Guide to choosing and living in a retirement village

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CONSUMER AFFAIRS VICTORIA

Disclaimer

Because this publication avoids the use of legal language, information about the law may have been expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation, specifically the *Retirement Villages Act 1986*.

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Introduction

Deciding where to live in your retirement years requires a lot of thought and sound professional advice. Older Victorians decide to move for a variety of reasons, including health, social interaction, access to organised activities, safety and security. It is important to understand why you want to move as this can help you determine what you are looking for in your new retirement living option.

Entering a retirement village is a major lifestyle and financial decision. Be aware that a retirement village is a communal living arrangement and you will not have the same level of control as owning your own home. Make sure you understand:

- how a village is run
- how your lifestyle is likely to change
- what the village offers in relation to healthcare
- the village's decision-making process
- ongoing fees and exit fees.

Retirement villages are unique. They offer a range of different contract and tenure types, unit types (independent living units, assisted living units and serviced apartments) and facilities and services. The cost of entering and leaving a retirement village varies. There are also fees and charges to consider, plus other arrangements that will be new to you.

The law gives retirees assistance in choosing the right village and understanding the contracts offered. When you are visiting a village you are interested in, the village must, on request:

- give you their factsheet of relevant information about the village
- allow you to inspect relevant documents about the village.

Before you sign any contract, the village must give you a disclosure statement that sets out the actual costs to you of entering, living in and leaving the village. Also, all retirement village contracts must conform to a standard structure to make them easier to understand and compare.

This guide will help you decide if a retirement village is the right option for you. It also provides impartial information on your rights and responsibilities while you live in your retirement village. We recommend that you use this as a reference guide and take it with you whenever you meet with your village operator.

More information

For more information, visit consumer.vic.gov.au/retirementvillages

Glossary

Below are common terms that appear in this guide or in retirement village contracts.

By-laws

See village rules.

Charge

Not to be confused with fees and charges payable, the charge refers to a security created to protect the refund of ingoing contributions. It is registered on the title to the retirement village land.

Close associate

If the retirement village manager is a **person**, a close associate is:

- the spouse, domestic partner, parent, child or sibling of the manager, or
- the parent, child or sibling of the spouse or domestic partner of the manager, or
- a company of which the manager (or the manager's spouse, domestic partner, parent, child or sibling, or the parent, child or sibling of the spouse or domestic partner of the manager) is a director or secretary, or an agent or employee of the manager.

If the manager is a **company**, a close associate is:

- a director or secretary of the company or of a related company, or
- the spouse, domestic partner, parent, child or sibling of such a director or secretary, or
- the parent, child or sibling of the spouse or domestic partner of such a director or secretary, or a related company, or
- an agent or employee of the manager.

Disclosure statement

A legal document that a retirement village must give to you at least 21 days before you sign a contract. It includes:

- the name and address of the village
- the dates the retirement village notice and charge were lodged at Land Use Victoria
- details of mortgages or agreements over the land that may impact on the residence rights of the residents
- summaries of the actual entry costs, maintenance charges and departure fees payable.

The disclosure statement you will be given depends on the tenure structure of the retirement village.

The (blank) template disclosure statements are available at consumer.vic.gov.au/forms

Factsheet

A legal document that a retirement village must give you within 7 days of your request containing a range of information about the village, including:

- the types of accommodation available
- the facilities and services provided
- summaries of the generic entry costs, maintenance charges and departure fees payable.

In addition, you can request to inspect relevant documents held by the operator and listed in the factsheet.

Ingoing contribution

A payment (that is not rent or a bond) you make to secure your right to live in a retirement village. The ingoing contribution can be:

- refundable or non-refundable
- a lump sum or instalments.

Loan-and-lease (or licence) unit

A unit in a retirement village occupied by a non-owner resident who has paid an ingoing contribution for a long term lease or licence of the unit.

Maintenance charge

An ongoing charge you pay for the provision of services and facilities provided by the retirement village manager under your contract.

Management complaint

Any complaint that a resident has against the manager of a retirement village about:

- the control, management or administration of the retirement village by the manager
- any action or failure to act by the manager that affects residents' use or enjoyment of the retirement village land
- the provision of services or a failure to provide services by the manager to residents of the retirement village.

Manager

Someone who manages a retirement village, or, if there is no separate manager, the owner of the retirement village.

Non-owner resident

A resident who does not own their unit.

Operator

The manager or owner of the village.

Owner

The person, organisation or company that developed the village and that owns all or some of the retirement village.

Owner resident

A resident who owns their unit.

Personal services

Services provided by a manager you may choose to use and pay for but which are not included in the maintenance charge.

Resident dispute

A dispute between residents about any action (or failure to act) by residents that affects the use and enjoyment of the village land or services by other residents.

Residents' committee

A group of residents who represent the interests of the residents of the village. Committee members are elected by a simple majority but can only be removed with a vote of at least 75 per cent of residents attending and voting at the meeting.

Retirement village notice

A notice lodged with the Registrar of Titles by the village owner stating that the relevant land is used (or proposed to be used) as a retirement village.

Services

Any of the following:

- management and administration
- gardening, repair and maintenance
- shops and other services providing goods to residents
- hostel accommodation
- laundry
- meals
- services or facilities for the recreation or entertainment of residents
- other services for the care or benefit of residents.

Special resolution

A resolution that is passed:

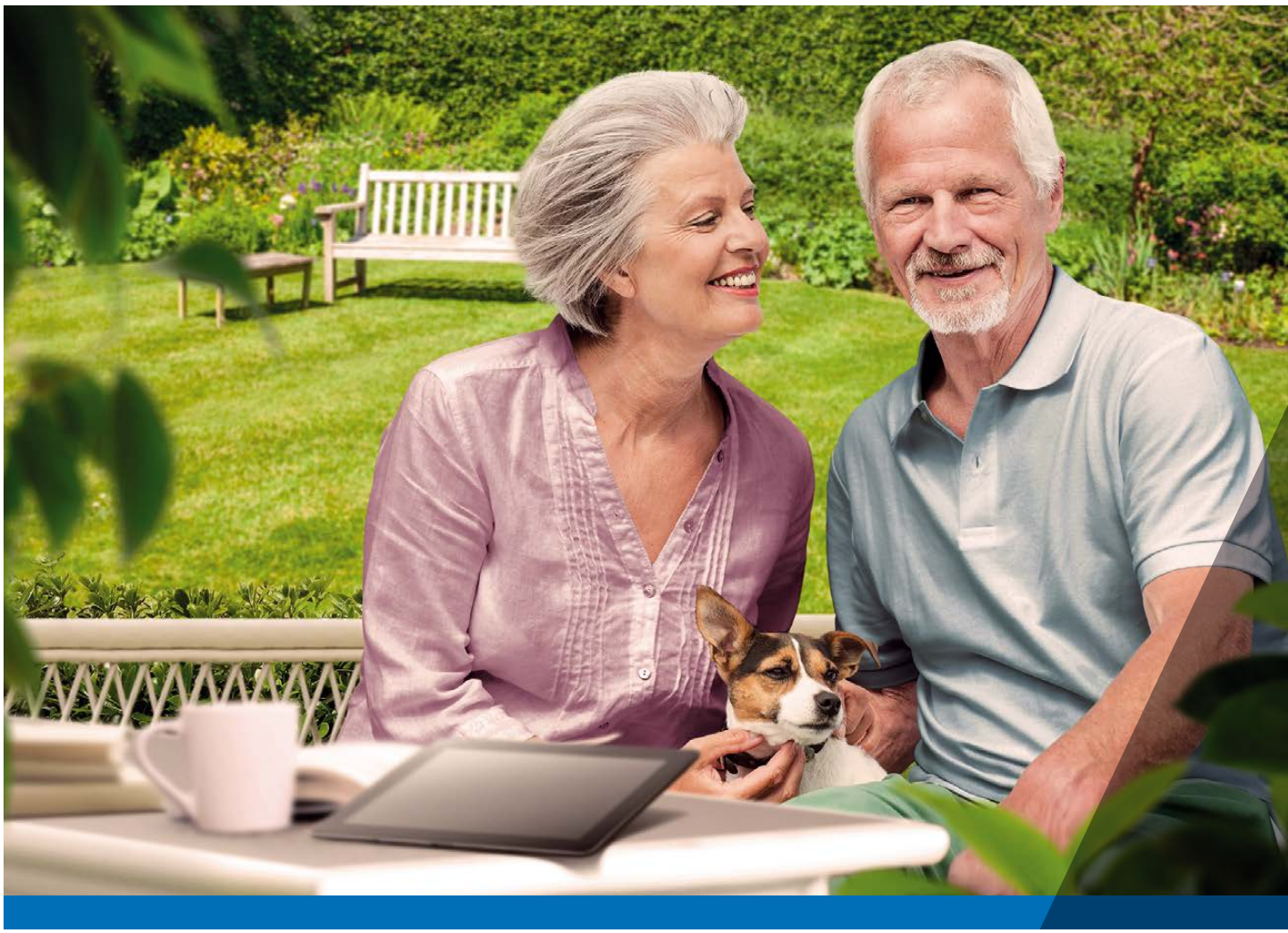
- at a meeting of which at least 21 days written notice has been given to all residents detailing the intention to propose the resolution as a special resolution, and
- at the resulting meeting by at least 75 per cent of residents attending and voting.

Strata title unit

A unit in a retirement village occupied by an owner resident who has purchased the strata title to the unit.

Village rules

Provisions relating to the use, enjoyment, control and management of the village. The rules can only be created, changed or revoked by a special resolution of the village residents. If a village has rules, a copy must be included in the disclosure statement.



What is a retirement village?

A retirement village that is regulated by the *Retirement Villages Act 1986* is defined as a community where:

- most residents are aged 55 years or over, or, if younger, are retired from full-time employment, who are provided with accommodation and services other than services provided in a residential or aged care facility, and
- at least one of the residents paid an ingoing contribution.

Every resident in a retirement village that fulfils this definition has certain protections under the *Retirement Villages Act 1986*. This law confers rights and obligations that are unique to this type of accommodation.

'Retirement villages' referred to in this booklet are those regulated by the *Retirement Villages Act 1986*.

Many residential complexes market themselves as community-style accommodation for retirees. But not everything that looks like a retirement village is regulated by the *Retirement Villages Act 1986* – see 'Understanding alternative types of retirement living' on page 10.

It's a lifestyle, not a financial investment

Entering a retirement village should be seen as a lifestyle decision, not an investment to make money. Some people presume they are making a capital investment when they buy into a retirement village and expect their investment to increase in value over time, just like other property investments. This is not usually the case.

You can face substantial costs when you leave a village. Often the resident and the village owner share any capital gain on the property, or the owner may take all capital gain. You could be required to pay significant fees and charges when you leave a village – some may continue until your unit is sold.

The village factsheet contains generic information about these matters and the disclosure statement contains the actual amounts payable on the unit you choose.

Get advice before you sign

Before signing a contract, seek professional advice to help you determine what is at stake and how much you could be liable for when you leave. Take the factsheet, disclosure statement and contracts with you. The cost of getting professional advice is a good investment when making this important decision.

Retirement village contracts can be long, complex and difficult to understand. They are not like residential property contracts and need careful consideration.

By law, all village contracts must conform to a standard structure to help residents and their advisers compare different contracts and locate rights and obligations.

Obtain both legal and financial advice from practitioners who specialise in retirement village contracts to help you understand the contract conditions and the financial implications of what you are committing to.

You can find legal practitioners through the Law Institute of Victoria's legal referral service, and financial advisers through CPA Australia and the Financial Planning Association of Australia. Contact details are at the back of this guide.

Is retirement village living right for me?

Before deciding to move into a retirement village, you need to understand:

- what retirement village and communal living is like > page 10
- different types of retirement living > page 10
- what retirement villages offer in relation to healthcare > page 10
- how you can have your say about village life > page 20
- the maintenance charge > page 13
- what it will cost when you leave the village > page 15
- the type of contract that best suits your needs > page 11
- how to choose the right retirement village > page 18
- signing a retirement village contract > page 11

The following information will help you to understand these points and decide if retirement village living is right for you.

Understanding retirement village and communal living

A retirement village provides independent accommodation and may include shared facilities, such as meeting rooms, a library or pool. It might also offer lifestyle services and social activities, such as organised outings, joint meals, craft workshops, visiting doctors and allied health professionals.

Some residents can feel a loss of independence and control when moving into a village. However, many residents enjoy the social interaction, security and range of activities. What you will enjoy in a retirement village depends on who you are.

Understanding alternative types of retirement living

Retirement villages are different from residential or aged care facilities, residential parks or rental villages.

Residential parks or 'lifestyle villages'

Residential parks, sometimes called 'lifestyle villages', can seem similar to retirement villages but they are not the same because you do not pay an ingoing contribution, although you may pay a departure or exit fee (see 'Departure or exit fees' on page 15). People living in a residential park own their moveable dwelling and rent the site it sits on. They are covered under the Part 4A provisions of the *Residential Tenancies Act 1997*. Visit **consumer.vic.gov.au/renting** for more information.

Rental villages

These are marketed specifically to retired people on a full-rental basis, with no ingoing contribution. Generally, investors buy units in a village, which they rent to tenants under a tenancy agreement covered by the *Residential Tenancies Act 1997*. The fortnightly rental is linked to a resident's age pension and rent assistance – usually 85 per cent of the age pension and 100 per cent of rent assistance.

Understanding the healthcare that villages offer

Although staff in some villages have healthcare backgrounds, services in retirement villages generally do not include healthcare. There is sometimes an expectation that retirement villages can provide medical support as your situation changes. This is not normally the case and you should thoroughly check whether the villages you are considering provide medical care.

Some retirement villages have on-site low-level and high-level aged care services known as residential or aged care facilities, nursing homes or hostels. There is a common misconception that when the time comes, retirement village residents will advance automatically into the on-site facility. This is not the case. Access to these facilities is dependent on an aged care assessment, as required by Commonwealth law.

Village operators cannot keep places free for retirement village residents, even if the care facility is on the same site. When moving from a retirement village into a care facility, you may have to end your contract with the retirement village and pay any associated fees.

Retirement village contracts

The majority of retirement villages operate on **loan-and-lease (or licence) arrangements** under which you sign a lease/licence for your unit and a management contract for the provision of services. There may also be a separate contract for the payment of the ingoing contribution.

However, there are some other types of contracts used by retirement villages and you should understand the implications associated with the tenure.

Strata title

Strata title is sometimes offered by retirement villages run for profit.

Under a contract of sale, you pay the agreed purchase price to the developer or unit owner, usually through their selling agent, such as the retirement village operator or an estate agent, and you get your own strata title to the unit.

This means you become a member of the owners corporation, as with any other strata title scheme.

You enter into a separate management contract with the village for the provision of services.

As a strata title unit owner, you will have to pay owners corporation fees while you own the unit as well as paying the maintenance charge to the village operator (sometimes the two amounts are merged).

You may also have to pay Goods and Services Tax (GST) if the unit is new and you are the first owner.

Company title

This is a more unusual arrangement, whereby:

- you buy shares in a company that owns a retirement village. The shares give you the right to occupy a village unit, and
- a board of directors, appointed by the shareholders, operates the retirement village and must comply with the company's constitution.

You enter into a separate management contract with the village for the provision of services.

Company title is a complex area of law. It is important to understand that you are not buying the unit, but shares in a company. Before signing, make sure you get independent legal and financial advice about what you are agreeing to with a company title.

Unit trust

This arrangement is similar to a company title scheme, except that you buy a unit in a trust that carries an entitlement to occupy the unit.

The retirement village is legally owned by the trustee, who holds it for the benefit of the unit holders in keeping with the terms of the trust.

As with company title, if you leave the retirement village, you will be entitled to receive the sale price of the unit in the trust at settlement, less any outgoing deductions.

As with company title, unit trusts are a complex legal structure. Before you sign the contract, make sure you get independent legal and financial advice about what you are agreeing to.

Your contractual right to reside in your unit is binding on the owner of the retirement village, regardless of ownership changes. **This right cannot be taken away if the village is sold.**

Retirement village contracts must, by law, conform to a standard structure. If you are interested in a retirement village, the operator must comply with any request to inspect the village's contracts within seven days.

Understanding retirement village fees

You will usually have to pay a range of fees and charges to enter, live in and exit a retirement village. Some fees can continue even after you have left.

Your fees are determined when you sign your contract and are set out in the disclosure statement you receive before you sign. If you would like to understand your fee payments further, discuss them with the village operator.

Waiting list fees

Some retirement villages require you to pay a waiting list fee. Before you add your name to a list, find out from the village factsheet:

- the cost to join a waiting list
- whether part or all of the fee will be refunded on entry to the village.

Always get a receipt for payment.

Up-front payments (ingoing contributions)

Most people make a substantial up-front payment (ingoing contribution – see definition in the 'Glossary' on page 5) when they enter a retirement village. This payment may:

- be described in the contract as the ingoing contribution, interest-free loan or deposit
- include an amount that may be refunded on departure from the village
- be required even if you are an owner-resident buying your own unit.

For loan-and-lease (or licence) residents, this is the largest single payment you are likely to make.

Maintenance charges

Maintenance charges are a part of retirement village living. You will usually have to pay a maintenance charge monthly or quarterly. It helps cover the cost of:

- managing the retirement village, including staff salaries
- maintaining the facilities and common areas available to all residents, such as gardens and recreational facilities
- providing services to all residents.

Your maintenance charge is specified in your contract. Your retirement village can only increase your maintenance charge in line with the annual Consumer Price Index (CPI) adjustment. A bigger increase is only allowed if it is:

- approved by a resolution of the residents' committee or a resolution of a majority of the residents, or
- due to an increase in award salaries or wages, or
- due to an increase in taxes and other statutory charges relating to the retirement village.

Special levies

Sometimes a retirement village may need more money than is collected in maintenance charges, and the operator may seek to cover the cost through a special levy. The operator can only propose a special levy once every 12 months and it is only payable if:

- residents have agreed to the levy through a special resolution, or
- the levy covers amounts payable under Victorian or Commonwealth law or an order of a court, or
- the retirement village contract or the village rules make residents responsible for the type of expenditure the levy is intended to cover – for example, your contract specifies that residents will have to pay for a new bowling green or pool.

Understanding what it will cost when you leave the village

The question of what money a resident is entitled to have returned from their ingoing contribution when they leave a village is one of the greatest areas of concern and confusion regarding retirement villages.

People can have misconceptions about what they are entitled to, and can be surprised or angry when they discover what their contract stipulates, and the significant amounts they must pay via deductions from the refund of their ingoing contribution. These deductions can seriously affect the ability of a resident to obtain equivalent accommodation outside the village. It is essential that before you enter a retirement village, your legal or financial adviser helps you understand what your financial situation will be if you leave.

You could be required to pay significant fees and charges (some ongoing) when you leave. This is one of the key ways in which a retirement village unit differs from conventional residential property.

Often the contract will specify that the resident and the village owner share any capital gains on the property, or that the owner takes all capital gains. For more information, see 'Capital gains' on page 17.

Once you have signed a legal contract and the cooling-off period of three business days has expired, you are bound by the terms of the contract. For more information, see 'Cooling-off' on page 19.

The costs described below – departure/exit fees, maintenance charges and capital gains – are set out in general terms in the village factsheet and in specific terms in the disclosure statement.

Departure or exit fees

You may have to pay fees and charges when you leave a village. Alternatively, a set amount of any ingoing contribution may be stated in the contract to be non-refundable.

The fees payable could include a 'deferred' fee (often called a 'deferred management fee'). The deferred fee is the most significant of these amounts and represents payment for the village owner's investment in the village. The fee is one way that commercial retirement villages generate a profit, and how not-for-profit villages improve their services or subsidise maintenance charges.

The calculation of this fee can be complicated and often depends on variables such as how long you have been in the village. The exact fee usually cannot be calculated until you have left your unit and a new resident has purchased it or made an ingoing contribution, or a valuation has been obtained. However, such fees are often around 30–40 per cent of your ingoing contribution/purchase price (but can be higher or lower).

The deferred fee is usually calculated as a percentage per year of:

- your ingoing contribution or purchase price, or
- a new resident's ingoing contribution or purchase price.

The fee is usually calculated up to a specified maximum percentage stated in your contract. For example, if the fee is 2.5 per cent per year up to a maximum of 25 per cent and you are there for more than 10 years, the most you will be charged for the fee is 25 per cent. This and other charges will be deducted from any amount you are entitled to if you leave.

The disclosure statement you must be given before you sign your contract will describe how this fee is calculated for your unit and will include estimates of the fee after 1, 2, 5 and 10 years' residence.

Departure or exit entitlements

Your contract may entitle you to a refund of your ingoing contribution (less any applicable fees and charges – see previous). The disclosure statement you receive before you sign a contract sets out your estimated exit entitlement after one, two, five and 10 years' residence.

If your contract was signed before 1 August 2006, it determines how and when this payment must be made to you.

For contracts signed after 1 August 2006, the law has set alternative ways of determining when the entitlement must be paid, as follows.

For **non-owner residents**, it must be paid:

- within 14 days of the resident leaving the village – where the payment is only conditional on the resident leaving the village, or
- where the payment is conditional on the re-letting of the unit, by the earliest of:
  - 14 days after the next ingoing contribution is paid
  - 14 days after the unit is re-occupied
  - six months after the resident has left the village.

However, the six month cut-off point does not apply if the contract contains prescribed terms that, among other things:

- allow the resident to require the operator to appoint an agreed marketing agent
- require the operator (if the agent) to use all reasonable endeavours to re-sell the unit or to instruct a third party agent so to do
- give the resident control over the asking price and veto over the selling price (the resident must not act unreasonably)
- require the operator not to refuse an offer unreasonably, to provide certain monthly information and not to impose unreasonable charges on the resident, in which case the exit entitlement must be paid by the earliest of:
  - 14 days after the next ingoing contribution is paid (if at least equivalent to the exit entitlement)
  - 14 days after the unit is re-occupied
  - the finding by a court that the operator has breached a prescribed term.

For **owner residents** who signed their contract after 1 August 2006, the entitlement must be paid:

- within 14 days of the sale of the unit, where the payment is conditional on the re-sale of the unit
- within 14 days of the resident leaving the village where the payment is only conditional on the resident leaving the village.

Fees and charges

Regardless of whether you are an owner resident or a non-owner resident, the retirement village can continue to charge you some fees even after you leave.

If you signed your contract on or after 30 January 2006, or your pre-2006 contract does not specify how long you must continue to pay fees after leaving the village, then the following rules apply by law:

- **Fees for personal services**
  You cannot continue to be charged for personal services for more than 28 days after you leave.
- **Owners corporation fees – owner residents**
  You will have to pay owners corporation fees until the unit is sold, as you remain a member of the owners corporation until then.
- **Maintenance charges – non-owner residents only**
  If you are a non-owner resident, maintenance charges for the provision of goods and services under your contract must stop within six months. However, during this six-month period, the retirement village must stop charging when either:
  - the unit you have vacated is re-occupied or
  - someone enters into a contract to occupy it.

Capital gains

If there is any capital gain (profit from the sale of your unit), how much of it you keep may also depend on your contract.

Most contracts share any capital gain between the resident and the village owner but some contracts assign 100 per cent of any capital gain to the village owner. As you would still have to pay a departure fee, you may end up leaving with less money than when you entered the retirement village. This may, or may not, be offset by other features of your contract such as lower maintenance charges.

Choosing a retirement village

Deciding where you want to live in your retirement can be daunting. No one knows what the future holds, so you need to make sure you take into account various situations that may arise. Sit down with your family and discuss your thoughts. Often, family members will want to be involved in your decision and talking with them can help you work out what you want. If you have visited villages you are interested in and obtained their factsheets, you can compare the offerings.

Ask yourself:

- ❑ Why am I moving out of my home?
- ❑ How much do I want to spend a year?
- ❑ What do I enjoy doing to keep busy?
- ❑ Where are my friends and family?

If you decide you want to move into a retirement village, it is important that you choose the right village for your needs now and in the future. Village factsheets will assist you in this task so make sure you request one when you inspect a village. You can also request to inspect the relevant documents listed in the factsheet, such as the contracts you would be required to sign.

Have you considered?

- ❑ Your level of health now and in the future.
- ❑ What sort of services you want in the village.
- ❑ Location – How close the village is to public transport and other services such as shopping, medical and entertainment centres.
- ❑ Accessibility issues.
- ❑ The age of residents you'd like to live with.
- ❑ Whether you want to live near family and friends.

Ask current residents:

- ❑ their likes/dislikes about the village
- ❑ if the village is maintained to a high standard
- ❑ what kind of emergency call system is in place, and do staff assist?
- ❑ is there adequate parking for residents and visitors?
- ❑ is the village secure, well lit, safe?

You can also ask friends and family to come with you.

Understanding your financial situation is essential in working out what you can do when considering moving into a retirement village.

You should discuss your situation with:

- ❑ your financial adviser or bank manager
- ❑ your lawyer.

Remember to take the factsheet, disclosure statement and contracts with you.

Ask, does your annual income cover:

- ❑ maintenance charges?
- ❑ one-off and unplanned special levies?

When looking at your financial situation, also consider different scenarios. These may include – what happens if you need to move into aged care or you want to move out of the village?

Before you sign a contract

The retirement village operator must give you certain documents at least 21 days before you sign your contract. Check that you have been given:

- ❑ a copy of the residence contract
- ❑ a copy of the management contract
- ❑ the disclosure statement
- ❑ the village factsheet (if not previously provided)
- ❑ the village rules or by-laws, if any, and any agreement to abide by them.

Before you sign any contract, make sure you have:

- ❑ obtained legal and financial advice
- ❑ checked that any verbal assurances you have been given are included
- ❑ been given at least 21 days to consider the contract before you sign
- ❑ generally understood the contract and your cooling-off rights. Ask the operator to explain any areas you are unclear about
- ❑ not felt pressured into signing the contract – take more time if you need it.

Cooling-off

You can cancel a contract up to three business days after you sign. You must notify the retirement village operator in writing. You are entitled to the return of any ingoing contribution or deposit you have paid minus either $100 or 0.2 per cent of the ingoing contribution paid by you (whichever is greater).

More information

For more information, visit consumer.vic.gov.au/retirementvillages to view our Retirement villages section.

Living in the village

Village rules

A retirement village can have rules or by-laws about the use, enjoyment, control and management of the retirement village. The rules usually deal with:

- visitors and guests
- noise
- security
- pets
- garbage disposal
- car parking
- restrictions on the use of services and facilities
- the external appearance of residents' premises
- gardening and landscaping.

You can only create, change or revoke retirement village rules by special resolution.

A copy of these rules must be included in the residence documents provided to you before entering the village.

If your village has an owners corporation, you must also follow the rules set out by the owners corporation regarding the use of the common property.

Communication

Good communication is at the heart of successful retirement village living. Communication between village residents and between residents and operators is important in reducing and resolving disputes.

When problems arise, it is always best to first discuss the situation with the person concerned – your village operator, fellow residents or the residents' committee. Often people are not aware they are causing a problem and are willing to discuss ways to solve it.

Good communication channels build strong relationships and may prevent such situations arising.

Residents' committee

Residents may elect a residents' committee to represent their interests. Some residents' committees are involved in organising outings and recreational activities, and helping to resolve minor disputes. Residents may choose not to have a residents' committee.

All residents can stand for election to the residents' committee. Committee members hold office for one year from the date of the election, and may be re-appointed.

A committee member can be removed from office by a special resolution. Residents' committees establish their own meeting procedures, decide how often to meet and call meetings of all residents.

Annual meetings

The retirement village operator must hold an annual meeting of residents. Information provided before the meeting must include:

1. A statement signed by the retirement village operator, which details:
   - refundable ingoing contributions – whether contributions that should have been paid out over the past 12 months were paid in full and according to requirements. The statement must give reasons for any failure to do so
   - debt management – whether the owner is aware of any reasons why the village will not be able to meet its debts during the next 12 months, and the details of those reasons.

2. A financial statement prepared by the manager that details:
   - the previous 12 months' income and expenditure
   - any provision for future extraordinary or major works
   - anticipated expenditure on goods and services for the next 12 months
   - any increases and any proposed increases in maintenance charges to be paid by residents
   - any special levies residents may be asked to pay.

   The financial statement must be audited, unless residents have agreed by special resolution.
3. A report on internal complaints and disputes during the past year, including:
   - the number and types of complaints and disputes
   - action taken to resolve these and their outcomes
   - any changes made, or proposed, to address issues identified as requiring a broader response.

It is good practice for the operator to provide this information to you no later than 14 days before the meeting.

If you cannot attend a meeting

If you cannot attend an annual meeting or a residents' committee meeting, you can appoint a family member or any other trusted person to represent you. This person holds your voting proxy and their vote is counted as if it were yours. Retirement village managers, their close associates or a person nominated by the manager cannot hold a resident's voting proxy unless the resident is a relative. Any such proxies given after changes in January 2006 to the *Retirement Villages Act 1986* are invalid.

Power of attorney

A power of attorney enables you to appoint a family member or trusted friend to manage your legal and financial affairs if you become ill or travel overseas.

Until 30 January 2006, the law allowed residents' powers of attorney to be held by the village manager, or a close associate, or a person nominated by the manager. This is no longer permitted. A retirement village manager, their close associate or a person nominated by the manager cannot hold a resident's power of attorney, unless the resident is a relative of the manager. However, any such powers of attorney that existed before 30 January 2006 remain unchanged.

Resolving disputes

Internal dispute resolution process

All Victorian retirement villages must have an internal dispute resolution process to deal with complaints about management and disputes between residents.

The process must be detailed in writing and copies of it must be readily available from the retirement village operator. The document must detail:

- when and where complaints can be made, and who they can be made to
- how a complaint about management or a dispute between residents will be handled
- information about other options for dispute resolution – see below.

Other options for resolving disputes between residents

For disputes between residents, you can also:

- seek assistance from your residents' committee
- contact Consumer Affairs Victoria for information and advice
- contact the Dispute Settlement Centre of Victoria (DSCV) for advice on dispute resolution assistance
- apply to the Victorian Civil and Administrative Tribunal (VCAT), but only if you and the other resident are members of an owners corporation and your dispute involves an owners corporation issue.

Be aware of the impact disputes can have on other residents. You may want to consider if this is something that you do not like, or whether it is impacting other residents.

Disputes with village operators

If you have an issue with the running of the retirement village or the operator, you should first seek to resolve it within the village, following the village's internal dispute resolution process. If that is unsuccessful, you can seek:

- information and advice from us
- dispute resolution assistance from DSCV.

Other avenues for resolving disputes

If you have tried unsuccessfully to resolve your management complaint by using the internal dispute resolution process, you can consider engaging another external service, such as a lawyer, mediator or dispute resolution body.

If you decide to proceed to litigation in the courts or in VCAT, bear in mind the possible effects on the parties and the village generally. Litigation can be costly and time consuming. It can disrupt the village and take a mental and emotional toll on the parties.

Alternative approaches to the issue that will help maintain ongoing village relationships should be carefully considered, and consultation with other residents is recommended.

Resolving retirement village disputes through the Dispute Settlement Centre of Victoria (DSCV)

DSCV may be able to help resolve a dispute between residents, or between a resident and a retirement village operator.

For more information, visit the DSCV website (disputes.vic.gov.au).

If the parties cannot agree, they can take the matter to VCAT for a decision that is binding on both parties.

Good practice protocols

Consumer Affairs Victoria has worked with bodies representing the retirement village industry and residents to develop a series of protocols for addressing common issues in retirement villages.

Our guide, *Retirement villages: Good practice to address key issues*, while aimed at village operators, also provides information that may be useful to residents.

The protocols cover:

- changes to services
- maintenance charges and processes
- what is covered by service and capital charges
- presentation of the annual financial statement
- marketing procedures for a unit when a resident leaves or dies
- ongoing charges after a resident leaves or dies
- refurbishment and reinstatement of units.

You can download *Retirement villages: Good practice to address key issues* at **consumer.vic.gov.au/forms**

Responsibilities of the manager

Village managers have certain responsibilities when you report a complaint to them. For example, they must:

- record the parties involved, date, nature of the complaint, actions taken and outcomes
- establish a separate record and keep it up-to-date for any complaint not resolved within 72 hours (excluding weekends and public holidays)
- present a report on complaints to the annual meeting of residents. This report must not identify the parties to the dispute.

A retirement village manager cannot:

- force you to make a complaint, or to put a complaint in writing
- penalise you because you have made a complaint or plan to do so
- encourage you not to make a complaint
- take action to resolve a dispute without the consent of all parties
- deal with a dispute between residents if it is already being dealt with by the residents' committee
- prevent you from being represented by another person throughout the resolution of your complaint
- follow procedures inconsistent with or overriding existing law (for example, privacy laws) or the resident's contract terms
- identify parties to a dispute in the report to the annual meeting of residents.

Fees

The fees you pay are determined by your contract. All retirement villages have maintenance charges that go towards the upkeep of the village and contribute to staff salaries.

Please refer to 'Understanding retirement village fees' on page 13 for more information on:

- ingoing contributions
- maintenance charges
- special levies.

Fees charged when you leave a retirement village

You may have to pay a significant amount when you leave a retirement village, and some fees can continue even after you leave.

See 'Understanding what it will cost when you leave the village' on page 15 for details on:

- what happens to your ingoing contribution
- departure/exit fees
- departure/exit entitlements
- ongoing charges.

Selling a strata title unit

If you are an owner resident and signed your contract after 1 August 2006, you have the right to sell your unit through the agent of your choice.

If you engage an independent estate agent, the retirement village operator:

- is not allowed to charge a fee or seek a commission for the sale
- can decide whether to approve the buyer as a resident. If the operator does not approve the buyer, the sale may not go ahead. Disputes about this must be resolved through VCAT.

Before you sign a contract with an estate agent to sell your unit, remember that:

- operators cannot require people buying a strata title unit to assign exclusive selling rights to them (applicable only to contracts signed after 1 August 2006)
- the agent must advise you in writing if you have to pay a commission if the sale does not proceed because the operator does not approve the buyer. The agent must get you to initial the page containing this information.

Depending on the terms of your contract, you may also have to pay the retirement village operator:

- a share of any capital gains
- departure fees and charges drawn from the proceeds of the sale.

You will continue to pay owners corporation fees until a buyer settles on the property, no matter how long it takes to find a buyer, just as you would with any other strata title property sale.

If a retirement village operator has a waiting list but is not the selling agent for your unit, you do not have to sell to people on that list and the operator does not have to give the waiting list to your selling agent.

Aged care payments – non-owner residents

If you are a non-owner resident, the payment of your exit entitlement could be delayed if the village operator cannot quickly find another person to occupy your unit.

This delayed payment could be a problem for non-owner residents who need to meet the costs of moving into an aged care facility.

In 2006, a regulation was introduced to protect non-owner residents in this situation, and enable them to access money for their daily accommodation payments (DAPs) or refundable accommodation deposit (RAD). In response to changes to how aged care facilities can charge new residents for their accommodation, this regulation was changed in 2017 to only require retirement village operators to fund DAPs for new residents.

Retirement village operators have different obligations for assisting you to enter aged care, depending on when you entered the village.

If you signed your retirement village contract before 30 July 2017

If you enter aged care and your retirement village unit has not yet changed hands allowing you to access your exit entitlement, the village operator must, upon request, fund your:

- DAPs from your entry into aged care until you receive your exit entitlement, or
- RAD no later than six months after your entry into aged care (unless the operator is granted a hardship exemption by VCAT).

In both cases, the operator must only fund the DAPs or RAD up to a maximum of 85 per cent of your estimated exit entitlement. At the time when the exit entitlement is payable, any aged care payments funded by the operator will be deducted.

If you signed your retirement village contract on or after 30 July 2017

If you enter aged care and your retirement village unit has not yet changed hands allowing you to access your exit entitlement, the village operator must, upon request, fund your DAPs from your entry into aged care until you receive your exit entitlement.

The operator must only fund the DAPs up to a maximum of 85 per cent of your estimated exit entitlement. At the time when the exit entitlement is payable, any aged care payments funded by the operator will be deducted.

Requesting funds for an aged care payment

The retirement village operator has 14 days to comply with a request, even if that takes the payment date beyond the due date of your aged care payment. Notify the operator well before your payment is due, so you can make the payment on time. Tell the operator or the operator's authorised representative the:

- amount of the aged care payment
- date you have to pay it.

If you are asked to leave

Removal of non-owner residents

The retirement village owner can terminate your contract and ask you to leave if you:

- breach a provision of your retirement village contract. The retirement village owner may give you written notice that you must either fix the breach or stop committing the breach within 28 days. If you do not comply and the breach is substantial, the owner may give you a further written notice detailing the breach and ordering you to leave within 60 days
- have a periodic tenancy. The retirement village owner can give you written notice to leave at the end of six months or at the end of the rental period, whichever is later.

A retirement village owner may also tell you in writing to leave the retirement village within 14 days if:

- your contract allows the owner to give you this notice, and the owner has met any contract conditions that must be complied with before this notice can be given, and
- the notice includes a copy of a certificate stating that you need care unavailable at the retirement village. This certificate must be signed by two registered medical practitioners, as defined by the *Medical Practice Act 1994*. You must have nominated or agreed to at least one of the medical practitioners.

Removal of owner residents

Under the *Retirement Villages Act 1986*, a retirement village operator cannot terminate your occupancy if you own the title to your residence. However, the operator may be able to terminate your management contract in the above circumstances. Seek legal advice if the operator tries to make you leave.

More information

For more information, visit consumer.vic.gov.au/retirementvillages to view our Retirement villages section.

Getting help and advice

Consumer Affairs Victoria

consumer.vic.gov.au

Phone 1300 55 81 81

Housing for the Aged Action Group

oldertenants.org.au

haag@oldertenants.org.au

Phone 03 9654 7389

Fax 03 9654 3407

1st Floor Ross House
247–251 Flinders Lane
Melbourne VIC 3000

Residents of Retirement Villages Victoria Inc.

rrvv.org.au

rrvv.vic@gmail.com

Phone (03) 9015 8402

Seniors Information/COTA Victoria

cotavic.org.au

cotavic@cotavic.org.au

Phone 1300 135 090

Level 4, Block Arcade
98 Elizabeth Street
Melbourne VIC 3000

Law Institute of Victoria – Legal Referral Service

liv.asn.au/referral

inquiries@liv.asn.au

Phone (03) 9607 9311

470 Bourke Street
Melbourne VIC 3000

Retirement Living Council of the Property Council of Australia

retirementliving.org.au/village-life

vic@propertycouncil.com.au

Phone (03) 9650 8300

Leading Age Services Australia (Victoria)

lasavictoria.asn.au

info@lasavictoria.asn.au

Phone (03) 9805 9400

Level 11, 600 St Kilda Road
Melbourne VIC 3004

National Seniors Australia

nationalseniors.com.au

general@nationalseniors.com.au

Phone 1300 765 050

Dispute Settlement Centre of Victoria

disputes.vic.gov.au

dscv@justice.vic.gov.au

Phone 1300 372 888

Level 4, 456 Lonsdale Street
Melbourne VIC 3000

Victorian Civil and Administrative Tribunal (VCAT)

vcat.vic.gov.au

vcat-rt@vcat.vic.gov.au

Phone 1300 01 8228

55 King Street
Melbourne VIC 3000

1800RESPECT

1800RESPECT provides a counselling helpline, information and support for people experiencing sexual assault or domestic and family violence. The service is available 24 hours a day, seven days a week.

1800respect.org.au

Phone 1800 737 732

Notes

consumer.vic.gov.au
1300 55 81 81 (local call charge)

Services from Consumer Affairs Victoria are also available at Ballarat, Bendigo, Box Hill, Dandenong, Geelong, Mildura, Morwell, Reservoir, Shepparton, Wangaratta, Warrnambool, Werribee and Wodonga. Our mobile service regularly visits rural communities.

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TIS

Translating and Interpreting Service **131 450**

TTY

Textphone or modem users only, ring the National Relay Service (NRS) on **133 677**, then quote **1300 55 81 81**.

Callers who use Speech to Speech Relay dial **1300 555 727**, then quote **1300 55 81 81**.

VICTORIA State Government