



Western Australia

Retirement Villages Act 1992

## **Retirement Villages Regulations 1992**

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## Retirement Villages Regulations 1992

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Retirement Villages Act 1992

## **Retirement Villages Regulations 1992**

## **Part 1 — Preliminary matters**

*[Heading inserted in Gazette 24 Mar 2015 p. 993.]*

### **1. Citation**

These regulations may be cited as the *Retirement Villages Regulations 1992*<sup>1</sup>.

### **2. Commencement**

These regulations shall come into operation on the day on which the *Retirement Villages Act 1992* comes into operation<sup>1</sup>.

### **3A. Payments excluded from premium**

(1) In this regulation —

**payment** means a payment that is paid to the administering body of a retirement village in consideration for, or in contemplation of, admission of the person by or on whose behalf the payment was made as a resident in the retirement village.

(2) A payment is excluded from the ambit of the definition of **premium** in section 3(1) of the Act if —

- (a) the payment relates to admission of a person as a resident of a retirement village for a period of 12 months or less; and
- (b) the total amount of the payment and each other payment (if any) that is paid in respect of that admission is an amount of \$1 500 or less.

*[Regulation 3A inserted in Gazette 24 Mar 2015 p. 994.]*

### **3. Memorial prescribed information**

The memorial approved by the Registrar of Titles under section 15(3) of the Act must contain the following information —

- (a) a description of the relevant land;



- (b) the name of the registered proprietor of the land;
- (c) the date on which the memorial is lodged.

*[Regulation 3 inserted in Gazette 24 Mar 2015 p. 994.]*

## **Part 2 — Residence contracts**

*[Heading inserted in Gazette 24 Mar 2015 p. 995.]*

### **Division 1 — Preliminary**

*[Heading inserted in Gazette 24 Mar 2015 p. 995.]*

#### **4A. Terms used**

In this Part —

**arrange**, in relation to carrying out work, includes supervision of the carrying out of the work;

**Code** means the *Code of Fair Practice for Retirement Villages 2015* set out in the *Fair Trading (Retirement Villages Code) Regulations 2015* Schedule 1;

**communal amenity** means any amenity provided or made available by the administering body of a retirement village for the use of all residents of the village;

**communal service** means any service provided or made available by the administering body of a retirement village to all the residents of the village that —

- (a) is not provided or made available under a separate service contract; and
- (b) is not an administrative or management service; and
- (c) is not a service for the maintenance or repair of a residential premises or personal amenity; and
- (d) is not a communal amenity; and
- (e) is not a personal service;

**exit fee** means a fee or charge, other than a recurrent charge, payable by or on behalf of a resident to the administering body of a retirement village on —

- (a) the resident permanently vacating residential premises in the retirement village; or

- (b) the settlement of the sale of the resident's right to reside in the residential premises;

*Note*, followed by a number, means the note of that number in the Notes section of the residence contract set out in Schedule 2 clause 2;

*personal amenity* means any amenity provided or made available for the use of a resident by the administering body of a retirement village, other than —

- (a) the residential premises; and
- (b) an amenity that forms part of, or is provided or made available with, the residential premises; and
- (c) communal amenities in the retirement village;

*personal service* means any service provided or made available by the administering body of a retirement village to a resident of the village that —

- (a) is not provided or made available under a separate service contract; and
- (b) is not a personal or communal amenity;

*reserve fund* has the meaning given in the Code;

*specified* means specified in a residence contract.

[Regulation 4A inserted in Gazette 24 Mar 2015 p. 995-6.]

#### **4B. Form of residence contract**

A residence contract must —

- (a) be written in plain English; and
  - (b) be printed in not less than 12 point type; and
  - (c) be set out clearly and logically and include —
    - (i) appropriate headings and subheadings; and
    - (ii) numbered provisions; and
    - (iii) a table of contents;
- and

- (d) if words and phrases used in the contract are used in the Act, these regulations or the Code, use those words and phrases consistently with the meanings in the Act, regulations or Code, as relevant.

*[Regulation 4B inserted in Gazette 24 Mar 2015 p. 996-7.]*

**Division 2 — Section 13 requirements**

*[Heading inserted in Gazette 24 Mar 2015 p. 997.]*

**4. Section 13 statement**

At least 10 working days before a person enters into a residence contract, the owner must cause to be given to that person a statement in the form of Form 1 in Schedule 1 completed and signed by the owner containing the information required to be provided under that form.

*[Regulation 4 amended in Gazette 21 Mar 2014 p. 722; 24 Mar 2015 p. 1030.]*

**5. Section 13 notice**

- (1) At least 10 working days before a person enters into a residence contract, the owner must cause to be given to that person a notice in the form of Form 2 in Schedule 1 of the persons's rights under sections 13 and 14 of the Act.
- (2) The notice given under subregulation (1) must be printed in a size not less than 12 point type face.

*[Regulation 5 amended in Gazette 21 Mar 2014 p. 722; 24 Mar 2015 p. 1030.]*

**6. Section 13 information**

- (1) For the purposes of section 13(2)(e) of the Act the following documents are prescribed —
- (a) a copy of the residence contract and each other contract that the resident will be required to enter into in order to

reside in the retirement village, including details of the payments to be made by the resident under each contract;

- (b) if the residence contract relates to a retirement village that is already operating —
  - (i) if the financial statements of the village for the previous financial year have been audited — a copy of the audited financial statements and the audit report; and
  - (ii) if the financial statements of the village for the previous financial year have not been audited — a copy of the unaudited financial statements; and
  - (iii) a copy of the operating budget for the village for the current financial year; and
  - (iv) if the village has a reserve fund — a copy of the reserve fund budget for the current financial year;
- (c) if the residence contract relates to a retirement village that is not yet operating —
  - (i) a copy of the proposed operating budget for the first year of operation of the village; and
  - (ii) if the village is to have a reserve fund that will receive income from recurrent charges in the first year of operation of the village — a copy of the proposed reserve fund budget for the first year of operation of the village;
- (d) if the residence contract relates to premises that are comprised in a strata plan or survey-strata plan registered under the *Strata Titles Act 1985* —
  - (i) a copy of the by-laws of the relevant strata company; and
  - (ii) an authority to apply to the strata company under the *Strata Titles Act 1985* section 43.

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- (2) A document referred to in subregulation (1)(b)(iv) is not a prescribed document in respect of a residence contract to be entered into by a person if —
- (a) the contract relates to residential premises in a retirement village that is operating before 1 April 2015; and
  - (b) the person enters into the residence contract before 1 July 2016.

*[Regulation 6 inserted in Gazette 24 Mar 2015 p. 997-9.]*

**Division 3 — Matters to be included in residence contract**

*[Heading inserted in Gazette 24 Mar 2015 p. 999.]*

**7A. General matters to be included in residence contract**

A residence contract must include the general provisions or matters listed in the Table.

**Table**

<b>Item</b>	<b>General provision or matter</b>
1.	A boxed statement in 16 point type about the terms of access to aged care services under the <i>Aged Care Act 1997 (Commonwealth)</i> as set out in Schedule 2 clause 1.
2.	A separate definitions provision containing the definitions of words and phrases used in the contract, including words and phrases that are defined in the Act, these regulations and the Code.
3.	A separate Notes section as set out in Schedule 2 clause 2.

<b>Item</b>	<b>General provision or matter</b>
4.	In a prominent place in the contract, a boxed statement in 16 point type about seeking independent advice as set out in Schedule 2 clause 3.
5.	<p>A statement that refers the resident to the Act, these regulations and the Code and the rights of the resident under that legislation including a reference to —</p> <p>(a) the right set out in the Code to be consulted on, and have access to information about, the administrative and financial arrangements of the retirement village; and</p> <p>(b) the rights set out in the Code in relation to processes available to the resident for the resolution of disputes in relation to the retirement village; and</p> <p>(c) a reference to Note 1.</p>
6.	A provision detailing the registration number of the memorial in respect of the retirement village lodged with the Registrar of Titles under section 15(3) of the Act.
7.	<p>A provision setting out the legal basis of occupancy of the residential premises.</p> <p>Examples:</p> <p>(a) as a non-owner resident under a residential tenancy agreement or another lease or licence arrangement;</p>

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<b>Item</b>	<b>General provision or matter</b>
	(b) as the owner of the premises in a strata scheme or survey-strata scheme;  (c) as a tenant in common in a purple title scheme that applies to the village.
8.	A provision setting out the type of residential premises the resident will be occupying in the village.  Examples: (a) a self-care or independent living unit; (b) a serviced unit.
9.	Plans that show the location, floor plan and significant dimensions of the residential premises and any amenity that forms part of, or is provided or made available with, the residential premises.
10.	A provision setting out the period of residency in the retirement village provided for under the contract.  Examples: (a) a lease for life tenancy; (b) a fixed term tenancy for a specified period.



<b>Item</b>	<b>General provision or matter</b>
11.	If the contract provides for a period of residency of a fixed term, a provision stating that the resident's financial rights and obligations under the contract will not be affected if the residence contract is renewed or extended.
12.	A description of the internal and external fixtures, chattels and amenities that are, or are to be, provided or made available in the residential premises to be occupied by the resident.
13.	If a fixture or chattel is to be provided or made available after the resident has entered into occupation of the residential premises — <ul style="list-style-type: none"> <li>(a) a statement of the latest date by which the fixture or chattel is to be provided or made available; or</li> <li>(b) if the provision or availability of a fixture or chattel is dependent on the happening of an event, a description of the event.</li> </ul>
14.	If the residence contract relates to residential premises in an existing retirement village, a warranty that the residential premises will be in a reasonable condition when the resident takes possession.

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<b>Item</b>	<b>General provision or matter</b>
15.	<p>A provision setting out the circumstances in which a resident may terminate a residence contract after the cooling-off period and the arrangements that relate to such a termination including —</p> <ul style="list-style-type: none"><li>(a) liability for any recurrent charges after the termination; and</li><li>(b) the period for which that liability will continue; and</li><li>(c) any other costs or charges relating to the premises for which the resident may be liable; and</li><li>(d) a reference to Note 2.</li></ul>
16.	<p>A schedule in a form approved by the Commissioner setting out a summary of the provisions of the Act relating to termination of a residence contract and the resident's right of occupation under a residence contract.</p>
17.	<p>A provision that the administering body may only terminate a residence contract in accordance with the Act.</p>

*[Regulation 7A inserted in Gazette 24 Mar 2015 p. 999-1003.]*

**7B. Matters relating to personal amenities to be included in residence contract**

A residence contract must include the provisions or matters listed in the Table relating to personal amenities that are to be provided or made available under the contract.

**Table**

<b>Item</b>	<b>Provision or matter relating to personal amenity</b>
1.	<p>A list of —</p> <ul style="list-style-type: none"> <li>(a) the personal amenities that will be provided or made available for the exclusive use of the resident; and</li> <li>(b) the amenities the administering body provides or makes available in the retirement village that may be made available as a personal amenity for the exclusive use of the resident and the conditions on which those amenities would be made available to the resident.</li> </ul> <p>Examples:</p> <ul style="list-style-type: none"> <li>(a) garage or carport;</li> <li>(b) storage areas;</li> <li>(c) gardening areas.</li> </ul>
2.	<p>A provision setting out the charges that will apply to the resident's access to, or use of, any personal amenity including —</p> <ul style="list-style-type: none"> <li>(a) the basis for the determination of current and future additional charges for providing the personal amenity or making the personal amenity available; and</li> <li>(b) any additional charges that may be payable by the resident for a variation in the provision or the availability of the personal amenity.</li> </ul>

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<b>Item</b>	<b>Provision or matter relating to personal amenity</b>
3.	A provision setting out the period of notice that the resident must give to the administering body to vary the provision or the availability of the personal amenity.
4.	A provision that the administering body will not, without the consent of the resident, vary the provision or availability of a personal amenity to the resident except in circumstances specified in the contract.
5.	A provision setting out —  (a) the circumstances in which the provision or availability of a specified personal amenity may be withdrawn by the administering body, which must be reasonable having regard to the nature of the amenity and the circumstances in which the amenity is provided or made available; and  (b) the period of notice to be provided to the resident of the intention to withdraw the amenity, which must not be less than 30 days.
6.	Plans that show the location, size and features of each personal amenity to be provided or made available under the contract.

<b>Item</b>	<b>Provision or matter relating to personal amenity</b>
7.	<p>If an amenity referred to in item 1 is to be provided or made available as a personal amenity after the resident has entered into occupation of the residential premises —</p> <p>(a) a statement of the latest date by which the amenity is to be provided or made available; or</p> <p>(b) if the provision or availability of an amenity is dependent on the happening of an event, a description of the event.</p>
8.	A reference to Note 1.

*[Regulation 7B inserted in Gazette 24 Mar 2015 p. 1003-6.]*

**7C. Matters relating to communal amenities to be included in residence contract**

A residence contract must include the provisions or matters listed in the Table relating to communal amenities to be provided or made available under the contract.

**Table**

<b>Item</b>	<b>Provision or matter relating to communal amenity</b>
1.	A list of the communal amenities that are part of, or will be part of, the retirement village.

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<b>Item</b>	<b>Provision or matter relating to communal amenity</b>
	Examples: (a) club or meeting room; (b) swimming pool; (c) bowling green; (d) men's shed.
2.	If a communal amenity is to be provided or made available after the resident has entered into occupation of the residential premises —  (a) a statement of the latest date by which the communal amenity is to be provided or made available; or  (b) if the provision or availability of a communal amenity is dependent on an event, a description of the event.
3.	Plans that identify all the buildings and grounds that form, or will form, the communal amenities available for the use of the resident.
4.	A provision that the administering body will not vary the provision or availability of any communal amenity unless the residents of the village, by a special resolution, consent to the variation.
5.	A reference to Note 1.

*[Regulation 7C inserted in Gazette 24 Mar 2015 p. 1006-7.]*

**7D. Matters relating to personal services to be included in residence contract**

A residence contract under which personal services are to be provided or made available to the resident must include the provisions or matters listed in the Table in relation to the personal services.

**Table**

<b>Item</b>	<b>Provision or matter relating to personal services</b>
1.	<p>A list of —</p> <p>(a) the personal services that will be provided or made available for the use of the resident; and</p> <p>(b) the services the administering body provides or makes available in the retirement village that may be made available as a personal service for the use of the resident and the conditions on which those services would be made available to the resident.</p>
2.	<p>A provision setting out the charges that will apply to the resident's access to, or use of, any personal service including —</p> <p>(a) the basis for the determination of current and future additional charges for providing the personal service or making the personal service available; and</p>

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<b>Item</b>	<b>Provision or matter relating to personal services</b>
	(b) any additional charges that may be payable by the resident for a variation in the provision or the availability of the personal service.
3.	A provision setting out —  (a) the circumstances in which a specified personal service may be withdrawn or varied by the administering body, which must be reasonable having regard to the nature of the service and the circumstances in which it is provided or made available; and  (b) the period of notice to be provided to the resident of the intention to withdraw or vary the service, which must not be less than 30 days.
4.	A provision setting out the period of notice that the resident must give to the administering body to vary the provision of a personal service.
5.	A provision that the administering body will not vary the provision of any personal service unless —  (a) the variation is in circumstances set out in accordance with item 3 and after the period of notice provided for in that item has ended; or



<b>Item</b>	<b>Provision or matter relating to personal services</b>
	(b) the resident has consented to the variation.
6.	A provision that the resident will not be liable to pay for a personal service that the resident does not use if —  (a) the residence contract has been terminated; or  (b) the resident has permanently vacated the residential premises; or  (c) the resident has temporarily ceased to reside in the residential premises.
7.	A reference to Note 1.

*[Regulation 7D inserted in Gazette 24 Mar 2015 p. 1008-10.]*

**7E. Matters relating to communal services to be included in residence contract**

A residence contract under which communal services are to be provided or made available to the resident must include the provisions or matters listed in the Table in relation to the communal services.

**Table**

<b>Item</b>	<b>Provision or matter relating to communal services</b>
1.	A description of each communal service that is or is to be provided or made available to the resident.
2.	If a specified communal service is to be provided or made available after the resident has entered into occupation of the residential premises —  (a) a statement of the latest date by which the service is to be provided or made available; or  (b) a description of an event, the happening of which the provision or availability of the service depends on.
3.	A provision that the administering body will not vary the availability of communal services, including by providing a new communal service, unless the residents of the village, by a special resolution, consent to the variation.
4.	A reference to Note 1.

*[Regulation 7E inserted in Gazette 24 Mar 2015 p. 1010-11.]*

**7F. Financial matters to be included in residence contract**

A residence contract must include the financial provisions or matters listed in the Table.

**Table**

<b>Item</b>	<b>Financial provision or matter</b>
1.	A provision setting out any premium payable by the resident in relation to a right to occupy residential premises in the retirement village including a description of any amenities forming part of, or provided or made available with, the residential premises that are covered by the premium.
2.	<p>A provision setting out the right of the resident to repayment of any premium on the termination of the residence contract including —</p> <p>(a) the method of calculation used to determine the repayment; and</p> <p>(b) when and how the repayment is to be made; and</p> <p>(c) any exit fee, commission or other charges for which the resident may be liable before the premium is repaid and if relevant, the method of calculation used to determine the amount of the exit fee, commission or charge; and</p> <p>(d) an explanation of the purpose of each exit fee, commission or charge referred to in paragraph (c) including a description of any services or amenities to which the exit fee, commission or charge relates; and</p>

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<b>Item</b>	<b>Financial provision or matter</b>
	(e) when and how the exit fee, commission or charge is payable by the resident; and  (f) a reference to Note 3.
3.	A provision setting out payments to be made by the resident on a recurrent basis towards the operating costs or expenses of the village including —  (a) a description of any amenities or services to which the operating costs or expenses relate; and  (b) the basis for the determination of the current and future amounts of any payments; and  (c) details of when the payments are to be made; and  (d) whether the resident will be liable for any of the payments if the resident permanently vacates the residential premises and another person has not been admitted to occupation of the premises under the retirement village scheme and if so, how long the resident will be liable for the payment; and  (e) a reference to Note 2.

<b>Item</b>	<b>Financial provision or matter</b>
4.	<p>A provision setting out any payments to be made by the resident on a recurrent basis that are not payments referred to in item 3 including —</p> <p>(a) a description of the purpose of the payments; and</p> <p>(b) the basis for the determination of the current and future amounts of the payments; and</p>
	<p>(c) details of when the payments are to be made; and</p> <p>(d) whether the resident will be liable for any of the payments if the resident permanently vacates the residential premises and another person has not been admitted to occupation of the premises under the retirement village scheme and if so, how long the resident will be liable for the payment; and</p> <p>(e) a reference to Note 2.</p>
5.	<p>A provision setting out the details of any reserve fund operating in respect of the retirement village, including the following —</p> <p>(a) the purpose of the fund;</p>

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<b>Item</b>	<b>Financial provision or matter</b>
	<p>(b) any payment the resident is required to make to the fund in the form of—</p> <ul style="list-style-type: none"><li>(i) recurrent charges; or</li><li>(ii) an amount to be deducted from the premium repayable to the resident after the resident permanently vacates the premises;</li></ul> <p>(c) any payment the administering body is required to make to the reserve fund under section 23(5) of the Act;</p> <p>(d) the amount and source of any other income used to meet expenditure from the reserve fund;</p>
	<p>(e) the method of calculation used to determine the payments or amounts referred to in paragraphs (b) to (d);</p> <p>(f) a reference to Note 2.</p>
6.	<p>If the costs of carrying out maintenance, repair, renovation or replacement work in respect of buildings, structures, fixtures, chattels and other capital items in the village are not paid out of a reserve fund operating in respect of the retirement village, a provision setting out—</p> <ul style="list-style-type: none"><li>(a) the contributions to be made by the resident and by the administering body to those costs; and</li></ul>

<b>Item</b>	<b>Financial provision or matter</b>
	(b) the method of calculation used to determine the contributions to the costs; and  (c) how any contribution to the costs by the resident is to be paid.
7.	A provision setting out —  (a) who is responsible for the cost of any independent audit of the annual financial statements of the retirement village carried out in accordance with the Code; and  (b) if the cost is to be shared between the administering body and the residents, how such costs are to be apportioned between the administering body and the residents.

*[Regulation 7F inserted in Gazette 24 Mar 2015 p. 1011-15.]*

**7G. Matters relating to condition of premises to be included in residence contract**

A residence contract must include the provisions or matters listed in the Table relating to the condition of the residential premises and village infrastructure covered by the contract.

**Table**

<b>Item</b>	<b>Provision or matter relating to condition of premises</b>
1.	<p>A provision setting out —</p> <ul style="list-style-type: none"><li>(a) who is responsible for arranging to carry out maintenance, repair or replacement work to ensure that the residential premises and any fixtures, chattels and capital items included in, or attached or connected to, the residential premises are maintained in a reasonable condition during the occupation of the premises; and</li><li>(b) the contributions to be made by the resident and by the administering body to the costs of carrying out the work referred to in paragraph (a); and</li><li>(c) if the resident is required to make a contribution to the costs of carrying out the work, the procedures to be followed in obtaining the consent of the resident to the carrying out of the work and the cost of the work; and</li></ul>
	<ul style="list-style-type: none"><li>(d) if the resident does not agree with the cost of work that is to be arranged by the administering body and paid for by the resident, a provision that the resident may instead arrange for the work to be carried out at the expense of the resident; and</li></ul>



<b>Item</b>	<b>Provision or matter relating to condition of premises</b>
	<p>(e) how any contribution to the costs by the resident is to be paid; and</p> <p>(f) a reference to Note 3.</p>
2.	<p>A provision setting out —</p> <p>(a) who is responsible for arranging to refurbish the residential premises in accordance with the Code if the resident permanently vacates the premises; and</p> <p>(b) the contributions to be made by the resident and by the administering body to the costs of carrying out the work referred to in paragraph (a); and</p> <p>(c) how any contribution to the costs by or on behalf of the resident is to be paid; and</p> <p>(d) a reference to Note 3.</p>
3.	<p>A provision setting out —</p> <p>(a) who is responsible for arranging to carry out maintenance, repair, renovation or replacement work in respect of buildings, structures, fixtures, chattels and other capital items in the village, other than those referred to in item 1; and</p> <p>(b) a reference to Note 3.</p>

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<b>Item</b>	<b>Provision or matter relating to condition of premises</b>
4.	<p>A provision that the resident may apply to the administering body for approval to add a fixture or chattel to, or remove a fixture or chattel from, the residential premises (the <i>alteration</i>) and that the administering body must —</p> <ul style="list-style-type: none"><li data-bbox="619 689 1225 763">(a) not unreasonably withhold approval for the alteration; and</li><li data-bbox="619 792 1235 943">(b) if the alteration is not approved — notify the resident in writing of the decision and the reasons for it no later than 10 days after a decision is made; and</li><li data-bbox="619 972 1225 1046">(c) if the alteration is approved — notify the resident in writing.</li></ul>
5.	<p>A provision that the administering body must include, in its notification to a resident of the approval of an application for an alteration, a statement of the terms and conditions that apply to the approval, which must include the following matters —</p> <ul style="list-style-type: none"><li data-bbox="619 1330 1209 1404">(a) who is responsible for arranging for the alteration;</li><li data-bbox="619 1433 1235 1650">(b) if the work is to be arranged by the administering body and paid for by the resident, a provision that the work must not commence unless the resident and the administering body have agreed on the cost of the work on the basis of —</li></ul>

<b>Item</b>	<b>Provision or matter relating to condition of premises</b>
	<ul style="list-style-type: none"><li>(i) a written quotation for the work provided by the administering body to the resident; or</li><li>(ii) if the resident does not agree to that quotation — another quotation obtained by the resident;</li><li>(c) who is responsible for the cost of maintaining or repairing any fixture or chattel the subject of the approval;</li><li>(d) the circumstances in which the return of the residential premises to the condition they were in before the alteration took place (having regard to the age and character of the premises) may be allowed or required;</li><li>(e) who is responsible for the costs of any work required to return the residential premises to the condition they were in before the alteration took place;</li><li>(f) the circumstances in which the resident may be liable to pay for any damage to the residential premises caused by the carrying out of the alteration or the work to return the premises to the condition they were in before the alteration took place.</li></ul>

*[Regulation 7G inserted in Gazette 24 Mar 2015 p. 1016-19.]*

**7H. Matters relating to urgent repairs to be included in residence contract**

(1) In this regulation —

*essential service* means each of the following —

- (a) electricity;
- (b) gas;
- (c) refrigeration;
- (d) sewerage, septic tank or other waste water management treatment;
- (e) water, including the supply of hot water;

*urgent repair* means a repair that is necessary —

- (a) for the supply or restoration of an essential service; or
- (b) to avoid —
  - (i) risk of injury to a resident; or
  - (ii) damage to the residential premises; or
  - (iii) the residential premises being or becoming unsafe or insecure; or
  - (iv) undue hardship to a resident.

(2) A residence contract must include the following provisions in relation to urgent repairs to the residential premises —

- (a) a provision that the resident is entitled to arrange for urgent repairs that are the responsibility of the administering body to be carried out on any fixtures, chattels or capital items included in, or attached or connected to, the residential premises on behalf of the administering body if —
  - (i) the resident has made all reasonable attempts to notify the administering body of the need for the urgent repairs; and
  - (ii) the administering body has failed to carry out the urgent repairs in a timely manner having regard

- to the nature of the repairs and any process established by the administering body for the carrying out of urgent repairs; and
- (iii) the resident arranges for the urgent repair work to be carried out in accordance with any process established by the administering body for the carrying out of urgent repairs; and
  - (iv) the resident arranges for the urgent repair work to be carried out by a repairer who is on a list of repairers approved by the administering body and displayed at a prominent place in the village, or if no such list is displayed, by a repairer qualified to undertake repairs of that nature;
- (b) a provision that if a resident arranges for urgent repairs to be carried out in accordance with paragraph (a), the administering body will be responsible for payment for the repairs including reimbursement to the resident of any amount paid by the resident in respect of the repairs.
- (3) Subregulation (2) does not apply if the residence contract provides for the resident, as the occupier of residential premises in a retirement village, to have an interest in the retirement village as an owner of the lot on which the retirement village is located under the *Strata Titles Act 1985*.

*[Regulation 7H inserted in Gazette 24 Mar 2015 p. 1020-1.]*

#### **Division 4 — Matters not to be included in residence contract**

*[Heading inserted in Gazette 24 Mar 2015 p. 1022.]*

#### **71. Provisions relating to certain powers of attorney not be included in residence contract**

- (1) In this regulation —
- administering body***, in relation to a retirement village, includes an agent or employee of the administering body or any person concerned with the administration of the retirement village;

**close associate**, in relation to an administering body, means any of the following —

- (a) if the administering body is a natural person —
  - (i) the spouse, de facto partner, parent, child or sibling of the administering body;
  - (ii) the parent, child or sibling of the spouse or de facto partner of the administering body;
  - (iii) a body corporate, if a person referred to in subparagraph (i) or (ii) is a director or secretary of the body corporate or a person involved in the management of the body corporate;
- (b) if the administering body is a body corporate —
  - (i) a director or secretary of the body corporate or of a related body corporate;
  - (ii) a person involved in the management of the body corporate or of a related body corporate;
  - (iii) the spouse, de facto partner, parent, child or sibling of a person referred to in subparagraph (i) or (ii);
  - (iv) the parent, child or sibling of the spouse or de facto partner of a person referred to in subparagraph (i) or (ii);
  - (v) a related body corporate;

**power of attorney** includes an enduring power of attorney as defined in the *Guardianship and Administration Act 1990* section 102;

**related body corporate** has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

- (2) A residence contract must not include a provision that requires a resident to give a power of attorney to another person —
  - (a) as a condition of the resident being admitted to occupation of the residential premises; or

- (b) during the resident's occupation of the residential premises; or
  - (c) after the resident has permanently vacated the residential premises.
- (3) Subregulation (2) does not apply if the requirement to give a power of attorney is a requirement to give a power of attorney created under the *Guardianship and Administration Act 1990* by an instrument referred to in section 104(1)(b)(ii) of that Act to a person who is not —
- (a) the administering body of the retirement village; or
  - (b) a close associate of the administering body; or
  - (c) a person nominated by the administering body.
- (4) A residence contract must not include a provision under which the administering body —
- (a) can accept a power of attorney given by the resident unless —
    - (i) the power of attorney is a limited power of attorney given to the administering body for the purpose of granting an exclusive right of occupation of particular residential premises to a new resident who is a tenant in common in a purple title scheme that applies to the village; or
    - (ii) the administering body is a natural person who is a relative of the resident;
- or
- (b) can nominate a person to be the donee of a power of attorney given by the resident unless —
    - (i) the nomination is in respect of a power of attorney that is a limited power of attorney given to the administering body for the purpose of granting an exclusive right of occupation of particular residential premises to a new resident

who is a tenant in common in a purple title scheme that applies to the village; or

- (ii) the resident is a relative of the person nominated.

*[Regulation 7I inserted in Gazette 24 Mar 2015 p. 1022-4.]*

**7J. Matters relating to variation and notice not to be included in residence contract**

- (1) A residence contract must not include a provision that allows for the contract to be varied without the consent of the resident unless the variation is required for the purposes of compliance with a written law.
- (2) A residence contract must not include a provision that requires a resident to give a period of notice of more than 30 days of the resident's intention —
  - (a) to vary the provision or availability of a personal amenity or personal service; or
  - (b) to terminate the contract; or
  - (c) to permanently vacate the residential premises occupied by the resident.
- (3) A residence contract must not include a provision that provides for residential premises to be permanently vacated other than in the circumstances set out in the definition of ***permanently vacated*** in section 23(1) of the Act.

*[Regulation 7J inserted in Gazette 24 Mar 2015 p. 1024-5.]*

**7K. Financial matters not to be included in residence contract**

- (1) A residence contract must not include a provision that requires a resident, while the resident occupies the residential premises or on the resident's permanent vacation of the residential premises, to contribute to the costs of all or part of any maintenance, repair, replacement or renovation of the residential premises that would exceed or be inconsistent with the requirements in relation to refurbishment work set out in the Code.



- (2) A residence contract must not include a provision that requires a resident, either while the resident occupies the residential premises or on the resident's permanent vacation of the residential premises, to pay for any damages to the residential premises caused by the carrying out of an alteration arranged by the administering body.
- (3) A residence contract must not include a provision for an exit fee (including an exit fee that is payable as a contribution to a reserve fund established in relation to the retirement village) that is to be calculated by reference to a period of time to be calculated on any basis other than on a pro-rata daily basis in respect of the applicable period of time.

*[Regulation 7K inserted in Gazette 24 Mar 2015 p. 1025-6.]*

**7L. Application of section 6(2) of the Act**

Section 6(2) of the Act does not have effect in relation to a provision listed in the Table.

**Table**

r. 7C Table it. 4	r. 7E Table it. 3
r. 7H	r. 7I
r. 7J	r. 7K

*[Regulation 7L inserted in Gazette 24 Mar 2015 p. 1026.]*

### **Part 3 — Abandoned goods**

*[Heading inserted in Gazette 24 Mar 2015 p. 1026.]*

#### **7. Disposal of abandoned goods**

- (1) If a residence contract is terminated and goods are abandoned on the residential premises by a former resident of a retirement village, the administering body of the retirement village may, after the expiration of 2 days from the termination of the contract, remove and destroy or dispose of the goods if —
  - (a) the goods are perishable foodstuffs; or
  - (b) the estimated value of the goods is less than the total estimated cost of the removal, storage and sale of the goods.
- (2) Where a residence contract is terminated and goods are left on the residential premises that were subject to the residence contract and have not been removed for destruction or disposal under subregulation (1), the administering body must store them in a safe place and manner for a period of not less than 60 days.
- (3) An administering body must before the expiration of 7 days after it has stored goods under subregulation (2) —
  - (a) where the former resident has informed it of a forwarding address, send a notice to the resident at that address in or to the effect of Form 3 in Schedule 1; and
  - (b) cause a notice in or to the effect of Form 4 in Schedule 1 to be inserted in a newspaper circulating generally throughout the State.
- (4) At the request of an administering body, the Commissioner may state in writing where or not in his or her opinion there are reasonable grounds for believing that subregulation (1) applies in respect of particular goods.
- (5) A person who has a lawful right to goods removed and stored under subregulation (2) may at any time before the goods are

sold under subregulation (6) reclaim the goods upon paying to the administering body the reasonable costs of the removal and storage of the goods.

- (6) Where goods are stored under subregulation (2) and have not been reclaimed within 60 days after the day on which they were removed and stored, the administering body must as soon as practicable after the expiration of that period cause them to be sold by public auction.
- (7) If goods are stored, removed and sold by public auction under this regulation, the administering body is entitled to retain out of the proceeds of the sale the reasonable costs of removing, storing and selling the goods.
- (8) An administering body must not incur any liability in respect of the removal, storage or sale under this regulation of goods to which subregulation (1) does not apply, except liability for intentional or negligent damage to the goods or where the administering body has actual notice of any interest in the goods of any person other than the former resident and fails to take all reasonable steps to notify that person of the whereabouts of the goods and afford that person a reasonable opportunity to reclaim the goods.
- (9) Where a dispute arises between an administering body and a former resident in respect of goods to which this regulation applies, the State Administrative Tribunal may upon application by such person, order the payment of any amount or make such other order as it considers appropriate in the circumstances.
- (10) The provisions of this regulation are subject to any order of the State Administrative Tribunal made under section 70(2) of the Act.

*[Regulation 7 amended in Gazette 30 Dec 2004 p. 6925;  
24 Mar 2015 p. 1030.]*

**8. Proceeds of sale of abandoned goods**

Before making an application to the State Administrative Tribunal for an order as to the proceeds of the sale of goods under section 70(2) of the Act the administering body must —

- (a) where the former resident has informed it of a forwarding address, send a notice of its intention to apply for that order to the resident at that address; or
- (b) where the administering body is aware of the address of a personal representative of the former resident, send a notice of its intention to apply for that order to the personal representative at that address.

*[Regulation 8 amended in Gazette 30 Dec 2004 p. 6925;  
24 Mar 2015 p. 1030.]*

## Part 4 — Other matters

*[Heading inserted in Gazette 24 Mar 2015 p. 1026.]*

- 9. Former resident's liability to pay recurrent charges (Act s. 23(3))**
- (1) In this regulation —
- commencement day*** means the day on which the *Retirement Villages Amendment Act 2012* section 11 comes into operation;
- evidence of death***, in relation to a deceased former resident of a retirement village, means —
- (a) evidence of the grant of probate or letters of administration; or
  - (b) other evidence that the administering body of the retirement village accepts as evidence of the former resident's death.
- (2) In this regulation, each of these terms has the meaning given in section 23(1) of the Act —
- former resident***
- permanently vacated***
- recurrent charges***
- (3) A former resident's liability to pay recurrent charges in respect of residential premises in a retirement village ceases when the earliest of these occurs —
- (a) a new resident becomes liable to pay those recurrent charges;
  - (b) a premium is repaid in whole or in part to the former resident —
    - (i) under section 19(3)(b) of the Act; or
    - (ii) in accordance with the residence contract; or

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- (iii) as a consequence of an order made by the State Administrative Tribunal under section 57, 58, 59 or 62 of the Act;
- (c) if —
  - (i) the former resident entered into the residence contract before the commencement day; and
  - (ii) the residential premises are permanently vacated on or after the commencement day; and
  - (iii) the former resident is deceased when the residential premises are permanently vacated, the expiry of 6 months after the later of —
    - (iv) the administering body of the retirement village being given evidence of death in relation to the deceased former resident; or
    - (v) the residential premises having been permanently vacated;
- (d) if —
  - (i) the former resident enters into the residence contract on or after the commencement day; and
  - (ii) the former resident is deceased when the residential premises are permanently vacated, the expiry of 3 months after the later of —
    - (iii) the administering body of the retirement village being given evidence of death in relation to the deceased former resident; or
    - (iv) the residential premises having been permanently vacated;
- (e) if —
  - (i) the former resident entered into the residence contract before the commencement day; and
  - (ii) the residential premises are permanently vacated on or after the commencement day; and

- (iii) the former resident is not deceased when the residential premises are permanently vacated, the expiry of 6 months after the residential premises are permanently vacated;
  - (f) if —
    - (i) the former resident enters into the residence contract on or after the commencement day; and
    - (ii) the former resident is not deceased when the residential premises are permanently vacated, the expiry of 3 months after the residential premises are permanently vacated.
- (4) If, before the commencement day —
  - (a) a former resident has permanently vacated residential premises in a retirement village; and
  - (b) none of the matters described in subregulation (3)(a) or (b) has occurred; and
  - (c) the former resident is deceased,  
the former resident's liability to pay recurrent charges ceases when the earliest of these occurs —
    - (d) any of the matters described in subregulation (3)(a) or (b);
    - (e) the expiry of 6 months after the later of —
      - (i) the administering body of the retirement village being given evidence of death in relation to the deceased former resident; or
      - (ii) the commencement day.
- (5) If, before the commencement day —
  - (a) a former resident has permanently vacated residential premises in a retirement village; and
  - (b) none of the matters described in subregulation (3)(a) or (b) has occurred; and

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- (c) the former resident is not deceased,  
the former resident's liability to pay recurrent charges ceases when the earliest of these occurs —
  - (d) any of the matters described in subregulation (3)(a) or (b);
  - (e) the expiry of 6 months after the commencement day.
- (6) If —
  - (a) subregulation (3)(e) or (f) or (5) applies in respect of a former resident; and
  - (b) the former resident dies before the expiry of the period referred to in that provision,

that period stops expiring on the former resident's death and does not continue to expire until the administering body of the retirement village is given evidence of death in relation to the deceased former resident.

*[Regulation 9 inserted in Gazette 21 Mar 2014 p. 723-5.]*

**10. Interest payable on recurrent charges (Act s. 24(5))**

- (1) In this regulation —  
**former resident** has the meaning given in section 23(1) of the Act;  
**maximum rate** means the maximum permissible interest rate worked out in accordance with the Fees and Payments Principles made under the *Aged Care Act 1997* (Commonwealth) section 96-1.
- (2) For the purposes of section 24(5) of the Act, the rate of interest payable by a former resident in respect of recurrent charges is determined as the maximum rate that applies at the time the former resident elects to pay the recurrent charges under section 24(2) of the Act.

*[Regulation 10 inserted in Gazette 21 Mar 2014 p. 725-6; amended in Gazette 24 Mar 2015 p. 1027.]*



**11. Matters in respect of which administering body is not to require payment (Act s. 25)**

(1) In this regulation —

**commencement day** means the day on which the *Retirement Villages Amendment Act 2012* section 11 comes into operation;

**payment** means a payment demanded or received as referred to in section 25(1) of the Act;

**professional body** means a body whose principal purpose is to represent the interests of the members of a particular profession;

**security interest** means a security interest as defined in the *Personal Property Securities Act 2009* (Commonwealth) section 12;

**special resolution** has the meaning given in section 57A(3) of the Act.

(2) Each paragraph of subregulation (3) prescribes a matter for the purposes of section 25 of the Act.

(3) Subject to subregulation (5), this regulation applies to a payment demanded or received by the administering body of a retirement village from a resident or former resident in respect of these matters —

(a) subject to subregulation (4), the expenses incurred by the administering body of lodging or withdrawing a caveat in respect of the residential premises occupied by the resident, or formerly occupied by the former resident, of the retirement village;

(b) the expenses incurred by the administering body of complying with the *Personal Properties Securities Act 2009* (Commonwealth) in relation to a security interest —

(i) that arises under a residence contract; and

(ii) with respect to which the administering body registers a financing statement or a financing change statement under section 150 of that Act;

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- (c) the marketing or advertising of the residential premises occupied by the resident, or formerly occupied by the former resident —
  - (i) to the extent that the payment demanded or received exceeds the expenses (if any) incurred by the administering body of that marketing or advertising; or
  - (ii) if the payment demanded or received does not relate to the marketing or advertising of only those residential premises;
- (d) the marketing or advertising of the retirement village as a whole, to the extent that the payment demanded or received from the resident or former resident exceeds his or her appropriate portion of the expenses incurred by the administering body of that marketing or advertising;
- (e) the expenses incurred by the administering body of —
  - (i) obtaining legal advice; or
  - (ii) instituting or defending or otherwise participating in legal proceedings; or
  - (iii) participating in arbitration proceedings or mediation,in relation to the retirement village, unless the residents have passed a special resolution that authorises those expenses to be paid by the residents;
- (f) the expenses incurred by the administering body of complying with an order made against the administering body by the State Administrative Tribunal or a court to pay compensation, a penalty or another amount in relation to the retirement village, unless the residents have passed a special resolution that authorises those expenses to be paid by the residents;
- (g) the provision by the administering body of administrative and management services to the residents of the retirement village, to the extent that the payment

demanded or received from the resident or former resident exceeds his or her appropriate portion of —

- (i) the expenses incurred by the administering body of providing those services; and
  - (ii) if the administering body is a person on whose behalf the retirement village is administered and is the owner of land within the retirement village (otherwise than as a resident) — a reasonable fee for providing those services;
- (h) the provision by the administering body of a copy of the residence contract entered into by the resident or former resident (other than the copy provided under an applicable code when the resident or former resident entered into the residence contract), to the extent that the payment demanded or received exceeds the expenses incurred by the administering body of providing the copy;
- (i) the refurbishment of the residential premises occupied by the resident, or formerly occupied by the former resident, to the extent that the payment demanded or received exceeds the expenses incurred by the administering body of that refurbishment;
- (j) the provision by the administering body of information or documents to which the resident or former resident is entitled under an applicable code;
- (k) the expenses incurred by the administering body relating to land tax, if the land used for the retirement village is eligible for an exemption under the *Land Tax Assessment Act 2002*;
- (l) the expenses relating to the depreciation or amortisation of, or to writing off, the assets of the retirement village;
- (m) the expenses incurred by the administering body of overseas travel by the administering body or the employees of the administering body;

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- (n) the expenses incurred by the administering body of accreditation or membership fees paid to a professional body or industry body, other than an industry body referred to in paragraph (o);
  - (o) the expenses incurred by the administering body of accreditation or membership fees paid to an industry body whose principal purpose is to represent the interests of administering bodies (however described) of retirement villages, to the extent that the payment demanded or received from the resident or former resident exceeds his or her appropriate portion of an amount equal to 50% of those expenses.
- (4) Subregulation (3)(a) does not apply to the expenses incurred by the administering body of a retirement village of withdrawing a caveat for a period, and then lodging it again at the end of the period, in respect of residential premises occupied by a resident of the retirement village, if —
- (a) the administering body withdraws the caveat for that period in accordance with the resident's written request; and
  - (b) that request is not made for the purposes of the sale of the residential premises.
- (5) For a retirement village that is in operation immediately before the commencement day, this regulation applies to a payment demanded or received by the administering body of the retirement village on or after the first day of the first financial year of the retirement village that begins after the commencement day.

*[Regulation 11 inserted in Gazette 21 Mar 2014 p. 726-9;  
amended in Gazette 24 Mar 2015 p. 1027.]*

**12. Exemption certificates (Act s. 77C)**

- (1) For the purposes of section 77C(1)(a) of the Act, the fee for an application for an exemption certificate (the *application fee*) is \$700.
- (2) The Commissioner may refund the whole or any part of the application fee if the Commissioner is satisfied there are special circumstances that justify the refund.
- (3) It is not a special circumstance for the purposes of subregulation (2) that an application is refused.
- (4) Without limiting subregulation (2), the whole of the application fee may be refunded under that subregulation only if the Commissioner is satisfied that no resources of the Department have been applied to assess the application.
- (5) Without limiting subregulation (2), any part of the application fee may be refunded under that subregulation only if the Commissioner has had regard to these matters —
  - (a) whether the application has been made in error because the applicant is not a person to whom section 76 of the Act applies;
  - (b) the extent to which the resources of the Department have been applied to assess the application.
- (6) A person must not give information that is false or misleading to the Commissioner in, or in relation to, an application for an exemption certificate under section 77C of the Act.

Penalty: a fine of \$5 000.

*[Regulation 12 inserted in Gazette 21 Mar 2014 p. 729.]*

## **Schedule 1**

### **Forms**

#### **Form 1**

*Retirement Villages Act 1992*

[r. 4]

#### **Information statement for prospective resident**

Under section 13(2) of the *Retirement Villages Act 1992* the owner of residential premises in a retirement village is required to provide the following information to a person at least 10 working days before that person enters into a residence contract.

**THE OWNER MUST ANSWER EACH OF THE FOLLOWING QUESTIONS IN WRITING BELOW EACH QUESTION —**

#### **Payment of premium and refund entitlement**

1. What premium and other costs are payable to enter the retirement village?
2. What is the refund entitlement if the residence contract is terminated and when is it to be paid? (Include any fees or commissions charged by the administering body on termination of the contract and detail the method used to make the determination.)
3. To enable me to compare the financial packages offered by different retirement villages, what would be the final return due after, say, 1, 2, 5 and 10 years.

#### **Charges for village operating costs**

4. What retirement village operating costs are charged to a resident? What are the components of those costs? What method or calculation is used to determine the resident's share of those costs and variations of those costs?
5. By what percentage did the village's operating costs payable by the residents increase during the previous financial year?

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6. Can a resident be liable for any additional or extraordinary charges? If so, under what circumstances?

**Budget surplus**

7. For what purpose, or purposes, may any budget surplus in the retirement village be applied?
8. Does a resident have any say in the purpose, or purposes, to which any budget surplus in the retirement village is to be applied? If so, what is the process for resident involvement in this decision?

**Reserve funds**

9. Is there provision for a reserve fund to pay for repairs, replacements, maintenance and renovations within the retirement village? If not, what are the arrangements for the carrying out of, and the funding of, such works?
10. What, if any, contribution does a resident make to any reserve fund? What method or calculation is used to determine any resident contribution?

**Resident funded capital improvements**

11. What are the rights of a resident to compensation for capital improvements made to the residential premises at the resident's expense?

**Amenities and services**

12. What amenities and services are, or are to be, provided or made available by the administering body? What charges or fees are payable by a resident for those amenities and services and what is the basis for the future determination of those charges or fees? Are there any conditions that apply to a resident's access to, or use of, those amenities and services?
13. What optional amenities and services are, or are to be, provided or made available by the administering body and at what cost?

**Existing service contract**

14. Is there a service contract already in existence that will bind a prospective resident? How can the service contract be varied or cancelled?

**Insurance**

15. What insurance arrangements (including self-insurance arrangements) are in place or proposed for the retirement village? What village insurance costs are, or will be, payable by the residents?
16. What is, or will be, the extent of insurance cover (including self-insurance cover) in the event of the residential premises or the retirement village as a whole being damaged or totally destroyed?

**Village management**

17. What are the qualifications and experience of the retirement village's senior management?
18. Can the administering body of the retirement village transfer or assign its management responsibilities and obligations to a third party? If so —
- What notice will be given to the residents of the transfer or assignment?
  - What information will be given to the residents about the qualifications and experience of the party to whom the responsibilities and obligations are to be transferred or assigned?
19. Is the retirement village accredited under any established accreditation scheme that applies to the retirement village industry?
20. What arrangements, if any, exist for the appointment of a trustee or residents' representative to oversee the interests of the residents under the retirement village scheme?

**Resident consultation**

21. What arrangements exist for a resident to participate in the administration of the retirement village, including the making of residence rules and the setting of charges for the village operating costs that are payable by the resident?



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22. How can the rights and obligations of the administering body and the resident under the residence contract and related contracts be varied? What resident participation is required to effect such variations?

**Resident voting rights**

23. If 2 or more residents occupy the same residential premises in the retirement village, is each resident entitled to vote on a matter that requires, or provides for, the consent of the residents of the village?
24. What are the rights of a resident of the retirement village to appoint a person to vote for the resident by way of a proxy vote?

**Use of residential premises**

25. What restrictions are there on a resident's use of his/her residential premises and the retirement village amenities in regard to —
- having someone else live with him/her?
  - having visitors, including short-stay guests?
  - car parking?
  - pets?

**Spouse or de facto partner occupancy rights**

26. What effect does the death of a resident have on the right of a spouse or de facto partner residing with the resident to continue to occupy the residential premises?

**Transport**

27. What type of public, private or village transport is available to residents?

**Medical certificate requirements**

28. Does the prospective resident have to supply a medical certificate or report to certify his/her ability to live independently?
29. Will the prospective resident have to provide documentation of his/her medical condition and medications? If so, who will have access to it?

**Emergency call procedures**

- 30. Is there an emergency call system? If so, when is it monitored? Who is responsible for responding to the calls?
- 31. In the event of an emergency who will be called and how will they gain access to the resident's residential premises?
- 32. If hospitalisation is required, where will a person normally be taken?

**Hospitalisation**

- 33. If hospitalisation or nursing care is required, how long will the resident's residential premises be kept in the name of the resident?
- 34. In the event that hospitalisation or nursing care is required, what ongoing costs would the resident incur with his/her existing residential premises?

**Moving**

- 35. What costs are associated with moving to and living in alternative accommodation within the retirement village?
- 36. In what circumstances would a resident be required to move to alternative accommodation within the retirement village or be transferred or relocated?

**Village under construction**

- 37. If the residential premises in the retirement village are still under construction, can the prospective resident have input into the design, construction or furnishings of his/her premises?

**Refund of deposit**

- 38. What entitlement does a prospective resident have to a refund of his/her deposit if the construction of the retirement village has not been commenced or completed?

**Sale of village**

- 39. What protection does a resident have against a loss of rights (including accommodation rights) if the retirement village is sold to another organisation?

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**Restrictions on sale of residential premises**

40. Are there any restrictions on the sale of residential premises (e.g. sole agency)? What happens if there is a dispute over the sale price?

**Repair and refurbishment of residential premises**

41. Can a resident be liable to pay for the cost of any repair or refurbishment of residential premises? If so, under what circumstances?
42. What can a resident do if dissatisfied with a claim made by the administering body for payment of any repair or refurbishment of residential premises?

**Termination of contract**

43. Under what conditions can the residence contract in the retirement village be terminated and at what cost? (The conditions must include the procedures to be followed under the *Retirement Villages Act 1992* and any applicable code.)
44. What fees will be payable by a prospective resident or a resident on termination of the residence contract? (This must include who is responsible for ongoing village operating costs and other charges during a period of vacancy of the residential premises.)

Signature of owner:

Date:

*[Form 1 inserted in Gazette 9 Sep 2003 p. 4047-52; amended in Gazette 21 Mar 2014 p. 730.]*

**FORM 2**  
*RETIREMENT VILLAGES ACT 1992*  
**NOTICE OF RIGHTS UNDER SECTIONS 13 AND 14 OF THE**  
***RETIREMENT VILLAGES ACT 1992***

[r. 5]

The rights you have under sections 13 and 14 of the *Retirement Villages Act 1992* are set out below.

The owner should give you this form at least 10 working days before you enter into a residence contract.

**UNDER SECTION 13 —**

1. a residence contract shall be in writing;
2. at least 10 working days before a person enters into a residence contract the owner shall cause to be given to that person —
  - (a) the information statement set out in Form 1 in Schedule 1 to the *Retirement Villages Regulations 1992* completed and signed by the owner;
  - (b) this notice;
  - (c) a copy of the residence rules; and
  - (d) a copy of any applicable code;
  - (e) the documents set out in the *Retirement Villages Regulations 1992* regulation 6;
3. a residence contract is taken to include a warranty as to the correctness of the information contained in the information statement.

That warranty —

  - (a) is subject to any written alteration made to the information statement made by the owner with the consent of the prospective resident on or before the signing of the residence contract by the owner;
  - (b) prevails over any inconsistent contractual term.

**UNDER SECTION 14 —**

If a person has not entered into occupation of residential premises under a residence contract that person may rescind the residence contract —

- (a) at any time within 7 working days after the date of the contract; or

- (b) if the documents required to be provided under section 13(2) are not provided — at any time before the expiration of 17 working days after the documents are provided.

A rescission of a residence contract must be carried out in accordance with section 75 of the *Retirement Villages Act 1992*.

*[Form 2 amended in Gazette 30 Dec 2004 p. 6926; 21 Mar 2014 p. 730; 24 Mar 2015 p. 1027.]*



- (b) goods whose value is less than the estimated cost of removal, storage and sale.





**Schedule 2 — Provisions and matters that must be included in residence contracts**

[r. 7A]

*[Heading inserted in Gazette 24 Mar 2015 p. 1027.]*

**1. Statement on terms of access to aged care services**

The administering body of a retirement village **cannot** guarantee that —

- (a) any proposed residential aged care facility will be constructed, or that any existing residential aged care facility will continue to be available; or
- (b) you will be allocated a place in, or have an automatic right of transfer to, any Commonwealth funded residential aged care facility (which provides accommodation for people who can no longer live independently); or
- (c) you are eligible to receive Commonwealth and/or State funded community care services (which provide support to assist people to continue to live independently).

Your entry to residential aged care facilities and your eligibility to receive aged care support services are subject to availability and to your

**cl. 2**

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ability to meet the eligibility and assessment requirements administered by the Commonwealth and/or State Government.

Aged care facilities and services are not regulated by the *Retirement Villages Act 1992* (Western Australia).

**2. Notes**

NOTES

1. The *Retirement Villages Act 1992* Part 4 sets out circumstances in which an application may be made to the State Administrative Tribunal including in relation to the following matters —
  - (a) a residence contract's compliance with a requirement of the *Retirement Villages Regulations 1992* (s. 55);
  - (b) a dispute about a service contract or the variation or cancellation of the terms of a service contract (s. 56);
  - (c) an increase in recurrent charges or imposition of levy (s. 57A);
  - (d) the transfer of a resident to other accommodation in the retirement village (s. 57);
  - (e) the termination of a resident's occupation of a retirement village (s. 58 and 59);
  - (f) the termination of a residence contract (s. 62 and 63).
2. The *Retirement Villages Act 1992* section 23 and the regulations made under that section set out limits to the liability of certain former residents of a retirement village to pay recurrent charges after permanently vacating residential premises in the village.

3. Regulations made under the *Retirement Villages Act 1992* section 25 set out matters in respect of which the administering body of a retirement village cannot demand or receive payment from a resident or former resident of the retirement village.

**3. Statement about seeking independent legal and financial advice**

Prior to signing this contract you are strongly advised to obtain independent legal and financial advice about your rights and duties under the contract.

*[Schedule 2 inserted in Gazette 24 Mar 2015 p. 1027-30.]*

**Notes**

<sup>1</sup> This is a compilation of the *Retirement Villages Regulations 1992* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

**Compilation table**

<b>Citation</b>	<b>Gazettal</b>	<b>Commencement</b>
<i>Retirement Villages Regulations 1992</i>	10 Jul 1992 p. 3191-8	10 Jul 1992 (see r. 2 and <i>Gazette</i> 10 Jul 1992 p. 3185)
<i>Retirement Villages Amendment Regulations 1993</i>	8 Jan 1993 p. 26-7	10 Jan 1993 (see r. 2)
<i>Retirement Villages Amendment Regulations 1998</i>	30 Sep 1998 p. 5506-9	1 Oct 1998 (see r. 2)
<i>Retirement Villages Amendment Regulations 2003</i> <sup>4</sup>	9 Sep 2003 p. 4047-52	1 Oct 2003 (see. r. 2)
<b>Reprint 1: The Retirement Villages Regulations 1992 as at 7 Nov 2003</b> (includes amendments listed above)		
<i>Retirement Villages Amendment Regulations 2004</i>	30 Dec 2004 p. 6925-6	1 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Retirement Villages (Recurrent Charges, Prescribed Matters and Exemption Certificates) Amendment Regulations 2014</i>	21 Mar 2014 p. 722-30	r. 1 and 2: 21 Mar 2014 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Apr 2014 (see r. 2(b) and <i>Gazette</i> 21 Mar 2014 p. 721)
<i>Retirement Villages Amendment Regulations 2015</i>	24 Mar 2015 p. 993-1030	r. 1 and 2: 24 Mar 2015 (see r. 2(a)); Regulations other than r. 1, 2, 6, 8 and 12-14: 1 Apr 2015 (see r. 2(b)); r. 6, 8 and 12-14: 1 Oct 2015 (see r. 2(c))

<sup>2</sup> Under the *Alteration of Statutory Designations Order (No. 3) 2001* a reference in any law to the Department for Community Welfare is read and construed as a reference to the Department for Community Development.

<sup>3</sup> Repealed by the *Veterans' Entitlements Act 1986* of the Commonwealth.

<sup>4</sup> The *Retirement Villages Amendment Regulations 2003* r. 4(2) reads as follows:

- (2) Despite subregulation (1), if the owner of a retirement village is required, under section 13(2) of the *Retirement Villages Act 1992*,

to give a statement containing information prescribed by regulation 4 of the *Retirement Villages Regulations 1992*, between 1 October 2003 and 31 December 2003 (inclusive), the owner satisfies the requirements of section 13(2) if either —

- (a) the form inserted by subregulation (1); or
- (b) the form it replaced,

is completed and signed.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
administering body .....	7I(1)
alteration .....	7G
application fee .....	12(1)
arrange .....	4A
close associate .....	7I(1)
Code .....	4A
commencement day .....	9(1), 11(1)
communal amenity .....	4A
communal service .....	4A
essential service .....	7H(1)
evidence of death .....	9(1)
exit fee .....	4A
former resident .....	9(2), 10(1)
maximum rate .....	10(1)
Note .....	4A
payment .....	3A(1), 11(1)
permanently vacated .....	9(2)
personal amenity .....	4A
personal service .....	4A
power of attorney .....	7I(1)
professional body .....	11(1)
recurrent charges .....	9(2)
related body corporate .....	7I(1)
reserve fund .....	4A
security interest .....	11(1)
special resolution .....	11(1)
specified .....	4A
urgent repair .....	7H(1)