

## Complex retirement village transactions may leave you shy and retiring

The *Retirement Villages Act 1999* ensures protections to retirees seeking to move into a retirement village including measures like a cooling off period and a requirement that retirement village operators provide a public information document to prospective residents. Despite those protections, retirees can still be left with the prospect of reading and understanding a bundle of documents, which is often the last thing you want to be doing as you embark upon your retirement.

A standard form contract for retirement villages was introduced in NSW last year but there is no news if that initiative will be introduced in Queensland. In 2013 the Queensland Government finalised a review of the *Retirement Villages Act 1999* and supported a series of recommendations as further consumer protections such as investigating better dispute resolution options and protecting the interests of residents to capital gains in their property as well as other red tape cutting measures, but those changes have not yet been presented as a bill to parliament and in any event there was no proposal for a standard form of document for retirement village contracts.

So unless or until a standard retirement village contract is adopted in this state, the paperwork still requires some specialised understanding and careful consideration in each case, as it is generally more complex than a standard residential purchase transaction.

At the launch of a retirement village legal advice service in April this year the Minister for Housing Tim Mander conceded that laws around retirement can be complex and difficult to understand, and given many residents are retired and may not be in a strong financial position, the last thing they need is to be involved in expensive, protracted disputes.

Retirees are therefore advised to understand what they are getting into when they sign the paperwork with retirement village operators, in order to avoid later disputes.

There are a variety of different forms of documents utilised by retirement village operators depending on how their scheme is set up, the main examples being as follows:

- freehold – usually in the form of strata title ownership, freehold ownership can offer a sense of security and control to residents, and they also have a right to vote as part of the body corporate. Often the retirement village operators will register a mortgage over the property to secure service agreement payments and buy back terms. Prospective residents will generally be presented with a number of documents including a residential contract for a lot in community titles scheme containing numerous special conditions, a mortgage to the operators and often a services agreement. There is also transfer duty payable and therefore, this arrangement can often come at a higher price than other options.
- leasehold – these long term leases are often entered into for a term of, say, 99 years for a nominal rent but the buy-in price is characterised as a loan from the resident under a loan agreement, which is payable in addition to any services fees. In those circumstances, there are often at least two complex legal documents, the lease and the loan agreement.
- licence – some operators will offer residents a right to occupy which is often the least costly approach for residents but also offers the least security as the resident's interest is not registered on the land's title.
- other – some arrangements involve the acquisition of a shareholding in a company that owns the retirement village residences.

With you.



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In each case exit arrangements are often controversial and there are restrictions on who can acquire those interests, as the retirement village operators may exercise buy back rights.

Residents are often faced with the decision when entering into a retirement village whether their exit payments will be calculated based on a capital appreciation method or not. In the case of a non-capital appreciation method, when the resident exits they do not share in any capital gain on the resale of their residence. This topic is likely to attract more attention from the government, given that in 2011 legislation was passed requiring retirement village operators to pro rata exit fees based on the number of days of occupancy and considering the government's review in 2013 which contained a recommendation for residents to share in any capital gains.

Kelly Legal property lawyers and conveyancers can assist any prospective residents of retirement villages to wade through the paperwork as part of the no fuss professional residential property services offered by Kelly Conveyancing.



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