

Version No. 002
**Retirement Villages (Contractual
Arrangements) Regulations 2006**

S.R. No. 99/2006

Version as at 11 April 2008

TABLE OF PROVISIONS

<i>Regulation</i>	<i>Page</i>
1 Objectives	1
2 Authorising provision	1
3 Commencement	1
4 Definitions	2
5 Condition for refund of in-going contribution to a non-owner resident	2
6 Payment of certain aged care costs	4
7 Calculation of amount of refundable in-going contribution where original in-going contribution was based on market value	6
8 Calculation of amount of refundable in-going contribution where original in-going contribution less than market value	6
9 Transitional	7
<hr/>	
SCHEDULES	8
SCHEDULE 1—Conditions to be Included in Certain Residence Contracts	8
SCHEDULE 2—Conditions to be Included in Certain Residence Contracts	11
SCHEDULE 3—Calculation of Refundable In-Going Contribution Based on Market Value	13
SCHEDULE 4—Calculation of Refundable In-Going Contribution Where In-Going Contribution Less Than Market Value	15

<i>Regulation</i>	<i>Page</i>
ENDNOTES	18
1. General Information	18
2. Table of Amendments	19
3. Explanatory Details	20

Version No. 002
**Retirement Villages (Contractual
Arrangements) Regulations 2006**

S.R. No. 99/2006

Version as at 11 April 2008

1 Objectives

The objectives of these Regulations are to—

- (a) prescribe conditions for the purposes of section 26(2)(c) of the **Retirement Villages Act 1986**; and
- (b) provide for full or part payment of refundable in-going contributions to be brought forward to cover certain costs to former residents associated with aged care accommodation; and
- (c) prescribe clauses to be included in residence contracts that set out how refundable in-going contributions are calculated in certain cases.

2 Authorising provision

These Regulations are made under section 43 of the **Retirement Villages Act 1986**.

3 Commencement

These Regulations come into operation on 1 August 2006.

4 Definitions

In these Regulations—

the Act means the **Retirement Villages Act 1986**;
and

the Aged Care Act means the Aged Care Act 1997
of the Commonwealth.

5 Condition for refund of in-going contribution to a non-owner resident

- (1) Where the clauses in Schedule 1 have been inserted into a residence contract with a non-owner resident, it is a condition for the purposes of section 26(2)(c) of the Act that the non-owner resident or the non-owner resident's legal representative is entitled to recover the amount refundable under section 26(1) of the Act—
- (a) if payment is made by another person under a residence contract in respect of the premises of the non-owner resident, that is at least the equivalent of the amount owed to the non-owner resident after the non-owner resident has delivered up vacant possession of the premises, on a day not more than 14 days after the day on which the payment is made; or
 - (b) on a day not more than 14 days after the day on which another person takes up residence in the premises of the non-owner resident after the non-owner resident has delivered up vacant possession of the premises; or
 - (c) following a court or tribunal finding that the owner has breached any of the clauses in Schedule 1—

whichever is earliest.

(2) Where—

- (a) it is a condition of a residence contract with a non-owner resident that—
 - (i) the amount of the in-going contribution is determined with reference to factors other than or in addition to the market value of the residence right; and
 - (ii) the amount of the in-going contribution is accordingly less than the market value of the residence right; and
- (b) the clauses in Schedule 2 have been inserted into the residence contract—

it is a condition for the purposes of section 26(2)(c) of the Act that the non-owner resident or the non-owner resident's legal representative is entitled to recover the refundable in-going contribution—

- (c) if payment is made by another person under a residence contract in respect of the premises of the non-owner resident, that is at least the equivalent of the amount owed to the non-owner resident after the non-owner resident has delivered up vacant possession of the premises, on a day not more than 14 days after the day on which the payment is made; or
- (d) on a day not more than 14 days after the day on which another person takes up residence in the premises of the non-owner resident after the non-owner resident has delivered up vacant possession of the premises; or
- (e) following a court or tribunal finding that the owner has breached any of the clauses in Schedule 2—

whichever is earliest.

- (3) If the whole or any part of a refundable in-going contribution has been paid to the non-owner resident under regulation 6, subregulations (1) and (2) do not apply to the extent of that payment.

6 Payment of certain aged care costs

- (1) In this regulation, *entitled person* means a former non-owner resident of a retirement village—
- (a) all or part of whose in-going contribution is a refundable in-going contribution; and
 - (b) who is not yet entitled to the refundable in-going contribution under the terms of his or her residence contract; and
 - (c) who has been accepted into a residential care facility as an approved care recipient within the meaning of the Aged Care Act; and
 - (d) who has agreed to pay a lump sum to the approved provider of the residential care facility as an accommodation bond or part of an accommodation bond within the meaning of the Aged Care Act.
- (2) On request by an entitled person, the owner of the retirement village must pay to the entitled person that part of the unpaid refundable in-going contribution that is equivalent to the amount that the entitled person demonstrates that he or she is required, at the time of the request, to pay in interest accrued on the accommodation bond to the approved provider of the residential care facility under the Aged Care Act.
- (3) If—
- (a) on or after the determined date, the entitled person will be subject to a requirement to pay a lump sum to an approved provider of the residential care facility as an accommodation bond or part of an
-

-
- accommodation bond within the meaning of the Aged Care Act; and
- (b) the entitled person notifies the owner of the retirement village in writing that the entitled person will be so subject—
- the owner of the retirement village must (in accordance with subregulation (4)) pay to the entitled person—
- (c) in the case where the amount of the unpaid refundable in-going contribution is equal to or less than the lump sum, the amount of the unpaid refundable in-going contribution; or
- (d) in the case where the amount of the unpaid refundable in-going contribution is more than the lump sum, the amount of the lump sum.
- (4) Payment must be made under subregulation (3) by the owner of the retirement village—
- (a) on or before the determined date, where notice has been given at least 14 days before the determined date; or
- (b) no later than 14 days after the giving of the notice, where notice has not been given at least 14 days before the determined date.
- (5) In this regulation the *determined date*, in relation to an entitled person, means the date that is the latest of—
- (a) 6 months after the entitled person delivers up vacant possession of his or her premises in the retirement village; or
- (b) 6 months after the entitled person enters into a residential care facility; or
-

- (c) the date on which the entitled person is required to pay the lump sum to the approved provider of the residential care facility as an accommodation bond or part of an accommodation bond.

7 Calculation of amount of refundable in-going contribution where original in-going contribution was based on market value

Where—

- (a) under a residence contract with a non-owner resident, the resident's refundable in-going contribution is to be calculated with reference to the amount that will be paid as an in-going contribution by the next resident of the subject premises; and
- (b) the residence contract is not a contract to which regulation 8 applies—

the clauses set out in Schedule 3 are incorporated into that residence contract.

8 Calculation of amount of refundable in-going contribution where original in-going contribution less than market value

Where—

- (a) it is a condition of a residence contract entered into with a non-owner resident that—
 - (i) the amount of the in-going contribution is determined with reference to factors other than or in addition to the market value of the residence right; and
 - (ii) the amount of the in-going contribution is accordingly less than the market value of the residence right; and

(b) the residence contract provides for a refundable in-going contribution to be calculated with reference to the amount that will be paid as an in-going contribution by the next resident of the subject premises—

the clauses set out in Schedule 4 are incorporated into the residence contract.

9 Transitional

- (1) These Regulations do not apply to a residence contract entered into prior to the commencement of these Regulations.
- (2) In respect of any residence contract entered into by an owner and a non-owner resident after the commencement of these Regulations and before the end of 16 September 2006, being a contract which does not contain either the clauses in Schedule 1 or the clauses in Schedule 2, a condition in the residence contract which entitles the non-owner resident or the non-owner resident's legal personal representative to recover the amount refundable under section 26(1) as a consequence of either—
 - (a) the payment being made by another person under a residence contract of an in-going contribution in respect of the premises of the non-owner resident; or
 - (b) the happening of another event that precedes payment being made by another person under a residence contract of an in-going contribution in respect of the premises of the non-owner resident—

is a condition for the purposes of section 26(2)(c) of the Act.

SCHEDULES

SCHEDULE 1

Regulation 5(1)

CONDITIONS TO BE INCLUDED IN CERTAIN RESIDENCE CONTRACTS

- 1 The parties agree that once the owner is notified in writing that the non-owner resident intends to deliver up vacant possession of his or her premises in the retirement village, the owner will ask the resident to advise the owner in writing within 5 business days whether or not the resident wishes the residence right relating to the premises to be sold through an estate agent who is not otherwise involved in the operation of the retirement village.
- 2 The owner agrees that if the resident advises in writing under clause 1 that the resident wishes the residence right to be sold through an estate agent not otherwise involved in the operation of the retirement village, the owner will appoint such an estate agent.
- 3 The owner agrees that an estate agent appointed under clause 2 must be an estate agent agreed between the owner and the resident.
- 4 If the owner and the resident cannot agree on an estate agent, the owner and the resident must use their best endeavours to agree on a fair and reasonable process for the selection and appointment of an estate agent.
- 5 The owner agrees that the owner's instructions to an estate agent appointed under clause 2 must be consistent with all reasonable endeavours being made to secure a residence contract with another person in respect of the premises and to procure payment of the in-going contribution from that person under that residence contract.

-
- 6 The owner agrees that if the resident does not advise in writing under clause 1 that the resident wishes the residence right to be sold through an estate agent not otherwise involved in the operation of the retirement village, the owner will make all reasonable endeavours to secure a residence contract with another person in respect of the premises and to procure payment of the in-going contribution from that person under that residence contract.
 - 7 If, at any time, the resident advises the owner in writing of a price at which, or a price range within which, the resident wishes offers to be invited, the owner must not invite offers outside that range without the written agreement of the resident.
 - 8 The owner must provide the resident at the end of each named month with a written summary of inquiries received about purchase of the residence right.
 - 9 The owner must advise the resident without delay of any offer received to purchase the residence right.
 - 10 Where the resident advises the owner in writing that the resident wishes a particular offer to purchase the residence right to be accepted, the owner must not unreasonably refuse or fail to accept the offer.
 - 11 The owner must not reach an agreement with a prospective purchaser of the residence right on a purchase price without first obtaining the agreement of the resident to that purchase price.
 - 12 The resident must not unreasonably refuse to agree in respect of the matters in clauses 7 and 11.
 - 13 The owner agrees not to make any unreasonable charges on the resident in relation to the process of selling the residence right.
-

Retirement Villages (Contractual Arrangements) Regulations 2006

Sch. 1

S.R. No. 99/2006

14 In clauses 1–13—

estate agent has the same meaning as in the **Estate Agents Act 1980**.

SCHEDULE 2

Regulation 5(2)

**CONDITIONS TO BE INCLUDED IN CERTAIN RESIDENCE
CONTRACTS**

- 1 The parties agree that once the owner is notified in writing that the non-owner resident intends to deliver up vacant possession of his or her premises in the retirement village, the owner will ask the resident to advise the owner in writing within 5 business days whether or not the resident wishes the residence right relating to the premises to be sold through an estate agent who is not otherwise involved in the operation of the retirement village.
- 2 The owner agrees that if the resident advises in writing under clause 1 that the resident wishes the residence right to be sold through an estate agent not otherwise involved in the operation of the retirement village, the owner will appoint such an estate agent.
- 3 The owner agrees that an estate agent appointed under clause 2 must be an estate agent agreed between the owner and the resident.
- 4 If the owner and the resident cannot agree on an estate agent, the owner and the resident must use their best endeavours to agree on a fair and reasonable process for the selection and appointment of an estate agent.
- 5 The owner agrees that the owner's instructions to an estate agent appointed under clause 2 must be consistent with all reasonable endeavours being made to secure a residence contract with another person in respect of the premises and to procure payment of the in-going contribution from that person under that residence contract.
- 6 The owner agrees that if the resident does not advise in writing under clause 1 that the resident wishes the residence right to be sold through an estate agent not otherwise involved in the operation of the retirement

village, the owner will make all reasonable endeavours to secure a residence contract with another person in respect of the premises and to procure payment of the in-going contribution from that person under that residence contract.

- 7 The owner must provide the resident at the end of each named month with a written summary of inquiries received about purchase of the residence right.
 - 8 The owner must advise the resident without delay of any offer received to purchase the residence right.
 - 9 The owner agrees not to make any unreasonable charges on the resident in relation to the process of selling the residence right.
 - 10 In clauses 1–9—
estate agent has the same meaning as in the **Estate Agents Act 1980**.
-

SCHEDULE 3

Regulation 7

**CALCULATION OF REFUNDABLE IN-GOING
CONTRIBUTION BASED ON MARKET VALUE**

- 1 The following clauses apply if the resident becomes entitled to payment of the refundable in-going contribution before another person has paid an in-going contribution in respect of the premises of the non-owner resident.
- 2 The parties agree that the refundable in-going contribution will be calculated as if another person had paid the proxy amount determined in accordance with clause 3 as an in-going contribution under a residence contract in relation to the premises.
- 3 For the purposes of clause 2, the proxy amount is the current market value of the residence right as determined by an independent valuation obtained from—
 - (a) an independent valuer agreed by the parties; or
 - (b) if the parties cannot agree, a valuer appointed by the President of the Victorian Division of the Australian Property Institute.
- 4 The parties agree that—
 - (a) if the resident is entitled under this contract to a proportion of any amount by which the in-going contribution paid by the resident is exceeded by the next in-going contribution paid in respect of the premises, the resident is liable for the costs of a valuation under clause 3 in the same proportion; and
 - (b) the owner is liable for any costs of a valuation under clause 3 for which the resident is not liable under subclause (a).

- 5 In clause 3, ***Victorian Division of the Australian Property Institute*** means the division of the association registered as the Australian Property Institute under the Associations Incorporation Act 1985 of South Australia managing the association's business in Victoria.
-

SCHEDULE 4

Regulation 8

**CALCULATION OF REFUNDABLE IN-GOING
CONTRIBUTION WHERE IN-GOING CONTRIBUTION LESS
THAN MARKET VALUE**

- 1 The following clauses apply if the non-owner resident becomes entitled to payment of the refundable in-going contribution before another person has paid an in-going contribution in respect of the premises of the non-owner resident.
- 2 The parties agree that—
 - (a) if—
 - (i) the amount of the in-going contribution being sought in respect of the premises is determined with reference to factors other than or in addition to the market value of the residence right; and
 - (ii) the amount of the in-going contribution is accordingly less than the market value of the residence right—

clause 3 will apply; and
 - (b) in any other case, clause 5 will apply.
- 3 Under subclause (2)(a), the refundable in-going contribution will be calculated as if another person had paid the proxy amount determined in accordance with subclause (4) as an in-going contribution under a residence contract in relation to the premises.

- 4 For the purposes of subclause (3), the proxy amount is—
- (a) the amount paid as an in-going contribution by the resident, indexed in accordance with the following formula—
- $$A \times \frac{B}{C}$$
- where—
- A** is the amount of in-going contribution paid by the resident; and
- B** is the CPI for the quarter previous to the quarter in which the payment of the refundable in-going contribution falls due; and
- C** is the CPI for the quarter previous to the quarter in which the in-going contribution was paid by the resident under the residence contract; or
- (b) if a higher amount is agreed between the parties, that amount.
- 5 If subclause (2)(b) applies, the refundable in-going contribution will be calculated as if another person had paid the proxy amount determined in accordance with subclause (6) as an in-going contribution under a residence contract in relation to the premises.
- 6 For the purposes of clause 5, the proxy amount is the current market value of the residence right as determined by an independent valuation obtained from—
- (a) an independent valuer agreed by the parties; or
- (b) if the parties cannot agree, a valuer appointed by the President of the Victorian Division of the Australian Property Institute.
-

7 The parties agree that—

- (a) if the resident is entitled under this contract to a proportion of any amount by which the in-going contribution paid by the resident is exceeded by the next in-going contribution paid in respect of the premises, the resident is liable for the costs of a valuation under clause (6) in the same proportion; and
- (b) the owner is liable for any costs of a valuation under clause (6) for which the resident is not liable under subclause (a).

8 In clauses 1–7 and this clause—

Australian Statistician has the same meaning as it has in the Australian Bureau of Statistics Act 1975 of the Commonwealth;

CPI means the All Groups Consumer Price Index number (for Melbourne) published by the Australian Statistician; and

Victorian Division of the Australian Property Institute means the division of the association registered as the Australian Property Institute under the Associations Incorporation Act 1985 of South Australia managing the association's business in Victoria.

=====

ENDNOTES

1. General Information

The Retirement Villages (Contractual Arrangements) Regulations 2006, S.R. No. 99/2006 were made on 1 August 2006 by the Governor in Council under section 43 of the **Retirement Villages Act 1986**, No. 126/1986 and came into operation on 1 August 2006: regulation 3.

The Retirement Villages (Contractual Arrangements) Regulations 2006 will sunset 10 years after the day of making on 1 August 2016 (see section 5 of the **Subordinate Legislation Act 1994**).

2. Table of Amendments

There are no amendments made to the Retirement Villages (Contractual Arrangements) Regulations 2006 by statutory rules, subordinate instruments and Acts.

3. Explanatory Details

No entries at date of publication.