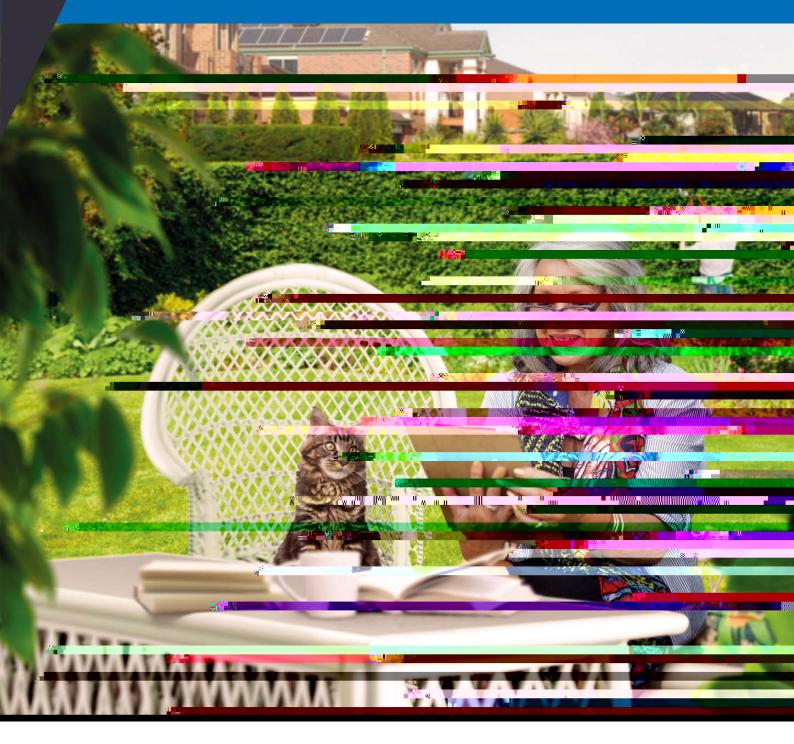
Guide to choosing and living in a retirement village





consumer.vic.gov.au

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, speci cally the Retirement Villages Act 1986.

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Additional copies

This guide is available from Consumer Affairs Victoria, consumer.vic.gov.au/forms or 1300 55 81 81.

Contents

Introduction	. 4
Glossary	5
What is a retirement village?	8
Understanding retirement village and communal living	.10
Retirement village contracts	1.1
Understanding retirement village fees	.13
Understanding what it will cost when you leave the village	15
Choosing a retirement village	.18.
Before you sign a contract	.1.9
Living in the village	20
Resolving disputes	.22
Responsibilities of the manager	24.
Fees	25
Selling a strata title unit	26
Aged care payments – non-owner residents	.27
If you are asked to leave	.28
Getting help and advice	29

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 nancial 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 bene t of residents.

Special resolution

A resolution that is passed:

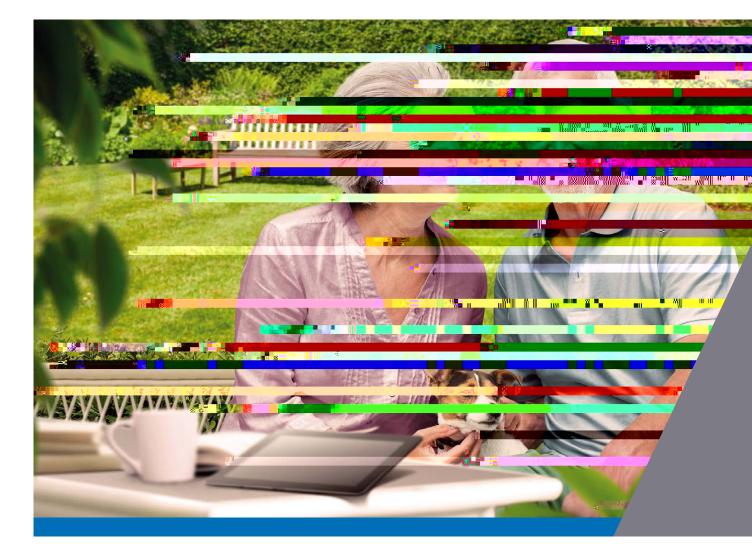
- at a meeting of which at least 21 days written notice has been given to all residents detailing the intention to propose the resolution as a special resolution, and
- at the resulting meeting by at least 75 per cent of residents attending and voting.

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.





Retirement village contracts can be long, complex and dif cult 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 nancial advice from practitioners who specialise in retirement village contracts to help you understand the contract conditions and the nancial implications of what you are committing to.

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

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 pro t.

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 rst 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 nancial 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 bene t 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

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, nd 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 de nition 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

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 speci es that residents will have to pay for a new bowling green or pool.





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, ve 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 nding 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 (pro t 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.



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 nancial 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

- 2. A nancial 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 nancial 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 identi ed 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 nancial 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 rst 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 nancial 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





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 signi cant amount when you leave a retirement village, and

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

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 nd 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 x 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 certi cate stating that you need care unavailable at the retirement village. This certi cate must be signed by two registered medical practitioners, as de ned 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.

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

Phone03 9654 7389Fax03 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

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.

