

# **Consumer Affairs Victoria**

## **Guide for Retirement Village Living**



**Edition 2**  
August 2006

**Large Print Version**



**Guide for retirement village living** is the summary approved by the Director of Consumer Affairs Victoria of the rights and duties of residents, owners and managers of retirement villages under the **Retirement Villages Act 1986**.

## **Additional copies**

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## **Disclaimer**

This guide should not be used as a substitute for the **Retirement Villages Act 1986** or professional legal advice.

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# Foreword

Every year thousands of Victorians consider embracing the advantages of living in a community of retirees.

Moving into a retirement village is a major financial and lifestyle decision. The aim of this guide is to help you make a more informed decision. The guide outlines the basic steps involved in choosing the village that is right for you and provides an overview of the different kinds of arrangements villages have for contracts and fees.

It also highlights your protections under the law and the role you can play in representing your fellow residents and ensuring that living in the village is an enjoyable and beneficial experience.

I recommend this guide as an essential reference tool for anyone who is thinking about entering or is currently living in a retirement village. In addition to reading the guide, I encourage you to research, shop around and take your time when making decisions.

If you have any concerns about any aspect of retirement village living, please call Consumer Affairs Victoria on 1300 55 81 81.

**Marsha Thomson MP**  
Minister for Consumer Affairs

## Status of edition 2 of this guide

Amendments to the legislation governing retirement villages in Victoria—the **Retirement Villages Act 1986**—were progressively implemented between May 2005 and August 2006.

In May 2005, for example, Commonwealth residential care facilities were excluded from the Victorian Act.

Since January 2006, there has been a requirement that certain details about retirement villages be registered with Consumer Affairs Victoria and that all villages have an operating internal dispute resolution system in place. New provisions commenced at the same time regarding proxies and powers of attorney and ongoing charges for residents who have left a retirement village.

From 1 August 2006:

- operators cannot require people buying a strata title unit to assign exclusive selling rights to the operator as a condition of the retirement village contract.
- new contracts must provide for outgoing residents to be paid any contractual exit entitlements within a mandated maximum time (which will differ according to the circumstances).

The final stage of the reforms will be to introduce regulations that provide for model contracts, to enable residents to more easily understand terms and conditions and compare costs and services between

different retirement villages. Contracts which are signed before the changes become law will not be affected.

To view the Act and Regulations as they stand at any given time go to [www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au) and click on Victorian Law Today. Printed copies may be obtained from Information Victoria (see section 10 of this guide).



# 1. **Introduction**

This guide provides an overview of what is involved in entering and living in a retirement village, including laws that affect how village owners and managers deal with prospective and existing residents.

A glossary and list of contacts are provided at the back of the guide.

## **Making the right choices**

Deciding whether or not to move into a retirement village and then choosing the one that best matches your needs can be a complex and time-consuming process.

You are more likely to make the right choices if you know what you want; are prepared to seek expert advice if you feel out of your depth; are informed about your options; shop around; refuse to be hassled or hurried into a decision; read everything before you sign it; and are ready to negotiate.

## **Be informed**

Make a list of what you absolutely must have in a retirement village and a similar list of items that would be desirable but are not essential.

Try to see as many villages as possible that fit your general location and financial requirements. Talk to the village residents and find out what they like and don't like about living in the village. Talk to friends and family and see if you can get them to come with you when you're looking at the villages. Friendly reinforcements are useful in retaining your perspective.

## **Read before you sign**

When you find a village that appears to meet your requirements, it can be tempting to sign an agreement, particularly if you've been looking for a long time. Retirement village contracts are not the same as ordinary residential property contracts and need careful consideration.

The law requires that you be given a retirement village contract at least 21 days before you sign. You should make sure you fully understand all the terms, conditions and fine print. If something is unclear, ask the manager to explain it to you in writing. If you're at all uncertain, it is better to seek professional advice before signing.

## **A note about owners, managers and operators**

Throughout this guide, there are references to the village operator. A village operator can be either the village owner, or village manager if the owner has no role in the day-to-day management of a village. Where the owner is

the only person legally permitted to undertake a task, the term village owner is used.

## 2.

### **What is a retirement village?**

Retirement villages provide people with independent accommodation. In many cases, the village also includes shared facilities, such as common meeting rooms, library or pool, lifestyle services and social amenities, such as the opportunity to interact and socialise with people in a shared environment. Although staff in some villages have health care backgrounds, services specified in retirement village contracts generally do not include health care services.

Retirement villages are either resident-funded villages run by private operators on a commercial basis or community-auspiced villages run by organisations with purposes other than profit.

### **When is a residential complex a retirement village?**

Many residential complexes market themselves as community-style accommodation for retirees. But not everything that looks like a retirement village is one. Retirement villages have a particular definition in Victorian law and are covered by the **Retirement Villages Act 1986**, which confers rights and obligations that are unique to this type of accommodation.

A retirement village is a community where:

1. The majority of residents are aged 55 years or over or are retired from full time employment (or are spouse/partners of such people) who are provided with accommodation and services other than services that are provided in a residential care or aged care facility and
2. At least one of the residents, as one of the contractual conditions of entering the village, must have paid an ingoing contribution **that is not rent**, regardless of who makes that payment or whether it is in a lump sum or by instalments.

When a community satisfies these two conditions of being a retirement village, every resident, regardless of whether or not they paid an ingoing contribution, and regardless of whether they own or lease their unit, is covered by the **Retirement Villages Act**.

Where land is used or proposed to be used as a retirement village, the owner of the land must lodge a notice to that effect with the Land Titles Office. That information, called a retirement village notice, is then recorded on the land title, which can be checked at the Land Titles Office.

If a retirement village notice has not been lodged, it is an offence for anyone to offer contracts that claim to entitle a person to become a retirement village resident.

## Ingoing contributions

In practice, most people who enter a retirement village pay an ingoing contribution, which is like an entry fee to the retirement village and may be described in the contract in a number of different ways; for example, as an interest-free loan or a refundable deposit. **If a resident does not make a payment which is described as an ingoing contribution in their contract, they still have a right to use the services and facilities that are defined in their contract.**

Your right to use the services and facilities defined in your contract is binding on the owner of the retirement village, regardless of how that ownership may change. It cannot be rescinded if the village is sold.

## Refunds and security for refunds

If you enter a retirement village through purchasing a strata title unit, you will receive the proceeds of re-sale (net of departure/outgoing fees, which can be substantial; see chapter 5) and your investment is secured by your own land title, as with any property purchase.

If you do not buy your own unit (see chapter 4 for information about types of retirement village contracts), some or all of your ingoing contribution may be refundable to you or your representatives when you leave. If your ingoing contribution or that of any previous resident of the village contains a refundable portion

exceeding \$10,000, your refundable ingoing contribution is protected by being secured against the retirement village land that is defined in the land title. Again, that security, or "charge" as it is described in law, transfers to any new owner of the retirement village.

## **Residential care facilities**

A retirement complex often includes low-level and/or high-level aged-care services. These can be known as aged or residential care facilities, nursing homes, or hostels.

Residential care facilities are generally covered under the Commonwealth **Aged Care Act 1997** rather than the **Retirement Villages Act**, even if the two types of facilities are on the same site.

Coverage by the two Acts can only overlap where a building that houses a residential care facility also has residents who have **not** been assessed as eligible for aged care under the Commonwealth Act.

There is a common misconception that retirement village residents will advance automatically into a co-located or nearby residential care facility, but this is not the case. Access to these services depends on assessment from an aged care assessment service run under the Commonwealth legislation. Operators cannot keep places free for retirement village residents. When moving from a retirement village into a higher care facility, the resident may be required to terminate their

contract with the retirement village and pay any fees that are outstanding.

## **Residential parks**

Residential parks are sometimes marketed to retirees in a way that makes them sound similar to retirement villages. However, the nature of the transaction is different, as residents do not make an ingoing contribution. They purchase their own prefabricated dwelling and pay rent for the site on which the dwelling sits.

Residents in these communities are covered under the caravan parks and movable dwellings provisions of the Victorian **Residential Tenancies Act 1997**, provided there is at least one dwelling in the park that is a movable dwelling as defined under that Act. Residential parks are not retirement villages.

## **Rental villages**

This type of accommodation is marketed specifically to retired people on a rental basis. Generally investors buy units in a village, which are in turn offered 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.

As with residential parks, the residents of 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 as it is defined under the Act. The rights and responsibilities of the tenants in a rental village are laid out in the **Residential Tenancies Act 1997**.

### **Consumer tip**

If you are a resident of a residential park or rental village, you can check your rights and responsibilities by obtaining a free copy of Consumer Affairs Victoria's consumer guides: Caravan Parks: A guide for residents, owners and managers and Renting a Home: A guide for Tenants and Landlords. Telephone 1300 55 81 81 or go to [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

## **Retirement villages register**

Consumer Affairs Victoria has a retirement villages register which is accessible from the Consumer Affairs website at [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au). That register enables people to find out whether an establishment is a retirement village within the meaning of the **Retirement Villages Act 1986** and whether it has any exemptions from any or all of the provisions of the Act.

All Victorian retirement villages subject to the **Retirement Villages Act 1986** are required to be listed in the register.

## **Consumer tip**

If you're not sure whether a place is a retirement village, check the Consumer Affairs Victoria retirement villages register at [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

### **3.**

## **Looking for a retirement village**

Moving to a retirement village is a major lifestyle choice. It's important to consider what you're gaining, what you're losing, what you must have and what would be good to have but you could live without in exchange for other benefits.

### **Before you start looking**

#### **Consider these questions**

- Why are you thinking of moving from your current residence? Have you considered alternatives, such as home help, seeking assistance from government or other agencies or moving to a smaller home?
- Have you considered how you will finance the move to a retirement village? Have you consulted a financial planner about the best way to manage your income and expenditure? If you are considering selling your home, have you checked the property market?
- Where do you want to live? If you are moving to be close to family or friends, have you asked them about their future plans?
- Have you discussed your decision to enter a retirement village with your family, friends, and other

people with whom you usually discuss important matters?

### **Consumer tip**

If you are considering selling your home to finance the move to a retirement village, obtain a free copy of Consumer Affairs Victoria's **Real Estate: A Guide for Buyers and Sellers** by telephoning 1300 55 81 81 or through [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

## **Comparing one village with another**

### **Managing your life in a retirement village**

- Does the village have a waiting list? Do you have to pay to be on the list? Will you get any of that money refunded if you enter the retirement village? How does the village manage the waiting list if some of the residents are selling through an estate agent?
- What is the village's position regarding pets, visitors and car parking?
- Does the village have a bus?
- How close is the village to all the facilities you want, such as public transport, medical facilities, shopping facilities, entertainment, etc?
- Are the residents actively involved in decisions concerning the level of maintenance and services provided and their cost, and how may these fees be varied in the future?

- Is there a residents' committee and how are residents elected?
- What system does the village have for maintaining the village?
- What system does the village have for resolving disputes?
- What are the restrictions on your use of the village facilities and your unit?
- What common areas are available? You'll probably have to pay for their maintenance as part of your ongoing fees, so check to see what you'd be paying for. Common areas can include just the basics, like a community room, outdoor sitting area, etc, but some villages include virtually a miniature town, with facilities such as a hairdressing salon, medical consulting room, workshop, bar, swimming pool, bowling green, BBQ, etc.
- What are the units like? Have you seen one that is identical or very similar to the unit you may move into? How much freedom do you have to modify it to fit your tastes?
- If the operator claims that additional facilities are planned, is this claim reflected in their promotional material? Are there any conditions attached?
- Does the village have an activities coordinator? If you choose not to participate in the activities, are you still required to pay some part of their cost through your ongoing fees?

## **Long-term needs**

- Does the village provide optional support services if you need them, such as assistance with meals, cleaning and other personal services? If so, could

you vary your contract to include them and at what cost?

- Are meals available? Where, how often and at what cost?
- Is there a common dining room? Can residents bring their own meal to eat in the dining room and can they invite guests?
- Is there hostel or nursing home accommodation in the area? Even though places in this accommodation are determined by Commonwealth agencies, if you do need to move to such a facility, you may want to remain in the same general area as the retirement village.
- Could you be moved from the village or within the village without your consent? If so, under what circumstances could you be moved?
- If pensioner rebates are to be claimed by the owner or manager on your behalf, would you receive all the benefits of the rebates?

## **Leaving the village**

- What is the cost of leaving the village? What are the departure fees or deferred management fees?
- Will you be required to pay the cost of refurbishment and who decides what needs to be done at what cost?
- When would you get access to your money after you leave the village?
- If you need to transfer to another facility and you are able to do so, will your ingoing contribution be refunded at that point or transferred to the new facility?

- Are there any restrictions on the persons to whom you may sell your own unit?
- What protection would you have if the village was sold to an organisation which had philosophies at variance with the management of this village?

### **Consumer tip**

When you are comparing villages, compare their respective contracts. Make sure that any verbal assurances you receive are reflected in the contract.

You should take all of the documents relating to the village to a legal practitioner who understands the legal and financial implications of retirement village contracts.

For example, you can contact the Legal Referral Service on (03) 9607 9550 to get contact details for legal practitioners who specialise in retirement village matters.

## **4.**

### **Types of retirement village contracts**

There are a number of different contractual arrangements that are offered by retirement villages. The most common arrangements are through strata title, long-term lease or licence, company title, unit trust and periodic tenancy.

#### **Strata title**

##### **Buying**

This is a common contractual arrangement offered by for-profit villages. You pay the agreed purchase price to the owner of the premises, usually through their selling agent, such as the village operator or an estate agent. This entitles you to occupy the premises and become a member of the body corporate, as with any other strata title scheme. You will also have to pay body corporate fees for as long as you own the unit. As with the purchase of any property, you will be registered as the owner of the unit on your title deed held at the Land Titles Office.

Unlike other strata title schemes, however, the sale is conditional on the village operator approving you as a resident and the consequential signing of a retirement village contract with the village owner. If there are any

disputes about this, they must be resolved through the Victorian Civil and Administrative Tribunal (VCAT).

If the unit is new and you are the first owner, you may be liable to pay GST. Make sure your GST liability, if any, is clear before you purchase.

As well as body corporate fees, you may also be required to pay a recurrent charge, also known as a maintenance charge, usually on a monthly or quarterly basis (see Chapter 5 for information about fees and charges).

In strata title retirement villages, there may also be a management contract made between the manager of the village and you as the unit owner that defines the services that are delivered to the village by the manager.

### **Consumer tip**

If a village operator maintains a waiting list at a village but is not the selling agent for a unit, the unit owner is not obliged to sell to people on that list. In addition, the operator may not be obliged or able to supply the waiting list to the selling agent.

## **Selling**

You normally have the right to sell your premises through the selling agent of your choice, usually either an external estate agent or the village operator.

**However, this is not the case if, prior to 1 August 2006, you signed a retirement village contract with the operator that assigns exclusive selling rights to them.** You may also, under the terms of your contract,

be required to pay the operator a share of any capital gains as well as departure fees and other charges from the proceeds of the sale.

## **Other forms of tenure**

Your contract may provide for money to be returned to you after you leave the village, based on either the ingoing contribution you paid or the ingoing contribution obtained from the next resident of your unit. Usually the amount paid to you will be net of a further fee to the operator and other deductions.

**The Retirement Villages Act and the Retirement Villages (Contractual Arrangements) Regulations** include new rules about the timing of these refund payments that apply to all contracts entered into from 1 August 2006. See section 9 for more details.

## **Long-term lease or licence**

This is a common contractual arrangement in Victoria. You pay an ingoing contribution and in return are given a lease or a licence to live in a particular retirement village unit for anything ranging from 49 to 199 years. You will also be required to pay a recurrent maintenance charge, usually on a monthly or quarterly basis. In some villages, this charge is a fixed percentage of the age pension.

## **Company title**

Under this arrangement, you buy shares in a company that owns a village. The shares give you the right to occupy a particular unit in the village.

A Board of Directors, appointed by the shareholders, operates the village and you will be required to comply with the company's constitution. If you leave the village, you will be entitled to receive the sale price of the shares at settlement, less any outgoing deductions.

Company title is a complex area of law that was not developed for private residential accommodation. It is essential, as with any retirement village contractual arrangements, to understand what it is you're signing before you sign it.

## **Unit trust**

This arrangement is similar to a company title scheme, except that you buy a unit in a trust that carries an entitlement to occupy the unit. The village is legally owned by the trustee of the unit trust, who holds it for the benefit of the unit holders in accordance with the terms of the trust. As with company title, if you leave the village, you will be entitled to receive the sale price of the unit in the trust at settlement, less any outgoing deductions. As with company title, unit trusts are a complex legal structure.

## **Periodic tenancy**

Periodic tenancy arrangements are sometimes used by not-for-profit organisations running community-auspiced villages. This is a lease (written or verbal) between the resident and the owner in which there is no fixed date for the end of the lease. In other words, the agreement operates from rental period to rental period. In some cases a resident will pay an ingoing contribution, some or all of which may be refundable at the end of the tenancy period. The rental paid by the resident gives them the right to live in the unit and use any common facilities.

## 5. Fees and charges

There are a range of fees and charges that you may have to pay to enter and to live in a retirement village.

### Waiting list fees

Some retirement villages operate waiting lists which you can only join on payment of a fee. If you are committed to entering a particular village, it may be worthwhile to think about adding your name to the list. However, you should first find out:

- What the fee is. Is it worth the payment?
- What the average waiting time is.
- Whether the fee is partially or fully refundable on entering the village, or if a place does not become available within a certain time, or if you change your mind about this retirement village.

If the village operator states that the fee is refundable under certain conditions, always ask for the detail of those conditions and get them in writing before handing over any money. Always get a receipt if you pay a fee.

#### **Consumer tip**

If a village operator maintains a waiting list at a village but is not the selling agent for a unit, the unit owner is not obliged to sell to people on that list.

## **Ingoing contribution/purchase price**

Most people make an upfront payment when they enter a retirement village. Even if you are not buying your own unit in the village, you will probably still be asked to make an ingoing contribution, some part of which is usually described as refundable. The ingoing payment is the largest single payment that you are likely to make and secures your right to occupy your premises.

## **Recurrent charges**

Whichever village you choose, you will have to pay recurrent charges to meet the expenses of operating the village. In a strata title scheme, you will have to pay these fees to the body corporate.

The recurrent charge or maintenance fee is usually payable on a weekly, fortnightly or monthly basis. It covers the cost of:

- managing the village, including salaries of any staff members
- maintaining the facilities and common areas that are available to all residents, such as gardens and recreational facilities
- providing additional services that are available to all residents, such as emergency call system monitoring, and so on.

## **Consumer tip**

If you leave a retirement village, you may find that you continue to be charged some fees and charges even after you have left. There are defined maximum periods beyond which this cannot continue.

**Personal services:** You cannot continue to be charged for personal services beyond 28 days after you leave the village.

**Recurrent charges—strata title owners:** If you are a strata-title owner, you will continue to be liable for body corporate fees until the unit is sold, since you continue to be a member of the body corporate until that time.

**Recurrent charges—non-strata title owners:** If you are not a strata-title owner, recurrent fees for general services to the village community, such as maintenance, must cease within six months. If the unit you vacate is reoccupied or someone enters into a contract to occupy it, the village must stop charging you recurrent fees from that time, even if the six months has not yet passed.

## **Independent and assisted living**

Some villages offer a choice between independent and assisted living arrangements. If you are in an assisted living arrangement, where you receive additional services on a regular or recurring basis as a part of your contract, such as the provision of meals, you will pay a

higher recurrent charge than people who are in an independent living arrangement.

## **Personal services**

Even if you don't need the ongoing services provided through an assisted living unit, additional personal services may be available to you on an as-needs basis. These services may include meals, cleaning, laundry and personal care, such as assistance with bathing and dressing, and are normally available on a user-pays basis, at commercial rates.

## **Varying fees and charges**

### **Maintenance fees**

Retirement villages are only permitted to increase recurrent charges for goods and services in line with the increase in the consumer price index since the charges were originally set, unless a higher rate is approved by a resolution of the residents' committee or a resolution of a majority of the residents.

### **Special levy**

A retirement village may require occasional injections of funds for capital expenditure in addition to ongoing maintenance. This may be, for example, for unexpected major repairs or the provision of a new service or facility. In addition to enabling increases to maintenance fees,

the **Retirement Villages Act 1986** also allows the operator to charge a special levy but only under the following conditions:

1. Residents have not been charged a special levy in the preceding 12 months, **and**
2. Either:
  - a. Residents agree to the change through a special resolution (see Glossary), OR
  - b. the owner or residents must make the expenditure which the levy is intended to cover because of the requirements of Victorian or Commonwealth law or the order of a court, OR
  - c. the retirement village contract or the village rules provide that the residents are responsible for the expenditure or the class of expenditure that the special levy is intended to cover.

An example of the latter might be if the contract you signed states that the residents will have to pay for building a new facility like a bowling green or pool.

### **Consumer tip**

When you evaluate the residence documents that are provided to you before signing a contract (see chapter 6): check to see if there is any provision for levying extra charges, and evaluate whether what you would receive as a resident in exchange for this additional cost is worthwhile for you.

## Departure/outgoing fees

It is important to be aware that as well as paying to enter a village, your contract may require you to pay a significant amount when you leave a village. This fee is often called a deferred fee. It may be a part of your purchase price whose payment is deferred until the end of your occupancy to allow you the use of your money while you are living in the village. It can also be one of the significant ways that for-profit retirement villages generate a commercial operating profit and not-for-profit villages improve their services or subsidise rates for recurrent charges. At some villages, a set amount of your ingoing contribution may be non-refundable. If there is any capital gain, whether or how much of it you keep may also vary according to the terms of your contract.

Departure fees can be complicated. They often depend on variables such as how long you have been in the village and can't be calculated as a dollar amount until you have vacated your unit and a new resident has made an entry payment or a valuation has been obtained.

Departure fees are usually calculated as a percentage per year of either your ingoing contribution/purchase price or the new resident's ingoing contribution/purchase price up to a specified maximum percentage. For example, if the fee is 2.5 per cent per year up to a maximum of 25 per cent and you are there for 10 years or longer, the amount you get if you leave will be reduced by 25 per cent.

Some village contracts include specific arrangements relating to capital gain. Some may assign 100 per cent of any capital gain to the village owner. Since you would still have to pay a departure fee, this means that you may suffer a considerable capital loss. This may or may not be offset by other features of your contract, such as reduced recurrent charges.

### **Consumer tip**

Moving to a retirement village is an investment decision as well as a lifestyle decision, so it is essential that you understand the impact of the contractual arrangements the village has in place for departure fees.

### **Other payments**

As well as the ingoing, outgoing and ongoing fees that you are required to pay as part of your retirement village contract, you are also usually responsible for covering the cost of:

- Services that are separately metered and charged to your unit, such as telephone, gas and electricity charges.
- Insuring your household contents.

## **6. Contracts**

### **What information must you get before you sign a contract?**

At least **21 days** before you enter into a contract for a residence in a retirement village, the owner of the residence or the owner's agent must provide you with a copy of that contract.

In addition, the village operator is required to provide you with other residence documents, including:

- 1.** Any contract relating to the provision of services to you by the operator.
- 2.** Any other agreement about payment of an ingoing contribution or a recurring charge for goods and services.
- 3.** The disclosure statement (see below).
- 4.** The list of important information for prospective residents (see below).
- 5.** The rules or by-laws of the village (see chapter 7) and any agreement to abide by them.

## **Consumer tip**

Twenty-one days is the **minimum** allowable time between receiving the residence documents and signing a contract. If you need more time to consider your options or have the documents professionally assessed, take that time. It is a lot easier to renegotiate the terms of a contract before you sign it rather than after.

## **The disclosure statement**

The disclosure statement contains the name and address of the retirement village. It gives the dates that the retirement village notice and the notification of the charge (if any) were provided to the Land Titles Office (see chapter 2) and if there are any encumbrances or agreements that have an impact on the rights of residents of the village. A copy of the disclosure statement in the form that is required under the **Retirement Villages Act 1986** is in Appendix 2 of this guide.

The disclosure statement is an important legal document. There are penalties for including false information in the disclosure statement and for failing to provide you with the statement and the other residence documents at least 21 days prior to you signing the contract for goods and services.

## **Consumer tip**

Take all of the documents relating to the village to a legal and/or financial practitioner who is experienced in retirement village contracts. Make sure you understand all of the terms and conditions.

## **The list of important information for prospective residents**

This list contains items that Consumer Affairs Victoria advises you to investigate fully before signing a contract. It covers important aspects of living in the retirement village and gives you a basis on which to compare one retirement village with another. The list is included in chapter 3 and is also separately reproduced in Appendix 1 as it is outlined in the **Retirement Villages Act 1986**.

Remember that it is mandatory that this list is included in the residence documents that are provided to you at least 21 days before signing a contract.

## **Change to the Retirement Villages Act 1986**

The final stage of the amendments to the Act will be the introduction of new regulations intended to enable residents to more easily understand their terms and conditions and compare the costs and services on offer from different retirement villages. These changes are not anticipated to substantially affect the rights of residents or the operating requirements of retirement villages, but

to enable prospective residents to make easier and better informed decisions about which village to enter.

The changes will not affect contracts that are signed before the new regulations are introduced.

## **Other information you may benefit from seeking out**

### **Financial considerations**

- A clear written statement of all of the ingoing, ongoing and outgoing costs.
- Statements of expenditure for the last three financial years, the current financial year and the next financial year.
- Accounts for the last three years. (Note that in some villages, the residents may have agreed to waive the usual requirement that accounts be audited for one or more of the preceding years).
- The most recent quarterly accounts of income and expenditure.
- The trust deed for any trust fund into which the money you pay will be deposited.
- Statement of balances of the village's capital replacement fund or maintenance fund for the last three years.

## **Current and future developments**

- An overall site plan for the village.
- Plans showing the location, floor plan and main dimensions of all available premises.
- The terms of any development consent for the village if the village has not been fully built or if there are services and facilities that the village has claimed will be provided at some future date.

## **Company trust and other schemes**

- If the village is subject to a company title scheme, the company's constitution and replaceable rules.
- If the village is subject to a strata title scheme, the rules of the body corporate, the body corporate certificate, the minutes of the last Annual General Meeting and copies of any management agreement.

### **Consumer tip**

If there are services and facilities that are not yet built, ensure that they are included in your contract. Always keep any promotional material provided by the village that describe any aspects of the village that are not yet provided.

## **Cooling-off period**

A cooling-off period of three clear business days exists from the day you sign the contract. A business day is any day that is not a weekend day or public holiday. You

can rescind the contract at any time within those three days by giving a signed notice to the village owner or manager or by leaving it at the owner's address specified in the retirement village contract or at the manager's address.

## **Return of ingoing contribution/deposit**

If you rescind the contract, you are entitled to the return of any ingoing contribution or deposit you may have already paid, except for the sum of \$100 or 0.2 per cent of the ingoing contribution paid by you (whichever is the greater), which may be retained by the owner.

## **Inclusion of cooling-off period in contract**

Your retirement village contract must contain a conspicuous notice advising you of the terms of the cooling-off period. If your contract does not contain the notice you may rescind the contract by serving notice on all other parties to the contract within six months of becoming aware that the notice was missing.

## **Buying off the plan**

As with many modern residential developments, retirement village units can be advertised for sale before they have been built. Potential residents are generally offered the opportunity to reserve the unit of their choice and choose between different styles and levels of fixtures and fittings. Another potential benefit is a saving in stamp duty, since stamp duty is calculated on the value of the property at the date of the contract, not the

value of the final building. Generally, a deposit is required, with final settlement to be made when the unit is ready for occupation.

If you are thinking about buying off the plan, probably the most important things to remember are:

- If you are financing the move to a retirement village through the sale of your current home, try and coordinate the two events so that you're not forced to find alternative accommodation while the village unit is still being completed.
- Check the other villages that the developer has been involved in. Were they completed on time? Do they fulfil the promises made in the promotional material?
- Make sure you know the details of exactly what you are going to get, down to the finishes, colours, carpets, fixtures and fittings.
- If the village is being built in stages, make sure planned future amenities and facilities are included in the retirement village contract you sign with the village owner.
- Keep all of the promotional material provided to you.
- Make sure your agreement with the developer includes a guaranteed completion date and includes the right for you to terminate the agreement and recover the full amount of your deposit without any penalty if the guaranteed date is not met.
- Make sure your agreement includes a guarantee that the developer will rectify any defects in their work that become apparent after you move in at no financial cost to you.

## **Consumer tip**

Consumer Affairs Victoria offers a consumer guide about dealing with builders called **Building and renovating: a guide for consumers**. To obtain a copy, telephone 1300 55 81 81 or go to [www.consumer.vic.au](http://www.consumer.vic.au).

If you have a problem with a builder and cannot reach an agreement, Consumer Affairs Victoria offers advice and assistance through Building Advice and Conciliation Victoria on 1300 55 75 59.

## 7. Resident representation

In most villages, residents have an opportunity to participate in how the village is run and to obtain information on the financial health of the village as a whole. In a strata title village, the unit owners are automatically members of the body corporate and have the right to attend body corporate meetings and stand for election to the body corporate committee. The rules governing the formation and powers of bodies corporate are covered in the **Subdivision Act 1988** and Subdivision (Body Corporate) Regulations 2001.

### **Consumer tip**

For information on the formation and powers of bodies corporate, obtain a free copy of Consumer Affairs Victoria's **Body Corporate: What to consider when buying a flat, unit or apartment** and **The body corporate annual general meeting**, and the Victoria Law Foundation's **Body corporate: a quick guide to the law in Victoria**. All of these publications are available from Consumer Affairs Victoria by calling 1300 55 81 81 or at [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

Note: there are expected to be changes to the legislation affecting bodies corporate during 2007.

## Annual meeting

In all villages, the retirement village manager is required to convene an annual meeting of residents. The meeting proceedings must include:

1. A statement signed by the owner of the retirement village land covering:

- Refundable ingoing contributions—whether those that should have been paid out over the past 12 months were paid in full and according to the requirements covering refundable contributions. If any have not, the statement is required to explain the reasons.
- Debt management—whether the owner is aware of any reasons why the village will not be able to meet its debts over the next 12 months and, if there are, the details of those reasons.

2. A financial statement showing details of:

- The previous 12 months income and expenditure.
- Any provision that has been made for future extraordinary or major works in the village.
- Anticipated expenditure on goods and services for the next 12 months.
- Any proposed increases in maintenance charges to be paid by residents.
- Any special levies which it is proposed to ask residents to pay.

The financial statement is required to be audited unless residents agreed by special resolution at the previous annual meeting to waive this requirement.

**3.** A report on internal complaints and disputes, including the number and types of complaints/disputes handled in the year, action taken to resolve them and outcomes, and any changes made or proposed to address any issues identified as requiring a broader response (see chapter 8).

## **Residents' committee**

Where there is no body corporate, the residents may elect a residents' committee to represent the interests of the residents of the village. An active and well functioning residents' committee adds value to a retirement village, as you can offer significant assistance to the overall operating of the village and contribute to a stable village environment.

Residents' committees are a common way for you to have influence over your village, but a committee's role varies from village to village. For example, some residents' committees are involved with the management of services provided within the village, organising outings and recreational activities or helping to resolve minor disputes. At other villages, the degree of resident participation is less.

You are free to stand for election to the residents' committee. Committee members hold office for one year from the date of the election, but can be reappointed. A

committee member can also be removed from office by a special resolution passed by a meeting of residents. A special resolution requires the support of at least 75 per cent of residents. Residents' committees establish their own meeting procedures and meet as frequently as they require.

They can also call a meeting of all residents at the village.

## **Voting proxies**

If you can't attend an annual meeting or, where relevant, committee meeting, you can appoint a family member or any other trusted person to represent you. This person is said to hold your voting proxy and their vote is counted as if it was yours.

Until recently, it was permitted for residents' voting proxies to be held by the village manager or their close associate or a person nominated by the manager. **This is no longer permitted.** Village managers can no longer hold residents' voting proxies unless the resident is related to the manager, the close associate or the nominated person. Any such proxies that existed in the past are now invalid.

## **Power of attorney**

A power of attorney enables you to appoint a family member or trusted friend to manage your legal and financial affairs, if you become ill or travel overseas.

Until recently, it was permitted for residents' powers of attorney to be held by the village manager, or a close associate or a person nominated by the manager. **This is no longer permitted.** Village managers can no longer hold residents' powers of attorney unless the resident is a relative of the manager, the close associate or the nominated person. **However, any such powers of attorney that are already in existence will not change.**

### **Consumer tip**

Except in defined and limited circumstances, it is not permitted for village managers, their close associates or a person nominated by the village manager to hold residents' voting proxies or powers of attorney. Any existing voting proxies are now invalid. However, existing powers of attorney continue unchanged.

## **Village rules**

In villages without a body corporate, it is quite common to have rules or bylaws, although it is not mandatory. If a village does have rules, a copy must be included in the residence documents provided to you before entering the village (see chapter 6).

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
- pets
- garbage disposal
- car parking
- restrictions on the use of services and facilities
- the external appearance of residents' premises
- gardening and landscaping.

## **Changing the rules**

You can only create, change or revoke village rules by special resolution, requiring a minimum of three-quarters of the residents to vote in favour of the change.

However, this provision does not affect body corporate rules. It is not permissible to make village rules which conflict with Commonwealth or Victorian law.

## **Residents of Retirement Villages Victoria Inc.**

Consumer Affairs Victoria has provided funding to the Council on the Ageing (COTA) Victoria to establish an association to provide information and support for retirement village residents.

This association has been named the Residents of Retirement Villages Victoria. It:

- Provides information and support to its members.
- Educates members and the broader community about issues affecting retirement village residents.
- Promotes interaction between retirement village residents throughout Victoria.

- Contributes to policy debate and advocates on behalf of the community of retirement villages residents.
- Promotes diversity and equal representation.

Contact Seniors Information Victoria on 1300 13 50 90

OR

Residents of Retirement Villages Victoria Inc

Telephone: 03 9655 2119

Tollfree: 1800 136 381

Email: [residentsassociation@cotavic.org.au](mailto:residentsassociation@cotavic.org.au)

## **8. Dispute resolution**

Victoria has a three-tier system of dispute resolution and complaint-handling for retirement villages. The three tiers are:

- 1.** Settlement through the internal dispute resolution systems operated by the retirement village
- 2.** Conciliation through Consumer Affairs Victoria
- 3.** Legally binding determinations through the Victorian Civil and Administrative Tribunal (VCAT).

Although village operators and residents can agree to use alternative sources of dispute resolution if they choose, operators are not permitted to make that a condition in your contract. You cannot be forced to participate in commercial arbitration with an external agency nominated by the operator.

### **The dispute resolution process**

All Victorian retirement villages are required to have an internal dispute resolution scheme in place. The dispute resolution scheme applies to both complaints about management and complaints about another resident or residents (resident vs resident disputes).

## **Consumer tip**

You do not have to use the village's dispute resolution scheme. For management complaints, you may choose to seek assistance from Consumer Affairs Victoria, the Victorian Civil and Administrative Tribunal (VCAT) or another external service or dispute resolution body. For resident vs resident disputes, you may choose to resolve the matter with the assistance of the residents' committee or seek the advice of Consumer Affairs Victoria. Although Consumer Affairs cannot intervene or conciliate in resident vs resident disputes, we can offer information about alternative avenues for dispute resolution.

## **Responsibilities of retirement village managers**

### **Retirement village managers must:**

- Put in writing the procedures for:
  - handling management complaints, and
  - mediating resident vs resident disputes.
- Inform you of the dispute resolution procedure and make copies of the documented procedure readily available.
- For all complaints, record the date, nature of complaint, parties to the dispute and the outcome or action taken.

- For any complaint not resolved within 72 hours (not counting weekends and public holidays), establish a separate record and keep it up-to-date.
- Present a report on complaints to the annual meeting of residents, including the number and types of complaints/disputes handled in the year, action taken to resolve them and outcomes, and any changes made or proposed to address any issues identified as requiring a broader response. This report must not identify the parties to the dispute.

### **The retirement village manager must not:**

- Require a resident to make complaints in writing.
- Take action to resolve a dispute without the consent of the parties.
- Deal with a resident vs resident dispute if it is already being dealt with by the residents' committee.
- Deter a resident from complaining.
- Penalise a resident because they have made a complaint or plan to make a complaint.
- Prevent a resident who makes a complaint from being represented throughout the resolution process by another person.
- Put in place a procedure that is inconsistent with or overrides existing law (for example, the (Commonwealth) **Privacy Act 1988**) or the terms of the resident's contract.
- Identify parties to a dispute in the report to the annual meeting of residents.

## Dispute resolution procedures document

Village managers must provide a written procedures document that sets out:

- How residents can complain, including:
  - the times and places at which complaints can be made
  - the name of the person/s who can take complaints
- How the management complaint or resident vs resident disputes will be handled, including, for example:
  - how the complaint or dispute will be acknowledged
  - standard steps the manager will take in attempting to resolve complaints and disputes and, where possible, the expected timeframes
  - how the resident/s concerned (or their representatives) will be kept informed of progress and advised about outcomes
  - the manager's procedures for complying with the statutory obligations to record and report on complaints and disputes.
- Information about other options for dispute resolution—the document must inform residents that they may:
  - seek advice on disputes from Consumer Affairs Victoria and provide Consumer Affairs' contact details
  - choose to have resident vs resident disputes handled by the residents' committee.

## **Disputes that cannot be resolved at village level**

An unresolved dispute can be referred to an external agency for resolution. Consumer Affairs Victoria is a convenient first point of contact for advice on all disputes, although its dispute resolution services do not currently extend to resident vs resident disputes.

Where the dispute is a contractual one, CAV can conciliate between residents and a manager and make representations to the manager on behalf of a resident. The parties to the dispute also have the option of taking the matter to the Victorian Civil and Administrative Tribunal (VCAT) for a decision that is binding on both parties.

### **What do we mean by "conciliation"?**

Consumer Affairs Victoria's conciliation process involves negotiating between the parties to a dispute to bring them to an agreed resolution of the issues. Where there is no voluntary agreement between the parties and there is no clear breach of legislation, Consumer Affairs Victoria cannot compel the manager to provide the outcome desired by the resident and is unable to make a binding determination on the matter.

## **Consumer tip**

Consumer Affairs Victoria has published a set of guidelines to assist villages in setting up internal dispute resolution procedures that comply with the Retirement Village Regulations. You can get a free copy of **Internal dispute resolution guidelines for owners and managers** by telephoning 1300 55 81 81 or go to [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au).

## **9. Leaving a retirement village**

### **Sale of strata title units**

From 1 August 2006 operators cannot require people buying a strata title unit to assign exclusive selling rights to the operator as a condition of the retirement village contract. However, if you signed a contract containing such a provision before 1 August 2006 the contract will remain unchanged and you will be bound by it.

Where you engage an external estate agent to handle the sale, operators are not permitted to charge a fee or seek a commission for the sale.

If you sell through an external estate agent, the purchaser must still be approved by the operator as a resident. If there are any disputes about this, they will be resolved through the Victorian Civil and Administrative Tribunal.

Your agreement with the estate agent may entitle the agent to be paid a commission even if the purchase is not approved by the operator, and the sale does not proceed as a result. If a commission will be payable in those circumstances, the agent must inform you of this in writing and have you initial the page before you engage him or her.

## Ongoing charges

If you leave a retirement village, you may find that you continue to be charged some fees and charges after you have left. There are some legal rules about this.

**Personal services:** You cannot continue to be charged for personal services beyond 28 days after you leave the village.

**Recurrent charges—strata title owners:** If you are a strata-title owner, you will continue to be liable for body corporate fees until the unit is sold, since you continue to be a member of the body corporate until that time.

**Recurrent charges—non-strata title owners:** If you are not a strata-title owner, recurrent fees for general services to the village community, such as maintenance, must cease within six months. If the unit you vacate is reoccupied or someone enters into a contract to occupy it, the village must stop charging you recurrent fees from that time, even if the six months has not yet passed.

## Exit entitlements

Your retirement village contract may entitle you to a payment after leaving your village. This may be based on your original ingoing contribution or the current value of your unit, net of fees to the operator (see Chapter 5 for more information about departure/outgoing fees). The length of time for any exit entitlements to be paid to you is determined by the terms of your contract.

New rules apply for contracts entered into from 1 August 2006, where:

- you don't own your unit (for example, when occupying under a lease or licence), and
- the retirement village operator will be liable to make a payment to you when you leave, once your unit changes hands.

## **Aged care accommodation bond costs**

If you leave a retirement village to go into an aged care facility and agree to pay an accommodation bond, you should advise the retirement village owner (or the owner's authorised representative) of the amount of the accommodation bond and the date you have to pay it. If your unit doesn't change hands in time for you to get your exit entitlement before your accommodation bond is due (no earlier than six months after you left the retirement village and entered the aged care facility), the owner must advance to you either your full entitlement or the full amount of the accommodation bond, whichever is less. The advance must be given without charge, to be deducted from the amount that is payable to you when the retirement village unit changes hands.

The owner has 14 days to advance you the money, so if you leave it until the end of the six month period when your accommodation becomes due before giving notification that an accommodation bond is payable, it may mean the advance is late.

Where the advance must be paid to you before the amount of your exit entitlement can be determined because your unit hasn't changed hands yet and a new resident therefore hasn't made an incoming payment,

there may be disagreement about the estimated value of your final entitlement. In fully commercial villages, the new rules provide that the current value of the right to occupy the unit will be determined by valuation and the entitlement will be calculated using that value. You and the owner share the cost of the valuation in the same proportions as you share in any capital gain under your contract. Where you did not pay a market price, the rules provide that the current value of the right to occupy the unit can be determined in any way, provided that the value is not less than the amount you originally paid adjusted according to the consumer price index.

The owner must also advance any interest demanded by the operator of the aged care facility on the aged care accommodation bond while it remains unpaid. As with payment of the full bond, the advance must be given without charge, to be deducted from the amount payable to you when the retirement village unit changes hands.

## **Extra contract terms**

Contracts entered into after 15 September 2006 must either:

- provide for you to be paid your exit entitlement if your unit has not changed hands within six months of you giving up vacant possession,

**OR**

- include certain extra terms and provide for you to be paid your exit entitlement ahead of your unit changing hands if a court or tribunal finds these extra terms have been breached.

The extra terms:

- give you the right to request engagement of an external estate agent you find acceptable to market the unit
- commit the owner to use all reasonable endeavours to sell the right to reside in your unit
- prevent any unreasonable charges on you in relation to the process of selling the residence right
- require that you receive monthly reports about enquiries and prompt advice about any offers if the operator is marketing the unit
- give you control over the advertised price and the selling price, if you paid a market price for the right to occupy the unit (but also require you to exercise this control reasonably).

Again, where the payment must be made before the amount of your exit entitlement has been established through the unit changing hands, alternative means of settling the value are provided for. In fully commercial villages, the current value of the right to occupy the unit will be determined by valuation and the entitlement will be calculated using that value. You and the owner share the cost of the valuation in the same proportions as you share in any capital gain under your contract. Where you did not pay a market price, the current value of the right to occupy the unit can be determined in any way, provided that the value is not less than the amount you originally paid adjusted according to the consumer price index.

# Removal from a retirement village

## Non-strata title villages

In non-strata title villages, the village owner can terminate your retirement village contract and ask you to leave the village under the following circumstances.

1. If you breach a provision of your retirement village contract, the owner may give you written notification that you are required to either fix the breach or stop committing the breach within 28 days.

If you don't comply with this notice and the breach is "substantial", the owner may give you a further written notification that details the breach and requires you to leave the village within 60 days.

2. If you have a periodic tenancy, the owner may give you written notification requiring you to leave at the end of six months or at the end of the current rental period, whichever is later.
3. An owner may give you written notification requiring you to leave the retirement village within 14 days if:
  - a. your retirement village contract authorises the giving of such a notice, and
  - b. the owner has complied with any conditions in your contract which must be complied with before such a notice can be given, and

c. the notice includes a copy of a certificate signed by two registered medical practitioners within the meaning of the **Medical Practice Act 1994**, one of whom you have nominated or agreed to and stating that you need care of a kind which is not available at the retirement village.

## **Strata-title villages**

The **Retirement Villages Act 1986** does not provide for an operator to terminate your occupancy where you own the title to your residence. If the operator attempts to do this, you should seek legal advice.

## **10. Useful contacts**

### **Consumer Affairs Victoria**

#### **Victorian Consumer & Business Centre**

113 Exhibition Street  
Melbourne Vic. 3000  
Tel: 1300 55 81 81  
[www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

#### **Regional services**

Consumer Affairs also has regional offices located in Ballarat, Bendigo, Geelong, Morwell, Mildura, Wangaratta and Warrnambool together with a mobile outreach service that regularly visits rural communities.

To find details on the office or mobile service nearest you, ring 1300 55 81 81 or go to the Consumer Affairs website on [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au) and click on the Contact Us link.

### **Residents of Retirement Villages Victoria Inc**

Council on the Ageing Victoria  
4th Floor, Block Arcade  
98 Elizabeth Street  
Melbourne Vic 3000  
Tel: (03) 9655 2119  
Tollfree: 1800 136 381

Email: [residentsassociation@cotavic.org.au](mailto:residentsassociation@cotavic.org.au)

## **Retirement Village Association**

4/335 Flinders Lane

Melbourne Vic 3000

Tel: (03) 9629 4520 [www.rva.com.au](http://www.rva.com.au)

## **Housing for the Aged Action Group**

2nd floor, Ross House

247-251 Flinders Lane

Melbourne Vic 3000

Tel: (03) 9654 7389

Country Calls: 1800 637 389

[www.oldertenants.org.au](http://www.oldertenants.org.au)

## **Information Victoria**

356 Collins Street

Melbourne Vic 3000

Tel: 1300 36 63 56

TTY (03) 9603 8806

[www.information.vic.gov.au](http://www.information.vic.gov.au)

## **Seniors Information Victoria**

247 Flinders Lane

Melbourne Vic 3000

Tel: 1300 13 50 90

[www.cotavic.org.au/seniors information/](http://www.cotavic.org.au/seniors%20information/)

## **Legal Referral Service**

Law Institute of Victoria  
470 Bourke Street  
Melbourne Vic. 3000  
Tel: (03) 9607 9550  
[www.liv.asn.au](http://www.liv.asn.au)

## **Dispute Settlement Centre**

3rd floor, 235 Queen Street  
Melbourne VIC 3000  
Tel: (03) 9603 8370  
Country Calls Only: 1800 658 528  
[www.justice.vic.gov.au/disputes](http://www.justice.vic.gov.au/disputes)

## **Victorian Civil & Administrative Tribunal (Civil List)**

55 King Street  
Melbourne Vic 3000  
Tel: (03) 9628 9700  
[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

# 11.

## Glossary

**by-laws**—see village rules

**charge**—a method of protecting the security of the refundable portion of all residents' ingoing contributions by holding the money against the retirement village title registered at the Land Titles Office. A charge transfers to any new owner of the retirement village and is created when any ingoing contribution contains a refundable portion that exceeds \$10,000.

**close associate**—if the retirement village manager is a person rather than a body corporate, a close associate is:

- the spouse, domestic partner, parent, child or sibling of the manager, or
- the parent, child or sibling of the spouse or domestic partner of the manager, or
- a body corporate of which the manager (or the manager's spouse, domestic partner, parent, child or sibling, or the parent, child or sibling of the spouse or domestic partner of the manager) is a director or secretary,
- an agent or employee of the manager.

If the manager is a body corporate, a close associate is:

- a director or secretary of the body corporate or of a related body corporate (within the meaning of the Corporations Act), or

- the spouse, domestic partner, parent, child or sibling of such a director or secretary, or
- the parent, child or sibling of the spouse or domestic partner of such a director or secretary, or
- a related body corporate, or
- an agent or employee of the manager.

**disclosure statement**—a statement that sets out:

- the day on which the retirement village notice for the retirement village was lodged with the Registrar of Titles, and
- particulars of any mortgage, charge or other encumbrances over the retirement village land that take priority over the rights of residents of the retirement village, and particulars of any agreement entered into in relation to the retirement village land relating to the priority of residence rights over earlier encumbrances over the land, and
- the day on which notification of the charge created over the retirement village land was given to the Registrar of Titles.

**exempt retirement village**—a retirement village which has been declared exempt from any or all the provisions of the **Retirement Villages Act 1986** or its related Regulations under section 6 of the Act.

**ingoing contribution**—the payment made:

- by way of donation because of an understanding between a person and an owner or manager to the effect that, on the making of the donation, the person will be entitled to become a resident of the village, or

- in consideration of acquiring shares in a company, if those shares confer on the holder the right to become a resident of a retirement village, or
- in consideration of the right to become a resident, whether it is paid by or on behalf of the person who wishes to become a resident and whether in a lump sum or by instalments but does not include rent.

**maintenance charge**—a regular, recurrent charge payable by a resident for the upkeep of services and facilities provided by a manager.

**management complaint**—means any complaint that a resident has against the manager of a retirement village about:

- the control, management or administration of the retirement village by the manager, or
- any action or failure to act by the manager that affects residents' use or enjoyment of the retirement village land, or
- the provision of services or a failure to provide services by the manager to residents of the retirement village.

**manager**—a person who manages a retirement village, or if there is no such person, the owner of retirement village land.

**non-owner premises**—the accommodation occupied by a non-owner.

**non-owner resident**—a person who is a resident of the village, but who does not own the land the person occupies as a private residence in the village.

**owner**—the person or organisation or company that is the registered owner of the retirement village land on the title deed held by the Land Titles Office.

**owner premises**—the accommodation occupied by an owner.

**owner resident**—a resident of the village who owns the land that the resident occupies as a private residence in the village.

**personal services**—services provided by a manager of a retirement village that a resident of the village may choose to use but which it is not necessary that the manager provide for the purposes of the maintenance of the village.

**recurrent charge**—a regular, recurring charge payable by a resident for the provision of goods or services by a manager.

**refundable ingoing contribution**—the part of an ingoing contribution that is:

- refundable to the resident if the resident leaves the retirement village, or
- payable to the resident's estate if the resident dies.

**residence documents**

- a contract for a residence in a retirement village
- any contract relating to the provision of services to you by the operator

- any other agreement about payment of an ingoing contribution or a recurring charge for goods and services
- the disclosure statement
- the list of important information for prospective residents
- the rules or by-laws of the village and any agreement to abide by them.
- any other document that the Regulations may define as a residence document (there are no such documents at the time of publication).

**resident dispute**—a dispute between residents in a retirement village about any action or failure to act by residents in the retirement village that affects the use and enjoyment of the retirement village land or services by other residents in the retirement village.

**residential care facility**—a facility:

(a) in which:

(i) a residential care service; or

(ii) a multi purpose service within the meaning of the **Aged Care Act 1997** of the Commonwealth, is operated by an approved provider within the meaning of that Act; and

(b) in respect of which an allocation of residential care places or flexible care places is in effect under Division 15 of that Act.

**residents' committee**—means a group of people who represent the interests of the residents of the village. Committee members are elected by simple majority but can only be removed with a vote of at least 75 per cent of the village residents.

**retirement village**—a community of people, the majority of whom are retired persons, where at least one resident before or upon becoming a member of the community, pays or is required to pay an ingoing contribution.

**retirement village contract**—the document that defines a resident’s ingoing contribution and the portion of it that may be refundable, the ongoing fees and charges paid by the resident and the way the departure fee is calculated. It generally also contains details of the accommodation, facilities and services offered by the village that the resident is entitled to use. It may also cover the resident’s agreement to observe the village rules or by-laws.

**retirement village land**—land used or to be used for the purposes of a retirement village, other than any part of any such land on which a residential care facility is situated.

**retirement village notice**—a notice lodged with the Registrar of Titles by the village owner stating that the land is used or proposed to be used as a retirement village.

**services**—any of the following

- management and administrative services
- gardening, repair and maintenance services
- shops and other services for the provision of goods to residents
- hostel accommodation
- laundry services
- the provision of meals

- services or facilities for the recreation or entertainment of residents
- other services for the care or benefit of residents.

**special resolution**—a resolution which:

- is passed at a meeting of which at least 21 days written notice has been given to all residents detailing the intention to propose the resolution as a special resolution; and
- is passed at the resulting meeting by a majority of not less than three quarters of the residents living at the retirement village.

**village rules**—provisions relating to the use, enjoyment, control and management of the village. They can only be created, changed or revoked by a special resolution of the village residents. If a village has rules, a copy must be included in the residence documents.

## **12.**

### **Appendix 1:**

## **List of important information**

### **LIST OF IMPORTANT INFORMATION FOR PROSPECTIVE RESIDENTS**

YOU SHOULD READ THIS DOCUMENT CAREFULLY. IT CONTAINS A NUMBER OF IMPORTANT THINGS THAT YOU SHOULD CONSIDER BEFORE DECIDING TO ENTER A RETIREMENT VILLAGE.

- 1.** Discuss your decision to enter a retirement village with your family friends, and other people who usually discuss important matters with you.
  
- 2.** You should take all of the documents relating to the village to a legal practitioner who understands the financial implications of retirement village contracts.
  
- 3.** Regarding life at the village itself, you should find out whether—
  - (a)** the lifestyle of the village (including social activities and religion) meet your needs;
  - (b)** the facilities at the village meet your present needs and whether they will meet what you expect will be your future needs;

- (c)** you have any say in the design, construction and furnishing of your unit if construction is not yet complete;
- (d)** the retirement village provides any nursing care, an emergency call system or other facilities specially designed for the elderly;
- (e)** you can be moved from the village or within the village without your consent, and if so, under what circumstances;
- (f)** your long term occupancy at the village is secure;
- (g)** the residents are actively involved in decisions concerning the level of maintenance and services provided and their cost, and how these fees are to be varied in the future.

**4.** You should also enquire about—

- (a)** pets, visitors, car parking and public transport;
- (b)** when you get access to your money after you leave the village;
- (c)** what system the village has for resolving disputes;
- (d)** what restrictions exist on the persons to whom you may sell your unit;
- (e)** the restrictions (if any) on your use of your unit and of the village facilities generally;
- (f)** what protection you have if the village is sold to an organisation that has management plans or philosophies that are inconsistent with the way in which the village you propose to enter is managed.

**5.** Compare the terms and amount of repayment of your in-going sum with other charges imposed on residents at the village, such as regular maintenance charges and any other extraordinary costs.

6. Find out how you will have to adapt and alter your existing lifestyle to comply with the regulations and restrictions of life in the village.
7. If the community facilities of the village have yet to be built, find out what guarantee you have that they will be completed.
8. Find out whether the owner can terminate your occupancy at any time, and if so, under what circumstances.
9. If pensioner rebates are to be claimed by the owner or manager on your behalf, find out whether you will receive all the benefits of the rebates.

IF YOU ARE UNCERTAIN ABOUT ANY ASPECT OF THE VILLAGE OR THE DOCUMENTS YOU HAVE RECEIVED FROM THE VILLAGE, YOU SHOULD SEEK EXPERT ADVICE.

S.R. No. 162/2005 Retirement Villages (Records and Notices) Regulations 2006, Schedule 2, Part A

**13.**  
**Appendix 2:**  
**The disclosure statement**

**DISCLOSURE STATEMENT**

Name of Retirement Village: \_\_\_\_\_

\_\_\_\_\_

Address of Retirement Village: \_\_\_\_\_

\_\_\_\_\_

I/We \_\_\_\_\_

of \_\_\_\_\_

being the owner/owners of the land upon which a retirement village is located certify that—

**1.** The retirement village notice required by Part 2 of **the Retirement Villages Act 1986** was given to the Registrar of Titles on the \_\_\_\_\_ day of 20\_\_\_\_.

**2.** The particulars of any mortgage, charge or other encumbrances which take priority over the rights of residents under that Act are: \_\_\_\_\_

\_\_\_\_\_

3. The particulars of any agreement entered into relating to the priority of residence rights over earlier encumbrances over the land are: \_\_\_\_\_

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4. The notification of the charge created by Part 5 of **the Retirement Villages Act 1986** was given to the Registrar of Titles on the \_\_\_\_\_ day of 20\_\_\_\_\_.

S.R. No. 162/2005 Retirement Villages (Records and Notices) Regulations 2006, Schedule 2, Part B

## **Consumer Affairs Victoria**

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TIS 131 450

Textphone (TTY) or modem users only, ring the NRS on 133 677, then quote 1300 55 81 81. Callers who use Speech to Speech Relay dial 1300 555 727, then quote 1300 55 81 81.

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Consumer Affairs Victoria

**"Confident Consumers, Protected Communities"**

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