



Housing Options. Financial and contractual arrangements in retirement villages

If you are considering retirement village living it is a good idea to get as much information as you can. Retirement villages are different from purchasing a house or strata titled unit.

It is important to understand that *you do not own the unit but usually have a lease or license giving you the right to occupy the unit*. The lease is not transferable and money cannot be borrowed against the property.

Financial arrangements

You also need to think about the type of retirement village you want and can afford. In South Australia, there are two main types of financial arrangements:

- resident-funded units which sell for market value (they can cost as much as a house). How much is returned to you on sale of the unit will depend on what is in your contract
- entry contribution units where you make a donation upon entry.

Some operators may offer a hybrid arrangement with a lower upfront payment but a reduced refund amount.

Many people consider moving into a retirement village as their last move. However, you may need to leave the village for a number of reasons, such as the family moving interstate, or needing a higher level of care, and this can have financial implications.

The Retirement Village Act

The *Retirement Villages Act 2016* (the Act) and *Retirement Villages Regulations 2017* (Regulations) describe statutory obligations and rights for operators (a.k.a. administering authorities) and residents of retirement villages. The Act and Regulations can be purchased from the **Service SA** outlet on 108 North Terrace, Adelaide, tel. 132 324. They are also available for download at www.legislation.sa.gov.au.

Under the new Act any exit entitlements must be repaid within 18 months of the resident ceasing to reside in the unit if it is not relicensed prior to this time. The Act doesn't stipulate minimum refund percentage, maximum fees or what services must be provided under each fee type. These are set in the contract you sign with the operator.

The contract

Once you decide to move into a retirement village unit you must be offered a *residence contract*, which sets out your rights and obligations. This is the most important requirement under the Act.

The contract can be very lengthy and quite daunting but it is crucial to understand every clause. There are legal and financial implications for entering, remaining in and leaving the village. The contract is a legally binding document for both you and the operator.

If it is necessary to sell the family home before moving into a retirement village, it is wise to ensure that any contract entered into is subject to the sale of your home achieving your minimum price. The sale price of your home needs to cover the costs of moving into the village and perhaps provide further funds for other needs e.g. new car, holiday.

What should the contract include?

Questions a written contract should address may include:

- What does the premium entitle you to besides the use of the unit, e.g. private garden area, all facilities?
- What is the settling-in period and if you elect to leave the village during this period, what will you be obliged to pay in costs and market rent? (NOTE: the premium may be held until the unit is relicensed)
- If recurrent charges/maintenance fees are paid, what do these charges/fees cover?
- What are you required to maintain at your own expense, e.g. utilities, internal maintenance, contents insurance?
- What is communal property and who else may have access to it? Is it strictly for residents' use or can it be hired out?
- If the retirement village is still under development, is there a written statement about the operator's and/or builder's commitment to erect all facilities and is a time plan included?
- If personal services are provided, are the details written into the contract? Are they fully described including how they are funded?
- What are the conditions if you are absent from your unit

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- on a short or long term basis, e.g. overnight respite, hospital stay or holiday?
- If you have been assessed as needing a higher level of care can you apply for an early refund? How does it work?
 - If you decide to move, are you required to refurbish at your expense? Can you clean, repaint the unit and shampoo carpets yourself? If the operator arranges refurbishment, do you have any say?
 - When you leave, will the refund be the current market value or the amount paid on entry?
 - What percentage is retained as profit by the operator should the resident move out after say 12 months, 18 months, 2 years, 5 years, 8 years, 10 years?
 - What is the retention amount based on? Is it the amount received from the new resident or the amount you paid on entry?
 - What other money is retained from the premium, e.g. recurrent charges/maintenance fees, advertising costs, management fees, refurbishment, capital replacement fund, depreciation?
 - When do you have to vacate the unit after giving notice of intention to leave or after the unit has been relicensed?
 - What if you marry/take a new partner? Is a new contract necessary?

Before signing the contract

When buying a normal house, the buyer would be asked to read and sign a simple standard contract. Retirement village contracts are not as simple partly due to the complexity of the facilities and services provided. Contracts can and do vary.

It is important to remember that, like any financial transaction, the 'buyer-beware' principle applies. When speaking with the sales people, take notes of any verbal promises or exemptions not contained in the advertising material. Ensure that these verbal promises have been included in the contract.

It is **strongly recommended** that you fully understand the legal and financial implications of the contract and are aware of all rules and restrictions that will govern your residency:

- Read the contract carefully and note any questions
- Discuss the contract at length with the operator and obtain answers to all your questions
- Seek advice from a financial adviser to ensure that you can afford to stay in the village on a long term basis. If you move in as a couple and later something happens to one of you, will the remaining person be able to afford to stay in the village? Will they be able to live on a single pension?

- Engage the services of a knowledgeable lawyer to read and explain the document. It is very important that you understand the legal and financial implications of moving into a retirement village. Also check what the executor of your will/family need to do if you die.
- It is also advisable to discuss the move with family, friends and/or the donee(s) of your enduring power of attorney. Ask them to read the contract as they may think of something that has been overlooked
- Are there any discrepancies between the Disclosure Statement and the contract? If uncertain on any point, seek **written** clarification from the operator

If there are any concerns about the interpretation of a specific clause in the contract, request a written explanation from the operator that clearly reflects an understanding of that clause. Attach this to the contract.

The more information you can gain before moving, the more likely it will be that you make the right decision for you.

After you sign the contract

After signing a *residence contract* there is a 15 day cooling-off period in which you can withdraw from the contract without penalty or cost. The contract may also provide a 'settling in' period whereby if you leave the village during that time, you are entitled to a full refund, less a fair weekly rental and other costs as described in the contract.

Make sure you receive a *premises condition report* and that it reflects the condition of fixtures, fittings and furnishings.

Further information

The **South Australian Government's Office for the Ageing (OFTA)** administers the Retirement Village Act and Regulations. OFTA also provides advice and support to all interested parties on interpretation and intent of the Act and maintains a register of retirement villages. It publishes a booklet with useful information for prospective retirement village residents.

Tel. 8204 2420, email RetirementVillages@sa.gov.au;
www.sa.gov.au/topics/housing.

A legal clinic is available at Catalyst Foundation (formerly Seniors Information Service) which includes advice on retirement village contracts; fees apply. For further information tel. 8168 8776, email information@catalystfoundation.com.au.

Legal Brokers - This website allows users to find private lawyers by category, including retirement villages.
www.legalbrokers.com.au/?idev_id=106

Alternatively contact the **Law Society of Australia** for a list of solicitors specialised in this matter (tel. 8229 0200) or search the register at www.lawsociety.asn.au.