

Strata retirement villages

Some retirement villages in NSW are set up as strata schemes. This information explains some of the things residents in a strata retirement village need to know.

Laws

Both the *Retirement Villages Act 1999* and the *Strata Schemes Management Act 1996* apply to strata retirement villages. The Acts operate side by side, with neither one taking priority over the other in most circumstances. The main differences between strata retirement villages and other types of villages are that, in a strata village, the owners corporation is responsible for maintenance of the common property and individual residents are responsible for the capital items they own in their unit. In other, non-strata, villages, the operator maintains the capital items that do not belong to residents.

Strata levies and recurrent charges

In a strata retirement village, residents who own a unit pay strata levies to the owners corporation and recurrent charges to the village operator. Strata levies cover the cost of managing and maintaining the common property in the strata scheme and administering the scheme.

Recurrent charges cover services provided by the village operator, such as an emergency call system, advertising, the village bus and auditing of the village accounts.

Strata levies are set by the owners each year at the annual general meeting of the owners corporation. Recurrent charges, on the other hand, are set out in the village contract between each resident and the operator. A resident is only liable to pay increased recurrent charges if the operator has given notice under Part 7 of the Retirement Villages Act. If the increase is not made according to a fixed formula in the contract and exceeds the CPI increase, the residents' consent is required or the NSW Civil and Administrative Tribunal's approval of the increase.

Meetings

In a strata retirement village an annual general meeting of the owners corporation must be held under the strata

laws. Separately to this, the Retirement Villages Act gives residents of the village the right to hold a meeting to consider and vote on any matter for which the residents' consent is required under the retirement village laws and any other matter affecting the operation of the village. These meetings can be held on separate days or one after the other, but not at the same time.

Executive and residents committees

Under the strata laws, each strata scheme must have an executive committee appointed by the owners corporation. Residents of a strata retirement village may additionally elect a residents committee if they wish. The committees can have the same or different members, so long as the person is entitled to be a member of each committee. However, non-residents, such as the operator, cannot be on a residents committee. Separate committee elections must be held, as different voting rights apply.

Voting rights

At a strata general meeting each owner has one vote for each lot. In certain cases a vote's value is based on unit entitlement. At a retirement village meeting only residents can vote. Lot owners who are not residents, such as the operator, cannot vote at a residents' meeting. Voting is based on one resident, one vote (that is, couples have two votes).

Voting at each meeting can only be about matters under the relevant Act. For example, a general meeting of the owners corporation can elect an executive committee but not a residents committee. The owners corporation votes on administrative and sinking fund levies, but not on recurrent charges increases.

Proxies

Proxies can be given under both Acts. However, each Act requires a particular proxy form. Care should be taken to ensure that the correct form is used. A proxy given under one Act has no effect at a meeting under the other Act.

This means a retirement village proxy cannot be used at the annual general meeting (AGM) of the owners corporation. Proxies under the retirement village laws cannot be given to the operator or a close associate of the operator, such as an employee or agent, and no person can hold more than two proxies in any village at any one time. These restrictions do not apply to proxies for strata scheme meetings.

Strata and village accounts

In a strata retirement village there must be two separate sets of annual accounts - the village accounts and the owners corporation accounts. The village accounts generally have to be audited while this is optional for the owners corporation accounts (except in the case of a strata scheme of more than 100 lots). There should be no duplication between the two sets of accounts. For instance, the village accounts should not contain details of income from strata levies or expenditure on the management or maintenance of common property.

Budgets

The budget processes under the two Acts are quite different. Under the strata laws a proposed strata budget detailing strata levies is sent with the notice of meeting before being voted on at the AGM.

Under the retirement village laws the operator must give the village's proposed annual budget, detailing recurrent charges income and expenditure, to all residents at least 60 days before the start of the village's financial year. If residents' consent for the budget is required, then the proposed budget must be considered and voted on at a meeting of residents, not at the owners corporation AGM.

Bylaws and village rules

Retirement villages usually have village rules that deal with matters like noise and pets. In a strata scheme such matters are dealt with under by-laws. To avoid confusion, the sections of the Retirement Villages Act about village rules do not apply to any part of a village that forms part of the strata scheme.

Managing the strata village scheme

In a strata scheme, the owners corporation is responsible for administering the scheme and maintaining the common property. An owners corporation may delegate some or all of its functions to a strata managing agent. A strata retirement village will also have a village operator. The managing agent and operator may or may not be the same person. Some owners corporations prefer to appoint a different agent from the operator to avoid potential conflicts of interest.

Resolving disputes

If a dispute is about the retirement village laws, an application may be made directly to the NSW Civil and Administrative Tribunal. In most cases strata disputes must go through mediation and adjudication before the matter may be taken to the Tribunal. The Tribunal is able to refer cases to the right system if an application is inadvertently made under the wrong Act.

More information

Strata living and Buying into a strata scheme? booklets as well as a range of information on the strata matters are available from any NSW Fair Trading Centre or our website www.fairtrading.nsw.gov.au