

Retirement village living

A guide to your rights and responsibilities



NSW Fair Trading
Supporting local communities

NSW Fair Trading
13 32 20
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Introduction

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

There are many reasons why people move into a retirement village, such as combining the benefits of being in a private and secure environment with a home that is easily maintained. Retirement villages can also offer social activities, amenities and the freedom to choose a lifestyle that meets your needs.

The decision to move into a retirement village is a lifestyle choice and an important financial decision. You are more likely to make the right choice if you are well informed and seek expert advice from the beginning. Take time to obtain all the information you can from the villages that interest you.

If after reading this booklet you have any further questions, please visit www.fairtrading.nsw.gov.au or call NSW Fair Trading on 13 32 20.



What is a retirement village?

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

There are hundreds of retirement villages in NSW of different sizes and styles, providing a range of services and facilities. Retirement villages are operated by private operators as well as community organisations such as churches and charities.

A broad range of retirement village accommodation is available, including:

- self-contained premises available to residents who are able to live independently
- serviced premises (or assisted living apartments), with meals, cleaning and other services
- a mix of self-contained and serviced premises, allowing residents to transfer if the need arises.

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

Overview of retirement village laws in NSW

NSW Fair Trading is a NSW Government consumer protection agency. We administer laws for a fair and effective marketplace and provide services and free information to prospective residents, residents of retirement villages and village operators.

Which Fair Trading laws apply to retirement villages?

The main legislation applying to retirement villages is the *Retirement Villages Act 1999* and the Retirement Villages Regulation 2017. The retirement village laws:

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

Other relevant laws include:

- the *Civil and Administrative Tribunal Act 2013*, which sets out the process for resolving certain disputes between residents and operators

- the *Australian Consumer Law*, which deals with general fair trading matters such as advertising and promotion
- the *Strata Schemes Management Act 2015* which is relevant to retirement villages that are set up as a strata scheme
- the *Community Land Management Act 1989*, which is relevant to retirement villages that are set up as a community scheme.

Where can I get a copy of the laws?

Copies of the legislation can be viewed or downloaded from the government legislation website, www.legislation.nsw.gov.au.

What do the laws not cover?

The retirement village laws do not apply to the following complexes, even though these complexes may cater exclusively or predominantly to retirees:

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

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

The retirement village laws do not apply to the following that may be found within a retirement village:

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



Different types of arrangements

There are different types of contracts that residents and operators enter into, depending on the arrangements in place in the village. This chapter gives you a brief explanation of the different types of arrangements.

Some of the information below may differ in individual circumstances. If unsure, check your contract or contact NSW Fair Trading for information.

Loan and licence arrangements

These arrangements are mainly offered by non-profit organisations such as where a church or charity owns the village. You pay an ongoing contribution up front in return for the right to occupy the premises. The contribution is in the form of an interest-free loan, part of which may be a non-refundable donation. You also pay recurrent charges, on a fortnightly or monthly basis.

A loan/licence agreement allows you to live in the unit, but you do not own it or have a registered interest in it. Sometimes a separate loan agreement sets out matters relating to the loaned amount.

Your permission to occupy the unit ends when your village contract is terminated. You are entitled to receive your refund within 14 days after your unit is re-sold or re-occupied. However, it must be refunded within 6 months

from the date you move out, even if the unit remains unoccupied, unless your contract provides for earlier payment. The refund may be reduced by a departure fee or donation if this was in your contract.

Leasehold arrangements

Leasehold is an arrangement where the village operator owns the residential premises in the village and the resident leases the unit from the operator. The lease is registered on the title deed held by the NSW government agency, Land and Property Information, which gives you added protection if the village is sold.

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



There are different types of arrangements in retirement villages:

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

When you permanently vacate the unit, your contract may require you to pay a departure fee or other amounts to the operator, such as recurrent charges and sale costs. Your contract may also provide for you to share any capital gain with the operator. The balance of your refund must be paid to you within 14 days after a new resident enters into a contract with the operator or when the operator receives full payment from a new resident for your unit, unless your contract provides for earlier payment.

Strata and community schemes

Buying premises in a strata or community scheme is where you purchase the unit and become the owner of the premises and a member of the owners corporation or community association, as in any other strata or community scheme. You will have to pay levies, on a quarterly basis, to the owners corporation or community association to cover the cost of managing the common property.

You will need to be familiar with your rights and obligations under the strata or community scheme laws.

Unlike other strata and community schemes, you need to enter into a service contract with the operator before you can move in. There may also be an existing agreement in place between the operator and the owners corporation or community association. This agreement, often for the life of the village,

is for the operator to assist the owners corporation or community association to carry out its functions in relation to the management and administration of common property. Any management fees are covered by your levies.

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

Rental arrangements

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

You will generally pay a rental bond (maximum 4 weeks' rent), regular rent payments and water usage (if you have a separate meter).

Company title schemes

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

Registered Interest Holders and Non-Registered Interest Holders

There are some important differences between contractual rights and obligations and financial terms, depending on whether you are a Registered Interest Holder or a Non-Registered Interest Holder in a retirement village.

You are a Registered Interest Holder in a retirement village if you are:

- an owner in a strata scheme or a community land scheme retirement village
- an owner of shares in a company title scheme giving you a residence right in a retirement village, or
- the holder of a registered long-term lease that entitles you to at least 50% of any capital gain that may be made when your unit is sold. A registered long-term lease is a lease that has a term of 50 years or more, or runs for the duration of your life.

If you live in a retirement village and do not fit into one of the categories above, then you are a Non-Registered Interest Holder. This means that you live in the retirement village under a rental, loan/licence arrangement or a registered lease that has a term of less than 50 years.

Registered Interest Holders generally have more responsibility and independent decision-making in relation to their property but may pay additional charges after leaving while their unit is on the market. For more information, visit www.fairtrading.nsw.gov.au or contact Fair Trading on 13 32 20.



Information you need when choosing a village

Buying into a retirement village is a major legal and financial commitment. You are more likely to make the right decision if you take time to carefully read all the information, think about your decision and seek expert advice from a solicitor with expertise in retirement village legislation before signing any contracts.

You are entitled to receive all relevant information and have time to consider it and get advice before you make a decision.

Finding a village

Find out where villages are located and how to contact them by searching the public register of retirement villages, available on the NSW Fair Trading website. The register includes the village's trading name, address and contact details.

General inquiry document

If you or somebody acting on your behalf contacts a village about becoming a resident, the operator is required to give you a general inquiry document within 14 days.

This document includes general information to help you search for the right village. It describes the type of village, the costs and village facilities. You should get general inquiry documents from a number of villages in the area that you are thinking of living in. This will

help you compare the various arrangements on offer and to identify the most suitable and affordable village for your needs.



Consumer tip

Remember:

- always read the disclosure statement before you choose a village or sign a village contract
- you have at least 14 days to read the contract and obtain advice before you sign it.

Disclosure statement

You can ask for a full disclosure statement for any unit you are interested in. An operator must give you a disclosure statement if you, or somebody acting on your behalf, requests a copy or expresses interest in becoming a resident. This statement is more detailed than the general inquiry document.

It is important to get a disclosure statement as early as possible in your decision-making process. The operator cannot enter into a village contract with you earlier than 14 days after they have given you the disclosure statement. Take time to consider the information and do not rush your decision.

You should get disclosure statements from a number of retirement villages in the area you are thinking of living in. This will help you compare their services and prices and identify the best village for your needs and budget.

A disclosure statement should include the following information:

- the size and location of the village
- the proximity of the village to public hospitals, shops and public transport
- contact details for the current operator/s and the residents committee (if any)
- a standard fees and charges table
- from 1 March 2018, an 'average resident comparison figure' which helps residents understand and compare the costs of a particular village
- what measures have been taken to make residents safe and secure
- the type of village contract you may be asked to sign
- the type and level of services and facilities available in the village
- full financial management details, including the costs to gain entry, reside in and leave the village
- details of all available premises in the village
- details of village ownership, including the year of original construction and the name of the original developer
- residential care facilities
- details of compliance with the legislation.



Consumer tip

Do your research! As well as reading the disclosure statement:

- visit your preferred villages, inspect all available units and talk to residents or residents committee representatives about living there
- ask to see sample contracts and any village rules or strata by-laws (for strata schemes)
- inspect site plans and budgets.

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



Retirement Village Calculator

Use Fair Trading's Retirement Village Calculator to work out the estimated cost of moving into, living in and leaving a retirement village. You can also use the calculator to compare villages. To use the calculator, visit rvcalculator.fairtrading.nsw.gov.au

What other information can I get?

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

These documents include:

- examples of all village contracts
- the village rules (if any)
- a site plan for the village
- plans showing location, floor plan, and main dimensions of available premises
- the annual budgets for the village's last 3 financial years, the current financial year and the next financial year
- the accounts for the last 3 financial years
- the most recent quarterly accounts
- the trust deed for any trust fund into which the money you pay will be deposited
- the terms of any development consent for the village (if the village has not been fully built, or if services or facilities are required to be provided for the life of the village)
- the operator's waiting list policy (if any)
- statements of the balance of the village's capital works fund for the village's last 3 financial years and the most recent quarter (if any)
- if the village is subject to a company title scheme, the company's constitution and rules (ie. the replaceable rules set out in the *Corporations Act 2001 (Cth)*)
- if the village is subject to a strata scheme – a copy of the by-laws, the minutes of the last annual general meeting of the owners corporation, and any management agreement relating to the village
- if the village is subject to a community land scheme – a copy of the by-laws, the scheme's management statement, the minutes of the last annual general meeting of the community association, neighbourhood association or precinct association, and any management agreement relating to the village
- details of any NSW Civil and Administrative Tribunal or other legal proceedings involving the village operator or residents committee in the past 5 years, the decisions or orders made and the reasons
- certificates of currency of the insurance for the village and policy documents showing the nature of the risk insured and the amount of insurance
- the most recent safety inspection report for the village, a list of all available premises and any other documents listed in section 12 of the disclosure statement.

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

Entering into a village contract

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

Read the contract before you sign it

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

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

What must be included in the village contract?

The contract must follow the standard format that is specified in the retirement village laws. While there will be some differences depending on the type of arrangements in place in your particular village, most contracts will look similar and the terms will be in the same order.

The important details of the village and the contract are at the front, followed by the financial details and then the general terms.

The operator may also attach additional terms at the back. Make sure to read these carefully. The additional terms must be consistent with the standard contract terms and the retirement village laws.

Older contracts entered before 1 October 2013 are not in the standard format, but still need to include all the relevant information required by the retirement village laws at the time they were signed.

Copies of the following must be attached to your contract:

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

What cannot be included in the village contract?

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

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

What if I change my mind?

Cooling off period

If you change your mind, you have a cooling-off period of 7 business days after you enter into the village contract. As long as you have not moved into the premises, you can rescind the contract during this period by simply notifying the other party to the contract and the operator in writing. Generally, any money you have paid under the contract must be fully refunded.



Consumer tip

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

Can I cancel my village contract for any other reason?

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

Settling-in period

There is also a 90-day settling-in period that allows you to terminate your contract within

the first 90 days of becoming entitled to occupy the premises. You are entitled to a refund of your incoming contribution or the proceeds from the sale of the premises plus any recurrent charges you paid under the contract.

The timing for payment of your refund depends upon the type of village contract you signed. If you do not have a registered interest in the premises, for example if you occupied the premises under a loan or licence arrangement, you will be entitled to a refund of your incoming contribution within 14 days after terminating the village contract.

If you purchased a registered interest in the premises, such as buying into a strata scheme or entering into a long term registered lease, you are entitled to your refund once the unit is re-sold or re-occupied by another resident.

Departure fees are not payable. You only have to pay fair market rent for the time you were there, the cost of any repairs for damage in excess of fair wear and tear, a reasonable administration fee (of no more than \$200), and



Consumer tip

You can terminate your contract within the 90-day settling-in period by permanently vacating the premises or by giving written notice to the operator.

the reasonable costs the operator had incurred in making alterations or adding any fixtures or fittings at your specific request.

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

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

The operator must give you the completed condition report at least 14 days before entering into a contract and must also give you a copy with your contract. If the unit is still under construction, the completed condition report must be given to you 14 days before you move in.

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

Keep the condition report safe, as you may need it if there is a disagreement when you move out.

You do not need a condition report if you are a registered interest holder (ie. if you own the unit under strata, community or company title or have a long-term registered lease which entitles you to at least 50% of the capital gains when you leave).

Fees and charges

There are a range of fees and charges that you may have to pay to enter, live in and exit a retirement village. The fees will be set out in your village contract.

Waiting list fees

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

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

Holding deposits

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

A holding deposit can only be charged on vacant premises or if the existing resident has given notice to vacate. As with waiting list fees, a holding deposit is to be fully refunded no

later than 14 days after written notice is given to the operator that the prospective resident does not intend to enter into the village contract.

Ingoing contribution/purchase price

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

Contract preparation fees

There are usually costs associated with the preparation of your village contract which are incurred by the operator, such as legal and other expenses. The maximum amount that you can be charged for the legal and other expenses incurred by the operator in the preparation of your village contract is \$50.

Recurrent charges

You will have to pay regular recurrent charges to meet the expenses of operating the village. The amount varies from village to village. You

will normally have to pay more in serviced premises than in self-contained premises.

At some villages you may also pay higher recurrent charges if you are living with your spouse or living in larger premises.

In a strata or community scheme retirement village, you will have to pay levies to the owners corporation or community association, in addition to any recurrent charges to the operator.

Varying recurrent charges

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

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

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

The operator must give you:

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

Fees and charges upon termination

In most villages, you will need to pay fees or charges when you leave, usually at the same time as receiving your refund. Part of your ingoing contribution may be non-refundable, or you may pay a departure fee, depending on what is in your contract. Your contract may also provide for you to share any capital gain (or loss) on your unit with the operator. You may be liable for some or all of the ongoing recurrent charges until the next resident takes over responsibility for your unit.



Consumer tip

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

General rights and obligations of residents

Your rights as a resident

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

- live in an environment that is free from harassment and intimidation, and without interference to your reasonable peace, comfort or privacy
- exercise self-reliance and autonomy in matters relating to your personal, domestic and financial affairs
- decide what possessions to have in your premises
- add, remove or alter fixtures and fittings and renovate with the operator's written consent (which may be subject to reasonable conditions, including that the premises be returned to the same condition when the village contract is terminated). The operator's consent is not required if you own the premises under a community land scheme, company title scheme or strata scheme
- have urgent requests for repairs and maintenance to items of capital for which the operator is responsible, responded to in a reasonable time
- live in a village that is safe and secure
- appoint an agent to receive notices and other documents on your behalf

- generally receive a copy of the proposed annual budget
- be given proper notice of any variation in your recurrent charges
- access any information about you held by the operator
- stand for election, if the village has a residents committee
- attend and vote at resident meetings (although you are not obliged to)
- request a variation in the services and facilities provided at the village, or an amendment to the village rules
- apply to the NSW Civil and Administrative Tribunal to resolve certain disputes.

Your obligations as a resident

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

- respect the rights of other residents and other persons in the village
- not interfere with the reasonable peace, comfort or privacy of other residents
- respect the rights of the operator, its employees and agents, to work in an environment free from harassment or intimidation

- not act in a manner that adversely affects the occupational health and safety of people working in the village
- not intentionally or recklessly cause or permit serious damage to any part of the village or injury to the operator, an employee or any other resident
- pay your recurrent charges when they fall due
- generally give at least 1 month's written notice if you decide to move out and you do not own the premises
- comply with the village rules and ensure that anybody you invite to the village also complies with the village rules.



General rights and obligations of operators

Operator's rights

The operator has the right to:

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

Operator's obligations

Among other things, the operator is obliged to:

- ensure the village is reasonably secure and safe, including preparing written safety and emergency procedures and undertaking an annual safety inspection
- provide a proposed annual budget to each resident at least 60 days before the start of the village's financial year
- seek the consent of the residents to the expenditure itemised in the proposed annual budget
- hold an annual management meeting with residents
- ensure the annual accounts for the village are audited (if they are required to be audited), and provide copies to residents within 4 months of the end of each financial year
- provide quarterly accounts to the residents committee and to individual residents on request, where required
- provide receipts for recurrent charges
- comply with the village rules and use its best endeavours to ensure that its tenants and employees and any other persons it invites to the village comply with the village rules
- ensure there is vehicular access to the residential premises in the village at all times for emergency and home care service staff
- insure the village to full replacement value, and ensure the village has public liability coverage.

Village rules

Is it compulsory to have village rules?

No, but it is common for villages to have them. If there are village rules in place, a copy of the current village rules must be attached to your village contract.

You have the right to inspect or have a copy of the village rules supplied to you before you sign a village contract.

Village rules do not apply to parts of retirement villages that are subject to a community land scheme or strata scheme (or to the residents of those parts of the village). Instead, the community or strata scheme by-laws apply.

What do the village rules cover?

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

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

- other restrictions on the use of communal areas
- gardening and landscaping.

How can I change village rules?

A group of residents (5 residents or 10% of the residents of the village, whichever is the greater, or if the village has fewer than 10 occupied units, a majority of residents), or the residents committee, may make a written request to the village operator suggesting a change to the rules.

The operator may also propose changes to the village rules. The operator must call a meeting of residents within 28 days after receiving the request. Changes to village rules must be by special resolution (75% of votes must support the change). The operator must notify residents of the outcome of the vote within 7 days.

If the residents approve a change to the rules that will impose additional costs on the operator, the operator must seek the residents' consent to change the annual budget accordingly.

You can apply to the NSW Civil and Administrative Tribunal if you think any of the village rules are unjust, unconscionable, harsh or oppressive, or inconsistent with the law. The operator can also apply to the Tribunal if they object to a change to the village rules that has been approved by the residents.

Resident input

Residents have the right to attend and vote at meetings of residents.

You can also stand for election to the residents committee if your village has one. In a strata or community land village, you can also attend meetings of the owners corporation or community association and stand for election to the strata committee.

On what issues do residents have a say?

The operator is required to obtain the consent of residents before certain actions may be taken. Consent can only be obtained at a meeting of residents.

The residents committee cannot give consent on behalf of residents. There are two types of consent:

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

Some of the matters that require general consent are:

- the establishment of a residents committee

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

Matters that require consent by special resolution are:

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

Ballots for special resolutions

A written ballot must be conducted for any proposal that requires a special resolution. Residents must be given at least 21 days' written notice of the meeting. The notice must:

- set out the resolution
- specify that the matter requires a special resolution
- specify that the residents may submit their vote in writing before the meeting (and explain how to do so), and
- be accompanied by a ballot paper initialled by the returning officer.

The returning officer is a resident (who is not a member of the residents committee or standing for election to the residents committee) chosen by a show of hands at a meeting of the residents.

Annual management meetings

Village operators must hold an annual management meeting of the residents within 4 months of the end of each financial year for the village.

Residents must be notified of the meeting at least 14 days in advance and be given a copy of the meeting agenda. You can lodge written questions with the operator at least 7 days before the meeting or ask questions relating to the village at the meeting.

Village budgets

A village budget is compulsory in most retirement villages where the residents pay recurrent charges. This ensures residents know the details of how their recurrent charges will be spent. In some circumstances, the operator is required to seek the residents' consent to the proposed budget. There are limited cases where a budget is not required.

When is a budget not required?

In some smaller villages, the residents can choose not to receive a copy of the village budget. This is only an option if the total amount of the recurrent charges to be paid during the financial year is \$50,000 or less.

A majority of residents must consent to not receiving annual budgets at a general meeting. The residents may also meet and vote to cancel their consent if they wish. If the amount of recurrent charges collected for a financial year exceeds \$50,000, the consent ceases to have effect.

Notice of proposed budget

In villages where a budget is required, the village operator must:

- prepare a proposed budget each year itemising how the recurrent charges will be spent during the next financial year, and
- give each resident a written notice with a copy of the proposed budget at least 60 days before the start of the financial year.

The budget notice must state:

- brief reasons for any changes in expenditure from the previous year
- that the residents' consent for the budget is required (see further below for when consent is required)
- that a special resolution of the residents is required for any variation in the village services or facilities that causes a change in expenditure, and
- that the operator may apply to the NSW Civil and Administrative Tribunal if the residents do not consent to the budget.

What must be in a proposed budget?

A proposed annual budget must include:

- the recurrent charges residents will pay during the year (including any expected increases by fixed formula if applicable)
- the method by which the recurrent charges have been calculated
- the total expected income from recurrent charges for the year
- the total proposed expenditure of the village for the year
- the effect of any expected surplus or deficit from the current year
- all proposed categories of expenditure
- the proposed expenditure in each category
- the proposed and actual expenditure in each category in the approved budget for the current year

- the method or calculation for sharing any item of expenditure between the village and the operator's other villages or businesses (if applicable)
- the method or calculation for sharing recurrent charges between residents, only if some residents are paying significantly higher recurrent charges than others (for example, because they are receiving optional services)
- the expected surplus or deficit for the year.

If the proposed budget includes some of the operator's head office costs or management or administration fees, these must be itemised to show the goods and services to which they relate and the approximate cost of those goods and services.

However, the operator may provide a breakdown of the goods and services instead of an itemised list, but only if they give an undertaking to provide an itemised list within 10 business days of it being requested by any resident. Operators must also provide details about how head office costs or fees have been apportioned between villages (where the operator owns two or more villages).

The budget may provide for contingencies up to a maximum of \$1.

What must not be in the budget?

There are some expenses which cannot be paid for from the money raised from recurrent charges. These items cannot be included in the budget:

- fees for the operator's membership of industrial or professional associations
- overseas travel by the operator or their agent or employees
- the cost of marketing vacant units
- some payroll tax amounts
- head office costs that do not relate to services provided to the residents of the village
- any other items for which the operator is financially liable under the legislation.

Payroll tax can only be included in the budget if:

- the wages to operate the village for the year are more than the tax threshold set under the *Payroll Tax Act 2007*, or
- before 1 March 2010, the residents had consented to pay payroll tax from the recurrent charges and they have not revoked the consent.

Can residents ask for more information?

The residents committee may ask the operator to provide any reasonable additional information needed to help the residents

decide whether to consent to the proposed budget. If there is no residents committee, any resident can make the request. For example, the residents may wish to see quotations for any proposed work to be carried out or any service or facility to be provided.

Do residents need to consent to the proposed budget?

In general, a meeting must be held for the residents to consider the proposed budget and vote on whether to consent to it. This is by a majority vote, that is, more than 50% of the votes cast (in person or by proxy) need to agree to the budget for it to be accepted.

In some circumstances, the residents' consent to the budget is not required. Consent is not needed if:

- the recurrent charges have not been changed, or
- the recurrent charges are being changed by a fixed formula, or
- the recurrent charges are being changed other than by a fixed formula and the change is within the Consumer Price Index variation.

Where the residents' consent is not required, they must still be given written notice and a copy of the budget.

Leaving a retirement village

How do I end my village contract?

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

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

When you leave a retirement village, you may be required to pay certain costs and charges, including:

- a departure fee
- charges and costs relating to repairs and sometimes refurbishment
- costs relating to the sale of your unit.

Your ongoing liability for recurrent charges varies depending on the type of contract you signed and the terms of your contract. Recurrent charges for any optional services you were receiving, such as meals or laundry, end on the date you move out.

Departure fees

A departure fee generally must be paid when you permanently leave a retirement village (including upon your death). Departure fees are also known as exit fees or deferred management fees.

Departure fees can be a significant amount, so it is important to check your village contract to understand how your departure fee is calculated.

Departure fees can be calculated in a number of ways but must always be calculated on a daily basis from the date your contract began to the date you permanently vacated the premises. If you move to a different unit in the same village, for the purposes of calculating your departure fee, the total time you lived in the village must be used and you cannot be required to pay more than one departure fee.

The rate of accrual can vary greatly between villages so you should compare villages and their departure fee structure before deciding whether a particular village is right for you. It is not uncommon for the rate of accrual used to calculate your departure fee to change based on the number of years you live in the village. Generally, the rate is higher in the first couple of years only, before returning to a lower rate in later years.

Resolving disputes

From time to time disputes or disagreements may arise. It is always desirable that disputes be resolved as quickly and amicably as possible.

Step 1 – Talk to the village operator or resident

Often the quickest and easiest way to solve a problem between you and the village operator, or with another resident, is to discuss it in person and try to come to a solution you both agree with. Before you do this, it is best that you know your rights. In particular, you should carefully read the terms of your contract, and obtain information on the relevant sections of the retirement village laws from Fair Trading or one of the other organisations listed in the Useful contacts section on page 34.

Step 2 – Get help from a third party

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

Step 3 – Contact Fair Trading

If a problem remains unresolved, contact Fair Trading on 13 32 20 or visit our website at www.fairtrading.nsw.gov.au

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

Step 4 – Apply to the NSW Civil and Administrative Tribunal

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

The Tribunal has a Retirement Villages division that specialises in retirement village matters. Decisions of the Tribunal are made according to the law. Application forms are available from any Service NSW Centre or any Tribunal Registry office (see page 34 for details). You can lodge an application online, by post or in person at any of the Tribunal Registry offices or Service NSW Centres.

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

Where are hearings held?

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

How are hearings conducted?

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

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

In some cases, the hearing may be adjourned, for example to allow more time for evidence to be presented. A decision may also be reserved, for example, the Member may need more time to study all the evidence and information presented during the hearing.

What can the Tribunal order?

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

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

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



Prospective resident's checklist

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

- Have I fully discussed my decision to move to a retirement village with my family, friends or advisers?
- Have I thought about whether community living in a village is right for me?
- Have I looked at a sufficient number of villages to be able to compare the services, facilities and financial arrangements?
- Have I received a general inquiry document and disclosure statement?
- How much will it cost me to move and live in a retirement village?
- Have I used the Retirement Village Calculator to help me better understand my financial obligations? To use the calculator visit rvcalculator.fairtrading.nsw.gov.au
- Can I afford to live there comfortably, even when the recurrent charges rise?
- Is it more appropriate that I live in self-contained or serviced premises?
- What type of arrangement does the village offer? Is it a loan/licence, leasehold, strata, rental or company title?
- Do I fully understand the contract and all the costs involved?
- What if I decide to leave the village? Will I be able to re-sell the unit? What are the termination fees and charges?

- How many vacant units are there in the village?
- What is the average time for the re-sale or re-letting of the type of unit I am interested in?
- Are the services and facilities at the village what I need? Will this still be the case as I get older or if I get sick?
- Is there adequate parking for visitors?
- Will I be eligible for rent assistance from the Commonwealth government?
- Are there local facilities such as doctors, shops, hospitals, libraries, churches, clubs and public transport near the village?
- Are there village rules that may affect my lifestyle? Are pets allowed?
- Will I be able to make changes to the inside of the premises, or to have someone visit or live with me?
- Am I able to do my own gardening?
- Is the village well maintained?
- Is the village reasonably secure? Is there adequate external lighting?
- Is there an emergency call system and/or staff on call?
- Are the paths designed for easy access?

Will my premises still be suitable if my needs and abilities change in the future?
For example, are there any stairs I will need to manage?

Have internal modifications related to frailty, such as bath rails, been made to the premises?

Is there a residents committee to liaise between residents and the operator?

Have I obtained adequate legal and financial advice?



Remember

Don't rush the selection process:

- inspect a number of retirement villages in the area you wish to live in
- at each inspection, ask a lot of questions and talk to some of the residents in the village if you can or the residents committee
- use the Retirement Village Calculator to help you work out the estimated costs of retirement village living. To use the calculator, visit rvcalculator.fairtrading.nsw.gov.au
- make sure you fully understand the contract and seek professional legal and financial advice before you sign anything.

Useful contacts

The contact details listed below are current at the time of printing and may change over time.

Fair Trading recommends you search for details through telephone directories or the internet.

NSW Fair Trading

Tel: 13 32 20

www.fairtrading.nsw.gov.au

www.rvcalculator.fairtrading.nsw.gov.au

TTY for hearing impaired: 1300 723 404

Language assistance: 13 14 50 (ask for an interpreter in your language)

NSW Civil and Administrative Tribunal

Applications for a hearing may be lodged by post, online at www.ncat.nsw.gov.au or in person at any of the Tribunal Registry offices. After you have lodged an application for a hearing, you may contact the Tribunal's Registry for information relating to that hearing.

GPO Box 4005, Sydney NSW 2001

Tel: 1300 006 228 (toll free)

National Relay Service (TTY): 1300 555 727
ask to call NSW Civil and Administrative Tribunal on 1300 006 228 (for hearing impaired people)

Translating and Interpreting Services (TIS National): 13 14 50 ask to call the NSW Civil and Administrative Tribunal on 1300 006 228

www.ncat.nsw.gov.au

Other agencies

Aged & Community Services NSW & ACT

Represents retirement village residential aged care and community care providers within the non-profit sector.

Tel: 02 8754 0400

www.agedservices.asn.au

LawAccess NSW

Provides free legal information and advice in NSW. Tel: 1300 888 529

TTY: 1300 889 529

www.lawaccess.nsw.gov.au

Law Society of NSW

Can provide you with a referral to a solicitor specialising in retirement village matters.

170 Phillip St, Sydney NSW 2000

Tel: 9926 0333

Email: lawsociety@lawsociety.com.au

www.lawsociety.com.au

Seniors Rights Service

A community legal centre that provides advocacy, legal advice and education to older people in NSW.

Tel: 9281 3600 or 1800 424 079 (outside Sydney)

www.seniorsrightsservice.org.au

Retirement Living Council, a division of the Property Council

Replaces the former Retirement Village Association (RVA)

Tel: 9033 1900

Industry: www.retirementliving.org.au/industry

Retirement Village Residents Association (RVRA)

Non-profit organisation which represents the interests of residents.

Tel: 1300 787 213

www.rvra.org.au

Seniors Information Service

NSW information and referral service on health, concessions, pensions, entertainment, housing, community care and support, legal and financial matters.

Tel: 13 12 44

Email: seniorsinfo@dadhc.nsw.gov.au

www.seniorsinfo.nsw.gov.au

The Aged-care Rights Service (TARS)

A community legal centre that provides advocacy for residents of retirement villages. Provides free advice on fees, care and residents' rights in nursing homes, retirement villages, hostels, community aged care packages and serviced apartments in NSW.

Level 4, 418A Elizabeth St, Surry Hills NSW 2010

Tel: 9281 3600 or 1800 424 079 (outside Sydney)

www.tars.com.au

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NSW Fair Trading
13 32 20
fairtrading.nsw.gov.au

Language assistance

13 14 50

TTY for hearing impaired

1300 723 404

Aboriginal enquiry officer

1800 500 330