

Retirement Living, looking through the legal haze and finding the village of your choice

by Arthur Koumoukelis and Matthew Mallos

Retirement Living – choosing your retirement lifestyle

Retirement living in Australia is experiencing a phase of unprecedented growth as the industry consolidates and operators diversify their product offerings to appeal to the changing demands of today's retirees.

The sector now offers a range of lifestyle and living choices for retirees to consider. Wealthy retirees looking to improve or maintain their lifestyle may be attracted to the sectors so called 'retirement resorts'. Those who are looking for a level of care for themselves or their spouse might consider serviced premises where 'ageing in place' is available. And for budget conscious retirees, rental villages are building strong reputations for meeting the demands of the low cost market¹.

The decision to move into a community living complex such as a retirement village or a rental village requires consideration of each individual's personal needs coupled with a specific village's product offering. A number of important matters you should look out for and how you can find out about them are explained in this article.

Interested in a village? Find out what the village offers you

The supervision of retirement villages in Australia is a State responsibility.

In New South Wales, the *Retirement Villages Act* and the *Retirement Villages Regulation* govern the relationship between retirement village operators and residents. Victoria, Queensland and South Australia have Acts and Regulations which adopt similar concepts to those found in NSW. In Western Australia, retirement villages have been subject to a Code of Practice for some time; however this may be about to change. The ACT and the Northern Territory rely on a Code of Practice.

All States and Territories require operators to meet comprehensive requirements for the disclosure of information to prospective residents. In New South Wales and Victoria operators must provide a Disclosure Statement. In Queensland, a Product Information Document is required.

These documents set out such things as the types of contracts you must sign to live in the village, the facilities and services available and the relevant fees and charges you are liable to pay while living in the village.

Rental villages are not subject to the same disclosure regime as retirement villages.

¹ Rental Villages are not retirement villages and are not currently subject to the same regulatory regimes applying to retirement villages. Rental Villages are referred to in this article to provide readers with an understanding as to the scope of products falling under the retirement living umbrella. State Governments are being lobbied to include rental villages as part of the regulation of retirement villages.

Common concepts in retirement living communities

The operation of retirement communities across the States and Territories use similar concepts.

Type of resident tenure

The most common forms of tenure are a long-term lease or a licence.

If a lease, it is usually for a term ranging from 49 to 99 years. You may share in the 'capital gain' achieved on the re-leasing of your premises. Where you are entitled to a proportion of capital gain, you also share responsibility should any capital loss arise.

Where a resident is granted a licence, there is usually no sharing in capital gain. The operator receives all the capital gain and bears responsibility for any capital loss.

The lease or licence may be coupled with a Services Agreement and a Loan Agreement. The Village Rules are also an important part of your village contract.

In a rental village, your tenure is by way of a Residential Tenancy Agreement. Your tenancy may be for a fixed term or periodic.

Ingoing contribution

You may be asked to pay an ingoing contribution on entry to a village. The ingoing contribution may be partly or wholly refundable.

The time for repayment of any refundable part of the loan will depend on the terms of your village contract and the regulations in your particular State or Territory.

The operator usually has a right to set off any deferred management fee (see below for an explanation of deferred management fees) against any refund of your ingoing contribution.

There is no ingoing contribution to enter a rental village, however a rental bond is payable.

Recurrent charges (NSW), Maintenance Levies (Qld)

These are regular charges payable to the operator on account of the costs of operating the retirement village. These charges may be increased at a fixed rate (e.g. as a percentage of the age pension) or in line with actual costs of operation.

In rental villages, rent is apportioned to cover accommodation costs and the costs of providing facilities and services.

Deferred Management Fee

The Deferred Management Fee is charged by the operator and is usually calculated with reference to the length of time you stay in the village.

The basis for the DMF may be the ingoing contribution paid by you, or, the ingoing contribution paid by a new resident who occupies the premises after you leave. The DMF is usually capped at a proportion (for example, 35%) of the relevant ingoing contribution.

In a rental village, there is usually no DMF however, you may be asked to pay an 'occupation' or 'unit preparation fee'.

What to do if you don't know what to do

Here are some simple steps to find out more about a village you are interested in:

1. Ask the operator for more information. In addition to the disclosure and product information document, State and Territory regulations require retirement village operators to make a variety of documents and information available to prospective residents. This may include historical and financial information concerning the village operator.
2. Ask your solicitor for advice. Retirement village contracts can be complex. You should obtain advice from a professional legal advisor before signing.
3. If entry costs and deferred management fees seem too high, consider alternatives such as a rental village.

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