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www.fairtrading.nsw.gov.au

13 32 20



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Retirement village living

An overview of the NSW retirement
village laws

www.fairtrading.nsw.gov.au



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Role of the Office of Fair Trading

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

Our role includes the following responsibilities:

- providing information about the retirement village laws
- handling complaints about possible breaches of the laws
- taking or defending judicial proceedings on behalf of residents in matters of public interest
- conducting education campaigns
- producing educational resources on retirement village matters
- investigating and carrying out research into retirement village matters
- monitoring the industry to detect unfair practices
- reviewing and amending the laws to ensure they remain relevant.

Introduction

What is the purpose of this booklet?

Once you have made up your mind to move into a retirement village, there are many important things to take into account before finalising your choice. These issues are covered in the following chapters of this booklet. There are many hundreds of retirement villages in NSW of different sizes and style providing a range of services and facilities. Take time to obtain all the information you can from the villages of interest to you.

As a prospective resident, you are entitled to receive a copy of this booklet from any village you express an interest in. It must be supplied at or before the time you are given a disclosure statement (page 11).

If after reading this booklet you have any further queries or questions please contact your nearest Fair Trading Centre.

Which Fair Trading laws apply?

From 1 July 2000 the main laws regulating retirement villages are:

1. The *Retirement Villages Act 1999*, which:

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

2. The Retirement Villages Regulation 2000, which
 - prescribes various forms, including a disclosure statement and condition report
 - contains a set of model village rules
 - prescribes what can and cannot be included in a village contract.
3. The *Consumer, Trader and Tenancy Tribunal Act 2001*, which sets out the process by which disputes between residents and operators are to be resolved.
4. The *Fair Trading Act 1987*, which deals with general fair trading matters such as advertising, promotional or other sales material.
5. The *Strata Schemes Management Act 1996*, which deals with retirement villages subject to a strata scheme.
6. The *Community Land Management Act 1989*.

Where can you get a copy of the laws?

Copies of the legislation are available to read at most public libraries.

They can also be accessed from our website:
www.fairtrading.nsw.gov.au

If you would like to purchase the legislation you should contact:

Tel: 1300 656 986

What is a retirement village?

Any residential complex predominantly occupied by residents who are aged over 55 years, or who have retired from full-time employment, may be a retirement village. Residents of the complex must enter into a contract with the operator of the complex, either to occupy the premises and/or to receive services.

There are some 750 retirement villages currently in New South Wales, accommodating about 40,000 residents. Retirement villages are located across the State and are operated by church, charitable, community as well as private operators.

A broad range of accommodation is available within the retirement village industry. Self-contained premises are available to those able to live independently. Serviced premises (or assisted living apartments), with meals, cleaning and other personal services provided are also available within the industry. Some villages contain a mix of self-contained and serviced premises, allowing residents to transfer when and if the need arises.

Personal support services are available at some but not all retirement villages. Prospective residents should make enquiries with each operator regarding the standard, extent and cost of personal support services, if any, available at the village.

What do the laws not cover?

The Act does not apply to the following complexes, even though these complexes may cater exclusively or predominantly to 'retired persons':

- caravan parks and manufactured home estates
- Commonwealth Government funded aged care hostels
- nursing homes
- Department of Housing tenancies
- accommodation provided by the Aboriginal Housing Office
- boarding and lodging houses
- group homes.

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

Sometimes a Commonwealth Government funded hostel or nursing home is located on the same land or next to a retirement village. As mentioned above, the retirement village laws do not cover such places. Residents of these facilities are not residents of the village. Under current Commonwealth Government guidelines admission to such a facility requires that places be allocated on a needs basis once a person has been assessed. No guarantee of admission can be given to residents of the retirement village.

The Act also does not apply to the following individual arrangements that may be found within a 'retirement village':

- respite care arrangements
- employee accommodation
- residential tenancy agreements under the *Residential Tenancies Act 1987*, but only if the agreement specifically contains a term stating that the *Retirement Villages Act 1999* does not apply.

Do the laws apply to existing contracts?

Yes. The laws apply to all existing and future retirement villages. The laws override the terms of any existing contract, agreement, scheme or arrangement. If an operator gives someone a contract which tries to avoid, or get around, the retirement village laws, significant penalties may be imposed.

Different types of contracts

There are generally five different types of contractual arrangements that are offered by village operators. This chapter gives you a brief explanation of the different types you may encounter. However, some of the information below may differ in individual circumstances.

Loan and licence arrangements

This is the most common arrangement in retirement villages, being the way most churches and charitable organisations operate their villages. You pay a fixed up-front interest free loan (an ingoing contribution) to the operator upon entry to the village. Sometimes a proportion of the loan is non-refundable (sometimes called a 'donation'). Recurrent charges, usually on a fortnightly or monthly basis, are also payable.

The licence agreement grants you a right to occupy the premises, but you do not own the premises nor do you have a legal interest in it. Sometimes a separate loan agreement sets out matters relating to your loan.

Leasehold arrangements

Leasehold is a common contractual arrangement offered by privately run retirement villages. The lease, usually expressed for 99 years or 199 years, is registered on the title deed held by Land and Property Information NSW, which gives you added protection should the village be sold. You pay an ingoing contribution in the form of an up-front deposit and prepaid rent or premium.

The amount will vary depending on market forces, similar to if you were buying the premises. Recurrent charges, usually on a monthly or quarterly basis, are also payable. The timing of payments by the operator on vacation will depend largely

on whether you are considered an owner or a non-owner under the Act. This will depend on the wording of your contract and is something that you should get legal advice on before signing.

Strata schemes

Selling premises in a strata scheme is another common contractual arrangement offered by privately run villages. You pay the agreed purchase price to the owner of the premises (eg. the former resident or the operator). This entitles you to occupy the premises and become a member of the owners corporation, as with any other strata scheme. You will also have to pay strata levies, on a quarterly basis, to the owners corporation.

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

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

Rental arrangements

A small number of villages offer premises for rent to retired people with little or no assets. You sign a tenancy agreement and pay rent like other tenants in the general community. There are no ingoing contributions to pay when you enter the village, or fees and charges to pay when you leave. However, the agreement may contain a term excluding you from coverage of the retirement village laws. If this is the case, your agreement will be covered by the *Residential Tenancies Act 1987*.

Company title schemes

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

Important

Disclosure statements contain vital information - read them before you enter a contract.

Before you sign a contract

What information must you get before you sign a contract?

In addition to this booklet, any operator contacted by you or somebody acting on your behalf, to express an interest in becoming a resident, must give you a disclosure statement free of charge.

It is important to get a disclosure statement as early as possible in your decision making process. The Act does not allow the operator of a retirement village to enter into a contract with a person for at least 14 days after the person is provided with a disclosure statement. So there is no need to rush your decision.

It is advisable to obtain a disclosure statement from a number of retirement villages in the area you are thinking of living in. This will assist you to compare the various arrangements on offer, and to identify the most suitable and affordable village for your needs.

A disclosure statement contains information about matters such as:

- the size and location of the village
- the proximity of the village to hospitals, shops and public transport
- contact details for the current operator/s and the Residents Committee (if any)
- what measures have been taken to make residents safe and secure
- the type of contracts you may be asked to sign
- the type and level of services and facilities available in the village

- full financial management details, including the costs to gain entry, reside in and leave the village
- details of all available premises in the village
- details of village ownership, including the year of original construction and the name of the original developer
- details of any residential care facilities
- details of compliance with the legislation.

You should not, however, base your decision solely on what is in a disclosure statement. Most prospective residents find it useful to visit the village, inspect all available premises, and discuss with some residents or a representative of the Residents Committee, issues such as what it is like to live in the village. You should also ask to see a copy of sample contracts and the village rules.

Disclosure statements are important documents and should be kept in a safe place. The operator must attach a copy of the disclosure statement to the contract you will be required to enter into. If there is any inconsistency that is to your detriment, between what is in the disclosure statement given to you and what is in the contract you sign, the information in the disclosure statement will, to the extent of the inconsistency, prevail.

What other information can you obtain?

A range of documents must be available for you, or a person making enquiries on your behalf, to inspect at each village or at a business address of the operator.

Important

Before buying:

- read disclosure statements
- visit the village
- view the contract and village rules
- speak to residents or the Residents Committee.

These documents include:

- examples of all village contracts you may be asked to sign (without the blanks filled in)
- the village rules (if any)
- an overall site plan for the village
- plans showing the location, floor plan, and main dimensions of all available premises
- statements of expenditure for the last 3 financial years, the current financial year and the next financial year
- audited accounts for the last 3 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
- the terms of any development consent for the village, (but only if the village has not been fully built or if services or facilities are required to be provided for the life of the village)
- the village's waiting list policy (if any)
- statements of balances of the village's capital replacement fund or maintenance fund for the last three years (if any)
- 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 or community scheme, the by-laws of the scheme, the minutes of the last Annual General Meeting, and copies of any management agreement.

You can read any of these documents at the village, or the designated place of inspection, and take notes.

You can also ask for copies of any of the documents to be provided, so you can examine them more closely.

If you prefer, you can write to or telephone the operator, and ask for copies to be sent to you. A copy of any document you request must be provided within seven days. There can be no charge for you to inspect any of these documents or to have copies.

Buying off the plan

Sometimes retirement village units are advertised even before they have been built. Potential residents are invited to buy 'off the plan' or to reserve the unit of their choice before 'it is too late.' Often a deposit is required, with settlement to be made when the unit is ready for occupation.

There are pitfalls associated with entering into arrangements of this nature, and there are some matters that should be carefully considered before making a decision.

One matter that needs particular caution is arranging for the sale of your own home before the village unit is actually completed and available for occupation. The worst scenario could be that you have to move out of your home to allow the purchaser to move in, while there is nowhere else for you to live because the village unit is not ready. Make sure you obtain good advice on the best time to put your home on the market if you have chosen to sell up to finance your move to a retirement village.

Potential residents should be careful signing contracts in connection with any premises that are still on the drawing board. Some of the things that can go wrong include:

- the unit may not be ready for occupation by the time promised
- the village may not end up being built at all
- there is no guarantee as to the quality of the building, fixtures and fittings
- it can not always be accurately forecast whether any financial arrangements entered into will reflect the market at the time the unit is ready to occupy (you could be paying too much)

- your circumstances could change (eg. your state of health might change and a self-care unit becomes inappropriate and supported accommodation becomes necessary) but you have already entered into a binding contract.

Summary

The Office of Fair Trading recommends that persons contemplating entering into 'off the plan' retirement village arrangements exercise caution in making their decisions. Appropriate legal and other advice should be obtained before signing any documents or paying any money.

Checklist

The Office of Fair Trading suggests that you consider the following checklist before making a decision to pay any money or sign any contract for retirement village accommodation that has not yet been constructed, or is not yet ready for occupation:

- make sure that you do not sell your present home too early
- make sure you discuss your plans with people you can trust
- make sure you understand the type of arrangement under which you would be entering the village (ie. loan/licence, leasehold, rental, company title or strata scheme)
- make sure that any contract offered to you in connection with the village unit is closely examined by a suitably experienced solicitor
- make sure the contract gives you proper protection in the event of something going wrong with the completion of the village or with your own circumstances
- make sure that you do not pay too much money up-front and check the likely standard by looking at other villages built by the operator or builder concerned
- check whether you are able to make customised changes (eg. the colour and style of tiles, carpets and internal painting and the type of items like stoves and dishwashers)
- check whether you can visit the village during construction
- confirm that you will have your finances in place if the village is finished earlier than expected.

Remember, this might be one of the biggest decisions of your life, so don't be rushed. Take time to obtain all the information and advice that you need.

Entering into a contract

Do you have time to read your contract before you sign it?

The operator must give you a copy of all relevant contracts you will need to sign, with all the blanks filled in, at least 14 days before you sign them. You can use this time to carefully read the contract and discuss its contents with your family or friends. Consider having the contract looked at by an independent solicitor, accountant or financial counsellor.

Important

You have at least 14 days to read the contract.

All village contracts should be in plain English, using unambiguous language. However, if there is something in your contract that you don't understand you should not sign it. You should ensure that details of any promised future services or facilities, or any other promise made by the operator or an employee or agent of the operator, is in the contract.

What must be included in your contract?

The contract must contain basic particulars such as the name of the village, its address, the names of the parties and the date on which the contract is made. More importantly, the contract must mention your rights under the statutory 'cooling-off' period and set out the terms and conditions relating to ingoing contributions and recurrent charges. The contract must also list and describe services and facilities, together with any fixtures, fittings and furnishings that may be provided and the process by which you can ask the operator to carry out repairs and maintenance.

In addition, the contract must contain terms that deal with matters such as, the operator's access to premises, village rules, dispute resolution, how the contract may be terminated, departure fees, your right to remove any fixtures added by you during your occupancy and the method of calculating any refund due to you on termination of the contract.

Attached to your contract must be:

- a copy of the actual disclosure statement that was given to you
- a copy of a premises condition report (if applicable)
- a copy of the village rules (if any).

There are also certain things that cannot be in your village contract. These include terms that:

- require you to take out any form of insurance, including home contents insurance, ambulance cover or other forms of health insurance
- restrict the period of time (eg. holidays, visiting relatives, hospitalisation) you may be absent from the village
- require you to have a will or to disclose its location to the operator.

What if you change your mind after you sign a contract?

There is a 7 business day cooling-off period that starts from the day you sign any village contract.

During this time, if you change your mind, you can rescind your contract simply by notifying the operator (or the other party to the contract) in writing.

Any monies you have paid under the contract must be fully refunded. However, the cooling-off period is waived should you move in to the premises within the 7 day period.

Important

You have a 7 business day cooling-off period.

Can you get out of your contract for any other reason?

You may be able to seek to have your contract rescinded if the operator did not give you a disclosure statement when required, or if the statement given to you contained false or misleading information. You must, however, apply to the Consumer, Trader and Tenancy Tribunal for an order to rescind your contract on this basis. Such an application must be made no later than three months after you begin to live in the premises.

A number of retirement villages have special conditions if you die before moving in or are otherwise unable to move into the village. Some villages also reduce their fees and charges if you die or move out within a short space of time of moving in. However, these matters are not covered by the laws and are subject to the terms of individual contracts.

What is a condition report and do you have to have one?

A condition report sets out the condition of your premises at the beginning of your residency. A condition report is, however, not needed if you are to own the premises, such as under strata or company title. If a condition report is required, you or somebody on your behalf, must be present when the premises are being inspected and the condition report is being filled out.

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

The completed condition report must be attached to your contract.

Important

You have 3 months from after you move in to apply to the Tribunal to rescind your contract.

What happens to your contract after you sign it?

As soon as possible, but no later than 14 days after the operator enters into a village contract with you, the operator must give you a copy of it.

Fees and charges

What fees and charges can apply?

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

Waiting list fees

A number of retirement villages operate a waiting list. Some of these villages charge a fee for you to join their waiting list. The maximum fee that can be charged is \$200. If a fee is to be charged the operator must have a written waiting list policy. A copy of the waiting list policy and a receipt must be given to you, or any person on your behalf, who pays the required fee.

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

Holding deposits

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

A holding deposit can only be charged on vacant or new premises or if the existing resident has given notice to vacate. As with waiting list fees a holding deposit is fully refundable within 14 days of a written notification that the prospective resident does not intend to enter into the contract or has died.

Ingoing contribution/purchase price

The largest amount you are likely to pay is the amount to secure the right to occupy your premises. If you are not going to own the premises you may be asked to pay an ingoing contribution. If you are to own the premises you will have to pay the agreed purchase price. At some villages you are able to enter into a contract and pay the ingoing contribution/purchase price once your home is sold. In such a case you are likely to be asked to pay a deposit. A deposit is only required to be refunded if you rescind the contract during the cooling-off period.

At some villages you may also be required to pay a separate ingoing contribution, under a separate village contract, should you want to have the use of a garage or carport.

Contract preparation costs

There are usually costs associated with the preparation of your village contract which are incurred by the operator, such as legal and other expenses. These costs must be split equally between you and the operator. The operator must provide you with a copy of any account in respect of these expenses. You are not required to pay your share of the costs until the operator has given you a copy of the relevant accounts.

Recurrent charges

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

At some villages you may also pay more recurrent charges if you are living with your spouse or living in larger premises. In a strata scheme retirement village, you will have to pay levies to the owners corporation, in addition to any recurrent charges to the operator.

A contract may provide for recurrent charges to be varied at specified intervals or on specified dates according to a fixed formula, for example variations in CPI or by some other method. A contract must not provide for more than one method of varying such charges. If it does, the method that results in the lowest increase in recurrent charges will be the applicable method.

Where charges are to be varied according to a fixed formula, the operator must give you at least 14 days written notice of the variation. In the case of variations based on any other method, the operator must give you at least 60 days written notice. Should you not consent to such a variation, the operator may seek a determination by the Consumer, Trader and Tenancy Tribunal (Tribunal).

Fees and charges upon termination

At some villages a set amount of your ingoing contribution may be non-refundable. Whether you benefit from any capital gain or suffer from any capital loss will depend on the terms of your contract.

In addition, at some retirement villages, the amount you will get back will be further reduced by departure fees (or deferred management fees). A departure fee is a percentage per annum of the relevant ingoing contribution or purchase price (calculated on a daily basis) for a specified maximum number of years of occupancy. For example, if the fee is 2.5% for a maximum of ten years the amount you will get back will be reduced by 25% should you reside for longer than 10 years.

Basic rights and obligations of residents and operators

What will be your basic rights?

You will have the following basic rights when you become a resident:

- to live in your premises without interference by anybody to your reasonable peace, comfort or privacy
- the ability to exercise self-reliance and autonomy in matters relating to your personal, domestic and financial affairs
- to decide what possessions to have in your premises
- to live in an environment free from harassment and intimidation
- to appoint an agent to receive notices and other documents on your behalf
- to receive a statement of proposed expenditure each financial year for which the operator must seek the consent of the residents
- to be given proper notice of any variation in your recurrent charges
- to access any information about you held by the operator
- to stand for election, if the village has a Residents Committee
- to attend and vote at any meeting of residents
- a group of residents or the Residents Committee may request the operator to propose a variation in the services and facilities provided at the village, or an amendment to the village rules.

What will be your basic obligations?

You will have the following basic obligations when you become a resident:

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

What are the operator's basic rights?

The operator has the right to:

- use any ingoing contributions and departure fees paid by residents for any purpose, such as paying off debt or expanding the village, unless your disclosure statement or contract says a specific proportion will be used for replacing items of capital within the village.

Generally, the operator must bear any costs of depreciation and capital replacement in the village. However, the operator may fund capital replacement and depreciation from the recurrent charges payable by a

resident, but only if no ingoing contribution is payable by the resident. This does not affect the operator's ability to fund the capital replacement and depreciation of (or the purchase of new) non-fixed items of capital such as a village bus, from the recurrent charges, even if an ingoing contribution is payable

- sell or transfer ownership of the village or their management rights
- decide who is employed within the village, subject to the amount for salaries and wages in the statement of approved expenditure
- propose a variation in the village rules or the services and facilities provided at the village, even if there has been no request from a group of residents or the Residents Committee
- apply to the Tribunal to settle disputes.

What are the operator's basic obligations?

The operator is obliged to:

- ensure the village generally is reasonably secure and that all residential premises, other than those owned by residents, have such locks or other security devices in good working order necessary to make the premises reasonably secure
- not attend or remain at a meeting of residents unless the residents at the meeting consent
- provide a statement of proposed expenditure to each resident at least 60 days before the start of each financial year, itemising the way in which the operator proposes to spend recurrent charges
- ensure the accounts for the village are audited annually and provide copies to residents within 4 months of the end of each financial year

- give the residents committee copies of quarterly accounts of the income and expenditure of the retirement village
- not to restrict the right of a resident to purchase goods and services from a person of the resident's choice
- where recurrent charges are paid in person, provide a receipt without delay. However, if the payment is not made in person a receipt must be prepared and made available for collection by the resident or given to the resident, as soon as practicable after receipt of the payment
- do his or her best to ensure tenants, employees and any other persons invited to the village by the operator, comply with the village rules
- insure the village to full replacement value, and ensure the village has public liability coverage of a minimum of \$10 million
- seek the consent of residents to matters required by the retirement village laws (pages 31 & 32).

What right of privacy will I have?

The operator or a person authorised by the operator may only enter your premises in the following circumstances:

- in an emergency
- if the operator has reasonable cause for concern about the health or safety of a person that the operator believes is on the premises
- to carry out urgent repairs
- to carry out general maintenance, but only if you have been given seven days notice
- to carry out a general inspection of the premises
- in accordance with an order of the Tribunal.

Village rules

Is it compulsory to have village rules?

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

What are the types of matters covered by the village rules?

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.

How do village rules get changed?

A group of residents (five residents or 10% of the residents of the village, whichever is greater) or the Residents Committee may request the operator to propose an amendment to the rules, or the operator can propose amendments.

Where an operator does receive a request, he or she must call a meeting of residents no later than 28 days after receiving the request.

No proposed amendments can be made unless the residents consent to the amendment by way of a special resolution.

What if you don't like the rules?

You can seek to have the rules amended as discussed above. You can apply to the Tribunal if you think the rules do not comply with the retirement village laws or any other law. You can also apply if you think the rule is unjust, unconscionable, harsh or oppressive.

Resident input

Can you become involved in how the village is run?

You have the right to attend and vote at meetings of residents. You can also stand for election to the Residents Committee if your village has one.

If, however, you choose not to become involved you are free to do so. If you are to occupy the premises with your spouse or another resident both of you may become involved and vote at meetings. In a strata village you can also attend meetings of the owners corporation and stand for election to the Executive Committee.

On what issues do residents have a say?

The operator is required to obtain the consent of residents before certain measures or action may be taken.

Consent can only be obtained at a meeting of residents.

The operator cannot send out a written ballot and the Residents Committee cannot give consent on behalf of residents.

There are two types of consent: general consent and consent by special resolution. General consent requires more than 50% of those residents who vote (whether in person or by proxy) to support the measure or action. A special resolution requires a 75% majority vote. Voting is by way of show of hands at the meeting, unless 50% of those present call for a written secret ballot.

Those matters that require **general consent** are:

- the establishment of a Residents Committee
- allowing persons other than those permitted under the Act to attend or remain at meetings of residents

- variations of recurrent charges (where the charges are varied other than by way of a fixed formula)
- a statement of proposed expenditure or amending an approved statement
- the appointment of an auditor (if recurrent charges are used to pay audit fees).

Those matters that require consent by **special resolution** are:

- a proposed amendment to the village rules
- requesting the operator provide or arrange for a village emergency system
- varying the level of services or facilities
- requesting the operator to provide a new item of capital
- spending a surplus at the end of a financial year or making good a deficit by way of a special additional payment from residents.

Dispute resolution

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

What should you do first if you have a problem?

Often the best, cheapest, quickest and easiest way to solve a problem between you and the village operator, or with another resident, is to discuss it in person and try to come to a solution you both agree with. Before you do this, it is best that you know your rights. In particular, you should carefully read the terms of your contract, and receive advice on the relevant provisions of the retirement village laws. If after doing so you are still unclear, you may get assistance from the Office of Fair Trading or one of the other organisations listed on pages 38-40.

What should you do if talking doesn't resolve the dispute?

Using a third party to assist in resolving a dispute is sometimes helpful. Some retirement villages have an internal method of resolving disputes. Your local Community Justice Centre may also be able to assist in resolving your dispute. Alternatively, and under certain circumstances, you may be able to take your dispute to the Consumer, Trader and Tenancy Tribunal.

What is the Consumer, Trader and Tenancy Tribunal?

The Consumer, Trader and Tenancy Tribunal is an independent decision-making body, which hears and decides on applications for orders from both residents and village operators. The Tribunal has a Retirement Villages Division that specialises in retirement village matters. Decisions of the Tribunal are made according to the law.

How much does it cost?

An application fee of \$32 applies, although for pensioners, those receiving other Government benefits, or Seniors Card holders, the application fee is \$5.

Where are hearings held?

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

How are hearings conducted?

The Tribunal hears matters in a quick, cheap and relatively informal way. The person who hears your case is called a Tribunal Member. The Member may encourage you and the operator to settle your differences, so that, if possible, you work out your own solution. A Tribunal conciliator may assist you in this process. If conciliation fails, the Tribunal will proceed to adjudicate on the dispute.

The Member will allow both parties, in turn, to tell their side of the story and present any supporting evidence. The member may also ask questions of the parties. Legal representation before the Tribunal is not a right and will only be permitted if the Tribunal considers it necessary. After all the information has been presented, the Member will usually announce a decision at the end of the hearing.

Important

Orders issued by the Tribunal are enforceable.

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

What can the Tribunal order?

Tribunal orders to settle a dispute can include:

- compliance with the retirement village laws, the terms of a village contract, or a village rule
- that a term of a village contract be varied or set aside, if it conflicts with the retirement village laws
- the re-instatement of a reduced or withdrawn service or facility
- the payment of compensation
- the termination of a residence contract
- the payment of an amount of money
- that steps be taken to remedy a breach of any village contract or rule
- the performance of any village contract or rule
- the restraint of any action in breach of any village contract or rule.

Application forms are available from any Fair Trading Centre or Tribunal Registry (page 38). Applications may be lodged by post or at any Fair Trading Centre.

Prospective resident's checklist

Before signing a contract you should ask yourself the following questions:

- Have you thought about alternate housing options for older people other than moving into a retirement village?
- Have you looked at a sufficient number of villages to be able to compare the services, facilities and financial arrangements?
- Have you fully discussed your decision to enter a retirement village with your family, friends or advisers?
- Have you received a disclosure statement?
- Is it more appropriate that you live in self-contained premises or serviced premises?
- Do you fully understand the contract you are about to sign or received adequate advice from an independent solicitor?
- Are the services and facilities at the village what you need?
- Will this still be the case as you get older or if you get sick?
- Can you afford to enter the village and live there comfortably, even when the recurrent charges rise?
- Will you be eligible for rent assistance from the Commonwealth Government?
- Are there local facilities such as doctors, shops, hospitals, libraries, churches, clubs and public transport near the village?
- Do you understand your rights of occupancy?

- Will you be able to make changes to the inside of your premises, or to have someone visit or live with you?
- Are you able to keep a pet?
- Are you able to do your own gardening?
- Are the grounds pleasant and well-tended?
- Is the village reasonably secure?
- Is there adequate external lighting?
- Are the paths designed for easy access?
- Will your premises still be suitable if your needs and abilities change in the future?
- For instance, are there any stairs you will need to manage?
- Have internal modifications related to frailty, such as bath rails, been made to the premises?

Where to get more information

Office of Fair Trading

General Enquiries

Tel: 13 32 20

www.fairtrading.nsw.gov.au

Consumer, Trader and Tenancy Tribunal (CTTT)

After you have lodged an application for a hearing, you may contact the Tribunal's Registry for information relating to that hearing.

Registry, Consumer, Trader and Tenancy Tribunal

Postal address:

GPO Box 4005, Sydney NSW 2001

Tel: 1300 135 399

Fax: 1300 135 247

TTY: 9641 6521 (for hearing impaired people)

Applications for a hearing may also be lodged in person at:

Hurstville Registry

Level 3, 4-8 Woodville St

Liverpool Registry

Level 3, 33 Moore St

Newcastle Registry

Level 1, 175 Scott St

Parramatta Registry

Level 2, 10 Valentine Ave

Penrith Registry

Level 1, 308 High St

Sydney Registry

Level 12, 175 Castlereagh St

Tamworth Registry

3-5 Kable Corner Complex
Cnr Kable Ave & Darling St

Wollongong Registry

Level 3, 43 Burelli St

Consumer groups

The **Aged-care Rights Service** (TARS) is an advocacy service for residents of retirement villages. TARS can provide residents and prospective residents with information, advice and assistance.

Level 4, 418A Elizabeth Street

Surry Hills NSW 2010

Tel: 9281 3600

1800 424 079 (outside Sydney)

Email: tars@tars.com.au

The **Retirement Village Residents Association** (RVRA) is an association of residents from villages across NSW. The RVRA can provide residents and prospective residents with advice and membership details.

Mr Lawrie Bowers

President

48 Lakefront Village

Evans Rd

Toukley NSW 2263

Tel: 4396 5423

General information

The **Seniors Information Service** produces a number of directories of retirement villages in both metropolitan Sydney and Country NSW.

PO Box 1332

Crows Nest NSW 1585

Tel: 13 12 44

Email: seniorsinfo@dadhc.nsw.gov.au

The Community Referral Service of the **Law Society** can provide you with a referral to a solicitor specialising in retirement village matters.

Level 5, 170 Phillip Street
Sydney NSW 2000
Tel: 9926 0300

LawAccess NSW is a free service providing a single point of access to legal and related assistance services in NSW.

PO Box 620, Parramatta NSW 2124
Tel: 1300 888 529
TTY: 1300 889 529
Website: www.lawaccess.nsw.gov.au

Industry groups

The **Aged and Community Services Association (ACS)** represents operators largely from the non profit sector.

Level 3, 9 Blaxland Road
Rhodes NSW 2138
Tel: 9743 4066
Fax: 9743 4556
Free call: 1800 424 770
Website: www.agedservices.asn.au

The **Retirement Village Association (RVA)** represents operators largely from the private sector. The RVA can provide information on member villages.

Unit 3, Level 4, 162 Goulburn St
Surry Hills NSW 2120
Tel: 9261 1777
Fax: 9261 5899
Email: enquiry.nsw-act@rva.com.au
Website: www.retirementvillageaust.com.au