



# Elder Law: Moving into a Nursing Home

Moving into a Nursing Home, whether for yourself or a loved one, is likely to be filled with emotions. At an age where residents are often vulnerable, it is important to ensure that any agreement with an aged care operator protects the resident's rights and is fairly negotiated. Using a legal adviser can remove the emotion and provide families with peace of mind.

Andersons Solicitors specialise in Elder Law, and can offer tailored legal advice that encompasses the review, negotiation and advice of nursing home agreements.

## What are Nursing Homes?

Nursing Homes provide accommodation, care and support for those who can no longer be cared for in their own home. The home will provide a supported living environment that includes:

- help with day-to-day living
- meal provision
- medical support including regular visits from doctors and other health care practitioners providing on-site services
- additional services such as a visiting hairdresser
- organised activities
- day excursions

## Aged Care Agreements

Any agreement between a new resident and aged care operator will exist in some combination of:

1. a resident agreement,
2. an accommodation agreement
3. an extra service agreement.

## The Aged Care Act

The *Aged Care Act 1997* is the law which controls the content, timing and form of these agreements. The care operator needs to provide the applicant with the terms of the resident agreement prior to the person entering care, and the applicant is able to review and make suggestions.

To help potential residents make an informed choice, the *Aged Care Act* contains a list of what must be included in each type of agreement, such as details of the services to be performed, the applicable fees and the complaint process. The essential features of an accommodation agreement includes whether the fees payable will be met by daily payments, refundable deposits, or a combination of the two.

An extra service agreement will exist where the operator has Extra Service Status; this means that the operator will provide a higher standard of accommodation, food and service at the request of the resident for an additional fee. Not all nursing homes offer Extra Service Status and the status does not affect the standard of care given by the operator.

## Aged Care Fees

Fortunately, the Aged Care sector in Australia is regulated to ensure that those in need will not go without a bed. However, the sector is not entirely funded by the Government and a final assessment of a resident's fees is based on a detailed income and assets test. This means that for those with a level of wealth, the Government will not subsidise the entire care arrangements.

Aged Care fees to be paid:

- **Basic Daily Fee** for living expenses such as meals, laundry and cleaning. This fee is set by the Department of Human Services and is tied to the single aged pension amount and is increased biannually.
- **Means Tested Care Fee** applies only to those who can afford it and is payable for day-to-day care and nursing costs. This amount will vary based on your income and assets however there is a lifetime cap.
- **Accommodation Costs** are a charge for the accommodation including the building, rooms and maintenance of the facility. This fee is secured either by a daily payment or a refundable accommodation deposit and any additional government contribution is means-tested.
- **Extra Service Fees** exist where a special service or facility is provided by the operator and the residents enter into an agreement to pay for those services. An operator will generally have a list of additional services that a resident can opt in to receive at a specified fee.

It is important to understand your financial position prior to considering an agreement, so you know if you can afford the refundable deposit amount and the

daily accommodation payment. Knowing your financial limitations will help you find a suitable home.

There is often some conjecture over the amount of the deposit required to be held by the aged care operator. Your lawyer may be able to negotiate a solution that better fits your financial situation.

## Things to remember before moving into a Nursing Home:

- The **Basic Daily Fee** may be the only fee some residents will pay for aged care services; however, this is limited to those with a low income and low assets.
- If you choose not to have your income and assets assessed you will be asked to pay the entire **Means Tested Care Fee**. Whilst inconvenient, choosing not to be assessed is a pitfall of many people who simply assume they will be in the top bracket but choose not to be formally assessed.
- The operator can set the price of **Accommodation Costs** as they see fit, however, if the home is subsidised by the Government an operator cannot ask for a refundable accommodation deposit greater than \$550,000 without approval by the Aged Care Pricing Commissioner.
- An operator must help potential residents to understand the **Resident Agreement**; including their personal rights, the services to be provided and the applicable fees.
- Once a **Resident Agreement** is signed there is a 14 day cooling off period should you not wish to proceed.

# Conclusion

Whilst the law promotes disclosure about agreements, fees, services and resident rights there is not a simple method of choosing the right location and right agreement for you or your loved one. Each Nursing Home's fees, services and deposit amounts will differ. The terms of both the resident agreement and accommodation agreement can be negotiated to protect your interests. A lawyer experienced in the area of Nursing Home agreements can do this for you.

It's important to ensure that any agreement with an aged care operator protects the resident's rights and is fairly negotiated.

Call Andersons Solicitors to discuss how we can help you review, advise and negotiate your nursing home agreement with you.