

Western Australia

Retirement Villages Regulations 1992

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Retirement Villages Regulations 1992

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Retirement Villages Regulations 1992

1. Citation

These regulations may be cited as the *Retirement Villages Regulations 1992*¹.

2. Commencement

These regulations shall come into operation on the day on which the *Retirement Villages Act 1992* comes into operation¹.

[3. *Deleted in Gazette 30 Dec 2004 p. 6925.*]

4. Section 13 statement

At least 5 working days before a person enters into a residence contract, the owner shall cause to be given to that person a statement in the form of Form 1 in Schedule 1 completed and signed by the owner containing the information required to be provided under that form.

5. Section 13 notice

- (1) At least 5 working days before a person enters into a residence contract, the owner shall cause to be given to that person a notice in the form of Form 2 in Schedule 1 of the persons's rights under sections 13 and 14 of the Act.

- (2) The notice given under subregulation (1) shall be printed in a size not less than 12 point type face.

6. Memorial — prescribed information

The memorial approved by the Registrar of Titles under section 15(3) of the Act shall contain the following information —

- (a) a description of the relevant land;
- (b) the name of the registered proprietor of the land; and
- (c) the date on which the memorial was lodged.

7. Disposal of abandoned goods

- (1) If a residence contract is terminated and goods are abandoned on the residential premises by a former resident of a retirement village, the administering body of the retirement village may, after the expiration of 2 days from the termination of the contract, remove and destroy or dispose of the goods if —
- (a) the goods are perishable foodstuffs; or
 - (b) the estimated value of the goods is less than the total estimated cost of the removal, storage and sale of the goods.
- (2) Where a residence contract is terminated and goods are left on the residential premises that were subject to the residence contract and have not been removed for destruction or disposal under subregulation (1), the administering body shall store them in a safe place and manner for a period of not less than 60 days.
- (3) An administering body shall before the expiration of 7 days after it has stored goods under subregulation (2) —
- (a) where the former resident has informed it of a forwarding address, send a notice to the resident at that address in or to the effect of Form 3 in Schedule 1; and

- (b) cause a notice in or to the effect of Form 4 in Schedule 1 to be inserted in a newspaper circulating generally throughout the State.
- (4) At the request of an administering body, the Commissioner may state in writing where or not in his or her opinion there are reasonable grounds for believing that subregulation (1) applies in respect of particular goods.
- (5) A person who has a lawful right to goods removed and stored under subregulation (2) may at any time before the goods are sold under subregulation (6) reclaim the goods upon paying to the administering body the reasonable costs of the removal and storage of the goods.
- (6) Where goods are stored under subregulation (2) and have not been reclaimed within 60 days after the day on which they were removed and stored, the administering body shall as soon as practicable after the expiration of that period cause them to be sold by public auction.
- (7) If goods are stored, removed and sold by public auction under this regulation, the administering body is entitled to retain out of the proceeds of the sale the reasonable costs of removing, storing and selling the goods.
- (8) An administering body shall not incur any liability in respect of the removal, storage or sale under this regulation of goods to which subregulation (1) does not apply, except liability for intentional or negligent damage to the goods or where the administering body has actual notice of any interest in the goods of any person other than the former resident and fails to take all reasonable steps to notify that person of the whereabouts of the goods and afford that person a reasonable opportunity to reclaim the goods.
- (9) Where a dispute arises between an administering body and a former resident in respect of goods to which this regulation applies, the State Administrative Tribunal may upon application

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by such person, order the payment of any amount or make such other order as it considers appropriate in the circumstances.

- (10) The provisions of this regulation are subject to any order of the State Administrative Tribunal made under section 70(2) of the Act.

[Regulation 7 amended in Gazette 30 Dec 2004 p. 6925.]

8. Proceeds of sale of abandoned goods

Before making an application to the State Administrative Tribunal for an order as to the proceeds of the sale of goods under section 70(2) of the Act the administering body shall —

- (a) where the former resident has informed it of a forwarding address, send a notice of its intention to apply for that order to the resident at that address; or
- (b) where the administering body is aware of the address of a personal representative of the former resident, send a notice of its intention to apply for that order to the personal representative at that address.

[Regulation 8 amended in Gazette 30 Dec 2004 p. 6925.]

[9, 10. Deleted in Gazette 30 Dec 2004 p. 6925.]

Schedule 1

Forms

Form 1

Retirement Villages Act 1992

[r. 4]

Information statement for prospective resident

Under section 13(2) of the *Retirement Villages Act 1992* the owner of residential premises in a retirement village is required to provide the following information to a person at least 5 working days before that person enters into a residence contract.

THE OWNER MUST ANSWER EACH OF THE FOLLOWING QUESTIONS IN WRITING BELOW EACH QUESTION —

Payment of premium and refund entitlement

1. What premium and other costs are payable to enter the retirement village?
2. What is the refund entitlement if the residence contract is terminated and when is it to be paid? (Include any fees or commissions charged by the administering body on termination of the contract and detail the method used to make the determination.)
3. To enable me to compare the financial packages offered by different retirement villages, what would be the final return due after, say, 1, 2, 5 and 10 years.

Charges for village operating costs

4. What retirement village operating costs are charged to a resident? What are the components of those costs? What method or calculation is used to determine the resident's share of those costs and variations of those costs?
5. By what percentage did the village's operating costs payable by the residents increase during the previous financial year?
6. Can a resident be liable for any additional or extraordinary charges? If so, under what circumstances?

Schedule 1 Forms

Budget surplus

7. For what purpose, or purposes, may any budget surplus in the retirement village be applied?
8. Does a resident have any say in the purpose, or purposes, to which any budget surplus in the retirement village is to be applied? If so, what is the process for resident involvement in this decision?

Reserve funds

9. Is there provision for a reserve fund to pay for repairs, replacements, maintenance and renovations within the retirement village? If not, what are the arrangements for the carrying out of, and the funding of, such works?
10. What, if any, contribution does a resident make to any reserve fund? What method or calculation is used to determine any resident contribution?

Resident funded capital improvements

11. What are the rights of a resident to compensation for capital improvements made to the residential premises at the resident's expense?

Amenities and services

12. What amenities and services are, or are to be, provided or made available by the administering body? What charges or fees are payable by a resident for those amenities and services and what is the basis for the future determination of those charges or fees? Are there any conditions that apply to a resident's access to, or use of, those amenities and services?
13. What optional amenities and services are, or are to be, provided or made available by the administering body and at what cost?

Existing service contract

14. Is there a service contract already in existence that will bind a prospective resident? How can the service contract be varied or cancelled?

Insurance

15. What insurance arrangements (including self-insurance arrangements) are in place or proposed for the retirement village? What village insurance costs are, or will be, payable by the residents?
16. What is, or will be, the extent of insurance cover (including self-insurance cover) in the event of the residential premises or the retirement village as a whole being damaged or totally destroyed?

Village management

17. What are the qualifications and experience of the retirement village's senior management?
18. Can the administering body of the retirement village transfer or assign its management responsibilities and obligations to a third party? If so —
 - What notice will be given to the residents of the transfer or assignment?
 - What information will be given to the residents about the qualifications and experience of the party to whom the responsibilities and obligations are to be transferred or assigned?
19. Is the retirement village accredited under any established accreditation scheme that applies to the retirement village industry?
20. What arrangements, if any, exist for the appointment of a trustee or residents' representative to oversee the interests of the residents under the retirement village scheme?

Resident consultation

21. What arrangements exist for a resident to participate in the administration of the retirement village, including the making of residence rules and the setting of charges for the village operating costs that are payable by the resident?
22. How can the rights and obligations of the administering body and the resident under the residence contract and related contracts be varied? What resident participation is required to effect such variations?

Schedule 1 Forms

Resident voting rights

23. If 2 or more residents occupy the same residential premises in the retirement village, is each resident entitled to vote on a matter that requires, or provides for, the consent of the residents of the village?
24. What are the rights of a resident of the retirement village to appoint a person to vote for the resident by way of a proxy vote?

Use of residential premises

25. What restrictions are there on a resident's use of his/her residential premises and the retirement village amenities in regard to —
- having someone else live with him/her?
 - having visitors, including short-stay guests?
 - car parking?
 - pets?

Spouse or de facto partner occupancy rights

26. What effect does the death of a resident have on the right of a spouse or de facto partner residing with the resident to continue to occupy the residential premises?

Transport

27. What type of public, private or village transport is available to residents?

Medical certificate requirements

28. Does the prospective resident have to supply a medical certificate or report to certify his/her ability to live independently?
29. Will the prospective resident have to provide documentation of his/her medical condition and medications? If so, who will have access to it?

Emergency call procedures

30. Is there an emergency call system? If so, when is it monitored? Who is responsible for responding to the calls?

31. In the event of an emergency who will be called and how will they gain access to the resident's residential premises?
32. If hospitalisation is required, where will a person normally be taken?

Hospitalisation

33. If hospitalisation or nursing care is required, how long will the resident's residential premises be kept in the name of the resident?
34. In the event that hospitalisation or nursing care is required, what ongoing costs would the resident incur with his/her existing residential premises?

Moving

35. What costs are associated with moving to and living in alternative accommodation within the retirement village?
36. In what circumstances would a resident be required to move to alternative accommodation within the retirement village or be transferred or relocated?

Village under construction

37. If the residential premises in the retirement village are still under construction, can the prospective resident have input into the design, construction or furnishings of his/her premises?

Refund of deposit

38. What entitlement does a prospective resident have to a refund of his/her deposit if the construction of the retirement village has not been commenced or completed?

Sale of village

39. What protection does a resident have against a loss of rights (including accommodation rights) if the retirement village is sold to another organisation?

Restrictions on sale of residential premises

40. Are there any restrictions on the sale of residential premises (e.g. sole agency)? What happens if there is a dispute over the sale price?

Schedule 1 Forms

Repair and refurbishment of residential premises

- 41. Can a resident be liable to pay for the cost of any repair or refurbishment of residential premises? If so, under what circumstances?
- 42. What can a resident do if dissatisfied with a claim made by the administering body for payment of any repair or refurbishment of residential premises?

Termination of contract

- 43. Under what conditions can the residence contract in the retirement village be terminated and at what cost? (The conditions must include the procedures to be followed under the *Retirement Villages Act 1992* and any applicable code.)
- 44. What fees will be payable by a prospective resident or a resident on termination of the residence contract? (This must include who is responsible for ongoing village operating costs and other charges during a period of vacancy of the residential premises.)

Signature of owner:

Date:

[Form 1 inserted in Gazette 9 Sep 2003 p. 4047-52.]

FORM 2
RETIREMENT VILLAGES ACT 1992
NOTICE OF RIGHTS UNDER SECTIONS 13 AND 14 OF THE
RETIREMENT VILLAGES ACT 1992

[r. 5]

The rights you have under sections 13 and 14 of the *Retirement Villages Act 1992* are set out below.

The owner should give you this form at least 5 working days before you enter into a residence contract.

UNDER SECTION 13 —

1. a residence contract shall be in writing;
2. at least 5 working days before a person enters into a residence contract the owner shall cause to be given to that person —
 - (a) the information statement set out in Form 1 in Schedule 1 to the *Retirement Villages Regulations 1992* completed and signed by the owner;
 - (b) this notice;
 - (c) a copy of the residence rules; and
 - (d) a copy of any applicable code;
3. a residence contract is taken to include a warranty as to the correctness of the information contained in the information statement.

That warranty —

- (a) is subject to any written alteration made to the information statement made by the owner with the consent of the prospective resident on or before the signing of the residence contract by the owner;
- (b) prevails over any inconsistent contractual term.

UNDER SECTION 14 —

If a person has not entered into occupation of residential premises under a residence contract that person may rescind the residence contract —

- (a) at any time within 5 working days after the date of the contract; or
- (b) if the documents required to be provided under section 13(2) are not provided — at any time before the expiration of 10 working days after the documents are provided.

Schedule 1 Forms

A rescission of a residence contract must be carried out in accordance with section 75 of the *Retirement Villages Act 1992*.

[Form 2 amended in Gazette 30 Dec 2004 p. 6926.]

FORM 3

RETIREMENT VILLAGES ACT 1992

[Regulation 7(3)(a)]

NOTICE TO FORMER RESIDENT AS TO DISPOSAL OF GOODS

To
(name of former resident)

of
(forwarding address of former resident)

1. The residence contract in respect of the premises at
.....
was terminated on
(insert date)

2. The following goods were left on the premises —
.....
(specify goods*)
.....
which were put into storage under regulation 7(2) on
(insert date)

3. Under regulation 7(5), a person who has a lawful right to the goods may reclaim them upon paying to the administering body the reasonable costs incurred for removal and storage.

4. If the goods have not been reclaimed within 60 days after the date shown in paragraph 2 above —
(a) the administering body is required by the regulations to have them sold by public auction; and
(b) the administering body is entitled to receive from the proceeds of sale its costs.

.....
(date) (signature of administering body)

.....
(name of administering body)

.....
(address of administering body)

*NOTE: Under regulation 7(1), an administering body need not store, but may remove and destroy —

(a) perishable foodstuffs; and

Schedule 1 Forms

- (b) goods whose value is less than the estimated cost of removal, storage and sale.

FORM 4

RETIREMENT VILLAGES ACT 1992

[Regulation 7(3)(b)]

NOTICE AS TO DISPOSAL OF GOODS

1. A residence contract in respect of the premises at
between
as owner of the premises and
as resident was terminated on
2. The following goods were left on the premises —
.....
which have been put into storage under regulation 7(2) on
3. Under regulation 7(5), a person who has a lawful right to the goods may
reclaim them upon paying to the administering body the reasonable costs
incurred for removal and storage.
4. If the goods have not been reclaimed within 60 days after the date shown
in paragraph 2 above the administering body —
 - (a) is required by the regulations to have them sold by public auction;
and
 - (b) is entitled to receive from the proceeds of sale its costs.

.....
(date) (signature of administering body)
.....
(name of administering body)
.....
(address of administering body)

*[Schedule 1 amended in Gazette 8 Jan 1993 p. 26-7; 30 Sep 1998 p. 5506-9;
9 Sep 2003 p. 4047-52; 30 Dec 2004 p. 6926.]*

[Schedule 2 repealed in Gazette 30 Dec 2004 p. 6926.]

Notes

¹ This is a compilation of the *Retirement Villages Regulations 1992* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Retirement Villages Regulations 1992</i>	10 Jul 1992 p. 3191-8	10 Jul 1992 (see r. 2 and <i>Gazette</i> 10 Jul 1992 p. 3185)
<i>Retirement Villages Amendment Regulations 1993</i>	8 Jan 1993 p. 26-7	10 Jan 1993 (see r. 2)
<i>Retirement Villages Amendment Regulations 1998</i>	30 Sep 1998 p. 5506-9	1 Oct 1998 (see r. 2)
<i>Retirement Villages Amendment Regulations 2003</i> ⁴	9 Sep 2003 p. 4047-52	1 Oct 2003 (see. r. 2)
Reprint 1: The Retirement Villages Regulations 1992 as at 7 Nov 2003 (includes amendments listed above)		
<i>Retirement Villages Amendment Regulations 2004</i>	30 Dec 2004 p. 6925-6	1 Jan 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)

² Under the *Alteration of Statutory Designations Order (No. 3) 2001* a reference in any law to the Department for Community Welfare is read and construed as a reference to the Department for Community Development.

³ Repealed by the *Veterans' Entitlements Act 1986* of the Commonwealth.

⁴ The *Retirement Villages Amendment Regulations 2003* r. 4(2) reads as follows:

“

(2) Despite subregulation (1), if the owner of a retirement village is required, under section 13(2) of the *Retirement Villages Act 1992*, to give a statement containing information prescribed by regulation 4 of the *Retirement Villages Regulations 1992*, between 1 October 2003 and 31 December 2003 (inclusive), the owner satisfies the requirements of section 13(2) if either —

- (a) the form inserted by subregulation (1); or
- (b) the form it replaced,

is completed and signed.

”.