
Estate Planning - Residential Aged Care Agreement

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Residential Aged Care Agreements

Residential Aged Care Agreements contain mandatory provisions to the requirements of relevant legislation including Retirement Village legislation. Most agreements do not however give “ownership rights” as one has with a house purchase. There are also necessarily provisions dealing with issues that could arise if there are future health issues making it unsustainable for a person to remain in a particular type of accommodation. These have implications for estate planning

Legislation has been found to restrict the right of village operators to make some charges of a capital nature..

In the case of *Regis Aged Care Pty Ltd v Secretary, Department of Health* [2018] FCA117, Regis, a Retirement Village residence agreement included a charge for “asset replacement” to fund maintenance, reinstatement and building of infrastructure in the retirement village.

The Department of Health contended this was not lawful under the Aged Care Act. Regis sought a declaration from the Court to overcome any uncertainty. The Court held that the charge was not lawful as it did not specifically relate to the cost of providing accommodation to the residents in question.

However, the Court also held that an aged care provider could charge additional fees provided they were in fact for the accommodation or care of the residents.

Estate Planning

Legal advice should be obtained in relation to aged care facility agreements. Contact an Estate Planning lawyer at Matthews Folbigg to discuss.