

RETIREMENT VILLAGE LIVING

The information in this document is taken from the NSW Fair Trading booklet
Retirement village living - An overview of the NSW retirement village laws
published in March 2011
This booklet is now out of print

RVRA Comments are shown in BLUE text.

- PLEASE have a look at the Resident's Check List at the end of this document.

NOTE: All references to CTTT should read NCAT.

The NSW Civil and Administrative Tribunal (NCAT) replaced CTTT on 1 January 2014

Introduction

Moving into a retirement village is an investment decision as well as a lifestyle decision. People have many reasons for moving into a retirement village, combining the benefits of being in a private and secure environment with a home that is easily maintained. Retirement villages offer social activities, amenities and the freedom to choose a lifestyle that meets your needs.

There are hundreds of retirement villages in NSW of different sizes and styles providing a range of services and facilities. Take time to obtain all the information you can from the villages that interest you.

This guide helps you make the decision about moving into a retirement village and explains many important things you need to consider before finalising your choice.

If after reading this information you have any further questions, please visit your nearest Fair Trading Centre or call them on 13 32 20.

RVRA Comment:

A Retirement Village is rarely a good financial investment. It is a life-style investment. Retirement Villages are a great model for living as people age but have financial implications which are not readily apparent when you read the contracts.

What is a retirement village?

A retirement village is a residential complex predominantly or exclusively occupied by residents who are aged over 55 years, or who have retired from full-time employment, where residents have entered into a contract with the operator of the complex, either to occupy premises in the complex and/or to receive services.

There are around 600 retirement villages in NSW, accommodating about 36,000 residents. Retirement villages are located across the State and are operated by church, charitable, community and private operators.

A broad range of accommodation is available within the retirement village sector including:

- self-contained premises available to residents who are able to live independently
- serviced premises (or assisted living apartments), with meals, cleaning and other services

- a mix of self-contained and serviced premises, allowing residents to transfer if the need arises.

Optional support services are available at some but not all retirement villages. Prospective residents should ask each operator about the standard, extent and cost of optional services available at the village.

Role of NSW Fair Trading

NSW Fair Trading administers the laws that set out the rights and obligations of prospective residents, residents of retirement villages and village operators.

NSW Fair Trading's role includes the following responsibilities:

- providing information about the retirement village laws
- handling complaints about possible breaches of the laws
- producing educational resources on retirement village matters
- investigating and carrying out research into retirement village matters
- monitoring the industry
- reviewing and amending the laws to ensure they remain relevant.

Consumer tip

Moving into a retirement village is an important decision. Shop around, don't be rushed, talk to village residents, family and friends; compare the costs, read the contract and obtain independent advice from a solicitor before you sign a village contract.

Which Fair Trading laws apply to retirement villages?

The main legislation applying to retirement villages is the Retirement Villages Act 1999 and the Retirement Villages Regulation 2009. This legislation:

- sets out the rights and obligations of residents and operators
- explains what information must be given to prospective residents
- sets out the process of entering into a village contract
- provides for the establishment of residents committees
- explains how and when a village contract can be ended.

RVRA Comment:

The Retirement Villages Act at the present time is very ambiguous about the cost of maintenance and repair and replacement of capital items. It is very difficult to have a real idea of what type of costs in which you may be involved from reading your contract and the information in Disclosure statements. Study the financial document carefully for the village you want to enter and look carefully at the Maintenance costs.

For the some 50 or 60 retirement villages that are held under Strata Title, the Strata Schemes Management Act is also of vital importance. Where the Retirement Villages Act and the Strata Schemes Management Act conflict, the latter Act frequently prevails. For example, in a Strata Village the resident is the owner and is undoubtedly responsible for all maintenance costs.

Other relevant laws include:

- the Consumer, Trader and Tenancy Tribunal Act 2001, which sets out the process for resolving certain disputes between residents and operators
- the Australian Consumer Law (NSW), which deals with general fair trading matters such as

- advertising and promotion
- the Strata Schemes Management Act 1996, which is relevant to retirement villages that are set up as a strata scheme
- the Community Land Management Act 1989, which is relevant to retirement villages that are set up as a community scheme.

Where can I get a copy of the laws?

Copies of the legislation are available to read at most public libraries. You can also view or download the legislation from the government legislation website at www.legislation.nsw.gov.au If you would like to purchase the legislation please call 1300 656 986.

What do the laws not cover?

The Retirement Villages Act 1999 does not apply to the following complexes, even though these complexes may cater exclusively or predominantly to retirees:

- residential parks and manufactured home estates
- Commonwealth Government funded aged care hostels
- nursing homes
- NSW Land and Housing Corporation tenancies
- NSW Aboriginal Housing Office tenancies
- boarding and lodging houses.

These complexes are covered by other legislation, either at the State or Commonwealth level.

Sometimes a Commonwealth Government funded hostel or nursing home is located on the same land or next to a retirement village. The retirement village laws do not apply to these types of accommodation and residents of these facilities are not residents of the retirement village.

The Retirement Villages Act 1999 also does not apply to the following that may be found within a retirement village:

- respite care buildings
- employee accommodation
- residential premises, where the operator and resident have a residential tenancy agreement under the Residential Tenancies Act 2010, if the agreement contains a term to say that the Retirement Villages Act does not apply to the premises.

Consumer tip

There are different types of arrangements in retirement villages:

- *loan and licence arrangements*
- *leasehold arrangements*
- *strata and community schemes*
- *rental arrangements*
- *company title schemes.*

Different types of retirement villages

There are different types of contracts that residents and operators enter into depending on the arrangements in place in the village. This chapter gives you a brief explanation of the different types of arrangements. However, some of the information below may differ in individual circumstances. If unsure, check your contract or contact Fair Trading for information.

Loan and licence arrangements

These arrangements are mainly offered by non-profit organisations such as where a church or charity owns the village. You pay an ingoing contribution to the operator in the form of an interest-free loan, part of which may be a non-refundable donation. You also pay recurrent charges, on a fortnightly or monthly basis.

The loan/licence agreement permits you to occupy the premises, but you do not own the premises or have an interest in it (like you would have if there was a lease). Sometimes a separate loan agreement sets out matters relating to your loan.

The permission to occupy the premises ends when your residence contract is terminated. You are entitled to receive your monetary refund within a fixed period set by the Retirement Villages Act unless your contract provides for earlier payment. The refund may be reduced by a departure fee or donation.

Leasehold arrangements

Leasehold is an arrangement where the village operator owns the residential premises in the village and each resident enters into a lease with the operator. The lease is registered on the title deed held by the Land and Property Management Authority, which gives you added protection if the village is sold.

The amount you pay for the leasehold varies depending on the market, similar to if you were buying the premises. You also pay recurrent charges, usually on a monthly or quarterly basis.

When you permanently vacate the unit, your contract may require you to pay a departure fee or other amounts to the operator, such as recurrent charges and sale costs. Your contract may also provide for you to share any capital gain with the operator. The balance of your refund must be paid to you within a fixed period set by the Retirement Villages Act unless your contract provides for earlier payment.

RVRA Comment:

This is an area of which many people neglect to take note when first investigating a move to a Retirement Village. Ensure you are aware of how long you or your family will be responsible for the cost of the recurrent charges. In many villages it can be until your dwelling is sold, which can take up to two years or more which can cause financial hardship to you, if you need to move to care, or your family, if they are trying unsuccessfully to sell your lease or dwelling.

If the lease contract allows for the Resident or their estate to receive 50% or more of any 'capital gain' on the sale of the property then after 42 days after vacating the property they will be responsible for that percentage of the Recurrent Charges. It is not unusual for Residents to have a lease contract that prescribes that they will be responsible for 100% of the Recurrent Charges for seven (7) years or longer if it takes that length of time to sell the property.

A small number of lease contracts have conditions prescribing that Recurrent Charges cease upon the death of the Resident, others prescribe that Recurrent Charges are payable for a maximum of six months and others still that state that the payment of Recurrent Charges will cease on the permanent vacating of the property. If these or other more advantageous conditions are contained in the contract, the Act provides that these provisions will apply.

Strata and community schemes

Buying premises in a strata or community scheme is another common arrangement available in villages. You pay the agreed purchase price to the owner of the premises (eg. the former resident or the operator). This makes you the owner of the premises and you automatically become a member of the owners corporation or community association, as in any other strata or community scheme. You will have to pay levies, on a quarterly basis, to the owners corporation or community association.

You will need to be familiar with your rights and obligations under the Strata Schemes Management Act 1996 or the Community Land Management Act 1989.

Unlike other strata and community schemes, you will be required to enter into a service contract with the operator before you can move in. There may also be an existing agreement in place between the operator and the owners corporation or community association. This agreement, often for the life of the village, is for the operator to assist the owners corporation or community association to carry out its functions in relation to the management and administration of the common property.

You usually have the right to sell your premises at any price you like. You can appoint any qualified person, including a real estate agent or the operator, to act as your selling agent. Under the terms of your service contract, you may have to pay the operator a share of any capital gains as well as departure fees and other charges from the proceeds of the sale.

Rental arrangements

A small number of villages offer premises for rent to retired people. You sign a tenancy agreement and pay rent like other tenants in the general community. The agreement may contain a term excluding you from the retirement village laws. If this is the case, your agreement will be covered by the Residential Tenancies Act 2010. There are no ongoing contributions to pay under the Retirement Villages Act when you enter the village, or fees and charges to pay when you leave.

You may have to pay a bond or other costs associated with the tenancy.

Company title schemes

A small number of privately run villages operate under company title. The village is owned by a company, in which you purchase shares at market value. The shares give you the right to occupy the premises. You have similar selling rights as with strata villages. A Board of Directors, appointed by the shareholders, operates the village. You will be required to comply with the company's constitution.

Information you need when choosing a village

Buying into a retirement village is a major legal and financial commitment. You are entitled to receive all relevant information and have time to consider it and get advice before you make a decision.

Consumer tip

Disclosure statements contain important information, read them before you choose a village or sign the village contract. You have at least 14 days to read the contract and obtain advice from your solicitor before you sign it. Make sure you understand all the terms and conditions before signing the contract.

RVRA Comment:

Unfortunately many solicitors are not very conversant with the RV Act and are not specialists in Retirement Village living. Ask your solicitor about the Act and Regulation and ensure they understand the implications.

What information must I get before I sign a village contract?

An operator must give you a disclosure statement if you, or somebody acting on your behalf, requests a copy or expresses interest in becoming a resident (ie. expresses interest in a particular premises within the village). It is important to get a disclosure statement as early as possible in your decision making process. Under the Retirement Villages Act the operator cannot enter into a village contract with you earlier than 14 days after the disclosure statement has been given. Take time to consider the information - do not rush your decision.

You should get disclosure statements from a number of retirement villages in the area you are thinking of living in. This will help you compare the various arrangements on offer and to identify the most suitable and affordable village for your needs.

A disclosure statement should include the following information:

- the size and location of the village
- the proximity of the village to public hospitals, shops and public transport
- contact details for the current operator/s and the residents committee (if any)
- what measures have been taken to make residents safe and secure
- the type of village contract you may be asked to sign
- the type and level of services and facilities available in the village
- full financial management details, including the costs to gain entry, reside in and leave the village
- details of all available premises in the village
- details of village ownership, including the year of original construction and the name of the original developer
- residential care facilities
- details of compliance with the legislation.

You should not base your decision solely on what is in a disclosure statement. You may find it useful to visit the village, inspect all available premises and talk to some residents or a representative of the residents committee to find out more about living in the village. You should also ask to see a copy of sample contracts, and the village rules (if any).

Keep disclosure statements in a safe place. The operator must attach a copy of the disclosure statement to your village contract. Generally, if there is any term in the contract inconsistent with the disclosure statement to your detriment, the information in the disclosure statement will override the inconsistency.

What other information can I get?

A range of documents must be available for you, or a person acting on your behalf, to inspect at each village or at a NSW business address of the operator. These documents include:

- examples of all village contracts
- the village rules (if any)
- a site plan for the village

- plans showing the location, floor plan, and main dimensions of all available premises
- the annual budgets for the village's last 3 financial years, the current financial year and the next financial year
- the accounts for the last 3 financial years
- the most recent quarterly accounts
- the trust deed for any trust fund into which the money you pay will be deposited
- the terms of any development consent for the village (if the village has not been fully built, or if services or facilities are required to be provided for the life of the village)
- the operator's waiting list policy (if any)
- statements of the balance of the village's capital works fund for the village's last 3 financial years and the most recent quarter (if any)
- if the village is subject to a company title scheme, the company's constitution and rules (ie. the replaceable rules set out in the Corporations Act 2001 (Cth))
- if the village is subject to a strata scheme - a copy of the by-laws, the minutes of the last annual general meeting of the owners corporation, and any management agreement relating to the village
- if the village is subject to a community land scheme - a copy of the by-laws, the scheme's management statement, the minutes of last annual general meeting of the community association, neighbourhood association or precinct association, and any management agreement relating to the village
- details of any Consumer, Trader and Tenancy Tribunal or other legal proceedings involving the village operator or residents committee in the past 5 years, the decisions or orders made and the reasons.

You can read any of these documents at the village, or the designated place of inspection, and take notes, or ask for copies of any of the documents, so you can examine them more closely. You may also write to or telephone the operator, and ask for copies to be sent to you. Generally, a copy of the documents you request must be provided within 7 days, free of charge.

Entering into a village contract

After you have carefully considered the disclosure documents and made the decision to move into a retirement village, you will need to sign a contract with the village operator.

Do I have time to read the village contract before I sign it?

The operator must give you (or a person acting on your behalf) a completed copy of each of the village contracts to be entered into and you have at least 14 days before you sign them. Use this time to carefully read the contract and discuss it with your family or friends. Check that details of any promised future services or facilities, or any other promise made by the operator or an employee or agent of the operator, are included in the contract. If there is something in your contract that you don't understand, do not sign it. Consider having the contract looked at by an independent solicitor, accountant or financial adviser.

As soon as possible (but no later than 14 days) after entering into a village contract, the operator must ensure you have a copy of the signed contract. If you sign the contract and give it to the operator before the operator signs, the operator must give you a copy no later than 14 days after the operator received it.

What must be included in the village contract?

Generally, some of the matters the contract must include are:

- the name and address of the village
- the full names of the parties
- the date when the contract is made
- your rights under the statutory 'cooling-off period
- the terms and conditions relating to ingoing contributions and recurrent charges
- the list and description of services and facilities
- a list of the fixtures, fittings and furnishings that are to be provided in the residential premises
- the process by which you can ask the operator to carry out necessary repairs and maintenance
- terms that deal with matters such as the operator's access to residential premises, village rules, dispute resolution, how to terminate the contract, departure fees, your right to remove any fixtures you added during your occupancy and the method of calculating any refund due to you after termination of the contract.

Copies of the following must be attached to your contract:

- the disclosure statement that was given to you
- the condition report (if applicable)
- the current village rules (if any).

What cannot be included in the village contract?

Certain matters cannot be included in your village contract, such as terms that:

- require you to take out an insurance policy, including contents insurance, ambulance cover or other forms of health insurance. The only exception is that the contract may require a resident who uses a motorised wheelchair to take out appropriate insurance in relation to the wheelchair
- restrict the period of time you may be absent from the village, eg. when you are on holidays, visiting relatives, or in hospital
- require you to have a will or to disclose its location to the operator
- enable an individual resident to be charged for legal, accounting or other services incurred by the operator in corresponding with the resident or a person acting on the resident's behalf or in enforcing the contract
- impose a penalty for a breach of the village rules or the contract
- exclude residents from receiving statutory benefits or advantages
- waive an operator's liability for any negligent act or omission by the operator, its employees or agents
- allow a fixed formula for varying recurrent charges to include a component related to the actual or proposed expenditure of the village.

What if I change my mind after I enter into the village contract?

You have a cooling-off period of 7 business days after you enter into a village contract during which you can rescind your contract, if you change your mind, by simply notifying the other party to the contract and the operator in writing. Generally, any money you have paid under the contract must be fully refunded. However, there is no cooling-off period if you move into the premises within the 7-day period.

Consumer tip

You generally have a cooling-off period of 7 business days after you enter into a village contract.

Can I get out of the village contract for any other reason?

You may be able to rescind your contract if the operator did not give you a disclosure statement when required, or if the information in it is false or misleading. To do this you must, within 3 months after you occupy the premises, apply to the Consumer, Trader and Tenancy Tribunal for an order allowing you to rescind your village contract.

Settling-in period

There is also a 90-day settling-in period. This means, for example, that if you find you need to move out of the village within 90 days of becoming entitled to occupy the premises, you only have to pay fair market rent for that period, the cost of any repairs for damage in excess of fair wear and tear, a reasonable administration fee (of no more than \$200), and the reasonable costs the operator had incurred in making alterations or adding any fixtures or fittings at your specific request. You do not have to pay any departure fees.

You are entitled to a refund of your ingoing contribution or the proceeds from the sale of the premises plus any recurrent charges you paid under the contract. The timing for payment of your refund depends on the type of village contract you signed. If you occupied the premises under a loan or licence agreement, you are entitled to a refund within 14 days after terminating the village contract. If you purchased a unit in a strata scheme or signed a long-term registered lease, you will need to wait until the unit is sold or occupied by a new resident to obtain your refund.

To terminate your contract, you need to give written notice to the operator, or if it is a residence contract being terminated - permanently vacate the premises, before the end of the settling-in period.

Consumer tip

You can terminate your contract within the 90-day settling-in period by permanently vacating the premises.

RVRA Comment:

The above gives the impression you can just move out, when in actual fact, you can move out, but you won't have any money to move somewhere else until they on-sell your lease which could take years. So this is really a furphy and prospective Residents should be aware of this.

What is a condition report and do I need to have one?

A condition report sets out the condition of your premises at the beginning of your residency. The condition report is to be completed in your or your nominee's presence, unless you authorise otherwise in writing.

You will be required to leave the premises in a similar condition as set out in the condition report, fair wear and tear excepted, when you vacate the premises.

The completed condition report must be attached to your contract. However, you do not need a condition report if you will own the premises under strata, community or company title.

Fees and charges

There are a range of fees and charges that you may have to pay, as a prospective resident or a resident of a retirement village.

Consumer tip

Some fees and charges you may have to pay include:

- *waiting list fee*
- *holding deposit*
- *ingoing contribution*
- *purchase price*
- *contract preparation fee (maximum \$200)*
- *recurrent charges*
- *termination fees and charges, when you leave the village.*

Waiting list fees

A number of retirement villages have a waiting list. Some of these villages may charge a fee for you to join their waiting list. The maximum fee that can be charged is \$200. If the operator charges a waiting list fee it must have a written waiting list policy. The operator must give you a copy of the waiting list policy and a receipt when you pay the fee.

A waiting list fee is fully refundable to you or your estate, if you are unable to or no longer wish to be a resident of the village. A refund must be made no later than 14 days after a written request.

Holding deposits

Some operators may allow you to pay a holding deposit on particular premises. This prevents the operator from offering the premises to any other person pending you entering into a residence contract with the operator.

A holding deposit can only be charged on vacant premises or if the existing resident has given notice to vacate. As with waiting list fees, a holding deposit is to be fully refunded no later than 14 days after written notice is given to the operator that the prospective resident does not intend to enter into the residence contract.

Ingoing contribution/purchase price

The largest amount you are likely to pay is the amount to secure the right to occupy your premises. If you are not going to own the premises you may be asked to pay an ingoing contribution. If you are buying the premises you will have to pay the agreed purchase price to the seller. At some villages you are able to enter into a contract and pay the ingoing contribution/purchase price once your home is sold. In such a case you are likely to be asked to pay a deposit.

Contract preparation costs

There are usually costs associated with the preparation of your village contract which are incurred by the operator, such as legal and other expenses. The maximum amount that you can be charged for the legal and other expenses incurred by the operator in connection with the preparation of your village contract is \$200.

Recurrent charges

You will have to pay regular recurrent charges to meet the expenses of operating the village. The amount varies from village to village. You will normally have to pay more in serviced premises than in self-contained premises.

At some villages you may also pay higher recurrent charges if you are living with your spouse or living in larger premises. In a strata or community scheme retirement village, you will have to pay

levies to the owners corporation or community association, in addition to any recurrent charges to the operator.

Varying recurrent charges

Your village contract may provide for recurrent charges to be varied at specified intervals or on specified dates according to a fixed formula, for example in proportion to variations in the Consumer Price Index (CPI), or it may provide for those charges to be varied otherwise than according to a fixed formula. A contract must not contain more than one method of varying the recurrent charges. If it does, the method that results in the lowest increase in recurrent charges will apply.

Where recurrent charges are to be varied according to a fixed formula, the operator must give you at least 14 days written notice of the variation.

In the case of variations that are not based on a fixed formula, only one variation in the recurrent charges is permitted every 12 months.

The operator has to give you:

- at least 14 days written notice of any proposed variation, if the variation does not exceed the variation in the CPI since the recurrent charges were last varied
- at least 60 days notice if the variation exceeds the variation in the CPI since the recurrent charges were last varied. The operator must also seek the consent of the residents whose recurrent charges will be affected. If village residents do not consent to the proposed variation, the operator may apply to the Consumer, Trader and Tenancy Tribunal for an order in respect of the proposed variation.

Consumer tip

If there is no fixed formula in your contract for varying recurrent charges, the operator cannot increase recurrent charges more than once in any 12-month period.

Fees and charges upon termination

At some villages a set amount of your ingoing contribution may be non-refundable. Whether you benefit from any capital gain or incur any capital loss will depend on the terms of your contract. In addition, at some retirement villages, the amount you will get back will be reduced by departure fees (or deferred management fees).

General rights and obligations of residents

Your rights as a resident

When you become a resident of a retirement village you have the right to:

- live in an environment that is free from harassment and intimidation, and without interference to your reasonable peace, comfort or privacy
- exercise self-reliance and autonomy in matters relating to your personal, domestic and financial affairs
- decide what possessions to have in your premises
- add, remove or alter fixtures and fittings and renovate with the operator's written consent (which may be subject to reasonable conditions, including that the premises be returned to the same condition when the village contract is terminated). The operator's consent is not

required if you own the premises under a community land scheme, company title scheme or strata scheme.

- have urgent requests for repairs and maintenance to items of capital for which the operator is responsible, responded to in a reasonable time
- live in a village that is safe and secure
- appoint an agent to receive notices and other documents on your behalf
- generally receive a copy of the proposed annual budget
- be given proper notice of any variation in your recurrent charges
- access any information about you held by the operator
- stand for election, if the village has a residents committee
- attend and vote at resident meetings (although you are not obliged to)
- request a variation in the services and facilities provided at the village, or an amendment to the apply to the Consumer, Trader and Tenancy Tribunal to resolve certain disputes.

Your obligations as a resident

Among other things, when you become a resident at a retirement village you have obligations to:

- respect the rights of other residents and other persons in the village
- not interfere with the reasonable peace, comfort or privacy of other residents
- respect the rights of the operator, its employees and agents, to work in an environment free from harassment or intimidation
- not act in a manner that adversely affects the occupational health and safety of people working in the village
- not intentionally or recklessly cause or permit serious damage to any part of the village or injury to the operator, an employee or any other resident
- pay your recurrent charges when they fall due
- generally give written notice at least 1 month in advance, if you decide to move out and you do not own the premises
- comply with the village rules and ensure that anybody you invite to the village also complies with the village rules.

General rights and obligations of operators

Operator's rights

The operator has the right to:

- sell or transfer ownership of the village or its management rights
- decide who is employed within the village, subject to the amount for salaries and wages in the annual budget
- propose an amendment to the village rules or a variation to the services and facilities provided at the village
- apply to the Consumer, Trader and Tenancy Tribunal to settle disputes.

Operator's obligations

Among other things, the operator is obliged to:

- ensure the village generally is reasonably secure and safe, including preparing written safety and emergency procedures and undertaking an annual safety inspection
- generally provide a proposed annual budget to each resident at least 60 days before the start

- of the village's financial year
- generally seek the consent of the residents to the expenditure itemised in the proposed annual budget
- hold an annual management meeting with residents
- ensure the annual accounts for the village are audited (if they are required to be audited), and provide copies to residents within 4 months of the end of each financial year
- provide quarterly accounts to the residents committee and to individual residents on request, where required
- provide receipts for recurrent charges
- comply with the village rules and use its best endeavours to ensure that its tenants and employees and any other persons it invites to the village comply with the village rules
- ensure there is vehicular access to the residential premises in the village at all times for emergency and home care service staff
- insure the village to full replacement value, and ensure the village has public liability coverage of a minimum of \$10 million.

Village rules

Is it compulsory to have village rules?

No, but it is common for villages to have them. If there are village rules in place, a copy of the current village rules must be attached to your village contract. You have the right to inspect or have a copy of the village rules supplied to you before you sign a village contract.

Village rules do not apply to parts of retirement villages that are subject to a community land scheme or strata scheme (or to the residents of those parts of the village). Instead, the by-laws under the Community Land Management Act 1989 or Strata Schemes Management Act 1996 apply.

What matters do the village rules cover?

Village rules relate to the use, enjoyment, control and management of the village and are usually about such matters as:

- visitors and guests
- noise
- security in the village
- pets
- garbage disposal
- car parking
- the use of services or facilities
- the external appearance of resident's premises
- gardening and landscaping.

Can I change village rules?

A group of residents (five residents or 10% of the residents of the village, whichever is greater or, if the village has fewer than 10 occupied residential premises, residents from a majority of the occupied residential premises), or the residents committee may make a written request to the operator to propose an amendment to the rules.

The operator can also propose amendments. The operator must call a meeting of residents to be held

no later than 28 days after the operator receives the request. No proposed amendments can be made unless the residents consent to the amendment by way of a special resolution. The operator is to notify the residents of the village of the outcome of the vote within 7 days.

You can apply to the Consumer, Trader and Tenancy Tribunal if you think the rules do not comply with the retirement village laws or any other law. You can also apply if you think the rule is unjust, unconscionable, harsh or oppressive.

Resident input

Residents under the Retirement Villages Act have the right to attend and vote at meetings of residents. You can also stand for election to the residents committee if your village has one. In a strata village or community land village you can also attend meetings of the owners corporation or community association and stand for election to the executive committee.

On what issues do residents have a say?

The operator is required to obtain the consent of residents before certain actions may be taken. Consent can only be obtained at a meeting of residents. The residents committee cannot give consent on behalf of residents. There are two types of consent:

- general consent - this requires more than 50% of those residents who vote to give consent
- consent by special resolution - a ballot must be conducted and a special resolution is carried only if it is passed by at least 75% of the residents who participate in the ballot.

Some of the matters that require **general consent** are:

- the establishment of a residents committee
- allowing persons other than those permitted under the Retirement Villages Act to attend or remain at residents' meetings (eg. certain relatives or friends of a resident)
- variations in recurrent charges where the charges are varied other than by way of a fixed formula and the variation exceeds variation in the Consumer Price Index
- approving the proposed annual budget or amending an approved annual budget (if consent is required)
- consenting to not being supplied with a proposed annual budget, or having accounts audited or receiving quarterly accounts (in small villages)
- the appointment of a new auditor (if the audit fees are to be paid by the residents)
- expenditure or distribution of a surplus in the annual accounts at the end of the village's financial year.

Matters that require consent by **special resolution** are:

- a proposed amendment to the village rules
- requesting the operator to provide or arrange for a village emergency system
- varying the services or facilities
- in some circumstances - use by the operator of money from the capital works fund.

Ballots for special resolutions

A postal ballot must be conducted for any proposal that requires a special resolution. You must be given at least 21 days written notice of the meeting. The notice must set out the resolution, specify that the resolution is to be put as a special resolution, specify that the residents may submit their vote in writing prior to the meeting (and set out how), and be accompanied by a ballot paper initialled by the returning officer. The returning officer is a resident (who is not a member of the residents committee or standing for election to the residents committee) selected by a show of hands

at a meeting of the residents.

Prior to the meeting you can submit your postal vote to the residents committee or, if there is no committee, to the operator. Alternatively, you can attend the meeting and vote in person or vote by proxy.

Annual management meetings

Village operators must hold an annual management meeting of the residents within 4 months of the end of each financial year for the village. You must be notified of the meeting at least 14 days in advance and be given a copy of the meeting agenda. You can lodge written questions with the operator at least 7 days before the meeting or ask questions relating to the village at the meeting.

Leaving a retirement village

How do I end my village contract?

This will vary depending on the terms of your contract, the reason you are leaving the village and whether you own your premises. If you own premises in a strata or community scheme, or you own the shares in a company title scheme, your right to occupy the premises (ie. your 'residence right') under the contract terminates when you sell the premises. If you had an assignable lease, your residence right terminates on assignment of the lease. If you are in another type of arrangement, you will generally need to give the operator at least 1 month's written notice before vacating, except in certain special circumstances.

What fees and charges would I need to pay after vacating?

Your ongoing liability for recurrent charges varies depending on the type of contract you signed and the terms of your contract. Recurrent charges for any optional services you were receiving, such as meals or laundry, end on the date you move out. Depending on your contract, you may have to continue paying recurrent charges for general services for 42 days or more if your unit is not re-occupied in that time. If your contract entitles you to a capital gain, the operator may need to pay a share of your recurrent charges for general services after 42 days. In a strata or community scheme a former occupant may be required to pay levies associated with the scheme until the unit is sold.

RVRA Comment:

This is an area of which many people neglect to take note when first investigating a move to a Retirement Village. Ensure you are aware of how long you or your family will be responsible for the cost of the recurrent charges. In many villages it can be until your dwelling is sold, which can take up to two years or more which can cause financial hardship to you, if you need to move to care, or your family, if they are trying unsuccessfully to sell your lease or dwelling.

If the lease contract allows for the Resident or their estate to receive 50% or more of any 'capital gain' on the sale of the property then after 42 days after vacating the property they will be responsible for that percentage of the Recurrent Charges. It is not unusual for Residents to have a lease contract that prescribes that they will be responsible for 100% of the Recurrent Charges for seven (7) years or longer if it takes that length of time to sell the property.

A small number of lease contracts have conditions prescribing that Recurrent Charges cease upon the death of the Resident, others prescribe that Recurrent Charges are payable for a maximum of six months and others still that state that the payment of Recurrent Charges will cease on the permanent vacating of the property. If these or other more advantageous conditions are contained in the contract, the Act provides that these provisions will apply.

Resolving disputes

While it is everyone's desire that life in a retirement village will be harmonious, from time to time disputes or disagreements may arise. As a village is a form of community, where people live in close proximity to each other, it is always desirable that disputes be resolved as quickly and amicably as possible.

Step 1 - Talk to the village operator or resident

Often the quickest and easiest way to solve a problem between you and the village operator, or with another resident, is to discuss it in person and try to come to a solution you both agree with. Before you do this, it is best that you know your rights. In particular, you should carefully read the terms of your contract, and obtain information on the relevant sections of the retirement village laws from Fair Trading, The Aged Rights Service (TARS) the RVRA or similar organisations.

Step 2 - Get help from a third party

Using an independent person to assist in resolving a dispute is sometimes helpful. Some retirement villages have an internal method of resolving disputes. Your local Community Justice Centre may also be able to assist in resolving your dispute.

Step 3 - Contact Fair Trading

If a problem remains unresolved contact Fair Trading on 13 32 20 or visit your nearest Fair Trading Centre or go to our website www.fairtrading.nsw.gov.au

In some cases Fair Trading may be able to intervene or act on your behalf. If so, you will be notified of the outcome. You may need to lodge an application with the Consumer, Trader and Tenancy Tribunal if the problem cannot be resolved informally.

Step 4 - Apply to the Consumer, Trader and Tenancy Tribunal (CTTT)

In certain cases you may need to apply to the CTTT for orders. The Tribunal is an independent decision-making body, which hears and decides on applications for orders from both residents and village operators.

The Tribunal has a Retirement Villages division that specialises in retirement village matters. Decisions of the Tribunal are made according to the law. Application forms are available from any Fair Trading Centre or any CTTT Registry. You can lodge an application online, by post, in person at any of the CTTT Registry or at any Fair Trading Centre, at a NSW Local Court Registry or at any NSW Government Access Centre.

An application fee applies. Pensioners, people receiving certain Government benefits, and NSW Seniors Card holders pay a reduced fee.

Where are hearings held?

Although the Tribunal is based in Sydney, hearings are held across NSW. Subject to the Tribunal's requirements, a venue will be arranged as close as practicable to the village involved in the application.

How are hearings conducted?

The Tribunal hears matters in a quick, cheap and relatively informal way. The person who hears your case is called a Tribunal Member. The Tribunal may encourage you and the operator to settle your differences, so that, if possible, you work out your own solution. A Tribunal conciliator may

assist you in this process. If conciliation fails, the Tribunal will adjudicate on the dispute.

The Member will allow both parties, in turn, to tell their side of the story and present any supporting evidence. The member may also ask questions of the parties. Legal representation before the Tribunal is generally not an automatic right and will usually only be permitted in exceptional circumstances or if the amount claimed or disputed exceeds a prescribed threshold. After all the information has been presented, the Member will usually announce a decision at the end of the hearing.

In some cases the hearing may be adjourned (ie. to allow more time for evidence to be presented) or a decision may be reserved (ie. the Member may need more time to study all the evidence and information presented during the hearing).

What can the Tribunal order?

The types of orders that the Tribunal can make include certain orders about:

- village contracts
- village rules
- capital maintenance and replacement
- recurrent charges
- annual budgets and accounts
- payment of money and compensation
- termination and vacant possession
- security and safety
- sale or letting of premises.

For more information on the Tribunal or retirement village orders visit www.ncat.nsw.gov.au

Prospective resident's checklist

Before you can make the right decision and choose the retirement village that best meets your needs, there are a few things you need to consider. Ask yourself the following questions:

- Have I fully discussed my decision to move to a retirement village with my family, friends or advisers?
- Have I thought about whether community living in a retirement village is right for me?
- Have I looked at a sufficient number of villages to be able to compare the services, facilities and financial arrangements?
- Have I received a disclosure statement?
- How much will it cost me to move and live in a retirement village?
- Can I afford to live there comfortably, even when the recurrent charges rise?
- Is it more appropriate that I live in self-contained or serviced premises?
- What type of arrangement does the village offer? Is it a loan/licence, leasehold, strata, rental or company title?
- Do I fully understand the contract and all the costs involved?
- What are my rights and costs under the contract?
- How many vacant units are there in the village?
- What is the average time for the re-sale of the type of unit I am interested in?
- Do I fully understand the contract?
- Have I obtained adequate advice from an independent solicitor?
- What if I decide to leave the village? Will I be able to re-sell the unit? What are the termination fees and charges?
- Are the services and facilities at the village what I need?
- Will this still be the case as I get older or if I get sick?
- Is there adequate parking for visitors?
- Will I be eligible for rent assistance from the Commonwealth Government?

- Are there local facilities such as doctors, shops, hospitals, libraries, churches, clubs and public transport near the village?
- What are my rights of occupancy?
- Will I be able to make changes to the inside of the premises, or to have someone visit or live with me?
- Are pets allowed?
- Am I able to do my own gardening?
- Are the grounds pleasant and well-tended?
- Is the village reasonably secure? Is there adequate external lighting?
- Are the paths designed for easy access?
- Will my premises still be suitable if my needs and abilities change in the future? For example, are there any stairs I will need to manage?
- Have internal modifications related to frailty, such as bath rails, been made to the premises?
- Is there a residents committee to liaise between residents and the operator?

Remember:

Don't rush the selection process.

Inspect a number of retirement villages in the area you wish to live in.

Take full advantage of each inspection.

Ask a lot of questions.

Talk to some of the residents in the village if you can or the residents committee.

Make sure you fully understand the contract and seek professional legal and financial advice before you sign anything.

*A Retirement Village can be a great place to live, the advice of the RVRA is "**Please do your homework before signing anything**".*