

Regulatory Guidelines for Retirement Village Scheme Operators

Topic:

Exit entitlement statements

Regulatory Services, Department of Housing

Purpose

The purpose of this document is to provide guidance to retirement village operators about:

- **Exit entitlement statements** – what information should be included in an exit entitlement statement

Regulatory Services, Department of Housing is responsible for the regulation of retirement villages in Queensland under the *Retirement Villages Act 1999* (the Act) and the Retirement Villages Regulation 2018.

Regulatory Services role includes the investigation of complaints relating to alleged breaches of the Act, providing information and education and implements any subsequent education, engagement or enforcement action.

Investigations and audits have raised concerns regarding retirement village scheme operators:

- failing to provide sufficient information in exit entitlement statements
- failing to correctly state and calculate the proportionate costs of general service charges and maintenance reserve fund contributions payable after 90 days from the day the resident vacates their unit on termination of the right to reside.
- failing to state the particulars of any costs charged to former residents for the resale of their unit
- charging former residents amounts for reselling a unit which are not in accordance with legislative requirements.

The following information reflects the minimum standards required to achieve compliance with the sections of the *Retirement Villages Act 1999* and *Retirement Villages Regulation 2018* which relate to the provision of exit entitlement statements.

What should be included in an exit entitlement statement

In the interests of industry compliance, consistency and transparency, the following information should be included in an exit entitlement statement:

1. Date of commencement of residency
2. Ingoing contribution paid upon entry
3. Date of termination of right to reside
4. Period of residency (years and days)
5. The amount of any exit fee payable and how it was calculated
6. The total amount of any capital gain or loss (if applicable), including the capital gain/loss payable to/by the former resident and how it was calculated
7. Any amounts payable for accrued outstanding general service charges or maintenance reserve fund contributions. A scheme operator must not charge interest on accrued amounts
8. Any amounts payable for accrued outstanding personal service charges
9. Any accrued or outstanding amounts payable for body corporate or sinking fund contributions, where applicable
10. The calculation used to determine any proportionate amounts payable for accrued or outstanding general service charges or maintenance reserve fund contributions – (i.e. for charges payable between 90 days and 9 months from the day the resident vacates their unit on termination of the right to reside), where the scheme operator and the resident share these costs. This should include details of the percentage of charges payable by each party and the period for which the amounts are payable
11. Amounts payable for any reinstatement and/or renovation costs broken down to show costings in accordance with quotes obtained. Copies of quotes may be attached to the exit entitlement statement
12. The amount of any scheme operator legal fees payable by the outgoing resident as provided for in the contract. This amount should include a breakdown of what these legal costs cover
13. Costs for selling the particular unit (see also costs of sale regulatory guideline for additional information) – e.g. these costs could include the staff cost for showing the unit on multiple occasions, the actual cost for placement of advertising on the scheme operators website (this cost should be discussed with an existing resident prior to advertising), any valuation costs required under the Act. Each of these costs should be separately itemised
14. The calculation for the amount payable for costs of sale, detailing the percentage of costs payable by the scheme operator and the former resident. These costs are to be shared between the former resident and the scheme operator in the same proportion as they are to share the gross ingoing contribution
15. The total exit entitlement payable after all deductions
16. How and when the exit entitlement will be paid (e.g. direct deposit to a nominated account, cheque, etc)

Relevant sections of the *Retirement Villages Act 1999*

Section 53A of the Act provides that where a residence contract requires that an exit fee is calculated having regard to the length of time the resident has lived in the village, the exit fee must be worked out on a daily basis.

www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.53A

Section 54 of the Act provides that a scheme operator must give an estimated exit entitlement statement to a resident within 14 days after receiving a written request and notice that the resident is considering terminating their right to reside.

www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.54

Section 63 of the Act requires that a scheme operator must provide a former resident or their representative with an exit entitlement statement upon payment of their exit entitlement.

www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.63

Section 68 of the Act provides that a scheme operator must not charge a former resident a fee, charge or commission, however described, for selling the resident's right to reside in the resident's accommodation unit and details how the costs of selling a particular unit are to be shared between the operator and the former resident.

www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.68

Section 102 of the Act provides that an operator must not charge a former resident for personal service charges after the notice period required under sections 52 or 53 of the Act have lapsed or for more than 28 days after a residence contract is terminated due to the death of a resident.

www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.102

Section 104 of the Act provides the timeframes a former resident must pay general service charges and maintenance reserve fund contributions after termination, when the contributions must be shared between the former resident and the scheme operator, and when the former resident's obligations for payment of these contributions ceases.

www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.104

Penalties may be imposed for non-compliance with legislative requirements regarding the calculation and disclosure of exit entitlements for former residents.

If you have any questions in relation to this information, please contact Regulatory Services by phone on (07) 3013 2666 or email regulatoryservices@chde.qld.gov.au

Disclaimer:

This guideline contains general information intended to inform persons about how the chief executive interprets and administers the Act. The information set out in this guideline reflects the chief executive's attitude to the minimum standards required to achieve compliance with the sections of the Retirement Villages Act 1999 and Retirement Villages Regulation 2018 which relate to exit entitlements and costs of selling a retirement village unit. Operators and residents should:

- *not rely on this guideline as legal or financial advice; and*
- *carefully review the Retirement Villages Act 1999 and Retirement Villages Regulation 2018 to identify their rights and obligations; and*
- *obtain independent legal or financial advice about their own circumstances.*