

Park and Village Information Link

Frequently Asked Questions

BEFORE MOVING INTO A RETIREMENT VILLAGE

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

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

Before signing a retirement village contract, you should ensure that you have had an opportunity to review the PID for the village as well as a copy of the proposed residence contract. It is important to read your PID and residence contract very carefully.

While these are often lengthy documents, you should make sure you have a good understanding of what your rights and responsibilities will be when you move into a retirement village. Get advice about these documents if you can, or discuss them with someone you know and trust and will be able to help you understand them.

Once you have signed a residence contract you must be given a single document that includes your residence contract, the PID and an unsigned copy of any other relevant contract that in order to finalise the residence contract.

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

It depends. Your PID forms part of your residence contract. If there is an inconsistency, the provision that is more beneficial to the resident

prevails. However, if a provision of the PID or residence contract contradicts a provision of the *Retirement Villages Act 1999* (Qld) (RV Act), the provision in the RV Act prevails.

Will I get a cooling-off period if I sign a residence contract?

Yes, you will have a fourteen-day cooling-off period starting on the day you sign your residence contract (or on a later date if your contract is contingent on another event occurring).

You are able to terminate your residence contract by giving written notice to the scheme operator before the cooling-off period ends.

GENERAL INFORMATION ABOUT RETIREMENT VILLAGES

Will I receive full ownership of my retirement village unit?

Retirement villages are set up to offer various types of ownership. In many retirement villages you do not hold freehold tenure for your unit, but instead obtain a license or lease and the right to reside in the retirement village unit for an extended period such as 99 years.

Do I get a say in what happens at the village?

The residents of a retirement village may establish a residents committee. Each resident has the right to participate in the committee while they live at the village.

The purpose of the residents committee is to liaise with the operator of the village on behalf of the residents about the day-to-day running of the village, or about complaints or proposals raised by the residents.

If I have a dispute with the operator of the village what can I do?

The RV Act sets out a three-step dispute resolution process that must be followed in most disputes that arise between a resident and the operator of the village. These steps are:

1. Internal negotiation—internal negotiation is aimed at resolving disputes in the most informal way possible. The party with the dispute writes to the other party, requesting a meeting and proposing a time (no sooner than 14 days after the notice is given). The other party must then respond within seven days and either accept the meeting time, or propose an alternative. The parties then meet to discuss the issues of concern.
2. Mediation—if the matter cannot be resolved by negotiation, an application for mediation can be made through the Queensland Civil and Administrative Tribunal (QCAT). A mediator is then appointed and a meeting time set. This is a private and confidential process.
3. Application to QCAT—if the matter is still unresolved, an application can be made for a hearing at QCAT. QCAT will then follow its own process to prepare the parties for a hearing. After the hearing, QCAT will make a decision and notify the parties.

In limited circumstances, you can make an application directly to QCAT, including when the scheme operator:

- threatens to remove, or actually removes, a resident from the retirement village
- threatens to deprive, or actually deprives, a resident of the right to live in the village
- threatens to restrict, or actually restricts, a resident's use of the retirement village land
- gives a resident false or misleading documents to the financial detriment of the resident
- fails to fulfil requirements regarding exit entitlements and unit resale.

FEES AND CHARGES

What kind of fees will I have to pay when I move into a retirement village?

You will initially pay an ongoing contribution if you decide to move into a retirement village. This pays for your right to live at the village.

What kind of ongoing fees will I have to pay?

You will also be responsible for paying a general services charge and a contribution towards the village's maintenance reserve fund while you live at a retirement village. Your obligation to pay the general services charge may continue for up to nine months after you terminate your residence contract.

The general services charge covers services supplied or made available to all residents of a retirement village. This could include management, administration, gardening, general maintenance, a shop or other service, or facilities provided for the recreation or entertainment of the residents. The way your general services charge is calculated is set out in the PID.

The maintenance reserve fund is set up to cover the cost of maintaining and repairing capital items at the village such as buildings, communal facilities and amenities, plant and machinery items, and infrastructure (e.g. roads and drains).

If you enter into an agreement for 'personal services', you will have to pay a separate personal services charge in addition to the general services charge.

When you leave the village, you may also be responsible for paying an exit fee to the operator.

Can my ongoing fees be increased?

Fees are reviewed each financial year when village operators must set budgets for both the general services charge and the maintenance reserve fund. The budgets are prepared by the scheme operator and will set the amount that residents have to pay over the course of the financial year.

As a result, fees often increase each financial year, depending on the ongoing cost of running the village and the extent of maintenance and repairs that are required at the village.

Is there anything to stop the village operator from making unreasonable fee increases?

In an effort to protect residents from unreasonable fee increases, the RV Act limits the way the general services charge can be increased each financial year.

As a general rule, the general services charge cannot be increased above the Consumer Price Index percentage increase for a financial year.

There are some exceptions to this rule including circumstances where:

- the residents of the village pass a special resolution—75% of residents agree that the fee increase should be allowed
- the increase relates to expenses that the operator has no control over such as rates, insurance, tax payable and salaries.

Also, before proposing an increase to the general services charge, operators are required to consider more cost-effective ways of providing services to residents.

I think the operator of my retirement village is charging the residents fees that we should not have to pay. What can I do?

The operator of a retirement village is responsible for paying for the provision of new capital items, except where the items are specifically requested by a resident/group of residents. The operator is also responsible for the replacement of capital items.

If you believe that the operator is not making the correct payments or is charging residents for costs that they are not responsible for, you are entitled to request quarterly financial statements from the scheme operator, which should detail income and expenses relating to capital replacement, maintenance and the general services charge.

If you still believe that the operator is making incorrect payments, you could follow the dispute resolution process to try and resolve your concerns, or you could make a complaint to the Residential Services Unit (RSU) at the Department of Housing and Public Works. The RSU may then be able to investigate whether or not the operator is breaching their responsibilities.

LEAVING A RETIREMENT VILLAGE

Ending a residence contract

You can end your residence contract by giving a one-month written notice to the scheme operator.

If the village is unregistered, you can terminate your contract within 14 days of becoming aware that the village is not registered. In this case, you are entitled to be repaid your full ingoing contribution and will not have to pay any exit fees.

Can the scheme operator terminate my residence contract?

Yes. The village operator can terminate your right to reside in certain circumstances.

The operator can give a resident a fourteen-day written notice to terminate their contract if a resident intentionally or recklessly:

- injures a person at the retirement village
- seriously damages the resident's accommodation unit
- seriously damages the property of another person at the village.

The operator can give a resident a two-month written notice to terminate their contract if:

- the resident materially breaches their contract (this is a serious breach of the contract)
- the scheme operator reasonably believes the resident has abandoned the right to reside
- an assessment is carried out, and it is reasonably believed that the resident's accommodation is now unsuitable for their health needs as the resident needs a higher level of care than is available at the village.

Exit fee

When you leave the retirement village, you may be required to pay an exit fee (sometimes referred to as deferred management fees). The way that the exit fee and is calculated depends on your contract, and is often calculated in reference to a percentage of the ingoing contribution and the length of time you have lived at the village. For example, the exit fee may be 5% of the ingoing contribution for the first year of residence and then increase to 6% for the second year and so on.

The RV Act also requires residents of retirement villages to continue to pay their general services charge (GSC) for a period after they leave the village.

The length of time that you will have to keep paying the GSC will depend on a number of things including:

- how long it takes to sell your unit
- when you signed your residence contract
- what your residence contract says.

All residents are usually required to pay the GSC for at least 90 days after they vacate their unit, unless the unit sells sooner. The obligation to pay the GSC can continue for up to nine months, depending on the content of your contract. If your unit has not been resold after nine months, the operator of the village will take over responsibility for your GSC contributions.

Before you decide whether or not to sign a contract to live at a retirement village, the operator must provide you with information about what your minimum and maximum exit fee would be, depending on when you leave the village.

Resale and reinstatement

Who sets the resale price for my unit when I leave?

The resident and the village operator must negotiate in good faith to try and agree on the resale price. If no agreement is reached within 30 days from the date the resident leaves the village, the village operator must obtain a valuation within a further 14 days. This valuation then becomes the resale price.

I have been told by the operator of my retirement village that they want to completely renovate my unit when I leave. I do not think it needs that much work. What can I do?

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

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

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

Do I have to pay the costs of reinstatement?

Reinstatement costs are the costs of renovating your unit to an acceptable quality to prepare it for resale when you leave the retirement village. You may have an obligation to contribute towards reinstatement costs.

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

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

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

Exit entitlement

You may be entitled to receive an exit entitlement. The way the entitlement will be calculated depends on your contract.

When can I expect to be paid my exit entitlement?

The retirement village operator does not have to pay you your exit entitlement until the sooner of:

- the date stated in your contract
- eighteen months from the date that you terminate your contract
- fourteen days after the settlement of the resale of your unit.

As a result, there is a maximum time frame of 18 months after which your exit entitlement must be paid out by the village. However, you should note that the village can apply to QCAT for an exemption from this 18-month time limit in special circumstances (e.g. if they can show that it would cause them financial hardship to pay out the full exit entitlement at once, they can seek an order that it be paid in instalments).

It has been over a year since I moved out of my retirement village. The unit still has not resold and I have not been paid my exit entitlement. Can I do anything?

If the retirement village unit has not sold within six months after the date the contract is officially terminated and the exit entitlement has not been paid by the operator, the former resident can appoint a

real estate agent to sell the unit for them. The former resident is then responsible for paying the costs of the sale and the commission payable to the agent.

Also, if the unit has not sold within six months, the resale value of the unit should be reconsidered by the operator and the former resident, and updated every three months after that. If the resale value cannot be agreed on, a valuation is once again obtained and the valuation then becomes the resale value for the unit.

Can the Queensland Civil and Administrative Tribunal order the operator to pay me my exit entitlement?

In limited circumstances, a former resident can make an application to the Queensland Civil and Administrative Tribunal requesting that the exit entitlement be paid to them. This may include the situation where the operator does not comply with the provisions of the RV Act relating to setting the resale value, agreeing on reinstatement costs, updating the resale value or notifying the former resident of all offers made to purchase the unit.

The former resident would only be successful if they can show they have been materially prejudiced by the actions of the operator.

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