
CONSUMER PROTECTION

CP301*

Retirement Villages Act 1992

**Retirement Villages (Recurrent Charges,
Prescribed Matters and Exemption Certificates)
Amendment Regulations 2014**

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Retirement Villages (Recurrent Charges, Prescribed Matters and Exemption Certificates) Amendment Regulations 2014*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — when the *Retirement Villages Amendment Act 2012* section 11 comes into operation.

3. Regulations amended

These regulations amend the *Retirement Villages Regulations 1992*.

4. Regulation 4 amended

In regulation 4 delete “5 working days” and insert:

10 working days

5. Regulation 5 amended

In regulation 5(1) delete “5 working days” and insert:

10 working days

6. Regulations 9 to 12 inserted

After regulation 8 insert:

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
 - (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
- (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.

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 User Rights Principles referred to in the *Aged Care Act 1997* (Commonwealth) section 57-19(1)(c).

- (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.

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 costs 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 costs 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;

- (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 costs (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 costs incurred by the administering body of that marketing or advertising;
- (e) the costs 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 costs to be paid by the residents;
- (f) the costs 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 costs 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 costs 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 costs 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 costs 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 costs 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 costs relating to the depreciation or amortisation of, or to writing off, the assets of the retirement village;
 - (m) the costs incurred by the administering body of overseas travel by the administering body or the employees of the administering body;
 - (n) the costs 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 costs 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 costs.
- (4) Subregulation (3)(a) does not apply to the costs 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.

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.

7. Schedule 1 amended

- (1) In Schedule 1 Form 1 delete “5 working days” and insert:

10 working days

- (2) In Schedule 1 Form 2:

- (a) delete “5 working days” (1st occurrence) and insert:

10 working days

- (b) under the heading “**UNDER SECTION 13 —**” delete “5 working days” and insert:

10 working days

- (c) under the heading “**UNDER SECTION 14 —**” delete “5 working days” and insert:

7 working days

- (d) under the heading “**UNDER SECTION 14 —**” delete “10 working days” and insert:

17 working days

R. KENNEDY, Clerk of the Executive Council.
