



Seniors Rights Service



Retirement village living

Your rights and responsibilities

02 9281 3600

info@SeniorsRightsService.org.au

SeniorsRightsService.org.au

Seniors Rights Service - We are here to help

Living in a retirement village is a decision many people make as they become older and their current home no longer suits their lifestyle. Retirement villages are purpose built for older people and offer support and security along with a sense of community.

However, moving into a retirement village can involve complex contractual obligations that can be difficult to understand. It can also be hard to work out what your rights and responsibilities are and what to do if problems arise or your circumstances change.

Before you enter into a contract to move into a retirement village there are important matters to consider and some of these are outlined in this brochure.

Seniors Rights Service is here to help you understand what is involved and to sort through and understand any issues that arise once you are living in a retirement village or if you decide to move out.

Our legal advice service is free and confidential. We are a community-based organisation that is independent of government and business.

We are here to listen, support and assist you.

Contact us on 02 9281 3600

Rights and Obligations

All residents living in retirement villages have rights protected by law in NSW. These include the right to:

- live in a village that is safe and secure
- live in an environment free from harassment or intimidation
- have your peace, comfort and privacy respected
- decide what possessions to have in your premises
- have repairs and maintenance dealt within a reasonable timeframe
- access services to help you to live independently
- establish a residents committee and be part of it

Residents have obligations to:

- respect the rights of other residents, visitors and staff
- not interfere with the peace, comfort or privacy of other residents
- not act in a way that negatively affects the health and safety of village workers
- not harass or intimidate operators, employees and agents
- not intentionally or recklessly cause property damage or injure anyone
- comply with the village rules, contractual terms and the existing laws



Resident participation

Residents have the right to participate in certain aspects of their village.

Operators must hold a general management meeting at least once each year at which residents can ask questions about matters including:

- the village's budget
- any capital works that might be undertaken
- future plans for the village including any proposed improvements or maintenance
- any safety issues
- proposed changes to services and facilities provided to residents

Residents must be notified of the meeting at least 14 days in advance and be given a copy of the meeting agenda. A resident can lodge written questions with the operator at least 7 days before the meeting or ask questions at the meeting.

Understanding ongoing charges

There are regular ongoing charges that you pay to live in a retirement village. These charges cover the running costs of the village and the costs of services and facilities that are part of the contractual arrangement.

Charges vary from village to village and the formula is set out in your contract. If the increase is based on the village's annual budget, residents must consider and approve the costs and charges at a meeting of village residents. The operator must provide the proposed budget to residents 60 days before the financial year starts for their consideration.

If the increase is set by a specific formula in the contract, the operator is required to give 14 days written notice of the increase. If the increase is below the CPI then no approval from the resident is required.

Meetings of residents can be organised by the residents committee, if there is one, or by the operator (see more information following about setting up a residents committee).



How to deal with disputes

If you have a dispute with an operator and don't know how to resolve it Seniors Rights Service can help. Many disputes can be resolved quickly in the early stages if they are discussed openly.

If you have a dispute, first talk to your operator. Operators have their own internal dispute handling processes. If you are not happy with this process or the dispute cannot be resolved, we can provide advice and support.

You can also contact the retirement village complaint service of NSW Fair Trading who can provide advice, dispute resolution assistance or a free onsite mediation service.

If your issue cannot be resolved by discussion and agreement, it may need to be dealt with by the NSW Civil and Administrative Tribunal. The Tribunal can consider the facts and evidence of the dispute and make an enforceable order.

Seniors Rights Service can help prepare you to represent yourself at the tribunal hearing, may attend the hearing with you or can represent you in certain circumstances.



Contract information meeting

Residents have the right to meet with the operator once a year to discuss their contract and understand what is in the contract. Residents can have family, friends or advisers attend this contract meeting.

At this meeting an operator can set out the terms of leaving the village including:

- a resident's rights and obligations in relation to leaving the village
- estimated departure fee (if applicable)
- estimated fees and charges involved with selling the unit
- estimated sale price or estimated ingoing contribution of the next resident, as applicable to the resident's contract
- estimates of any other fees or charges that apply when leaving the village (including an estimate of any capital gain shared with the operator)
- how long recurrent charges may be payable after leaving the village
- estimate of the final monies a resident would receive upon leaving the village, after they have paid all fees and charges
- any costs claimed by the operator at the meeting must be reasonable. Significant penalties can apply for operators who provide unreasonable estimates or claims

What to do if you need to transfer from one village to another

A resident can request a transfer from their premises, within the village or to another village managed or controlled by the same operator. There is no requirement to pay a departure fee in these circumstances because it is considered a continuous occupation.

A resident may also decide to move to another retirement village managed by a different operator and in this circumstance a departure fee will be charged.

An operator can require a resident to move to another village in certain circumstances. These include a redevelopment or a change of purpose (if the village is going to stop operating as a retirement village). In these circumstances, the operator is responsible for finding comparable accommodation at no greater cost to the resident.



How to access aged care services in your retirement village

Living in a retirement village is like living in your own home.

A resident is entitled to access aged care services in their retirement village just as they would in their own home.

Residents of retirement villages can choose to access home care support services directly from My Aged Care or from the retirement village operator. Retirement village operators are not able to require you to use their services.



Exit entitlements

There are many things to consider when leaving a retirement village depending on the type of your contract.

An exit entitlement is the refund of your ingoing contribution when you permanently leave the retirement village. The amount depends on the terms of your individual contract.

The payment of exit entitlements to departing residents normally depends on the sale of the premises, and another resident entering the village.

If a resident wants to gain access to an exit entitlement before the property is sold, they can apply to the Secretary of the NSW Government's Department of Customer Service for an Exit Entitlement Order. The amount to be paid is based on either the resident and operator agreeing on the value or an agreed value determined by an independent property valuer.

When the property is eventually sold if the sale price is higher or lower than the agreed exit price then no monetary difference is owed by either party.

If a resident needs to leave the retirement village and go into an aged care facility they may request the operator to make an accommodation payment to their nominated aged care provider. Operators must pay up to 85 per cent of the prescribed component of the resident's calculated exit entitlement (not including any capital gain) as the accommodation payment.



Right to have a residents committee

A residents committee may be established in a retirement village with the consent of the residents living there.

This is a committee set up by residents and the residents themselves determine how it will run.

A village can have only one residents committee but can form sub-committees. An operator of a village must not discourage or prevent establishing a residents committee.

The committee can call meetings of residents for the purpose of considering and voting on village matters.

An operator must not obstruct the resident's committee from exercising its functions.

All residents of a village have the right to join the residents committee.



Seniors Rights Service

Contact Seniors Rights Service if you have any questions about your rights and obligations while living in a retirement village.

We are independent of government and our service is free and confidential.

02 9281 3600

info@SeniorsRightsService.org.au

SeniorsRightsService.org.au

Seniors Rights Service is supported by NSW Fair Trading