

What is a Retirement Village

THE LEGISLATIVE FRAMEWORK

A retirement village is a particular type of housing for seniors regulated by state law. The laws are:

- *Retirement Villages Act* 1992 (including amendments made on 1 April 2014) (“the Act”)
- *Retirement Villages Regulations* 1992 (amended 1 April 2014) (“the Regulations”)
- *Fair Trading (Retirement Villages Interim Code) Regulations* 2014 (“the Code”)

Copies of these laws can be accessed through the WARVRA website (warvra.org.au/legislation)

Under this legislative regime, a retirement village:

- is for retired persons who are defined as being over 55 **OR** retired from full-time employment **OR** the spouse or de facto partner of such a person;
- has a memorial over the land, reserving it for use as a retirement village, lodged with the Registrar of Titles;
- has a “Retirement Village Scheme”, usually included in the contract;
- has at least one resident who has paid a “premium” (a lump sum payment to the administering body in consideration for the admission to the retirement village).

The inclusion or absence of the words “retirement village” in the village’s title does not automatically prove that it is or is not a retirement village. The simplest test is that there is a memorial registered on the Certificate of Title mentioning that the property is subject to the *Retirement Villages Act*. You should ask the administering body to confirm in writing that it is bound by the requirements of the *Retirement Villages Act* if that is not stated in their documentation.

Some of the purposes of this legislation are:

- to require the administering body to provide prospective residents with certain information to help them choose between different villages and to help them understand their rights before entering a village;
- to set out rules about the operation of villages, which includes giving residents the opportunity to be consulted with regard to the future planning and budgeting of the village;
- to seek to provide some security of tenure for residents of a village by, among other things, requiring any subsequent owner of the village to honour

- existing resident contracts and limiting the circumstances under which a residence contract can be terminated; and
- to require retirement villages to have a process whereby disputes can be resolved in a relatively informal and inexpensive way.

REQUIRED PRELIMINARY INFORMATION

At least 10 working days before anyone enters into a residence contract, the village owner/operator must provide:

- a copy of every contract required to be entered into to reside in the village;
- the Information Statement for a prospective resident, commonly called a disclosure statement or Form 1 (44 questions), signed by the owner/operator;
- a statement of the rights of a resident under sections 13 and 14 of the Act (Form 2);
- the residence rules;
- a copy of the Code; and
- the village accounts for the preceding year and the operating budget for the current year.

OWNERSHIP/OCCUPANCY STRUCTURES

There are several types of ownership or occupancy structures in retirement villages. It is important to understand the normal rights conferred under these structures in other situations may be modified by the residence contract, so a direct comparison with what might apply elsewhere cannot always be drawn.

The most common structures used in WA are:

1. Leasehold

- An initial contribution is made for the lease of a particular residential unit and the right to the use of common areas and facilities for a period that may be anything from 49 to 199 years, or may be for the life of the lessee.
- Lease does not provide any ownership rights but is registered on the title deeds of the property and gives some security should the village be sold.
- On leaving the leased property (to move into residential aged care or on death), the lease may be transferable or assignable to another person but there may be restrictions contained in the contract as to the age of the new lessee and the owner may have some right to fix the price or a minimum price.
- The owner usually has the right upon assignment or transfer of the lease to receive part of the price paid (an exit fee) which can amount to 30% or 40% of the resale value.

- Some leases are “non-participating” which means the outgoing resident or their estate will not share in the capital gain or loss incurred as a result of the transfer of the lease.
- One advantage of a leasehold arrangement is that there is no stamp duty, which reduces the ingoing costs to a resident. Without any ownership rights, however, finance is usually difficult to obtain.
- The obligation to continue paying recurrent charges ceases 3 months after the premises are permanently vacated.

2. Loan and Licence

- The right (a licence) to live in a specific residential unit in the village together with the right to share in the use of the common facilities and amenities is granted by the owner subject to the resident making an interest free loan to the owner.
- A licence usually comes to an end on the death of the resident or when the resident leaves the village (for example, to go into aged care). At this point, there is usually a refund to the resident or the resident’s estate, but there is commonly the retention of part of the loan amount, which is sometimes called a “donation”.
- The resident will not normally be entitled to any interest on the loan. If the new resident makes a larger loan than the previous resident, the owner usually retains that the amount of the increase.
- This kind of a loan cannot be regarded as an investment that will grow in value. But the amount of the loan is usually less than required in other forms of tenure.
- The obligation to continue paying recurrent charges ceases 3 months after the premises are permanently vacated.

3. Purple Title (Tenancy-in-Common)

- Each resident here purchases an equal undivided share (or purple title, after the colour of the certificate) in the whole retirement village and holds a Certificate of Title for that share. As well, the resident holds a licence for the exclusive use of one of the residential units, granted by all the other co-owners.
- The owner of a purple title share is entitled to sell his or her share and licence (together). Ease of sale will depend on the state of the property market at the time. The residence contract will limit purchasers to those entitled to reside in a retirement village and there will be exit fees payable.
- This form of tenure provides the security of a Certificate of Title but residents must understand that they do not own their residential unit, they own a share of the whole village.

- It is difficult to raise finance on a purple title.
- The payment of recurrent charges after the premises are vacated continues until a sale is effected.

4. Strata Title Schemes

- In a strata title village, each resident owns a defined portion of the village (“a lot”) and holds a Certificate of Title for that lot.
- Any part of the village site not included in one of the lots is called “common property” and comprises the communal facilities and roadways in the village. All the lot owners are tenants-in-common of the common property and have the right to use and access it.
- The owner of a strata title lot is entitled to sell his or her lot. Ease of sale will depend on the state of the property market at the time. The residence contract will limit purchasers to those entitled to reside in a retirement village and there will be exit fees payable.
- This form of tenure provides the security of a Certificate of Title but residents must understand that their rights will be limited according to the residence contract.
- It is easier to raise finance on a strata title.
- Strata Schemes are also subject to the *Strata Titles Act* 1985 which sometimes leads to complex situations when the *Strata Titles Act* and the Retirement Villages legislation overlap.
- The payment of recurrent charges after the premises are vacated continues until a sale is effected.

Note that there is wide variation in residence contracts and village schemes and these general descriptions need to be checked very carefully against the arrangements for any particular village.

VILLAGE CONTRACTS

The law recognises two types of contracts entered into for retirement villages – a residence contract and a service contract – and does permit the two to be combined.

A **Residence Contract** sets out your right to occupy residential premises in a retirement village. It can be a long and detailed document which will affect your future lifestyle and conditions so you must read and understand all the terms of the contract thoroughly before you consider signing the agreement.

The **Residence Contract** must cover things like:

- the basis on which you are legally entitled to occupy the property (type of tenure);

- the length of time you can reside in the village;
- the circumstances under which you can voluntarily or involuntarily transfer to or be relocated in another unit in the village and the fees that apply;
- the type of amenities and services you will receive and any restrictions on access to or the use of these amenities and services;
- details of the entry costs and ongoing (recurrent) fees and charges, including the method by which these fees and charges are calculated;
- details of any fees you must pay upon leaving the village, including ongoing fees if your unit is not immediately resold or leased or occupied;
- details of any contribution you must make to any village reserve fund for improvements and maintenance to the village, including details of the method of calculating your contribution;
- who is responsible for the maintenance and replacement of fixtures and fittings;
- your right to a refund, if any, on termination of the residence contract and how this is calculated;
- plans of the village showing the location and floor plan of facilities allocated to you and common facilities you can use.

A **Service Contract** is for personal services to you when provided by the village operator (such as meals, cleaning or laundry) for which you have to pay extra. A Service Contract is not required for common services (such as gardening) nor if you have personal services provided to you by an external contractor.

FINANCIAL CONSIDERATIONS

1. Entry Costs

In addition to the premium you pay (purchase of a strata or purple title, upfront rent on a lease or a loan to the village operator) there will also be conveyancing fees, documentation costs and stamp duty.

Some extras may not be included in the entry costs, such as air conditioning, ceiling fans, extra power points, awnings, curtains and blinds. Check what is provided and if you want features such as these, and they are not included, you may need to pay extra.

2 Recurrent Charges

The Information Statement (Form 1) must identify all of the operating costs and village outgoings for which the resident will be responsible. The recurrent charges may be divided between:

- (a) costs and outgoings of a regular and ongoing nature to meet the operating costs of the village; and
- (b) maintenance and replacements of an irregular, substantial or capital nature.

(a) Operating Costs

Operating costs are a levy charged regularly for the upkeep of the common areas, rates and utilities, building and liability insurance, gardening, administration and staff and security or care staff.

The amount raised from these levies is determined by the adopted annual budget divided among the residents by whatever method is specified in the contract (equally, single or multiple occupancy, floor area of your unit).

Village budgets increase annually, so your contribution will rise too. Residents can appeal to the State Administrative Tribunal against excessive or unwarranted increases or the imposition of a specific levy.

(b) Capital Maintenance and Replacement

To reduce the impact of these larger expenses on the operating budget, most villages have created a reserve fund (maintenance reserve, painting reserve, refurbishment and improvement fund etc) to meet these irregular, substantial and capital costs.

The Act does not (at present) require villages to have a reserve fund. But if it does, the Information Statement must disclose it and must disclose the contributions to be made to it and how they are calculated. If there is no reserve fund, then the Information Statement must disclose what arrangements are in place for funding any repairs, replacements, maintenance or renovations. The Information Statement must disclose the details of any reserve fund and the Code requires village operators to report at least annually on its income and expenditure. The source of funding for reserve funds varies from village to village – a component of the entry fee, an allocation from the operating budget or from exit fees.

Capital maintenance and replacement has been identified as a significant matter of contention between residents and village operators. If there is no reserve fund, you need to look at how capital maintenance and replacement will be handled in the future – you may find yourself having to meet additional levies to fund particular major projects, particularly as the village ages.

3. Exit Charges

It is common practice to impose fees which are payable on a resident's departure from the village. These "exit fees" may include a contribution to the refurbishment or reserve fund, a deferred facilities fee, a marketing fee and the balance of any recurrent charges.

The deferred facilities fee (sometimes called the deferred management fee or DMF) is a distinctive feature of Australian retirement village operations. It is to provide the operator with a return on their financial investment in the common facilities of a retirement village. The sales proceeds of the initial sales in the village do not typically cover the cost of the common facilities and the developer is in effect "lending" the residents the cost of the construction of these facilities and amenities. As a return on that investment, the developer receives a portion of the re-sale price of each unit.

The Act does not regulate fees charged upon exit from a village – they will be specified in the contract and residents will be bound to pay the amounts outlined in any contract they have signed.

A further charge on leaving the village relates to reinstating the unit into a state similar to when the resident took up occupation. Reinstatement only requires repairs of an insubstantial nature such as cleaning, re-carpeting, re-painting and making good any damage. If the village owner wishes to renovate or upgrade the premises, then these costs are met from the reserve fund or directly by the owner.

IN CONCLUSION

The concept of entering a retirement village is a package deal. It cannot be properly assessed on one element on its own, such as the entry contribution or the level of the service fee or indeed the exit fee calculation. All of them need to be considered as part of the package and balanced against the benefits offered. In particular, what would be the costs to you of receiving the same benefits outside of a retirement village scheme and what would be the risks involved.

Please remember – before you make any commitment you should carefully read the Information Statement and the residence (and service) contract. Make sure any verbal agreements made or concessions offered by salespeople are written into the contract. Take legal advice from a solicitor who is familiar with retirement village law to ensure your interests are protected, obtain advice from a certified financial planner of your ability to meet the entry and on-going costs of moving into a retirement village and make sure you talk to some of the residents of the village you are considering.

Disclaimer: WARVRA has made every reasonable effort to ensure the general information given on this paper is accurate, but it is not to be construed as legal or financial advice. Each person should seek advice and verify information themselves.