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RETIREMENT VILLAGES

There are differing motivations for moving into retirement villages — including receiving better support and companionship, greater security and having easy access to medical care. Retirement villages can vary from large commercial villages to small ‘not-for-profit’ villages, many of which also include access to varying levels of hospital and dementia care. Buying into a retirement village is a very different process then buying residential property, so it is essential you understand both the legal and financial implications.

ENTERING A VILLAGE

Upon agreeing to enter into a retirement village, the resident is required to pay a sum as a capital contribution. Usually, 20 to 30 percent of this capital contribution accrues to the village over the following years to cover expenses, such as ‘long term’ maintenance, communal facilities and management fees. These funds are usually deducted at the end of the resident’s occupation and are commonly called a ‘deferred management fee’ or a ‘fixed deduction’ and are kept by the village.

PAYMENTS, FEES AND CHARGES

Retirement villages also require residents to pay regular fees to assist with payments of outgoings, such as insurance, local authority rates and services, which include ‘day-to-day’ maintenance of the retirement village, gardening and security. Retirement villages also provide additional services to residents on a ‘user pays’ basis.

For most residents, they are responsible for paying their own power, telephone, contents insurance and medical costs, in addition to their normal personal and household expenditures. However, services retirement village apartments are an exception and moist retirement villages include these costs as part if the service apartment package.

There are varying types of ownership and occupation arrangements in place for retirement village units. However, the majority of retirement villages in New Zealand offer a ‘License to Occupy’ arrangement. This grants the resident the right to live in the unit, without having any ownership rights in the unit.

Irrespective of the type of ownership/occupation rights, all units in registered retirement villages have a interest registered on the title, which provides the resident with security of residency. Effectively, should the retirement village find itself in financial difficulty, the residents cannot be evicted or have their units sold. Your lawyer will check the ownership/occupation structure and relevant property titles and explain the implications of the various structures.

Residents must be consulted about any proposed changes to their retirement village fees and charges. There may also be instances where an increase in regular fees means that a resident may no longer be able to meet their retirement village expenses. In these circumstances, it is important to know about the retirement village’s options for payment. Some retirement villages offer the option of deferred payments, whereby the retirement village will permit payments or charged to be deferred until the resident leaves the retirement village (ie. taken from their capital contribution). In these instances, interest is often charged, so it is important to understand the implications of this deferred payment type.

THE STATUTORY SUPERVISOR

It is essential that all retirement villages have a Statutory Supervisor, unless they have received an exemption. The role of the Statutory Supervisor is to protect the financial interests of the retirement village along with the interests of the residents. The statutory Supervisor’s responsibilities include listening to residents complaints, ensuring the retirement village is being run in a proper manner, and reporting on the activities and performance of the retirement village.

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DISCLOSURE STATEMENT

A Disclose Statement is required to be provided by the retirement village to every prospective resident.
This statement must include information on:

- The type of legal ownership/occupation structure in place for the retirement village unit;
- The costs involved in entering and exiting the retirement village, and the financial implications of leaving the retirement after 2, 5 and 20 years;
- The facilities and services offered by the retirement village, and the charges for these;
- How the resident's occupation can be cancelled, and the statutory 'cooling off period';
- How the sales process works after the resident leaves, and the roles the retirement village takes in selling the unit; and
- Details on who owns the retirement village and who the key management personnel are, including who the Statutory Supervisor is.

CANCELLATION OF THE AGREEMENT

One the resident has received the necessary advice regarding the occupation of a unit and they have signed the Occupation Agreement, a deposit is usually required to be paid. This deposit is held by the Statutory Supervisor until the settlement date or until such time as the resident validly cancels the Occupation Agreement. A resident may cancel the Occupation Agreement in any one or more of the following circumstances:

- Within the statutory 'cooling off period' - ie. within 15 working days (or any longer 'cooling off period' granted by the retirement village) of the date the resident signed the Occupation Agreement;
- If the retirement village unit is in the process of being built and it has not been completed within 6 months of the proposed completion date as stated in the Occupation Agreement; or
- If the resident becomes aware of a 'substantial breach' after signing the Occupation Agreement. Examples of such include discovering missing required information or that the retirement village is not registered.

OCCUPATION AGREEMENTS

An Occupation Agreement details the resident's right to occupy a retirement village unit. It also details what services and facilities are available and the obligations placed on the resident. Often the prospective resident will have had multiple conversations with the retirement village regarding their proposed occupation of the unit before they receive their copy of the Occupation Agreement. It is important to ensure that if any special arrangements have been negotiated with the retirement village in those conversations (ie. permission to bring a pet), this is reflected in the Occupation Agreement or that special arrangements have been recorded in writing.

The retirement village should also provide prospective residents with the Code of Residents Rights and the Code of Practice (which details the basic requirements that retirement village operators must meet to fulfil their legal obligations under the Retirement Villages Act 2003).

Most retirement villages have rules in place to cover a range of issues, such as visitors, renting units, parking and whether residents are able to have pets. Residents must be provided with these rules and consulted with if changes are made to these.

SELLING/VACATING A UNIT

The costs associated with selling/vacating a unit are significant. The Disclosure Statement must detail the amounts the resident is likely to receive if they leave the retirement village. These figures are intended to provide clarity regarding the deductions the retirement village may take when the unit is sold.

The Occupation Agreement will detail if a resident is entitled to receive a share of the capital gain from the sale of their unit. Usually residents are not entitled to any share. Some Occupation Agreements contain a capital loss clause, which means if the unit sells for less then the 'capital contribution' the resident paid for it, they may be expected to cover the retirement village's loss.

Most retirement villages take control of the sale of a unit when a resident leaves but will keep the resident fully informed. The resident is likely to have to wait until their unit is sold before they receive their repayment from the retirement village.

Legal advice is essential before entering into a retirement village. Should you have any questions around retirement village living please contact us to discuss these

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