

Retirement villages in WA

WHAT IS A 'RETIREMENT VILLAGE'?

Retirement villages are regulated at a state and territory level. In Western Australia, a retirement village is a residential development, occupied predominantly by retired residents and governed by a regulatory framework established by:

- *Retirement Villages Act 1992* (WA) ("Act");
- *Retirement Villages Regulations 1992* (WA) ("Regulations"); and
- The Retirement Villages Code prescribed under the *Fair Trading Act 2010* (WA) ("Code").

WHAT IS NOT A 'RETIREMENT VILLAGE'?

There are other means of accommodating and caring for older persons, but these are not (or not necessarily) retirement villages. For example:

- residential aged care governed by the *Aged Care Act 1997* (Cth);
- residential parks and lifestyle villages governed by the *Residential Parks (Long-stay Tenants) Act 2006* (WA);
- strata titled developments, including those restricted under the *Strata Titles Act 1995* (WA) to occupation by 'retired persons'.

WHO'S WHO IN A RETIREMENT VILLAGE?

Although there may be other parties and bodies involved, the main parties to be aware of are:

- **The Resident:** A retirement village is occupied predominantly by 'retired persons' – meaning 'a person who has attained the age of 55 years or retired from full-time employment or a person who is or was the spouse or de facto partner of such a person'.
- **Administering Body:** This is 'the person by whom, or on whose behalf, the retirement village is administered and includes a person (other than a resident) who is the owner of land within the retirement village'.

The Administering Body may or may not own the retirement village. In some cases an owner may, for example, lease their land or village to another party (who then sublets individual units to residents). In other cases an owner may engage a third party to manage and administer their village.

- **Residents' committee:** Under the Code, the residents of a retirement village may establish a committee whose function is to consult with the Administering Body.

DOES A RETIREMENT VILLAGE RESIDENT OWN THEIR UNIT?

The short answer is, this varies from village to village.

The WA retirement village legislation does not create a discrete form of land tenure. Like other types of property developments, retirement villages may be comprised of strata titled or non-strata titled units. They may either be leased or licensed (on a long term or short term basis) to residents, or (in the case of strata titled units) individually owned.

Of all the possible permutations, the most common retirement village model in WA appears to be a 'lease for life' or long term lease arrangement.

RESIDENCE CONTRACTS

Residence contracts are an essential feature of any retirement village. They are defined in the Act as: 'a contract, agreement, scheme or arrangement which creates or gives rise to a right to occupy residential premises in a retirement village, and may take the form of a lease or licence'.

A residence contract must comply with prescribed requirements; and prior to being entered into, the prospective resident must be given various prescribed information including a detailed disclosure statement prescribed by the Regulations.

To ensure compliance with all the requirements, it is necessary to consult not just the Act, but also the Regulations and the Code.

Residence contracts vary between retirement villages, but will typically address common features including fees and charges; personal and communal services and amenities; maintenance and refurbishment; financial and day to day village management; marketing; and re-letting (or re-sale) processes. After entering into a compliant residence contract, prospective residents enjoy a 7 working day cooling off period.

MEMORIALS ON TITLE

The Act requires the owner of a retirement village to lodge a memorial 'before entering into a contract which creates or gives rise to a right to occupy residential premises in the retirement village' or even before inviting applications, offers or proposals. These memorials are an important legal characteristic of a retirement village. They will contain the following information, prescribed by regulation:

- that the land is (or is proposed to be) used for the purpose of a retirement village;
- that the land may be subject to a statutory charge securing repayment of money to village residents; and
- that the provisions of the Act pertaining to retirement village rights and obligations apply.

Once lodged, a memorial under the Act can be difficult to remove.

FEES & CHARGES

Fees and charges necessarily vary but in a typical lease for life retirement village one would expect:

- **Ingoing entry payment:** Usually repayable to the resident in whole or in part when they depart their unit.
- **Recurrent charges:** A contribution towards the administering body's operating costs of the village.
- **Exit charges:** The main fee on departure is known as a deferred management fee or 'DMF'. There may also be refurbishment costs and marketing costs, and a reserve fund contribution.

CONTACT DETAILS

For more information or to discuss how we may be able to assist you, contact our team at Panetta McGrath Lawyers:

Business:

ADA House, Level 2
54–58 Havelock St
West Perth WA 6005

Postal:

PO Box 29
West Perth
WA 6872

Contact numbers:

P 08 9321 0522
F 08 9321 0622
E info@pmlawyers.com.au

Or visit our website at
www.pmlawyers.com.au

The information contained in this Fact Sheet is general information only and does not constitute legal advice

CONSUMER PROTECTION – A KEY FOCUS

WA's retirement village legislation emphasises consumer protection, and the Commissioner for Consumer Protection has various functions for the purpose of the legislation.

Some important consumer protection themes are:

- A right to information;
- Controls around advertising and promotion of retirement villages;
- Prescription of the manner in which a village must be operated (in terms of matters such as budgets, management procedures and resident consultation);
- Dispute resolution processes applicable to disputes either between residents, or between residents and an administering body;
- The notion that retirement villages should be offered as permanent accommodation for the residents. In the absence of agreement from the resident, a residence contract may be terminated only in a limited number of circumstances in accordance with the Act.

PANETTA MCGRATH

L A W Y E R S