New reforms to Retirement Villages Act 1992 and Retirement Villages Regulations 1992
Time cap – recurrent charges – former non-owner residents - section 23

Background

Section 23, 24 and 25 of the *Retirement Villages Act 1992* (Retirement Villages Act) were inserted by section 11 of the *Retirement Villages Amendment Act 2012* (Amendment Act) and commenced on 1 April 2014. Sections 23 and 24 both relate to recurrent charges payable after a "non-owner" resident permanently vacates the premises that they occupied in the village. Section 25 relates to matters prescribed in *Retirement Villages Regulations 1992* (Retirement Villages regulations) for which an administering body must not demand or receive payments from a resident.

This paper is intended to be a guide to section 23 of the Retirement Villages Act and reg. 9 of the Retirement Villages regulations.

Section 23 has a number of important elements. These include:

- Separate definitions for ***former resident***, ***permanently vacated*** and ***recurrent charges***.
- The provisions apply to former residents that permanently vacated their premises **before** 1 April 2014 and to former residents that permanently vacated their residential premises **on or after** 1 April 2014.
- The Retirement Villages Act provides that a former resident's liability to pay recurrent charges **begins** when the premises have been **permanently vacated** and **ceases** in accordance with the regulations.
- If a residence contract provides for the former resident's liability to cease at a time that would occur before the time specified in the regulations – the former resident's liability ceases in accordance with the contract.
- Once a former resident's liability to pay recurrent charges has ceased the administering body of the village must pay recurrent charges at the time when the former resident would have been required to pay them until a new resident of the residential premises becomes liable to pay the recurrent charges.
- An administering body that is liable to pay the recurrent charges of a former non-owner resident whose liability has ceased is prohibited from seeking to recover those costs from residents still living in the retirement village by increasing the recurrent charges or by demanding or receiving from them any additional fee or charge.

Q1: Do the provisions apply to all retirement villages?

A1: No. The provisions only apply to retirement villages that confer a right to occupy premises through a lease/licence arrangement. They do not apply to strata title villages or purple title villages. This limit comes from the definition ***former resident*** that excludes residents that have an interest in the retirement village as a tenant in common or as the owner of a lot under the *Strata Titles Act 1985*.

The majority of retirement villages in WA operate on a lease/licence model where the resident pays a premium and secures a right to occupy premises but does not own the premises. The cap on recurrent charges will apply to those villages.

Some lease/licence villages, especially in the not for profit sector repay residents the amount of premium owing to them under the contract within a set period of the resident leaving. Where the set period is less than the maximum capped periods the provisions will not apply.

Q2: What does 'permanently vacated' mean?

A2: Permanently vacated is defined in section 23. It requires four things to be done:

- the resident must give the administering body (or the village manager) written notice of the resident's intention to vacate the premises if this is a requirement of the residence contract;
- the resident or their representatives have removed the resident's goods and belongings from the residential premises;
- the resident has ceased to reside in the residential premises; and
- the right to exclusively occupy the residential premises has been given up by returning the keys to the premises to the administering body or village manager.

Q3: Will the caps apply to all lease/licence residence contracts?

A3: Yes. The maximum timeframes apply to all lease/licence residence contracts both those entered into before 1 April 2014 and those entered into on or after 1 April 2014. The Retirement Villages Regulations also apply to residents that permanently vacated their residential premises prior to 1 April 2014.

Q4: What are the time frames?

A4.1: To determine when a resident's liability ends a number of questions have to be asked:

- is the village a lease/licence village and not a strata/purple title village?
- has a new resident become liable to pay the recurrent charges (i.e. by entering into a residence agreement for the former resident's premises);
- has the former resident been repaid their premium:
  - under section 19(3)(b) of the Act; or
  - the residence contract; or
  - as a consequence of an order of the State Administrative Tribunal under ss. 57, 58, 59 or 62 of the Act?
- When did the former resident enter into the residence contract?
- Were the residential premises permanently vacated before or after 1 April 2014?
- Is the resident deceased?
  - If deceased, does the administering body require the resident's representative to have been granted probate or letters of administration or some other evidence of death?
  - If not deceased, have the residential premises been permanently vacated?

A4.2 The above questions give rise to six basic scenarios that are addressed in the regulations:

Scenario 1

Where:

- the residential premises were permanently vacated before 1 April 2014; and
- the resident is deceased,

the resident's liability ceases from the earliest of:

A. a new resident becoming liable to pay the recurrent charges (i.e. by entering into a residence agreement for the former resident's premises); or

B. the former resident being repaid their premium; or
C. the expiry of six months after the later of:
   (i) the administering body being given evidence of death in relation to the deceased resident; or
   (ii) the commencement day (i.e. 1 April 2014)

Scenario 2

Where:

- the residential premises were permanently vacated before 1 April 2014; and
- the resident is not deceased,

the resident's liability ceases from the earliest of:

A. a new resident becoming liable to pay the recurrent charges (i.e. by entering into a residence agreement for the former resident's premises); or
B. the former resident being repaid their premium; or
C. the expiry of six months after the commencement day.

Scenario 3

Where:

- the residence contract was entered into before 1 April 2014; and
- the residential premises were permanently vacated on or after 1 April 2014; and
- the resident is deceased when the premises are permanently vacated,

the resident's liability ceases from the earliest of:

A. a new resident becoming liable to pay the recurrent charges (i.e. by entering into a residence agreement for the former resident's premises); or
B. the former resident being repaid their premium; or
C. the expiry of six months after the later of:
   (i) the administering body being given evidence of death in relation to the deceased resident; or
   (ii) the residential premises being permanently vacated.

Scenario 4

Where:

- the residence contract was entered into before 1 April 2014; and
- the residential premises were permanently vacated on or after 1 April 2014; and
- the resident is not deceased when the premises are permanently vacated,

the resident's liability ceases from the earliest of:

A. a new resident becoming liable to pay the recurrent charges (i.e. by entering into a residence agreement for the former resident's premises); or
B. the former resident being repaid their premium; or
C. six months after the residential premises are permanently vacated.

Scenario 5

Where:

- the residence contract was entered into on or after 1 April 2014; and
- the resident is deceased when the premises are permanently vacated,

the resident's liability ceases from the earliest of:

A. a new resident becoming liable to pay the recurrent charges (i.e. by entering into a residence agreement for the former resident's premises); or
B. the former resident being repaid their premium; or
C. the expiry of three months after the later of:
   (iii) the administering body being given evidence of death in relation to the deceased resident; or
   (iv) permanent vacation.

Scenario 6

Where:

- the residence contract was entered into on or after 1 April 2014; and
- the resident is not deceased when the premises are permanently vacated,

the resident's liability ceases from the earliest of:

A. a new resident becoming liable to pay the recurrent charges (i.e. by entering into a residence agreement for the former resident's premises); or
B. the former resident being repaid their premium; or
C. the expiry of three months after the residential premises are permanently vacated.

Q5: What happens if a residence dies during the capped period?

A5: The Retirement Villages regulations provide that where a resident dies before the expiry of one of the specified periods the period stops expiring until the administering body is given evidence of death in relation to the deceased former resident.