

# Queensland Retirement Village and Park Advice Service

## Moving out of a Retirement Village

Moving out of and selling your right to reside in a retirement village is different to selling a house.

This factsheet explains how to sell your right to reside in a retirement village unit and also explains what rights your relatives have in the event that you die leaving them living in your unit.

The Department of Housing and Public Works factsheets *Fees for Selling a Unit* and *Reinstatement of Retirement Village Units* may also help you to understand your rights and obligations when moving out of a retirement village.

This factsheet is for general information only. It is important to obtain legal advice that is specific to your circumstances.

### TERMINATING YOUR AGREEMENT

Before your right to reside is sold, your residence agreement must be terminated.

You can terminate your residence agreement by giving a one-month written notice to the scheme operator.

If the village is unregistered, you can terminate your agreement within 14 days of becoming aware that the village is not registered. In this case, you are entitled to be repaid your full ingoing contribution and will not have to pay any exit fees.

The village operator can terminate your residence agreement in the following circumstances:

- within 14 days by a written notice if you intentionally or recklessly:
  - injure a person at the retirement village
  - damage an accommodation unit
  - damage the property of another person at the village

- within two months by written notice if:
  - you materially breach your agreement
  - the operator believes that you have abandoned your unit
  - an assessment is carried out and it is demonstrated that your accommodation is unsuitable for your health needs or that you need a higher level of care than is available at the village.

### RESELLING THE RIGHT TO RESIDE

Once you have decided to resell your unit, you and the village operator must negotiate in good faith to try and agree on the resale price (see below for a sample letter to negotiate the resale value of a unit). If no agreement is reached within 30 days from the termination date, the village operator must obtain an independent valuation within a further 14 days. This valuation then becomes the resale price. It is likely that you will need to contribute to the cost of the valuation.

If the village operator has not resold your unit within six months after the termination date, and you have not received your exit entitlement, you can engage a real estate agent to sell your unit. If you do engage a real estate agent, you will be responsible for the payment of their fees and commission.

#### Updating the resale price

If your unit has not been resold within six months after your retirement village agreement has been terminated and you have not received your exit entitlement, the resale price of the unit must be updated every three months.

The same process used to set the original price should be followed to update the resale price.

Again, if no agreement can be reached with the village operator about the resale price, a valuer must be appointed within 14 days, and the valuation will become the agreed resale price. You will be required to pay some of the valuer's costs.

## Getting your unit ready to sell

To resell your unit, it must be returned to a marketable condition. Within 30 days of you leaving the village, you and the operator must reach an agreement about what work needs to be completed to return the unit to a marketable condition. This is described as reinstatement.

If you are not able to reach an agreement with the operator within that 30-day period, both you and the village operator have a further 14 days to exchange quotes for what you think is a reasonable estimate of the reinstatement costs.

Once reinstatement costs have been agreed upon, the work must be done within 90 days of the date that you vacate the village.

The extent to which you are responsible for those reinstatement costs will depend on the terms of your residence contract.

See the Department of Housing and Public Works factsheet about reinstatement for more information.

## Information about resale process

The village operator must promptly advise you of all offers made to purchase your retirement village unit if you have left the village and have not been paid your exit entitlement. Also, you are able to ask the village operator to provide a monthly update about the sale process, including information about:

- all sales enquiries made relating to your unit
- steps taken to promote the sale
- other units for sale at the village.

### Exit fees

The exit fee is an amount of money that you may need to pay the scheme operator when you stop living in the village. Exit fees are sometimes referred to as deferred management fees. Your residence agreement will probably provide that operators can deduct your exit fees and other costs from the proceeds of the sale of your unit.

How your exit fee is calculated will be provided in your agreement. Exit fees are often calculated by having

regard to the ingoing contribution and the length of time you have lived at the village. For example, the exit fee may be 5% of the ingoing contribution for the first year of residence and then increase to 10% for the second year and so on.

### Ongoing fees

When you leave a village, the operator should provide you with a statement that outlines the ongoing fees that you are liable for. For example, you may have to pay the general services charge for up to nine months after you vacate the unit, unless the unit sells earlier.

You may also have to pay personal services charges for up to:

- one month after you give notice that you are vacating
- fourteen days after you give notice because the village is not registered
- fourteen days after the operator gives notice due to dangerous behaviour or, if the notice is extended, 14 days after the extension period
- two months after the operator gives notice because you have breached the agreement, abandoned the unit or been assessed as medically unfit to live in the unit.

### Exit entitlement

An exit entitlement is an amount that an operator may be required to pay to you when you leave your unit or when payment of the sale of your right to reside in the unit is received.

The operator does not have to pay you your exit entitlement until the sooner of:

- the date stated in your contract (if any)
- eighteen months from the date that you terminate your contract or
- fourteen days after the settlement of the resale of your unit.

As a result, there is a maximum time frame of 18 months after which your exit entitlement must be paid out by the village. However, you should note that the village can apply to QCAT for an exemption to this 18-month timelimit in special circumstances (e.g. if they can show that it would cause them financial hardship to pay out the full exit entitlement at once, they can seek an order that it be paid in instalments).

If you are considering terminating your residence agreement, you can ask the operator for a statement

setting out an estimate of your exit entitlement. This is likely to also give you an indication of exit fees and other amounts payable before you will receive your exit entitlement. The operator must give you the statement within 14 days of your request unless you have previously received one within the last six months.

### Rights of relatives

Your right to reside in your unit ends on your death or when you terminate your residence agreement and leave the retirement village. If your spouse or relative has lived in the unit for six months or longer without being on the agreement, they can live in the unit for three months after you die or leave the village. During this time your relative has all the rights and liabilities of a resident. They must write to the operator stating that they agree to the terms of the agreement while they live in the unit. They must do this within 14 days of the date of your death or from the time at which you no longer live in the unit.

Your relative may also wish to enter into a residence agreement to live in the unit. They may do so if all of the following applies:

- your interest was leasehold or licence
- no other person has a right under the agreement to live in the unit
- they meet the eligibility criteria to live in the village
- they give written notice of their wish to enter into a residence agreement.

## DISPUTES AND ADVICE

See the Queensland Retirement Village and Park Advice Service factsheet *Disputes and Complaints* for practical guidance about how to resolve disputes that relate to retirement villages.

## THE LAW

The *Retirement Villages Act 1999* (Qld) contains the law about retirement villages in Queensland. It does not contain the law about resolution of disputes between residents.

## CONTACT POINTS

### QUEENSLAND RETIREMENT VILLAGE AND PARK ADVICE SERVICE

This service, situated at Caxton Legal Centre, provides information, advice and assistance about the law relating to retirement villages. To access this service, call the centre on (07) 3214 6333.

### ASSOCIATION OF RESIDENTS OF QUEENSLAND RETIREMENT VILLAGES

This association provides advice and information to members about dispute resolution. For more information or how to become a member visit their website at [www.arqrv.org.au](http://www.arqrv.org.au) or call the association on 0437 906 074.

### DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL

The department provides a free mediation service to help settle disputes without having to go to court. You can contact this service on (07) 3239 6269 or 1800 017 288 (toll free outside Brisbane).

### QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

The tribunal can make orders about disputes relating to retirement villages. The tribunal is contactable on 1300 753 228.

### QUEENSLAND LAW SOCIETY

This service can provide referrals to a lawyer who has experience advising and assisting people who are thinking of moving into a retirement village. To get a referral, contact the Queensland Law Society on 1300 367 757 or the seniors enquiry line on (07) 3842 5842.

### DEPARTMENT OF HOUSING AND PUBLIC WORKS—RESIDENTIAL SERVICES UNIT

This unit regulates the *Retirement Villages Act 1999* (Qld). This includes investigating complaints and alleged breaches of the Act. You can contact the unit on (07)3008 3450.

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1 Manning Street

South Brisbane Qld 4101

Telephone: (07) 3214 6333

Facsimile: (07) 3846 7483

Internet: [www.caxton.org.au](http://www.caxton.org.au)

Know Your Rights! [www.queenslandlawhandbook.org.au](http://www.queenslandlawhandbook.org.au)

This information is current at February 2018.

## Disclaimer

This information is intended only as a guide. It is not a substitute for legal advice.

No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.

# SAMPLE LETTER TO NEGOTIATE RESALE VALUE OF A UNIT

10 February 2018

Mrs Jennifer Jones  
 The Manager  
 The Residence  
 455 Juniper Street  
 Brisbane Qld 4001

Dear Mrs Jones,

## **Sale of Unit 15**

As you know, I currently live in Unit 15 at The Residence.

On 10 January, I provided you with a written notice that I was terminating my residence contract (one-month notice).

On 27 January, you responded to my termination notice and said that you considered the resale value of my unit to be \$100 000.

I consider my unit to be worth closer to \$120 000. My view is based on the following:

1. The right to reside in Unit 16, which is a very similar unit to my unit, sold six months ago for \$122 000.
2. I purchased my unit 12 months ago for \$125 000, and there has been no significant deterioration of the unit since that time.

Please consider revising your estimate of the resale value of my unit and provide me with your response in writing within seven days of the date of this letter.

If you do not agree that the resale price should be \$120 000, please provide reasons why.

I am aware that if we cannot agree on the resale price, within 30 days from the date my contract terminates, that you must obtain a valuation to set the price. I hope we can avoid the need for this expense by reaching a mutual agreement.

I look forward to hearing from you.

Yours sincerely

Angela Jensen  
 Tel: 0472 345 789

This paragraph outlines the issue that you are trying to negotiate—another example could be the costs associated with reinstatement.

State here your view and the basis of that view—for example outlining the work that you think needs to be completed to reinstate the unit.

In this paragraph outline how you would like the village operator to respond and also provide a time frame for their response.