

NATIONAL GUIDE TO CREATING
SIMPLE AND EFFECTIVE
retirement living
contracts



EXECUTIVE SUMMARY

Retirement village contracts are sometimes criticised for being too complex - too long, confusing, or for containing 'hidden traps'. As a result, it can be easy to lose sight of the fact that the retirement living sector is a vital and growing part of our urban fabric, providing service integrated housing to many older Australians.

Nearly 200 000 Australians call a retirement village home. All of these individuals have chosen to live in a retirement community because they are purpose built to enable older people to be independent, happy and socially engaged. Contemporary Australian retirement villages support mobility, reduce trip hazards, and are the focus for many organised activities and new friendships alike.

To reduce the confusion around contracts, village operators drawn from the Retirement Living Council (RLC) worked together with the RLC's legal partner, Russell Kennedy Lawyers, to develop key elements of a good residence contract. The Retirement Living Council is a leadership group in the Property Council, and exists to lead the growth of a responsible retirement village industry.

These elements are set out in this National Guide. It has been created to assist retirement village operators with suggestions on structure and language for new contracts. This Guide documents broad industry consensus on many important contract principles in order to:

- **Assist continuous improvement in practice across the sector**

The Guide suggests a simple, functional structure and the use of plain English, which will be a handy reference point for operators looking to revise their contracts over time; and

- **Improve public and customer relations**

By demonstrating that village operators have heard and are acting on the message that some older Australians find retirement living contracts excessively long and confusing.

We encourage all retirement village operators to consult this Guide. It captures the main elements of a village residence contract that are most important to older Australians who are considering moving to a village – transparency, plain English and a simple structure.

It should also be noted that this Guide is designed as a helpful reference, not a prescriptive code or a substitute for legal advice. Because of the varying nature of retirement village legislation in Australia, it is impossible to create clauses that are totally compliant or consistent with all the different retirement village laws. Operators should of course always consult a specialist lawyer to draw up new contracts.



Alison Quinn

President

Retirement Living Council

November 2016



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BACKGROUND INFORMATION

“With the number of older people in Australia increasing rapidly, demand for retirement village living is expected to grow significantly in the coming decades.”

BACKGROUND INFORMATION

About the retirement living sector

There are retirement villages in every Australian state and territory. Retirement villages offer a special type of home and urban community, designed especially to meet the needs of older people.

As of 2014, there were approximately 2,270 villages offering 141,600 dwellings across Australia. This number is growing all the time.

Like many other human service industries, operators in the retirement village sector vary widely in size and structure. Village owners range from small, independent businesses operating one village, to large national businesses operating many villages across multiple states.

Operators may be not-for-profit (NFP) entities such as churches or charities, or commercial for-profit businesses. Some are aligned with particular religions or cultures. Both NFP and commercial operators have villages to suit all budgets – from villages with basic comforts and facilities, to expensive resort-style complexes.

A person can generally enter a retirement village from age 55. However, according to the 2016 PwC/Property Council Retirement Census (the most comprehensive survey in the industry), the average entry age of people moving to a village is 75. With the number of older people in Australia increasing rapidly due to ageing of the population, lower birth rates and immigration, demand for retirement village living is expected to grow significantly in the coming decades. The most recent Intergenerational Report shows that, in 2014-15, there were 3.6 million Australians aged 65 years or older. This figure is projected to increase to 8.9 million in 2054-55, or one in every four Australians.

Numerous surveys and research show the vast majority of retirement village residents enjoy village life and are glad they decided to move there. However, a small proportion of residents are dissatisfied. Three main concerns tend to attract adverse media attention:

- Dissatisfaction with the actions of the retirement village operator or manager;
- Not understanding the contract they signed before entering the village; and
- Dissatisfaction with the nature of fees charged during village tenure or upon leaving.

It is important for people considering a retirement village to make an informed choice. A retirement village is not an investment property. Nor is it a vehicle to build personal wealth. It is a place to live and a hub for services; a place to enjoy facilities, activities and the company of others.

Prospective residents should be encouraged to undertake their own research, visit different villages, speak with village managers and residents, and seek professional financial and legal advice before making a decision. Most state governments also produce information sheets about retirement village living, which list the issues prospective residents should check before making a decision.



BACKGROUND INFORMATION

What is a residence contract?

To live in a retirement village, a prospective resident enters into a contract with the owner or operator of the village. The owner of a village is a commercial entity (whether a small family business, a not-for-profit operator, or a large stock-exchange listed provider) that has made a large capital investment in the land and all the buildings on it.

All retirement village contracts must deal with a number of issues, including the nature of the resident's tenure (in particular long term lease, purchase or rental) and the costs associated with moving into, living in, and leaving the village.

For people moving from their own home to a retirement village, the contract and payment model can seem unusual or complex. A retirement village contract is usually quite different to contracts used to purchase a regular residential home or apartment (i.e. freehold title).

There are various types of tenure in Australian retirement villages. Some village owners offer freehold title to homes within their village; however it is more common for occupancy to be via a long term or lifetime lease or licence agreement between the resident and operator.

This lease or licence tenure is secure, owing to the contract terms and government legislation designed to protect residents. For these tenures, barring exceptional circumstances (such as serious nuisance or abuse by the resident towards others, or a significant change in the resident's care needs) a resident decides how long they want to live in the village, not the operator.

A good residence contract will outline the fees payable by the resident to move into the village, to live in the village, and to move out of the village.

The ongoing cost to enter a village varies. It is based on many factors, including the age of the unit, quality of the unit, location of the village, and facilities in the village.

Ongoing service fees may be charged to the resident on a weekly, fortnightly or monthly basis. These fees are a contribution to the day-to-day costs of running the village. Costs will vary, depending on the extent and age of the village's communal facilities and the type of services provided.

A resident who leaves a village typically receives an amount from the operator when the unit is sold to a new resident, or after a certain time has passed (depending on the relevant state's legislation and the contract). The basis used to calculate what this amount is and when it will be paid should be documented in the resident's contract.

A contract should also specify whether or not a resident leaving a village is entitled to any of the capital gain (or share in any capital loss), and in what proportion.

Finally, an exit fee is often payable by the resident. The exit fee is also commonly called a deferred management fee (or DMF). By deferring part of the value of living in the unit until a resident leaves it, the ongoing price paid by the resident can be lower. The PwC/Property Council Retirement Census found that nationally, the average two bedroom retirement village unit cost 67 per cent of the median house price in the same suburb.

BACKGROUND INFORMATION

How to use this Guide

This National Guide describes the main commercial elements of the relationship between the resident and operator, and the key concepts that should be covered in a residence contract. The significance of each stage is summarised in some detail, and accompanied by sample contract wording that operators might consider using in their contracts.

Throughout this Guide, highlighted text includes specific clauses which operators and managers can include within residence contracts. All of the clauses have been devised for the creation of a loan lease model, although many of the clauses are relevant and can be adapted for other types of retirement village tenure as well.


Some suggested terms adopt a higher standard than is required by law in particular states, and all terms are included in order to achieve a high level of transparency between operator / manager and the resident, regardless of whether the matter is addressed in individual state law.

The Guide suggests clauses written in plain English and that avoid legalistic terminology for ease of comprehension. It is broken into five sections:

- (1) Layout of a Residence Contract**
- (2) Moving into a Village**
- (3) Living in a Village**
- (4) Leaving the Village**
- (5) Other important elements for both residents and operators / managers**



LAYOUT OF THE CONTRACT



“A ‘plain English’ introduction gives the prospective resident information about the nature of the agreement they are considering entering into, and outlines the respective obligations of the operator and the resident.”

LAYOUT OF THE CONTRACT

Introduce the contract

Before commencing the technical aspects of the contract, include a written introduction, which advises the reader about what the contract includes. A 'plain English' introduction gives the prospective resident information about the nature of the agreement they are considering entering into, and outlines the respective obligations of the operator and the resident.

A simple sample introduction you can include in a contract given to a prospective resident is:

We are the Owner and/or the Manager of the Village.

This Residence Contract grants You the right to live in your Unit and to enjoy certain facilities and services during your time at the Village.

It also sets out various terms and conditions that will apply when You move into the Village, while You live in the Village and after You have left the Village.

In particular, this Residence Contract sets out our agreement as to:

- *Our obligations, including the terms and conditions under which We agree We will manage the Village and provide services to You as a resident of the Village; and*
- *Your obligations, including the financial obligations that You agree to comply with and your obligations as a resident when You move into the Village, while You live in the Village and after You have left the Village.*

Before You sign this Residence Contract, You should make sure that You understand the agreement You are entering into.

We recommend that You seek independent legal advice, financial advice and any other advice You may consider helpful.

Cooling off period

The front page of the contract should include a prominent statement that explains to the purchaser that, if they want to change their mind about their move to the village, they can cancel the contract without penalty during the 'cooling off period'. The statement should specify the length of the cooling off period and when it commences. A cooling off period tends to be between three and 14 business days and is regulated by each state's retirement village legislation.

Sequence

The resident has obligations which span from entering the village, living in the village, to when they move out of the village (including a period after they have left the village).

The contract should be set out in three primary parts, to reflect these three stages:

Part 1: 'Moving into the Village', which explains when the contract officially commences and the payments which need to be made upon entry;

Part 2: 'Living in the Village', which explains all of the resident's obligations and operator's obligations while the resident/s are residing in the village;

Part 3: 'Leaving the Village', which explains the ways in which a contract can be terminated and the various obligations operators and residents have to each other once occupancy ends.

LAYOUT OF THE CONTRACT

Glossary of commonly used terms

A retirement village residence contract will include a number of frequently used terms within the contract clauses. It is advisable to include a glossary of these terms at the front of your contract. When a term is used in the residence contract, it should be capitalised (as specified in the glossary) – all terms used in suggested contract clauses in this Guide are capitalised for this reason.

A glossary of common terms is below. You should use as many of these terms in your glossary as you deem useful.

Glossary of commonly used terms in Residence Contracts

“Act” means the relevant Retirement Villages Act from the following list:

ACT: Retirement Villages Act 2012

NSW: Retirement Villages Act 1999

NT: Retirement Villages Act 1995

QLD: Retirement Villages Act 1999

SA: Retirement Villages Act 1987

TAS: Retirement Villages Act 2004

VIC: Retirement Villages Act 1986

WA: Retirement Villages Act 1992

“Administration Fee” means a fee, being:

[Insert amount]% of the New Ingoing Contribution, for services which We render during and up to the granting of a new occupancy of your Unit including opening your Unit from time to time for inspection by prospective new Residents, liaising and coordinating with the cleaners and other workmen in cleaning and carrying out necessary refurbishment or repair works to your Unit, interviewing and meeting with prospective new residents of your Unit to ensure their suitability to retirement village life; and

[Insert amount]% Of the New Ingoing Contribution for promoting and advertising your Unit; unless You have the right under any statute, law or regulation to require an estate agent to be appointed and You exercise that right.

“Authority” means the tribunal within the State or Territory with legislative authority under the Act (if applicable) or if there is no such tribunal, an independent third party to be appointed by the parties by mutual agreement.

“Capital Gain” means the amount (if any) by which the New Ingoing Contribution exceeds the Ingoing Contribution.

“Capital Loss” means the amount (if any) by which the Ingoing Contribution exceeds the New Ingoing Contribution.

“Commencement Date” means the date this Contract commences, being the date set out in Item 6 of the Reference Schedule.

“Common Areas and Facilities” means those areas and facilities that We make available for the common use of residents of the Village from time to time, including pathways, roads, garden areas, any community centre and any recreational facilities.

“Dispute Resolution Procedures” means the procedures required under the Act to be undertaken to resolve a dispute that arises at the Village between a resident and management or between a resident and another resident.

LAYOUT OF THE CONTRACT

“Eligible Resident” means a person who is capable of living independently who We reasonably believe is a suitable person to occupy your Unit after your Contract has ended and who is permitted by the Act to occupy premises in a retirement village.

“Exit Entitlement” means any amount to be paid to You on the Exit Entitlement Date.

“Exit Entitlement Date” means the date which is the earlier of the expiration of [2 years, or insert alternative timeframe up to 5 years] years from the termination date and the date that the new resident takes up permanent occupation of your unit.

“Exit Fee” means the fee payable by You to Us on the Exit Entitlement Date.

“Fair Market Value of the Unit” means the fair market value of the Unit at the Termination Date, as agreed between the parties (having regard to the sale prices of Similar Units in the Village) and failing agreement, as determined by a Valuer whose decision as to the Fair Market Value shall be final and binding. The costs of the Valuer shall be shared equally between the parties. It is agreed that in determining the Fair Market Value there must be taken into account the fact that any new resident must enter into a contract on the same or similar terms to this Contract. If the Unit has not been sold to a new resident within 6 months of the date of the Valuer’s determination of the Fair Market Value, then the parties must meet and endeavour to agree, acting in good faith, on the Fair Market Value of the Unit, and failing agreement the parties must jointly appoint the Valuer to undertake an updated valuation of the Fair Market Value of the Unit.

“Ingoing Contribution” means the amount specified in Item 3 of the Reference Schedule, being the amount, which You advance to Us.

“Manager” means the party referred to as the “Manager” in the Reference Schedule.

“New Ingoing Contribution” means the ingoing contribution [OPTION – insert if applicable: excluding any other entry payment] paid by the New Resident

“New Resident” means a person who is an Eligible Resident and enters into a new residence contract with respect to your Unit

“Operating Charges” means the operating costs of the village. This includes but is not limited to:

- the costs and charges for procuring or providing the Services, including the salaries and wages of any staff, and all other reasonable items and expenses paid or incurred by the Owner or the Manager in the provision of the Services;
- all rates, taxes, charges, fees and other similar outgoings which are at any time rated, taxed, charged or imposed in respect of the whole or part of the Village by any relevant authority [OPTION – insert if applicable: unless such charges are separately assessed in respect of each unit at the Village];
- the costs and charges of all premiums for insurances in respect of the Village, including building reinstatement insurance, public liability insurance, workers compensation, common law and statutory liability insurance in respect of employees We employ or the manager employs for the Village and any other insurances We deem necessary, all such insurance to be in respect of such amounts and with such extensions and exclusions as We reasonably think fit and includes any cost of obtaining such insurances (such as the cost of obtaining any valuations or reports);
- any excess payable under any policy of insurance for the Village;
- any other costs and charges which We reasonably and properly incur or are incurred by Us or the Manager in the operation and management of the Village; and
- any GST which We or the manager are required to pay with respect to the supply of any of the Services, or of any goods, services or other things to the Resident (less the value of any input tax credits which We accrue with respect to the purchase of any goods, services or other things, the cost of which forms part of the Operating Charges).

LAYOUT OF THE CONTRACT

“Optional Services” means additional services which We (or a person on our behalf) may from time to time make available to You and which You may choose to have provided to You on a user pays basis and which, at the date of this Contract, are those optional services listed in Schedule One of this Contract.

[**OPTION** – insert if applicable and note that if this option is inserted, delete the definition of Pre-paid Rent: **“Other Entry Payments”** means the amounts payable by You to Us, being the amount set out in Item 4 of the Reference Schedule.]

[**OPTION** – insert if applicable and note that if this option is inserted, delete the definition of Other Entry Payments: **“Pre-Paid Rent”** means the amount payable by you to us, being the amount set out in Item 4 of the Reference Schedule.

“Rates and Taxes” means all rates, taxes, charges and outgoings which are separately assessed on or attributed to your Unit by any relevant authority.

“Recurrent Charge” means the charge payable by You to the Manager as your contribution towards the Operating Charges.

“Reference Schedule” means that part of this Contract titled “Reference Schedule”.

“Residence Documents” means collectively the [list all documents required to be provided e.g. Factsheet/ General Inquiry Document, Disclosure Statement and this Contract].

“Services” means the services provided or made available to all residents of the Village and which are listed in Schedule One of this Contract.

“Term” means a term of [insert number of years and note that it must be a term of at least 49 years] years.

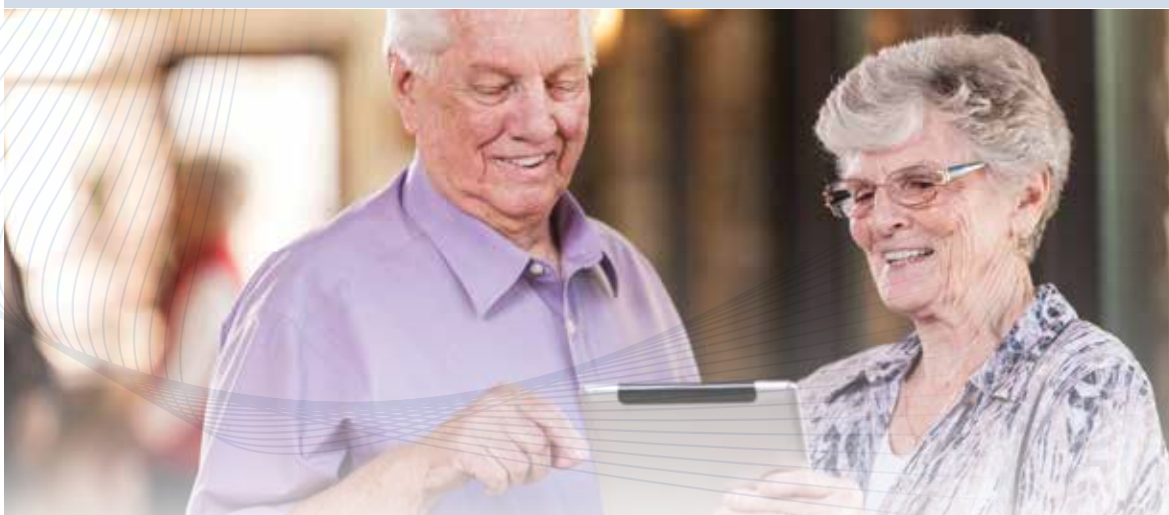
“Termination Date” means the date that the Contract is terminated.

“Valuer” means a Valuer with not less than 5 years’ experience valuing residential properties within a retirement living development, as agreed by the parties, and failing agreement, as appointed by [insert relevant institute for the Jurisdiction e.g. the President of the Victorian Division of the Australian Property Institute].

“Village” means the retirement village specified in Item 1 of the Reference Schedule and all improvements built at the address there specified.

“We” and “Us” means the Owner and/or Manager.

“You” means the Resident.



LAYOUT OF THE CONTRACT

Summary of Key Terms and Reference Schedule

Many operators / managers include a table summary of frequently used 'key terms' of the contract. While this is a summary only, and does not detract from the need for individuals to be fully aware of the details within the contract, it is a ready reference guide when looking up specific issues.

In addition, a Reference Schedule at the start of the contract highlights key information for both the resident and operator. Information about the term of the contract, the unit and the costs and fees payable (including fees which the resident remains liable for after the resident moves out) should be included in the Reference Schedule.

Sample Summary of Key Terms:

| Description | Brief Overview | Quick Reference Guide |
|---|---|---------------------------------|
| PART 1 – MOVING INTO THE VILLAGE | | |
| Legal and Financial Advice | Before You become a resident of the village, We recommend that You obtain legal, financial and any other advice You think is necessary to assist You to make an informed decision about the disclosure documents, this Contract and moving into the Village. | [insert relevant clause number] |
| Your right to reside in the Village | Under this Contract, We grant You a long term lease of your Unit. | |
| Fees payable on entry to the Village | You must pay certain fees and charges to become a resident of the Village. These fees are the Ingoing Contribution, [OPTION: Prepaid Rent, Other Entry Payment, Recurrent Fees in advance]. | |
| PART 2 – LIVING IN THE VILLAGE | | |
| Services We provide | During Your occupancy at the Village, We will provide services to You and other residents of the Village. These services are funded by the Recurrent Charge You and other residents of the Village pay. | |
| Optional Services You may choose to receive | In addition to the services We provide, You may choose to receive additional services. These services are optional and are provided on a user pays basis. For example visiting allied health professionals; hairdresser, etc. | |
| Ongoing fees and charges payable by You after You become a resident | You must pay ongoing fees and charges after You move into the Village. These fees and charges are the Recurrent Charge, [OPTION: rates and taxes assessed on your Unit, fees for optional services, utilities for your Unit]. | |
| Your rights and obligations in relation to occupying your Unit and living in the Village | As a resident of the Village, You have certain rights and obligations in relation to occupying your Unit and living in the Village. [NOTE: if there are absolute restrictions (for example, the Village is a no pet Village or the resident is not permitted to have guests), this should be stated here.] | |
| Your maintenance and repair obligations | While You occupy your Unit, You must maintain and repair your Unit as set out in this Contract. | |

LAYOUT OF THE CONTRACT

| | | |
|---|--|--|
| Our rights and obligations | Like You, We have rights and obligations in relation to your occupancy of a Unit in the Village. For example, We have an obligation to insure the buildings within the Village and the right to access your Unit in certain situations. | |
| PART 3 – LEAVING THE VILLAGE | | |
| Termination of your right to occupy your Unit | Subject to the Act, this Contract terminates and your right to occupy your unit ends if You breach this Contract or a Village Rule, You die, your care needs change to those that are not available at the Village or We require You to relocate to another unit in the Village. | |
| Your ongoing obligation to pay fees and charges after you permanently vacate your Unit | You are responsible for paying certain fees or charges for a period after You permanently vacate your Unit. | |
| Works to your Unit after you permanently vacate your Unit | You must leave your Unit in a good condition after You permanently vacate your Unit. You are responsible for the costs of certain works required to be done to your Unit. | |
| Finding a new resident for your Unit after you leave | After You permanently vacate your Unit and leave the Village We will (subject to the Act) seek a new resident for your Unit. | |
| Exit Payments | After You permanently vacate your Unit, You must pay certain fees and charges and We must pay You your Exit Entitlement within the timeframe specified in this Contract. | |
| PART 4 – OTHER IMPORTANT TERMS | | |
| Dispute Resolution | In the event of a dispute You agree to comply with the applicable Dispute Resolution Procedures under the Act. | |



LAYOUT OF THE CONTRACT

Sample Reference Schedule:

| | | |
|------------------------------------|--|---|
| Date of Contract: | | |
| Parties (name and address): | | |
| Owner: | | |
| Manager: | | |
| Resident: | | |
| Item 1 | Village Name and Address: | |
| Item 2 | Address of Unit: | |
| Item 3 | Ingoing Contribution: | |
| Item 4 | Prepaid Rent (if applicable)/ Other Entry Payment (if applicable): | <i>[Note: if Pre-paid Rent or Other Entry Payments are not payable, insert the words "Not applicable"]</i> |
| Item 5 | Occupation Date: | |
| Item 6 | Commencement Date: | |
| Item 7 | Term of Contract: | |
| Item 8 | Recurrent Charge (as at #): | |
| Item 9 | Method of Variation of Recurrent Charge: | <i>[Note: insert method of variation subject to relevant state legislation]</i> |
| Item 10 | Liability for payment of Recurrent Charge after termination: | <i>[Note: insert liability period subject to relevant state legislation]</i> |
| Item 11 | Liability for payment of Optional Services after termination: | <i>[Note: insert liability period subject to relevant state legislation]</i> |
| Item 12 | Exit Fee: | |
| Item 13 | Amount of Contents Insurance included (if applicable): | <i>[Note: if no contents insurance, insert the words "Not applicable"]</i> |
| Item 14 | Capital Improvement Fund/Major Maintenance Fund/Reserve Fund Contribution: | <i>[Note: if the Village does not have a Fund, insert the words "Not applicable"]</i> |
| Item 15 | Your Capital Gain Share: Your Capital Loss Share: | |
| Item 16 | Timing of payment of your Exit Entitlement after termination: | |
| Item 17 | Special Conditions: | <i>[Note: insert special conditions here if not many special conditions otherwise attach as separate schedule and refer to that schedule in this section]</i> |

MOVING INTO THE VILLAGE

“The type of tenure offered is a decision made by the village owner. However, there are different costs associated with the different forms of tenure and it is important for residents to be aware of these costs.”

MOVING INTO THE VILLAGE

2.1 Encourage prospective residents to seek legal and financial advice

The decision to move into a retirement village is typically a lifestyle decision. However the price on entry and other fees (such as exit fees) payable by a resident can affect their age pension, financing options for residential aged care (if necessary) and size of a person's estate upon death.

It is therefore strongly recommended that all prospective residents be encouraged to seek independent financial and legal advice to determine how a decision to move into a retirement village affects them.

Financial advisors can be found at www.fpa.com.au/find-a-planner/. Specialist lawyers with experience in retirement village law can be found by contacting the Law Society:

| | | | |
|--|---|--|--|
| Queensland Ph 1300 367 757 www.qls.com.au | New South Wales Ph 02 9926 0333 www.lawsociety.com.au | Australian Capital Territory Ph 02 6274 0300 www.actlawsociety.asn.au | Victoria Ph 03 3 9607 9311 www.liv.asn.au |
| Tasmania Ph 03 6234 4133 www.lst.org.au | South Australia Ph 08 8229 0200 www.lawsocietysa.asn.au | Western Australia Law Society Ph 08 9324 8600 www.lawsocietywa.asn.au | Northern Territory Ph 08 8981 5104 www.lawsocietynt.asn.au |

A suggested contract clause encouraging future residents to seek advice is:

You acknowledge, warrant and confirm that:

- a) You received the Residence Documents at least *[insert period]* days before entering into this Contract;
- b) You had the opportunity to seek independent legal, financial and other advice as You considered appropriate about the Residence Documents;
- c) You have had the opportunity to inspect your Unit and the Village, and You are satisfied with the condition, appearance and state of repair of your Unit and the Village;
- d) You are able to live independently taking into account the Services available at the Village; and
- e) all information provided by You to Us before You signed this Contract is true and correct at the time the information was provided.

2.2 Security of tenure

Several types of tenure exist in retirement villages in Australia.

A resident's security of tenure is protected by the Retirement Villages Act. Many states also require an Operator / Manager to register a memorial over the retirement village land.

Some village operators offer residents the ability to purchase the freehold for the unit, while the more common option is for residents to purchase a long-term lease or licence over their unit. Less common tenure types are company title, rental, and (in Western Australia) purple title.

MOVING INTO THE VILLAGE

A suggested clause giving security of tenure pursuant to a lease is:

We agree to grant to You a lease of the Unit on the terms set out in this Contract. This Contract commences on the Commencement Date and continues for the duration of the Term, unless it is terminated earlier.

The type of tenure offered is a decision made by the village owner. However, there are different costs associated with the different forms of tenure and it is important for residents to be aware of these costs. For instance, in strata titled properties, stamp duty will be payable on the acquisition price of the unit, whereas in retirement villages where tenure is secured by a lease, no stamp duty is payable.

The occupation period or 'term' should be defined as a period of years, ideally between 49 and 99 years (longer than the resident's remaining life expectancy).

The contract will end early if the resident decides to leave the village, or if the operator requires the resident to leave the village. The operator may require this if the resident is no longer able to safely live in the village, due to the resident's poor health (e.g. advanced dementia or the need for daily assistance with showering or medication). Occasionally an operator may terminate a contract due to a serious breach by the resident (such as being a persistent nuisance and threat to other residents).

Antisocial behaviour or poor health sufficient for an operator to terminate a resident's contract is a rare situation, but does happen. An Operator / Manager would not seek to force a resident to leave lightly and, in both scenarios, the Operator / Manager should work with the resident and their family to seek a resolution. This resolution may include additional care being provided into the resident's unit or facilitating entry into a Residential Aged Care Facility (RACF), which acknowledges that a higher level of care is needed for the resident than that which can be provided within the retirement village.

2.3 Entry fees

An entry fee is paid in exchange for the right to live in the village; for example, an entry fee is paid to purchase the freehold in a unit, or to pay the lease or licence fee for a unit. This fee is often referred to as the ingoing contribution, but terminology can vary, depending on which state you live in.



MOVING INTO THE VILLAGE



Many people who enter a retirement village are seeking to downsize and unlock the equity they have built up in their family home.

The 2016 PwC/Property Council Retirement Census found **the most common unit size in a retirement village consists of two bedrooms.**

The average price for this size unit nationally was **67% of the median house price in the same postcode.**

To become a resident of the village, certain fees and charges must be paid before moving into the retirement village. These fees may include, but are not limited to:

- Ingoing Contribution;
- Prepaid Rent/Other Entry Payment;
- Recurrent Fees in advance.

Suggested clauses for a loan lease contract which cover these payments on entry include:

Payment of Ingoing Contribution

You agree to advance the Ingoing Contribution to Us on the Commencement Date by way of an interest free loan and We agree to accept the Ingoing Contribution upon the terms and conditions set out in this Contract.

Other payments

- **[OPTION – delete if not applicable:** You must pay the Pre-paid Rent to Us on or before the Commencement Date. The Pre-paid Rent is a non-refundable payment.]
- **[OPTION – insert Operator's clause which sets out any additional payment, if applicable.]**

Stakeholder

If You pay any moneys to Us before You are entitled to possession of your Unit under this Contract, We must pay those moneys to a Stakeholder to hold in accordance with the Act. The Stakeholder will release any moneys held by the Stakeholder to Us when it is permitted to do so under the Act.

No interest

No interest is payable to You in relation to the Ingoing Contribution.

LIVING IN THE VILLAGE

“Residents of the village have rights and obligations in relation to occupying their unit and living in the village, and these need to be stated clearly.”

LIVING IN THE VILLAGE

For most residents, living in a retirement village is a very happy experience. According to the McCrindle Baynes Village Census of 2013, 98 per cent of new residents said they would choose to move into their retirement village if they could go back in time and make the decision again. To have a successful and satisfying life in a village, it is important that residents clearly understand the rights and responsibilities of them and their Operator / Manager.

3.1 Provision of services

During the resident's occupancy at the village, services are provided to them and other residents of the village. Each resident contributes to the cost of providing these services by payment of the recurrent charge. Examples of commonly included services include gardening, maintenance, the operation of the emergency call system, the operation and maintenance of the community facilities, village transport, etc.

In addition to the services provided, the resident may choose to receive additional services. These services are optional and are provided on a user pays basis. Examples of these optional services include costs for visiting allied health professionals such as physiotherapists, podiatrists and nutritionists, as well as hairdressers, beauty therapists, etc.

Suggested clauses for services are:

Type of Services

From the Commencement Date, We will provide or arrange for the following to be provided to You:

- a) the Services; and
- b) the Optional Services (if any).

Variation to Services

We may vary the Services and facilities in accordance with the Act.

The list of Services and Optional Services should be included as a Schedule of the contract.

3.2 Ongoing fees and charges

Residents are liable for the payment of ongoing fees and charges after they move into the village. These fees and charges consist of the recurrent charge (usually monthly or quarterly); and can also include separately charged rates and taxes assessed on their unit and/or the provision of optional services or utilities.

Variations to recurrent charges are regulated by the relevant state Act, which may also define the length of time after leaving a village for which a resident remains responsible for the recurrent charges.

Many retirement village operators will include some regular bills, such as council rate notices and utility bills, in their regular recurrent charges. According to the 2016 PwC/Property Council Retirement Census, **61 per cent of operators said their recurrent charge included council rates and 81 per cent included water rates. In 2016, the average monthly recurrent charge for a single resident was \$409.**

LIVING IN THE VILLAGE

Suggested clauses relating to the payment of fees and charges are:

Fees and Charges

From the Commencement Date, You must pay:

- to Us the Recurrent Charge at the times and in the manner specified in the Reference Schedule. The Recurrent Charge payable as at the date specified in Item 8 of the Reference Schedule is the amount specified in that item;

[– Suggested clause where rates and taxes are not included in the Recurrent Charge]:

- to the relevant authority all rates, taxes, charges and outgoings which are separately assessed or attributed to or in respect of your Unit by any relevant authority;

[– Suggested clause if Resident is responsible for utilities]:

- to the relevant provider all charges for electricity, gas, telephone, water, pay television and other services separately metered, assessed or imposed in respect of your Unit;
- to the relevant provider all charges for Optional Services provided to You (if any).

Recurrent charges may increase during a resident's tenure, and there are mechanisms in state laws that regulate how increases can be made.

For owner residents in strata title villages, the outgoing resident will generally remain responsible for strata fees until the property has been sold to an incoming resident. This is not the case with non-strata leasehold tenure villages where strata fees are not payable by residents.

Optional services are paid on a fee-for-service basis by individual residents who elect to receive them. Residents can expect that the cost of these optional services will be reviewed over the time they live in the village, and that changes are made without their prior approval (like any service provider does in the general community, such as a hairdresser or beautician raising prices for their services).

A suggested clause to cover the variation of charges is:

Variation of Recurrent Charge

We may vary the Recurrent Charge as set out in Item 9 of the Reference Schedule.

Variation of charges for Optional Services

[– Suggested clause in relation to variation of Optional Services]:

We may vary the charges for Optional Services from time to time or the charges may be varied by the service provider depending on the Optional Services provided and the costs of providing those services. You are responsible for any variation from the date You are notified of the variation.

It is important that residents are aware of any ongoing liability they may have for the payment of recurrent fees or optional services once they have left the village. This obligation passes to the resident's estate if the resident dies.

The length of time for which recurrent fees are payable by a resident once they have left a village is determined by the individual state laws. This is covered in more detail in section 4.2 of this Guide.

3.3 Occupying the unit

Residents of the village have rights and obligations in relation to occupying their unit and living in the village, and these need to be stated clearly.

If there are absolute restrictions (for example, the village is a 'no pet' village or the resident is not permitted to have guests overnight in a serviced apartment) these should be stated in the contract.

LIVING IN THE VILLAGE

Suggested clauses for detailing key obligations regarding the resident's use of their unit are:

Use of Unit

You must:

[**OPTION 1** – *suggested clause where no other use permitted*]:

only use your Unit as your principal place of residence and not for any other purpose without our consent;

[**OPTION 2** – *if home office is also permitted, delete Option 1 and insert suggested clause*]:

use your Unit as your principal place of residence and home office and not for any other purpose without our consent; and

not use or permit your Unit to be used for any illegal purpose or so as to cause any breach of any laws

Outside appearance of Unit

You must not:

[**OPTION** – *hang any clothing or other articles outside your Unit, other than on a clothes line provided for that purpose*]; or

[**OPTION** – *put up any signs that are visible from outside your Unit.*]

Hazardous substances or items causing structural damage

You must not keep in your Unit or the Village any dangerous or flammable materials or goods unless approved by Us.

Dealing with your interest in your Unit

You must not, without obtaining our prior written consent:

- transfer or assign this Contract;
- sublet or otherwise part with possession of, all or part of your Unit;
- mortgage, charge or otherwise encumber this Contract; or
- lodge a caveat over any of the titles to the Village.

We have an absolute discretion as to whether or not We give consent.

A retirement village is a community and, like any community, there are rules and regulations. It is important to communicate this through the contract; that all residents must comply with the rules in order for the expectations of other residents to be met. In many instances these obligations are similar to those of residents living in a high-rise development, or an integrated inner city development, or a new residential land community in urban growth areas.



LIVING IN THE VILLAGE

Suggested clauses detailing the resident's obligations while part of the village community are:

Village Rules

You must comply with and ensure your guests and invitees comply with the Village Rules. The Village Rules may be varied as permitted by the Act.

No nuisance

You must not do or allow your guests or invitees to do or keep anything in your Unit or in any other part of the Village that may be a nuisance, annoyance, disturbance, or cause harm to any other person in the Village or the neighbourhood or that will harass, intimidate or bully such person.

Undue noise

You must ensure that all noise coming from your Unit is reasonable and does not annoy other residents or persons in the Village.

Guests

You must:

- inform the Manager within 24 hours of the arrival of any person other than you who intends to occupy your Unit, and must not, without the Manager's prior written consent:
 - a) Allow any other person to reside in your Unit for any period of time in excess of *[insert period]* in total in any 12 month period; or
 - b) **[OPTION 1]** – allow any person to occupy your Unit for a period of more than *[insert period]* while You are absent] OR
- **[OPTION 2]** – delete Option 1 and insert allow any person to occupy your Unit while You are absent].
- ensure that your guests and invitees comply with the Village Rules and, where applicable, the Resident's obligations contained in this Contract.

Sales or auctions

You must not allow or hold any auction or sale in, or from, your Unit without our prior consent.

Parking

You must:

- **[OPTION]** – *suggested clause:* not use or allow to be used any parking area which You are permitted to use for any purpose other than parking a motor vehicle, or any other purpose which We may permit.]
- not use any car parks set aside for visitor use, or use or allow to be used any car parks which have been allocated or leased to other residents, and must ensure that your guests and invitees only use designated visitor car parks; and
- not assign or sublet any rights to use a car park area without our prior written consent.

Garbage

You must observe any guidelines We issue relating to rubbish disposal from your Unit and the placing of any rubbish bins within the Village.

Fire safety

You must:

- comply with any fire regulations or policies relating to your Unit; and
- not smoke in areas of the Village that We designate from time to time as non-smoking areas.

Not to invalidate our insurances

You must not do anything that may invalidate, or increase the premium for, an insurance policy that We have in respect of the Village.

LIVING IN THE VILLAGE

Many retirement villages allow residents to have pets. A study published in the Journal of the American Geriatrics Society demonstrated that independently living older people who had pets tended to have better physical health and mental wellbeing than those that did not.

Some retirement villages however have a 'no pet' policy. It is important that incoming residents understand any restrictions and the rules relating to pet ownership, before signing the contract.

Suggested clauses relating to the ownership of pets in the village are:

Pets

[OPTION 1 – suggested clause if pets allowed]:

Subject to us providing our prior written consent, You may keep a single pet in your Unit. Any approval granted may be provided with conditions and withdrawn if the pet unreasonably disturbs the quiet enjoyment of neighbours, creates nuisance to others in the Village or poses a health or safety risk to You or any other person in the Village.

[OPTION 2 – if no pets allowed, delete Option 1 and insert suggested clause]:

You must not keep or bring any animal in your Unit or the Village.



LIVING IN THE VILLAGE

3.4 Maintenance and repair

While certain maintenance services will be included as part of the overall service offering at the village, residents have obligations in relation to maintenance and repairs of their own unit. It is important that operators clearly explain what types of maintenance is included in the recurrent charges paid collectively by residents, and what types of maintenance the resident is responsible for, so as to avoid confusion and disputes.

It is also important for residents to understand that changes they may make to their unit while living there require prior approval, and that they may be obliged to meet the costs of restoring the unit to its original state when they leave the village.

Additionally, it is important that each individual unit is maintained to an acceptable standard of appearance and functionality while the resident lives in the village.

Suggested clauses for the maintenance and repair of a resident's unit are:

Alterations and additions

You must not, without our prior written consent, make any alterations or additions to the inside or outside of your Unit. If consent is given, You must maintain and repair any such alterations or additions at your cost.

[**OPTION** – *suggested clause to require alterations remain or be removed upon termination:*

Upon termination of this Contract, We may request that You:

- a) not remove any alterations or additions in which case they become our property; or
- b) remove any alterations or additions and repair any damage caused by their removal at your cost.]

Your maintenance, repair and replacement obligations

You must, at your cost, keep your Unit clean, tidy and in a good condition and state of repair. This includes that You must:

- keep your Unit free from rubbish and vermin;
- keep all sewerage and sanitary apparatus in working order;
- repair damage caused by You or your guests or invitees; and
- [**OPTION** – *insert any other specific requirements, if applicable.*]

Note: it is suggested that any other Operator specific restrictions are inserted as special conditions.



3.5 Insurance

Operators have an obligation to insure the village and its operations. As a minimum, this should cover the following areas:

- Building / plant / grounds – full replacement value (often as part of an Industrial Special Risks policy)
- Public and products liability
- Worker's compensation for staff
- Motor vehicle insurance (where applicable)
- Volunteers / personal accident insurance (where applicable)

There may be other insurance policies required, due to the type of village – e.g. office bearer's liability for strata villages.

Suggested clauses related to insurance paid by the operator and insurance paid by the resident are:

Insurances which We arrange

We will obtain the following insurances for the Village:

- a) building reinstatement insurance for the full replacement value of all buildings, improvements, structures and fixtures located within the Village;
- b) public liability insurance;
- c) workers compensation, common law and statutory liability insurance in respect of employees We employ for the Village; and
- d) **[OPTION – insert where the costs of contents insurance to a certain value are included in the Recurrent Charge: contents insurance to the value as set out in Item 13 of the Reference Schedule for each Unit in the Village; and]**
- e) any other insurances We deem necessary.

All the insurances which We procure will be for such amounts and with such conditions, extensions and exclusions, as We deem appropriate.

Insurances You must or We recommend You obtain

[OPTION 1 – suggested clause if Operator does not arrange contents insurance: We recommend that You obtain insurance for the contents in your Unit because We will not obtain any such insurance.]

[OPTION 2 – if some component of unit contents insurance is included in recurrent charge, delete Option 1 and insert: We recommend that You obtain insurance cover for the contents in your Unit valued above the amount of any contents insurance cover We obtain for the contents in your Unit.]

[OPTION 3 – if Operating Charges include all contents insurance in resident units, delete Option 1 and Option 2.]

LIVING IN THE VILLAGE

3.6 Common areas and facilities

All retirement villages contain common areas and facilities which may include a clubhouse, swimming pool, bowling green and communal gardens which all residents have a right to use. A residence contract should outline the circumstances in which residents can and cannot use these facilities.

Suggested clauses related to the use of common areas and facilities are:

Common Areas and Facilities

We agree to allow You to use the Common Areas and Facilities in common with others residing at the Village while you occupy your Unit. However, You must observe the Village rules or any rules relating to the use of the Common Areas and Facilities.

[**OPTION** – *insert if public is permitted to use common areas and facilities:* We may from time to time hire out the Common Areas and Facilities to residents of the Village or a member of the public. You must not object to the Common Areas or Facilities being used for such a purpose provided such use does not substantially affect the use of the Common Areas and Facilities by the residents as a whole or cause your costs to increase.]

3.7 Rights to access the unit

There may be circumstances in which the operator/manager of a village, or someone authorised by the operator/manager, will need to access the resident's unit, mainly to conduct repairs or in the case of an emergency. The residence contract should clearly determine under which circumstances the operator/manager has this access right.

Suggested clauses related to the operator/manager's right to access a resident's unit are:

Our rights to access your Unit

You agree that We (or any person We authorise) may at all reasonable times (except in the case of an emergency, in which case We may enter at any time) enter your Unit to:

- a) comply with any of our obligations under this Contract;
- b) carry out any maintenance and repair work to your Unit or any other part of the Village;
- c) read any meter or measuring device or inspect any installation for the provision of utility services to your Unit, or any other part of the Village;
- d) show your Unit to prospective residents if the Contract terminates;
- e) examine its state and condition. If You fail to comply with your maintenance and repair obligations, You must also allow access by such tradespeople as we deem necessary for the purpose of maintaining your Unit in a reasonable and safe state of repair and condition at your cost.

We (or anyone We authorise) may access your Unit in an emergency, or if We have reasonable cause for concern about the health or safety of a person in your Unit. In that event, We may enter your Unit at any time and by whatever means as We deem appropriate.

3.8 Damage and destruction

Due to a variety of reasons, including weather events and accidents, a resident's unit may become unfit for occupation for a period of time. The residence contract should make clear under what circumstances the operator/manager will pay for repairs, or reinstate the unit, and what circumstances the resident pays for repairs, as well as the temporary measures that will be arranged for the resident during the period that the unit is repaired.

Suggested clause relating to damage and destruction are:

Repair or Reinstatement

If your Unit is destroyed, or damaged to such an extent that it is substantially unfit for your occupation, then We may, at our absolute discretion, choose to repair or reinstate your Unit as soon as reasonably possible.

What happens after We make a decision

If We choose to reinstate your Unit, then until any such repairs or reinstatement works have been completed, We may, at our absolute discretion, and by written notice to You, choose to:

- a) relocate You to another Unit in the Village; or
- b) make any alternative accommodation arrangements (with your agreement)

If We choose not to reinstate your Unit, this Contract comes to an end from the date We notify You of our decision not to reinstate your Unit.

If You cause the damage or destruction

This clause does not apply if your Unit is destroyed or damaged as a result of a deliberate act by You or your guest or invitee.



LEAVING THE VILLAGE

“Because certain fees and charges are payable by the resident after the contract termination date, it is advisable to include clauses that specifically address what will and what may be payable.”

4.1 Terminating the contract

Many of the complications that arise from contractual misunderstandings occur at the end of a resident's tenure, especially when dealing with the resident's relatives who may have little knowledge of the agreed contract.

Previous negative media commentary on the retirement living sector stems from confusion about the fees a resident is liable to pay after they leave the village (or their estate must pay), how long the unit resale process takes, and who has control over that process. Therefore it is vital to be clear in the contract about the work that may need to be done on a unit before it's marketed, and when the resident/s (or their estate) will receive their financial entitlements in relation to the resale.

A residence contract will terminate and the resident's right to occupy their unit ends as a result of one of a range of circumstances. These may include:

- the resident giving notice that they would like to terminate the contract;
- the resident's death;
- the resident breaching their contract or a village rule;
- the resident's care needs changing

It is important that operators detail all of these circumstances in their contract documentation.

Suggested clauses for the right to terminate a contract are:

TERMINATION

Your right to terminate

You may terminate this contract at any time by giving us at least *[insert period]* days written notice. The Contract will terminate upon the expiration of your notice.

Our right to terminate

OPTION – *recommend that termination clause includes at least the following:*

We may terminate this Contract:

- on the grounds of your physical or mental incapacity in that You require care which is not available at the Village, after we have served on You a notice which includes an assessment by a medical practitioner or by an ACAT Delegate to this effect. This Contract terminates *[insert period]* days after the date We serve such a notice on You. For the purposes of the assessment, You agree to be examined or assessed by a medical practitioner nominated or approved by us or by an ACAT Delegate and to be bound by the assessment. We must provide You with reasonable written notice that the assessment is required;
- if You breach this Contract or a Village Rule and:
 - a) The breach relates to You causing serious injury or damage to any part of the village, our employees or to any other resident, this Contract terminates *[insert period]* days after the date we give You notice of the breach; or
 - b) We have given You a notice setting out details of your breach and requiring You remedy the breach (if capable of remedy) within *[insert period]* days, or if not capable of remedy, that You cease committing the breach, and You do not comply with the notice, and we give You a further notice that this Contract terminates on *[insert period]* days from the date of such further notice;
- **[OPTION** – *include this clause if the 'Redevelopment or refurbishment' section is used:* if the circumstances set out in the 'Redevelopment or refurbishment' section of this Contract apply, and We have complied with our obligations under that clause, this Contract terminates on the commencement date of the new residence contract for the other unit to which You relocate.]

LEAVING THE VILLAGE

Termination on death

This Contract terminates on the date of your death. If there is more than one of You named as the Resident in this Contract, then this Contract terminates on the date of death of the last remaining resident.

CONSEQUENCES OF TERMINATION

Vacant Possession

When this Contract is terminated You must give Us vacant possession of your Unit.

Rights not affected by termination

The termination of this Contract does not affect:

- the rights of the parties relating to breaches that occurred before the termination;
- the rights and obligations of the parties under this Contract which are capable of being undertaken or completed after the termination of this Contract; and
- subject to any law to the contrary, your obligation to pay any charges or fees payable under this Contract, as this obligation survives the end of the term of this Contract and continues to accrue and be payable until the date as set out in this Contract.

Your property

Subject to any law to the contrary, if upon the termination of this Contract there remains in your Unit any goods or chattels belonging to You:

- We may give You or your legal personal representative 14 days' written notice to remove those items;
- If You or your legal personal representative fail to comply with that notice, We may then, at your expense:
 - a) arrange storage of those items;
 - b) dispose of perishable items and items which in our reasonable opinion are of nominal value; or
 - c) sell those items and pay the net sale proceeds to You or your legal personal representative;
- We are not liable for any loss suffered by You as a result of any reasonable action which We take under this clause; and
- We are entitled to deduct from any money payable to You under this Contract any expenses We incur in disposing, storing and/or selling those items.



4.2 Fees and charges payable to the operator

Because certain fees and charges are payable by the resident (or the resident's estate) after the contract termination date, it is advisable to include clauses that specifically address what may or will be payable. (It is important to note again that the resident's liability under legislation for the ongoing payment of charges varies from state to state.)

Suggested clauses for outlining the fees and charges payable upon termination of a contract are:

Continuing liability for fees and charges on termination

Upon termination of this Contract you must continue to pay the:

- Recurrent Charge until the time set out in Item 10 of the Reference Schedule. If you have paid the Recurrent Charge for at least 6 months after the Termination Date, You may, by providing [*insert time frame - one month is recommended*] prior written notice to Us, elect to accrue future payments of the Recurrent Charge which We will recover as a payment due to Us; [*This will only be applicable if the time set out in Item 10 of the Reference Schedule is greater than 6 months.*]
- **[OPTION – insert where rates and taxes are not included in the Recurrent Charge:** rates, taxes, charges or outgoings which are separately assessed or attributed to or in respect of your Unit by any relevant authority, until We receive a New Ingoing Contribution;]
- **[OPTION – insert where Resident is responsible for utilities:** charges for electricity, gas, telephone, water consumption, pay television, information technology and other communication service (including the internet) and other services separately assessed upon or consumed at your Unit, until We receive a New Ingoing Contribution]; and
- fees for Optional Services (if any) until the time set out in Item 11 of the Reference Schedule.

4.3 Works to the resident's unit

After a resident's tenure in a retirement village unit has concluded, the operator and/or the resident (or their estate) may wish to carry out works to the unit before it is sold to a new resident. Like selling any house, works are generally done to increase the selling price and make it more attractive for a prospective resident.

However, as noted earlier, disputes can occur between the operator and the resident (or their estate) about how long a sale should take, who should pay for any works, and how those works should be undertaken, especially if the resident (or their estate) receives some or all of the capital gain on that unit.

Operators should specify to what extent residents are responsible for the costs of works required to be done to their unit both internally and externally to bring it up to a marketable condition after vacant possession. It is important that operators are aware of the applicable Act in their state with regard to the liability for the cost of these works.

LEAVING THE VILLAGE

Suggested clauses related to works to the unit after termination of a contract are:

Works required to your Unit after You leave

You must leave your Unit in a good condition and state of repair having regard to the condition it was in when You commenced occupying your Unit.

[**OPTION 1** – *suggested clause if resident not responsible for fair wear and tear or refurbishment of the Unit:* You are responsible for any works required to bring your Unit to a good condition and state of repair, fair wear and tear excepted, having regard to the condition it was in when You commenced occupying your Unit.

These works may include:

- cleaning;
- repainting the interior of your Unit;
- replacing fixed floor coverings;
- replacing window furnishings;
- repairing any damage; and
- [**OPTION:** *insert any Operator specific works, if applicable*]

We will arrange for the carrying out of these works at your expense.]

[**OPTION 2** – *if the resident is responsible for fair wear and tear and refurbishment of the Unit, delete Option 1 and insert the following clause:* You are responsible for any works required to bring your Unit to a marketable condition with a view to achieving the maximum New Ingoing Contribution as reasonably determined by Us.

These works will include:

- cleaning;
- repainting;
- replacing fixed floor coverings;
- replacing window furnishings;
- repairing any damage; and
- [**OPTION:** *insert any Operator specific works, if applicable*]

unless, acting reasonably, We agree otherwise. We will arrange for the carrying out of these works at your expense.

These works will also include:

- retiling surfaces;
- renovation of your Unit, including:
 1. replacing or renovating the whole or any part of the kitchen;
 2. replacing or renovating the whole or any part of the bathroom; and
- [**OPTION** – *insert other Operator specific works, if applicable*]

if required in our reasonable opinion. We will arrange for the carrying out of these works. The costs and expense of these works (after consultation with You) will be shared between the parties according to our respective share in the Capital Gain unless You and We agree otherwise.]

LEAVING THE VILLAGE

4.4 Finding a new resident

After a resident terminates their contract, the village operator will typically seek a new resident for the unit. It is not in an operator's financial interests to have a unit empty and unsold, even if a resident is paying certain charges for a defined period.

Particular fees and charges are payable by the outgoing resident, and the operator must pay the exit entitlement to the outgoing resident within the timeframe specified in their contract and in accordance with the applicable state Act.

A special note should be made of the definition of 'Fair Market Value of the Unit' in the Glossary. Where the parties are unable to agree on a sale price for the Unit, a Valuer will determine the fair market value. Where the unit has not sold within six months, the parties should reconsider the list price and if necessary, engage a Valuer for an updated valuation. The price of the Valuer is to be shared equally between the parties.

Suggested clauses related to finding a new resident are:

Offer of new lease

After the Termination Date We:

- will market your Unit to persons suitable for occupancy of the Unit; and
- **[OPTION – insert the following clause:** must offer occupancy of the Unit to members of the public who qualify as an Eligible Resident on the terms then applying for occupancy at the Village, which may vary from time to time, and may vary from the terms of this Contract.]

Eligible Residents

[OPTION – insert the following clause if Operator approval of a new resident is required or the new resident must be an Eligible Resident:

You acknowledge that:

- the New Resident for your Unit must be an Eligible Resident approved by Us; and
- We may decide, acting reasonably, not to approve a person if that person is not an Eligible Resident or your Unit is not suitable for occupancy by that person.]

Payments from New Resident

Once the New Resident has been located and the amount of the New Ingoing Contribution established, then the New Ingoing Contribution must be paid by the New Resident to Us on dates to be determined which We will determine in consultation with the New Resident.

Amount of New Ingoing Contribution

If You are entitled to a Capital Gain Share, the New Ingoing Contribution must be an amount equal to the Fair Market Value of the Unit, unless We agree otherwise with You.

If You are not entitled to a Capital Gain Share, We may, subject to any law to the contrary, determine the amount of the New Ingoing Contribution in our absolute discretion.

LEAVING THE VILLAGE

4.5 Exit payment to the outgoing resident

When exiting the village, operators / managers should provide the outgoing resident with as much certainty about timing of the payment of their exit entitlement as possible. State laws vary on the treatment of this aspect of the resident-operator relationship, and there is also diversity in how this is treated by individual operators/managers.

Operators / managers should ideally commit in resident contracts to the payment of the exit entitlement within two years of the resident leaving the village, and no later than five years in any circumstances. Tax law requires that a loan lease style contract must have a fixed repayment date.

According to the 2016 PwC/Property Council Retirement Census, the **average time** from vacant possession to **settlement of a new contract** for a typical independent living unit in a retirement village was **232 days**.

The contract should clearly set out how the resident's exit payment will be calculated and what fees will be deducted. This does not mean calculating what the exit payment will be – it simply means being clear about the formula that will be applied to calculate the exit fee, and specifying all the other fees payable. You could consider including examples of an exit payment calculation, to aid in interpretation.

Suggested clauses pertaining to the timing of an exit payment are:

Exit Payments

The Exit Entitlement Date is the date which is the earlier of:

- the expiration of *[insert Operator's period – up to 2 years is recommended]* years from the Termination Date; and
- the date that the New Ingoing Contribution is received by Us in respect of your Unit.

Repayment of Ingoing Contribution

On or before the Exit Entitlement Date, We must repay You the Ingoing Contribution. We may set off this payment against the amounts payable by You to Us.

Payment of any Capital Gain

On or before the Exit Entitlement Date, We must pay You an amount equal to your Capital Gain Share (if any). We may set off this payment against the amounts payable by You to Us.

Payments by You

On or before the Exit Entitlement Date, You must pay to Us:

- the Exit Fee which We may retain as our property absolutely;
- an amount equal to your Capital Loss Share;
- **[OPTION – insert if applicable:** the Administration Fee;]
- any fees paid to an external agent engaged to re-let your Unit;
- all costs which We reasonably incur in arranging or carrying out works to your Unit as required;
- **[OPTION – insert if applicable:** the contribution to the Capital Improvement Fund/Major Maintenance Fund/ Reserve Fund;]
- any outstanding Recurrent Charges or other moneys owing by You under this Contract or otherwise;
- any GST which We are liable to pay on the amounts referred to in this clause.

LEAVING THE VILLAGE

Payment

Payment under this clause must be made:

- to You, or if there is more than one person named in this Contract as the Resident
 - to the residents in equal proportions;
 - if any person named as Resident in this Contract is deceased, to the surviving Resident; or
 - as You may direct;
- if You are deceased, to your legal personal representative after We receive a certified copy of the grant of probate of your will or letters of administration of your estate.

Many small and medium village operators have limited cash flow and may not be able to meet a 'buyback' requirement in a short time. In relevant cases, and where the law allows, your contract could contain a 'financial hardship' clause that outlines the procedure if the operator cannot fund the exit payment before a new resident has moved in.

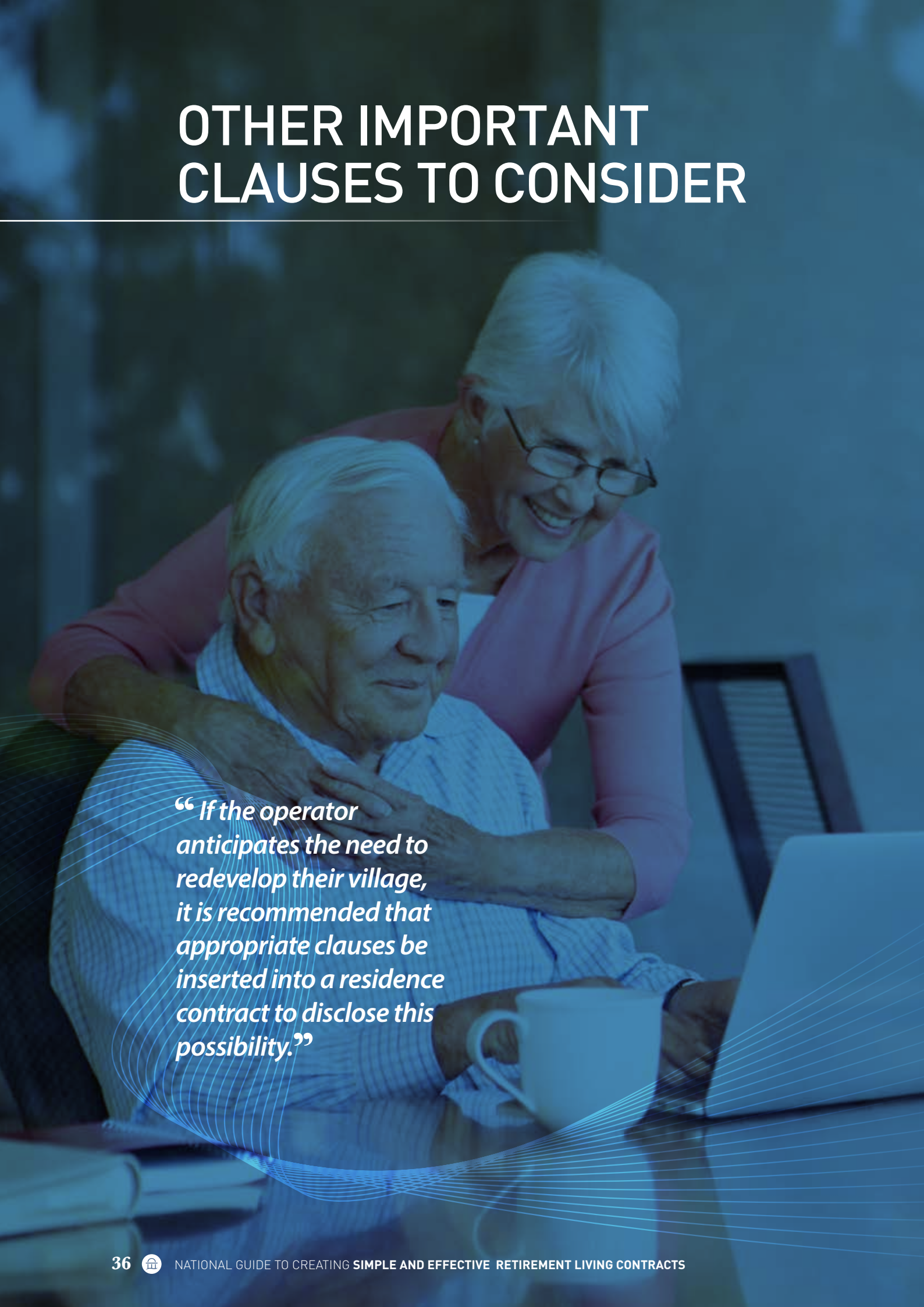
A suggested financial hardship clause which deals with these matters is:

Financial Hardship

If the requirement to repay the Ingoing Contribution or the Capital Gain Share (if any) on the Exit Entitlement Date will cause Us serious financial hardship, We may apply to the Authority to extend the Exit Entitlement Date by a period of up to 12 months. If the Authority approves our request then the payments to be made are payable on the date approved by the Authority.



OTHER IMPORTANT CLAUSES TO CONSIDER



“If the operator anticipates the need to redevelop their village, it is recommended that appropriate clauses be inserted into a residence contract to disclose this possibility.”

OTHER IMPORTANT CLAUSES TO CONSIDER

5.1 Redevelopment of the village

Many villages are reaching or will reach an age in next few years where they require significant capital upgrades. These works exceed the typical level of general maintenance and capital improvements, and involve much larger investments than are generally contemplated in resident contracts.

In addition to major improvements to amenities, some owners will partially meet the demand for more purpose built seniors accommodation in inner and middle ring suburbs in our capital cities by redesigning ageing villages, and demolishing and rebuilding outdated facilities and units.

According to the 2016 PwC/Property Council Retirement Census, the average age of a retirement village is 24 years, with the oldest villages now more than 40 years old.

If the operator anticipates the need to redevelop their village, it is recommended that appropriate clauses be inserted into a residence contract to disclose this possibility, detailing how it may impact the resident and what provisions for them would be made in the event of a redevelopment.

5.2 Dispute resolution

In the event of a dispute between the resident and the operator, it is important for the operator to have a dispute resolution procedure available to all residents. This will ensure there is a clear framework in place for all parties to participate in a process that hopefully leads to resolution of the issue within the village and without the need for external referral. The provision of a dispute resolution procedure is often a requirement of state legislation.

A suggested clause to outline your village's dispute resolution procedure is:

We have provided You with a copy of the Dispute Resolution Procedures as required under the Act. You agree to comply with the Dispute Resolution Procedures as they apply to You.

Australia also has a network of resident associations, who provide advice and support to residents and may be able to help with disputes.

- **Queensland** – www.villagers.org.au
- **Victoria** – www.residentsofretirementvillagesvic.org.au
- **New South Wales** – www.rvra.org.au
- **South Australia** – www.sarvra.asn.au
- **Western Australia** – www.warvra.org.au
- **ACT** – no website, phone 02 6288 2392

5.3 Legal Costs

There will normally be legal costs incurred by both parties in relation to the creation and execution of the contract, as well as in the event of a breach of contract. Who pays legal costs should be clearly outlined in the contract.

A suggested clause related to legal costs, to make it clear that operators should pay their own legal fees to prepare a resident's contract, is:

Costs

We must pay all our legal costs with respect to the preparation and execution of this Contract. We cannot require that You pay these legal costs.

You must pay:

- all stamp duty (if any) and registration fees (if any) in respect of this Contract;
- our costs in relation to any breach or default of this Contract by You; and
- all the costs You incur in complying with your obligations under this Contract.

More information

We hope this National Guide to Creating Simple and Effective Retirement Living Contracts has provided you with useful clauses you can implement in your contracts to reduce and eliminate confusion among prospective new residents. This Guide has provided guidance on how to:

- structure a resident contract;
- outline the operator and resident obligations throughout the resident's tenure;
- outline the operator and resident obligation during the resident's exit from the village.

If you need specific advice on any of the suggested clauses contained in this Guide, please contact a qualified lawyer. We recommend getting independent legal advice from someone with specific knowledge of your state's Retirement Villages Act about your contracts.



**The Property Council would like to thank Russell Kennedy Lawyers
for their support in developing this National Guide.**



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