

Village contract information meeting

Guidelines for retirement village operators

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Introduction

Retirement village residents have the right to be informed of the estimated costs payable if they were to leave their current premises through a village contract information meeting.

These guidelines are issued under section 189B of the *Retirement Villages Act 1999* (the Act) to assist operators and residents by providing information on the process for conducting a village contract information meeting.

It should be noted that the NSW Civil and Administrative Tribunal (the Tribunal) may take these guidelines into account to determine if operators have complied with the requirements of the Act.

Any reference to an *operator* in this guideline means “the person operating a retirement village who manages or controls the village”.

Request for a meeting

Residents may request a contract information meeting with the operator at least once a year (section 69A of the Act). The resident or a holder of their Power of Attorney needs to make the request in writing (e.g. email or letter).

The operator must:

- give the resident a written reply about the meeting;
- hold a face-to-face meeting with the resident within 30 days of receiving their request (this allows sufficient time to review contracts, calculate any figures and prepare for the meeting); and
- offer to explain the resident's current village contract information and give them a written summary of that information at the meeting. The resident can waive their right to oral explanation, however, the operator must still provide the written information.

The resident may nominate in writing one person or more to represent them at the meeting or attend it with them. Options could include a family member, friend or adviser.

The operator may nominate someone to conduct the meeting. That person must have the appropriate authority, qualifications and skills and also be capable of explaining and answering questions about the resident's contract information.

The operator should confirm that the resident (and any person accompanying the resident to a meeting) understands:

- the information provided;
- that the resident's continued right to occupy the residential premises is not affected in any way by the meeting or the information being provided; and
- that the resident's right to occupy their unit is not, and will not be, terminated.

To communicate information to the resident effectively the operator may need to consider factors such as the following:

- the resident's age and health;
- the resident's ability to understand English; and
- the resident's understanding of oral or written information.

Depending on the resident's needs, it may be appropriate to support them by ensuring that they have a nominated representative present who can better understand the discussion and relay information to them.

The operator must not charge the resident for any preparation or provision of information associated with the meeting. For example, the preparation of figures.

If the operator has already met with a resident to fulfil a request under section 69A of the Act then they are not required to agree to another request in that calendar year. However, if an operator receives multiple requests they can still agree to meet with the resident or provide them with their contract information.

Information to provide to the resident

The information the operator needs to give the resident will depend on if they are a registered interest holder or not.

A registered interest holder is a resident who is:

- a registered proprietor of the premises;
- an owner of a lot in a strata scheme;
- a proprietor of a lot in a community land scheme;
- an owner of shares in a company title scheme for the premises; or
- entitled to at least 50 per cent of any capital gain through a registered longterm lease.

Registered interest holder

The village contract information needed for these residents is:

- a summary of general requirements under the Act, Regulations and the village contract regarding terminating the contract (necessary for sale);
- the estimated departure fee (if any) payable by the resident;
- the resident's liability to pay recurrent charges (section 152)
- for residents who are registered interest holders and receive 50 percent or more of the capital gain, their liability to pay recurrent charges for 42-days after permanent vacation (section 152 (e));
- estimates of any amounts payable by the resident in relation to the sale of the residential premises;
- the estimated sale price for the residential premises;
- the estimated amount payable by the operator to the resident following the sale of the residential premises;
- a summary of processes and estimates for residents eligible for aged care daily accommodation payments (section 182AG);
- a summary of processes and estimates for those who are entitled to early access to exit entitlements (section 182AC); and
- estimates of any other amounts the resident would pay under their contract (including any capital gain shared with the operator).

Operators should also consider providing residents with information regarding the engagement of an external selling agent and whether this is likely to result in any additional costs.

Not a registered interest holder

The information needed for these residents is:

- a summary of general requirements under the Act, Regulations and the village contract regarding terminating the contract (necessary for sale);
- the estimated departure fee (if any) payable by the resident;
- the resident's liability to pay recurrent charges (section 153);
- the estimated amount payable by the resident for repairs required to the residential premises (section 163);
- the estimated ingoing contribution that would be payable by an incoming resident of the residential premises, where this contribution is material to the calculation of estimates;
- the estimated amount the operator pays to the resident, should the resident vacate the residential premises; and
- estimates of any other amounts the resident would pay under their contract (including any capital gain shared with the operator).

Providing a reasonable estimate

The operator must state the date on which the calculated amounts have been based. This date can be the date of the meeting, or no later than 30 days after the meeting.

This date should be treated as if it were the date on which the resident's right to occupy their residential premises were terminated. The operator should calculate the estimates as if the resident were leaving the village on the date of the meeting or a date no later than 30 days after the date of the meeting.

Significant penalties can apply for providing estimates that are not reasonable. A reasonable estimate will ultimately depend on the circumstances of each resident.

Operators should exercise professional skill and care in determining estimated amounts. An operator may have to provide evidence to NSW Fair Trading to support the reasonableness of the estimated amounts.

Making a reasonable estimate

Operators should consider all relevant information before providing estimates to the resident or including estimates in any document.

The operator must make reasonable estimates for:

- the estimated departure fee (if any);

- the resident's liability to pay recurrent charges (sections 152 or 153)*;
- estimates of other amounts the resident may be required to pay on leaving the village;
- amounts the operator would be required to pay the resident;
- and
- estimate of other amounts that may have to be paid that an operator determines should be made after careful consideration of all factors that will affect these amounts (section 69A(7)).

* Note from 1 July 2021, residents who are registered interest holders and who receive 50 per cent or more of the capital gain, will have their recurrent charges capped at 42-days after permanent vacation of the retirement village.

When determining reasonable estimates, the operator should take into account matters such as the following:

- the specific wording of the contract the resident has entered into with the village operator;
- the method used in calculating the departure fee, including the rate of accrual and reasons for any change in that rate;
- any written summary previously provided to the resident for any purpose;
- any other records kept by the operator or former operators used in calculating estimated amounts; and
- any other requirements of the Act and Regulation.

Operators must provide residents with a realistic sale price as the estimated sale price. This should be reasonable and evidence based – it does not need to reflect the resident's expectations or their preferred sale price. The operator must not quote a price that is less than a property's estimated sale price; for example, during a future sales campaign for the property.

Operators must advise residents who are registered interest holders and receive 50 percent or more of the capital gain, of their option to request:

- from the Secretary of the Department of Customer Service an order for the early payment of their exit entitlement, if their unit has not sold within certain time periods and there has been an unreasonable delay in the sale of the property (section 182AC)
- the operator pay an aged care facility their daily accommodation payment, which will be deducted from their exit entitlement once their premises sells (section 182AG).

Operators are not expected to predict future economic conditions or market forces. Operators are expected to provide information that is applicable and relevant at the date of the meeting.

Evidence for determining estimates

To substantiate the reasonableness of an operator's estimates the NSW Fair Trading Commissioner can request the operator for the information and file notes used to determine their estimates (section 69A(11)).

When determining estimates, operators must:

- be prepared to provide the resident with the data and rationale behind their calculations;
- record all relevant information that would allow them to show how they determined a particular amount to be a reasonable estimate; and
- keep file notes and all information relied upon to determine an estimated amount.

Keeping file notes

An operator should keep file notes on information such as:

- contract information;
- any calculations used to arrive at reasonable amounts that have been communicated to the resident;
- any discussions with the resident; and
- relevant change in recurrent charges in the village or the circumstances of the resident.

Reasonable estimate of the sale price

An operator must provide the resident with an estimated sale price for the residential premises (section 69A(7)(v)).

The estimated sale price can be used by the operator when determining estimates of any other amounts payable by the resident, including:

- any amount of capital gain shared with the operator on the sale of the property; and
- □ any sale costs associated with that sale as required.

When determining a reasonable estimate of the sale price of a property, an operator should take into account:

- the specific factors that will influence the expected sale price;
- the features of the village and its surrounds;
- any sales of comparable properties in the village;
- feedback from potential purchasers of those properties or other inquiries;
- any current or relevant valuations provided in respect of the property;

- the characteristics and features of the property, such as its size and location, including the existence of any 'material facts'; and
- the methods used to market properties in the village.

For information on material facts, refer to the [Misrepresentation guidelines](#) on the NSW Fair Trading website.

Keeping file notes

An operator should keep file notes on:

- comparable sales of residential properties in the village;
- market conditions;
- the property's features;
- other relevant information that may affect the estimated price that is provided
- any discussions with the resident (optional); and
- relevant changes in local market factors, such as the operator building further new residential premises for sale in the village (optional).

Evidence for determining an estimated sale price

As with other estimations, the NSW Fair Trading Commissioner may also request that the operator provide it with the information it used to determine a reasonable estimated sale price. Operators must similarly be prepared to inform the resident of their evidence for these, and record and keep all relevant information used to determine the estimate.

Australian Consumer Law

The Australian Consumer Law (ACL) has other requirements an operator must follow. These requirements prohibit unfair practices and misleading or deceptive conduct. The ACL also makes it an offence to provide false or misleading representations about the price, quality or standard of a property.

The ACL prohibits an operator misrepresenting the price (or price range) they believed a property would sell for, or its market value.

For more details on false or misleading pricing under the ACL, refer to the [Australian Consumer and Competition website](#) information on false or misleading claims, and on real estate.

If an operator is a licensed real estate agent (under the *Property, Stock and Business Agents Act 2002*) and determining the sale price as an agent, they must refer to Fair Trading information on their responsibilities, including on [Underquoting](#) and the [Misrepresentation guidelines](#).

Checklist for operators

Use this checklist to assist in conducting contract information meetings with residents

Meeting with the Resident	
	Has the resident received a written reply after they requested a contract information meeting?
	Has the meeting been arranged within 30 days from receiving the request?
	Is the resident aware they may nominate a person on their behalf to attend the meeting, or bring along a family member, friend or adviser?
	Have you considered any special requirements the resident may have in relation to their age, health, English proficiency, or ability to understand oral / written information?
	As the operator, do you want to nominate a person to conduct the meeting? Does the person have the required skills and knowledge to represent you? Are they capable of explaining, and answering questions about, the resident's contract information?
	<p>Have you explained the resident's current village contract information (unless waived), and provided a written summary at the meeting of the explanation of that information?</p> <p>The template provided with these guidelines can be used by operators to provide the resident with a written summary of the contract information.</p>
Gathering information	
	<p>Have reasonable estimates been made for the departure fees, recurrent charges, , other amounts paid on departure or amounts the operator would be required to pay the resident?</p> <p>Have you determined whether the resident is a registered interest holder and receives 50 or more percent of the capital gain? (if they are, you will need to tell them about their options to request an early payment of their exit entitlement or receive payments for aged care facilities)</p> <p>Have you considered the wording in the village contract, rate of accrual and reasons for any change in that rate, any written summary previously provided to the resident for any purpose or any other records used for calculating estimated amounts?</p>
	<p>Is the estimated selling price a reasonable estimate of the likely selling price for the property?</p> <p>Have you considered comparable recent sales, recent purchaser interest in similar properties, real estate market conditions, the property's features and other relevant information?</p>
	Have the reasonable estimates been calculated using the date of the meeting scheduled (or a date no later than 30 days after the meeting) with the resident?

	Do you have evidence which is sufficient to support the reasonable estimates which can be provided to the resident if necessary?
Maintaining Evidence	
	Can the estimated sale price be supported by written information from reliable sources?
	Is all the information that was used to determine the estimated sale price kept in a safe business place so it can be provided either to the resident or the Commissioner for Fair Trading if necessary?
	Have file notes been captured regarding discussions with the resident, any relevant change in recurrent charges in the village, changes in circumstances of the resident or in local market factors?

Village Contract Information Template

Retirement Villages Act 1999, section 69A(1)(b)

Residents have the right to request a contract information meeting with the operator once each year. Operators are required to hold a face-to-face meeting with a resident within 30 days of receiving the request.

The operator is required to explain to the resident the current village contract information, and provide a written summary at the meeting of the explanation of that information. This document is to be used by operators to provide residents with a written summary of their current village contract information.

It is important that the resident (or a representative) understands this information and that:

- the resident's right to occupy the residential premises is not affected in any way by this meeting or the provision of the information; and
- their right to occupy is not, and will not be, terminated.

NSW Fair Trading may request operators to substantiate the reasonableness of their estimates.

Name of resident

Name of representative on behalf of resident

(if applicable)

Name of operator in attendance

--

Name of person attending on
behalf of operator

(if applicable)

Date of request (from the
resident)

--

Date of meeting

--

Location where meeting held

CONTRACT INFORMATION

PROPERTY DETAILS

Address:

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Title of the property: *[Circle only one]*

Loan / Licence – Non-registered interest holder

Lease (50 years or less) – Non-registered interest holder

Lease (50 years or more) – Registered interest holder

Strata title – Registered interest holder

Community title – Registered interest holder

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Company title – Registered interest holder

Date costs have been calculated in relation to

(this is normally the meeting date)

Amount of ingoing contribution / \$ purchase

price for the premises

Current rate of recurrent charges for \$ _____ per
_____ the premises

Share of any capital gains payable to _____%
you on termination

Formula for departure fee payable
on termination

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ESTIMATED SALE PRICE

Estimated sale price for this property is:		\$
Estimated sale price has been based on: [If used, tick the corresponding box]	Comparable recent sale prices	
	Property features	
	Recent purchaser interest in similar properties	
	Real estate market conditions	
	Other	

ESTIMATED DEPARTURE FEES

Departure fee is based on: [Select one only]	Entry payment			
	New entry payment			
Departure fee structure: [Insert additional rows as required]	<u>Years</u>			<u>Fee percentage</u>
		to		%
		to		%
		to		%

		to		%
Administration fee: [If none, put \$0]				\$
Other exit fees: [If none, put \$0 and strikethrough]				\$
CAPITAL GROWTH				
Share of capital gain: (If none, put 0%)				%
Share of capital loss: (If none, put 0%)				%
ONGOING FEES				
General recurrent charges*:	\$	per: week / fortnight / month		
Optional services of:	\$	are included in this amount		
Strata/Community levies:	\$	per: week / fortnight / month		
AMOUNT PAYABLE BY RESIDENT				
Reinstatement:		\$		
For the sale of the premises:	Sales Commission	\$		
	Advertising	\$		
	Other	\$		
AMOUNT PAYABLE BY OPERATOR				
After premises has been sold:		\$		
After premises has been vacated:		\$		
Incoming contribution from incoming resident:		\$		

* Reminder: For both registered interest holders who receive 50 or more percent of the capital gain and non-registered interest holders, these recurrent charges will cease 42-days after permanent vacation of the retirement village (if their premises does not sell)

The operator has provided and explained to me/my representative the contract information related to my circumstances and I understand the information that has been provided.

Signed by resident (or representative)

Print Name

To the best of my knowledge, the information contained in this document is true and accurate at the time it is provided and all care and diligence has been used in determining the estimated amounts.

Signed by operator (or representative)

Print Name

Date