**Attachment A**

**Explanatory Notes for Retirement Village operators**

**Disclosure statements (Form 1 and Form 1A)**

Form 1 and Form 1A have been developed to replace the existing Form 1 in Schedule 1 to the *Retirement Villages Regulations 1992* (RV Regulations). From 1 July 2016, Form 1 is to be used for prospective residents who you will require to pay a ‘premium’ to secure admission to your retirement village. ‘Premium’ is defined in the *Retirement Villages Act 1992 –* RV Act.[[1]](#footnote-1)

The RV Regulations exclude certain payments made to secure admission to a village on a ‘short term residence’ from being a ‘premium’.[[2]](#footnote-2)

That is where:

* the residence is to be for 12 months or less; and
* any requirement to make an up-front payment to secure admission to the retirement village is in an amount that totals $1,500 or less (short-term residence).

Form 1A is to be used for prospective residents contemplating a ‘short term residence’.

The pre contract disclosure stage is just as much about you identifying whether a prospective resident is suitable for your village as it is about residents determining whether your village is suitable to them. Forms 1 and 1A constitute the minimum pre contract disclosure required: they do not limit your disclosure to the stipulated matters.

**Form 1**

The notes in the table below explain the purpose of the new Form 1.

| **Section** | **Explanatory notes** |
| --- | --- |
| Introduction | **Declaration by the owner**  The existing requirement for the retirement village ‘owner’ to make a declaration that the information contained in the disclosure statement, to the best of their knowledge, remains in place.[[3]](#footnote-3) This declaration alerts owners, and through them village administering bodies, to section 13(4) of the RV Act. Section 13(4) provides that residence contracts contain a warranty as to the correctness of the information contained in the prescribed disclosure statement (now Forms 1 and 1A).[[4]](#footnote-4)  This warranty prevails over any inconsistent contractual term. That is, terms in the residence contract that are inconsistent with the information in the disclosure statement may not have effect. It is, therefore, critically important that the information in the Form 1 is accurate.  From a practical perspective, section 13(4) recognises the role that pre-contractual disclosure plays in ensuring residents are informed prior to being contractually bound. This is especially important given that the complexity of many retirement villages contracts results in residents finding it difficult to identify the information they need to assess the suitability of a retirement village or to know what their rights and obligations will be after becoming a resident. As well as being ethical business practice, provision of unambiguous pre-contract information protects village owners from section 13(4) waiver claims arising from different interpretations of the information provided in the Form 1.  **Important notice to prospective resident**  The purpose of the upfront notice is to alert a prospective resident that they are being provided with important information that they need to consider before signing a residence contract. Focussing a prospective resident’s attention on the need to understand the information you provide is intended to alert them to the need to clarify any matters not fully understood **prior** to entering into the contract. This reduces potential for later disputes. |
| 1A-E | **Retirement village**  1A-C requires you to provide basic information about the retirement village.  1D requires you to provide details enabling residents to understand when the village was first constructed, dates of subsequent stages of construction, and estimated completion dates of any stages that are still to be constructed. This links with the questions in 22A-D, requiring further details about the planning and development of the village.  Awareness of the age of a village, the likely need for capital replacement and future development or plans for additional stages are all important considerations for residents in choosing a village. People looking for ‘quiet enjoyment’ may decide they do not want to live in a village where construction work may create noise and disruption. Alternatively, some prospective residents may be attracted by the promise of vitality, upgrades or new and better facilities offered in new staged developments. Your obligation is to provide sufficient detail to ensure prospective residents are making an informed decision.  **Aged care facility**  Research shows that prospective residents commonly misunderstand the restrictions Commonwealth legislation places on their ability to access an aged care facility in, or co-located with, a retirement village. A person’s decision to enter a village should not be influenced by the mistaken belief that they will get automatic entry to an on-site aged care facility when needed.  This section provides prospective residents with up front notice that entry to an on-site aged care facility cannot be guaranteed and is subject to an aged care assessment in accordance with the *Aged Care Act 1997* (Cth).[[5]](#footnote-5) |
| 2A-C | **Owner/administering body/management of the retirement village**  2A-B requires you to provide basic details identifying the village owner and administering body.  2C requires provision of details regarding any management representative for the village.  The availability of a management representative, and their accessibility, reassures some prospective residents (and their families, which can be equally important in the decision to enter a village) about their safety in an emergency. Research confirms that the ability to call for information or urgent assistance, and the cost of that service if available, can be an important factor in whether your village is right for particular residents in light of their current and future needs. |
| 3A-B | **Nature of residential premises (specific to the prospective resident)**  3A requires you to identify the type of residential premises the prospective president is considering in terms of the number of bedrooms in the residential premises. This avoids any later confusion as to what was finally proposed in a context where residents may change their mind over the course of discussions. It also provides a basis for a person to compare the benefits and costs associated with different residences within your village, as well as comparing the benefits and costs of an equivalent residence in another village.  3B requires you to identify what the person’s occupancy right will be. For example, whether the person will be a long term non-owner resident under a lease for life contract, an owner resident holding a strata title or a purple title, or some other form of long term occupancy (e.g. long fixed term rental).  (As noted above, Form 1A is to be used for a limited group of short term rentals.) |
| 4A | **Parking amenities (specific to prospective resident’s proposed residential premises) visitors’ parking and parking for trailers, boats and caravans**  4A requires you to provide detail as to the availability, location and cost of garage and parking facilities for residents’ vehicles, as well as for visitors, trailers, boats and caravans. This is an important factor for most (if not all) prospective residents and cannot be left to assumption.  You should make inquiry of prospective residents as to their expectations. For example, if a resident requires some assisted care which includes provision of heavy equipment, a residence without private parking or situated some distance from visitor parking areas may not be suitable. For this reason specific information, as well as a plan of the village indicating the location of the parking amenities, must be provided in **Annexure A**. |
| 5A-B | **Premium and other entry fees and charges**  You must include the dollar amount/s payable on entry to the village, regardless of what the payment/s are called, and advise whether the premium is fully, partially or non-refundable.  Clear information on the premium and all other entry fees and charges is essential because the total amount often constitutes a significant proportion of the prospective residents’ total assets and savings. |
| 6A-E | **Ongoing amounts payable to the operator during occupation (specific to the prospective resident and the residential premises that the resident has expressed interest in)**  You must inform the prospective resident of the recurrent and other ongoing charges, such as reserve fund charges, contents insurance, council rates, water and utilities rates, and repairs and maintenance costs that they will incur on an ongoing basis whilst residing in the village.  For strata title villages, information must also be provided relating to whether there is a body corporate levy, as well as who owns the communal amenities, and whether residents contribute to the payment of the costs of the communal amenities (section 6D).  As recurrent charges are subject to increases (generally annual), historical information as to the dollar amount and percentage increases or decreases for each of the last three financial years must be provided. This information must pertain to the type of residential premises the prospective resident has expressed interest in (section 6E). The figures must be calculated on the basis of the terms and conditions that will apply to the prospective resident, not on the basis of previous contracts with different terms and conditions concerning recurrent or other ongoing charges.  Similar historical information relating to increases or decreases in recurrent charges for operating expenses in the village as a whole must also be provided at 6F. |
| 7A-E | **Exit fees and other exit related matters**  Exit fees charged by retirement villages can be controversial.  To minimise later disputes, which can be expensive and stressful for operators as well as residents, it is important that these fees are transparent and that prospective residents understand at the outset the structure of the fees that they will be charged on permanently vacating your village.  Most villages in Western Australia apply a structure or formula to the charging of exit fees (also referred to as *Deferred Management Fees* (DMF) or *Deferred Fees* or *Deferred Facilities Fees*), rather than identify a specific quantum in the residence contract. However, the structure/formula varies considerably between villages. Form 1 requires you to provide information specific to your village in respect of some common exit fee features to meet demands (from residents and industry) for better transparency and easier comparison between villages:   * Information relating to the structure or formula applying in your village, including whether there is a cap on the exit fee charged, must be provided at 7A. * The duration of payment of recurrent charges after a resident permanently vacates the village must be disclosed at 7B. * The extent of the resident’s contribution to refurbishment costs and how these costs are determined and assessed must be disclosed at 7C. * If reserved fund payments are charged as part of the exit fee, this must be disclosed at 7D. * 7D also requires you to provide, if relevant, an explanation about how reserve, or sinking, fund charges operate in your strata titled village. * 7E requires you to provide a list of any other expenses and their amounts deducted from the resident’s premium at the point of exit from the village. |
| 8A | **Arrangements for marketing, releasing or selling the residential premises**  You must provide information as to the specific marketing arrangements pertaining to your village, including fees payable by the resident, in this section of the form.  As with exit fees, various arrangements exist for the marketing, re-leasing or selling of a resident’s residential premises and the extent to which, if at all, residents will be involved in these processes. A significant number of resident complaints made to Consumer Protection arise from unmet expectations in this respect – whether because the resident expected more consultation and control or because they expected the village to do more. ‘Hidden’ fees are also an issue.  Future disputes can be minimised by ensuring fees are not ‘hidden’ and pre contract disclosure of any relationship between the agents handling sale of the lease and the village owners or operators. |
| 9A-C | **Repayment of whole or part of premium**  This section is related to 5A above, in which you provide general information as to the premium being fully, partially or non-refundable.  Section 9A-C requires you to provide specific information as to the amount to be repaid in terms of percentage of the original premium or percentage of any increase in the premium. Information is also required about any precondition for the repayment of the premium and when resident will be repaid.  This section links to the tables at **Annexure B**, which require you to estimate refund entitlements based on the resident permanently vacating after 1, 2, 5 and 10 years. **Table A (Annexure B)** is based on an initial premium, with the resident having no entitlement to an increase in the value of the residential premises. **Table B (Annexure B)** is based on the resident having an entitlement to share in an assumed increase in the value of the residential premises. For ease of understanding, and comparison purposes, a standard increase in value of 2% per annum has been used over the full period of 1, 2, 5 and 10 years.  The formulation of these tables, together with the notional percentage increase in value, was determined after lengthy consultation with your industry representatives.  This section is vitally important to a prospective resident as the amount to be repaid is likely to be relied upon should the resident need to find an alternate residence after permanently vacating the village. Further, in the event that the retirement village becomes unsuitable and the resident needs to move into an aged care facility it is more likely that the money will be needed quickly if the resident is not to be financially disadvantaged in terms of their aged care options.  Surprise at, and dissatisfaction with, refunds is probably the most common area of resident complaint. Yet industry research suggests that residents who understand the financial arrangements pertaining to their departure from a village generally do not later complain. It is, therefore, in your interests to take the time to go through this information with prospective residents and ensure that any verbal information you provide does not render the written disclosure ambiguous. |
| 10A-B | **Village operating funds**  The remainder of the financial disclosure questions focus on the general operation of the village and related costs. This is because operating budget information is vitally important to enable prospective residents to determine whether they can afford the ongoing costs of living in the village. Unrealistic assessment can result in you having residents who are unable to pay, leaving you to face the expense (and difficult public relations exercise) of ‘evicting’ them - an outcome that cannot be assured if the information you provided in pre contract disclosure is wrong or ambiguous.  10A refers the prospective resident to **Annexure C,** at which you provide a copy of your village’s operating budget for the current financial year.  This section also requires you to disclose whether the operating budget resulted in a surplus or deficit in the previous financial year, and if so, the dollar amount of the surplus or deficit.[[6]](#footnote-6) |
| 11A-C | **Reserve fund(s)**  Completion of this section becomes mandatory on 1 July 2016.[[7]](#footnote-7) Prior to that date, you can choose whether to complete this section.  11A is related to 6A and 7D above. It requires you to provide specific information as to the dollar amounts held in any reserve funds existing in the village. In the event there is no reserve fund, information is required as to how the cost of capital works and maintenance are managed if the village does not have a reserve fund. 11B requires information about when residents pay any reserve fund contribution and 11C requires you to advise the basis for the calculation of any reserve fund payment when the resident permanently vacates.  ‘Reserve’ fund is a generic term that captures all sinking type funds used for capital works, replacement or maintenance. You may operate a fund captured by this section even if it is not called a ‘reserve fund’ in your accounting system or budgets. |
| 12A-C | **Insurance**  This section focuses on the insurance arrangements within the village, for example who pays for insurance of the village, how the costs are charged if they are passed on to the resident and what type/s of insurance residents are responsible for arranging.  It requires you to provide specific details about what the village is insured for, the amount of insurance cover, the period of coverage and excess payable in the event of a claim.  This information is vitally important to the prospective resident as it alerts them to any insurance that they will need to arrange themselves, as well as adding to their understanding of the cost of living in the village. |
| 13 | **Communal amenities**  This section requires you to list any communal amenities that are available to all residents.  Retirement villages that offer shared amenities, such as a club house, a swimming pool, a bowling green and other sporting and leisure facilities can be attractive to more active retirees. Information about communal amenities is important because residents would not normally be able to afford or maintain such amenities individually. Therefore the extent of communal amenities available may be one of the deciding factors in choosing one village over another. They can add to the atmosphere of a village even if a prospective resident does not intend to use them.  However, there can be confusion in whether charges arise from residence alone or are related to actual use by the particular resident. It is important that you clarify this prior to entry. |
| 14A-B | **Communal and personal services**  You are required to list the communal services available at **Annexure D** and personal services at **Annexure E**.  Similar to communal amenities, the level of communal and personal services available in the village may also be a deciding factor which influences a prospective resident’s decision as to whether to take up residence or not. Yet, again, there can be confusion in whether charges arise from residence alone or are related to actual use by the particular resident. |
| 15A-B | **Security**  The new Form 1 requires you to disclose the security arrangements available in the village and to provide details about the monitoring of any security services available.  Living in a secure and safe environment is important to older people, and the security services available can be a significant influencing factor in choosing a retirement village. Again, misunderstandings in this respect have potential to cause considerable expense to an operator, including time spent in dealing with dissatisfied residents. |
| 16A-C | **Emergency system**  The new Form 1 requires you to provide information on how residents are charged for emergency services and how frequently the system is monitored. |
| 17A-B | **Resident restrictions**  This sectionrequires you to list the clauses in the residence contract or residence rules that refer to restrictions or conditions on the use of residential premises and personal and community amenities in **Annexure F**.  Retirement villages are likely to have certain restrictions on the use of the residential premises, as well as the use of personal and community amenities in the village. Restrictions can cause tensions amongst residents but be difficult to locate in the complex residence contract and village rules. |
| 18A-B | **Accreditation**  This section requires disclosure of the name of any applicable accreditation scheme, key details of the scheme, the year in which the village was last assessed, the extent to which residents contribute to the costs of accreditation and the criteria for which the village was accredited. For example, the Lifemark accreditation scheme (run in association with the Property Council) has 26 standards in six categories of village performance and information about how well the village is accredited against these standards would be very helpful to prospective residents.[[8]](#footnote-8)  Although accreditation is not mandatory in Western Australia, whether a village is accredited to an industry body can be of interest to prospective residents. |
| 19 A-B | **Residents’ committee**  This section requires you to advise whether your village has a residents’ committee and whether it is established under the auspices of an incorporated association.[[9]](#footnote-9)  If the village does not have an established residents’ committee, you must advise the prospective resident how they will communicate with management and how management will communicate with them. |
| 20A | **Resident consultation**  This section requires you to provide details of the process for resident consultation specifically in relation to the administration of the village, including the making of residence rules and charging for the village operating costs payable by the resident.  One of the objectives of the RV Code is to facilitate an effective means of consultation between the administering body and the residents on the management of a retirement village (clause 4(e)). This section seeks to ensure this objective is given practical effect. |
| 21A-B | **Waiting list**  This section requires you to provide information as to all possible entry fees, including whether there is a waiting list fee, and if so, whether this fee is refundable on entry to the village. |
| 22A-C | **Planning and development**  This section is related to 1D above, regarding the staged development of the village. It requires you to provide information as to any plans to further develop the village.  The rationale and purpose of this information, as outlined in 1D applies equally to this section. |

**Form 1A**

The notes in the table below explain the purpose of Questions 1 – 18 in the new Form 1A.

Form 1A is slightly shorter than Form 1. It has been adapted to only require information relevant to a ‘short term’ residence contract. (For example sections relating the payment and refund of a premium have not been included).

However, the common element of residence in a retirement village means many sections in Form 1A require similar or identical information to that required by in Form 1.

| **Section** | **Explanatory notes** |
| --- | --- |
| Introduction | **Declaration by the owner**  Same as Introduction in Form 1.  **Important notice to prospective resident**  Same as Introduction in Form 1. |
| 1A-E | **Retirement village**  Same as 1A-D in Form 1.  **Aged care facility**  Same as 1E in Form 1. |
| 2A-C | **Owner/administering body/management of the retirement village**  Same as 2A-C in Form 1. |
| 3A-B | **Nature of residential premises (specific to the prospective resident)**  3A is the same as section 3A in Form 1.  3B is different. It requires you to provide information about the term of occupancy in relation to its duration (12 months or less) and options to renew or vary the residence contract, move to a periodic tenancy, or move to a new fixed term tenancy on the same terms at the end of the fixed period. |
| 4A | **Parking amenities (specific to prospective resident’s proposed residential premises) visitors’ parking and parking for trailers, boats and caravans**  Same as 4A in Form 1. |
| 5A-C | **Ongoing amounts payable to the operator during occupation (specific to the prospective resident and the residential premises that the resident has expressed interest in)**  Same as 6A-C in Form 1. |
| 6A-B | **Village operating funds**  Same as 10A-B in Form 1. |
| 7A-C | **Payment and repayment of an amount paid on entry**  If the prospective resident is required to pay an entry fee, the amount must be stated.  If the resident is entitled to a refund of the entry charge, minus any fees and charges, you must provide the details of this at **Annexure B**.  7C requires a statement as to when the resident is entitled to any refund. |
| 8A-C | **Insurance**  Same as 12A-C in Form 1. |
| 9 | **Communal amenities**  Same as 13 in Form 1. |
| 10A-B | **Communal and personal services**  Same as s 14A-B in Form 1. |
| 11A-B | **Security**  Same as s 15A-B in Form 1. |
| 12A-C | **Emergency system**  Same as s 16A-C in Form 1. |
| 13A | **Resident restrictions**  Same as s 17A-B as in Form 1. |
| 14A-B | **Accreditation**  Same as s 18A-B in Form 1. |
| 15 | **Residents’ committee**  Same as s 19A-B in Form 1. |
| 16A | **Resident consultation**  Same as 20A in Form 1. |
| 17A-B | **Waiting list**  Same as s 21A-B in Form 1. |
| 18A-D | **Planning and development**  Same as s 22A-C in Form 1. |

1. Section 3 RV Act and reg 3A RV Regulations. [↑](#footnote-ref-1)
2. RV Regulations Reg 3A(2) [↑](#footnote-ref-2)
3. Where the owner is a legal entity belonging to a church, charitable organisation, company or corporation, the declaration may be signed by a person authorised to act on behalf of the owner. [↑](#footnote-ref-3)
4. There is an exception for written amendments made to the disclosure statement by the owner with the consent of the prospective Section 3 RV Act and Reg 3A RV Regulations. Where the owner is a legal entity belonging to a church, charitable organisation, company or corporation, the declaration may be signed by a person authorised to act on behalf of the owner. There is an exception for written amendments made to the disclosure statement by the owner with the consent of the prospective resident, provided that occurs prior to the residence contract being signed. [↑](#footnote-ref-4)
5. This notice must also be contained in the residence contract (RV Regulations 7A Item 1). [↑](#footnote-ref-5)
6. Under clause 20 of the *Fair Trading (Retirement Villages Code) Regulations 2015* (RV Code), residents have the right to determine, by special resolution, how the budget surplus will be applied). [↑](#footnote-ref-6)
7. This is the first day of the financial year in which the RV Code provisions giving transparency to monies held in reserve funds come into effect. [↑](#footnote-ref-7)
8. As an example Lifemark’s accreditation standards are arranged into six categories, namely:

   * **Lifestyle:** social activities, transport, resident involvement in decision making
   * **Support:** information, resident orientation, communication, satisfaction
   * **People/staff:** dignity and privacy, performance of employees and volunteers, staff orientation, performance management, people development
   * **Safety:** security, signage, emergency procedures, disaster planning
   * **Regulations:** food and catering, financial arrangements, compliance, occupational health and safety, insurance
   * **Village policy:** dispute resolution, resident meetings, maintenance.

   [↑](#footnote-ref-8)
9. The RV Code (clause 24) enables residents to establish a residents’ committee to consult with the administering body on behalf of the residents about the day-to-day running of the retirement village and any issues or proposals raised by the residents. The function of the residents’ committee may be vested in an incorporated association (clause 25). [↑](#footnote-ref-9)