Retirement Villages in Australia

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By the author (Martin Pollins), this paper was written in December 2013 following a visit to Brisbane, Queensland, Australia. The paper is a brief introduction to Retirement Villages in Australia. There is a degree of repetition in some places as information on some points is covered in several sources.

Please read the notice at the end of this paper. The source of information in each section of this paper is given at the start of each section.
References to $ mean the Australian $.

SECTION 1:

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What is a retirement village?

Legal definition of a retirement village

Not everything that looks like a retirement village is one. By law, a retirement village is a community where:

- ✓ most residents are aged 55 years or over or are retired from full-time employment (or are spouses/partners of such people). Residents are provided with accommodation and services, other than services provided in a residential care or aged care facility, and
- ✓ at least one of the residents, as a contractual condition of entering the retirement village, paid an ingoing contribution that was not rent. It does not matter who made that payment, or whether it was a lump sum or by instalments.

When a community meets this legal definition of a retirement village, every resident is protected by the Retirement Villages Act 1986. This law applies whether you paid an ingoing contribution, or own or lease your unit.

When land is to be used as a retirement village, the landowner must lodge a ‘retirement village notice’ with the Land Titles Office. This notice is recorded on the land title, which can be checked at https://www.landata.vic.gov.au.

It is illegal for anyone to offer contracts that claim to entitle a person to become a retirement village resident without lodging this notice.

Retirement village features

A retirement village provides people with independent accommodation and may include shared facilities, such as meeting rooms, a library or pool. It might also provide lifestyle services and social activities, such as organised outings, joint meals, craft, visiting doctors and allied health professionals. Although staff in some villages have healthcare backgrounds, services in retirement villages generally do not include health care.

Retirement villages are usually run by commercial operators for profit, or by community organisations such as religious or ethnic associations.

Are retirement villages different from other retirement accommodation?

Retirement villages are a special kind of accommodation under Victorian law.
They are different from:

- ✓ residential care facilities (aged care facilities, nursing homes, hostels)
- ✓ residential parks
- ✓ rental villages.

Residential care facilities

A retirement complex often includes low-level and/or high-level aged-care services. These may be called:

- ✓ aged care or residential care facilities
- ✓ nursing homes
- ✓ hostels

Access to aged care services depends on an aged care assessment, in accordance with the Commonwealth Aged Care Act 1997. This means an aged care operator cannot keep places free for residents from a specific retirement village, even if it is on the same site or in the same building as the aged care facility.

When moving from a retirement village into an aged care facility, you may have to end your contract with the retirement village and pay any associated fees. For more information about these costs, go to: http://www.consumer.vic.gov.au/housing-and-accommodation/retirement-villages/leaving-a-retirement-village

Residential parks

Residential parks sometimes seem similar to retirement villages but they are not the same. People moving into a residential park:

- ✓ do not make an ingoing contribution
- ✓ buy their own prefabricated dwelling and rent the site.

People living in residential parks are covered under the caravan parks and moveable dwellings provisions of the Victorian Residential Tenancies Act 1997, provided at least one dwelling in the park meets the legal definition of a moveable dwelling.

You can get free information and advice about your rights and responsibilities as a residential park resident from http://www.consumer.vic.gov.au/housing-and-accommodation/renting

Let villages

This type of accommodation is marketed specifically to retired people on a rental basis. Generally, investors buy units in a village, which they offer to residents for rental under a tenancy agreement. The fortnightly rental is linked to a resident's age pension and rent assistance – usually 85 per cent of the age pension and 100 per cent of rent assistance.

Residents in rental villages do not make an ingoing contribution as it is defined under the Retirement Villages Act 1986. The rental village is not a retirement village by law. If you live in a rental village, the law that applies is the Residential Tenancies Act 1997. For more advice about your rights and responsibilities, go to: http://www.consumer.vic.gov.au/housing-and-accommodation/renting

Is buying into a retirement village a good investment?

Buying into a retirement village is not the same as buying an investment property. You may face substantial costs when you leave a village. **Buying into a retirement village is a lifestyle decision, not an investment to make money.**

SECTION 2:

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Retirement Villages - Overview

A retirement village is essentially a managed community for seniors, although the term is something of a misnomer because you don't necessarily have to be retired at all. Entry is generally restricted to people over 55 years of age or have retired from full-time employment, and their spouses.

Each Australian State and Territory has enacted specific legislation that defines what is and what is not a retirement village and regulates many aspects of the relationship between retirement village operators and their residents and prospective residents. Manufactured home villages for those over 50 and rental villages for those over 50 are also managed communities for seniors, even though they generally don't fall within the technical definition of a retirement village under the relevant retirement village legislation and are regulated by specific manufactured home and tenancy legislation.

Retirement villages, manufactured home villages and rental villages may also be called, described or referred to as over 55's villages, over 50's villages, lifestyle villages, lifestyle resorts, lifestyle communities, lifestyle estates, retirement resorts, retirement communities, retirement estates or retirement homes.

What are the Main Benefits of Retirement Village Living?

The first and most obvious benefit of retirement village living is **community**. Being part of a community of like-minded 55+ or 50+ people and enjoying the social contact, interaction, companionship and physical and emotional security that it provides is priceless.

The second benefit of retirement village living is **lifestyle and convenience**. Most retirement villages offer a range of shared common areas and facilities and relatively low maintenance homes and gardens that you can "lock and leave" if you want to travel. Many are geographically situated in desirable locations and are close to appropriate amenities and services.

The third benefit of retirement village living is **flexible services**. Most retirement villages offer independent living units (ILUs), which are sometimes called self-care units or apartments, and provide a range of general services for the benefit of all residents. Many also offer additional services, sometimes including personal care, on an "as required" and "pay as you go" basis. So as your needs change, the services you receive can be adjusted accordingly.

Some retirement villages also offer serviced apartments, which are sometimes called assisted living units or apartments. These apartments are usually offered with a standard package of services, such as housekeeping, meals and laundry and linen. If you require more services than the village offers, you can also arrange additional home care services privately (see Home Care for further information).

The fourth benefit of retirement village living is **purely economic**. Facilities and services can be provided to a community of seniors more efficiently than they can be provided to a dispersed group of individuals. It is of course important to ensure that the benefit of this efficiency is equitably shared between the operator (as profit) and the residents (through lower costs and charges).

Are there any Negatives to Retirement Village Living?

The main difficulty with retirement villages is their complexity, which is largely the result of:

- ✓ the range of different and sometimes unfamiliar legal structures that are used
- ✓ extensive legal documentation that can vary significantly from village to village, even where the same legal structure is used
- ✓ financial arrangements that are complicated and unusual and can vary significantly from village to village
- ✓ legislation that is different in each State and Territory

The financial arrangements include ongoing recurrent charges and also usually include a unique fee, called a departure fee, exit fee, deferred management fee or DMF, which is paid when the resident permanently vacates the premises. The formula used to calculate this fee can vary from village to village, making it difficult to shop around and compare homes in different retirement villages because there is much more to consider than just the respective entry prices.

Confusion about the financial arrangements and what happens when the home is permanently vacated have historically been the cause of most of the problems and disputes associated with retirement villages. In most States, the retirement village legislation has increased disclosure requirements and clarified the resale process, but it is still very important to do proper due diligence and understand the legal and financial arrangements before you make a commitment.

Getting help can be difficult because there are relatively few lawyers, financial advisers and real estate agents with comprehensive retirement village experience.

Finding rental accommodation in the main metropolitan centres like Sydney, Melbourne, Brisbane, Adelaide, Perth, Hobart, Canberra and Darwin can also be a challenge.

Help

Below you will find links to a range of detailed information:

- ✓ Top Ten Tips
- ✓ Services and Levels of Care
- ✓ Financial Considerations & Departure Fees
- ✓ Departure Fee Calculator
- ✓ Rental Accommodation
- ✓ Pets
- ✓ Legal Structures
- ✓ Legislation
- ✓ Publications (including a free Senior Living Guide and a free Departure Fee Guide)

SECTION 3:

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Reforms to retirement village laws

Important changes to the Retirement Villages Act and Regulation have come into effect since March 2010. The changes include:

- ✓ annual management meetings between operators and residents
- ✓ annual safety inspections
- ✓ a settling–in period for new residents
- ✓ reducing the recurrent charges payable by a former occupant after vacating
- ✓ encouraging operators to keep

recurrent charge increases at or below the rate of inflation
- ✓ increasing operators' accountability for budget deficits
- ✓ ensuring urgent repairs are carried out quickly
- ✓ cutting red tape for smaller village operators
- ✓ improving the way residents committees operate and making it easier for more residents to be involved
- ✓ giving residents the right to make reasonable alterations to their dwelling
- ✓ better protection of refund entitlements for residents who do not have a registered interest in their dwelling.

Links to further information

Standard contract and disclosure documents

The NSW Government has developed a new standard contract for retirement villages that will be mandatory for village contracts entered into on or after 1 October 2013. There are also some new requirements about the documents operators must provide before prospective residents sign a contract. For more information, go to Standard contract and disclosure documents page.

Register of retirement villages

Village operators must notify the Government that the land is used as a retirement village. To register, they need to complete Request form 11RN (Request to enter notification pursuant to Section 24A *Retirement Villages Act 1999*) available from the Land title dealing forms page of the Land and Property Information (LPI) website.

More details about this requirement is available from the Retirement villages page of the Fair Trading website.

Registration information is recorded on a publicly accessible list of all retirement villages in NSW. To search for a retirement village, go to the Accommodation registers page of the Fair Trading website.

Annual management meetings

Operators are required to conduct annual management meetings with residents and to answer questions submitted by residents either before or at the meeting.
The Regulation lists matters that must be included on the meeting agenda.

Safety and emergency procedures

All village operators are required to prepare written safety and emergency procedures and take reasonable steps to ensure that residents and staff are familiar with such procedures. Operators are also required to conduct a safety inspection at least once each year and report back to residents on the findings of these inspections.

Settling-in period

New residents who terminate their contract by permanently vacating their premises within the first 90 days of moving in are only required to pay a fair market rent for the period of their occupancy and a reasonable administration fee to the operator. The maximum administration fee the operator can charge is $200.

Departure fees are not payable. The resident is entitled to a refund of their ingoing contribution or purchase price plus any recurrent charges paid under the contract.

The timing for payment of the refund depends upon the type of village contract in place. Where the resident does not have a registered interest in the premises, for example where they occupied the premises under a loan or licence arrangement, they will be entitled to a refund of their ingoing contribution within 14 days after termination of the village contract. Where the resident purchased a registered interest in the premises such as buying into a strata scheme or entering into a long term registered lease, the resident is entitled to a refund of the purchase price once the unit is re-sold or re-occupied by another resident.

Encouraging recurrent charge increases to be at or below inflation

Operators are encouraged to keep increases in the recurrent charges payable by residents at or below the rate of inflation, by removing the need to gain resident consent for such increases and reducing the notice period from 60 to 14 days. The Regulation includes a transitional provision so that this change will not come into effect until the second budget cycle following reforms. For the 2010–11 budget, resident consent is required regardless of whether recurrent charges are to increase by more than the CPI except where the village contact provides for recurrent charges to be varied in accordance with a fixed formula.

Reducing ongoing recurrent charges after a resident vacates

For residents who do not own their accommodation, the maximum period of time a former resident or their estate can remain liable to pay recurrent charges after they vacate or pass away has been reduced from 6 months to 6 weeks.

For residents who are owners, after 6 weeks the recurrent charges must be shared between the outgoing resident and the operator in the same proportion as they are to share any capital gains under the contract.

Capital repairs and maintenance

The existing provisions regarding capital repairs and maintenance are being retained, with some refinements. Operators will continue to pay for the replacement of capital items. Recurrent charges will continue to fund capital maintenance. The Regulation now prevents recurrent charges from being used to pay for improvements to capital items or to repeatedly repair an item that it would be more cost effective to replace. For more information refer to the Repairs, maintenance and replacement page on the Fair Trading website.

Responsibility for capital items in residents' premises

The reforms prohibit operators from selling capital items to residents or attempting to pass on responsibility to individual residents for the maintenance and replacement of capital items in their premises.

Residents who have previously bought capital items in their premises from the operator or had agreed to be responsible for these items can notify the operator and pass responsibility back. This should be done as soon as possible. For more details refer to the Transfer of items of capital to village operator page on the Fair Trading website.

NOTE: This does not apply to premises owned by a resident in a strata, community or company title scheme.

Budget deficits

Other than in prescribed exceptional circumstances, village operators are required to make good any budget deficit at the end of each financial year. At the same time, operators have flexibility to vary expenditure between line items. Residents can be asked to fund a deficit only if it is caused by increases in certain costs specified in the Regulation. These are: utilities (except telephones), rates and taxes, award wages and salaries, urgent maintenance, and public liability and workers compensation insurance.

Urgent repairs

Residents have the right to carry out urgent repairs and be reimbursed if the operator fails to have the repairs done within a reasonable period after being notified. Urgent repairs are defined in the Act and include a gas leak, burst water service, blocked or broken lavatory, serious roof leak, dangerous electrical fault, serious storm or fire damage or other damage that causes an urgent safety or security risk.

Reducing compliance burden on smaller operators

Villages with an annual income of $50,000 or less are no longer required to have their annual accounts audited or provide quarterly accounts to residents, but only if residents agree. In addition, residents in these small villages can consent to not being given a budget at the start of every year. It is anticipated that this will assist in reducing costs for smaller, volunteer run villages.

Improving the way residents committees operate

The maximum number of proxies any person may hold for voting at a residents committee meeting has been reduced from the 5 to 2. No resident will be able to hold the same position as an office bearer on a residents committee for more than 3 consecutive years. They will still be able to hold other positions on the committee and be eligible to return to their original position at a later stage.

Residents are able to vote at meetings by written ballot and will be able to submit postal votes on special resolutions.
These measures will make it easier for more residents to be involved in decision making.

Fixtures and alterations

Residents have the right to add or remove fixtures or make alterations to the premises with the consent of the operator, which cannot be unreasonably refused.

Protecting refund entitlements

Residents who do not have an interest registered in the village land will have their refund entitlements protected and will be given priority over certain other creditors in the event that a village needs to be sold due to the insolvency of the operator.

Disclosure to prospective residents

Operators will continue to be required to inform prospective residents by supplying a detailed disclosure statement.

Investigation and enforcement powers

The investigation, compliance and enforcement powers have been revised. The Director General will have the power to issue a public warning notice involving a particular operator.

Role of the Consumer, Trader and Tenancy Tribunal

The Consumer, Trader and Tenancy Tribunal plays an important role in the resolution of disputes that arise between residents and village operators. The Retirement Villages division of the CTTT can hear and determine applications about disputes between the retirement village operator and one or more residents. The types of orders that the CTTT can make include:

- ✓ 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 about the CTTT visit www.cttt.nsw.gov.au

Further information

If you have any questions about the rights of prospective residents, residents or operators under the Act contact the Fair Trading Specialist Support Unit on 9895 0297 or toll free on 1800 625 963.

Related information

Retirement Villages Act 1999
Retirement Villages Regulation 2009

SECTION 4:

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New contract and disclosure requirements effective 1 October 2013:

Retirement villages in NSW - are you ready for the changes affecting disclosure? (Derived from text written by By Kirsten Matthews and Crystal Eggleton) Village operators, which include entities who manage or control the retirement village, should review their suite of contracts to ensure compliance with the new regulatory regime.

Key Points:

- ✓ Retirement village operators should act now to ensure they are ready to implement the new contract and disclosure requirements effective 1 October 2013.
- ✓ In a move designed to increase transparency in the retirement village industry and to simplify and streamline the contractual arrangements for entry into and exit from retirements villages in NSW, the NSW Government has introduced amendments to the Retirement Villages Regulation 2009, which will govern contracts entered into on and after 1 October 2013.

Three new prescribed documents have been introduced, which will be compulsory to issue to prospective occupiers of retirement villages:

- ✓ The General Inquiry Document provides a basic explanation about the retirement village, including financial matters such as current recurrent charges, departure fees and details on whether residents share in any capital gains.
- ✓ The Disclosure Statement must be given to potential residents at least 14 days before entry into a retirement village contract. This document gives a more detailed overview of matters such as the management, services offered, financial matters and dispute resolution arrangements. Importantly, it also highlights the

prospective residents' rights to view village documents, such as accounts, budgets and income and expenditure accounts. If the information in the disclosure statement is materially false or misleading, a resident may, within three months of commencing occupation, apply to the Consumer, Trader and Tenancy Tribunal for an order permitting the resident to rescind the contract.
- ✓ The Standard Retirement Village Contract has been drafted in plain English so as to allow prospective occupiers to clearly identify their rights and obligations and to compare costs and conditions between retirement villages. There have been five template contracts for the five most common village types developed and these are available from NSW Fair Trading.

Areas of confusion in the past, such as around financial matters including identification of the services included in the recurrent charges paid by residents, charges for optional services, the capital gain or loss structuring, departure fees and the sale of units, have been clarified, as have the operators' and residents' respective responsibilities to undertake repairs and capital replacements.

The purpose of the standard contracts is to make it easier for prospective residents to make comparisons and to reduce complexity for operators, which should deliver greater confidence in the industry.

Retirement village operators may insert additional terms in the retirement village contract, but they must ensure that those terms do not contravene the Retirement Villages Act 1999 and are not inconsistent with a term of the prescribed retirement village contract, which will mean that careful drafting is required.

Penalties may be imposed on operators who enter into a village contract for which the standard form of contract is prescribed knowing that it is not in, or to the effect of, the standard form, and the contract will be void to the extent to which it is not in, or to the effect of, the standard form.

SECTION 5:

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Introduction

Each Australian State and Territory and New Zealand has enacted specific legislation that regulates the operation of retirement villages. The main purpose of the legislation is to protect the interests of residents and prospective residents. This is generally achieved by:

- ✓ imposing a heavy disclosure burden on operators
- ✓ prescribing various matters that either must or must not be included in the legal documentation
- ✓ regulating some (but by no means all) financial matters
- ✓ establishing mechanisms for resolving disputes.

The legislation in each jurisdiction is different and has its own definition of what is and what is not a retirement village. This is important because a village that falls outside the definition will generally not be regulated by the legislation. The definitions generally exclude hostels and nursing homes and may exclude other facilities that are generally thought of as retirement villages, such as over 50s manufactured home villages and rental villages for seniors. Even where the legislation does apply, it may apply differently to different legal structures and contractual arrangements.

Particular legal structures and contractual arrangements may also attract the application of other legislation, such as strata title, community title, companies and securities, manufactured home or tenancy legislation. Other legislation may also be relevant. For example, most jurisdictions have "fair trading" legislation that regulates general trading matters, including advertising and marketing. Some jurisdictions also have:

- ✓ specific residential dispute resolution legislation that applies to retirement village disputes
- ✓ contract review legislation that allows unfair and unconscionable contracts to be modified or set aside.

The legislation and documentation can be quite complicated, so you should consider obtaining legal and financial advice from qualified professionals in appropriate circumstances.

The following links will take you to some of the relevant legislation on various online legal resource websites, but please note that you should satisfy yourself that it is current and up-to-date:

Australian Capital Territory:	Retirement Villages Industry Code of Practice
New South Wales:	Retirement Villages Act 1999 and Regulations
Northern Territory:	Retirement Villages Act 1995 and Regulations
Queensland:	Retirement Villages Act 1999 and Regulations
South Australia:	Retirement Villages Act 1987 and Regulations
Tasmania:	Retirement Villages Act 2004 and Regulations
Victoria:	Retirement Villages Act 1986 and Regulations 1 & 2
Western Australia:	Retirement Villages Act 1992 and Regulations
New Zealand:	Retirement Villages Act 2003 and Regulations

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Martin Pollins is a Chartered Accountant with wide experience in corporate finance and business management. He holds a number of directorships and has served on the boards of several companies, including those listed on the London Stock Exchange, AIM and OFEX.

He was a Council member of the Institute of Chartered Accountants in England and Wales from 1988 to 1996.

Martin Pollins ran his own firm based in Sussex and was the first Accountancy firm in the UK to advertise on television and Martin went on to create and launch the CharterGroup Partnership (the UK's first Accountancy network) and then LawGroup UK (one of the largest networks of lawyers in the country).

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