

Regulatory Guidelines for Retirement Village Scheme Operators

Topic:

How to calculate the percentage of proportionate costs for selling a right to reside and sharing ongoing resident fees after termination

Regulatory Services, Department of Communities Housing and Digital Economy

Purpose

The purpose of this document is to provide guidance to retirement village scheme operators to correctly calculate the percentage of costs payable by the scheme operator and the former resident after termination in the following two situations:

1. Former residents – Fees after termination - For general service charges and maintenance reserve fund contributions payable during the 6 month period from 90 days and until 9 months after a former resident vacates their unit upon termination of the resident's right to reside.
2. For the costs of selling a right to reside in a retirement village.

Regulatory Services, Department of Communities, Housing and Digital Economy 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 investigate complaints from retirement village residents relating to alleged breaches of the Act and implements any subsequent education, engagement or enforcement action.

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

- failing to apportion costs and fees payable between the scheme operator and the former resident after termination.
- failing to correctly calculate the proportion of costs and fees payable by the scheme operator and the former resident after termination.
- failing to disclose the method of calculation for determining the percentage of costs and fees payable by the scheme operator and former resident after termination.

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 apportioning costs between a former resident and scheme operator for ongoing resident fees after termination and selling a right to reside.

When do proportionate costs apply?

The Act specifies two situations where a retirement village scheme operator shares payment of particular costs with former resident/s after termination.

Section 104(3)(a) and section 68 of the Act set out how to calculate the percentage of costs that each party is responsible for as follows:

1. **Calculation of proportionate general service charges and maintenance reserve fund contributions for the 6 month period from 90 days and until 9 months from the date a former resident vacates their unit** (section 104(3)(a) of the Act) – Sect104RVAct

When a resident leaves a retirement village, they are responsible for paying 100% of their general service and maintenance reserve fund contributions for the first 90 days after they vacate their unit.

For the 6 month period after 90 days and until 9 months after they vacate their unit, the former resident and the scheme operator must share these costs in the same proportion as they are to share the gross ingoing contribution upon the sale of the right to reside, as provided for in the residence contract-S104(3)(a).

A scheme operator is required to calculate the percentage of costs payable by the resident and the scheme operator after termination. This calculation should be shown on any exit entitlement statement prepared by the scheme operator for the former resident.

2. **Calculation of the costs for selling a right to reside in a retirement village unit** (section 68(1) of the Act) - Sect68RVAct

The costs of selling a retirement village right to reside are costs which are directly associated with the sale of a right to reside in a unit. The costs of selling can include costs of advertising the unit or demonstrating the unit to prospective purchasers. Other specific costs can also include the cost of a valuation where the operator and former resident were unable to agree on a resale value.

The costs of selling a unit are to be shared by the former resident and the operator in the same proportion as they share the gross ingoing contribution on the sale of the right to reside, as provided for in the residence contract.

An operator is required to calculate the percentage of costs payable by the former resident and the scheme operator. This calculation must be shown on any exit entitlement statement prepared by the operator for the former resident.

How do I calculate the percentage share of costs payable by a former resident and the scheme operator after termination?

The proportion or percentage of costs payable by the former resident and the scheme operator is based on each party's percentage share of the **gross ingoing contribution upon the sale of the right to reside**. The ingoing contribution is the amount paid by an incoming resident to secure a right to reside in the retirement village.

The Act defines **gross ingoing contribution** as the amount of the ingoing contribution before any deductions are made. Costs such as legal fees, contract administration costs, costs of sale or other outstanding fees or charges payable by a resident upon termination, do not affect the calculation of the percentage for proportionate costs.

A residence contract must disclose any amount payable to a scheme operator when a contract is terminated, referred to as an exit fee (section 15 of the Act). This is usually calculated over time as a percentage of an ingoing contribution, and the exit fee is taken into account in calculating the proportionate share of the gross ingoing contribution. Generally, a former resident will receive an exit entitlement amount after the sale of their right to reside. An example of an exit entitlement could be where a former resident receives a refund of their own ingoing contribution less an exit fee.

When a right to reside is sold, the scheme operator will receive the amount of the resale value (the amount of the ingoing contribution paid by the new incoming resident), less any amounts payable to the former resident (the former resident's exit entitlement).

Costs will be shared between the former resident and the scheme operator in accordance with how the former resident and the scheme operator share in the resale value of the unit. Examples of how this cost-sharing proportion can be calculated in specific scenarios are set out below.

Example 1 No Capital Gain

For this example, the residence contract states the resident receives no share of any capital gain upon the resale of their right to reside, and the exit fee is calculated as 35% of the resident's original ingoing contribution. The resident's original gross ingoing contribution was \$300,000 and the resale value of the unit is \$360,000. The exit fee is 35% of the resident's original ingoing contribution. (i.e. \$105,000)

The proportion of costs payable by the resident is calculated as follows

$$\begin{aligned} \text{Resident's \%} &= (\text{OGIC} - \text{EF}) / \text{RV} \times 100 \\ &= (\$300,000 - \$105,000) / \$360,000 \times 100 \\ &= \$195,000 / \$360,000 \times 100 \\ &= 54.17\% \end{aligned}$$

Where: OGIC is the original gross ingoing contribution paid by the resident
EF is the exit fee payable by the resident
RV is the resale value of the unit

The percentage of costs payable by the resident in this example is 54.17% and the operator pays 45.83%.

Example 2 **With Capital Gain**
Exit Fee calculated on Original Ingoing Contribution + Capital Gain

For this example, the residence contract states the resident shares 50% of the capital gain upon the resale of their right to reside, and the exit fee is calculated as 35% of the resident's original ingoing contribution plus their share of any capital gain. The resident's original gross ingoing contribution was \$300,000 and the resale value of the unit is \$360,000. The exit fee is 35% of the resident's original ingoing contribution and 50% of the capital gain (i.e. \$115,500).

The proportion of costs payable by the resident is calculated as follows

$$\begin{aligned} \text{Resident's \%} &= (\text{OGIC} + [50\% \times \text{capital gain}] - \text{EF}) / \text{RV} \times 100 \\ &= (\$300,000 + \$30,000 - \$115,500) / \$360,000 \times 100 \\ &= \$214,500 / \$360,000 \times 100 \\ &= 59.58\% \end{aligned}$$

Where: OGIC is the original gross ingoing contribution paid by the resident
 EF is the exit fee payable by the resident
 RV is the resale value of the unit

The percentage of costs payable by the resident in this example is 59.58% and the operator pays 40.42%.

Example 3 **With Capital Gain**
Exit fee calculated only on Original Ingoing Contribution

For this example, the residence contract states the resident shares 50% of the capital gain upon the resale of their right to reside, and the exit fee is calculated as 35% of the resident's original ingoing contribution. (ie the capital gain is not included in the exit fee calculation)

The resident's original gross ingoing contribution was \$300,000 and the resale value of the unit is \$360,000. The exit fee is 35% of the resident's original ingoing contribution (i.e. \$105,000).

The proportion of costs payable by the resident is calculated as follows:

$$\begin{aligned} \text{Resident's \%} &= (\text{OGIC} - \text{EF}) + (50\% \times \text{capital gain}) / \text{RV} \times 100 \\ &= (\$300,000 - \$105,000) + \$30,000 / \$360,000 \times 100 \\ &= \$225,000 / \$360,000 \times 100 \\ &= 62.5\% \end{aligned}$$

Where: OGIC is the original gross ingoing contribution paid by the resident
 EF is the exit fee payable by the resident
 RV is the resale value of the unit

The percentage of costs payable by the resident in this example is 62.5% and the operator pays 37.5%.

The calculation used to determine the percentage of costs payable by the former resident and the scheme operator for

- i. the costs for selling a right to reside in a unit; or
- ii. the ongoing general service charges and maintenance reserve fund contributions payable for an unsold unit from 90 days until 9 months after the resident vacates their unit must be detailed in any exit entitlement statement prepared by a scheme operator for a former resident.

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 104 of the Act provides the timeframes for which 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.

The Business Queensland website for retirement village scheme operators has been updated to reflect Regulatory Services' expectations for scheme operators to achieve compliance under the Act.

Below is a link to our updated web content for retirement village scheme operators which reflects the information provided below.

<https://www.business.qld.gov.au/industries/service-industries-professionals/housingaccommodation/operating-retirement-village/managing-residents-fees>

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 how to calculate the percentage of proportionate costs for selling a right to reside and sharing ongoing resident fees after termination.

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.