

Legalquotes News

PROVIDED BY RANKIN NATHAN LAWYERS

RETIREMENT VILLAGES IN NSW

In this article we take a brief look at the laws and regulations which apply to retirement villages in NSW. In NSW specific legislation has been enacted to regulate the operation of retirement villages, the main purpose being to ensure that the rights of residents and intending residents are protected. These laws have recently been amended with the changes coming into effect on 1 March 2010.

WHAT IS A RETIREMENT VILLAGE?

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 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.

CONTRACTUAL ARRANGEMENTS

As noted above, for a complex to be covered by the Act, residents must enter into a contract with the operator of the complex either in respect of living in the complex and/or receiving certain services offered by the operator. There are different types of contracts that a resident may be asked to sign before moving in to a retirement village and the most common are loan and licence agreements, leases, and services and facilities agreements. A resident might also be able to buy into the complex and become an owner of a unit within the village. Importantly, the laws in NSW override the terms of a village contract, and there are penalties for operators who ask residents to sign a contract which attempts



to avoid the laws.

Retirement village contracts can differ from village to village and it is important for residents to obtain legal advice about the contract before they sign anything or pay any money to an operator of a retirement village.

INFORMATION TO BE PROVIDED TO PROSPECTIVE RESIDENTS

The retirement village laws require an operator of a village to provide a prospective resident (or a person acting on the resident's behalf), with a 'disclosure statement' before signing a contract. The 'disclosure statement' must contain certain prescribed information about the retirement village. The purpose of the 'disclosure statement' is to give prospective residents a general understanding of the features and financial arrangements of the particular retirement village being considered which then supposedly allows the prospective resident to better compare different villages. The document must contain details of the fees and charges that will be payable by the resident. Residents cannot enter into a Contract with the operator until at least 14 days after receiving the 'disclosure statement'. Operators are also required to make available for inspection, or provide free of charge, other information about the village such as a site plan for the village, statements of proposed expenditure and audit accounts for the village.



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LEGAL COSTS

The Act provides that the legal and other expenses incurred by the operator in connection with the preparation of a village contract are to be shared by both the resident and the operator. From 1 March 2010, the maximum amount payable by a resident in most situations is \$200.00.

SETTLING IN PERIOD

The new laws introduce a 90 day settling in period for residents. Residents who vacate the village within 90 days of moving in will now only be required to pay to the operator a fair market rent for their stay, plus a reasonable administration fee up to a maximum of \$200.

REPAIRS AND MAINTENANCE

The laws set out who is responsible for the repairs and maintenance of the various items within a retirement village. The operator has an obligation to ensure that all "items of capital" are maintained in a reasonable state of repair having regard to certain factors such as the age of the village, the amount of ingoing contributions paid by residents and the amount of money available for maintenance allocated by the village. Often it is not entirely clear whether the operator or the resident will be responsible for repairs and maintenance of certain items and the new laws attempt to clarify this. Broadly speaking the following rules generally apply and the application of the rules will depend on whether an item is classified as an item of capital (as defined in the table below).

An "item of capital" is defined as:

- ✓ any building or structure in a retirement village, and
- ✓ any plant, machinery or equipment used in the operation of the village, and
- ✓ any part of the infrastructure of the village, and
- ✓ any other item prescribed by the regulations,

The new laws prescribe the following items in a retirement village, including those in residential premises in the village, for the purposes of the definition of "item of capital":

- ✓ fixtures (for example, bench tops, built-in cupboards and wardrobes, floor coverings, hot water systems and stoves),
- ✓ fittings (for example, light fittings, taps and sanitary fittings),
- ✓ furnishings (for example, curtains and blinds),
- ✓ non-fixed items (for example, whitegoods, portable air conditioners, fans, tables and chairs).

The new laws define "capital maintenance" as follows:-

- ✓ work done to prevent or repair defects in, damage to, or deterioration of, an item of capital,
- ✓ replacement of a non-fixed item of capital,
- ✓ replacement of a component of an item of capital that is necessary for the proper operation of an item of capital,

The new laws define the following as not being "capital maintenance":

- ✗ work done to substantially improve an item of capital beyond its original condition,
- ✗ work done to maintain or repair an item of capital in circumstances where it would have been more cost effective to replace the item of capital.

Next Issue

In the next issue of Legalquotes we will look at some other aspects of resident's rights and obligations in respect of living in retirement villages, including the fees and charges payable (i.e. the incoming contribution/purchase price) and the funds available to a resident/resident's estate upon termination and the resolution of disputes.

If you, or someone you know, would like assistance with a retirement village contract in NSW, please contact one of our Property Lawyers on 1300 727 813. We'd be happy to discuss your particular circumstances with you.

| ITEM | TYPE OF REPAIR | PARTY RESPONSIBLE | EXAMPLE |
|---|-----------------------|---|-----------------------------------|
| Item of capital | Repair or replacement | Operator | Hot water system, the village bus |
| Item of capital | Maintenance | Resident | Carpet cleaning |
| Item owned by resident | Repair or replacement | Resident | Fridge or microwave |
| Item damaged by the resident or a visitor | Repair or replacement | Resident | Any item |
| Item of capital | Urgent repairs | Resident can arrange and Operator must reimburse resident | Gas leak, blocked/ broken toilet |