

Closure of retirement villages

Your rights as a resident

The operator of a retirement village may advise you that they intend to close the village. This information has been prepared to assist you, and your family, to understand your rights in this situation.

Informal advice of closure

An operator may call a meeting of all residents, or distribute a letter, advising of their plans to close the village at some time in the future. It is important to understand that you do not have to move out, or even start looking for other accommodation, at this stage.

Retirement villages are marketed as offering permanent accommodation. Many residents decide to live in a retirement village because of the security of being able to live there for the rest of their lives.

It can be stressful for elderly residents to relocate if they have lived in a retirement village for many years. The *Retirement Villages Act 1999* recognises this and provides a long notice period and strict requirements if an operator wishes to close a retirement village. The emphasis is on ensuring that the rights of residents are protected.

It is important to remember that even though the operator may say the village is closing it may never happen, or if it does it may not be for a number of years.

IMPORTANT - The Act continues to protect you even if you are the last resident left in the village.

Purpose must be change of use

There may be many reasons why an operator may wish to close a village. The operator may wish to use, or to sell the site to a developer, for some other purpose than as a retirement village.

For example, the site may be used to provide housing to non-retirees or turned into a shopping centre. This is known as a 'change of use' and is provided for under the Act.

In some situations the operator may wish to sell the site to another operator with vacant possession, or they may want residents to vacate simply to enable higher fee paying residents to move in. These reasons are not considered to be a 'change of use'. Attempts to evict residents or coerce them into vacating in these situations would be in breach of the Act.

TIP - The process for termination for 'change of use' is set out in section 136 of the Act.

Need for development consent

The operator must first obtain development consent and any other necessary approvals in respect to the proposed change of use. Until this happens you do not have to think about moving. Remember that the development consent may be declined.

Residents may have the right to lodge submissions with the local council at the time that the operator seeks the development consent.

What is the first formal step?

You must be given at least 12 months written notice of the operator's intention to apply to the NSW Civil and Administrative Tribunal to terminate your contract. The notice must be in the form prescribed in Schedule 1 of the Retirement Villages Regulation 2009.

Do I have to leave once I receive formal notice?

No. This is one of your most important rights as a resident. You do not have to move out until ordered to do so by the Tribunal. If you receive a notice you should obtain immediate, independent advice as to what you should do next.

You have the right to put your case to the Tribunal. The Tribunal may or may not make a termination order. It may take into account factors such as your age, health condition and need to remain in the village. It may also

consider any undertakings given to you when you moved in as to how long you could stay in the village.

The operator must prove their case. Even if the Tribunal does make an order for you to leave it may allow a long period before you have to move.

Does the operator have to offer or help find alternative accommodation?

Yes. The Tribunal will not end a contract unless it is satisfied that the operator has obtained or offered you alternative accommodation.

Such accommodation must be of approximately the same standard as your current premises. This may be at another retirement village or in the general community. Importantly, it must not cost you more to move into or live in than your home in the village.

Must I accept any offer?

No. The alternative accommodation must be acceptable to you, unless your rejection is unreasonable. You may reject an offer that is not of the same standard or if it would cost you more to live there. If you have close links to where you are living you may also reject offers which are too far away. Remember that the first offer may not be the last one and that a more suitable place may become available later on.

Can I voluntarily move out?

You can choose to leave at any time rather than staying and going through the Tribunal process. This should be your own decision. You should not feel pressured into moving or feel that you have to go because other residents have already left.

Am I entitled to compensation?

If the Tribunal terminates your contract it may order the operator to pay you compensation for removalist and utility expenses. The operator may also be ordered to compensate you if your new place will cost you more or if you will lose access to services or facilities. If you

voluntarily vacate you should still negotiate with the operator to be paid compensation before you move.

Need more information?

If you have any questions about your rights as a resident under the Act, contact the Fair Trading Specialist Support Unit on 9895 0297 or 1800 625 963 (toll free).