

Retirement villages in WA

Series – Part 1: what are the housing options for seniors?

David McMullen presents the first of a three part series on the relevant legal frameworks and issues faced by seniors and their families in this area.
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What is a ‘retirement village’?

A retirement village is a residential development, occupied predominantly by retired residents and governed in WA by a regulatory framework established by:

- *Retirement Villages Act 1992 (WA) (Retirement Villages Act)*;
- *Retirement Villages Regulations 1992 (WA)*; and
- *Fair Trading (Retirement Villages Code) Regulations 2015 (WA)*.

What are some alternatives?

While this series will focus on retirement villages, these are not the only development option for the housing of seniors. For example:

- A strata titled development can be set up with a restriction under the *Strata Titles Act 1995 (WA)* limiting occupation only, or predominantly, to ‘retired persons’.
- A condition of planning approval and corresponding notification on title can restrict occupants to ‘aged persons’.
- ‘Residential parks’ and ‘lifestyle villages’ under the *Residential Parks (Long-stay Tenants) Act 2006 (WA)* are another model that have been adapted to use for seniors housing.

The retirement village framework is a very different regime to the Commonwealth-funded residential ‘nursing home’ style aged care governed by the *Aged Care Act 1997 (Cth) (Aged Care Act)*. In fact, the contract given to a resident entering a retirement village must make the specific point that aged care facilities and services are not regulated by the Aged Care Act.

A scheme for ‘retired persons’

A retirement village is occupied predominantly by ‘retired persons’ – meaning ‘a person who has attained the age of 55 years or retired from full-time employment or a person who is or was the spouse or de facto partner of such a person’.

Owners and Administering Bodies

A retirement village needs someone to own and/or run it. Rights and responsibilities are imposed both on the owner and the ‘administering body’ of a retirement village. These may be – but are not necessarily – the same person or entity.

The administering body of a retirement village is defined in the Retirement Villages Act as *'the person by whom, or on whose behalf, the retirement village is administered and includes a person (other than a resident) who is the owner of land within the retirement village'*.

For various reasons, a retirement village may be leased by its owner to an administering body who then subleases individual units to residents.

An owner or administering body might also engage someone else to administer a retirement village 'on their behalf'. An organisation with expertise in running retirement villages could, for example, be contracted to manage and market a retirement village developed by an unrelated third party who is new to the industry, or for whom retirement villages is not their core business.

There are various examples of retirement villages which are managed and marketed by a party (and branded accordingly), but owned by an unrelated third party.

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 to discuss how we can assist.