

# Retirement Living Webinar: NSW Retirement Living Reforms

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# Webinar housekeeping

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- All attendees will be on mute and their cameras turned off for the entire webinar.
- We have BD tech support live to assist with any technical issues.
- Use the chat function for any comments/technical issues.
- Use the Q&A function for specific questions related to the webinar content - Questions will be addressed at the end of the webinar.
- There will be a post webinar survey link sent at the end of the webinar, we value attendee feedback, presentation slides will also be sent to all attendees.
- We will also have a QR code linking to our feedback survey towards the end of the presentation so you can provide instant feedback.

# Introduction



# Exit Entitlements

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## General principle:

- A registered interest holder (other than strata, freehold, trust) resident will have the right to apply to the Secretary of the Department of Customer Service for an Exit Entitlement Order requiring the operator to pay an exit entitlement at 6 months (for metro areas) or 12 months (for regional areas)(to be confirmed in Regulations yet to be released) after vacation of the property if the property remains unsold and the resident believes that the operator has unreasonably delayed the sale.

# When does the prescribed period commence?

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## 40 days after whichever occurs first:

- the date the former occupant's premises are first advertised for sale;
- the date the former occupant vacates the premises including by returning to the operator all keys to the premises; and
- if the former occupant does not intend to move out of the premises while the premises are for sale, the date the former occupant gives written notice to the operator of that fact.

## Aged care residents – new

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- Prescribed period commences on the date the resident enters RACF.
- Resident who is receiving an accommodation payment under the new Aged Care Rule may apply for an exit entitlement order if the premises have not sold within 2 years.

# Application for Exit Entitlement Order

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- Not until end of the Prescribed period
- In approved form
- Must have agreed valuation (no more than 30 days old)
- Only once during prescribed period

# Agreed value

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- Agreed between operator and resident or determined by independent valuer
- Valuer to be experienced, no conflict
- Valuer to be appointed by parties and if dispute, by President of API (NSW)
- Costs shared equally



# Exit Entitlement Order

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- Onus on the operator to establish that has not unreasonably delayed the sale
- Matters to be considered by the Secretary – Regulations
- Must set out amount to be paid by the operator – can be by lump sum or instalments and must be paid no earlier than 30 days after order made
- Reasons for decision
- Right of appeal against decision

# Right of appeal from decision of Secretary

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- Operator right to apply for EOT
- Retrospective application - applies to existing contracts

# Aged Care Rule

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## General concept

- Facilitates former residents transition to aged care by enabling them to access a percentage of their exit entitlement before the sale of their home

# Aged Care Rule

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## Who qualifies?

- Applies to former registered interest holders (not strata, community scheme or company title) if:
  1. Resident has entered into RACF;
  2. Resident not received “prescribed component” of exit entitlement; and
  3. Premises not yet been sold.
- Not retrospective

# Aged Care Rule – “prescribed component”

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- Component or proportion of an exit entitlement prescribed by the regulations – regulations not released yet
- “Exit entitlement” - the amount the operator would have to pay to the resident on sale or if an exit entitlement order is made

# Aged Care Rule

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## What must the operator pay and when?

- Operator to pay DAPs – up to 85% of the “prescribed component”
- Payment to be made from “prescribed component” of exit entitlement
- Timing of Payment:
  - Resident proposes to enter RACF – at least 28 days from date of proposed entry; or
  - Resident in RACF – within 28 days of resident’s request
- Form of resident’s application – approved form and contain certain information

# Aged Care Rule – Right to apply to Tribunal

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- **Operator** – within 28 days of resident's request, Operator can apply for extension of time to pay or not pay if to do so would cause significant financial burden
- **Resident** – can apply for Operator to recalculate “prescribed component” and pay any additional amount as a consequence of recalculation

# Aged Care Rule: Non-compliance & When Payments Stop

- Penalty for non-compliance
- Payments stop when:
  - premises sold;
  - resident requests payments to stop;
  - resident dies;
  - when payments reach 85% cap;
  - the resident doesn't enter the RACF; or
  - as prescribed by the Regulations



## 42 day recurrent charge cap

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- Registered leasehold interest holders only - those who are entitled to at least 50% of any capital gain
- Commences on the first financial year for the retirement village commencing on or after 1 July 2021
- “Permanent vacation” defined as when the person moves out of the premises or the executor or administrator of the person’s estate delivers up vacant possession. Must hand back all keys to the operator
- Operator NOT to increase recurrent budget as a result of any liability that arises out of the 42 day cap rule (unless regulations provide otherwise)
- Opportunity for lobbying – Regulations not yet released
- Between 1 January 2021 and 30 June 2021 – former resident can make an application for recurrent charges to be paid out of exit entitlement

## Key take-aways

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1. Still a lot of critical information to be in the Regulations and possibly guidelines – operator's should ensure they consider them as soon as they are released and make appropriate submissions;
2. Operator's should do a liquidity assessment to ensure they will have available funds to make aged care accommodation payments when due;
3. Operators need to have documented, clear and practical sales procedures in place and follow them;
4. Operators need to have clear communications with outgoing residents in relation to the resale process; and
5. 42 day cap rule is in two stages, starting with a transitional period between 1 January 2021 and 30 June 2021.

# Contacts

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