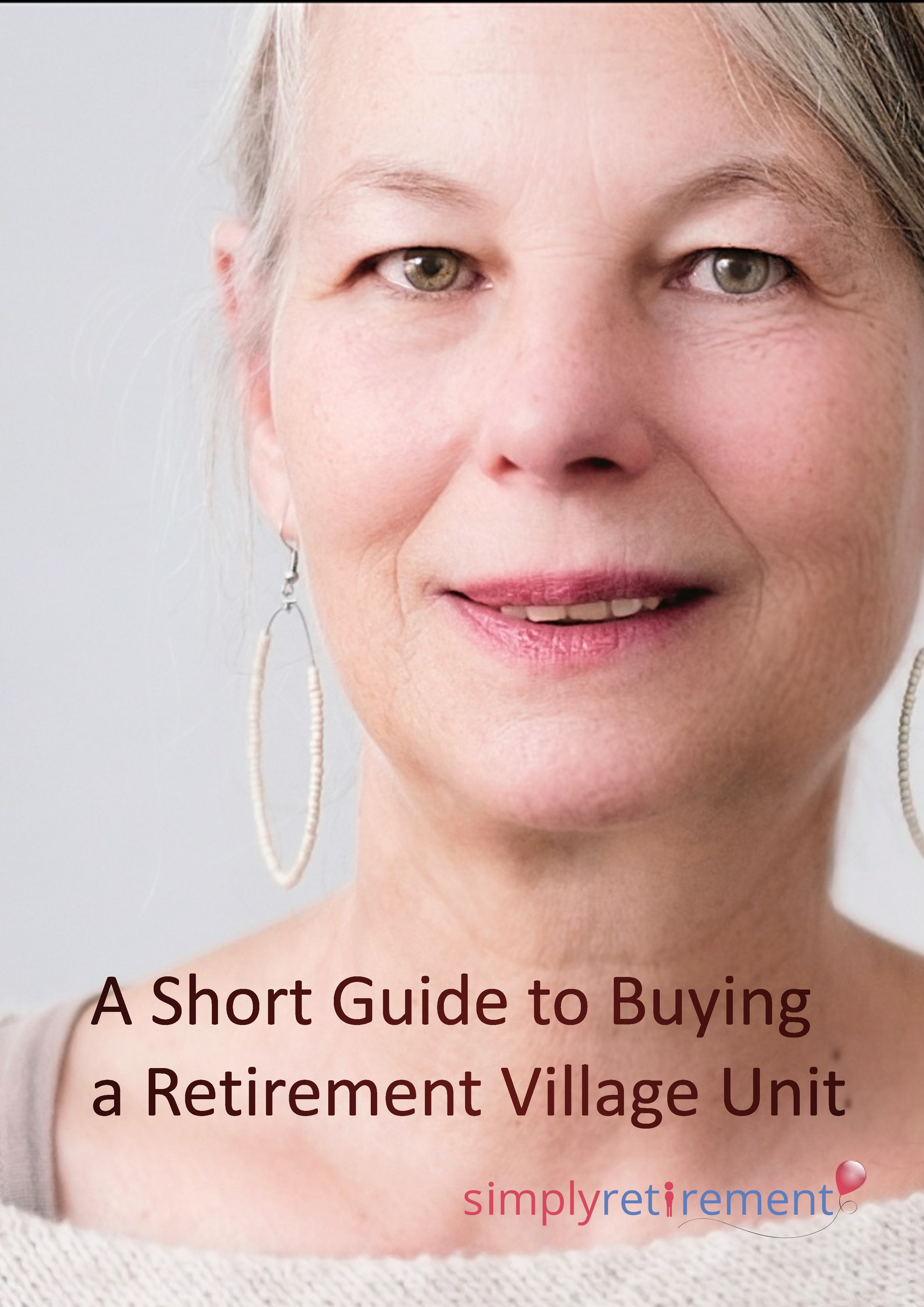

A Short Guide to Buying a Retirement Village Unit

simplyretirement

Legal and Financial Considerations when buying a Retirement Village Unit…

Introduction

Nearly 200,000 Australians currently make their home in retirement villages. With an ageing population, these numbers are expected to increase very rapidly in the near future.

For those individuals and couples contemplating moving into a Village, it is absolutely essential to ensure that they have a thorough understanding of what entering a retirement village entails, from both a legal and financial perspective, before entering any Residency Agreement. It is a necessary part of ensuring that you enjoy a comfortable, secure and worry free future.

The fact that moving into individual villages is often characterised as a "lifestyle decision" does not mean that you should throw "caution to the wind" and disregard financial and legal considerations. Indeed, take your time, do your homework and seek professional advice; this is an important stage of your life and one you need to get right first time.

This short guide is intended as highlighting a number of important areas that either you, your family members and/or advisers, need to give consideration to before entering into any agreement. Legislation in this area differs by State and Territory and we don't overly focus on legal details because no agreement should be entered into without seeking the advice of an **experienced solicitor**. This sage advice is, unfortunately, often ignored in an effort to save money - an example of "penny wise pound foolish" given that the fees will normally pale in comparison with the investment being considered. The Resident Associations listed at the end of this Guide should be able to suggest appropriate solicitors.

Perhaps more importantly, and solicitors cannot provide advice in this regard, you need to very carefully consider the financial aspects of any move into a retirement village, and more particularly whether the terms being offered are fair and reasonable, and offer good value. Making this assessment can be difficult, because of the complex way in which agreements are structured, and you should either seek the involvement of family and friends in this assessment, or preferably an experienced financial planner.

The Legal Structure of Agreements

As we cover in our website, your interest in a retirement village can take a number of forms, including long-term leases and licences, short-term leases and forms of direct and indirect ownership.

No approach is necessarily "right" or "wrong", it depends upon

> *"While traditionally the target demographic has been described as 55+ years old, it is clear that the age of a typical retirement living resident has shifted significantly, with the average age of new residents being 75 years old in 2015. In fact, in this year's Census data, only 4% of residents are younger than 65 years old."*
>
> 2016 PwC/Property Council Retirement Census

the Agreement's individual terms and conditions; but we have a clear preference for simpler, rather than more complicated arrangements. We therefore strongly recommend that **no interest is taken in an indirect ownership structure** - involving your holding company shares or units in a trust - without specialist legal advice.

Whatever Agreement you will be required to sign before entering a Village takes, it will almost invariably, be complicated in nature. To a degree, this reflects the relatively complex nature of the relationship between you and the village operator and the financing arrangements. However, there is a real concern that this complexity often results in village residents having an incomplete understanding of their rights and responsibilities.

This is appreciated by the Retirement Village industry, and they have released a model designed to represent a "good retirement village contract". Unfortunately,this appears to have gained little traction, and there is a very wide range of agreements circulating in Australia - and many villages will have residents on a multitude of different agreements, reflecting changes over time.

We think this approach is far from ideal - far too much scope remains for misunderstandings. Certainly any advice from a solicitor should result in you having a *very good understanding* of your rights and obligations with respect to entry to the village, time spent as a resident and on exit. This particularly includes when, and if, the operator can compel you to leave the Village.

Remember that it is the Agreement, *rather than any discussions you may have with the operator or current residents*, that will prevail when it comes to any financial liabilities, and your rights as a resident.

Some retirement villages may not provide a copy of their retirement village agreement until after an individual or couple has indicated an in-principle agreement to entering the village, or indeed provided a refundable deposit. We think this is undesirable, as it means that you are not in full and early possession of all the information required to make a decision. This approach should be resisted and we recommend taking no decisions, in principle or otherwise, until in possession of the Agreement and having received advice. Note also that some States, including Victoria, require Villages to provide a comprehensive fact-sheet when requested, and to attach this to any marketing materials.

Financial Matters

It's helpful to focus on three major issues when it comes to considering your move into a retirement village from a financial perspective.

1. In the majority of situations in Australia you will <u>not purchase ownership</u> of your retirement unit. Instead, you will have a right to occupy it under the terms of a long-term license or lease agreement following your payment to the retirement village operator of an entry fee in the form of an *interest-free loan* to the value of your unit, and you will receive this money back, <u>less</u> certain deferred payments, when you vacate your unit.

2. You will pay the retirement village operator a regular fee for the maintenance of your unit, garden and other community facilities. You may arrange other services, such as medical or household assistance, on a separate fee basis.

3. Finally, when you vacate the unit you will liable to pay certain deferred payments as specified above. These vary quite considerably from village to village in terms of how they are calculated, but typically they are expressed as a percentage of the current value or sale price of the unit. Further fees for marketing your unit and refurbishment costs prior to sale are also usually payable.

The Purchase Cost

Whether you are looking to purchase a freehold retirement unit, a license or lease, from a charity or private operator, you need to consider the purchase terms very carefully. Agreements are absolutely essential and they are not innately good of bad, it

depends entirely upon the conditions contained within the Agreement – much like any other major purchase you make.

We continue to see very fair and balanced offers in the market for a retirement village occupancy, and we also see offers which can be regarded as overpriced and restrictive. There will always be people who rush into purchasing, driven by emotion or marketing; you just need to ensure that you or your family member make a considered purchase.

An experienced solicitor will be able to explain both the operation of individual clauses within the agreement, and crucially whether those provisions are reasonable. Any agreement which is not considered “fair and balanced” as between yourselves and the Villages operators should not be considered, whatever your circumstances. But note that “reasonability” extends to the financial terms - and solicitors cannot provide advice in terms of whether you are paying a reasonable price on entry or for ongoing services - that needs to provided by a financial planner and you need to do your own homework to ensure that you are confident regarding the finances.

Entry Fees

People are surprised to find that purchasing access to a retirement village unit or apartment is inherently more complicated than buying a normal family home. This is partly because the Agreement addresses all aspects of your relationship with the operator, including your entry to the village, while living the village and on departure - a period of what may be decades, as distinct from a pure purchase/sale agreement. Remember, as per above, that unless you are purchasing a freehold unit, the payment of an “entry fee” represents an interest-free loan to the village operator for the period of your stay in the village.

Historically, a retirement village “entry fee” would represent a substantial discount to the normal price you would pay for such a property on the open market, allowing retirees easier access to accommodation, on the basis that the difference would be paid on a deferred basis when the individuals left the village. That relationship doesn’t necessarily exist anymore, and it depends upon the village you are seeking to enter. The *2016 PwC/Property Council Retirement Census* report contains the following statement about the cost of independent living units (ILU’s):

“On average, the cost of a two bedroom ILU remains lower than the median house price in the same postcode. However, ILUs in newer villages are generally priced closer to the postcode median house price.”

In practice, this means that there may be little or no differential between the cost of entry into a modern two-bedroom independent living unit, and a freestanding house in the same general locale. We think this particularly applies at the more expensive, newly built end of the market

In any comparison you need to remember however that retirement village units offer services and features extending beyond those available in a normal apartment or unit complex – such as community centres, libraries, emergency call systems and organised village activities. Also bear in the mind, for the sake of comparison, that deferred fees are almost always payable when you vacate the property.

Remember that any entry payment may affect whether you are considered to be a homeowner, or otherwise, for the purposes of receiving rent assistance from Centrelink. If the payment is less than what is called the "extra allowable amount" (EAA) - which is really the difference between the homeowner and non-homeowner asset test thresholds - then you may be eligible to receive rent assistance because you are not considered a homeowner. If you pay more than the EAA (currently $200,000) then you are considered a homeowner and the payment is not included in the assets test.

Deferred Payments and Fees

These are variously called a departure fee, exit fee or deferred management fee - whatever the title they

involve the payment to the village operator of a sum(s) of money at the time you leave the village. Typically, it is expressed as a percentage of your entry or purchase fee, sale price or fair market value on exit and it increases with your tenure in the village up to a maximum capped rate.

In most villages, the deferred payment percentage ranges between 30% and 40%, with the maximum percentage reached after you have lived in the village between 7 and 12 years. We have provided an example in the Table overleaf of a unit purchased for an entry fee of $500,000 and subject to different levels of price inflation over the next 5 and 10 years - 2%, 5% and 8% per annum respectively - and a deferred fee of 5% per annum capped at 35%.

The precise approach adopted can have a very significant impact on how much money a resident is entitled to on exit from the village and should be discussed with your financial advisor. Note that we are now seeing more examples of operators including two forms of deferred fee - the normal deferred fee, plus what is sometimes referred to as a "capital replacement fund fee", "long-term maintenance fund" or "sinking fund". All fees need to be added together in order to assess the total fee on departure and how much money you will retain.

As you can see, if you leave a village after 7 or more years you may expect to receive a refund amounting to between 70% and 60% of your unit valuation or sale price. But we can't emphasize too much the need to understand the provisions in your individual agreement. Disputes can arise regarding the precise figure, and also when access to these funds is available, and this is something you and your legal advisor need to give clear attention to when reviewing the agreement.

To add even more complexity, some villages will offer you the option of paying a higher incoming fee on the basis that your deferred fee will be smaller - and which is the best option will depend entirely upon your circumstances, and this is a situation where you should seek financial advice.

One alternative way of assessing whether you are obtaining fair value in terms your retirement unit is to take the period of time you intend to occupy the unit (say 10 years) – divide the deferred payment by this number, add your annual maintenance charges and the interest income you have foregone on the entry payment, and ask yourself whether you would be prepared to pay this amount as an annual rental to occupy the unit - bearing in mind that your objective should be to enjoy these years as fully as possible. This should not viewed as a pure

	Scenario 1	**Scenario 2**	**Scenario 3**
Entry Fee $	500000	500000	500000
Price Inflation %	**2**	**5**	**8**
Deferred Fee	5% per annum capped at 35% after 7 years		
Value End Year 5 $	552000	638000	734700
Deferred Fee $ (25%)	138000	159525	183675
Net Payout $	414000	478575	551025
Value End Year 10 $	638100	814400	1079470
Deferred Fee $ (35%)	223335	285040	269868
Net Payout $	414765	529360	809602

investment decision - rather it is a lifestyle decision and the emphasis should be on ensuring that you obtain reasonable value for your money and not on whether it represents a good investment.

Common Terms and Conditions

As mentioned previously, the regulation of Retirement Villages is (regrettably) a State matter, and therefore we have a "patchwork quilt" of legislation across Australia that can differ materially. We provide a very general summary of how the major conditions compare in Attachment A of this Guide, and some particular commentary in the following sections.

Cooling Off Periods

The front page of the agreement should include a statement to the effect that the purchaser may cancel the contract without penalty during a "cooling off" period. The agreement should specify the exact period, which tends to vary between 3 and 15 business days, depending on the state in which the village is located.

Proper preparation means that you should not need to rely upon this clause; but your solicitor should discuss it with you and ensure that, should you change your mind, you activate this clause before the appropriate date.

Ongoing Fees and Charges

You will be required to pay certain ongoing maintenance and other fees and charges after you move into the village, usually on a fortnightly or monthly basis. These payments will often include services such as regular gardening, maintenance of the units and community facilities, emergency services at call and village transport, management and insurance. The agreement should state exactly what charges the operator will levy, and clearly state how they will increase over the period of the agreement - often this will be in accordance with State legislation.

In freehold title retirement villages, residents may also be required to pay owners' corporation levies or body corporate levies in addition to the service or maintenance fees.

You will normally be responsible for your own utility bills, and note that many retirement villages also include some responsibility for both council and water rates associated with communal areas within their regular charges, even if you do not have ownership of the property.

Typically, residents will be able to choose to receive additional services, such as visiting health and other professionals, and the operator will provide an ongoing pricelist. These fees may not be regulated by State governments.

Redevelopment Clauses

Many villages will be subject to significant redevelopment over the next few years, and if there is a redevelopment clause within your agreement, it should specify your rights should a redevelopment affect your particular unit. The existence of such a clause should cause you to question the village operator regarding existing development plans. These responses won't be binding, as intentions change, but the possibility of a redevelopment should be borne in mind before you enter the village.

Exit fees

Leaving a retirement village will typically trigger the payment of deferred fees, as mentioned above, unless you own a unit freehold. Under the terms of the residence agreement you will normally not have access to your share of the funds until your particular unit has been sold and you should pay particular attention to when those funds will be paid to you under the agreement and who is responsible for paying ongoing costs.

Bear in mind that State legislation may require the payment within certain periods and you should pay particular attention to how long you need to wait until those funds are paid to you. Different rules

may also apply where a resident is moving into a Nursing home.

Refurbishment

You may be required to pay for the refurbishment of your unit prior to sale, and depending upon the exact term within the agreement, this can range from requiring new carpeting and paint to the replacement of kitchens and bathrooms. You should strive to ensure that you have absolute clarity in relation to your liabilities in this regard. You will typically not be given the option to arrange your own refurbishment on the basis that the village will want to maintain common standards across all of its facilities.

Again, however, the operator will effectively be using your money to finance the refurbishment so it will pay carefully consider the breadth of the clause.

Marketing your Unit

Your agreement may specify that the operator will be in charge of marketing your unit, and that they will charge a certain percentage of the valuation or sale price for the services - with these fees to be deducted from your entry fees. At the extreme, in some agreements, residents may also be charged individual fees when potential buyers are shown through their units.

Depending upon which state you are located, you may be entitled to participate in the marketing of your unit after a certain length of time. Ask your solicitor to explain any entitlements or rights in this regard.

Any clause which provides that you or your estate remain liable for paying the ongoing costs attaching to a retirement unit until a sale occurs merits close attention in terms of how this works in practice and your potential exposure.

Sale Proceeds and return of Entry Fees

Disputes can arise around the time taken to sell retirement units, and again this is an area where you should seek clarity. Legislation differs by State, and you may have the option to choose your own real estate agent. You should also ask the operator (and existing residents) how long it typically takes to sell a unit, bearing in mind that the market situation may change during your period in the village. This can be very important, particularly if individuals wish to move into a nursing home, and there are upfront fees applicable.

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FURTHER INFORMATION AND RESOURCES

simplyretirement.com.au

The website provides access to a range of resources associated with retirement, including superannuation, retirement villages and nursing homes. This Guide is intended to be read in conjunction with the our Retirement Village Checklist.

Village Resident Associations and State Government Departments

State	Residents Association	Government
ACT	See below	ACT Fair Trading
New South Wales	The Retirement Village Residents Association NSW & ACT (RVRA) www.rvra.org.au	NSW Fair Trading
Northern Territory	None	NT Consumer Affairs
Queensland	Association of Residents of Queensland Retirement Villages (ARQRV) www.villagers.org.au	QLD Department of Housing and Public Works
South Australia	South Australian Retirement Village Residents Association (SARVRA) www.sarvra.asn.au	SA Consumer and Business Services
Tasmania	None	TAS Consumer Affairs and Fair Trading
Victoria	Residents of Retirement Villages Victoria (RRVV) www.residentsofretirementvillagesvic.org.au	VIC Consumer Affairs
Western Australia	Western Australia Retirement Village Residents' Association (WARVRA) www.warvra.org.au	WA Consumer Protection

Attachment A

A Comparison of Retirement Village regulations across Australia

	NSW	*Vic*	*Qld*	*SA*	*WA*	*Tas*	*NT*	*ACT*
Definition of retirement village	Complex for retirees who signed prescribed village contracts	Complex for retirees where at least one pays ingoing contribution and services differ from	Complex for retirees where all residents pay ingoing contributions	Complex for retirees where at least one pays an ingoing contribution	Complex for retirees where at least one pays an ingoing contribution	Complex for retirees where at least one pays an ingoing contribution	Complex for residents who are retired	Complex for retirees who signed prescribed village contracts
Registration other than Title Office	No	Yes – with Consumer Affairs	Yes – with Department of Housing	Yes – with Department of Health	No	No	No	No
Contract	Standardised	Structure and content as per regulations	Content as per regulations	Content as per regulations	Content as per regulations	Content as per regulations	Content as per regulations	Structure and content as per regulations
Prescribed disclosure documents	General inquiry document and disclosure statement	Information factsheet and pre-contract disclosure statement	Public information document	Condition report, residence rules, remarketing policy and other documents	Information statement, notice of rights, and residence rules	Legal notice of rights and checklist	Disclosure document and checklist	General inquiry document and disclosure statement
Cooling off period	7 business days	3 business days	14 days	15 business days	7 business days	5 business days	10 business days	7 business days
Increases in ongoing fees	Increase higher than CPI must be explained and consented to by residents	Increase higher than CPI must be explained and consented to by residents	Increase higher than CPI must be consented to by residents	Can increase by a 'reasonable' level	Not specified	Can increase by a 'reasonable' level	Increases not specified but need to be agreed to by residents	Increase higher than CPI must be explained and consented to by residents
Payment of fees after moving out	Fees payable for max 42 days after moving out	Fees payable for max 6 months after moving out	Fees payable in full for 3 months, and then at a reduced rate for the next 6 months	Fees payable for max 6 months after moving out	Fees payable for 3 months (6 months if contract signed before April 2014) after moving out	Not specified	Not specified	Fees payable for max 42 days after moving out
Refund of ingoing contribution	Within max 6 months	Within max 6 months, unless moving into aged care	Within 14 days after unit resold	Within 10 days after unit resold, unless moving into aged care	Within max 45 days	Within max 6 months, unless moving into aged care	Within max 6 months	Within max 6 months

Source: Based on Productivity Commission, Housing Decision of Older Australians 2015