



Retirement Villages Act

Strata retirement villages



IMPORTANT

Proxies under the strata laws are valid for two AGMs or 12 months, whichever is sooner. Retirement village proxies are valid for only the first meeting within 6 months.



QUICK TIP

The Strata Schemes Management Regulation contains model by-laws for strata retirement villages.

There are about forty (40) strata retirement villages in NSW. Some uncertainty has been expressed about which laws apply to such villages. This factsheet explains some of the things those involved with a strata retirement village need to know.

Which laws are applicable?

Both the *Retirement Villages Act 1999* and the *Strata Schemes Management Act 1996* apply. The Acts operate side by side, with neither one taking priority over the other.

General Meetings

In a strata retirement village there should be at least two general meetings per year. An annual general meeting (AGM) of the owners corporation must be held under the strata laws. The *Retirement Villages Act* also requires a general meeting of residents of the village. The meetings can be held on separate days or one after the other, but not simultaneously.

Executive and Residents Committees

Each strata scheme must have an Executive Committee appointed by the owners corporation. Residents of a strata retirement village can also elect a Residents Committee if they wish. The Committees can have the same or different members. However, non-residents, such as the operator, cannot be on a Residents Committee. Separate Committee elections must be held, as different voting rights apply.

Voting rights

At a strata general meeting each owner has one vote for each lot. On certain issues voting is based on unit entitlement. At a retirement village meeting only residents can

vote. Lot owners who are not residents, such as the operator, cannot vote. Voting is based on one resident, one vote (eg. couples have two votes).

Voting at each meeting can only be about matters under the relevant Act. For example, a general meeting of the owners corporation can elect an Executive Committee but not a Residents Committee.

Proxies

Proxies can be given under both Acts. However, each Act contains a particular proxy form. Care should be taken to ensure that the correct form is used. A proxy given under one Act is of no effect at a meeting under the other Act. For example, a retirement village proxy cannot be used at the AGM of the owners corporation.

Proxies under the retirement village laws cannot be given to the operator or a close associate of the operator, such as an employee or agent or a person nominated by the operator. No person can hold more than five proxies in any village at any one time. These restrictions do not apply to proxies given under the strata laws.

Strata levies and recurrent charges

In a strata retirement village residents who own a unit would be paying strata levies to the owners corporation and recurrent charges to the village operator. For convenience sake both payments may be made at the same time. Strata levies are used for expenditure relating to the management or maintenance of common property. Recurrent charges cover expenses unrelated to the strata scheme, such as the emergency call system, advertising, the village bus, auditing of village accounts and other services provided by the operator.



IMPORTANT

A village operator cannot perform the functions of a strata managing agent (eg collect levies) unless they are licensed to do so under the Property, Stock & Business Agents Act 1941.




QUICK TIP

Recurrent charges do not include strata levies under the Retirement Villages Act.



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- Shopping
- Retirement villages
- Residential parks
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business hours

Strata levies can be set at the AGM of the owners corporation. Recurrent charges, on the other hand, are set out in the village contract and can only be varied by giving notice under Part 7 of the *Retirement Villages Act*.

Strata and village accounts

In a strata retirement village there should be two separate sets of annual accounts – the village accounts and the scheme's accounts. The village accounts have to be audited while this is optional for the scheme's accounts. There should be no duplication between the two sets of accounts. For instance, the village accounts should not contain details of income from strata levies or expenditure on the management or maintenance of common property.

Budgets/statements of expenditure

The budget processes under the two *Acts* are quite different. Under the strata laws a proposed strata 'budget' (re: strata levies) is sent with the notice of meeting before being voted on at the owners AGM.

Under the retirement village laws the operator must give the village's statement of proposed expenditure (re: income and spending of recurrent charges) to all residents at least 60 days before the start of the financial year. It must be considered and voted on at a meeting of residents, not at the owners AGM.

By-laws and village rules

Retirement villages usually have village rules that deal with matters like noise and pets. In a strata scheme, however, such matters are dealt with under by-laws. To avoid confusion, those sections of the *Retirement Villages Act* about village rules do not apply to strata retirement villages.

Management of the village/scheme

An owners corporation may delegate all or some of its functions to a strata managing agent. A strata village will also have an operator. The managing agent and operator may or may not be the same person. Some owners corporations prefer to appoint a different agent from the operator to avoid potential conflicts of interest.

Resolving disputes

If an unresolved dispute is about the retirement village laws an application may be made directly to the Residential Tribunal. In most cases strata disputes must go through mediation and adjudication before the matter may be taken to the Tribunal. The Tribunal is able to refer cases to the right system if an application is made under the wrong *Act*.

Where to get more information

Fair Trading Centres

Tel. 13 32 20

Specialist Support Unit

Tel. 9895 0381, or

9895 0266, or

9895 0434, or

Toll free: 1800 625 963

TTY Tel. 9338 4943

Telephone service for hearing impaired.

Language Assistance Tel. 13 14 50

Ask for an interpreter in your language

www.fairtrading.nsw.gov.au

This fact sheet must not be relied on as legal advice. For more information about this topic, please refer to the appropriate legislation.