

## Queensland Retirement Village and Park Advice Service

# Frequently Asked Questions

residence contract signed prior to 1 February 2019

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

## BEFORE MOVING INTO A RETIREMENT VILLAGE

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

You should receive a *Public Information Document* (PID) when you make enquiries about a retirement village. The PID sets out general information about the retirement village as well as specific information about the unit that you are considering purchasing, the fees and charges that you will need to pay and the process to follow if disputes arise or if you want to leave the village.

Before signing a retirement village contract, you should ensure that you have had an opportunity to review the PID for the village as well as a copy of the proposed residence contract. It is important to read your PID and residence contract 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 you have signed a residence contract you must be given a single document that includes your residence contract, the PID and an unsigned copy of any other relevant contract that in order to finalise the residence contract.

### Can I rely on what my Public Information Document says if the contract that I signed contradicts it?

It depends. Your PID forms 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 PID or residence contract contradicts a provision of the *Retirement Villages Act 1999* (Qld) (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.

## 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 to 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 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 income and expenditure, 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.

## 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.

### 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, requesting 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.

## 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 PID.

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 fund 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 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 service 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 service charge for at least 90 days after they vacate their unit, unless the unit sells sooner. The obligation to pay the general service 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 service 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.

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

For residence contracts entered into before 1 February 2019, reinstatement costs are the costs of renovating your unit to an acceptable quality to prepare it for resale when you leave the retirement village.

If you entered into your residence contract before 1 February 2019 you may have an obligation to contribute

towards reinstatement costs depending on the type of interest you purchased.

Residents who hold the freehold title for their unit must pay the cost of reinstatement of their unit.

Other residents who hold either a leasehold interest or a licence to reside will need to refer to their residence contracts for guidance as to whether they must contribute to reinstatement costs or whether it is the village operator's responsibility.

In any case, residents who contribute to the need for particular reinstatement work by deliberate damage or accelerated wear will need to pay for the work that is required to rectify that damage.

### **I have been told by the operator of my retirement village 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 residents who entered contracts prior to 1 February 2019, reinstatement may include renovations necessary to reinstate the unit to a marketable condition.

However, the village operator should not dictate the amount of work that will be carried out to reinstate the unit when a resident leaves. The operator and resident are supposed to engage in negotiations to come to an agreement about the amount of work to be done.

If an agreement cannot be reached within 30 days after the resident leaves the village, the operator must obtain a quote for the work they believe is necessary and provide it to the resident within a further 14 days. The resident may also get a quote and give it to the village operator.

If there is still no agreement, the resident and village operator would then need to progress through the dispute resolution process that is set out in the Act.

## 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 retirement village. The unit 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.

Caxton Legal Centre Inc.

© Copyright Caxton Legal Centre Inc.

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 2020.

## 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.