



RETIREMENT VILLAGES ACT, 1987

No. 46 of 1987

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ELIZABETHAE II REGINAE

A.D. 1987

No. 46 of 1987

An Act to regulate retirement villages and the rights of residents of such villages; and for other purposes.

[Assented to 30 April 1987]

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

1. This Act may be cited as the "Retirement Villages Act, 1987". Short title.
 2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.
 3. In this Act, unless the contrary intention appears— Interpretation.
 - "administering authority" in relation to a retirement village means the person by or on whose behalf the retirement village scheme is administered and includes a person (other than a resident) who owns land within the village:
 - "business day" means any day except a Saturday, Sunday or public holiday:
 - "the Commission" means the Corporate Affairs Commission:
 - "premium" means a payment (including a gift) made to the administering authority of a retirement village in consideration for, or in contemplation of, admission of the person by or on whose behalf the payment was made as a resident under a retirement village scheme (including any such payment made for the purchase of a residential unit in a retirement village or for the purchase, issue or assignment of shares conferring a right to occupy any such residential unit) but does not include—
 - (a) any such payment excluded by regulation from the ambit of this definition;
- or

(b) recurrent charges:

“recurrent charge” means any amount (including rent) payable by a resident to the administering authority of a retirement village on a recurrent basis:

“residence contract” means a contract under which a person enters into occupation of a unit in a retirement village:

“residence rules” means the rules with which residents of a retirement village are expected by the administering authority to comply:

“resident” of a retirement village means a person who has been admitted to occupation of a residential unit in accordance with the scheme and includes a spouse of such a person who—

(a) is residing with that person;

or

(b) was residing with that person at the time of his or her death:

“residential unit” or “unit” means premises or a part of premises designed for separate occupation as a place of residence and includes a hostel unit:

“retired person” means a person who has attained the age of 55 years and retired from full-time employment:

“retirement village” means a complex of residential units or a number of separate complexes of residential units (including appurtenant land) occupied or intended for occupation under a retirement village scheme:

“retirement village scheme” or “scheme” means a scheme established for retired persons and their spouses, or predominantly for retired persons and their spouses, under which—

(a) residential units are occupied in pursuance of lease or licence;

(b) a right to occupation of residential units is conferred by ownership of shares;

(c) residential units are purchased from the administering authority subject to a right or option of repurchase;

or

(d) residential units are purchased by prospective residents on conditions restricting their subsequent disposal,

but does not include any such scheme under which no resident or prospective resident of a residential unit pays a premium in consideration for, or in contemplation of, admission as a resident under the scheme:

“service contract” means a contract between an administering authority or former administering authority of a retirement village and a resident for the provision to the resident of—

(a) hostel care;

(b) infirmary care;

- (c) medical or nursing services;
- (d) meals;
- (e) administrative and management services;
- (f) maintenance and repair services;
- (g) recreational services;
- or
- (h) any other services:

“special resolution” means a resolution passed at a meeting of residents of a retirement village in the following circumstances:

- (a) at least 21 days’ written notice of the meeting, containing a statement of the proposed special resolution, must have been given to all residents;

and

- (b) the resolution must have been passed by a majority of not less than three-quarters of the number of residents who were present, and entitled to vote, at the meeting:

“strata retirement village” means a retirement village divided into separate residential units and common property by a strata plan:

“the Tribunal” means the Residential Tenancies Tribunal.

4. (1) Subject to this section—

- (a) this Act applies to retirement villages established either before or after the commencement of this Act;

and

- (b) this Act binds the Crown.

(2) The Minister may, by notice published in the *Gazette*, confer exemptions from this Act or specified provisions of this Act—

- (a) on specified religious or charitable organizations or religious or charitable organizations of a specified class;

or

- (b) in relation to specified retirement villages or retirement villages of a specified class.

(3) An exemption under subsection (2) may be conditional or unconditional.

(4) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.

Penalty: \$5 000.

5. The Commission is responsible to the Minister for the administration of this Act. Administration.

PART II

RIGHTS OF RESIDENTS

6. (1) A residence contract must be in writing.

Cooling-off.

(2) Before a person enters into a residence contract, the administering authority shall give that person a notice in the prescribed form of the person's rights under this section.

Penalty: \$20 000.

(3) The notice given under subsection (2) must have attached to it—

- (a) a copy of the residence rules;
- (b) a checklist in the form of Schedule 2;
- and
- (c) any other prescribed documents.

(4) A resident or prospective resident is entitled to rescind the residence contract—

- (a) at any time within 10 business days after the date of the contract;
- or
- (b) if subsection (2) is not complied with—at any time before the expiration of 10 business days after the date on which the notice (with the attachments) is given.

(5) A contract is rescinded under this section by notice in writing, given personally or by post, to the administering authority.

Termination of residence rights.

7. (1) A resident of a unit in a retirement village has a right of occupation that cannot be terminated unless—

- (a) the resident dies;
- (b) the resident terminates the residence contract or ceases to reside in the retirement village in circumstances in which there is no reasonable prospect of the resident returning to reside in the retirement village;
- (c) the resident commits a breach of the residence contract or the residence rules and the administering authority terminates the resident's right of occupation on that ground;
- (d) the unit becomes an unsuitable place of residence for the resident because of the resident's mental or physical incapacity and the administering authority terminates the resident's right of occupation on that ground;

or

- (e) the holder of a mortgage or charge that was in existence at the commencement of this Act becomes entitled to vacant possession of the unit in pursuance of rights conferred by the mortgage or charge.

(2) The rights of termination under subsection (1) (a), (b), (c) or (d) are subject to—

- (a) any limitations or qualifications arising from a contract between the administering authority and the resident;
- (b) any rights of the resident deriving from the resident's ownership of an interest in the residential unit.

(3) The administering authority's decision to terminate a resident's right of occupation on the ground of a breach of the residence contract or the

residence rules is ineffective unless the Tribunal is satisfied, on the application of the administering authority, that the breach is sufficiently serious to justify termination of the right of occupation and confirms the administering authority's decision.

(4) The administering authority's decision to terminate a resident's right of occupation on the ground of a mental or physical incapacity is ineffective unless the Tribunal is satisfied, on the application of the administering authority, that proper grounds for the termination exist and confirms the decision.

(5) Where an application is made to the Tribunal under this section the Tribunal must proceed with the hearing and determination of the application with as much expedition as is reasonably practicable in the circumstances.

(6) Where the Tribunal confirms the administering authority's decision to terminate a right of occupation, it must fix a period within which the resident must vacate the unit.

(7) The Tribunal may make an order for the ejection of a resident who has not vacated a unit at the expiration of the period referred to above.

(8) If the administering authority decides to terminate a resident's right of occupation it must give the resident, personally or by post, a notice—

(a) setting out the grounds of the administering authority's decision;

(b) informing the resident that the decision is subject to review by the Tribunal;

and

(c) informing the resident of his or her rights with regard to such a review.

Penalty: \$5 000.

8. (1) Subject to subsection (2), a premium paid to the administering authority must be held in trust (in a bank account or in a form of investment in which trustees are authorized by statute to invest trust money) until—

(a) the person by or on whose behalf the premium was paid enters into occupation of a unit;

or

(b) it becomes apparent that that person will not enter into occupation of a unit.

(2) The Commission may, on the application of an administering authority, grant an exemption from subsection (1) if satisfied of the authority's capacity and willingness to provide residential units in accordance with its obligations under the residence contracts.

(3) An exemption may be conditional or unconditional, and if an administering authority contravenes or fails to comply with a condition of an exemption the authority will be guilty of an offence.

Penalty: \$5 000.

(4) If the prospective resident does not enter into occupation of a unit, any question affecting entitlement to or disposition of the premium will be determined by reference to the residence contract subject to the following qualifications:

- (a) if the prospective resident's failure to enter into occupation of the unit is attributable to a failure on the part of the administering authority to carry out contractual obligations, interest and accretions arising from investment of the premium must be paid to the prospective resident;
- (b) in any other case, the administering authority will be entitled to retain any such interest and accretions.

(5) If a provision of this section is not observed, the administering authority is guilty of an offence.

Penalty: \$20 000.

Contractual rights
of residents.

9. (1) A service contract may be enforced against the administering authority, for the time being, of the retirement village.

(2) Where a premium is paid under a contract providing that it will be repaid in whole or in part on the happening of a contingency and the contingency occurs, the resident or a person claiming under the resident may recover the amount that is repayable as a debt from the administering authority, for the time being, of the retirement village.

(3) Proceedings will not lie against the owner of land in a retirement village for the enforcement of rights under subsection (1) or (2) unless—

- (a) the owner is a party to the contract under which the premium is repayable;
- (b) the owner is the sole administering authority of the retirement village;

or

(c) an administering authority other than the owner has failed to satisfy a judgment given for the enforcement of those rights.

(4) The rights of a resident to repayment of a premium, or part of a premium, are a charge on land in the retirement village other than—

(a) a residential unit owned by a resident;

or

(b) common property in a strata retirement village.

(5) The charge referred to above can only be enforced—

(a) with the approval of the Supreme Court;

and

(b) subject to any conditions to which the Supreme Court's approval is subject.

(6) If the Supreme Court approves the enforcement of the charge it may, subject to the conditions stipulated by the Court, be enforced in the same way as a mortgage registered under the Real Property Act, 1886.

Meetings of
residents.

10. (1) The administering authority of a retirement village—

(a) may convene a meeting of the residents at any time;

and

(b) shall convene such a meeting on an annual basis.

(2) The annual meeting must be held not more than 4 months after the end of the financial year in relation to which accounts are to be presented under this section.

(3) A meeting of residents may also be convened by a residents' committee.

(4) A meeting will be convened by sending to each resident, at least 14 days before the date of the meeting, a written notice setting out—

(a) the time and place of the meeting;

and

(b) the business to be transacted at the meeting.

(5) At an annual meeting, the administering authority must present—

(a) accounts showing the gross income derived from recurrent charges during the previous financial year, the manner in which that income has been applied, and such other information as is prescribed;

and

(b) estimates of income from recurrent charges and the expenditure of that income for a period of not less than 12 months and not more than 16 months commencing within 4 months before or after the date of the meeting.

(6) The estimates of expenditure may include provision—

(a) for paying off existing debts;

and

(b) for establishing, maintaining or increasing reserves for meeting future liabilities.

(7) The administering authority shall ensure the residents have a reasonable opportunity to put questions to the authority or its representative at any meeting convened by the authority and shall ensure as far as practicable that the questions are properly answered.

(8) Recurrent charges cannot be increased beyond a level shown to be justified by estimates of expenditure presented to a meeting of residents under this section.

(9) A special levy may not be imposed on residents of a retirement village unless authorized by special resolution passed at a meeting of residents.

(10) In the case of a strata retirement village, a meeting under this section may be held in conjunction with a meeting of the unit holders under Part XIXB of the Real Property Act, 1886.

(11) If a provision of this section is not complied with, the administering authority is guilty of an offence.

Penalty: \$10 000.

(12) Where two or more residents are in occupation of the same residential unit in a retirement village only one of them may exercise a vote at a meeting of the residents and if more than one purport to vote, the person presiding at the meeting may determine which vote is to be recognized.

Harsh or
unconscionable
residence rules.

11. If a residence rule, or a provision of a residence rule, is harsh or unconscionable the rule or provision is void.

Documents to be
supplied to
residents.

12. (1) The administering authority of a retirement village shall, at the request of a resident, provide the resident with—

- (a) a copy of the residence contract under which the resident was admitted to the retirement village;
- (b) a copy of the residence rules that are applicable to the retirement village;
- (c) a statement of the amount to which the resident would be entitled, by way of repayment of premium, if the resident were to cease to reside at the retirement village.

Penalty: \$2 000.

(2) If an alteration is made to residence rules, the administering authority shall issue an amended set of the rules to every resident.

Penalty: \$2 000.

Residents'
committees.

13. (1) The residents of a retirement village may elect a residents' committee to represent the interests of the residents.

(2) No person except a resident of the retirement village may be a member of such a committee.

(3) Each member of a residents' committee will hold office for one year from election but is eligible for re-election.

(4) A member may be removed from office by a special resolution at a meeting of the residents.

(5) A residents' committee may determine its own procedure.

(6) A residents' committee may appoint sub-committees and determine their procedures.

Tribunal may
resolve disputes.

14. (1) If a dispute arises between the administering authority and a resident of a retirement village, either party to the dispute may apply to the Tribunal for resolution of the matters in dispute.

(2) Where the Tribunal resolves a dispute, it may give such directions as it thinks necessary to give effect to its decision.

(3) A person who contravenes or fails to comply with a direction under this section is guilty of an offence.

Penalty: \$2 000.

(4) The Tribunal may decline to entertain an application under this section if it appears to the Tribunal that the dispute could be adequately dealt with under rules for the resolution of disputes established by the administering authority of the retirement village.

(5) An application cannot be made under this section in relation to a dispute as to the repayment of a premium or portion of a premium.

(6) This section does not derogate from the jurisdiction of any court.

PART III
MISCELLANEOUS

15. (1) Where land is, or is to be, used as a retirement village, a note of that fact must be endorsed on the relevant certificates of title.

Endorsement of certificates of title.

(2) The owner of any such land shall apply to the Registrar-General for endorsement of the relevant certificates of title—

(a) if the retirement village was established before the commencement of this Act—within 3 months after the commencement of this Act;

(b) in any other case—before any person is admitted to occupation of a unit in accordance with the scheme.

Penalty: \$20 000.

(3) Before an application is made under subsection (2), the owner must notify each person who holds a mortgage, charge or encumbrance over the land and, if the application relates to a retirement village that had not been established before the commencement of this Act, the application can only be made with the consent of each such person.

(4) The Registrar-General may cancel an endorsement made under this section if satisfied that no part of the land is still occupied under the scheme.

16. (1) The administering authority of a retirement village may lease, or grant a licence to occupy, land within the village that is not immediately required for the purposes of the scheme.

Lease of land in retirement village.

(2) Unless the Commission authorizes a lease or licence for a longer term, the term of any such lease or licence must not exceed 2 years.

(3) A person to whom a lease or licence is granted under this section does not become a resident of the retirement village.

(4) If a lease or licence is granted contrary to this section the administering authority is guilty of an offence.

Penalty: \$5 000.

17. (1) A retirement village scheme cannot be terminated without the approval of the Supreme Court while a person who has been admitted to occupation of a unit under the scheme remains in occupation of that unit.

Termination of retirement village scheme.

(2) The Commission will be a party to any proceedings in which the Supreme Court's approval of the termination of a retirement village scheme is sought.

(3) If the Supreme Court approves the termination of a retirement village scheme it may make such orders as it thinks necessary to protect the interests of existing residents.

18. (1) A person to whom this section applies shall not be concerned in the administration or management of a retirement village.

Certain persons not to be involved in the administration of a retirement village.

Penalty: \$20 000.

(2) This section applies to—

(a) a person who is an insolvent under administration within the meaning of the *Companies (South Australia) Code*,

or

(b) a person who—

(i) has during the preceding 5 years been convicted of an offence to the person or an offence involving fraud or dishonesty;

or

(ii) has served a sentence of imprisonment for an offence to the person or an offence involving fraud or dishonesty, being a sentence that ended during the preceding 5 years.

Non-compliance
may be excused
by the Court.

19. (1) The Supreme Court may, on the application of any person, excuse that person from the consequences of inadvertent non-compliance with a provision of this Act.

(2) Where the Supreme Court acts under subsection (1), it may—

(a) make consequential orders protecting the interests of any person affected by the contravention;

and

(b) make any other order that the justice of the case may require.

(3) An application may not be made under this section after proceedings for an offence relating to the non-compliance have been commenced.

Appeal.

20. (1) An appeal lies to the Supreme Court against any decision of the Tribunal under this Act.

(2) The appeal must be instituted within 28 days after the appellant receives notice of the Tribunal's decision unless the Supreme Court, in its discretion, allows a longer period for instituting the appeal.

(3) On an appeal under this section, the Supreme Court may—

(a) confirm, vary or quash the Tribunal's decision;

(b) make any decision that should have been made in the first instance;

(c) make any incidental or ancillary orders.

No contracting
out.

21. The rights conferred on a resident of a retirement village by this Act cannot be excluded or limited by contract.

Offences.

22. (1) The offences constituted by this Act are summary offences.

(2) A prosecution for an offence against this Act can only be commenced by the Commission or a person authorized by the Commission.

(3) Where a body corporate is guilty of an offence against this Act, a director or manager is also guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that he or she could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate.

Regulations.

23. (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a)* prescribe fees;
 - (b)* prescribe forms and the information to be contained in forms;
 - (c)* prescribe penalties (not exceeding \$2 000) for breach of a regulation.
- (3) The regulations—
- (a)* may be of general or limited application;
 - (b)* may leave any matter to be determined according to the opinion or discretion of the Registrar-General or the Commission;
- and
- (c)* may incorporate, adopt or apply, with or without modifications, any document formulated or published by any body or authority (as in force at a particular time or from time to time).

SCHEDULE 1

Transitional Provision

(1) An interest granted or conferred by the administering authority of a retirement village will constitute a prescribed interest for the purposes of the *Companies (South Australia) Code* and the *Securities Industry (South Australia) Code* if—

- (a) the retirement village was established before the commencement of this Act;
- (b) such an interest constituted a prescribed interest before the commencement of this Act;
- and
- (c) the Commission notifies the administering authority that this Schedule is to apply to it.

(2) Such an interest will cease to be a prescribed interest if the Commission cancels the notification given under subclause (1) (c).

SCHEDULE 2

Check List

YOU SHOULD READ THIS DOCUMENT CAREFULLY

ENTRY INTO A RETIREMENT VILLAGE USUALLY INVOLVES A SIGNIFICANT CAPITAL COMMITMENT AND MAY CHANGE YOUR LIFESTYLE.

THESE QUESTIONS SHOULD ASSIST YOU TO MAKE AN INFORMED DECISION.

IF YOU ARE UNCERTAIN ABOUT ANY ASPECTS OF THE VILLAGE OR THE DOCUMENTS YOU HAVE RECEIVED FROM THE VILLAGE, SEEK ADVICE.

General

Have I discussed fully my decision to enter a retirement village with my family, friends, a social worker or an advisory body such as Citizens Advice Bureau?

What discussions have I had with residents of the retirement village I have chosen?

Will the lifestyle of the village (including social activities and religion) suit me?

What are the rules with regard to having someone else live with me?

What system does the village have for resolving disputes?

Are the residents actively involved in making village rules?

Legal Implications

Have I sought advice on the documents relating to the village from a solicitor, Legal Aid office, my local Citizens Advice Bureau or some other appropriate source?

Under what conditions can I be moved from my place of residence to another part of the village? Do I know and agree with the procedure?

How can the owner terminate my occupancy? Do I agree with the procedure and what are my rights?

Is my long term occupancy at the village secure?

What protection do I have if the village is sold to some other organization?

Financial Matters

Am I aware of and can I afford to pay the premium (if applicable), the regular maintenance charges and any extraordinary charges which can be imposed on me? What arrangements can be made if I can't meet future charges?

How do the terms and amount of repayment of my premium compare with other villages?

When do I get access to my money after I leave the village?

Are the residents actively involved in decisions concerning the level of maintenance and services provided, their cost, and how these costs are to be varied in the future?

What are the restrictions on the sale of my unit? What say do I have in deciding the sale price?

Building and Construction

Have the community facilities of the village been built? If not, what guarantee do I have that they will ever be constructed?

Do I have any say in the design, construction and furnishing of my unit if construction is not yet complete?

Will the unit, building and site be accessible if I become disabled and need a wheelchair or walking aid? If not, can modifications be made easily?

Health and Welfare

What services specially designed for the elderly does the village provide, e.g. nursing care, access to nursing care, an emergency call system? Do these services meet my present needs and what I expect will be my future needs?

What financial and accommodation alternatives do I have if I become too frail to live in this unit/hostel?

Activities and Amenities

What are the restrictions on the use of my unit and the village facilities? Have I enquired about live-in guests and visitors.

How will I have to adapt and alter my existing lifestyle to comply with the regulations and restrictions of life in the village?

What type of public, private or village transport is available?

Are pets permitted?

How accessible are the local shops to my present and future needs?

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor