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WESTERN AUSTRALIAN RETIREMENT VILLAGES RESIDENTS ASSOCIATION INC

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RESIDENTS' TENURE IN RETIREMENT VILLAGES

The freehold title of the family home is a well-known form of home ownership. Such titles give security that can be borrowed against and incur stamp duty at settlement. They also make us liable for water and council rates.

Choosing to live in a retirement village villa or apartment usually introduces a different form of tenure. Retirement villages, whether for-profit or not-for-profit, specify the tenure or legal title under which people over 55 years of age can buy into a village. The common forms of tenure are leasehold (often referred to as lease-for-life), loan-and-licence, purple title and strata title (freehold). Much less common are company title and trust deeds.

Leasehold

Although some general principles in regard to leases are the same, all leases are not the same. An intending purchaser needs to check the details carefully.

Commonly, in a leasehold situation an incoming resident pays an entry contribution close to the market value of the unit in return for which they are given a long term lease on that unit and the right to use the common facilities. They pay for the upkeep of the common facilities, which remain the property of the developer/operator, on a continuing basis through a regular fee or levy. It is important to note that a lease does not amount to ownership of the unit or part of the property but it is registered on the title deeds of the village and gives some security should the village be sold.

On termination of the lease, the outgoing resident or beneficiaries will be entitled to a lease termination payment that may be higher than the in-going amount due to capital growth. Against this sum, deferred management and/or refurbishment fees ('exit fees') are charged. With other charges, depending on the length of time in residence, exit fees can amount to 30 or 40%, or even more, of the resale value of the unit.

Some leases, however, are "non-participating". This means the outgoing resident or beneficiaries will not share in the capital gain or loss. The amount of their original payment, less deferred management and/or refurbishment fees, is repaid without regard to current market value.

Another form of lease is the prepaid or periodic rental lease, by which a resident pays in advance a period of rent, usually some years of rent. If the lease is terminated before the stipulated years are up, a refund will be paid for the time remaining. Residents with this kind of lease pay a fortnightly or monthly instalment, which includes rent and a service fee. The rent is usually calculated in line with Government pensions and rent assistance payments. Entry to villages offering this form of lease may be subject to a means test.

One advantage of leasehold tenure is that there is no stamp duty. This reduces the incoming cost to the resident. However legal fees may be higher and, as a rule, the lease cannot be used to borrow against as the resident does not receive title to the property.

Loan-and-Licence Lease

The loan and licence arrangement involves the organisation or developer offering the resident the right to live in a village, subject to the resident making an interest-free loan to the organisation or developer. In return, the resident is given a licence to occupy a unit within the village, together with the right to share in the use of village facilities and amenities.

The licence comes to an end on the death of the resident or when the resident leaves the village, for example, to go to an aged care facility. When a licence comes to an end, there is usually a refund of the 'loan' to the resident or beneficiary but the amount repayable is usually substantially reduced by the retention of part of the loan amount, which is sometimes called a 'donation'.

This scheme does not require the payment of stamp duty. By its very nature, it does not give any share of capital gains to the departing resident or their estate.

Purple Title (Tenancy in Common)

This title is named after the colour previously used on the Certificate of Title compared to the green which was used on a freehold land title. Only a few villages in Western Australia operate under purple title.

In this format, each resident purchases an equal undivided share or 'purple title' in the whole retirement village and holds a Certificate of Title for that share. This means that every co-owner would have an equal interest in every unit in the village. A resident in this type of village would enter into an agreement whereby all of the co-owners grant to the resident the right to exclusive use of one of the units in the village. In this way, each can occupy a residence to the exclusion of the other co-owners of the village. They do not own the unit but they do own a share in the whole property. Some residents in this kind of scheme do not understand that they do not own their unit. Also, as a rule, it is not possible to raise a bank loan against this form of tenure.

Strata Title Schemes

Residents with Strata Title to their units are considered to be owners and have a separate certificate of title.

In a strata title scheme, a resident owns their "lot" and may either share as tenants-in-common in the ownership of the common property (that is the community facilities and amenities) or enter into a residency deed with the village operator which grants rights to the use of common facilities and limits the rights of resale.

When the developer of a strata-titled village has sold the last unit, it is possible for them to leave and for the village residents to then manage the village, but this arrangement is uncommon. In practice, most developers have an option to re-purchase or on-sell the unit when a resident leaves.

There may be some complexity for residents because such developments come under both Strata Title and Retirement Village Legislation. Its advantage lies in that the resident has the security of owning their own unit and the title can be used, if needed, as security in raising finance.

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