

# Retirement villages in WA Series - Part 3: Residence Contracts and Consumer Protection

David McMullen presents the final of his three part series on the relevant legal frameworks and issues faced by seniors and their families in this area (August 2017)

## Residence contracts

Residence contracts are an essential feature of any retirement village. They are defined in the *Retirement Villages Act 1992 (WA)* (**Act**) as:

*'a contract, agreement, scheme or arrangement which creates or gives rise to a right to occupy residential premises in a retirement village, and may take the form of a lease or licence'*

A residence contract must comply with prescribed requirements; and prior to being entered into, the prospective resident must be given various prescribed information. To ensure compliance with all the requirements, it is necessary to consult not just the Act, but also the Regulations and Code outlined in Part 1 of this Retirement Villages in WA series (**Series**).

A typical residence contract in a 'lease for life' retirement village operates similar to a residential tenancy agreement; but it will differ due to the added emphasis on services and consumer protection.

There is no universal or industry standard residence contract in WA. Residence contracts will however typically address common features including fees and charges; personal and communal services and amenities; maintenance and refurbishment; financial and day to day village management; marketing; and reletting processes. In order to comply with the legislation, residence contracts will state also the legal basis of occupancy (eg whether as a lease, licence or strata title: refer to Part 2 of this Series).

An important precursor to entry into a residence contract is the provision of a disclosure statement in the appropriate form prescribed by regulation.

After entering into a compliant residence contract, prospective residents enjoy a 7 working day cooling off period.

## Consumer protection – a key focus

WA's retirement village legislation emphasises consumer protection. The Commissioner for Consumer Protection has various functions for the purpose of the legislation; and an overview of the Commissioner's activities can be found on the Department of Commerce website: <https://www.commerce.wa.gov.au/consumer-protection/retirement-villages>

Residence contract requirements and a prospective resident's right to information are an important part – but not the only part – of the consumer protection framework.

Controls around advertising and promotion of retirement villages are aimed at giving consumers a degree of certainty and transparency about the village they are entering into. For example, the owner of land must obtain all necessary consents to develop a retirement village before any sales promotion is undertaken (though market surveys or taking expressions of interest would be acceptable).

Village management provisions determine the manner in which a village must be operated, once established. Important topics such as budgets, management procedures, resident consultation and residents' committees are all dealt with.

There are also processes for resolution of disputes either between residents, or between residents and an administering body, with a focus on conferral and mediation. These processes operate in tandem with avenues for dispute resolution by application to the State Administrative Tribunal, which is empowered to make orders in respect of various retirement village disputes.

An important consumer protection aspect to the retirement village landscape is that these are intended to be offered as permanent accommodation for the residents. In the common lease for life scenario, if not literally granted 'for life' a residence contract term will generally be framed as a 99 year term, or at least have a substantial term and option to renew that would exceed the remaining lifespan of a retired person entering a village. As is aptly explained by a note found in the *Fair Trading (Retirement Villages Code) Regulations 2015 (WA)*:

*'[A] residence contract may be terminated only in a limited number of circumstances, as set out in the residence contract or the Retirement Villages Act 1992.*

*The administering body of a retirement village cannot terminate a residence contract on its own; that is, without the agreement of the resident. However, a resident or the administering body may apply to the State Administrative Tribunal to terminate a residence contract under circumstances as specified in the Retirement Villages Act 1992'.*

### **How can I find out more?**

At IRDI Legal, our Health & Ageing lawyers can advise you on the various legal issues arising in the retirement village, health aged care industries.

Together with our experienced Property and Commercial teams, we can help you complete a broad range of transactions and resolve the associated legal issues without compromising our friendly, personal service. Please contact David McMullen on (08) 9443 2544 or [david.mcmullen@irdi.com.au](mailto:david.mcmullen@irdi.com.au) to discuss how we can assist.