

## Queensland Retirement Village and Park Advice Service

# Frequently Asked Questions

residence contract signed on or after 1 February 2019

**IMPORTANT:** This kit is aimed at residents who entered a residence on or after 1 February 2019. Existing residents who entered into a residence contract before 1 February 2019 should read our *Frequently Asked Questions—residence contract signed prior 1 February 2019 factsheet*.

## BEFORE MOVING INTO A RETIREMENT VILLAGE

### If I move into a retirement village, what documents should I receive?

The retirement village operator must provide you with the following documents at least 21 days before entering into the residence contract:

- a Retirement Villages Form 3 *Village Comparison Document* (VCD)
- a Retirement Villages Form 4 *Prospective Costs Document* (PCD)
- a copy of the proposed residence contract (usually a lease or licence)
- any by-laws for the retirement village.

These VCD and PCD (the disclosure documents) are standard forms that replaced the former Public Information Document (PID) on 1 February 2019. For retirement village residents who entered the retirement village before that date, the PID relating to their residence contract remains in force. Please see our factsheet *Frequently Asked Questions—residence contract signed before 1 February 2019* if you entered into your retirement village contract before this date.

The VCD gives general information about the retirement village to potential residents, including information about the facilities, accommodation and services and, as well general information about costs, any plans for future development and turnover details for units in the village. The PCD sets out specific information about the unit

that you are considering purchasing and gives an estimate of the costs of moving into, living in and leaving the retirement village, including the exit fee you will pay if you leave the retirement village after certain periods of time (e.g. after one, five or ten years).

Before signing a residence contract, you should ensure that you have had an opportunity to review the disclosure documents for the village as well as a copy of the proposed residence contract and any by-laws. It is important to read these documents very carefully.

While these are often lengthy documents, you should make sure you have a good understanding of what your rights and responsibilities will be when you move into a retirement village. Get advice about these documents if you can, or discuss them with someone you know and trust and will be able to help you understand them.

Once the 21 days have passed, you and the village operator can enter the retirement village residence contract by signing the residence contract.

Once you have signed the residence contract you must be provided with a signed copy, along with an unsigned copy of any other relevant supplementary contract, in order to finalise the agreement to live in the village. The residence contract, the disclosure documents, any by-laws and the *Retirement Villages Act 1999* (Qld) (Act) govern your rights and obligations when living in the village.

### Can I waive the 21-day precontractual disclosure period?

Yes. You can waive the requirement for 21 days to pass between when you are given the disclosure documents, a copy of the proposed residence contract and any by-laws, and signing the residence contract.

To do so, you will need to sign a Retirement Villages Form 5 *Precontractual Disclosure Waiver* after receiving advice from a lawyer about entering into the residence contract.

### Can I rely on what my disclosure documents says if the residence contract that I signed contradicts it?

It depends. Your disclosure documents form part of your residence contract. If there is an inconsistency, the provision that is more beneficial to the resident prevails. However, if a provision of the disclosure documents or residence contract contradicts a provision of the Act, the provision in the Act prevails.

### Will I get a cooling-off period if I sign a residence contract?

Yes, you will have a 14-day cooling-off period starting on the day you sign your residence contract (or on a later date if your contract is contingent on another event occurring).

You are able to terminate your residence contract by giving written notice to the village operator before the cooling-off period ends.

### Do I need to be given an entry condition report?

Yes. Before you move into the village your unit must be inspected and a Retirement Villages Form 6 *Entry Condition Report* should be completed by the village operator in your presence. This document records the condition of your unit when you move in, and can be used as evidence if there is a dispute over reinstatement of your unit when you terminate the residence contract (see 'Leaving a Retirement Village' below).

## GENERAL INFORMATION ABOUT RETIREMENT VILLAGES

### Will I receive full ownership of my retirement village unit?

Retirement villages are set up to offer various types of ownership for their residents. In many retirement villages you do not hold freehold tenure for your unit, but instead obtain a licence or lease and the right to reside in the retirement village unit for an extended period such as 99 years. In a leasehold or licence retirement village

scheme, the resident will pay an upfront fee (called an ingoing contribution) to secure a 'right to reside' in the unit. Other retirement villages may offer freehold, licence and shareholder arrangements, depending on the village. It is important to understand how the village is structured because being a resident of a village is not the same as owning your own home, even if you have freehold title. See our *Moving into a Retirement Village* kit for further information.

### Do I get a say in what happens at the village?

The residents of a retirement village may establish a residents committee. Each resident has the right to participate in the committee while they live at the village.

The purpose of the residents committee is to liaise with the operator of the village on behalf of the residents about the day-to-day running of the village, or about complaints or proposals raised by the residents. See our *Participating in Decision Making* factsheet for further information.

### Can I get access to operational documents for the village?

Yes, residents and prospective residents can request access to a range of operational documents for the village including:

- the registration certificate for the retirement village
- a certificate of title or current title search for the retirement village land
- a site plan for the retirement village
- a plan showing the location, floor plan or dimensions of an accommodation unit in the retirement village
- a plan relating to an accommodation unit or facility being constructed on the retirement village land
- a development approval relating to construction or redevelopment of all or part of the retirement village
- a written plan about the redevelopment of the village
- statements of the balance of any statutory village funds (e.g. the capital replacement fund, maintenance reserve fund, general services fund, administrative or sinking fund) for the past three financial years
- a copy of the draft maintenance reserve fund budget and draft general services charge budget for the financial year

- templates of any contracts (e.g. draft residence contracts) the retirement village has entered into
- the retirement villages' dispute resolution and mediation policy
- certificates of currency for insurance policies
- any by-laws that have been made by residents and are in force
- annual financial statement presented at the most recent annual meeting of residents of the retirement village
- quarterly financial statements of up to the last two completed financial years
- a copy of the current PID that applies to existing pre 1 February 2019 residence contracts.

You must request the operational document in writing and suggest a reasonable time, at least seven days, for you to inspect or take a copy of the document.

### What if the village operator wants to redevelop the village?

If the village operator wants to redevelop the village whilst it is running, for example by constructing or demolishing accommodation units or buildings in the village ('running redevelopment'), they must follow a process under the Act.

This process requires the village operator to prepare a written redevelopment plan; ask the residents to approve it by a special resolution or, if the residents vote against the proposal, request approval from the Director General of the Department of Housing and Public Works. The Director General can only approve the plan if it provides for a clear, orderly and fair process for the running redevelopment. Where the Director General approves the plan, residents have a right to appeal the decision in the Queensland Civil and Administrative Tribunal (QCAT). See our *Moving into a Retirement Village* self-help kit for further information.

**Note:** This process does not apply if the village operator has provided every resident with written notice of the running redevelopment before they became a resident in their Public Information Document, resident contract, Village Comparison Document, Prospective Costs Document or the village by-laws.

### If I have a dispute with the operator of the village what can I do?

The Act sets out a three-step dispute resolution process that must be followed in most disputes that arise between a resident and the operator of the village.

These steps are:

1. Internal negotiation—internal negotiation is aimed at resolving disputes in the most informal way possible. The party with the dispute writes to the other party, requesting a meeting and proposing a time (no sooner than 14 days after the notice is given). The other party must then respond within seven days and either accept the meeting time, or propose an alternative. The parties then meet to discuss the issues of concern.
2. Mediation—if the matter cannot be resolved by negotiation, an application for mediation can be made through the Queensland Civil and Administrative Tribunal (QCAT). A mediator is then appointed and a meeting time set. This is a private and confidential process.
3. Application to QCAT—if the matter is still unresolved, an application can be made for a hearing at QCAT. QCAT will then follow its own process to prepare the parties for a hearing. After the hearing, QCAT will make a decision and notify the parties.

In limited circumstances, you can make an application directly to QCAT, including when the village operator:

- threatens to remove, or actually removes, a resident from the retirement village
- threatens to deprive, or actually deprives, a resident of the right to live in the village
- threatens to restrict, or actually restricts, a resident's use of the retirement village land
- gives a resident false or misleading documents to the financial detriment of the resident
- fails to fulfil requirements regarding exit entitlements and unit resale.

## FEES AND CHARGES

### What kind of fees will I have to pay when I move into a retirement village?

You will initially pay an ingoing contribution if you decide to move into a retirement village. This pays for your right to live at the village.

### What kind of ongoing fees will I have to pay?

You will also be responsible for paying contributions towards the village's general services charge fund and maintenance reserve fund while you live at a

retirement village. Your obligation to pay the general services charge may continue for up to nine months after you terminate your residence contract.

The general services charge covers services supplied or made available to all residents of a retirement village. This could include management, administration, gardening, general maintenance, a shop or other service, or facilities provided for the recreation or entertainment of the residents. The way your general services charge is calculated is set out in the PCD.

The maintenance reserve fund is set up to cover the cost of maintaining and repairing capital items at the village such as buildings, communal facilities and amenities, plant and machinery items, and infrastructure (e.g. roads and drains).

If you enter into an agreement for 'personal services', you will have to pay a separate personal services charge in addition to the general services charge.

When you leave the village, you may also be responsible for paying an exit fee to the operator.

### Can my ongoing fees be increased?

Fees are reviewed each financial year when village operators must set budgets for both the general services charge fund and the maintenance reserve fund. The budgets are prepared by the village operator and will set the amount that residents have to pay over the course of the financial year.

As a result, fees often increase each financial year, depending on the ongoing cost of running the village and the extent of maintenance and repairs that are required at the village.

### Is there anything to stop the village operator from making unreasonable fee increases?

In an effort to protect residents from unreasonable fee increases, the Act limits the way the general services charge can be increased each financial year. The village operator must set a general services charge budget for each financial year. As a general rule, the village operator must not increase the general services charge above the Consumer Price Index (CPI) percentage increase for the previous financial year. Section 106(4) (b) of the Act includes an example of a CPI percentage increase calculation.

Also, before proposing an increase to the general services charge, operators are required to consider more cost-effective ways of providing services to residents.

There are some exceptions to this rule including circumstances where:

- the residents of the village pass a special resolution—75% of residents agree that the fee increase should be allowed
- the increase relates to expenses that the operator has no control over such as rates, insurance, tax payable and salaries.

Where there is an increase in the expenditure involved in providing a general service, that varies from expected expenditure in the general services charge fund budget, the residents committee may ask the village operator for an explanation. The village operator must, as soon as practicable, give the committee a document that explains the increase.

### I think the operator of my retirement village is charging the residents fees that we should not have to pay. What can I do?

The operator of a retirement village is responsible for paying for the provision of new capital items, except where the items are specifically requested by a resident/group of residents. The operator is also responsible for the replacement of capital items.

If you believe that the operator is not making the correct payments or is charging residents for costs that they are not responsible for, you are entitled to request quarterly financial statements from the village operator, which should detail income and expenses relating to capital replacement, maintenance and the general services charge. You can only request quarterly financial statements up to the previous two financial years.

If you still believe that the operator is making incorrect payments, you could follow the dispute resolution process to try and resolve your concerns, or you could make a complaint to the Regulatory Services at the Department of Housing and Public Works. Regulatory Services may then be able to investigate whether or not the operator is breaching their responsibilities.

## LEAVING A RETIREMENT VILLAGE

### Ending a residence contract

You can end your residence contract by giving a one-month written notice to the village operator.

If the village is unregistered, you can terminate your contract 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.

### Can the village operator terminate my residence contract?

Yes. The village operator can terminate your right to reside in certain circumstances.

The operator can give a resident a 14-day written notice to terminate their contract if a resident intentionally or recklessly:

- injures a person at the retirement village
- seriously damages the resident's accommodation unit
- seriously damages the property of another person at the village.

The operator can give a resident a two-month written notice to terminate their contract if:

- the resident materially breaches their contract (this is a serious breach of the contract)
- the village operator reasonably believes the resident has abandoned the right to reside
- an assessment is carried out, and it is reasonably believed that the resident's accommodation is now unsuitable for their health needs as the resident needs a higher level of care than is available at the village.

### Exit fee

When you leave the retirement village, you may be required to pay an exit fee (sometimes referred to as deferred management fees). The way that the exit fee and is calculated depends on your contract, and is often calculated in reference to a percentage of 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 6% for the second year and so on.

The Act also requires residents of retirement villages to continue to pay their general services charge for a period after they leave the village.

The length of time that you will have to keep paying the general services charge will depend on a number of things including:

- how long it takes to sell your unit
- when you signed your residence contract
- what your residence contract says.

All residents are usually required to pay the general services charge for at least 90 days after they vacate their unit, unless the unit sells sooner. The obligation to pay the general services charge can continue for up to nine months, depending on the content of your contract. If your unit has not been resold after nine months, the operator of the village will take over responsibility for your general services charge contributions.

Before you decide whether or not to sign a contract to live at a retirement village, the operator must provide you with information about what your minimum and maximum exit fee would be, depending on when you leave the village.

### Resale and reinstatement

#### Who sets the resale price for my unit when I leave?

The resident and the village operator must negotiate in good faith to try and agree on the resale price. If no agreement is reached within 30 days from the date the resident leaves the village, the village operator must obtain a valuation within a further 14 days. This valuation then becomes the resale price. You and the village operator must reconsider the resale price every three months if your unit has not sold.

#### Does the village need to provide me with an exit condition report?

Yes. Within 14 days of terminating your residency, the village needs to inspect your former unit and complete a Retirement Villages Form 7 *Exit Condition Report* describing the condition of your unit.

If you disagree with something on the exit report, you should note this on your copy of it, and return this to the village within 14 days.

This form, along with the Retirement Villages Form 6 *Entry Condition Report*, provides evidence of the condition of the unit from entry to termination, and can be referred to if there is a dispute over reinstatement.

## Do I have to pay the costs of reinstatement?

For residence contracts entered into on or after 1 February 2019 reinstatement means returning the unit to the same condition it was when you move in, apart from fair wear and tear and any renovations or changes to the condition of the unit that were carried out by agreement between you and the village operator. Fair wear and tear includes a reasonable amount of wear and tear associated with the use of items commonly used in a retirement village.

If you have entered a residence contract on or after 1 February 2019, you must generally pay the costs of reinstating your unit.

You must either undertake reinstatement by leaving your unit in the same condition it was in when you moved in (save for fair wear and tear) before moving out or, once you have moved out, the village may do the work and recover the costs from you.

### **I have been told by the village operator that they want to completely renovate my unit when I leave. I do not think it needs that much work. What can I do?**

For residence contracts entered on or after 1 February 2019, the Act contemplates that reinstatement and renovations are separate things. Reinstatement is defined above as returning the unit to the same condition it was prior to the resident moving in. Renovation work means replacement or repairs other than reinstatement work.

If the village operator wants to undertake renovation work in or affecting your unit, you and the village operator need to agree on a date for the renovation to be completed. The village operator must stick to this timeframe.

If you and the village operator cannot agree on the reinstatement or renovation work to be undertaken, you can apply directly to QCAT to resolve the dispute without attempting informal negotiation or mediation. See our *Dispute Resolution* factsheet for further information.

Generally, you will share renovation costs with the operator in the same proportion that you will share proceeds from the unit's sale (capital gains).

## Exit entitlement

You may be entitled to receive an exit entitlement. The way the entitlement will be calculated depends on your contract.

### **When can I expect to be paid my exit entitlement?**

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

- the date stated in your contract
- eighteen months from the date that you terminate your contract
- 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 from this 18-month time limit 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).

### **It has been over a year since I moved out of my unit. It still has not resold and I have not been paid my exit entitlement. Can I do anything?**

If the retirement village unit has not sold within six months after the date the contract is officially terminated and the exit entitlement has not been paid by the operator, the former resident can appoint a real estate agent to sell the unit for them. The former resident is then responsible for paying the costs of the sale and the commission payable to the agent.

Also, if the unit has not sold within six months, the resale value of the unit should be reconsidered by the operator and the former resident, and updated every three months after that. If the resale value cannot be agreed on, a valuation is once again obtained and the valuation then becomes the resale value for the unit.

## **Can QCAT order the operator to pay me my exit entitlement?**

In limited circumstances, a former resident can make an application to QCAT requesting that the exit entitlement be paid to them. This may include the situation where the operator does not comply with the provisions of the Act relating to setting the resale value, agreeing on reinstatement costs, updating the resale value or notifying the former resident of all offers made to purchase the unit.

The former resident would only be successful if they can show they have been materially prejudiced by the actions of the operator.

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This information is current at February 2020.

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