Navigating Retirement Village Contracts

Dear Friends,

Retirement village contracts are complex legal documents that will govern one of the most important decisions of your life. Unlike a typical property purchase, retirement village contracts involve unique financial arrangements, ongoing fees, and exit provisions that require careful understanding.

This edition demystifies retirement village contracts and legal requirements, empowering you to make informed decisions and protecting your financial interests. We'll explore the different types of contracts, what to look for, what to avoid, and why independent legal advice is essential.

The Key Insight:

A retirement village contract is not just a property purchase – it's a comprehensive agreement that affects your finances, lifestyle, and future options. Never sign without independent legal advice from a solicitor experienced in retirement living.

Types of Retirement Village Contracts

Understanding the fundamental differences between contract types is crucial to making the right choice for your circumstances.

Loan-License Agreements (Most Common)

What it means: You pay an entry contribution (loan) to occupy a unit under a license agreement. You don't own the property.

How it works:

- You pay an ingoing contribution (typically $400,000 - $800,000+)
- You receive the right to occupy the unit
- When you leave, you receive your contribution back minus the Deferred Management Fee (DMF)
- You 'may' receive a share of any capital gain
- You pay ongoing monthly fees for services and maintenance

✓ Advantages:

- Lower initial cost than freehold purchase
- Access to village facilities and services
- Some protection from property market downturns
- Maintenance and security included

⚠ Considerations:

- You don't own the property
- DMF reduces your exit amount (typically 25-35% of entry price)
- Limited or no capital gain in many contracts
- Ongoing monthly fees can increase
- May need to wait for unit resale before receiving funds

Leasehold Arrangements

What it means: You purchase a long-term lease (typically 99 years) on the unit.

How it works:

- You buy a lease rather than freehold title
- More similar to traditional property ownership
- You typically benefit from capital gains
- You're responsible for maintenance and repairs
- You can usually sell the lease independently

✓ Advantages:

- More control over your property
- Generally, receive capital gains
- Can sell independently (subject to village approval)
- Clearer property rights

⚠ Considerations:

- Higher initial purchase price
- Responsible for maintenance costs
- Lease eventually expires (though typically very long term)
- May still pay village amenity fees

Freehold/Strata Title (Less Common)

What it means: You own the property outright, similar to any property purchase.

How it works:

- You purchase the property with full ownership
- You receive the title deed
- You benefit from all capital gains
- You can sell on the open market
- You pay body corporate or village fees for shared facilities

✓ Advantages:

- Full property ownership
- All capital gains are yours
- Can sell independently
- Property is part of your estate
- Can rent out or make modifications (subject to bylaws)

⚠ Considerations:

- Highest initial purchase price
- Fully exposed to property market fluctuations
- Responsible for all maintenance and repairs
- Body corporate fees can be substantial

Rental/Weekly Fee Arrangements

What it means: You rent the unit, similar to any rental property.

How it works:

- No large upfront payment required
- Pay weekly or monthly rent
- Typically includes services and facilities
- Can leave with minimal notice (subject to the rental agreement)

✓ Advantages:

- No large upfront capital required
- Flexible exit arrangements
- All maintenance included
- Preserves capital for other uses or family

⚠ Considerations:

- Higher ongoing costs
- No capital gain benefits
- No asset to leave in estate
- Rent can increase over time
- Less security of tenure

💰 Understanding the Deferred Management Fee (DMF)

The DMF is one of the most significant financial aspects of retirement village contracts, yet it's often misunderstood.

What is a DMF?

The Deferred Management Fee (also called an Exit Fee or Departure Fee) is an amount deducted from your ingoing contribution when you leave the village. It compensates the operator for services provided and facility access during your residency.

How DMF is Typically Calculated:

- **Fixed percentage:** Usually 25-35% of the ingoing contribution
- **Accrual period:** Often accumulates at 2-7% per year for 5-7 years until cap reached
- **Based on entry price:** Calculated on your ingoing amount, not the resale price
- **Maximum cap:** Most contracts cap the DMF at 30-35%

📊 Example Calculation:

Scenario: *You pay $500,000 entry contribution. DMF is 6% per year for 5 years (30% maximum).*

- ***Year 1:*** *DMF = $30,000 (6% of $500,000)*
- ***Year 2:*** *DMF = $60,000 (12% of $500,000)*
- ***Year 3:*** *DMF = $90,000 (18% of $500,000)*
- ***Year 4:*** *DMF = $120,000 (24% of $500,000)*
- ***Year 5+:*** *DMF = $150,000 (30% of $500,000 - capped)*

Exit after 5 years: *You receive $500,000 - $150,000 = $350,000 (plus any capital gain share, minus selling costs)*

⚠ Critical DMF Questions to Ask:

- What is the exact DMF percentage and cap?
- How quickly does the DMF accrue?
- Is DMF calculated on ***entry*** price or ***exit*** price?
- Are there any circumstances where DMF is reduced or waived?
- What happens to DMF if the unit sells for less than your entry price?
- Is there a time limit for DMF accrual or is it ongoing?

Capital Gains and Losses

Understanding how property value changes affect your finances is crucial.

Capital Gain Sharing Arrangements

Contract Type	Capital Gain Share	Capital Loss Impact
No Share	Village keeps 100%	You receive full entry contribution back
50/50 Share	You receive 50% of gain	You absorb 50% of loss
Full Share	You receive 100% of gain	You absorb 100% of loss

Capital Gain Example:

Entry contribution: *$500,000*
Resale price: *$600,000*
Capital gain: *$100,000*
DMF: *30% = $150,000*
No capital gain share:
Exit payment = $500,000 - $150,000 = $350,000
50% capital gain share:
Exit payment = $500,000 + $50,000 (50% of gain) - $150,000 = $400,000
100% capital gain share:
Exit payment = $600,000 - $150,000 = $450,000

⚠ Capital Loss Considerations:

If the unit sells for less than your entry price, you may still owe the full DMF depending on your contract. This could significantly reduce your exit amount. However this scenario is very rare.
Example: Entry $500,000, sells for $450,000, DMF is $150,000 (30% of entry price) = You receive only $300,000

💵 Ongoing Fees and Charges

Beyond the entry contribution, you'll pay regular fees throughout your residency.

Types of Ongoing Fees

General Service Fee (Monthly)

Covers day-to-day village operations and services:

- Building and grounds maintenance
- Common area cleaning
- Village administration
- Security services
- Garden and pool maintenance
- Building insurance

Typical range: $300 - $800 per month

Maintenance Reserve Fund (Monthly) or Capital Works Fund

Contributions to fund major repairs & maintenance:

- Roof repairs
- Major building works
- Equipment repair
- Facility upgrades

Typical range: $100 - 400 per month

Personal Utilities and Costs

Expenses you pay directly:

- Electricity and gas (individual meters)
- Telephone and internet
- Contents insurance
- Council rates (in some contracts)
- Emergency call system (sometimes extra & sometimes included in the monthly fees)

⚠ Fee Increase Provisions:

Most contracts allow operators to increase fees annually. Critical questions:

- How are fee increases calculated? (CPI, percentage, at operator discretion?)
- What is the historical rate of fee increases at this village?
- Are there any caps on annual increases?
- What happens if you can't afford increased fees?

📋 Exit and Resale Provisions

Understanding how and when you can leave is just as important as understanding how you enter.

Exit Process Timeline

Typical Exit Steps:

1. **Notice period:** Provide written notice (typically 30-90 days)
2. **Unit preparation:** Return unit to agreed standard
3. **Marketing period:** Village markets the unit (you may assist)
4. **New resident found:** Contract signed with incoming resident
5. **Settlement:** Financial matters finalised
6. **Exit payment:** You receive your calculated amount

Who Markets Your Unit?

Operator Marketing (Most Common)

- Village operator controls resale
- You have limited input
- Operator helps you set the price
- May prioritise newer units
- Timeline can be lengthy

Resident Marketing (Less Common)

- You can engage your own agent
- More control over process
- Usually faster resale
- Subject to village approval
- You pay agent fees

⚠ Critical Exit Questions:

- **Payment timing:** Do you receive funds when you leave or when unit resells?
- **Buyback guarantee:** Does operator guarantee to buy back after set period?
- **Ongoing fees:** Do you keep paying fees until unit resells?
- **Reinstatement costs:** What condition must you return the unit in?
- **Sale price approval:** Who controls the listing price?
- **Marketing costs:** Who pays for advertising and sales commissions?
- **Price reductions:** Can operator reduce price without your consent?

Aged Care and Higher Care Transitions

Your contract should clearly outline what happens if you need residential aged care.

Key Contract Provisions:

- **Temporary absences:** How long can you be away for health reasons?
- **Permanent relocation:** What triggers the end of your residence?
- **Ongoing fees during transition:** Do you keep paying until unit resells?
- **Priority for on-site aged care:** Do you get priority if village has aged care on-site?
- **Respite care provisions:** Can you use respite without ending contract?
- **Medical certification requirements:** Who determines you can't return?

⚠ The Double Payment Problem:

Many residents face paying for aged care while still paying village fees until their unit resells. This can create significant financial stress.
Ask: Does the contract provide any financial relief or fee reduction during this period?

Your Legal Rights and Protections

Australian states have specific legislation protecting retirement village residents.

State-Based Legislation

State	Primary Legislation	Key Protections
NSW	Retirement Villages Act 1999	Cooling-off period, dispute resolution, disclosure requirements
VIC	Retirement Villages Act 1986	Contract requirements, fee limitations, residents' rights
QLD	Retirement Villages Act 1999	Financial disclosure, dispute resolution, statutory protections
WA	Retirement Villages Act 1992	Contract standards, exit entitlements, dispute mechanisms
SA	Retirement Villages Act 2016	Comprehensive reforms, fair contracts, protection measures
TAS	Retirement Villages Act 2004	Resident protections, financial transparency

✓ Common Statutory Protections:

- **Cooling-off period:** Usually 7-15 days to cancel without penalty
- **Disclosure documents:** Operator must provide detailed information
- **Budget transparency:** Annual financial statements and budgets
- **Residents' committee:** Right to form and participate
- **Dispute resolution:** Access to tribunals and mediation
- **Contract terms:** Minimum standards for fairness

Cooling-Off Period

Most states provide a statutory cooling-off period after signing:

- Typically 7-15 days depending on state
- Cancel contract without penalty
- Full refund of any payments made
- Must provide written notice
- Starts from contract signing or receipt of disclosure documents (whichever is later)

⚠ Don't Rush Your Decision!

Even with a cooling-off period, avoid signing under pressure. Once the cooling-off period expires, exiting the contract becomes much more difficult and expensive.

Essential Documents You Must Receive

Operators are legally required to provide specific documents before you sign.

Mandatory Disclosure Documents:

- **Disclosure Statement – eg. NSW:** a comprehensive legal document that provides detailed information about the village's financial position, contracts, fees, rules, and resident rights
- **General Enquiry Document – eg. NSW -** Standardised summary of key contract terms
- **Residence Contract:** The full legal agreement
- **General Services Charges Estimate:** Breakdown of ongoing fees
- **Budget and Financial Statements:** Village financial position
- **Village by-laws and rules:** Regulations governing resident behaviour
- **Maintenance Reserve Fund report:** Status of major repair fund