

The Retirement Villages Handbook

An information **handbook** about the *Retirement Villages ACT 2012*



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Chief Minister, Treasury and
Economic Development Directorate
Access Canberra



ACT
Government

**Access
Canberra.**

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Introduction

The *ACT Retirement Villages Act 2012* (the Act) creates a legal framework to protect the rights of residents of retirement villages and provide clear rules for operators. It also helps prospective residents to make informed choices, including by requiring information to be provided to them.

The content of this handbook is based on the Act. It lists the information prospective residents should receive in disclosure statements and outlines the designated waiting period before prospective residents can enter into a contract with the operator. The handbook also contains details of how resident rights are protected by the required transparency in budget proposals and expenditures. It includes guidance for operators on managing the services and facilities of the village. It also explains where residents and operators can go for help if they find themselves unable to resolve a dispute.

Which residential complexes do not fall under this law?

The Act does not apply to the following complexes, although these complexes may cater exclusively or predominantly to retirees:

- > Commonwealth Government funded aged care hostels
- > nursing homes
- > mobile home parks
- > residences subject to a tenancy agreement with the Housing Commissioner
- > boarding houses
- > *Housing Assistance Act 2007* tenancies.

The Act does not apply to the following facilities which can also be located within a retirement village:

- > respite care buildings
- > employee accommodations

- > residential premises, where the operator and resident have a residential tenancy agreement under the *ACT Residential Tenancies Act 1997*, if the agreement contains a term to say that the Act does not apply to the premises.

Other relevant ACT and Commonwealth laws include the:

- > *Retirement Villages (Capital maintenance and replacement) Guidelines 2019*
- > *ACT Civil and Administrative Tribunal Act 2008*
- > *Civil Law (Sale of Residential Property) Act 2003*
- > *Community Title Act 2001*
- > *Residential Tenancies Act 1997*
- > *Unit Titles (Management) Act 2011*
- > *Land Titles Act 1925*
- > *Aged Care Act 1997 (Cth)*
- > *Competition and Consumer Act 2010 (Cth)*
- > *Human Rights Commission Act 2005*

Where are copies of the laws?

ACT legislation can be viewed or downloaded from the ACT Legislation Register at: legislation.act.gov.au

The *Competition and Consumer Act 2010* and *Aged Care Act 1997* can be viewed or downloaded from the Commonwealth Legislation website at: comlaw.gov.au.

What is a retirement village?

A retirement village is a residential complex predominantly or exclusively occupied by retired individuals (people who are 55 years or older or have retired from full-time employment) who have entered into a contract with the operator of the complex to occupy the premises or to receive services.

A broad range of accommodation is available within the retirement village sector including:

- > self-contained premises for independent living
- > independent serviced premises or assisted living apartments which provide meals, cleaning and other services
- > a combination of self-contained and serviced premises.

What are the different types of retirement villages?

This section provides a brief overview of the main types of retirement villages available in the ACT, however, other options may be available.

Loan-licence agreements

Under a loan-licence agreement, an ongoing contribution and recurrent charges are paid to the operator. The loan-licence agreement allows a resident to occupy the premises, but the resident does not own the premises or have an interest in it. Therefore, the resident's name will not appear on the registered Crown Lease for the unit.

Residents lose the right to reside in the premises once the contract is terminated. Contract provisions determine the amount refunded upon departure and may include deductions for the departure fee. Residents under a loan-licence agreement are bound by the provisions of the Act.

Residential tenancy agreements

A residential tenancy agreement provides residents with a contractual right to reside in a retirement village and lists the services provided by the village. The contract will address the termination process and departure fees.

Residents under these agreements are bound by the provisions of the *Residential Tenancies Act 1997*.

Unit title

Where a retirement village has units under the *Unit Titles Act 2001*, the resident purchases the unit and becomes a registered interest owner of the premises, in addition to contracting with the operator for the retirement village services. As a registered interest owner, the resident becomes a member of an owners' corporation. If a unit is owned by two or more part-owners, each part-owner is a member of the owners' corporation. The corporation is responsible for the maintenance of common property and the residents are responsible for the capital items they own in their unit.

Unit title retirement villages are governed by the *Unit Titles (Management) Act 2011* and the *Retirement Villages Act 2012*. Residents pay levies to the owners' corporation for managing and maintaining common property under the *Unit Titles (Management) Act 2011* and these levies are set yearly by the owners' corporation at the annual general meeting. Residents also pay recurrent charges to the village operator under the Act for the services provided under the contract.

Unit title retirement village residents are to comply with the owners' corporation rules. They also appoint an executive committee to manage meetings and exercise the functions of the owners' corporation. Meetings in a unit title retirement village must not be held simultaneously with any other meeting that the residents, in another capacity, are required to participate in under the Act.

When residents of unit title retirement villages terminate their contract, they are required to sell their premises.



When residents of unit title retirement villages terminate their contract, they have to sell their premises

Community title scheme

The residents are registered interest owners and members of the body corporate in community title scheme retirement villages.

Community title scheme retirement villages operate similarly to unit title retirement villages however, community title scheme retirement villages are governed by the *Community Title Act 2001* and the Act.

Company title scheme

In company title scheme retirement villages, a group of adjoining premises are owned or leased by a corporation. Each shareholder in the corporation has an exclusive right to occupy one or more of the residential premises if they have received a residence right. Purchasing shares gives rise to a residence right in residential premises

of the retirement village. Company title scheme retirement villages operate similarly to unit title and community title retirement villages and are managed under the Act.



What information will a prospective resident receive before signing a village contract?

The operator must provide prospective residents with:

- > a disclosure statement, and
- > a general inquiry document if the prospective resident, or someone acting on their behalf, requests a copy or expresses interest in a particular premise.

A retirement village's disclosure statement contains information to assist prospective residents in comparing villages because entering into a retirement village is a major legal and financial commitment.

A general inquiry document provides a brief explanation of the residential premises, services and facilities available in the retirement village.

The operator can also provide the prospective resident with a copy of the contract. Under the Act, contract negotiations cannot start, and a contract cannot be signed, until the prospective resident has had possession of the disclosure statement and the contract for at least 14 days.

Disclosure statement

While the information contained in a disclosure statement is helpful in making a decision, it can also be useful to visit the village, inspect

all available premises and talk to residents or a representative of the residents' committee,

executive committee (*if unit titled*) or committee of management (*if community titled*) to obtain more information about living in the village.

A disclosure statement must include the following:

Information on:

- > the management of the village
- > facilities available to residents
- > services provided by the operator
- > residential premises in the village, including fees and charges payable in relation to the premises
- > the proximity of the village to services such as hospitals, shops and public transport
- > whether the operator operates a residential aged care facility
- > the differences between services offered in a retirement village and that offered in a residential care facility
- > the ownership of the village, including whether a resident can own residential premises in the village
- > how a capital gain will be shared between the operator and a resident (where applicable)
- > whether the village has a residents' committee and, if so, information about the committee

- > financial management details including the village's income and expenditure
- > village safety measures, including information about security and emergency systems
- > the village contract prospective residents will sign to become residents
- > the village rules (a copy must be included)
- > costs of entering into a residence contract
- > any waiting list for the village and any waiting list fee payable
- > if the operator has a policy about access by residents to home care services – details of the policy.

A statement:

- > that a former occupant of residential premises in the village is not liable to refurbish the premises
- > to the effect that, to the best of the operator's knowledge the information in the disclosure statement is true.

The operator must attach a copy of the disclosure statement to the village contract. If a term in the contract is inconsistent with the disclosure statement and the inconsistent term is to the detriment of a village resident, then the term in the disclosure statement will prevail over the term in the contract.

What other information is available to a prospective resident?

Prospective residents can request the following information:

- > a site plan for the village
- > plans showing the location, floor plan and significant dimensions of available residential premises
- > proposed annual budgets and approved annual budgets for the village's last three financial years, the current financial year and the next financial year (if available)
- > audited annual accounts for the last three financial years if the village has more than \$50,000 in recurrent charges
- > the most recent quarterly accounts, if the operator is required to provide these to residents
- > the trust deed for any trust fund into which money paid by residents is deposited
- > the terms of any development approval for the village if construction is not complete or it is a condition of the development approval that a particular service or facility be provided for the life of the village
- > the waiting list policy and fees if the operator maintains a waiting list
- > exit fees, departure fees and deferred management fees
- > the operator's policy on residents' access to carer services including the right of carers to stay at the village
- > the village's capital works fund balance statements for the last three financial years and the most recent quarter if the village has a capital works fund
- > in a company title scheme village, the company's constitution and rules under the *Corporations Act 2001* (Commonwealth law)

Copies of the disclosure statement and condition report (if applicable) must be attached to the contract

- > in a community title scheme, the scheme’s management statement and management agreement relating to the village to which the relevant community association, neighbourhood association or precinct association is a party as well as the minutes of the most recent annual general meeting of the relevant community association, neighbourhood association or precinct association
- > in a units plan village, the owners’ corporation rules for the plan, the management agreement relating to the village and the minutes of the most recent annual general meeting of the owners’ corporation
- > details of any court or tribunal proceedings involving the village operator or residents committee which transpired in the past
- > five years, the decision or order made and the reasons
- > any other document mentioned under the heading “Village Contracts” in the village disclosure statement.

Copies of these documents must be provided within seven days of the request, at no charge to the prospective resident.

What must be included in the village contract?

Once a prospective resident decides to move into a retirement village, they will be required to sign a contract with the village operator before moving into the retirement village.

A village contract must contain:

- > the name of the village
- > the address of the resident’s premises in the village
- > the full names of the parties to the contract
- > the signatures of the parties to the contract
- > the name and address of the resident’s agent, if applicable
- > the date the disclosure statement and the relevant information were provided to the resident
- > the date when the contract is signed
- > the name and address of the village operator if the operator is not a party to the contract
- > prospective resident rights under the statutory ‘cooling-off’ period (*see page 13*)
- > the terms and conditions relating to ongoing contributions and recurrent charges including the day that the balance of any ongoing contribution is payable



- > the list and description of services and facilities provided
- > a list of the fixtures, fittings and furnishings that are provided in the residential premises
- > the process by which residents ask the operator to carry out necessary repairs and maintenance
- > terms that deal with matters such as the operator's access to residential premises, village rules, dispute resolution, how to terminate the contract, departure fees, the resident's right to remove any fixtures added during occupancy and the method of calculating any refund due upon termination of the contract.

If the operator is a party to the contract, then the following must also be included in the contract:

- > name and address of the operator's agent, if applicable
- > the date in which a copy of the contract was provided to the resident
- > the amount of any ingoing contribution payable by the resident and the date by when it must be paid
- > the amount of recurrent charges payable by the resident as of the date the contract is signed
- > the date from which those charges become payable
- > the date agreed as the date the resident is entitled to occupy the premises.

What cannot be included in the village contract?

A village contract cannot:

- > require the parties to the contract to resolve disputes using processes not provided under the Act
- > require residents to take out an insurance policy, including contents insurance, ambulance fund or other form of health insurance. However, the contract can require a resident who uses a motorised wheelchair to take out appropriate insurance in relation to the wheelchair
- > restrict the period of time a resident may be absent from the village
- > require residents to have a will or to disclose its location to the operator
- > enable an individual resident to be charged for legal, accounting or other services incurred by the operator in corresponding with the resident or a person acting on the resident's behalf or in enforcing the contract
- > impose a financial penalty for a breach of the village rules or the contract
- > exclude residents from receiving statutory benefits or advantages
- > waive an operator's liability for any negligent act or omission by the operator, its employees or agents
- > include a provision to the effect that the written contract represents the entire agreement between the parties to the contract
- > include a provision requiring a former occupant to pay the difference between the amount paid by a prospective resident, and the value of an occupant's residential premises determined before the sale of the premises
- > restrict a person from obtaining independent advice before entering into a village contract with the operator.


How much time do prospective residents have to consider the village contract before signing it?

The operator is obligated to provide prospective residents with a completed copy of each applicable village contract. The prospective resident has at least 14 days to review the contracts. During this time, prospective residents should carefully read the contract, compare the disclosure statement to the terms of the contract and discuss the contract with family and friends. Prospective residents should also consider having the contract reviewed by an independent solicitor, accountant or financial adviser.

Access Canberra does not provide advice or guidance on contracts for prospective residents.

What is a condition report?

A condition report sets out the condition of the premises before the prospective resident occupies the residence. It is to be completed by the operator in the presence of the prospective resident (or nominated person), dated and signed by both parties. Once completed, the prospective resident has 14 days to review the condition report and suggest changes.



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The condition report is used as evidence to resolve disputes about any damage to the residence that may occur during a resident's occupancy. This means it is important that it accurately reflects the condition of the property at the start.

Prospective residents might wish to inspect the property and take photos of its condition, and in particular any signs of damage. Residents should clearly indicate any parts of the condition report with which they disagree. Residents may request that photos or videos be attached to the condition report.

The operator must provide a prospective resident with a copy of the report before they occupy the residence and attach it to the resident's contract. However, a condition report is not required if the prospective resident is a registered interest holder.

Does the Act affect retirement village contracts made before it came into effect?

The *ACT Retirement Villages Act 2012* (the Act) commenced on 4 March 2013 and replaced the *ACT Fair Trading (Retirement Villages Industry) Code of Practice 1999*. Retirement village residence and service contracts made under the old laws remain in effect. The only exceptions are if a provision of the contract is not consistent with the Act or if implementation of the Act has resulted in the acquisition of property on unjust terms.

Prospective residents checklist

It is important to take the time to assess the different retirement villages, obtain independent advice and be fully informed before deciding to enter into a retirement village contract.

What to consider when selecting a retirement village:

- > decide whether a loan-licence agreement, unit titled retirement village, residential tenancy, community title or company title scheme agreement is the right option for you
- > determine which services and facilities are needed
- > request a disclosure statement and a general inquiry document from each retirement village
- > compare the incoming contributions and recurrent charges
- > visit the retirement village and talk to residents determine whether the retirement village will provide access to activities of interest such as gardening or golf
- > consider the village's proximity to medical care, shops, libraries, churches, clubs and public transport
- > ask about village safety and security
- > request a copy of the contract and review the terms
- > read the village rules and pet policies
- > inquire about a residents' committee
- > inquire about dispute resolution procedures or grievance procedures
- > review the contract termination fees and charges
- > consider the average length of time to re-sell or re-let the premises
- > ask about the rights and responsibilities of a registered interested holder
- > assess whether the premises are suitable for your needs
- > discuss your decision to move to a retirement village with family, friends or advisers
- > assess whether the village will meet long term and short term needs.



What if a resident changes their mind after entering into the village contract

Cooling-off period

Once the contract is signed, the new resident has a cooling-off period of seven business days, the first day beginning the day after the village contract is entered into. During this time the new resident can rescind the contract, without any loss or penalty, by providing written notice to the operator or the other party to the contract. However, the cooling-off period is waived if the resident moves into the residential premises before the end of the seven days.

Settling-in period

The settling-in period is generally the first 90 days a resident is entitled to occupy the residential premises. During this period the resident can rescind

the contract by permanently vacating the residential premises, or by giving written notice to the village operator indicating an intention to end the contract.

If the resident terminates the contract during the settling-in period then they will be liable to pay the fair market value rent for the period that they occupied the residence, the cost for any repairs or renovations made at the resident's request and a reasonable administration fee not exceeding \$200.

If the contract is rescinded, registered interest holders are entitled to the proceeds from the sale of the premises. If the former occupant is not a registered interest holder, then the former occupant is entitled to any ingoing contribution paid to the operator and any recurrent charges paid under the contract. These refunds are to be paid within 14 days after terminating the village contract.



What are the fees and charges?

There are a range of fees and charges to be paid by prospective and current retirement village residents.

Some of the required fees and charges include:

- > waiting list fees (maximum \$200 total)
- > holding deposits
- > ingoing contribution
- > purchase price (unit title, community title)
- > contract preparation fee (maximum \$200 total)
- > recurrent charges
- > departure fees
- > administration fees
- > levies to owners corporation (unit title)
- > charges to body corporate (community title).

Waiting list fees

A waiting list can be established when a retirement village does not have any vacant premises but there are prospective residents interested in the village. Prospective residents can be added to a waiting list by paying a waiting list fee of no more than \$200. Upon receiving the fee, operators will provide the prospective resident with a copy of the waiting list policy and a receipt.

When the prospective resident signs a contract with the retirement village, then the waiting list fee will either be refunded or deducted from the ingoing contribution or purchase price.

Alternatively, if the prospective resident decides not to enter into a contract with the retirement village and requests a refund in writing, the operator must return the waiting list fee within 14 days.

Holding deposits

Paying a holding deposit reserves a specific vacant premises once the occupant has given written notice of an intention to vacate. Once the operator receives the deposit, the premises cannot be offered to other prospective residents. The funds are held in trust by a trustee.

When the prospective resident signs a contract with the retirement village, the holding deposit will either be refunded or deducted from the ingoing contribution or purchase price. Alternatively, if the prospective resident decides not to enter into a contract with the retirement village and requests a refund in writing, the operator must return the holding deposit within 14 days.

However, if a prospective resident has paid a holding deposit, has entered into a residence contract with the operator and decides not to move into a retirement village, the operator may retain the reasonable costs incurred from leaving the residential premises empty. The reasonable costs cannot exceed an amount prescribed by regulation, or if no amount is prescribed, \$10,000.

The operator cannot retain deposit funds if the prospective resident has died or the prospective resident has been assessed as suitable for residential aged care.



Ingoing contribution

The ingoing contribution includes the amount a prospective resident pays under a loan-licence agreement for the right to become a resident and the instalment fees due under the residence contract. The ingoing contribution does not include the waiting list fee, recurrent charges or the purchase price of the land/lot.

The ingoing contribution is held in trust until the prospective resident enters into a residence contract with the operator, or provides the

operator with written notice that the prospective resident does not intend to enter into a residence contract. If the contract is terminated during the settling-in period, the operator must refund the ingoing contribution. However, if the contract is terminated after the settling-in period, departure fees are payable out of the former occupant's ingoing contribution.

Purchase price (unit title, community title)

The purchase price is agreed upon between the unit buyer and seller. Upon signing the contract to purchase, the buyer is obligated to provide the operator written notice of ownership.

Contract preparation fee

Contract preparation expenses are payable by the operator and resident in equal shares.

Recurrent charges

Residents pay recurrent charges to meet the expenses of operating a village and the amount varies from one village to the next. Some villages base the amount of the recurrent charges on the number of occupants or the size of the premises.

Recurrent charges can be varied as specified in the contract. When recurrent charges are varied according to a fixed formula, then the

operator must give the residents written notice at least 14 days before implementing a variation, but resident consent is not required before the variation goes into effect.

When the variation is not based on a fixed formula, only one variation in recurrent charges is permitted every 12 months. The operator of a retirement village must give a resident of the

village written notice of a proposed amendment of recurrent charges with at least 60 days' notice and resident consent is required before the change can take effect. Resident consent is required for all proposed budget expenditure and for all increases in recurrent charges not made by a fixed formula.

If resident consent cannot be obtained, the operator can apply to the ACT Civil and Administrative Tribunal (ACAT) for an order to determine the recurrent charges.

Departure fees

The departure fee is an amount a former occupant is obligated to pay in accordance with the terms of the contract. It is calculated on a daily basis and payable out of the former occupant's ingoing contribution or from the proceeds of the sale of the premises. The contract must specify whether a departure fee will be charged, the method for calculating the fee and state that no departure fee is payable in relation to any period after the resident permanently vacates the premises.

If a departure fee is based on what the next resident pays to enter the village, the operator should share in meeting the recurrent charges.

Administration fees

Operators can charge former occupants an administration fee of no more than \$200 if the contract is terminated during the settling-in period.

Levies to owners' corporation (unit title)

In a unit title retirement village, residents who own units pay contributions to the owners' corporation in addition to the recurrent charges paid to the operator. Unit title contributions are set by the residents each year at the annual general meeting of the owners' corporation and cover the management and maintenance of the common property.

Charges to body corporate (community title)

The owner of a unit in a unit title scheme is responsible for all the rates, taxes and charges payable.



What are common property and capital items in a retirement village?


What is common property in a unit title village?

There are two types of unit title properties in the ACT with retirement villages being typed as Class “A” or Class “B”. Class “A” units are generally high rise blocks with units above or below one another. The internal boundary of these units extends midway between walls, floors and ceilings from one unit to the next. The external part of the wall, which is not adjoining another unit, and the roof are usually common property. Unit owners are responsible for the structure within the internal boundary and the corporation is responsible for the common property.

Class “B” units are freestanding, without any other units above or below but can be joined to the next unit by a wall or roof. The boundary is usually the boundary of the land on which a townhouse has been built (or improvements fixed to the land, including the townhouse, garage etc.) Unit owners in a Class “B” retirement village are responsible for all maintenance, repair and improvement of everything inside that boundary.

What is common property in a community titled scheme village?

The common property of a community title scheme is all the lots included in the master plan for the scheme that are identified as common property.



In unit title villages the owners corporation is responsible for common property

Who is responsible for the cost of maintenance or the replacement of capital items?

Operators are responsible for the repair and maintenance of capital items. However, the operator of a retirement village is not responsible for any capital item that is owned by a resident of the village or common property under a community title scheme or units plan.

What are capital items in a retirement village?

Capital items include the following:

- > buildings or structures in the village
- > the plant, machinery or equipment used in the village's operation
- > fixtures such as bench tops, built-in cupboards and wardrobes, floor coverings, hot water system and stove
- > fittings such as light fittings, taps, and sanitary fittings
- > furnishings such as curtains or blinds
- > non-fixed items such as whitegoods, portable air conditioner, fan, tables and chairs.

How is the maintenance or replacement of capital items funded?

The operator of a retirement village can use the village capital works fund or recurrent charges to cover the cost of capital maintenance.

However, the village capital works fund and recurrent charges cannot be used to replace capital items, improve a capital item beyond its original

condition, or maintain or repair a capital item in circumstances where it would have been more cost effective to replace the capital item. Rather, these costs are the operators' responsibility. The only exception would be if the village residents consent by special resolution to the capital works fund or recurrent charges being used for these purposes.

Examples of instances when the operator cannot use funding from the capital works fund or recurrent charges include:

- > new building construction or a new stage of the village
- > any work arising from the breach of a statutory warranty under the *Building Act 2004, section 88* (Statutory warranties)
- > the depreciation of capital items
- > the refurbishment of vacant village residential premises.

It can be complex to distinguish between capital maintenance and capital replacement. The *Retirement Villages (Capital maintenance and replacement) Guidelines 2019* provide examples of some commonly encountered capital maintenance and capital replacement issues to assist residents, village operators and other industry participants with the interpretation of the rules.

Urgent repairs – capital items

A retirement village resident may only carry out capital maintenance or replacement of a capital item for which the operator of the village is responsible if the work is urgent, the resident has notified the operator and the repair was not completed within a reasonable period of time.

Once these conditions are met, the resident can arrange for the urgent repair to be completed by a properly qualified person and seek reimbursement from the operator. The operator must reimburse the resident within 21 days. If the operator neglects to repair or maintain capital items, residents can apply for an order from the ACAT.

Examples of urgent repair in a retirement village are:

- > a burst water service
- > a blocked or broken lavatory service

- > a serious roof leak
- > a gas leak
- > a dangerous electrical fault
- > flooding or serious flood damage
- > serious storm or fire damage
- > a failure or breakdown of the gas, electricity or water supply to residential premises in the village
- > a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating or laundering
- > any fault or damage that causes the village to be unsafe or unsecure.



What are the rights and obligations of village residents?

Resident rights

Retirement village residents have the right to:

- > live in reasonable peace, comfort and privacy
- > live in a reasonably safe and secure environment
- > exercise autonomy over personal and financial affairs
- > decide what possessions to have in the premises
- > add, remove or alter fixtures and fittings or renovate after receiving the operator's written consent (which may be subject to reasonable conditions such as requiring the premises be returned to the same condition when the resident's contract is terminated). However, the operator's consent is not required if the resident owns the premises in a unit titled retirement village
- > appoint an agent to receive notices and other documents on the resident's behalf
- > receive a copy of the proposed annual budget
- > receive proper notice of any proposed variation in recurrent charges
- > access information about the resident which is held by the operator
- > establish a residents' committee and stand for election
- > attend and vote at resident meetings
- > appoint a proxy to vote on a matter on the resident's behalf
- > request a variation in the village services and facilities or amendment to the village rules
- > raise a concern or complaint with the ACT Human Rights Commission
- > apply to the ACAT to resolve certain disputes.

Resident obligations

Residents have an obligation to:

- > respect the rights of other residents and other persons in the village
- > not interfere with the reasonable peace, comfort or privacy of other residents
- > respect the rights of the operator, its employees and agents, to work in an environment free from harassment or intimidation
- > not act in a manner that adversely affects the occupational health and safety of people working in the village
- > not intentionally or recklessly cause or permit serious damage to any part of the village or injury to the operator, an employee or any other resident
- > pay recurrent charges when due
- > pay the cost of repairs for damage to the residential premises in excess of fair wear and tear
- > comply with village rules and ensure guests also comply with the rules.

What are the rights and obligations of the operator?

Operator rights

Operators have the right to:


- > sell or transfer ownership of the village or its management rights
- > decide who is employed within the village, subject to the amount for salaries and wages in the annual budget
- > propose an amendment to the village rules or a variation to the services and facilities provided at the village
- > apply to the ACAT to settle disputes.

Operator obligations

Operators have an obligation to:

- > not interfere with the reasonable peace, comfort, privacy and quiet enjoyment of residents
- > not interfere with residents' autonomy over personal and financial affairs
- > not allow other residents to unreasonably interfere in the peace, comfort and quiet enjoyment of fellow residents
- > ensure residents can reside in the village without being harassed or intimidated
- > ensure the village is reasonably safe and secure
- > prepare written safety and emergency procedures
- > conduct an annual safety inspection
- > provide a proposed annual budget to each resident at least 60 days before the start of the financial year or on an agreed day at least 30 days before the beginning of the financial year
- > seek the residents' consent to the spending in the proposed annual village budget
- > hold an annual management meeting with residents

- > maintain annual and quarterly accounts of spending and income
- > ensure the village's annual accounts are audited according to recognised accounting standards by an auditor qualified under the *Corporations Act 2001* if the village generates more than \$50,000 in annual recurrent charges
- > provide residents with copies of the annual accounts within four months of the end of each financial year
- > provide the residents' committee with copies of the quarterly accounts within 28 days after the quarter ends
- > provide receipts for recurrent charges **unless paid by direct debit**
- > comply with the village rules
- > ensure the village provides vehicular access to emergency and home care service staff
- > insure the village to full replacement value with public liability coverage of at least \$10 million.



Operators must not interfere with the reasonable peace, comfort, privacy and enjoyment of residents

How do residents provide input?

Consent

Resident consent is required for several aspects of retirement village operations and is obtained when more than 50% of the residents who vote are in agreement.

Resident consent is required to:

- > establish a residents' committee
- > allow non-residents to attend resident meetings
- > spend funds in the proposed annual budget
- > amend the existing annual budget
- > amend recurrent charges payable under a village contract
- > finance payroll tax using recurrent charges
- > inform the operator that residents do not want to receive a copy of the proposed annual budget or a copy of quarterly accounts
- > inform the operator that residents do not want to have the accounts audited
- > appoint a new auditor if the audit fees are to be paid by the residents
- > distribute surplus funds from the annual accounts at the end of the village's financial year to the operator and exiting residents in the same proportion as their contribution to the surplus.

Special resolution

Resident consent can also be obtained through a special resolution. Obtaining consent through a special resolution requires 75 per cent of the residents who vote to be in agreement. To conduct a special resolution, each resident must receive written notice of the action being considered at least 21 days before the meeting where residents will vote. Included in the written notice will be a ballot whereby residents can vote by submitting a postal vote to the residents' committee or the operator, if the village does not have a residents' committee. The Act also requires a quorum to be present at the meeting, either personally or by postal or proxy vote.

Resident consent through a special resolution is required to:

- > propose an amendment to the village rules
- > request the operator provide a village emergency system

- > change the village services or facilities
- > permit the operator to use money from the capital works fund for a different purpose than specified in the Act.

The requirements for conducting a special resolution ballot are outlined within the Regulation, and must be followed.

Residents' committees

Residents' committees, acting on behalf of village residents, provide a basis for a constructive working relationship between residents, operators and management. There can only be one committee per village.

Meetings

Village operators must hold an annual management meeting of the residents within four months of the end of each financial year for the village. Residents are to be notified of the meeting at least 14 days in advance and receive a copy of the meeting agenda. Residents can submit written questions to the operator at least seven days before the meeting or ask questions at the meeting. The operator must keep minutes of meetings with residents and this can be kept electronically. The minutes must be made available by the operator for inspection by the village residents.

Village operators must not attend meetings of residents or the residents' committee unless the residents have consented to the operator being present. Operators are not to be present during the period of the meeting in which the residents vote on a matter.

Voting

Where multiple residents live in one unit, the default rule is that only one person may vote on matters which require the operator to obtain the consent of residents. The 'one vote per unit' model achieves equity between sole occupiers and multiple-occupants of units in retirement village. However, individual retirement villages may adopt by special resolution a voting model of 'one vote per person'.

What matters are covered by the village rules?

Village rules are not compulsory but can be established to govern the use, enjoyment, control and management of a retirement village and cover topics such as:

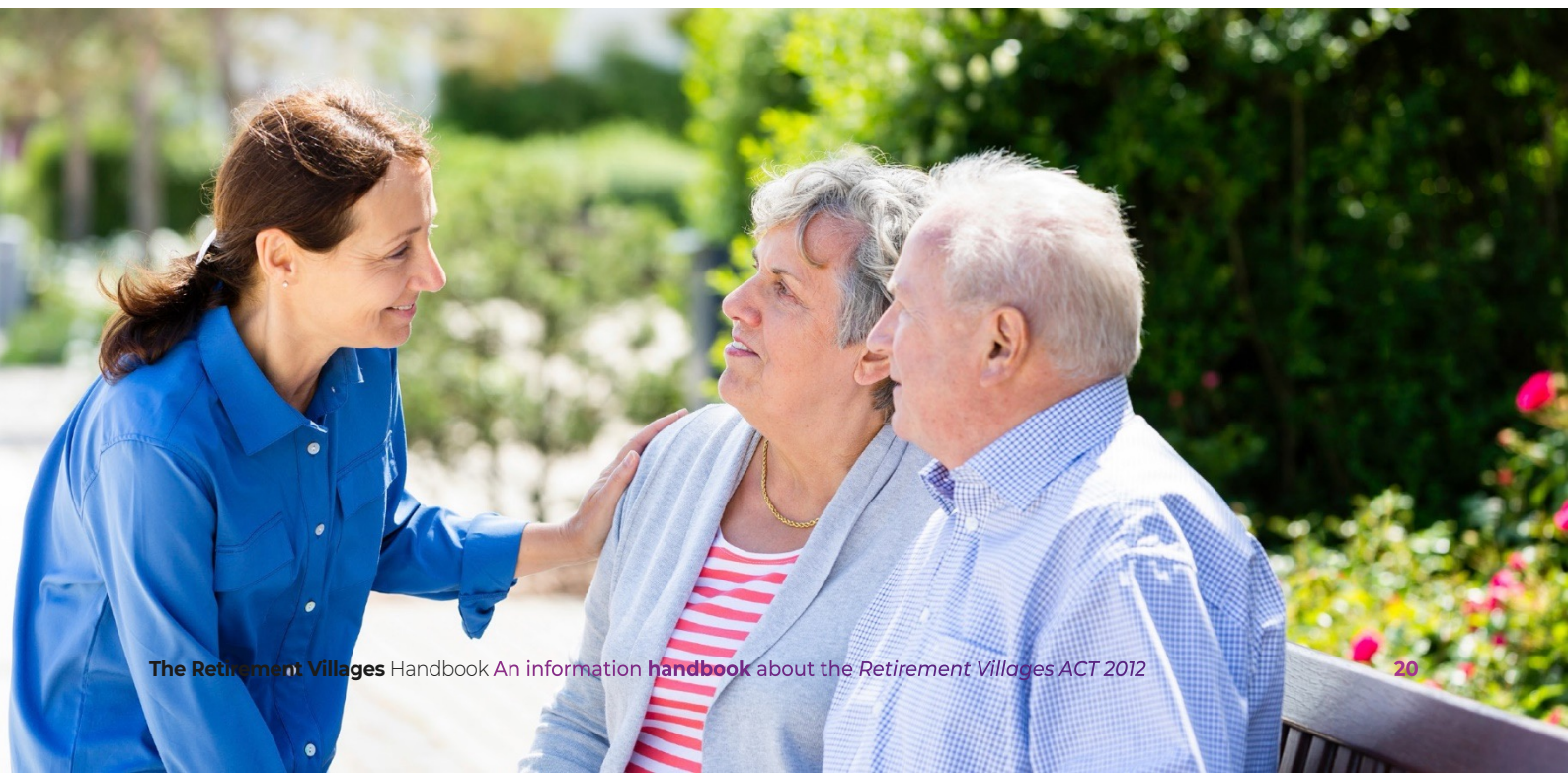
- > visitors and guests
- > noise
- > security in the village
- > pets
- > garbage disposal
- > parking
- > the use of services or facilities
- > the external appearance of residents' premises
- > gardening and landscaping.

If there are village rules, a copy of the current village rules must be attached to a prospective resident's village contract for review prior to signing the contract. Village rules do not apply to a part of a retirement village that is subject to a community title scheme or unit plans or to the residents of that part of the village. Instead, the *Community Title Act 2001* and *Unit Titles (Management) Act 2011* apply. The operator must ensure that the village rules are consistent with the Act.

Can the village rules be changed?

The village rules can be changed with the consent of residents obtained through a special resolution. A group of residents or the residents' committee can propose an amendment to the village rules by submitting a written request to the village operator. Upon receiving the written request, the operator must call a residents' meeting within 28 days to consider a special resolution about the proposed amendment. If the residents consent to the proposed amendment, the operator is informed and the amendment generally takes effect seven days later.

If the operator or a resident objects to the proposed amendment, they can apply to the ACAT for an order prohibiting the proposed amendment. Village rules cannot limit a person's right to make a complaint to the ACT Human Rights Commission or an application to the ACAT regarding a concern or dispute.



How can a village contract be terminated?

Methods for ending the village contract must be listed in the contract. If the resident is a registered interest holder then the contract ends when the sale of the premises is completed. If the resident is not a registered interest holder, or the holder of an assignable sublease, the contract ends on the day the resident permanently vacates the residence.

The resident must provide the operator with at least one month's written notice of the intention to vacate the premises. Alternatively, the residence

is permanently vacated upon the death of the last surviving resident under the contract. A resident or operator can also apply to the ACAT for an order ending the contract.

What fees and charges are due when a resident vacates the premises?

The resident's contract must state whether departure fees are due when the contract ends and how the fees will be calculated. If the contract is terminated during the settling-in period the former occupant is responsible for the fair market rent for the period of occupancy, the cost of any repairs and an administrative fee of less than \$200, but there are no termination fees. Former occupants may be liable to pay a departure fee which is based upon the period of residency and calculated on a daily basis.

If the former occupant was a registered interest holder, the departure fee is payable out of the proceeds of the sale of the residential premises.

The operator is required to pay a share in meeting the recurrent charges where the departure fee is based on what the next resident pays to enter the village. For registered interest holders, an operator shares in the capital gain under the village contract where the departure fee payable by the former occupant is calculated with reference to the amount of the ingoing contribution payable by the incoming resident. The amount of the capital gain which the operator is deemed to receive is the same percentage as the percentage applied to the incoming resident's ingoing contribution when calculating the departure fee.

Recurrent charges for optional services, such as meals or laundry, end on the date the resident moves out. If the contract entitles a former resident to a capital gain, then the operator may be required to pay a share of the recurrent charges for general services, where the charges are incurred after 42 days after the resident moves out.

How are disputes resolved?

Effective methods of dispute resolution include direct communication between the parties, the disputes committee, third party involvement or if all else fails, making an application to the ACAT.

Talk to the village operator or resident

Often the quickest and easiest way to solve a problem between a resident and the village operator, or another resident, is to discuss the issue directly with the person and attempt

to come to a mutually agreeable resolution. Residents should also carefully read the terms of their contract and look at any legislation or guidance material.

Get help from a third party

An independent third party can be used to help resolve the dispute.

The ACT Disability & Community Services Commissioner, who is part of the ACT Human Rights Commission, can consider complaints about the provision of services for older people, including retirement villages. The Commissioner's role is to consider concerns and complaints and assist the parties to resolve a matter through an informal, accessible conciliation process. If the matter cannot be resolved through conciliation, the complainant can make an application to the ACAT to have the matter heard and determined.

For more information about the ACT Human Rights Commission's role visit hrc.act.gov.au, call the Commission on **6205 2222** or email to human.rights@act.gov.au.

Disputes committee

Retirement villages must establish a committee (a disputes committee) to resolve disputes that arise between residents and operators. The disputes committee consists of a member appointed by residents, a member appointed by the operator and a chair agreed upon by the representatives of the operator and residents to be independent. The disputes committee must, within 30 days after receiving notice of a dispute: resolve the dispute; arrange for mediation; or tell the parties that the dispute is unresolved.

It is not compulsory for residents and operators to use the disputes committee to resolve disputes before utilising other options.

A person can make a complaint to the ACT Human Rights Commission and try to resolve the complaint through conciliation at the Commission. Alternatively, the parties may proceed directly to dispute resolution by the ACAT or seek outside mediation.

Contact Access Canberra or the ACT Human Rights Commission

If a problem remains unresolved, Access Canberra can be consulted by calling **13 22 81**. Access Canberra can provide information but cannot resolve disputes, give you legal advice or tell you what you should do.

You can also call the ACT Human Rights Commission on **6205 2222** for information about its complaint and conciliation service for retirement village complaints.

Apply to the ACT Civil and Administrative Tribunal (ACAT)

If the dispute cannot be resolved informally, an application can then be made to the ACAT for an order to settle the dispute. The ACAT provides a simple and inexpensive way to resolve issues arising from legislation in a manner which is fair and consistent.

Applications to the ACAT may be made by completing the Retirement Villages application form, and filing the completed form at the Tribunal Registry. When the application form is lodged you will be required to pay a filing fee or request that the filing fee be waived. People do not need a lawyer to represent them in ACAT. However, it can be beneficial to seek legal advice before going to ACAT or during an ACAT matter. This can help people understand how ACAT might decide their matter based on the law and what information is most relevant for them to provide.

ACAT cannot give people legal advice about disputes, but its members and staff can provide information about its processes.

ACAT has powers to make a wide range of orders to resolve retirement village disputes fairly and appropriately. Residents and operators are legally required to comply with ACAT's orders.

Previous decisions of ACAT may provide some guidance on how ACAT may decide new cases. A selection of published decisions of ACAT are available on the ACAT website or in an online searchable database on the Australasian Legal Information Institute website at: austlii.edu.au

What needs to be included in the application?

The application form requires the name and addresses of both parties to the dispute (referred to as the 'applicant' and the 'respondent'). You will need to summarise the details of the dispute, and what outcome or orders you seek from the ACAT. If there are relevant documents such as a contract, minutes of a meeting, or other correspondence, you should attach that to your application.

How is the application filed?

You can file an application by delivering it in person to the ACAT Registry, or by sending it to the ACAT Registry by post, by email, or by facsimile.

You will need to pay the prescribed fee or seek a waiver before the application can be progressed.

Where is the ACAT?

The ACAT is located at Allara House, 15 Constitution Avenue, Canberra City.

The other contact details for the ACAT are listed in this handbook under 'Useful contacts'.

What happens once an application is filed with the ACAT?

Directions Hearing

After the application is filed it will usually be given a date for a 'Directions Hearing'. The ACAT Registry will send a Notice of the Directions Hearing, and a copy of the application, to each party to the dispute.

Where time permits, the respondent will be requested to file a response to the application prior to the Directions Hearing.

At the Directions Hearing, the matter will be considered by a Member of the ACAT who will

clarify the dispute referred to in the application, and the response to the application. The Member will discuss with the parties the best route to resolution of the dispute. This may include referring the parties to an alternative dispute resolution process such as a preliminary conference or mediation, where the dispute may be negotiated and final orders made by consent.

Even where a matter is listed for alternative dispute resolution, it will usually also be given a date for final hearing and the Member will make directions to assist each party with the proper preparation of their case. This usually includes directions about the filing of documents or witness statements.

The Orders and Directions made at the Directions Hearing will be typed and sent to each party.

These orders will confirm any conference, mediation or hearing dates which have been set.

Preliminary Conference/Mediation

A preliminary conference or mediation is convened by a member or Registrar of the ACAT. A conference or mediation is a more private and confidential forum in which the parties to the proceedings can discuss the dispute with the

assistance of the Member or Registrar, and seek to negotiate an agreed outcome. Where agreement is reached, final orders can be made by consent.

Even where there is no overall agreement, the parties may be assisted in refining the real issues in dispute, which can be of assistance in the final hearing of the matter.

Final Hearing

A final hearing is conducted by a Member of the ACAT. During a hearing, each party will be given the opportunity to present their evidence and respond to the other party's presentation. The ACAT will observe natural justice and procedural fairness

in the hearing process, and will make a decision applying the provisions of the relevant legislation. The decision of the ACAT is recorded in final orders of the ACAT usually made at the conclusion of the hearing. A copy of the final orders is then issued by the ACAT registry and sent to each party.

Parties to the matter may seek written reasons for a decision, within 14 days of the decision being made. It is possible to appeal a decision to the Appeal Division of the ACAT by filing a notice of appeal within 28 days of the decision being made.

What is the role of Access Canberra?

Access Canberra administers the laws governing retirement villages and has the following responsibilities:

- > provide information regarding retirement village legislation
- > clarify legislative requirements
- > deliver information sessions
- > conduct inspection programs
- > investigate allegations of non-compliance.

Access Canberra does NOT:

- > resolve disputes between operators and residents
- > recommend certain retirement villages
- > comment on the performance or integrity of any ACT retirement village for prospective residents.

What is the role of the ACT Human Rights Commission?

The ACT Human Rights Commission (HRC) has a specific complaint handling role for complaints about retirement villages in the ACT. The HRC can help resolve concerns or complaints residents have with the village operator.

You can call the HRC to talk about your concern, how to make a complaint and options for resolving the complaint.

You can make a complaint by filling in the online form at hrc.act.gov.au, sending an email to human.rights@act.gov.au or calling the HRC on **6205 2222**. The complaint process is free, flexible and informal. HRC staff will talk to you about the outcomes you are seeking and work with you and

the operator to try and resolve your concerns quickly & informally. If the matter cannot be resolved, you can take your complaint to the ACAT to have the matter heard and determined.

The ACT Human Rights Commission also handles complaints about

- > discrimination
- > health services & health records
- > exploitation or abuse of people over 60
- > services for older people like in home support or transport
- > disability services
- > services for victims of crime.

Useful contacts

The contact details listed below are current at the time of printing and may change over time.

Access Canberra

Telephone: 13 22 81

Website: accesscanberra.act.gov.au

ACT Health Services Commissioner

The Health Services Commissioner deals with complaints about services for older people in the ACT, including services provided by Retirement Villages.

Telephone: **6205 2222**

Email: human.rights@act.gov.au

Website: hrc.act.gov.au

ACT Civil and Administrative Tribunal

Telephone: **6207 1740**

Email: tribunal@act.gov.au

Website: acat.act.gov.au

Other agencies

Council on the Ageing ACT (COTA)

Housing Options Advisory Service.

Telephone: **6282 3777**

Email: contact@cotaact.org.au

Website: cotaact.org.au

Legal Aid ACT

Provides free legal information advice and education.

Telephone: **1300 654 314**

Email: legalaid@legalaidact.org.au

Website: legalaidact.org.au

Older Persons ACT Legal Services

Specialist service within Legal Aid ACT. OPALS provides legal help to older people in Canberra.

Telephone: **1800 353 374**

Email: opals@legalaidact.org.au

Website: legalaidact.org.au/opals

ACT Law Society

Provides referrals to solicitors specialising in retirement village matters.

Telephone: **6274 0300**

Email: mail@actlawsociety.asn.au

Website: actlawsociety.asn.au

ACT Retirement Village Residents Association

Represents the interests of retirement village residents.

Email: enquiries@actrvra.org.au

Notes and records of discussions

Whenever possible, your notes and records should include the date and time they occurred and who you spoke to.

Date/...../..... Time Contact name

Date/...../..... Time Contact name

Date/...../..... Time Contact name

Date/...../..... Time Contact name

Date/...../..... Time Contact name

Date/...../..... Time Contact name

The Retirement Villages Act 2012 aims to protect the rights of residents in retirement villages and provide clear guidance for operators in the ACT.

Access Canberra has prepared this handbook to help prospective residents of retirement villages better understand the rules governing retirement villages.

This handbook does not replace sound legal advice or the decisions of the ACT Civil and Administrative Tribunal (ACAT) and the courts.

While everything practicable has been done to ensure the accuracy of information in this handbook, no liability is accepted for any loss or damage whatsoever attributable to reliance upon any of that information.

Nothing in this guide should be taken to replace the need to seek professional advice.

Accessibility

The ACT Government is committed to making its information, services, events and venues as accessible as possible.

If you have difficulty reading a standard printed document and would like to receive this publication in an alternative format such as large print, please contact Access Canberra through the online feedback form on the website at act.gov.au contact or phone **13 22 81**.

If you are deaf, or have a hearing or speech impairment, contact us through the National Relay Service. For more information, visit: relayservice.gov.au.

If English is not your first language and you require a translating and interpreting service, please phone **13 14 50**.