

# Legalquotes News

PROVIDED BY RANKIN NATHAN LAWYERS

## RETIREMENT VILLAGES IN NSW – PART 2

In the Autumn 2010 issue of *Legalquotes* we took an introductory look at the laws and regulations which apply to retirement villages in NSW. We noted that specific legislation has been enacted to regulate the operation of retirement villages in NSW. The main purpose of the *Retirement Villages Act 1999* and *Retirement Villages Regulation 2000* (as amended) is to ensure that the rights of retirement village residents and intending residents are protected. In this issue, we look at some further aspects of retirement village living, such as the entry fees and charges payable and the funds available to a resident/resident's estate when the resident leaves the village.

### WHEN DO THE LAWS APPLY?

To recap, the laws apply to any retirement village in NSW. A "retirement village" is defined in the *Retirement Villages Act 1999* (the Act) to mean a complex containing residential premises that are, or are intended to be, predominantly or exclusively occupied by retired persons who have entered into village contracts with an operator of the complex. A "retired person" is defined as a person aged 55 years or who has retired from full-time employment. This means that residential complexes where most of the residents are over 55 years and the residents have a contract with the operator of the complex are covered by the Act. The Act also excludes certain complexes from the Act, such as nursing homes, caravan parks or manufactured home estates for example. It should be noted that just because a complex calls itself an "over 55's village" (or something similar) and it is marketed only to retirees, this does not necessarily mean that it is a 'retirement village' under the Act.

### FEES AND CHARGES

There are various fees and charges that a prospective resident or resident may be required to pay when entering a retirement village. The operator of the village is required by law to provide

information about the entry costs payable in the disclosure statement given to prospective village residents. It is important to note that the entry costs and the restrictions that apply to those costs will differ depending on the nature of the transaction, i.e. whether the resident is purchasing or leasing the premises. A resident should obtain independent legal advice about the village contracts before signing anything or paying any money to an operator of a retirement village. The table on the following page provides a brief summary of typical entry costs.

### RELEASE OF FUNDS UPON TERMINATION

Again, depending on whether the resident owns or leases the village premises, and whether or not the resident is entitled to a share of the capital gain, the operator of a village has certain obligations in respect of paying monies to residents when the resident vacates. As noted in the table above, the operator will deduct the fees it is entitled to deduct from the ingoing contribution and then refund the balance to the resident or the resident's estate. The operator of the village must generally pay these amounts within certain periods.

For example, Section 181 of the Act provides that if a resident [former occupant], who did not own the premises, or leased the premises for less than 50 years (or the life of the resident) or leased the premises for more than 50 years but was not entitled to at least 50% of any capital gain, then:

(2) *The date on which the operator of a retirement village **must make any refund of the former occupant's ingoing contribution that is required, under a village contract, to be made is:***

(a) *the date that is 14 days after the date on which the operator receives full payment under the residence contract of an incoming resident of the premises, or*

(b) *the date that is 14 days after the date on which the operator enters into a*



*residential tenancy agreement with an incoming tenant of the premises, or*

(c) *the date that is 14 days after the date on which a person takes up residence in the premises with the consent of the operator, or*

(d) *if the Tribunal terminated the residence contract-the date that is one month after the date of the termination, or*

(e) *if the former occupant delivered up vacant possession of the premises to the operator after receiving notice of the operator's intention to apply to the Tribunal for an order terminating the residence contract-the date that is one month after the date on which vacant possession was delivered, or*

(f) *the date that is 6 months after the date on which the former occupant otherwise delivered up vacant possession of the premises to the operator,*

*whichever date occurs first, or such earlier date as the operator and the former occupant may agree (unless the contract between the operator and the former occupant provides for earlier payment).*

Residents should carefully check the particular terms of the village contracts and make sure that they understand their rights in respect of recovering monies paid to a retirement village operator when they vacate the premises.

If you, or someone you know, would like assistance with a retirement village contract in NSW, please contact one of our Property Lawyers on 02 4929 9333. We'd be happy to discuss your particular circumstances with you.



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## RETIREMENT VILLAGE FEES AND CHARGES

FEE TYPE	WHEN PAYABLE	RESTRICTIONS/COMMENTS	RIGHTS OF RESIDENT
Waiting List Fee	When a prospective resident wishes to be placed on the waiting list for a village	<ul style="list-style-type: none"> <li>• Maximum \$200</li> <li>• Village must provide written waiting list policy</li> <li>• Fee is fully refundable</li> </ul>	<ul style="list-style-type: none"> <li>• Village must refund the fee within 14 days of receiving a written request to do so or deduct the fee paid from the ingoing contribution</li> </ul>
Holding Deposit	When a prospective resident wishes the village to reserve a particular premises	<ul style="list-style-type: none"> <li>• Can only be required or accepted on vacant or new premises, or when the outgoing resident has given notice to vacate</li> </ul>	<ul style="list-style-type: none"> <li>• Village must refund the fee within 14 days of receiving a written notice that prospective resident does not wish to proceed.</li> </ul>
Deposit	When a resident enters into a village contract	<ul style="list-style-type: none"> <li>• Must be held on trust in accordance with the Act (i.e. held in a solicitor's trust account).</li> </ul>	<ul style="list-style-type: none"> <li>• Deposit is fully refundable if a resident decides not to proceed within the "cooling-off" period.</li> </ul>
Legal Costs	When the village contract is prepared, the resident and the village operator share the costs (usually payable upon entering the Contract)	<ul style="list-style-type: none"> <li>• the maximum amount payable by a resident in most situations is \$200</li> </ul>	<ul style="list-style-type: none"> <li>• The village operator must provide the resident with evidence of the expenses incurred (i.e. copy of the account).</li> </ul>
Ingoing Contribution	When a resident is not going to own the premises in the village, payable on settlement (on entering the premises)	<ul style="list-style-type: none"> <li>• Refund entitlements for unregistered interests of residents are now protected and are given priority over certain other creditors in the event that the village becomes insolvent.</li> <li>• A set amount of the ingoing contribution is normally non-refundable</li> </ul>	<ul style="list-style-type: none"> <li>• A resident may be able to delay payment of the ingoing contribution and/ or pay the contribution by instalments.</li> <li>• Often a village will charge interest on the unpaid portion of the contribution; however, the maximum rate of interest is set by the regulations.</li> </ul>
Recurrent Charges	Payable by the residents to cover the cost of running the village, usually payable fortnightly or monthly.	<ul style="list-style-type: none"> <li>• Check the village contract for the method of varying recurrent charges</li> <li>• The operator must comply with the legislation in respect of these charges</li> </ul>	<ul style="list-style-type: none"> <li>• Residents must be given notice (usually 60 days) of any variation in the recurrent charges.</li> <li>• Less notice is required if charges are increased by less than CPI</li> <li>• General consent of residents is required when variation is by other than a fixed formula</li> </ul>
Departure Fee / Deferred Management Fee	An amount deducted by the village from the ingoing contribution fee paid by the resident, payable when the resident vacates	<ul style="list-style-type: none"> <li>• Usually this fee is calculated as a percentage per year of the ingoing contribution/ purchase price for a maximum period</li> </ul>	<ul style="list-style-type: none"> <li>• Check the village contract</li> <li>• Fee is payable from the ingoing contribution or proceeds of sale</li> </ul>
Capital Loss/ Capital Gain	If the village contract provides, the resident and the operator may share any capital loss or capital gain on the premises at the time the resident leaves the village	<ul style="list-style-type: none"> <li>• A capital gain means any increase between the amount that the resident paid for the premises and the amount that the next resident pays for the same premises</li> </ul>	<ul style="list-style-type: none"> <li>• Check the village contract</li> </ul>