides in their unit, and it operates in the following way:

For all residence contracts entered into after 1 March 2012, the exit fee must be worked out on a pro rata daily basis and the scheme operator and resident cannot agree otherwise.

For all residence contracts entered into before 1 March 2012, the exit fee must be worked out on a pro rata daily basis unless the contract provides a way of working out the exit fee that is not on a daily basis.

The working of s 53A has created some confusion as it is not clear exactly what is required for an exit fee in a pre 1 March 2012 contract to be interpreted as providing ‘a way of working out the exit fee that is not on a daily basis’. The exit fee calculation set out in the residence contract should be carefully examined to ensure that the methodology is understood and applied correctly, taking into account this new legislative requirement.

The exit fee is normally deducted from the monies paid by the new resident (an exit entitlement), which is payable to the outgoing resident. The exit entitlement represents how much money the resident can walk away with once they leave the unit and the unit is resold. There is no regulation on how much the exit entitlement can be.

Some villages allow a person to receive, as part of the exit entitlement, any capital gain made on the resale of the unit or at least to share in that capital gain with the operator. Conversely, they may also require a resident to take any capital loss on the resale. Reading the PID or the residence agreement will reveal how the particular village deals with these matters.

The operator must pay the exit entitlement to the resident or their estate within at least 14 days after the right to reside in the unit has been sold (s 63 Retirement Villages Act). A statement of how the exit entitlement has been worked out must be given to the resident at the time it is paid.

If a resident leaves the village or dies, the resident (or the resident’s estate respectively) will also be liable for the following charges from when the resident vacates the unit (s 104 Retirement Villages Act):

- general services charge until the unit is sold or 90 days after the resident vacates the unit (whichever is the sooner). After the 90 days, the resident and the operator share the charges in the same proportion as they share in the gross sale proceeds of the unit until the unit is sold or nine months have elapsed since the resident vacated the unit. After the nine months, the resident no longer has to pay the charges
- personal services charge, but only for 28 days after the vacation of the unit (s 102).

The above provisions in relation to the general services charge apply to all residents. Many residence agreements also provide for payment of other monies to the operator on the resale of the unit, such as the operator's legal costs, an administration fee and a fee for the surrender of the lease if that is the basis of the resident's tenure.

Residents' Participation in the Retirement Village

Residents in a retirement village can establish a residents committee under the Retirement Villages Act.

Members of the residents committee must be elected and can hold office for one year but may be re-elected or removed from office at any time by a special resolution of the village residents (s 127 Retirement Villages Act).

The residents of a village may adopt a constitution for the committee and its operations (s 128 Retirement Villages Act). The function of the committee is to deal with the village operator on behalf of the residents of the village about the day-to-day running of the village and any complaints or proposals raised by the residents (s 129 Retirement Villages Act).

Residents of the village may, by special resolution and with the agreement of the operator, make a change or revoke any by-laws in the village. An operator must not unreasonably refuse to abide by a residents' resolution in relation to the by-laws (s 130 Retirement Villages Act).

Every year, the operator must call an annual general meeting of the residents as soon as practicable after the annual financial statements are available and present the statements. At least a 21-day notice of the meeting must be given in writing to each resident (s 131 Retirement Villages Act).

A Checklist for Prospective Residents of Retirement Villages

Here are some questions a person who is considering moving into a retirement village might ask themselves or obtain legal advice about:

- What are the terms of the Public Information Document and the contract documents provided by the operator?
- How secure is the tenure in the village?
- What is the reputation and track record of the operator or management?
- How good is the investment?
- Is there a statutory charge registered against the village?

- What do existing residents think about the village?
- How much are the services charges and can I afford them?
- How will moving into a village affect my social security entitlements (if applicable)?
- Can I move into an aged care facility if the need arises, and what guarantees does the operator give that I can move into such a facility?
- How much money am I likely to get back when I leave, and will it be easy to sell the unit?
- How well maintained is the village?
- Should I check with the relevant government department (Office of Fair Trading) about the village?
- What are the facilities in the village?
- What is the dispute resolution process in the village?
- Have there been lots of disputes in the village?
- What do the by-laws of the village say?
- Are there convenient transport, shopping and medical facilities?
- Is there a 24-hour emergency call button in the unit?
- Can I put my boat or caravan somewhere convenient, and what does it cost?
- What are the rules about visitors (especially children)?
- Does the unit have a garage?
- Should I be looking for a one, two or even a three-bedroom unit?
- Is it near family and friends?
- Would I be happy living there?

Manufactured Home Parks

What is a Manufactured Home? Applicable Legislation

This section is intended to provide an overview of the laws affecting people living in manufactured home accommodation. The law in this area can be quite complex, and legal and financial advice should be obtained by any existing or intending residents about the implications of particular aspects of manufactured home park living.

The *Manufactured Homes (Residential Parks) Act 2003* (Qld) (Manufactured Homes Act) governs the operations of manufactured home parks with the objective of regulating and promoting fair trading practices in relation to these types of accommodation.

The Manufactured Homes Act creates a concept known as a 'manufactured home', which is defined in the Act as a structure other than a caravan or tent that:

- has the character of a dwelling house
- is designed to be able to be moved from one position to another
- is not permanently attached to land.

Just as in a retirement village, a manufactured home is normally sited with other homes in the same geographical location (a park) with shared community facilities. Generally speaking, manufactured homes are less expensive than retirement village units.

Manufactured Home Parks – Agreements and Contracts

The Manufactured Homes Act imposes significant disclosure and legal obligations on park owners. It requires a standard information document and site agreement, and specifies a number of obligations that a park owner cannot contract out of.

A park owner must give to a prospective homeowner a homeowner's information document, the park rules together with any proposals or changes to those rules and two copies of the proposed site agreement.

The homeowner's information document must include (s 18 Manufactured Homes Act):

- information identifying the park, the park owner and manager
- details of the communal facilities
- the homeowner's and park owner's responsibilities as set out in ss 15-17 of the Manufactured Homes Act
- the rights of termination and assignment or transfer of the site agreement
- how rent for the site can be varied
- how disputes can be resolved
- a recommendation that a person obtain legal advice before entering into or transferring a site agreement.

The site agreement itself sets out details of the rent of the land on which the mobile home is located, the positioning of the home on the land and what rights the homeowner has in relation to use of the common areas and facilities.

The site agreement must, among other things (s 25 Manufactured Homes Act):

- be legible, in 12-point font, precise and in plain language
- precisely identify the site where the home is located
- provide for each party's contact details
- set out the site rent and other charges payable, when and how they are payable and how the rent may be varied
- stipulate the maximum number of persons who may reside on the site

- be signed by all the parties to the agreement.

All the costs of preparing the agreement must be borne by the park owner, and the agreement itself must be kept by the park owner for at least one year after it is terminated.

The site agreement itself must include the homeowner's and park owner's responsibilities as set out in the Manufactured Homes Act together with the park rules and any relevant terms of any order of QCAT that applies to the park.

Even though the homeowner owns the home, the homeowner's responsibilities are similar to those of a tenant under the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), including the obligation to maintain the home in a reasonable state of cleanliness and repair, and not to intentionally or recklessly damage or destroy the communal facilities in the park (s 16 Manufactured Homes Act).

The park owner's responsibilities include having to ensure that the common areas and communal facilities are maintained in a reasonable state of cleanliness and repair, and to take reasonable steps to let homeowners have access to the site and the common areas (s 17 Manufactured Homes Act). It is an offence under the Manufactured Homes Act for a park owner to engage in fraudulent or misleading conduct (s 95).

Cooling-off period

The Manufactured Homes Act also provides for a cooling-off period. The right to terminate during the cooling-off period only arises, however, if the disclosure documents have not been given to a homeowner before the site agreement is made or if the site agreement is made within seven days of the disclosure documents being given. In those circumstances, a homeowner has 28 days after the agreement was entered into to terminate a site agreement and any amounts already paid by the owner under the agreement have to be refunded (s 33 Manufactured Homes Act).

Security of Tenure in Manufactured Home Parks

The Manufactured Homes Act provides that a site agreement is one that provides for the use and enjoyment of a site, but it does not specify the type of tenure the homeowner receives when they take up residence in a mobile home park.

The Manufactured Homes Act provides that a site agreement will continue where there is a transfer of ownership from park owner to park owner or until the site agreement is terminated (ss 26–27). The Manufactured Homes Act provides that a site agreement can be terminated by a homeowner but also by the park owner on application to QCAT (ss 37–38).

It is an offence for a park owner to coerce or attempt to coerce a homeowner to agree to terminate the site agreement. A site agreement will continue where a purchaser purchases a homeowner's interest in the home park, but only where the assignment of a homeowner's interest under the site agreement is in writing and the park owner has consented (s 48 Manufactured Homes Act).

The Manufactured Homes Act also sets out many grounds upon which an application can be made by the park owner to QCAT for a termination order including that the park owner wishes to use the park for another purpose (s 38).

Variation of Site Rent in Manufactured Home Parks

Generally, a park owner:

- can only increase site rent based on market review if the resident agrees or this mechanism is set out in the site agreement
- can only apply to QCAT to increase the site rent over and above the agreed mechanism if there are significant increases in operational costs, repair costs or cost of improvements
- can include a market review clause in a site agreement when the current site owner sells their interest
- may not threaten, intimidate or pressure a resident to agree to a proposed site rent increase or not to apply to QCAT for a review of the increase.

The Manufactured Homes Act gives homeowners the right to apply to QCAT to object to any such increase, and the tribunal must consider an extensive array of factors before it determines if the increase is justifiable. Homeowners are strongly urged to seek prompt legal advice once they receive any notice from the park owner of any proposed increase in site rent.

Provision of Services and Facilities in Manufactured Home Parks

As noted above, the homeowner's information document under the Manufactured Homes Act must disclose details of the park's communal facilities. The Act also specifies that a park owner is responsible for maintaining the common areas and communal facilities and to ensure reasonable access for homeowners.

The Manufactured Homes Act, however, does not extend the same obligations in relation to the provision of services (e.g. a bus service) and does not require the details of any services provided to be disclosed, nor does it impose an obligation on the owner to maintain or ensure access to such details.

Manufactured Home Parks Residents' Participation and Rules

The Manufactured Homes Act provides that park owners may make park rules about certain matters concerning the manufactured home park. Both, park owners and homeowners must, as a term of their site agreement, comply with them (s 77 Manufactured Homes Act).

A mechanism is also provided for homeowners to be informed and have the opportunity to object to proposed changes to the rules (s 78 Manufactured Homes Act). Where five or more homeowners (or if there are fewer than ten sites, a majority of homeowners) object to any proposed change, a park liaison committee must be formed to consider each objection (s 80 Manufactured Homes Act). The committee must comprise the park owner or their nominee, an objector and a third member agreed upon by the others. If the matter cannot be resolved it is referred to QCAT to determine.

The Manufactured Homes Act also allows homeowners to form a homeowners committee to deal with the park owner about the day-to-day running of the park together with any complaints or proposals raised by homeowners (ss 100–102). The park owner must respond in writing to any notice of a complaint or proposal within 21 days after receiving the complaint (s 103 Manufactured Homes Act).

Dispute Resolution in Manufactured Home Parks

Any disputes between a park and homeowner can be adjudicated on by QCAT where either party applies to the tribunal for the resolution of a dispute (s 140 Manufactured Homes Act).

A collection of homeowners may make a joint application to QCAT where the complaint arises from similar circumstances (s 141 Manufactured Homes Act).

The legislation that governs the operation of QCAT provides that the tribunal must:

- ensure the parties have an equal opportunity to assert and defend their rights
- treat like cases alike and allow parties to represent themselves in order to save legal costs.

Before going to QCAT, parties to any dispute in a mobile home park are normally encouraged to use their internal dispute resolution processes. Unfortunately, the Manufactured Homes Act does not stipulate any particular internal dispute resolution process or that any must be put in place.

In preparing for a hearing before the tribunal, parties may be assisted by a lawyer but they have to get the consent of the other party or apply to QCAT to be granted permission to have legal representation at the hearing. The tribunal’s final determination and reasons will be in writing and constitute a public document enforceable as an order of the court.

Residential Rooming Accommodation

What is Residential Rooming Accommodation?

Applicable Legislation

The *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (RTRA Act) differentiates between residential tenancies and rooming accommodation. Rooming accommodation is defined (s 15 RTRA Act) as accommodation occupied by residents who, in return for rent:

- have a right to occupy one or more rooms
- do not have a right to occupy the whole premises
- do not occupy a self-contained unit
- share other rooms or facilities outside of the resident’s room with one or more other residents.

For the purposes of this part, the respective parties involved in rooming accommodation are called the provider and the resident. It should be borne in mind that the RTRA Act does not apply to all forms of rooming accommodation (ss 43–44).

Rooming Accommodation – Rights and Responsibilities of Residents and Providers

The RTRA Act sets out the rights and responsibilities of both providers and residents in rooming accommodation.

As part of their responsibilities, a provider must (s 247 RTRA Act):

- ensure the premises comply with health and safety regulations
- take reasonable steps to ensure that a resident has access to their room, bathroom and toilet facilities and other common areas
- take reasonable steps to ensure the security of the resident's room and personal property
- maintain the resident's room and common areas fit for the resident to live in
- take reasonable steps to ensure the resident's room and common areas are kept safe and in good repair, and subject to any agreement otherwise
- not unreasonably restrict the resident's guests in visiting the resident
- be available at all reasonable times to be contacted
- give to a resident their name and address or, if they use an agent, the details of the agent
- make sure the resident has, what is known as, quiet enjoyment of the room and common areas, and must supply and maintain the locks necessary to ensure the resident's room is reasonably secure. This will require the provider to supply a key to the lock in each resident's room and, if necessary, to the building itself.

The RTRA Act also imposes responsibilities on a resident (s 253):

- to use their room and common areas as a place of residence
- not to use them for illegal purposes
- not to interfere with the peace, comfort and privacy of other residents
- to pay rent when required
- not to keep an animal on the premises without the provider's permission
- not to recklessly damage or destroy any part of the property
- to keep the resident's room clean
- to maintain the room in a condition that does not give rise to fire or health hazards
- to leave the room in the same state as it was with fair wear and tear accepted as when they entered the room for the first time.

Rooming Accommodation Agreement

The RTRA Act prescribes terms that must be included within the agreement known as standard terms. However, the parties may agree to other special terms provided they do not conflict or are inconsistent with the standard terms.

As well as that, the RTRA Act requires that a rooming accommodation agreement must be in writing and be signed by both the resident and the provider.

The standard terms covered under the RTRA Act include:

- when the agreement starts
- the completion of an entry condition report in cases where a rental bond is payable
- when, how and where rent must be paid
- payment of rent in advance
- rent increases and decreases
- the term of the agreement
- the house rules
- keeping of pets.

Special terms may include items outside the standard terms such as the provision of care or meals. A provider must give the written rooming accommodation agreement to the resident for signing on or before the day the resident occupies the room and then, after receiving the document signed by the resident, must return a copy signed by the provider to the resident within three days. In addition, the provider must, on or before the day the resident occupies the room, give a copy of a condition report in relation to the room to the resident. Within three days of occupying the room, the resident must sign the condition report or, if they do not agree with it, mark it in the appropriate way and then return it to the provider.

A resident cannot be asked to pay rent more than two weeks in advance, and the provider must give a receipt to the resident for any rent payment and how the rent is paid. A provider, without a court order, cannot seize or dispose of a resident's property in payment of any rent or any other monies owing.

With respect to rent increases, unless the rooming accommodation agreement is for a fixed term, a provider who proposes to increase the rent payable by a resident must give the resident a written notice stating the amount of the increased rent, and that the increase will be applicable four weeks after the date of giving the notice.

Rental bond

A rental bond may be required to be paid under the provisions of a rooming accommodation agreement.

The RTRA Act requires that within 10 days of receiving the bond or any part of it, the provider must pay it to the Residential Tenancies Authority (RTA).

The resident must increase the rental bond if the rent increases, and the provider gives notice to the resident to increase the bond. In addition, the first notice can only be given of any increase of the bond after 11 months of the commencement of the rooming accommodation agreement.

The maximum rental bond payable under a rooming accommodation agreement is the amount equal to rent payable for a period of four weeks under the agreement.

House rules

House rules are rules and regulations about the use, enjoyment, control and management of the rooming accommodation premises.

Under sch 5 to the *Residential Tenancies and Rooming Accommodation Regulations 2009* (Qld), there are certain prescribed house rules that apply to every rooming accommodation agreement and these relate to:

- resident and guest behaviour
- maintenance of rooms
- use of common areas
- access to the residents' rooms
- door locks and keys
- the keeping of animals.

In addition, a provider may make other house rules that are not inconsistent with the prescribed rules covering other issues such as:

- use of shared facilities
- parking of cars
- drinking of alcohol or consuming of drugs
- smoking.

A provider can change the house rules but must follow the process prescribed by the RTRA Act to do so. A resident has the right to object to any proposed rule change, and ultimately it can be adjudicated on by QCAT.

Entry and privacy

Under the RTRA Act a provider can enter a resident's room if the resident consents (s 257). They may also enter the resident's room at a reasonable time to inspect the room, but must give at least 48 hours prior written notice of doing so. Such notice cannot be given more than once every month.

In addition, the provider must give at least 24 hours prior notice in writing where the provider wishes to enter the resident's room to clean it, carry out pest control, make repairs or maintenance, show the room to a prospective resident or to allow valuation of the premises.

A provider may, however, enter a resident's room without notice in an emergency, if the room is believed to have been abandoned or to carry out urgent repairs.

Terminating a Rooming Accommodation Agreement

An agreement may end if both parties agree that it end. However, a provider can require a resident to leave where there is an alleged breach of the rooming accommodation agreement. The RTRA Act prescribes a process that must be followed which includes:

- the provider must first give the resident a notice requiring the resident to remedy the breach
- the requisite will vary depending on the nature of the breach that is alleged.

Ultimately, where such a notice is given and the breach is not rectified, the provider may require a resident to leave the premises. In such circumstances, if the breach relates to the non-payment of rent, the resident must leave four days after notice to leave is given, otherwise two days after the notice is given.

Notwithstanding the above, a provider can ask a resident to leave immediately if the provider believes the resident has used the room for an illegal purpose, or the resident or a guest has intentionally or recklessly destroyed or damaged the property, or interfered significantly with the reasonable peace, comfort and privacy of other residents.

In all other circumstances, a provider may terminate a rooming accommodation agreement, which is a periodic agreement and not for a fixed term by giving at least 30 days written notice to the resident.

Ultimately, if a resident is lawfully asked to leave and refuses to, the provider may, with the assistance of other people as necessary, use such reasonable force as necessary to remove the resident from the premises. Such force can only be used while a police officer is present.

Termination without ground

If no reason is given for ending an agreement as set out in the RTRA Act, it is called 'without ground'.

A provider can end a periodic agreement without ground only by giving at least 30 days notice to the resident. A service provider can end a fixed-term agreement without ground only at the end of the term and not less than 14 days after notice was given (s 372 RTRA Act).

A resident can end a periodic agreement without ground only by giving at least seven days notice to the service provider (s 381 RTRA Act).

General breach of the agreement

If either the provider or resident has breached a condition of the agreement, a notice to remedy breach has been issued and the other party has not fixed the breach by the due date, the provider or resident issuing the notice can choose either to ignore the breach and continue the agreement or proceed to end the agreement.

If the party chooses to end the agreement because the breach has not been fixed by the due date, the service provider may issue a notice to leave or a resident may issue a resident leaving form. The service provider's notice to leave must give at least four days notice if the breach is for non-payment of rent and two days notice for any other breach (s 369 RTRA Act) while the resident must give at least seven days notice.

Non-payment of rent

Where the agreement has ended because rent has not been paid, and the resident has not paid the rent by the time required under a notice to remedy breach, the service provider can give the resident a notice to leave.

If the resident has been there for less than 28 days, they can be asked to leave immediately. If they have been a resident for more than 28 days, the notice to leave must allow at least four days for the resident to leave.

Serious breach of the agreement

The service provider may give a resident a notice to leave requiring the resident to leave the premises immediately if the provider believes the resident has committed a serious breach of the agreement for example:

- the resident has used their room for an illegal purpose
- the resident has destroyed or seriously damaged a part of the premises, endangered another person or has significantly interfered with the peace, comfort and privacy of another resident
- the resident has abandoned the premises (s 75 RTRA Act)
- hardship (s 118 RTRA Act).

Goods or money left behind

The RTRA Act prescribes that when a resident leaves the premises and has left behind personal property, the provider must make reasonable efforts to contact the former resident about the property and store the property safely for at least 28 days unless it is claimed in the meantime.

If at the end of the 28-day period the property has not been reclaimed, the provider must give it to the Public Trustee.

If the property does not consist of personal documents or money, the provider may sell the property or dispose of it in any other way, if the provider reasonably believes it is perishable or its market value is less than the amount prescribed under the regulations, or the storage of the goods would be unhealthy or unsafe. This can only be done once the provider has made reasonable efforts to contact the former resident and has stored the property safely for at least 28 days.

Rooming Accommodation Dispute Resolution

The RTRA Act sets out specific dispute resolution processes that apply to rooming accommodation disputes where they have not been resolved through negotiation or any other dispute resolution process.

Such disputes may be resolved by conciliation through the Residential Tenancies Authority (RTA) or ultimately by an application to QCAT.

If a dispute arises about the agreement, the resident or service provider can contact the RTA for information to find out what steps to take.

If the resident and service provider cannot sort out the dispute by speaking with each other, the RTA's Dispute Resolution Service can help the parties to sort out the dispute themselves.

The RTA's Dispute Resolution Service offers free services to resolve disputes. The RTA's conciliators can provide information on the RTRA Act, identify the steps to follow to resolve the dispute and arrange a meeting between the provider and the resident.

Under the RTRA Act, residents and providers must seek the help of the Dispute Resolution Service before they can apply to the tribunal for a decision.

Granny Flats

Granny Flats and Family Accommodation Arrangements

These arrangements can include older people moving in with their family (often into granny flats) or family members moving in with the older person, and they generally consist of an exchange of something of value for the right of occupancy in a residence. The right of occupancy is generally in the private home of a family member, which need not necessarily be a separate residence from the main home.

In many cases, the person entering the arrangement will pay for the granny flat interest. The payment will often involve the gifting of assets or the payment of money to another person in exchange for a life interest in a home.

Unfortunately, where these arrangements are left on an informal basis, they can often result in disputes arising out of disagreements about how the arrangement was to operate. In other cases, the relationship between the family members can simply break down.

There are significant issues to address before entering these arrangements:

- Is this the best option for long-term care of the person?
- What if the older person has to move into residential aged care?
- How will the parties get on and what happens if they cannot?
- What do other family members think?
- What are the Centrelink implications?
- What are the tax implications?

- Who will pay for what in this arrangement?

Needless to say, it is highly advisable for anyone contemplating such an arrangement to obtain good legal and financial advice before entering the arrangement. This can sometimes mean formalising the arrangement in what is known as a family agreement.

Centrelink consequences

Careful consideration needs to be given to the effects of these family arrangements on a person's Centrelink entitlements.

In particular, the gifting of assets or money can breach the gifting or deprivation provisions of the *Social Security Act 1991* (Cth) and have an adverse consequence on a person's pension.

Centrelink has special rules in relation to granny flat arrangements, which, if complied with, may have no impact on a person's pension. If the entry contribution paid by a person is higher than the extra allowable amount (i.e. the difference between the homeowners' and the non-homeowners' asset limits at any particular time), the granny flat resident is assessed as a homeowner by Centrelink. For non-homeowners, the entry contribution becomes an assessable asset for Centrelink purposes.

Granny flat interests are usually private family arrangements, and they do not have a market value. The value of the granny flat interest is the same as the amount that is paid for the life interest, and there is no deprivation of assets that affects a person's pension.

As an example, a person will not contravene the deprivation rules if the amount paid for the granny flat interest is either:

- a transfer of title of their home
- a payment for the construction and fit-out of premises
- a property purchased in another person's name.

But there are some exceptions to these rules where Centrelink values the granny flat interest differently by using what is known as the reasonableness test. This test assesses the value at a different amount to what is actually paid for the life interest and may be used, for example, where:

- there is a transfer of the home and the transfer of additional assets
- there is a payment made for construction and fit-out of premises and the transfer of additional assets
- the person is using the granny flat rules to gain a social security advantage.

Needless to say, the complexity of these and other rules mean that no arrangements should be entered into until advice from Centrelink, and legal and financial advisors has been sought.

Tax consequences

Certain granny flat arrangements may incur capital gains tax (CGT) as indicated in an Australian Taxation Office ruling no 2006/14. This particularly relates to agreements when a parent pays a certain sum of money to a son or daughter, for example, in exchange for the right to live in the latter's home or to construct a separate granny flat there.

Generally our principal place of residence is an exempt asset from any taxation implications particularly CGT, however, the issue is complex and both parties to any such granny flat arrangement need to get good legal and financial advice before entering such an arrangement.

Legal Notices

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