

South Australia

Retirement Villages Regulations 2006

under the *Retirement Villages Act 1987*

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Legislative history

1—Short title

These regulations may be cited as the *Retirement Villages Regulations 2006*.

2—Commencement

These regulations will come into operation on 1 November 2006.

3—Interpretation

In these regulations—

Act means the *Retirement Villages Act 1987*;

termination notice—see regulation 11(1).

4—Payments excluded from definition of premium

A payment of less than \$1 000 is excluded from the ambit of the definition of *premium* in section 3(1) of the Act.

5—Residence contracts

Pursuant to section 17 of the Act, a contract under which a person enters into occupation of a residence in a retirement village (a *residence contract*) must comply with the following requirements:

- (a) the residence contract must include a statement (shown conspicuously in bold black type) advising the person—
 - (i) that he or she should seek independent legal advice about his or her rights and duties under the contract; and
 - (ii) that he or she has a right to cool-off (that is, to rescind the contract by notice in writing and not proceed with becoming a resident of the retirement village)—
 - (A) at any time within 15 business days after the date of the contract; or
 - (B) at any time before the expiration of 15 business days after the date on which the last of the documents required to be given to the person under section 17(3) of the Act is so given;

Note—

See section 17(7) and (8) of the Act.

- (b) the residence contract must, as far as possible—
 - (i) be expressed plainly in gender neutral language; and
 - (ii) be printed in not less than 12 point type face; and
 - (iii) be set out clearly with appropriate headings and numbered clauses;
- (c) the residence contract must include definitions of words and phrases used in the contract (including words and phrases defined in the Act);

Note—

See, in particular, section 3 of the Act.

- (d) if the Minister has conferred an exemption from a provision of the Act in relation to the retirement village—the residence contract must include details about the exemption and any conditions imposed on the exemption;
- (e) the residence contract must include the following information in relation to the contract:

- (i) the name and address of each of the parties to the contract (and, if there is a limitation on who may, in the future, become a party to the contract, details of the limitation);

Note—

The parties to the residence contract will be the administering authority and the prospective resident or residents.

- (ii) the date of the contract;
- (f) the residence contract must include the following information in relation to the retirement village scheme:
- (i) the name and location of the retirement village;
- (ii) details of the certificates of title for the land on which the retirement village is situated, including—
- (A) the Volume and Folio numbers; and
- (B) the name of the owner in fee simple of the land registered on the certificates of title; and
- (C) if the land is subject to a mortgage or charge—the name of the holder of the mortgage or charge; and

Note—

A resident of a retirement village has a right of occupation that cannot be terminated unless the holder of a mortgage or charge that was in existence when the Act commenced (that is, 30 June 1987) becomes entitled to vacant possession of the residence pursuant to rights conferred by the mortgage or charge—see section 31(1)(e) of the Act.

- (D) the endorsement on the certificates of title as required by section 33 of the Act; and
- (E) any other endorsement on the certificates of title;
- (iii) the form of tenure that will apply to the resident and the terms and conditions of the tenure;

Example—

The form of tenure will be 1 of the following:

- community title;
- strata title;
- lease;
- licence to occupy;
- some other form of tenure (with a full description).

- (g) the residence contract must include the following information in relation to the residence to be occupied by the resident of the retirement village:
- (i) a description (in reasonable detail) of the features of the residence;
- (ii) a plan of the residence showing significant dimensions;

- (iii) a plan of the retirement village showing the location of the residence in the retirement village and any separate facilities allocated to the resident;
- (h) the residence contract must include details of the facilities available in the retirement village, including—
 - (i) communal facilities available to all residents; and
 - (ii) any separate facilities allocated to the resident; and
 - (iii) if additional facilities are to be provided to the resident—
 - (A) any work that is to be undertaken in relation to the provision of those facilities; and
 - (B) the cost of the work to be undertaken;
- (i) the residence contract must include details of services available to residents in the retirement village, including—
 - (i) services provided to all residents (payment for which is by a recurrent charge); and
 - (ii) optional personal services available to residents (payment for which would be by an additional recurrent charge), specifying any such services to be provided to the resident;
- (j) the residence contract must include the following financial information about the retirement village scheme:
 - (i) in relation to the premium to be paid by the resident—
 - (A) the amount of the premium; and
 - (B) the basis on which the premium is to be paid; and
 - (C) the date (or, in the case of progress payments, the dates) on which the premium is payable; and
 - (D) how and on what basis the premium will be refunded;
 - (ii) the terms and conditions under which the premium will be refunded and the basis on which the refund will be calculated;

Note—

The residence contract must include the following details:

- (a) the date from which the refund will be calculated (that is, the date on which the resident was given access to occupy the residence—the *date of occupation*);
- (b) the date up to which the refund will be calculated (that is, the date on which the resident ceases to reside in the retirement village—the *date of termination*);
- (c) the formula for calculating the refund;
- (d) the fees and charges that may be deducted from the amount of the refund;
- (e) the conditions that must be met before the refund will be made;

Examples—

- | | |
|---|--|
| 1 | The residence must be resold/relicensed and the administering authority must receive a deposit/premium in relation to the residence. |
| 2 | The trustees of the retirement village scheme must approve the amount of the refund. |

(f) when, how and to whom the refund will be made.

See, also, section 21 of the Act in relation to repayment of so much of the premium as a resident of a retirement village may require to secure entry into residential care at an aged care facility.

- (iii) in relation to recurrent charges payable by the resident—
- (A) the amount of each recurrent charge and how that amount is calculated; and
 - (B) the reason for each recurrent charge; and
 - (C) when each recurrent charge becomes payable; and
 - (D) if a recurrent charge may be varied by the administering authority—
 - the date on which the charge was last varied; and
 - the estimated date on which the charge will next be varied; and
 - the period of notice to be given to the resident before a variation will come into force; and
 - (E) recurrent charges (if any) that will continue to be payable if the resident is absent or leaves the retirement village;

Note—

Recurrent charges may include—

- the maintenance charge; and
 - charges for additional personal services provided to the resident (such as, for example, a cleaning service or the provision of meals).
- (iv) when, in relation to the retirement village scheme, the financial year begins and ends;
- (v) in relation to funds established by the administering authority to which the resident will be required to contribute—
- (A) the purpose of each fund; and
 - (B) the amount required to be contributed by the resident to each fund; and
 - (C) when the resident will be required to contribute to each fund;

- (k) the residence contract must include the following information in relation to the resident's settling-in period:
- (i) when the settling-in period begins and ends; and
 - (ii) the fees and charges for which the resident will be responsible during the settling-in period; and
 - (iii) what refunds the resident will be entitled to receive if he or she terminates the contract during the settling-in period;

Note—

See section 3(2)(b) and section 31(3) to (6) of the Act.

- (l) the residence contract must include the following information in relation to any development of the retirement village being undertaken, or planned, as at the date of the contract:
- (i) the number (if any) of residences under construction or to be constructed and the estimated completion date;
 - (ii) any communal facilities under construction or to be constructed and the estimated completion date;
 - (iii) any landscaping being undertaken or to be undertaken and the estimated completion date;
 - (iv) if development approval is required under the *Development Act 1993*—details of the approvals granted and any conditions of the approvals;
 - (v) details of consultation with residents that must occur before any future redevelopment of the retirement village may commence;

Note—

See section 25 of the Act.

- (m) the residence contract must include procedures for the resolution of a dispute within the retirement village;

Note—

See Schedule 1 clause 7 (Code of conduct to be observed by administering authorities of retirement villages) and section 32 of the Act.

- (n) the residence contract must include the following information in relation to the trustee:
- (i) the name and address of the trustee;
 - (ii) the terms and conditions on which the trustee has been appointed for the purposes of the retirement village scheme (insofar as any such trustee is involved in holding money paid by the resident on trust, or is available or responsible to represent the interests of the resident);
 - (iii) the assistance available to residents from the trustee;
 - (iv) how the trustee's fees are to be paid;

- (o) the residence contract must include the action to be taken to terminate the contract and the steps (if any) that a party agrees to undertake after a termination;

Note—

See section 31 of the Act.

- (p) the residence contract must include any other information that is agreed between the parties.

Note—

The Act sets out various rights that a person has on entering into a residence contract that cannot be excluded by the contract.

6—Arrangements if resident is absent or leaves—application for extension of prescribed period

For the purposes of section 20(5) of the Act, an application by an administering authority to the Tribunal for extension of the prescribed period in relation to a resident who has ceased to reside in a retirement village—

- (a) must include the following information:
 - (i) the name and address of the administering authority;
 - (ii) the name and address of the retirement village;
 - (iii) the name of the resident;
 - (iv) the address for service of notices on the resident;
 - (v) evidence in support of the application;
 - (vi) the period of extension sought;
 - (vii) the date of the application; and
- (b) must be signed and dated by the administering authority (or by a person duly authorised to act on behalf of the administering authority); and
- (c) must be accompanied by—
 - (i) a copy of the residence contract with the resident; and
 - (ii) the prescribed fee.

7—Meetings of residents

- (1) For the purposes of section 22(6)(a)(iv) of the Act, the following information is required to accompany a notice convening an annual meeting for a retirement village:
 - (a) a statement of the proportion (if any) of premiums received during the previous financial year used, or to be used, for purposes similar to those for which recurrent charges are used;
 - (b) a statement of the amount of money received from residents and held in reserve for the establishment, or maintenance, refurbishment or replacement, of facilities at the retirement village, stating the payments made from those reserves during the previous financial year;

- (c) a statement of the amount of any expenditure during the previous financial year for which residents were, or will be, liable, being expenditure not otherwise accounted for under this regulation or section 22(6) of the Act.
- (2) The administering authority of a retirement village must, within 14 days after the holding of an annual meeting under section 22 of the Act, provide a copy of the minutes of the meeting to each residence in the retirement village.

8—Standards for financial information

Information provided under section 22(6)(a) or 23(1) of the Act to a resident or residents of a retirement village must be in a form that shows specific information for the retirement village (and, if the retirement village has more than 1 site, must specifically relate to the site at which the resident or residents reside).

9—Harsh or unconscionable residence rules

A dispute as to whether a residence rule, or a provision of a residence rule, is harsh or unconscionable, may be taken to the Tribunal or to a court.

10—Information about manager to be supplied to residents

For the purposes of section 29 of the Act, the administering authority of a retirement village must, within 14 days after—

- (a) the employment or engagement of a person to manage the retirement village; or
- (b) any change in details previously provided to the residents under that section, provide written notice of such information to each resident of the retirement village.

11—Termination of residents' rights

- (1) A notice under section 31(12) of the Act (a *termination notice*) given to the resident of a retirement village by the administering authority of the retirement village—
 - (a) must include the following information:
 - (i) the name and address of the administering authority;
 - (ii) the name and address of the retirement village;
 - (iii) the name of the resident;
 - (iv) that—
 - (A) the resident is being given notice of the decision by the administering authority to terminate the resident's right of occupation of a residence in the retirement village and the reasons for the decision; and
 - (B) the decision is not effective until confirmed by the Tribunal; and
 - (C) the resident will be notified of the time and place of the hearing of the Tribunal and will be entitled to attend and present matters related to the proposed termination; and

- (D) if the Tribunal confirms the decision to terminate—the Tribunal will set a date by which the resident must leave the retirement village; and
 - (b) must be signed and dated by the administering authority (or by a person duly authorised to act on behalf of the administering authority).
- (2) An application under section 31(7) or (8) of the Act by the administering authority of a retirement village to the Tribunal for confirmation of the administering authority's decision to terminate a resident's right of occupation of a residence in the retirement village—
- (a) must be made within 60 days after the date on which the termination notice was given to the resident; and
 - (b) must include the following information:
 - (i) the name and address of the administering authority;
 - (ii) the name and address of the retirement village;
 - (iii) the name of the resident;
 - (iv) the address for service of notices on the resident;
 - (v) evidence in support of the application;
 - (vi) the date of the application;
 - (vii) the date on which the termination notice was given to the resident; and
 - (c) must be signed and dated by the administering authority (or by a person duly authorised to act on behalf of the administering authority); and
 - (d) must be accompanied by—
 - (i) a copy of the residence contract with the resident; and
 - (ii) a copy of the residence rules; and
 - (iii) a copy of the termination notice; and
 - (iv) the prescribed fee.
- (3) An application under section 31(10) of the Act by the administering authority of a retirement village to the Tribunal for an order for ejection of a resident from the retirement village—
- (a) must include the following information:
 - (i) the name and address of the administering authority;
 - (ii) the name and address of the retirement village;
 - (iii) the name of the resident;
 - (iv) the address for service of notices on the resident;
 - (v) the date of confirmation by the Tribunal of the decision of the administering authority to terminate the resident's right of occupation of a residence in the retirement village;

- (vi) the period set by the Tribunal for the resident to vacate the retirement village; and
- (b) must be signed and dated by the administering authority (or by a person duly authorised to act on behalf of the administering authority); and
- (c) must be accompanied by the prescribed fee.

12—Resolution of disputes

An application under section 32(1) of the Act by a party to a dispute between the administering authority of a retirement village and a resident of the retirement village to the Tribunal for resolution of matters in dispute—

- (a) must include the following information:
 - (i) the name and address of the administering authority;
 - (ii) the name and address of the retirement village;
 - (iii) the name of the resident;
 - (iv) the address for service of notices on the resident;
 - (v) the reasons for the application;
 - (vi) the relief sought from the Tribunal;
 - (vii) whether the other party to the dispute has been advised of the application; and
- (b) must be signed and dated by the applicant; and
- (c) must be accompanied by—
 - (i) a copy of the residence contract; and
 - (ii) a copy of the residence rules; and
 - (iii) the prescribed fee.

13—Endorsement of certificates of title

An application to the Registrar-General under section 33(2) or (4) of the Act—

- (a) must be in a form determined by the Registrar-General; and
- (b) must be endorsed with a certificate as required by section 273(1) of the *Real Property Act 1886*; and
- (c) must be accompanied by the appropriate fee under the *Real Property (Fees) Regulations 2002*.

14—Offence

A person who breaches, or fails to comply with, a provision of these regulations is guilty of an offence.

Maximum penalty: \$2 500.

Schedule 1—Code of conduct to be observed by administering authorities of retirement villages

1—Preparation and provision of documents

The administering authority of a retirement village may not charge a fee for the preparation or provision of a document required under section 17(3) of the Act to be given to a person before the person enters into a residence contract.

2—Premises condition report

The premises condition report required under section 17(3)(c) of the Act to be given by the administering authority of a retirement village to a person before the person enters into a residence contract for a residence in the retirement village—

- (a) must be completed as at the date of the contract; and
- (b) must specify the year in which any fixture, fitting or furnishing is to be repaired or replaced; and
- (c) must be signed and dated—
 - (i) by the administering authority (or by a person duly authorised to act on behalf of the administering authority); and
 - (ii) if or when the resident is satisfied as to the information contained in the report—by the resident; and
- (d) must be reviewed at the time the resident is vacating the residence.

3—Remarketing policy

- (1) The administering authority of a retirement village may take preliminary steps for the remarketing of a residence in the retirement village as soon as the administering authority receives notice of the decision of the resident (the *outgoing resident*) to vacate the residence (or of any other circumstance that means that the resident will no longer be residing in the retirement village).
- (2) The administering authority must act under its remarketing policy as soon as the administering authority receives notice of the decision of the outgoing resident to vacate the residence (or of any other circumstance referred to in subclause (1)).
- (3) The requirements under the administering authority's remarketing policy must at least include or address—
 - (a) arrangements to meet with the outgoing resident, or an agent, nominated person or personal representative of the outgoing resident, to view the residence, complete the premises condition report, and explain and discuss the remarketing process (unless this is not reasonably practicable to do in view of the resident's circumstances); and
 - (b) procedures to identify any work that should be undertaken to ensure that the residence is in a reasonable condition for remarketing, and to determine when and how any such work will be undertaken, and who will be responsible for organising the work, and for the cost of the work; and

- (c) the fixing of the price at which the residence will initially be remarketed, and when and how changes to that price will be considered and made; and
 - (d) the type, level and frequency of advertising that will be undertaken in relation to the marketing of the residence; and
 - (e) who will be responsible for any costs associated with the valuation of the residence, any advertising, and other relevant matters, and how any such costs are to be calculated or determined; and
 - (f) what will be required of the outgoing resident in relation to the remarketing of the residence, and the extent to which the resident may or will assume responsibility for any aspect of the remarketing process; and
 - (g) what action will be taken if the residence is not sold or relicensed—
 - (i) after 90 days; and
 - (ii) after 6 months; and
 - (h) what steps are to be undertaken by—
 - (i) the administering authority; and
 - (ii) the outgoing resident,when the residence is sold or relicensed; and
 - (i) settlement procedures, including what fees, charges and costs will be deducted by the administering authority at the time of settlement, and the provision to the outgoing resident of a statement at (or at an appropriate time after) the settlement.
- (4) In addition to any requirement or undertaking in a remarketing policy, the administering authority must—
- (a) provide ongoing written reports to the outgoing resident on the progress of the matter at least monthly; and
 - (b) if new residences within the retirement village are on the market at the same time, at least match the level of marketing for the residence of the outgoing resident that applies to those new residences.

4—Payment after settlement

The administering authority of a retirement village must ensure that all amounts due to a former resident of a residence in the retirement village on the resale or relicensing of the residence are paid to the former resident within 10 business days after the date of settlement of the residence.

5—Residents' committees

The administering authority of a retirement village will undertake reasonable consultation with a residents' committee established under section 30 of the Act in relation to the following matters:

- (a) maintenance issues raised by residents;
- (b) the preparation of an annual budget for the retirement village;

- (c) any proposed change to a service or facility provided at the retirement village that is reasonably expected to result in—
 - (i) increased costs to residents beyond any increase shown in the annual budget; or
 - (ii) a loss of amenity;
- (d) any proposal to alter or improve a building, fixture or fitting where residents will be expected to finance some or all of the capital or recurrent costs of the work, except where—
 - (i) the costs have already been included in the annual budget for the retirement village; or
 - (ii) the costs will not exceed \$2 000 in total;
- (e) the establishment of a disputes committee, or of any other procedure for dealing with disputes;
- (f) any proposal to formulate or alter rules for the retirement village;
- (g) the distribution of information to residents;
- (h) the establishment of social or recreational programmes at the retirement village;
- (i) the appointment of a trustee (or new trustee) for the purposes of the retirement village scheme, or any proposal to alter the functions or duties of such a trustee;
- (j) any other matter agreed between the committee and the administering authority.

6—Additional consultation with residents

The administering authority of a retirement village must, in addition to the requirements of the Act and clause 5, take steps to ensure that there is reasonable consultation with residents of the retirement village in relation to any matter that could have a significant impact on their financial affairs, the amenity of the retirement village or their way of life.

7—Dispute procedures

- (1) The administering authority of a retirement village must provide to each resident of the retirement village a document setting out the policies and procedures to be applied by the administering authority in the event of a dispute and, if or when those policies or procedures are altered, a revised version of such a document.
- (2) The policies and procedures to be applied by an administering authority of a retirement village in the event of a dispute must include the right for a resident to be accompanied by a person chosen by the resident at any meeting held to resolve the dispute.

Example—

The resident may, for example, choose to be accompanied by his or her spouse, a friend, another resident (who may, or may not, be a member of the residents' committee), a lawyer or some other person.

Schedule 2—Fees

1	Application for exemption under section 4(2) of the Act	\$250
2	Notification of information required for register under section 12 of the Act in relation to a retirement village—	
	• if the retirement village comprises not more than 10 residences	\$15
	• if the retirement village comprises more than 10 residences but not more than 50 residences	\$40
	• if the retirement village comprises more than 50 residences but not more than 150 residences	\$150
	• if the retirement village comprises more than 150 residences but not more than 300 residences	\$400
	• if the retirement village comprises more than 300 residences	\$500
3	Notification of additional stage within a retirement village	\$50
4	Application to Tribunal under section 31(7) or (8) of the Act	\$400
5	Application to Tribunal under section 31(10) of the Act	\$100
6	Application for exemption under section 18(2) of the Act	\$80
7	Application to Tribunal for an extension of prescribed period under section 20(5) of the Act	\$400
8	Application to Tribunal under section 32(1) of the Act	\$100
9	Application for authorisation under section 34 of the Act	\$80

Schedule 3—Revocation of *Retirement Villages Regulations 2002*

The *Retirement Villages Regulations 2002* are revoked.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2006	54	<i>Gazette 18.5.2006 p1359</i>	1.11.2006: r 2