

SOUTH AUSTRALIA

RETIREMENT VILLAGES ACT 1987

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 28 May 1998.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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RETIREMENT VILLAGES ACT 1987

being

Retirement Villages Act 1987 No. 46 of 1987
[Assented to 30 April 1987]¹

as amended by

Land Tax Act Amendment Act 1987 No. 72 of 1987 [Assented to 5 November 1987]²

Strata Titles Act 1988 No. 13 of 1988 [Assented to 7 April 1988]³

Retirement Villages Act Amendment Act 1990 No. 12 of 1990 [Assented to 12 April 1990]⁴

Retirement Villages (Miscellaneous) Amendment Act 1994 No. 12 of 1994 [Assented to 5 May 1994]⁵

Residential Tenancies Act 1995 No. 63 of 1995 [Assented to 10 August 1995]⁶

Statutes Amendment (Community Titles) Act 1996 No. 38 of 1996 [Assented to 9 May 1996]⁷

Statutes Amendment (Consumer Affairs) Act 1998 No. 21 of 1998 [Assented to 2 April 1998]⁸ (as amended by Statutes Amendment (Consumer Affairs) Amendment Act 1998 No. 22 of 1998 [Assented to 2 April 1998])

¹ Came into operation 30 June 1987: *Gaz.* 25 June 1987, p. 1610.

² Came into operation at midnight on 30 June 1987: s. 2.

³ Came into operation 1 September 1988: *Gaz.* 21 July 1988, p. 420.

⁴ S. 7 came into operation 30 June 1987: s. 2(2); remainder of Act came into operation 27 September 1990: *Gaz.* 27 September 1990, p. 938.

⁵ Came into operation 1 July 1994: *Gaz.* 9 June 1994, p. 1669.

⁶ Came into operation 30 November 1995: *Gaz.* 23 November 1995, p. 1412.

⁷ Came into operation 4 November 1996: *Gaz.* 31 October 1996, p. 1460.

⁸ **Part 10 (s. 27) & Sched. came into operation 28 May 1998: *Gaz.* 28 May 1998, p. 2292.**

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

An Act to regulate retirement villages and the rights of residents of such villages; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Retirement Villages Act 1987*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act, unless the contrary intention appears—

"**administering authority**" in relation to a retirement village means the person by whom or on whose behalf the retirement village scheme is administered and includes a person (other than a resident) who owns land within the village;

"**business day**" means any day except a Saturday, Sunday or public holiday;

"**the Commission**" means the Corporate Affairs Commission;

"**the Commissioner**" means the Commissioner for Consumer Affairs;

"**community retirement village**" means a retirement village divided into separate residential units and common property by a community plan under the *Community Titles Act 1996* or a strata plan under the *Strata Titles Act 1988*;

"**premium**" means a payment (including a gift) made to the administering authority of a retirement village in consideration for, or in contemplation of, admission of the person by or on whose behalf the payment was made as a resident under a retirement village scheme (including any such payment made for the purchase of a residential unit in a retirement village or for the purchase, issue or assignment of shares conferring a right to occupy any such residential unit) but does not include—

- (a) any such payment excluded by regulation from the ambit of this definition; or
- (b) recurrent charges;

"**recurrent charge**" means any amount (including rent) payable by a resident to the administering authority of a retirement village on a recurrent basis;

"**residence contract**" means a contract under which a person enters into occupation of a unit in a retirement village;

"**residence rules**" means the rules with which residents of a retirement village are expected by the administering authority to comply;

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"**resident**" of a retirement village means a person who has been admitted to occupation of a residential unit in accordance with the scheme and includes a spouse of such a person who—

- (a) is residing with that person; or
- (b) was residing with that person at the time of his or her death;

"**residential unit**" or "**unit**" means premises or a part of premises designed for separate occupation as a place of residence and includes a hostel unit;

"**retired person**" means a person who has attained the age of 55 years and retired from full-time employment;

"**retirement village**" means a complex of residential units or a number of separate complexes of residential units (including appurtenant land) occupied or intended for occupation under a retirement village scheme;

"**retirement village scheme**" or "**scheme**" means a scheme established for retired persons and their spouses, or predominantly for retired persons and their spouses, under which—

- (a) residential units are occupied in pursuance of lease or licence; or
- (b) a right to occupation of residential units is conferred by ownership of shares; or
- (c) residential units are purchased from the administering authority subject to a right or option of repurchase; or
- (d) residential units are purchased by prospective residents on conditions restricting their subsequent disposal,

but does not include any such scheme under which no resident or prospective resident of a residential unit pays a premium in consideration for, or in contemplation of, admission as a resident under the scheme;

"**service contract**" means a contract between an administering authority or former administering authority of a retirement village and a resident for the provision to the resident of—

- (a) hostel care; or
- (b) infirmary care; or
- (c) medical or nursing services; or
- (d) meals; or
- (e) administrative and management services; or
- (f) maintenance and repair services; or
- (g) recreational services; or
- (h) any other services;

"**special resolution**" means a resolution passed at a meeting of residents of a retirement village in the following circumstances:

- (a) at least 21 days' written notice of the meeting, containing a statement of the proposed special resolution, must have been given to all residents; and
- (b) the resolution must have been passed by a majority of not less than three-quarters of the number of residents who were present, and entitled to vote, at the meeting;

"**the Tribunal**" means the Residential Tenancies Tribunal.

Application of this Act

4. (1) Subject to this section—

- (a) this Act applies to retirement villages established either before or after the commencement of this Act; and
- (b) this Act binds the Crown in right of this State and (so far as the legislative power of the State permits) the Crown in any other capacity, but not so as to impose criminal liability on the Crown.

(2) The Minister may, by notice published in the *Gazette*, confer exemptions from this Act or specified provisions of this Act—

- (a) on specified religious or charitable organisations or religious or charitable organisations of a specified class; or
- (b) in relation to specified retirement villages or retirement villages of a specified class.

(3) An exemption under subsection (2) may be conditional or unconditional.

(4) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.

Maximum penalty: \$10 000.

Administration

5. The Commissioner is responsible, subject to the control and direction of the Minister, for the administration of this Act.

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**PART 2
RIGHTS OF RESIDENTS**

Creation of residence rights

6. (1) A residence contract must be in writing and comply with the requirements prescribed by the regulations.

(2) Before a person enters into a residence contract, the administering authority must give that person—

- (a) a statement in the prescribed form completed by the administering authority containing the information required by the regulations; and
- (b) a notice in the prescribed form of the person's rights under this section; and
- (c) a copy of the residence rules; and
- (d) a checklist in the form of schedule 2; and
- (e) any other prescribed documents.

(3) Where a person enters into a residence contract, the contract will be taken to include a warranty on the part of the administering authority of the correctness of the information contained in the statement under subsection (2)(a) (subject to any written alteration to the statement made by the administering authority with the consent of the resident on or before the signing of the contract by the administering authority), and that warranty prevails over any inconsistent contractual term.

(3a) An administering authority must not, without the approval of the Commissioner—

- (a) make a representation to a prospective resident that is inconsistent with information contained in a statement given to the prospective resident under subsection (2)(a);
- (b) give to a prospective resident a statement under subsection (2)(a) that contains information that is inconsistent with a representation made by the administering authority to the prospective resident.

(3b) For the purposes of subsection (3a), a representation made by an employee or agent of an administering authority will be taken to be a representation of the administering authority unless the administering authority proves that the person was not acting in the course of his or her employment or agency.

(4) A resident or prospective resident is entitled to rescind the residence contract—

- (a) at any time within 15 business days after the date of the contract; or
- (b) if subsection (2) is not complied with—at any time before the expiration of 15 business days after the date on which the documents required under that subsection are given to the resident or prospective resident.

(5) A contract is rescinded under this section by notice in writing, given personally or by post, to the administering authority.

(6) If a provision of this section is not observed, the administering authority is guilty of an offence.

Maximum penalty: \$35 000.

(7) A residence contract may be enforced against the administering authority, for the time being, of the retirement village.

Termination of residence rights

7. (1) A resident of a unit in a retirement village has a right of occupation that cannot be terminated unless—

- (a) the resident dies; or
- (b) the resident terminates the residence contract or ceases to reside in the retirement village in circumstances in which there is no reasonable prospect of the resident returning to reside in the retirement village; or
- (c) the resident commits a breach of the residence contract or the residence rules and the administering authority terminates the resident's right of occupation on that ground; or
- (d) the unit becomes an unsuitable place of residence for the resident because of the resident's mental or physical incapacity and the administering authority terminates the resident's right of occupation on that ground; or
- (e) the holder of a mortgage or charge that was in existence at the commencement of this Act becomes entitled to vacant possession of the unit in pursuance of rights conferred by the mortgage or charge.

(2) Subject to subsection (2a), the rights of termination under subsection (1)(a), (b), (c) or (d) are subject to—

- (a) any limitations or qualifications arising from a contract between the administering authority and the resident;
- (b) any rights of the resident deriving from the resident's ownership of an interest in the residential unit.

(2a) A contract cannot limit or qualify the right of a resident to terminate a residence contract during his or her settling-in period.

(2b) If a resident terminates a right of occupation during his or her settling-in period (even if he or she then continues to reside in the retirement village after the end of that period), the resident is liable to pay—

- (a) fair market rent in respect of his or her period of occupation of a unit, less any amount paid by the resident for services that would otherwise be included in the assessment of fair market rent; and
- (b) other amounts (if any) payable under a contract between the administering authority and the resident.

(2c) An amount payable by a resident under subsection (2b) may be deducted from any refund of premium due to the resident.

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(2d) No provision in a contract between the administering authority and the resident can have the effect of making the resident liable to pay an amount by way of a penalty if he or she terminates a right of occupation during his or her settling-in period (and any such provision is void to the extent that it would have such an effect).

(3) The administering authority's decision to terminate a resident's right of occupation on the ground of a breach of the residence contract or the residence rules is ineffective unless the Tribunal is satisfied, on the application of the administering authority, that the breach is sufficiently serious to justify termination of the right of occupation and confirms the administering authority's decision.

(4) The administering authority's decision to terminate a resident's right of occupation on the ground of a mental or physical incapacity is ineffective unless the Tribunal is satisfied, on the application of the administering authority, that proper grounds for the termination exist and confirms the decision.

* * * * *

(6) Where the Tribunal confirms the administering authority's decision to terminate a right of occupation, it must fix a period within which the resident must vacate the unit.

(7) The Tribunal may make an order for the ejection of a resident who has not vacated a unit at the expiration of the period referred to above.

(7a) An order under subsection (7) may be enforced by a bailiff of the Tribunal in the same manner as an order for the possession of premises under the *Residential Tenancies Act 1978* (and, for that purpose a bailiff may, in particular, exercise the powers of a bailiff under section 83 of that Act).

(8) If the administering authority decides to terminate a resident's right of occupation it must give the resident, personally or by post, a notice—

- (a) setting out the grounds of the administering authority's decision; and
- (b) informing the resident that the decision is subject to review by the Tribunal; and
- (c) informing the resident of his or her rights with regard to such a review.

Maximum penalty: \$10 000.

(9) For the purposes of this section, a resident's settling-in period is—

- (a) the period ending 90 days after the day on which the resident first occupies a unit in the retirement village, or 180 days after the day of settlement on the unit, whichever first occurs; or
- (b) such longer period as may be specified in an agreement between the administering authority and the resident.

Premiums

8. (1) Subject to subsection (2), a premium paid to the administering authority must be held in trust (in a bank account or in a form of investment in which trustees are authorised by statute to invest trust money) until—

- (a) the person by or on whose behalf the premium was paid enters into occupation of a unit;
or
- (b) it becomes apparent that that person will not enter into occupation of a unit.

(2) The Commissioner may, on the application of an administering authority, grant an exemption from subsection (1) if satisfied of the authority's capacity and willingness to provide residential units in accordance with its obligations under the residence contracts.

(3) An exemption may be conditional or unconditional, and if an administering authority contravenes or fails to comply with a condition of an exemption the authority will be guilty of an offence.

Maximum penalty: \$10 000.

(4) If the prospective resident does not enter into occupation of a unit, any question affecting entitlement to or disposition of the premium will be determined by reference to the residence contract subject to the following qualifications:

- (a) if the prospective resident's failure to enter into occupation of the unit is attributable to a failure on the part of the administering authority to carry out contractual obligations, interest and accretions arising from investment of the premium must be paid to the prospective resident;
- (b) in any other case, the administering authority will be entitled to retain any such interest and accretions.

(5) If a provision of this section is not observed, the administering authority is guilty of an offence.

Maximum penalty: \$35 000.

Contractual rights of residents

9. (1) A service contract may be enforced against the administering authority, for the time being, of the retirement village.

(2) Where a premium is paid under a contract providing that it will be repaid in whole or in part on the happening of a contingency and the contingency occurs, the resident or a person claiming under the resident may recover the amount that is repayable as a debt from the administering authority, for the time being, of the retirement village.

(3) Proceedings will not lie against the owner of land in a retirement village for the enforcement of rights under subsection (1) or (2) unless—

- (a) the owner is a party to the contract under which the premium is repayable; or
- (b) the owner is the sole administering authority of the retirement village; or
- (c) an administering authority other than the owner has failed to satisfy a judgment given for the enforcement of those rights.

(4) The rights of a resident to repayment of a premium, or part of a premium, are a charge on land in the retirement village other than—

- (a) a residential unit owned by a resident; or
- (b) common property in a community retirement village.

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(4a) Despite the *Real Property Act 1886*, the charge referred to above ranks in priority to any other mortgage, charge or encumbrance over the land to which the charge relates.

(5) The charge referred to above can only be enforced—

(a) with the approval of the Supreme Court; and

(b) subject to any conditions to which the Supreme Court's approval is subject.

(6) If the Supreme Court approves the enforcement of the charge it may, subject to the conditions stipulated by the Court, be enforced in the same way as a mortgage registered under the *Real Property Act 1886*.

Absence from retirement village

9A. (1) Where a resident is absent from a retirement village for a continuous period of at least 28 days, the resident is not liable to pay, in respect of a period of absence after those 28 days, any amount in respect of any personal service that the retirement village (or the administering authority) ceases to provide to the resident because of his or her absence from the retirement village.

(2) Where a resident ceases to reside in a retirement village in circumstances in which there is no reasonable prospect of the resident returning to reside in the retirement village—

(a) the resident ceases to be liable to pay any amount (other than an amount that has already accrued) in respect of any personal service that the retirement village (or the administering authority) ceases to provide to the resident after he or she leaves the retirement village; and

(b) if the resident is entitled to the repayment (in whole or in part) of a premium, the resident is not liable to pay any amount in respect of charges that may accrue after he or she has ceased to reside in the retirement village until the premium is repaid (but the administering authority may then, at the time of repayment, deduct from the premium any amount payable by the resident).

(3) In this section—

"**personal service**" means a service provided to a resident individually (rather than to residents generally).

Meetings of residents

10. (1) The administering authority of a retirement village—

(a) may convene a meeting of the residents at any time; and

(b) shall convene such a meeting on an annual basis.

(2) The annual meeting must be held not more than 4 months after the end of the financial year that applies in relation to the retirement village.

(2a) A meeting convened under subsection (1)(b) must be chaired by a representative of the administering authority who is authorised to speak on behalf of the administering authority and to give responses to questions put at the meeting in accordance with the requirements of this section.

(3) A meeting of residents may also be convened by a residents' committee.

(4) A meeting will be convened by sending to each resident, at least 14 days before the date of the meeting, a written notice setting out—

- (a) the time and place of the meeting; and
- (b) the business to be transacted at the meeting.

(5) A notice for an annual meeting under subsection (4) must be accompanied by—

- (a) in relation to the retirement village—
 - (i) a statement of income received from residents, and expenditure of that income, for the previous financial year; and
 - (ii) a statement of estimates of income from residents, and expenditure of that income, for the current financial year; and
 - (iii) a statement of estimates of income (from any source), and expenditure, for the current financial year in respect of any contingency, sinking or other reserve fund or account established for the purposes of capital replacement or improvements, irregular long-term maintenance, or other similar items; and
 - (iv) such other information as the regulations may require; and
- (b) an invitation to residents to submit—
 - (i) written questions to the administering authority at least seven days before the date of the meeting; and
 - (ii) other questions at the meeting.

(6) The administering authority must ensure—

- (a) that information provided under subsection (5)(a) complies with any standard or principle prescribed by the regulations; and
- (b) that any resident is afforded, on request, a reasonable opportunity to inspect, depending on how the administering authority prepares its accounts—
 - (i) a balance sheet (with appropriate notes) for the retirement village; or
 - (ii) a balance sheet (with appropriate notes) for the administering authority,

as at the end of the previous financial year.

(7) The administering authority must ensure—

- (a) that residents have a reasonable opportunity to put questions to the administering authority or its representative at a meeting of residents convened by the administering authority; and
- (b) that questions submitted in writing under subsection (5)(b), or asked at a meeting, are answered—

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- (i) if possible—in reasonable detail at the relevant meeting; or
- (ii) to the extent that compliance with subparagraph (i) is not possible—as soon as is reasonably practicable after the meeting by the presentation of detailed written answers.

(8) Nothing in this section requires an administering authority, or the representative of an administering authority, to answer an unreasonable question.

(8a) Recurrent charges cannot be increased beyond a level shown to be reasonable in view of the accounts for the previous year, and the estimates for the current financial year, as explained at a meeting of residents under this section.

(9) A special levy may not be imposed on residents of a retirement village unless authorised by special resolution passed at a meeting of residents.

(10) In the case of a community retirement village, a meeting under this section may be held in conjunction with a meeting of the community corporation or the strata corporation.

(10a) The administering authority of a retirement village must, for the purposes of this section, establish a financial year that is to apply (on a yearly basis) in relation to the retirement village.

(11) If a provision of this section is not complied with, the administering authority is guilty of an offence.

Maximum penalty: \$20 000.

(12) Where two or more residents are in occupation of the same residential unit in a retirement village only one of them may exercise a vote at a meeting of the residents and if more than one purport to vote, the person presiding at the meeting may determine which vote is to be recognised.

Meeting with new administering authority

10AA. (1) It will be a term of every agreement that will result in a change in the administering authority of a retirement village (including a change by virtue of the sale of an interest in the land within the village) that, before the change is effected, the person who is to be the new administering authority will convene a meeting of residents under this section at which the person (or his or her representative) will—

- (a) present a report on any changes that are proposed for the retirement village (including any proposal to change a charge, fee or levy payable by residents), and his or her plans for the future management and operation of the retirement village; and
- (b) answer any reasonable question put by a resident.

(2) A meeting will be convened by sending to each resident, at least seven days before the date of the meeting, a written notice setting out—

- (a) the time and place of the meeting; and
- (b) the reason for the meeting.

(3) If a change in an administering authority of a retirement village is effected by an agreement without compliance with the term referred to in subsection (1), the person who is the new administering authority is guilty of an offence.

Maximum penalty: \$10 000.

Land tax must not be charged to residents

10A. (1) Subject to subsection (2), land tax payable in respect of any of the land comprising a retirement village is not recoverable by the taxpayer directly or indirectly from the residents of the village.

(2) Subsection (1) does not prevent a taxpayer from recovering directly from the resident of a unit land tax payable in respect of that unit and its appurtenant land where the unit is not being occupied by the resident as his or her principal place of residence.

Harsh or unconscionable residence rules

11. If a residence rule, or a provision of a residence rule, is harsh or unconscionable the rule or provision is void.

Documents to be supplied to residents

12. (1) The administering authority of a retirement village shall, at the request of a resident, provide the resident with—

- (a) a copy of the residence contract under which the resident was admitted to the retirement village;
- (b) a copy of the residence rules that are applicable to the retirement village;
- (c) a statement of the amount to which the resident would be entitled, by way of repayment of premium, if the resident were to cease to reside at the retirement village.

Maximum penalty: \$2 500.

(2) If an alteration is made to residence rules, the administering authority shall issue an amended set of the rules to every resident.

Maximum penalty: \$2 500.

Residents' committees

13. (1) The residents of a retirement village may elect a residents' committee to represent the interests of the residents.

(2) No person except a resident of the retirement village may be a member of such a committee.

(3) Each member of a residents' committee will hold office for one year from election but is eligible for re-election.

(4) A member may be removed from office by a special resolution at a meeting of the residents.

(5) A residents' committee may determine its own procedure.

(6) A residents' committee may appoint sub-committees and determine their procedures.

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(7) An administering authority must not—

- (a) discourage or prevent the appointment of a committee under this section; or
- (b) obstruct a committee in the performance of its functions.

Maximum penalty: \$2 500.

(8) An administering authority must, on the reasonable request of a residents' committee, meet with, or ensure that a representative of the administering authority who is authorised to speak on behalf of the administering authority meets with, the members of the committee, or a representative (or representatives) of the committee.

Maximum penalty: \$2 500.

(9) The members of a residents' committee, or a representative (or representatives) of a residents' committee, must, on the reasonable request of an administering authority, meet with the administering authority, or a representative of the administering authority.

(10) If a contravention of subsection (9) occurs, each member of the residents' committee who is in default is guilty of an offence.

Maximum penalty: \$2 500.

Tribunal may resolve disputes

14. (1) A party to a dispute between an administering authority and a resident of a retirement village may apply to the Tribunal for resolution of the matters in dispute.

(2) On an application under subsection (1)—

- (a) if the Tribunal finds that a party to the dispute has breached, or failed to comply with, a residence contract or service contract, the Tribunal may—
 - (i) by such order as it considers appropriate in the circumstances, restrain the breach of the contract or require action in performance of the contract;
 - (ii) order the payment of an amount payable under the contract;
 - (iii) order the payment of compensation for loss or injury, other than personal injury, caused by a breach of the contract or a failure to comply with the contract;
- (b) if the Tribunal finds that a party to the dispute has breached, or failed to comply with, a provision of this Act, the Tribunal may—
 - (i) by such order as it considers appropriate in the circumstances, restrain a breach of this Act or require action to comply with this Act or, in relation to an administering authority, require the administering authority to vary or reverse a decision or the effect of an act of the administering authority;
 - (ii) order a party to the dispute to refrain from future action of a kind specified in the order;
 - (iii) order the payment of compensation for loss or injury, other than personal injury, caused by a breach of this Act or a failure to comply with this Act;

- (c) if the Tribunal finds that the administering authority has acted in a harsh or unconscionable manner, the Tribunal may, by such order as it considers appropriate in the circumstances—
 - (i) require the administering authority to vary or reverse a decision or the effect of an act of the administering authority;
 - (ii) avoid *ab initio*, or modify, terms or conditions of an agreement between the administering authority and the resident;
 - (iii) require the administering authority to repay to the resident any amount paid by the resident in pursuance of a term or condition of an agreement (that has been avoided or modified by the Tribunal);
- (d) if the dispute relates to the repayment of a premium, or a part of a premium—the Tribunal may determine the amount that is repayable, and make orders as to payment.

(3) If—

- (a) the Tribunal is unwilling to make an order under subsection (2), or before or during the course of proceedings it appears to the Tribunal that it would be preferable to endeavour to resolve the matters in dispute by arbitration; or
- (b) the parties to a dispute indicate to the Tribunal that they wish to resolve the matters in dispute by arbitration,

the Tribunal may, with the express consent of the parties (which may not be subsequently withdrawn), proceed to deal with the dispute by arbitration.

(4) Where the Tribunal is dealing with a dispute by arbitration, the Tribunal may determine any question that arises for determination in the course of the proceedings by reference to considerations of general justice and fairness.

(5) The Tribunal may, at the end of an arbitration, give such directions as the Tribunal thinks fit to resolve the dispute, or make any order to determine the dispute.

(6) The Tribunal may decline to entertain an application under this section if—

- (a) it appears to the Tribunal that the matter could be adequately dealt with under rules for the resolution of disputes established by the administering authority of the retirement village; or
- (b) the Tribunal considers that it would be more appropriate for proceedings to be taken in a court, or in another tribunal constituted by law; or
- (c) the Tribunal considers that it is appropriate for some other reason to decline to proceed with the application.

(7) The Tribunal should, in deciding whether it should decline to entertain an application under this section, take into account—

- (a) the issues raised by the application;
- (b) the seriousness of the matter;

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- (c) the relief sought;
- (d) if the application relates to the repayment of a premium or a portion of a premium—the amount in dispute;
- (e) whether difficult or complicated questions of law may arise in the proceedings;
- (f) the extent to which a court, or another tribunal, could resolve all matters in dispute between the parties more efficiently or effectively,

and may take into account such other matters (whether similar or dissimilar to those referred to above) as the Tribunal thinks fit.

(8) The Tribunal may make an order under this section notwithstanding that it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such remedy would not otherwise be available.

(9) The Tribunal may make ancillary or incidental orders for the purposes of proceedings under this section.

(10) If a person fails, without reasonable excuse, to comply with an order or direction of the Tribunal, other than an order for the payment of an amount, the person is guilty of an offence.

Maximum penalty: \$2 500.

(11) If an order is made by the Tribunal requiring a person to pay an amount to another person, the order is enforceable in the same manner as a similar order under the *Residential Tenancies Act 1978*.

(12) A dispute as to the repayment of a premium or a portion of a premium may also be brought before a court competent to hear and determine a claim founded on contract for the amount in dispute.

(13) This section does not derogate from—

- (a) the other provisions of this Act that relate to applications to the Tribunal;
- (b) the other provisions of this Act that relate to the ability to resolve matters in dispute by conciliation;
- (c) the jurisdiction of a court, or of another tribunal constituted by law.

(14) In this section—

"resident" of a retirement village includes a former resident of a retirement village.

**PART 3
MISCELLANEOUS**

Endorsement of certificates of title

15. (1) Where land is, or is to be, used as a retirement village, a note of that fact must be endorsed on the relevant certificates of title.

(2) The owner of any such land shall apply to the Registrar-General for endorsement of the relevant certificates of title—

- (a) if the retirement village was established before the commencement of this Act—within 3 months after the commencement of this Act;
- (b) in any other case—before any person is admitted to occupation of a unit in accordance with the scheme.

Maximum penalty: \$35 000.

(3) Before an application is made under subsection (2), the owner must notify each person who holds a mortgage, charge or encumbrance over the land and, if the application relates to a retirement village that had not been established before the commencement of this Act, the application can only be made with the consent of each such person.

(4) The Registrar-General may cancel an endorsement made under this section if satisfied that no part of the land is still occupied under the scheme.

Lease of land in retirement village

16. (1) The administering authority of a retirement village may lease, or grant a licence to occupy, land within the village that is not immediately required for the purposes of the scheme.

(2) Unless the Commissioner authorises a lease or licence for a longer term, the term of any such lease or licence must not exceed 2 years.

(3) A person to whom a lease or licence is granted under this section does not become a resident of the retirement village.

(4) If a lease or licence is granted contrary to this section the administering authority is guilty of an offence.

Maximum penalty: \$10 000.

Termination of retirement village scheme

17. (1) A retirement village scheme cannot be terminated without the approval of the Supreme Court while a person who has been admitted to occupation of a unit under the scheme remains in occupation of that unit.

(2) The Commissioner will be a party to any proceedings in which the Supreme Court's approval of the termination of a retirement village scheme is sought.

(3) If the Supreme Court approves the termination of a retirement village scheme it may make such orders as it thinks necessary to protect the interests of existing residents.

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Certain persons not to be involved in the administration of a retirement village

18. (1) A person to whom this section applies shall not be concerned in the administration or management of a retirement village.

Maximum penalty: \$35 000.

(2) This section applies to—

- (a) a person who is an insolvent under administration within the meaning of the *Companies (South Australia) Code*; or
- (b) a person who—
 - (i) has during the preceding 5 years been convicted of an offence to the person or an offence involving fraud or dishonesty; or
 - (ii) has served a sentence of imprisonment for an offence to the person or an offence involving fraud or dishonesty, being a sentence that ended during the preceding 5 years.

Non-compliance may be excused by the Tribunal

19. (1) The Tribunal may, on the application of any person, excuse that person from the consequences of inadvertent non-compliance with a provision of this Act.

(2) Where the Tribunal acts under subsection (1), it may—

- (a) make consequential orders protecting the interests of any person affected by the contravention; and
- (b) make any other order that the justice of the case may require.

(3) An application may not be made under this section after proceedings for an offence relating to the non-compliance have been commenced.

Appeal

20. (1) An appeal lies to the District Court against any decision of the Tribunal under this Act.

(2) The appeal must be instituted within 28 days after the appellant receives notice of the Tribunal's decision unless the District Court, in its discretion, allows a longer period for instituting the appeal.

(3) On an appeal under this section, the District Court may—

- (a) confirm, vary or quash the Tribunal's decision;
- (b) make any decision that should have been made in the first instance;
- (c) make any incidental or ancillary orders.

Contract to avoid Act

21. An agreement or arrangement that is inconsistent with a provision of this Act or purports to exclude, modify or restrict the operation of this Act, or a right conferred by or under this Act is (except where such inconsistency, exclusion, modification or restriction is expressly permitted by this Act) to that extent void and of no effect.

Codes of conduct

21A. (1) The regulations may prescribe codes of conduct to be observed by administering authorities.

(2) It will be a term of a residence contract that the administering authority will observe any code of conduct (subject to any agreement between the administering authority and the resident that, pursuant to a power contained in the code of conduct, provides for the exclusion or modification of a provision of the code of conduct in the circumstances of the particular case).

(3) If an administering authority breaches a code of conduct, the administering authority is, in addition to any civil remedy that may be available against the administering authority, liable to a fine not exceeding \$2 500 as if the administering authority had breached the regulations.

Offences

22.

* * * * *

(2) A prosecution for an offence against this Act can only be commenced by the Commissioner or a person authorised by the Commissioner.

(2a) In proceedings for an offence against this Act, a document apparently signed by the Commissioner that appears to be an authorisation for the purposes of subsection (2) will be accepted, in the absence of proof to the contrary, as proof of such an authorisation.

(3) Where a body corporate is guilty of an offence against this Act, a director or manager is also guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that he or she could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

Regulations

23. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe fees;

(b) prescribe forms and the information to be contained in forms;

(ba) provide that a residence contract or other document required under this Act must be printed or typewritten (apart from insertions or amendments) in type of a prescribed kind and size;

(bb) make provision in relation to the form or content of residence contracts;

(c) prescribe penalties (not exceeding \$2 500) for breach of a regulation.

(3) The regulations—

(a) may be of general or limited application; and

(b) may leave any matter to be determined according to the opinion or discretion of the Registrar-General or the Commissioner; and

(c) may incorporate, adopt or apply, with or without modifications, any document formulated or published by any body or authority (as in force at a particular time or from time to time).

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SCHEDULE 1

Transitional Provision

(1) An interest granted or conferred by the administering authority of a retirement village will constitute a prescribed interest for the purposes of the *Companies (South Australia) Code* and the *Securities Industry (South Australia) Code* if—

- (a) the retirement village was established before the commencement of this Act; and
- (b) such an interest constituted a prescribed interest before the commencement of this Act; and
- (c) the Commission notifies the administering authority that this Schedule is to apply to it.

(2) Such an interest will cease to be a prescribed interest if the Commission cancels the notification given under subclause (1)(c).

SCHEDULE 2

Check List

YOU SHOULD READ THIS DOCUMENT CAREFULLY

ENTRY INTO A RETIREMENT VILLAGE USUALLY INVOLVES A SIGNIFICANT CAPITAL COMMITMENT AND MAY CHANGE YOUR LIFESTYLE.

THESE QUESTIONS SHOULD ASSIST YOU TO MAKE AN INFORMED DECISION.

IF YOU ARE UNCERTAIN ABOUT ANY ASPECTS OF THE VILLAGE OR THE DOCUMENTS YOU HAVE RECEIVED FROM THE VILLAGE, SEEK ADVICE.

General

Have I discussed fully my decision to enter a retirement village with my family, friends, a social worker or an advisory body such as Citizens Advice Bureau?

What discussions have I had with residents of the retirement village I have chosen?

Will the lifestyle of the village (including social activities and religion) suit me?

What are the rules with regard to having someone else live with me?

What system does the village have for resolving disputes?

Are the residents actively involved in making village rules?

Legal Implications

Have I sought advice on the documents relating to the village from a solicitor, Legal Aid office, my local Citizens Advice Bureau or some other appropriate source?

Under what conditions can I be moved from my place of residence to another part of the village? Do I know and agree with the procedure?

How can the owner terminate my occupancy? Do I agree with the procedure and what are my rights?

Is my long term occupancy at the village secure?

What protection do I have if the village is sold to some other organisation?

Financial Matters

Am I aware of and can I afford to pay the premium (if applicable), the regular maintenance charges and any extraordinary charges which can be imposed on me? What arrangements can be made if I can't meet future charges?

How do the terms and amount of repayment of my premium compare with other villages?

When do I get access to my money after I leave the village?

Are the residents actively involved in decisions concerning the level of maintenance and services provided, their cost, and how these costs are to be varied in the future?

What are the restrictions on the sale of my unit? What say do I have in deciding the sale price?

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Building and Construction

Have the community facilities of the village been built? If not, what guarantee do I have that they will ever be constructed?

Do I have any say in the design, construction and furnishing of my unit if construction is not yet complete?

Will the unit, building and site be accessible if I become disabled and need a wheelchair or walking aid? If not, can modifications be made easily?

Health and Welfare

What services specially designed for the elderly does the village provide, e.g. nursing care, access to nursing care, an emergency call system? Do these services meet my present needs and what I expect will be my future needs?

What financial and accommodation alternatives do I have if I become too frail to live in this unit/hostel?

Activities and Amenities

What are the restrictions on the use of my unit and the village facilities? Have I enquired about live-in guests and visitors.

How will I have to adapt and alter my existing lifestyle to comply with the regulations and restrictions of life in the village?

What type of public, private or village transport is available?

Are pets permitted?

How accessible are the local shops to my present and future needs?

SCHEDULE 3

Proceedings before the Tribunal

Application of schedule

1. Subject to any variation or exclusion prescribed by the regulations, this schedule applies to proceedings before the Tribunal under this Act.

Constitution of Tribunal

2. (1) The Tribunal will, for the purpose of hearing proceedings under this Act, be constituted of a single member of the Tribunal.

(2) The Tribunal must hear and determine proceedings under this Act wherever practicable within 14 days after they are instituted and, where that is not practicable, as expeditiously as possible.

Application to vary or set aside order

3. (1) A person who is or was a party to proceedings before the Tribunal may apply to the Tribunal for an order varying or setting aside an order, decision or direction made or given in those proceedings.

(2) An application under subclause (1) must be made within three months of the making or giving of the order, decision or direction.

Application to Tribunal

4. (1) An application under this Act to the Tribunal must—

- (a) be made in writing and, if a form is prescribed by the regulations, comply with that form; and
- (b) contain the prescribed particulars (or such particulars as may be required by a prescribed form); and
- (c) be accompanied by the prescribed fee (if any).

(2) Before the Tribunal proceeds to hear an application it must first—

- (a) give the applicant notice in writing setting out the time and place at which it will hear the application; and
- (b) give to any other party—
 - (i) notice in writing setting out the time and place at which it will hear the application; and
 - (ii) such notice of the nature of the application as it thinks fit.

Proceedings of Tribunals

5. (1) For the purpose of any proceedings, the Tribunal may—

- (a) by summons signed by a member, registrar or deputy registrar of the Tribunal, require the attendance before the Tribunal of any person;
- (b) by summons signed by a member, registrar or deputy registrar of the Tribunal, require the production of books, papers or documents;
- (c) inspect books, papers or documents produced before it, retain them for such reasonable period as it thinks fit, and make copies of any of them, or of any of their contents;
- (d) require a person appearing before the Tribunal to make an oath or affirmation that he or she will truly answer any relevant questions put to him or her by the Tribunal or a person appearing before the Tribunal;
- (e) require a person appearing before the Tribunal (whether he or she has been summoned to appear or not) to answer any relevant questions put to him or her by the Tribunal or a person appearing before the Tribunal.

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(2) If a person—

- (a) fails without reasonable excuse to comply with the requirements of a summons served on him or her under subclause (1); or
- (b) refuses or fails to comply with a requirement of the Tribunal under subclause (1); or
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal,

the person is guilty of an offence.

Maximum penalty: \$1 250.

(3) In any proceedings the Tribunal may—

- (a) hear the application in such manner as the Tribunal considers best suited to that purpose; and
- (b) decline to entertain the application if it considers that the application is frivolous or involves a trivial matter or amount; and
- (c) decline to entertain the application, or adjourn the hearing, until the fulfilment of conditions fixed by the Tribunal with a view to promoting the settlement or resolution of matters in dispute between the parties; and
- (d) proceed to hear and determine the application in the absence of a party; and
- (e) extend any period prescribed by or under this Act within which an application or other step in respect of proceedings must be made or taken (even if that period has expired); and
- (f) vary or set aside an order or decision where the Tribunal considers there are proper grounds for doing so; and
- (g) adjourn the hearing to a specified time or place or to a time and place to be fixed; and
- (h) allow the amendment of the application; and
- (i) hear the application jointly with another application; and
- (j) receive in evidence any transcript of evidence in proceedings before a court and draw any conclusion of fact that it considers proper; and
- (k) adopt, as in its discretion it considers proper, any findings, decision or judgment of a court that may be relevant to the proceedings; and
- (l) generally give all such directions and do all such things as it thinks necessary or expedient in the proceedings.

(4) In any proceedings the Tribunal is not bound by the rules of evidence but may inform itself on any matter relating to the proceedings in such manner as it thinks fit.

Presentation of cases before Tribunal

6. (1) Except as provided in this clause, a party to proceedings before the Tribunal under this Act must present his or her own case and not be represented or assisted in the presentation of the case by another person.

(2) A party to proceedings before the Tribunal may be represented by an agent or assisted by an agent in the presentation of his or her case if the Tribunal is satisfied that—

(a) the party is unable to appear personally or conduct the proceedings properly himself or herself; and

(b) no other party will be unfairly disadvantaged by the fact that the agent is allowed so to act.

(3) All or any of the parties to any proceedings before the Tribunal may be represented by legal practitioners—

(a) if all the parties agree and the Tribunal is satisfied that any party who is not so represented will not be unfairly disadvantaged; or

(b) if one of the parties is a legally qualified person; or

(c) if the proceedings involve an amount which exceeds \$50 000 or such other amount as is prescribed instead by regulation; or

(d) if the Tribunal gives leave for such representation.

(4) If a party applies for leave permitting representation by a legal practitioner under subclause (3)(d), it must be granted if the Tribunal is satisfied—

(a) that the granting of leave is likely to reduce costs or shorten the proceedings; or

(b) that the applicant would, if leave were not granted, be unfairly disadvantaged.

(5) This clause does not prevent—

(a) a body corporate from being represented by an officer or employee of the body corporate (not being a legally qualified person) authorised to conduct the proceedings on its behalf (whether or not he or she is remunerated by the body corporate for representing it in the proceedings); or

(b) a person from acting as an interpreter for a party provided that his or her fee does not exceed an amount fixed by the Tribunal at the hearing.

(6) A person must not demand or receive any fee or reward for representing or assisting a party to proceedings before the Tribunal unless—

(a) the person is a legal practitioner; or

(b) where the party is a body corporate, the person is an officer or employee of the body corporate representing it under subclause (5).

Maximum penalty: \$750.

(7) In this clause—

"**agent**" means a person who is not a legally qualified person;

"**legally qualified person**" means a legal practitioner, an articulated law clerk, or a person who holds or has held legal qualifications under the laws of this State or any other place.

Settlement of proceedings

7. (1) If before or during the hearing of any proceedings it appears to the Tribunal either from the nature of the case or from the attitude of the parties that there is a reasonable possibility of matters in dispute between the parties being settled by conciliation, the person constituting the Tribunal may—

(a) interview the parties in private (either with or without any person who may be representing any of them or assisting any of them in the presentation of his or her case); and

(b) endeavour to bring about a settlement of the proceedings on terms that are fair to all parties.

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(2) Nothing said or done in the course of an attempt to settle proceedings under this clause may subsequently be given in evidence in proceedings before the Tribunal except by consent of all parties to the proceedings.

(3) The member of the Tribunal who attempts to settle proceedings under this clause is not disqualified from hearing or continuing to hear any proceedings in the matter.

(4) Where proceedings are settled under this clause, the Tribunal may embody the terms of the settlement in an order or direction of the Tribunal.

Costs

8. In proceedings under this Act the Tribunal must not award costs unless—

- (a) all parties to the proceedings were represented by legal practitioners; or
- (b) the Tribunal is of the opinion that there are special circumstances justifying the award of costs.

Reservation of question of law

9. (1) The Tribunal may reserve a question of law for the decision of the Supreme Court, whose decision will be certified to and binding on the Tribunal.

(2) Any costs arising from the reservation of a question under this clause, including costs incurred by the parties to the proceedings, must be paid out of the General Revenue of the State and this Act, without any further appropriation, is sufficient authority for such payment.

APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Retirement Villages (Miscellaneous) Amendment Act 1994, s. 16)

16. (1) The amendments made to the principal Act by sections 5(a) and 6 of this Act do not apply to a residence contract entered into before the commencement of this subsection.

(2) The amendments made to the principal Act by section 9 of this Act do not apply to an agreement that will result in a change in the administering authority of a retirement village entered into before the commencement of this subsection.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3:	definition of "administering authority" amended by 12, 1994, s. 3 definition of "the Commissioner" inserted by 12, 1990, s. 3 definition of "community retirement village" inserted by 38, 1996, s. 33(a) definition of "strata retirement village" repealed by 38, 1996, s. 33(b)
Section 4(1):	amended by 12, 1994, s. 4; 21, 1998, Sched. cl. 7
Section 4(4):	amended by 12, 1990, s. 12 (Sched.); 21, 1998, Sched. cl. 7
Section 5:	substituted by 12, 1990, s. 4
Section 6(1):	amended by 12, 1994, s. 5(a)
Section 6(2) and (3):	substituted by 12, 1990, s. 5(a)
Section 6(3a) and (3b):	inserted by 12, 1990, s. 5(a)
Section 6(4):	substituted by 12, 1990, s. 5(a)
Section 6(6):	inserted by 12, 1990, s. 5(b); amended by 21, 1998, Sched. cl. 7
Section 6(7):	inserted by 12, 1994, s. 5(b)
Section 7(2):	amended by 12, 1994, s. 6(a)
Section 7(2a) - (2d):	inserted by 12, 1994, s. 6(b)
Section 7(5):	repealed by 12, 1994, s. 6(c)
Section 7(7a):	inserted by 12, 1994, s. 6(d)
Section 7(8):	amended by 12, 1990, s. 12 (Sched.); 21, 1998, Sched. cl. 7
Section 7(9):	inserted by 12, 1994, s. 6(e)
Section 8(2):	amended by 12, 1990, s. 6
Section 8(3) and (5):	amended by 12, 1990, s. 12 (Sched.); 21, 1998, Sched. cl. 7
Section 9(4):	amended by 38, 1996, s. 34
Section 9(4a):	inserted by 12, 1990, s. 7; amended by 21, 1998, s. 27
Section 9A:	inserted by 12, 1994, s. 7
Section 10(2):	amended by 12, 1994, s. 8(a)
Section 10(2a):	inserted by 12, 1994, s. 8(b)
Section 10(5) - (8):	substituted by 12, 1994, s. 8(c)
Section 10(8a):	inserted by 12, 1994, s. 8(c)
Section 10(10):	amended by 13, 1988, Sched. 1, cl. 4; substituted by 38, 1996, s. 35
Section 10(10a):	inserted by 12, 1994, s. 8(d)
Section 10(11):	amended by 12, 1990, s. 12 (Sched.); 21, 1998, Sched. cl. 7
Section 10AA:	inserted by 12, 1994, s. 9
Section 10AA(3):	amended by 21, 1998, Sched. cl. 7
Section 10A:	inserted by 72, 1987, s. 6
Section 12(1) and (2):	amended by 12, 1990, s. 12 (Sched.); 21, 1998, Sched. cl. 7
Section 13(7) and (8):	inserted by 12, 1994, s. 10; amended by 21, 1998, Sched. cl. 7
Section 13(9):	inserted by 12, 1994, s. 10
Section 13(10):	inserted by 12, 1994, s. 10; amended by 21, 1998, Sched. cl. 7

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Section 14:	amended by 12, 1990, s. 12 (Sched.); substituted by 12, 1994, s. 11
Section 14(10):	amended by 21, 1998, Sched. cl. 7
Section 15(2):	amended by 12, 1990, s. 12 (Sched.); 21, 1998, Sched. cl. 7
Section 16(2):	amended by 12, 1990, s. 8
Section 16(4):	amended by 12, 1990, s. 12 (Sched.); 21, 1998, Sched. cl. 7
Section 17(2):	amended by 12, 1990, s. 9
Section 18(1):	amended by 12, 1990, s. 12 (Sched.); 21, 1998, Sched. cl. 7
Section 19(1):	amended by 12, 1994, s. 12(a)
Section 19(2):	amended by 12, 1994, s. 12(b)
Section 20(1) - (3):	amended by 63, 1995, Sched. cl. 6(a)
Section 21:	substituted by 12, 1994, s. 13
Section 21A:	inserted by 12, 1994, s. 13
Section 21A(3):	amended by 21, 1998, Sched. cl. 7
Section 22(1):	repealed by 21, 1998, Sched. cl. 7
Section 22(2):	amended by 12, 1990, s. 10(a)
Section 22(2a):	inserted by 12, 1990, s. 10(b)
Section 23(2):	amended by 12, 1990, ss. 11(a), 12 (Sched.); 12, 1994, s. 14; 21, 1998, Sched. cl. 7
Section 23(3):	amended by 12, 1990, s. 11(b)
Schedule 3:	inserted by 12, 1994, s. 15
Clause 2(1):	substituted by 63, 1995, Sched. cl. 6(b)
Clause 5(2):	amended by 21, 1998, Sched. cl. 7
Clause 6(6):	amended by 21, 1998, Sched. cl. 7