



Department of Commerce

Department of Local Government and Communities



Your Home: a guide to housing options for people over 55

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1 Your housing options

Housing needs change with time. If you are approaching or over 55, you may be considering changes to your housing that better meet your finances, lifestyle or present and future needs.

This guide is written to provide you with available options and information about each option. It includes information on:

- buying or building;
- strata titles;
- retirement villages;
- residential parks and lifestyle villages;
- renting;
- boarding or lodging;
- help to stay in your home;
- aged care options;
- accessing equity; and
- contracts and agreements.

There are different laws covering different housing options. The guide will explain which laws or rules apply and where you can go to find out more.

This guide is not a substitute for legal advice and we strongly recommend that you seek independent expert advice before entering into any major contract about buying, selling, building, leasing or receiving services.

It is important to think about the long-term consequences of your choices. For example, your care needs may increase with time, so it is a good idea to ensure that the decisions that you make now do not limit your choices in the future.

What's in a name? Retirement villages, lifestyle villages and strata title

Information sheets 3, 4 and 5 deal in detail with these options. Some complexes use the term 'retirement', 'lifestyle', 'gardens', 'units' or 'apartments' but they can mean different things and don't actually tell you what sort of housing is provided and which laws apply.

For the purposes of this guide:

- Retirement villages are those options covered by the *Retirement Villages Act 1992*.
- Lifestyle villages are those options covered by the *Residential Parks (Long-stay Tenants) Act 2006*.
- Strata title units come under the *Strata Titles Act 1985*, and may include strata units that have been purchased within a retirement village.

Check whether or not the option that you are considering is classed as a retirement village, residential park or strata title. This will affect your consumer rights and responsibilities.

The type of housing you have affects the consumer rights and responsibilities that you need to know about, so it is important to have a general sense of the legal difference between the different options.

The table and flow chart on the following pages will help you understand your housing options.

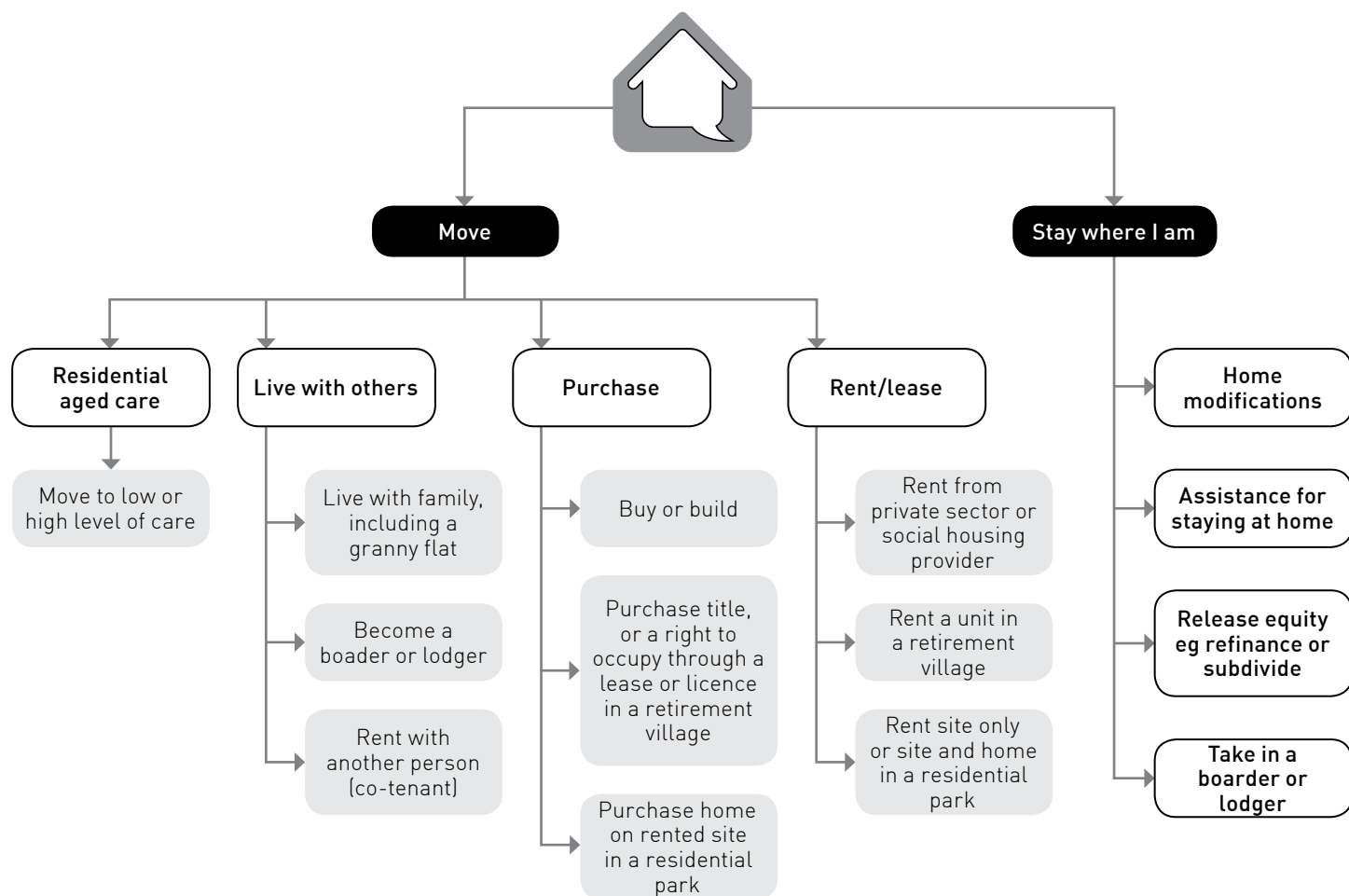
Remember that your housing needs can change and you may be a retiree for 30 to 40 years. Where you want to live, the lifestyle you want and your financial and care needs may vary from when you are 55 to when you are 85. It is important to be aware that the decisions you make now may limit your future choices. So it may be best to consider options that maximise future alternatives.

Apart from home ownership, which many people are familiar with, there are a number of different types of housing 'tenure'. The following table shows the differences between some of the housing options that people often confuse.

Retirement village	Residential park	Strata title	Renting	Boarding and lodging	Residential aged care
Covered by the <i>Retirement Villages Act 1992</i> .	Covered by the <i>Residential Parks (Long-stay Tenants) Act 2006</i> .	Covered by the <i>Strata Titles Act 1985</i> .	Covered by the <i>Residential Tenancies Act 1987</i> .	Covered by common law on contracts.	Covered by <i>Aged Care Act 1997</i> (Cwlth) if government funded.
Includes units and serviced apartments for 55s and over, retired and spouse/partner.	Includes mixed-use parks and lifestyle villages for over 45s.	Includes strata schemes for over 55s.	Includes private rentals and social housing (public and community housing).	Includes licensed lodging houses and private arrangements.	Includes hostels and nursing homes with high or low care.
Can purchase a lease or licence to occupy, rent premises or buy a strata unit.	Can buy or rent the premises, but the land is always leased.	Can purchase or lease property.	Tenants pay rent for exclusive possession of premises.	Rent may include meals and other services or just room.	May be charged care fees and accommodation bond.
May use many names, including 'lifestyle village'.	May use many names, including 'lifestyle village'.	A number of individual ownership/common property scenarios exist.	A tenancy agreement gives either a fixed or periodic term and sets out the conditions of the tenancy.	May have exclusive occupation of own room and share common areas.	May receive government subsidy.
Rights and responsibilities depend on individual agreements.	Structure must be relocatable.			Rights and responsibilities depend upon individual agreements.	Requires an Aged Care Assessment Team (ACAT) assessment to determine eligibility.

Laws mentioned above are aimed at highlighting points of difference. Other laws such as the common law on contracts and *Transfer of Land Act 1893* may also apply to some options.

This flow chart shows some of the housing options available when you are trying to decide.



Margaret and Bill

Upon retiring at 60, Margaret and Bill decide to sell up and move to a small country town. They buy a house that is cheaper than their previous home and use some of the money they made on the sale of the house to travel and buy a new car.

When Bill is 70, he is diagnosed with Alzheimer's disease. Margaret and Bill decide they want to move back to Perth to be closer to health care, respite services and family.

When they sell their country home, they find that they do not have enough money to buy a house in the city because of the higher cost of houses in Perth.

Sometimes people move through one housing option while waiting for another.

Tony

Tony had lived in private rental until he was 75, but then began to find the rent too high.

He applied for social housing but was told it was likely to be a five-year wait. Tony moved to a lodging house for six months and then became a co-tenant with a friend.

Sometimes Tony and his friend take in an overseas student as a boarder, to assist with living costs. The share housing arrangement works well because it means Tony has affordable housing and company.

What to consider

Deciding to change your housing is a big decision. Questions that you may want to consider before making any change are:

- Why are you thinking of moving? Have you considered getting assistance or making modifications to allow you to stay in your current home?
- Is this a good time for you to consider a big lifestyle change, or should you wait?
- Where do you want to live? If you are moving to be close to family or friends, have you asked them about their future plans – what if they move?
- How will you finance the move? What will be the financial implications?
- If you are considering selling your home, have you checked the state of the market? Is it a good time to sell?
- Have you talked with family, friends and other people with whom you usually discuss important matters?
- If you are considering a community lifestyle option, are you ready for the compromises of community living?
- Are you looking to release equity? If so will you be able to fund future needs eg if you need to move to aged care?

Getting advice

Before making any major decision, it is a good idea to get legal and financial advice.

Depending on the issue that you need advice on and your income and assets, it is possible that you will not be able to get free legal assistance and you will have to pay a private lawyer.

If you are seeking referral to a private lawyer or law firm, the Law Society of Western Australia manages a database of members, which identifies areas of expertise. You can contact the Society for the names of three private legal services who meet your requested criteria. The Society is unable

to make personal recommendations. For more information, ring the Society on (08) 9324 8600.

The Centrelink Financial Information Service (FIS) helps people to make informed decisions about investment and financial issues for their current and future needs. While FIS can provide information and education, it cannot provide advice. To talk to a FIS Officer, call 13 2300.

The Department of Commerce's Seniors' Housing Centre can provide general information but not advice about the different options and what to consider. You can ring the Centre on 1300 367 057.

If you feel you are being pressured or harassed by a family member or carer to make a decision, contact the Older People's Rights Service on (08) 9440 1663.

Decision making checklist

- ☐ Know what you want. Make a list of what you absolutely must have in your housing and features that are desirable but not essential.
- ☐ Do your research and become informed. Find out as much as you can about the laws covering your housing option, financial implications and what you need to know as a consumer.
- ☐ Shop around. As in all areas of life, there are good deals and not so good deals. Some options will offer more than others and there may be small print that you should know about and read carefully.
- ☐ Refuse to be hassled or hurried into a decision. The bigger the commitment or risk or more significant the change, the more important it is that you take your time to make the right decision for you.
- ☐ Seek expert advice. For example, consider talking to a lawyer before signing a major contract or getting financial advice if considering refinancing.
- ☐ Talk to people you trust to weigh up the pros and cons.



2 Buying or building

You may be living in a home that you own or have a mortgage on, but wish to sell and buy or build another one. This might be because you want less garden, a smaller house or you want to change location.

Before making a final decision or signing any contracts to sell, buy or build:

- know what you want and can afford;
- do your research and shop around;
- ask lots of questions;
- get advice; and
- talk to people you trust.

Costs

To buy or build, you may need a home loan. In applying for a loan, the lender will consider your income and capacity to repay. Home loans have different features, including interest rates, fees, charges and pay back options. Understanding the different options can be difficult and confusing. If you are not sure about anything, ask questions and get advice.

Before you go looking for properties or engage a builder, you can approach a lender to approve a home loan in principle and in writing.

The cost of buying or building is much more than just the price of the land and the dwelling. There are other expenses that you need to plan for, such as stamp duty, charges, expert advice, site costs, possible demolition or refurbishment, insurances and ongoing expenses. There is also the cost of moving and living somewhere else while you are building or in between selling and buying.

It is not only important that you can afford to buy or build and meet your expenses now; you must also be able to continue to afford your home and expenses in the future.

Titles

Each parcel of land available for purchase in Western Australia is recorded on an electronic

register by the Land Titles Office, which is part of Landgate – a government agency. The original record is known as a certificate of title.

Think carefully before signing a final contract for finance, purchase or building.

There is no requirement for a cooling-off period with these contracts in Western Australia. If the contract you sign does not include a cooling off period, you cannot get out of the contract because you have changed your mind.

The certificate of title outlines important information about the land, including:

- the legal description of the land (lot number, plan number and title number);
- whether the land is a green title, purple title or a strata title;
- who owns the land; and
- some types of restrictions about if and how the land can be used.

You can request a copy of a property's title from Landgate for a fee. Contact (08) 9273 7373, 1300 556 224 (country areas) or visit: www.landgate.wa.gov.au

Restrictions on land or properties

Before buying a property or land on which to build, check to see if there are any restrictions eg covenants, easements, memorials or caveats on the land title. Some titles may restrict what you can build, what additions may be made and even what materials you can use. For example, the Water Corporation may have a right to install or access a sewer line on the property, which could restrict your ability to install a pool or build an extension. Some newer suburbs may have covenants about fences, gardens or the style or quality of the housing.

Restrictions are generally recorded on the certificate of title. When a property is first sold with restrictive covenants, these conditions should be detailed in the contract of sale. As well as reviewing the title, you may also want to check with the local government about any planning restrictions that may apply.

Buying a home

Property can be bought either by private sale or at auction. An auction is a publicly held sale where the property is sold to the highest bidder. A private sale can be conducted directly with the property owner or through a real estate agent.

Real estate agents are required to be licensed by the Department of Commerce. To check that an agent is licensed before you engage one to sell a home or assist you in buying a home, ring the Department of Commerce on 1300 30 40 64.

It is important to remember that, unless the contract makes specific provision, properties are sold in the same state as when first inspected. So it is essential to conduct a thorough inspection. Once you have inspected the property, if you want changes to be made prior to sale or you want to ensure certain items are included in the sale, you should insert specific terms or conditions into the contract. These terms need to be accepted by the seller.

The seller is not currently required to supply information about a property directly to the buyer, except for a strata title property (see fact sheet 3 for more details on strata title). However, buyers may if the seller agrees, receive a Seller Disclosure Summary, which provides information about a property. It is important that the seller and agent do not deliberately mislead buyers about the condition of a property.

Checking the things you can't easily see in a property or complex may require special skills, so it's often a good idea to engage experts to do these inspections for you. Types of inspections include building, electrical, plumbing/sewerage and timber pest inspections.

Checking the things you can't easily see may also involve asking the seller or agent to confirm in writing if:

- there are restrictions on the use of the property that are not listed on the title, for example, access to a sewerage;

- any buildings, improvements and fences on the property were constructed without the relevant approvals;
- the building or any additions are less than six years old and, if so, whether home indemnity insurance has been taken out; and
- there are any legal ownership disputes.

If a property is currently tenanted, ask for details of the lease agreement. If the tenants have a fixed term agreement with the current owner, and do not agree to move earlier, they may remain in the property until the fixed term expires, with the buyer as their new landlord.

Buying checklist

- ☐ Conduct thorough inspections of the property and check restrictions, or use independent experts to do these checks on your behalf.
- ☐ Get all assurances in writing.
- ☐ Word the contract so that any offer on a property can be withdrawn if standards written into the contract are not met.
- ☐ Be clear on what is included in the sale eg fixtures and fittings.

Building a home

Building a home involves three major decisions:

- choosing land;
- choosing a design; and
- choosing a builder.

You will need to think about all three decisions at the same time. For example, the type of land you buy may limit your options for the design of your house and the type of house design you choose may impact on your choice of builder.

Choosing land

Check with the local government about:

- any special by-laws, planning aspects or restrictions relating to the land;
- previous recorded use of the land by industry;
- whether there are any restrictions on the materials you use, the style of your house or the timeframe for building; or

- any plans for the area that might affect your enjoyment of the property, such as planned road construction.

Choosing a design

If you have an idea for a house design, you can employ a building designer, architect or builder (who offers a design service) to draw the design for you. Before engaging someone, discuss the cost and who keeps the design copyright. If you want to build again using the design, you may want to retain copyright. Make sure this is in writing.

Alternatively you can choose an existing design that is offered by a builder as a project home.

Choosing a builder

Builders must normally be registered by the Building Commission to undertake building work worth \$20,000 or more.

Project home builders offer standard designs at a known cost. There may be extra costs to fit the design on your block of land, and if you change the standard design. Some project home builders offer house and land packages that minimise the risk of extra costs.

Many project home builders offer a design service and will prepare and cost a one-off design for you. You may pay extra for this service, and the builder will normally retain copyright so that you can't get prices from other builders.

If you have your own design you can ask a number of builders to give you a price to build it. You may get your architect or designer to arrange this for you. It is always good to get at least three prices.

In selecting any builder it is always wise to ask to look at recently completed work, and to speak to recent clients about their experience.

Building contracts

Make sure that the building contract includes all your final requirements about the building and features. Making changes after the building contract has been signed can be costly.

You should check that your contract covers matters such as:

- type and size of the hot water system;

- type, number and location of light, gas and TV fittings, power points and taps;
- provision for site works;
- method for termite prevention treatment;
- extent of tiling;
- the crossover (where the driveway on your land meets the verge); and
- which surfaces are to be painted and the quality of paint to be used.

Disputes

If you are unable to resolve a problem with a builder, you can lodge a complaint with the Building Commission. To get a complaint form, contact the Commission on 1300 489 099 or visit their website at www.buildingcommission.wa.gov.au.

What is an owner-builder?

If you are not a registered builder and want to manage the building of your own house, you can apply to the Building Commission for owner-builder approval.

Owner-builders are required to ensure that the construction meets the relevant laws, including the building standards policed by local authorities and laws involving provision of a safe working environment for tradespeople.

There are many rules, risks and responsibilities when you decide to construct your own house as an owner-builder. One of the major risks is the possibility that your project could run over time and over budget. As an owner-builder, you may find it difficult to obtain a home loan and there may be restrictions on selling the home. Get advice and weigh up this option carefully.

Granny flats

Ancillary accommodation or a 'granny flat' on an existing property is an option that can be convenient and cost effective for some people. It can allow families to use existing land and provide close access whilst still ensuring independence. Granny flats may be an extension to the home or a separate dwelling in the backyard.

Granny flats do not require a property to be subdivided, but planning approval is required from the local authority and a building permit is required for construction. Approval is also required from the Water Corporation.

Granny flats can be custom designed or can be purchased as a kit or prefabricated home. They need to be built either by a registered builder or owner-builder.

There are a number of companies in the market that specialise in building granny flats and can manage all drawings, approvals and construction.

If you contributed money or other valuable assets in exchange for your granny flat, Centrelink or the Department of Veterans' Affairs may regard you as having a 'granny flat interest' for the purposes of assessing assets or eligibility for rent assistance.

See sheet 11 for non-building issues to consider about granny flats and family agreements.

Where can I get more information?

For more information on buying and building, including getting advice from experts, buying off-the-plan and kit homes, the Department of Commerce has the following guides:

- *Home Buyers Survival Guide*
- *Building your new home: a checklist*

To obtain a copy please visit www.commerce.wa.gov.au/cp/publications.

Subdividing

If you live on a larger block, you may wish to subdivide and sell off a portion of the land to access funds or reduce the amount of land that has to be maintained.

Alternatively, you may wish to use part of the land to build a new villa for yourself or develop 2 new houses – one for you and one to sell.

The Western Australian Planning Commission (WAPC) is responsible for approving all subdivision applications in WA. The WAPC refers applications to the relevant local government and any public body or private utility for objections or recommendations.

The WAPC may approve an application with or without conditions, or refuse an application. You can apply to the State Administrative Tribunal for a review of a decision of the WAPC to refuse an application or to impose conditions on approval.

The WAPC will endorse a subdivision on a plan or diagram that has been certified correct by the Western Australian Land Information Authority (Landgate). The WAPC must be satisfied that the plan is in accordance with the approval and that all conditions have been complied with.

The applicant can then apply to Landgate for new titles. Applications for title must be made within two years of the WAPC endorsement date.

There are significant costs involved in subdividing and the process can be quite lengthy and complicated. An experienced surveyor can help you with the steps involved. A surveyor can help with checking for restrictive covenants applying to the land, site surveys, subdivision approvals, meeting any conditions for subdivision, final pegging, drafting of the plan and the lodgement of plans.

Check with the surveyor on what is included in their charges and what you have to pay as extra. Costs can include:

- Surveyor's fees
- Sewerage, drainage and plumbing
- Power charges
- Driveways
- Tree removal
- Fencing
- Demolition
- Settlement agent fees
- Government fees

Under the *Planning and Development Act 2005*, subdivisions comprising three or more lots may require a monetary contribution in lieu of providing public open space.

Where can I get more information?

For more information on subdivisions, contact the Western Australian Planning Commission on (08) 6551 9000, or visit www.planning.wa.gov.au

3 Strata titles

Some people choose to sell their home and 'down size' by buying a unit or apartment. These options are usually a strata title arrangement.

A strata title is a certificate of title for a lot and a share in the common property in a strata scheme set up under the *Strata Titles Act 1985*. The strata scheme dictates what you own when you buy a strata titled lot and what is common property. There are a number of combinations of individual ownership and common property. Some examples are:

- individual ownership of the buildings and areas inside and outside the buildings;
- individual ownership of inside and outside areas, but only part of the building eg the walls, but not the roof; and
- ownership of inside and outside areas, but not any part of the building.

Depending on the strata scheme, common property may include exterior walls, courtyards, roofs, and driveways as well as shared facilities such as laundries, swimming pools, stairwells and lifts.

Before buying a strata titled property, see a copy of the strata plan to check what you will own and what is common property. This can be determined by viewing the ground floor page of the strata plan.

Under the *Strata Titles Act 1985*, some strata titled schemes may be restricted to occupation by retired persons and their partners. A 'retired person' is defined as someone who is 55 years and over or someone retired from full time employment.

If you purchase a strata unit within a scheme restricted to people over 55 and you then decide you want to rent the property, you will need to ensure that the incoming tenant meets the age eligibility criteria.

Some strata units are within retirement villages and are also subject to the provisions of the *Retirement Villages Act 1992*.

Strata responsibilities

As an owner of a strata titled property, you have a number of duties, including:

- becoming a member of the strata company, which entitles you to participate in its management;
- abiding by any by-laws (or rules) of the strata company;
- paying levies to administer the strata scheme, such as insurance, maintenance and repair of common property; and
- attending meetings to discuss and vote on issues, including expenses, repairs, improvements and management of the complex.

Information you must be given

Before you buy a strata titled property, check whether it is a registered strata titled lot or a proposed strata titled lot. The main difference between the two is the information that the seller must give you prior to the sale. As a minimum, the seller must give you the following:

- A copy of the strata plan, which indicates the lot being sold and provides information about the lot.
- A copy of the standard and any non-standard by-laws.
- A form called *Buying and Selling a Strata Titled Lot (Form 29)*. Form 29 outlines your rights and obligations as an owner of a strata titled property.
- A form called *Disclosure Statement: Sale of Strata Titled Lot or Proposed Strata Titled Lot (Form 28)*. Form 28 sets out a list of all the information you should receive before buying a strata titled property and your rights if you do not receive the information.

Only if you are happy with the content of the forms should you sign Form 28. Signing Form 28 is not an offer or contract to buy the strata titled property – it simply shows that you have received and understood the information provided.

Strata information checklist

Make sure you have the following information:

- ☐ What is the age group/mix of residents?
- ☐ Are units owner-occupied or rented?
- ☐ What are the costs of strata company fees, levies, rates and insurances.
- ☐ Are the unit walls free standing or are they shared?
- ☐ How old is the property, are there major repairs that are needed to common areas?
- ☐ Are there any shared facilities eg a swimming pool or a laundry area?
- ☐ What are the rules about pets, car parking and use of common property?
- ☐ Is there a clear procedure to follow regarding maintenance problems?
- ☐ How often is maintenance or gardening carried out?
- ☐ What is the financial position of the strata company? Does it have enough funds to properly maintain the complex?
- ☐ Are there any legal or insurance claims pending or outstanding levies due?
- ☐ Does the strata company employ a strata manager and what functions does he/she carry out?
- ☐ Is there a person who is paid to maintain the complex?
- ☐ How are disputes resolved?

Where can I get more information?

Landgate has a publication, *A Guide to Strata Titles*, which provides information about this type of housing option. For a copy, ring Landgate on (08) 9273 7044.

If the strata unit is within a Retirement Village complex, you should also read information sheet 4 for more information about Retirement Villages generally.

4 Retirement villages

A retirement village is a community of seniors living in individual premises that share common facilities and amenities.

Retirement villages provide housing for people 55 and over and their spouse or partner. The majority of residents tend to be retired or no longer working full time. Retirement villages are managed and administered by a village operator. Some are run by commercial companies or corporations, others by not for profit organisations that are usually incorporated associations.

There can be confusion about the difference between village complexes that are classified as retirement villages and those classified as residential parks. In terms of appearance and services, the two may be very similar. The main differences relate to the type of ownership and occupancy arrangements, the permanency of tenure and the protections provided to residents. In this guide, we refer to retirement villages as complexes that come under the *Retirement Villages Act 1992* (RV Act).

Retirement villages may not necessarily use the words 'retirement' or 'village' in their name. For example, a retirement village may be called 'Bottlebrush Gardens' or 'Grevillea Lifestyle Estate', but still be classified as a retirement village. If you are not sure if a retirement village you are considering comes under the RV Act, ask the village operator or check with Landgate or Consumer Protection Division.

Retirement village living usually involves a significant financial commitment. It is a lifestyle decision and you may face substantial costs when you leave a village. It is important to remember that, like any financial transaction, the 'buyer beware' principle applies. Refuse to be hassled or hurried into entering a contract.

Accommodation

The style of buildings that make up retirement villages range from units and villas to townhouses and freestanding homes. Accommodation can include independent living units, serviced apartments and hostel accommodation.

The accommodation in a retirement village is designed for seniors and may include additional fixtures and fittings, such as handrails, emergency call buttons and intercom systems.

Retirement villages should not be confused with residential aged care. Retirement villages cater mainly for people who are able to live independently. Although some villages also have aged care facilities on the same site or an adjacent site, these facilities are determined by Commonwealth laws.

If you are an existing independent village resident, you are not automatically eligible to move to aged care facilities at the same site. Eligibility will be determined by Aged Care Assessment Teams (ACAT), so that placements within the aged care facility cannot be guaranteed by the village operator.

Common areas, facilities and services

The facilities of retirement villages vary greatly. Some retirement villages offer amenities like communal rooms, dining rooms, swimming pools and bowling greens, whereas others simply provide accommodation.

Apart from management services, some villages also provide additional services. These might include arranging activities and excursions, transport, shopping trips and emergency call monitoring. Some villages can arrange personal services for residents on a user-pay basis, such as meals, cleaning, laundry and personal care such as assistance with dressing or bathing.

Ownership and occupancy

Different ownership and occupancy rights exist in retirement villages in Western Australia, depending upon the contract signed between the resident and the village operator prior to entry.

Some contracts are in the form of a licence or lease giving a right to occupy, others allow the resident to purchase the premises outright as a strata title unit or acquire ownership through a 'purple title' arrangement, which involves the purchase of an undivided share of the village as a co-owner. The various legal forms include:

- Freehold title, this can be:
 - strata title – where the resident purchases ownership of a defined portion of land or building; or
 - purple title – where the resident acquires an undivided interest in the whole of the retirement village.
- Lease/Licence – where a resident enters into a contract that gives the resident a long term right to occupy the premises. The lease/licence may or may not be registered on the title.
- Other forms, including shareholder and company title.

Some villages offer rental as well as purchase and lease options and some offer rents that are capped at a percentage of income. This allows people on low incomes with few assets to choose retirement village living. If you rent, you may be eligible for Commonwealth Rent Assistance. Rental contracts in a Retirement Village are not subject to the Residential Tenancies Act.

Rights and responsibilities

As a resident of a retirement village, you have certain rights under the RV Act. The Fair Trading (Retirement Villages Code) Regulations also applies. The Code is law and covers the provision of information, as well as the promotion, sale and operation of villages. Operators must comply with the Code.

Most villages also have their own day-to-day rules known as residence rules. These rules are not law, but your residence contract may require that you abide by them.

What costs are involved?

In choosing to live in a retirement village, you may be required to pay any or all of the following:

- an initial entry price;
- ongoing regular charges and other expenses;
- a departure fee; and
- other expenses such as refurbishment and marketing fees payable following permanently vacating your premises.

Entry price

Before entering a village, prospective residents are usually required to make a payment known as a 'premium'. This is generally a one-off, up-front payment and, depending on the particular legal structure, can range from a nominal amount to an amount equivalent to the cost of buying the premises. Sometimes this amount may take the form of an interest free loan to the operator.

Recurrent charges

Recurrent charges are ongoing, usually monthly, charges that you pay on a regular basis while living in the village. Recurrent charges generally cover operating costs and services that are provided for the benefit of all residents. These might include village administration, maintenance of the property and grounds, amenities and resident services.

Each village has its own terms for fees and charges. Depending on the type of legal structure and financial model used by the operator, recurrent charges might also include rent or body corporate fees. Recurrent charges are not regulated and may increase while you live in the village.

On top of recurrent charges, you may have to pay levies, which can include a component for capital maintenance or replacement. These levies may be paid into a sinking or reserve fund.

Departure fees and other expenses

Many retirement villages have fees that are payable when you leave the village. These fees are known as exit fees, deferred facilities fees, deferred management fees or deferred payment. The amount you pay often depends upon how

long you have been in the village, and will be determined by the contract you entered into with the operator.

These fees can be high so it is important that you find out up front how much you will be required to pay if you leave.

Be aware – you may have to continue to pay ongoing charges when you leave the village until someone else takes over your lease/licence or buys your unit.

Exit entitlements

This is the amount the village operator must pay or credit you if you want to move out of the village. It is important to find out at what point you are eligible to receive this money as you may need it if you have to move to a higher level of care. Your right to an exit entitlement may depend upon someone else first buying or leasing your unit, which could involve a period of time.

What about my partner?

Make sure that both you and your partner's names are on any title, lease or licence. Otherwise he or she may have to move out if you die or need to move to aged care.

Consider village rules around new partners. Check whether the rules allow for a new partner to live with you on a temporary or ongoing basis.

Things to consider

There are pros and cons to living in a retirement village just as there are with any form of housing. It is important that you fully understand what you are agreeing to and what the legal and financial implications are for you and your partner of entering, remaining in and leaving a village. You need to consider current and future accommodation needs carefully.

The move might involve a significant change to your lifestyle. Community living has many benefits, but it also involves some trade-offs.

The best way to find out whether a retirement village is right for you, is to visit the village as

many times as you need to in order to satisfy yourself that it is what you want. Talk to village management and current residents, particularly members of any residents' committee, and carefully observe daily life in the village.

Retirement village checklist

- ☐ What types of accommodation and amenities are offered?
- ☐ What are my ownership and occupancy rights?
- ☐ What are the entry, ongoing and departure costs?
- ☐ What are the rules about pets, visitors and car parking?
- ☐ Will I have my own garden? Will I have sufficient privacy?
- ☐ Is there space for a caravan or boat?
- ☐ Is the village close enough for family and friends to visit?
- ☐ Is the village close to facilities that I use eg public transport, doctors, shops, entertainment, libraries or churches?
- ☐ Are meals available? Where, how often and at what cost?
- ☐ Is there a common dining room? Can I bring my own meals to eat there? Can I invite guests?
- ☐ What happens to my partner if I move to aged care?
- ☐ What happens if I remarry or find a new partner?
- ☐ Is there a functioning residents' committee?
- ☐ What facilities are available if I become sick?
- ☐ Will the village meet my needs in the future if I require additional assistance?
- ☐ What are the financial implications if I want to leave?
- ☐ Is there provision for a reserve/sinking fund to ensure the village is properly maintained over the long term?

What if the village operator sells?

Retirement village residents cannot be evicted if a retirement village changes hands. New village owners are still bound by the contract that you entered into with the previous village owner.

Your rights if the village operator becomes insolvent will vary depending on the contract you have entered into. While there are some statutory protections, this is a complex area and it is strongly recommended that you get legal advice to see what your position would be in the event that a village operator becomes insolvent.

Before signing up

If moving into a retirement village, you will be presented with several documents. These can be lengthy and quite daunting. It is critical that you read and understand the documents – especially the contract. If you decide to enter into the contract, it will generally be legally binding for both you and the operator.

Consider getting legal advice to ensure that your interests are protected. Retirement villages are a specialised area of law, so try to find a lawyer who has experience with retirement village contracts.

You should also consider getting independent advice from an accountant or licensed financial planner on the financial consequences of moving into and exiting a village.

It is important that you understand the risks and consequences that could flow from a need to exit the village or from an insolvency of a village operator. Always do your homework and seek independent, expert advice before signing a contract.

Ensure that any verbal agreements or claims made are written into the contract.

Where can I get more information?

Call the Seniors' Housing Centre on 1300 367 057.

The Department of Commerce produces an information booklet called *So you're thinking of moving into a retirement village*.

To obtain a copy please visit:
www.commerce.wa.gov.au/cp/publications

The Western Australian Retirement Villages Residents' Association (WARVRA) is a resident's association that can provide information on village life and other matters:
Call 0448 812 888 or visit www.warvra.org.au

For information about retirement village accommodation provided by members of Aged and Community Services Western Australia, call (08) 9244 8233.

5 Residential parks and lifestyle villages

Residential parks provide sites upon which relocatable homes are placed. Residents either rent a home and a site, or rent a site only and own the home on the site. The home may be a caravan, cabin, park home or motor home. Whether you own the home or not, park living always involves renting the site.

In Western Australia, residential parks are generally either:

- 'mixed-use' parks - residential parks that cater for both long-stay tenants and holiday makers; or
- 'lifestyle villages' - residential parks solely for long-stay tenants with some lifestyle villages specifically set up for people over 45.

There are two types of long-stay agreements:

- A fixed-term long-stay agreement. This is an agreement of 3 months or longer with a specified end date.
- A periodic long-stay agreement. This is an agreement that continues for three months or longer but does not specify an end date.

In a residential park you do not own the land upon which your home stands and you have no rights over the land in the park, except where this is provided for in a long-stay tenancy agreement. A park operator may sell the land and close the park, provided that notice is given to the tenant. If the land is sold or the park is closed, you will need to find somewhere else to live. If you have a fixed-term agreement, the park operator may have to pay you compensation.

It is important that you consider the possibility that you may have to move. Things to consider are:

- the cost of moving;
- trying to find another suitable park with similar location and amenities;

- the practicality and cost of moving your caravan or mobile home especially if it is an older structure;
- the time required to find another site and move; and
- if moving your home to a less desirable location, the value of the investment may decrease.

Buying into a residential park is different to buying a freehold title. If you purchase a home within a residential park, you only purchase the structure not the land. If you decide to sell in the future, you are selling the structure only, not the land upon which it is situated. It is important to bear in mind that this structure will likely lose value over time.

Park living may not be a permanent living arrangement. Seek independent, expert advice before entering into this kind of arrangement.

It is important that you understand the risks and consequences resulting from an insolvency of a park operator, or what happens if the land upon which your home is situated cannot be on-leased for a long period or at all, after you leave or wish to leave.

If you will own the structure that you live in but not the land you also need to consider the process to sell your home when you want to go to other accommodation. For example how easy will it be to sell the structure in 20 to 30 years time?

Parks other than those that are operated by local government on Crown land are required to be licensed under the *Caravan Parks and Camping Grounds Act 1995*.

The *Residential Parks (Long-stay Tenants) Act 2006* applies to all long-stay tenancy agreements entered into after August 2007, regardless of whether the parks are operated by private businesses or local government. The Residential Parks Act covers the contractual relationship between park operators and tenants.

The Residential Parks Act requires that:

- all agreements are in writing;
- park operators provide disclosure material to assist prospective long-stay tenants in deciding if park living is suitable for their needs;
- a minimum five-day cooling off period applies to site-only agreements;
- a minimum 180 days notice must be given for a park operator to terminate a periodic 'site only' tenancy agreement;
- a minimum 60 days notice must be given for a park operator to terminate a periodic on-site home agreement;
- parks with a minimum of 20 long-stay sites must establish a Park Liaison Committee;
- compensation must be paid if a fixed-term agreement is terminated early for reasons other than a breach of agreement; and
- the State Administrative Tribunal determines disputes.

Are lifestyle villages residential parks?

Many types of housing can use the term 'lifestyle village' in their name or promotional materials. The term 'lifestyle village' will not tell you whether the housing option is a retirement village, a strata title complex, a residential tenancy, or a residential park (see fact sheet 1 for more information on the differences).

This guide refers to lifestyle villages as those options that are classified under the *Residential Parks (Long-stay Tenants) Act 2006*, because this is a common scenario.

When considering any option, check with the operator or salesperson to see what type of accommodation is being offered and which laws will cover you as a resident.

Lifestyle villages generally offer a different experience than mixed-use parks. Lifestyle villages are often marketed to people over 45 and are designed specifically to cater to long-stay residents. Many provide amenities such as swimming pools, recreation centres and storage areas for boats or caravans.

Things you should know

Park living may not be a permanent living arrangement. While initial agreements may be for any length of time greater than three months, circumstances may change and either of you or the operator may want to end the agreement early. Depending on your agreement, if you have to move, it may be at your own expense.

If you have a fixed term agreement, the park operator may have to pay you compensation if they are ending the tenancy before the end of the fixed term. If you want to move before the end of the fixed term you may have to pay compensation to the park operator.

'Mixed-use' parks provide a combination of long-stay and tourist accommodation. Although long-term tenants should be situated on long-stay as opposed to short-stay sites, you may be sharing facilities, such as recreational and toilet facilities, with holidaymakers.

There may be restrictions on the alterations you can make to the site where the home is located, even if you own the home outright. There are often rules that affect how you can behave on the site, such as noise, visitors, pets and the use of facilities.

The tenancy agreement

Because park living involves renting the site, it is important that you are clear about the conditions of the tenancy. The tenancy agreement is a legally binding contract between you and the park operator. Understanding the rules from the start helps to avoid disputes later.

Before signing a tenancy agreement the following documents must be given to you:

- the proposed agreement;
- an information booklet and sheet;
- the park rules;
- a condition report;
- written schedule of fees and charges; and
- written information about the membership and functions of the Park Liaison Committee (if any).

The agreement will be either for a fixed period eg one year or periodic eg from fortnight to fortnight. Other matters that may be included are:

- the amount of the rent, fees and charges;
- the number of people who can reside in the premises;
- the types of fixtures and facilities that may be used;
- under what circumstances you can be transferred to another site or home; and
- whether you can sell your park home.

Information provided should include park rules, the types of utilities available and the membership and functions of a Park Liaison Committee.

You should read and understand the park rules before signing the tenancy agreement.

Is park living for me?

The decision to live in a residential park is often influenced by a desire to move into more manageable or affordable housing, release equity, travel in retirement or live in natural settings.

There are many advantages to living in a residential park. For example, as an alternative to private renting, park living may be more affordable and the cost of buying a caravan or park home is generally less than buying or building a regular home. Residential parks can provide a location and facilities you may not normally be able to afford to buy.

On the other hand, because you only rent the land, park living can bring less security and certain restrictions.

Parks provide a place for a number of people to live reasonably close together, which can provide people with a feeling of safety and a sense of belonging to a community. However, people may find that living close to others can sometimes create disharmony and require compromise and good communication.

Where can I get more information?

Seniors' Housing Centre 1300 367 057.

To obtain a copy please visit:
www.commerce.wa.gov.au/cp/publications

Park Home Owners Association WA
www.parkhomeowners.com.au

Questions to ask before deciding

- ☐ Am I happy with the terms of the agreement? Are the terms negotiable?
- ☐ What happens if I change my mind after I sign a tenancy agreement?
- ☐ What are the up-front and ongoing charges?
- ☐ What is a security bond? Can I be asked to pay a bond if I own my home?
- ☐ If I want to go on holiday, can I rent the site or the home while I am away?
- ☐ Can I be asked to leave the park and under what circumstances? How much will it cost to move my home? Where else could I go? When am I entitled to compensation?
- ☐ Can I make improvements to the exterior of my home?
- ☐ Can I keep pets?
- ☐ What are the park rules? How are rules enforced? How can rules be changed?
- ☐ Can I have a say in the running of the park?
- ☐ Can the park operator enter my rented premises? Can I refuse entry?
- ☐ What shared facilities are available?
- ☐ How are utilities charged?
- ☐ Is there a charge for visitors?
- ☐ What are my rights if I want to sell my caravan or park home?
- ☐ What happens if the park operator wishes to sell?

If you are on a pension, you may be eligible for Commonwealth Rent Assistance to help with the cost of rent. To find out more, contact Centrelink on 13 23 00.

To obtain a copy please visit:
www.commerce.wa.gov.au/cp/publications



6 Renting

Renting is when an owner of a residential property (lessor) grants a tenant the right to occupy the property in exchange for money (rent). The *Residential Tenancies Act 1987* is the law that applies to renting.

You may rent a home because you cannot afford to own a property, because it suits your lifestyle or while you are waiting for another form of housing. You may wish to rent out your home as a way of funding a move to a new locale. Renting also gives the opportunity to try a new locale before buying, with the option of returning to your own home.

When looking for a property to rent, shop around and avoid rash decisions. Think carefully about whether the property meets your needs. These needs might include your capacity to pay the rent, proximity to shops or public transport, even how safe you might feel in the home.

Information provided here is specific to tenants. However, it is equally relevant if you wish to rent your home to another person. The Department of Commerce provides information and publications for both tenants and lessors.

Cost of renting

To move into a rental property, you will need to have money to pay for:

- rent in advance (two weeks);
- security bond (maximum of four weeks rent);
- a bond for a pet to cover fumigation costs (if applicable); and
- other costs associated with changing house, such as moving furniture, electricity connection etc.

The amount of rent you pay depends upon location, amenity and whom you are renting from. There are three main types of rentals:

- Private rental is when you rent from the lessor or their real estate agent.

- Public housing is when you rent from the Department of Housing.
- Community housing is when you rent from a community housing provider.

Private market rents are determined by the market place. Public and community housing (social housing) can be cheaper than private rental because it is often subsidised and based on about 25 to 30 per cent of your income.

Applications for public and community housing are subject to both income and assets eligibility criteria. There can be a long wait to be offered a property, even if you are eligible. To find out more, contact your Department of Housing Office.

National Rental Affordability Scheme (NRAS) properties are owned and managed by community housing or the private rental sector. Rents are set at least 20 per cent less than the normal market rent and applications are subject to income eligibility. Some properties have been set aside for tenants over 55. NRAS properties are usually identified as such in real estate advertisements.

Assistance

If you are on a pension, you may be eligible for Commonwealth Rent Assistance to help with the cost of rent. To find out more, contact Centrelink on 13 2300.

The Department of Housing offers bond assistance and two weeks rent in advance as an interest-free loan to help people on lower incomes to obtain accommodation in the private rental market. Limits apply to the amount you can borrow. The rent must not be more than 60 per cent of your income. To obtain this assistance, visit any Department of Housing office (no appointment is necessary). You will need to supply documents to show proof of your income, identity and rent.

Types of agreements

Rental agreements are either periodic or fixed term. A **periodic tenancy** has no pre-determined finish date but continues on with the same terms and conditions until either the lessor or the tenant terminates the tenancy agreement by giving the other party the appropriate notice.

A **fixed term tenancy** is an agreement in which a tenant rents the premises for a set period with a specific start and finish date. It provides more certainty and security for both parties.

The tenancy agreement is in writing, it must be in the prescribed form. It will show details and the details of the lessor and any other tenants. The agreement should include relevant dates, rent requirements, responsibilities and special conditions.

Don't leave any blank spaces on the rental agreement and make sure all parties sign it.

At the start of your tenancy, you should be given:

- an information statement;
- two copies of the property condition report (seven days after you move in);
- a bond lodgement form if you are paying a bond so it can be lodged with the Bond Administrator; and
- keys to your new home.

Application forms and option fees

You may be asked to complete an application form, to assess whether or not to accept you as a tenant. The lessor may also ask for an option fee. The most the lessor can charge for an option fee is \$50 or \$100 per tenancy application as specified in the Residential Tenancy Regulations 1989 (the Regulations).

If an agreement is signed, this fee can be put towards the rent. If a tenancy is not offered, the fee must be refunded in cash or by EFT within seven days of the decision not to offer you the tenancy. If you decide not to rent the property

after being offered the tenancy, the option fee may not be returned. Check if this is stated on the application form.

Bonds

A lessor can ask for a security bond. In most circumstances, the bond can be no more than four weeks rent. If you are permitted to keep a pet that may carry parasites that can affect humans, an additional amount of no more than \$260 can be charged. The bond is your money and must be held by the Bond Administrator (a section of the Department of Commerce). When you pay the bond, the lessor must give a receipt on the spot, showing your name, the amount, date and address of the rental premises.

Within 14 days of you paying the bond, the lessor must deposit the bond with the Bond Administrator.

At the end of a tenancy, bond money will only be paid out if you and the lessor agree, or if a court order states what should be done with the bond. If a dispute arises over the bond, you can resolve it by negotiation or by taking action in the Magistrates Court.

Property condition report

The lessor must prepare a property condition report (PCR) describing the condition of the property at the start and the end of the tenancy.

Within seven days of moving in, the lessor must provide you with two copies of the PCR. You will have seven days to mark anything you disagree with on both copies and return one copy to the lessor. If you don't return it to the lessor, it is taken that you agree with the PCR. Keep your copy in a safe place as it will be needed if a dispute arises.

At the end of the tenancy, the lessor must prepare a PCR describing the condition of the property and give you a reasonable opportunity to attend the inspection. You must be provided with the final PCR within 14 days.

Paying rent

A lessor must not ask for more than two weeks' rent in advance. If convenient, a tenant can choose to pay more eg monthly or any other period that is agreed but this cannot be a term of the tenancy agreement. The lessor must not ask for rent until the period covered by the previous payment is finished.

Receipts for rent paid must be issued within three days, unless you pay rent electronically, in which case a receipt will not be issued. You should keep receipts or records of your rent payments in case there is a dispute in the future about rent.

Rent increases

The laws relating to rent increases vary, depending on what type of tenancy you have:

- Rent in a periodic tenancy may be increased only at six-monthly intervals and you must be given at least 60 days notice in writing. You only have to pay the increase if proper notice has been given in a form approved by the Minister.
- In fixed term tenancy, rent can only be increased if the tenancy agreement stipulates the amount of the increase or the method of calculating the increase. The lessor doesn't have to give you notice of an increase if your fixed term agreement is being renewed, however, the rent cannot be increased for the first 30 days after the new agreement begins.

If you believe the rent is too high you can apply to the Magistrates Court for a reduction, or to argue against a proposed increase. The grounds for applying to the court are that:

- since the tenancy began, there has been a significant reduction in the contents or facilities provided; or
- the owner is putting up the rent by big amounts to force you out.

If your rent is overdue

Your tenancy may be terminated if you fall behind in paying rent. If a problem arises in making the payments, you should contact the lessor immediately and arrange to pay the arrears. A lessor cannot seize your belongings in return for rent owed.

If you reasonably believe you are not behind in rent payments, you can remain in the premises while the matter is sorted out by negotiation, or until the lessor applies for an eviction hearing in court, where both parties can put their case.

A lessor cannot end a tenancy without a court order, even if you are behind in rent.

Urgent repairs

You must inform the lessor about any urgent repairs required as soon as possible. If you did not cause the damage, the lessor is required to arrange (not complete) repairs to essential services within 24 hours and urgent repairs within 48 hours.

Examples of urgent repairs are:

- a burst water pipe or broken hot water system;
- a gas leak or electrical fault likely to endanger people or damage property;
- a sewerage system blockage or broken sewerage fitting;
- damage from flooding, storms or fire; or
- a broken major appliance such as a stove (if included in the tenancy).

If you can't contact the lessor/property manager after making reasonable attempts, or you contact them and they take no action, you can then have the minimum repairs carried out by a qualified tradesperson and claim back the costs. You should get at least two quotes. As soon as practicable after the repairs are carried out the lessor must reimburse you for any reasonable expenses incurred in relation to arranging and paying for the repairs.

Ending a tenancy

How to deal with the end of a tenancy depends on whether the agreement is a fixed term tenancy or a periodic tenancy.

You want to end a tenancy

You may end a periodic tenancy agreement without providing a reason, but you must give a minimum of 21 days' notice in writing. You are committed to a fixed term tenancy agreement for the duration of that term, unless:

- it is ended by written agreement signed by the two parties; or
- you seek an order from the Magistrates Court to end the agreement because the lessor has not kept to the terms of the agreement and refuses to fix the problem.

If you leave a fixed term tenancy before the end of the fixed term, and without written agreement or a court order, you may be liable for rent and expenses until the lessor finds a new tenant or the original tenancy expires.

Although fixed term tenancy agreements have expiry dates, they will not automatically terminate on the end date unless either you or the lessor gives 30 days notice of intention not to renew the agreement.

You can give two days notice to end an agreement if the premises are destroyed, or become uninhabitable. This applies to both periodic and fixed term tenancies.

The owner wants to end a tenancy

An lessor may give notice to end a periodic or fixed term agreement if:

- you are behind in rent payments;
- you fail to keep to the provisions of the tenancy agreement (seven days notice after being given 14 days notice in writing to put matters right); or
- the premises are destroyed or become uninhabitable (seven days notice).

In the case of periodic tenancies, notice can also be given by the owner if:

- the property is to be sold and the contract requires handing over vacant premises (minimum of 30 days notice); or
- the tenancy is to be ended without giving any reasons (minimum of 60 days notice).

The lessor may seek to end a fixed term tenancy through the Magistrates Court if you have recklessly injured the lessor, agent or a neighbour; or caused serious damage to the premises. A fixed term tenancy may also be ended:

- at its natural conclusion, ie at the end of a fixed term by either party giving 30 days notice;
- by written agreement signed by the two parties; or
- if a magistrate is convinced a lessor would suffer undue hardship if the agreement were not ended.

Eviction

You cannot be forced out of a property without a court order. Any other method of eviction is unlawful.

If you receive proper notice to end an agreement but refuse to leave, the lessor can seek a court order to end the agreement and take possession of the premises. The order can be enforced with a warrant authorising a bailiff to evict you.

Where can I get more information?

The Department of Commerce has the following guides:

- Renting a home in Western Australia: a tenant's guide
- Renting out your property: a lessor's guide

To obtain a copy please visit:

www.commerce.wa.gov.au/cp/Publications

Tenancy WA (08) 9221 0088 or 1800 621 888
(country): www.tenancywa.org.au

7 Boarders and lodgers

It can be difficult to distinguish the difference between boarders, lodgers and tenants.

A tenant is a person who pays rent and in return is granted a right to occupy residential premises, usually (but not always) including a right to exclusive possession of the premises — see “How do I know if I have exclusive possession” below.

A boarder is an occupant who shares the landlord’s house, pays rent and receives some services from the landlord, such as cooking and cleaning.

A lodger is similar to a boarder, but a lodger generally does not receive services from the landlord.

Boarders and lodgers are a special group of home-dwellers in terms of the law. Unlike most people who rent, they are not covered by the *Residential Tenancies Act 1987*.

Am I a boarder or lodger?

The following factors may assist you to determine whether you are a tenant, a boarder or a lodger, however only a Court can make a binding ruling about this.

Depending on the documents making up the agreement and the circumstances of your situation, you are more likely to be a boarder or lodger if:

- you are entitled to live in the premises but cannot call the place your own ie the landlord exerts control and authority over the whole premises.
- the landlord provides you with attendance or services eg cleaning, linen or meals which require the landlord or their servants to access and use the premises.
- there are house rules.
- the landlord/owner/representative lives on site.
- the length of time of the agreement ie the length of time you are given permission to stay in the house is only for a short time.

- the landlord and yourself only need to give a very short period of notice to leave — see “Do I need to give any notice before I move out” below.

How do I know if I have exclusive possession?

A right of exclusive possession means the right to exclude anyone, including the owner, from the premises or the room you rent. This is different from exclusive occupation or use, where you may have your own room in which no one else can stay without your permission.

The landlord is the person who provides the room/s and gives the boarder or lodger permission to live there. If you are a boarder or lodger, your landlord keeps control and authority over the house, even if you have a key, and can come into the house without giving you any notice.

Just because your room has a lock, it does not automatically mean you have exclusive possession of the room. The house rules may state that the landlord is allowed to come into your room without your permission.

For example, if your agreement includes cleaning, linen or meals, the landlord will need access and you would not have exclusive possession.

What if I am renting a room from an existing tenant?

If you are renting all or part of a house from an existing or head tenant, they should have obtained approval from the landlord before you moved in. If this is the case, you are either a sub-tenant or a lodger, depending upon the agreement between you and the head tenant.

You are a sub-tenant if you agreed with the landlord that you could have exclusive possession of all or part of the house, meaning that you have the right to exclude anyone, including the landlord. This agreement must have been approved by the landlord before you moved in.

If you are staying in a room, paying rent to the head tenant, you are probably a lodger and are unlikely to have exclusive possession of any part of the house. It is important to note that the head tenant may need the landlord's approval for this kind of arrangement.

Be aware there are other factors that impact on whether you are a sub-tenant or lodger. Each case needs to be determined by looking at the particular agreement reached between the parties.

If you are not sure if you are a tenant, sub-tenant, boarder or a lodger, please phone the Consumer Protection Advice Line on 1300 30 40 54 for advice or to request a copy of the publication Boarders and lodgers.

Can I be evicted?

If you are a boarder or lodger, the landlord/owner may ask you to leave without any reason at any time.

However, the landlord/owner must give you reasonable notice to leave the premises and take your belongings. The length of notice may have been agreed before you moved in – check any written agreement you may have. If not you should be able to agree about a reasonable time with the landlord/owner, but be aware that you may have to move out at short notice.

Reasonable notice depends on the circumstances of each situation. For example, if you need to make arrangements to move furniture, you may need more notice than if you are renting a furnished room.

Do I need to give any notice before I move out?

The length of notice you are required to give may have been agreed to before you moved in, so you should check any written agreement you may have. You should allow the landlord/owner a reasonable time to inspect your room and arrange for the return of any security bond you have paid.

Written agreements

If the landlord/owner asks you to sign a written agreement, make sure you read it, understand it and agree with its terms before signing.

You are entitled to and should always request and keep a copy of the written agreement. Get a receipt for any payments for rent or bond and keep those receipts.

If you have to pay a security bond, ask for a receipt that shows what the payment is for. For example, a single payment may include part payments towards the bond and rent for the premises. If you are paying for rent in advance then make sure the receipt shows the rental period covered.

You should inspect the rooms and common areas you will be using before deciding to move in

How do I solve disputes?

If you have a problem with your lodging arrangements, you should always try to sort it out by discussing it with the landlord/owner first. If this does not work, you can contact one of the agencies listed below.

In some instances, you may be able to take civil action in the Magistrates Court. However, before taking such a step you should seek independent legal advice.

If you have failed to meet your responsibilities as a boarder or a lodger, the landlord/owner is entitled to take action against you in court.

What are my rights as a boarder or lodger?

While boarders and lodgers are not covered by the Residential Tenancies Act 1987, it is important to know that they still have certain rights.

If you are a boarder or lodger, you have a right to:

- expect the house to be clean and tidy and in a reasonable state of repair when you move in and while you are staying in the house, including all the rooms, common areas, facilities, furniture and equipment supplied by the landlord;
- privacy, peace and quiet and to use your room and facilities without unreasonable interference by the landlord;

- access to your room, toilets and bathrooms;
- access to common areas and facilities such as the laundry and the kitchen;
- security for your room and personal belongings; and
- be made aware of the house rules.

Your rights as a boarder or lodger may be changed by agreement between you and the landlord.

What are my responsibilities as a boarder or lodger?

This depends on what you have agreed with your landlord. For example, you will probably be responsible for:

- keeping your room clean and tidy;
- paying your rent when it is due and in the agreed way;
- following the house rules;
- asking your landlord before you keep any pets;
- letting your landlord know about any damage you or your visitors may have caused and paying for that damage;
- letting your landlord know if any of the furniture, fixtures, facilities or equipment needs to be fixed;
- making sure you don't disturb the privacy or peace and quiet of other residents;
- allowing your landlord to enter your room to clean it or in an emergency; and/or
- keeping any vehicle you may own in an agreed place.

Questions to ask before deciding

- ☐ How much is the rent?
- ☐ How much do I need to pay before you can move in?
- ☐ Does the rent cover the cost of other expenses, such as gas, electricity, water, telephone or internet? If not, how will I be charged for them?
- ☐ What services will be offered by the owner and how much extra will they cost eg linen, laundry, cleaning or meals?
- ☐ Does the arrangement allow for medical assistance, special diets or other needs? Will these be provided and what will it cost me?
- ☐ Am I happy with the rules of the house?
- ☐ Are there any limitations on visitors, noise, hours of entering and leaving, use of common areas, parking or gardening?
- ☐ How long can I live here?
- ☐ Will there be a restriction or penalty if I leave after only a short time?
- ☐ How much notice do I need to give if I decide to leave, and how much notice will I receive if the owner asks me to leave?

Rent assistance

You may be eligible for Commonwealth Rent Assistance for the cost of your accommodation excluding food or meal expenses. To find out more, contact Centrelink on 13 23 00.

Where can I get more information?

The Seniors' Housing Centre 1300 367 057

To obtain a copy please visit:
www.commerce.wa.gov.au/cp/publications



8 Help to stay in your home

Many people prefer to stay in their home and maintain their independence as they age. Staying at home in the environment you know, with familiar neighbours, shops and other facilities, is often the best option, but sometimes you may need assistance to remain at home.

Home and community care

The Home and Community Care (HACC) program can help you stay in your home. Assistance can include such things as:

- home help like cleaning and shopping;
- delivered meals;
- gardening, home maintenance and home modifications;
- assistance with transport;
- personal or nursing care; and
- social support.

You may be eligible for HACC if you:

- are older and frail or have a disability; and
- have difficulty with everyday tasks; or
- are the carer of a frail older person or someone with a disability.

A HACC team member will meet with you to determine your eligibility and discuss your needs. The HACC worker will be able to recommend which services are most appropriate to meet your needs and assist you in getting those services.

You will be asked to pay a contribution toward the cost of the support services provided, based upon your income and the level of support that you receive.

A person receiving an age pension contributes a maximum fee per week. No person will be denied a service because they cannot afford to pay.

Higher care needs

A Home Care Package can help people with complex care needs to stay at home. Your home care provider coordinates care and services to support you at home.

To receive these services, you must be assessed by an Aged Care Assessment Team (ACAT) as requiring a level residential care but able to live at home with the support of a care package, if that is your choice. You may be asked to contribute to the costs of your care.

You can find out more about HACC on 1300 785 415, respite care from Commonwealth Respite and Carelink Centres on 1800 052 222 or home care packages from My Aged Care on 1800 200 422. These centres provide information and guidance about community care services, health services and aged care homes available in your local area and how to contact them.

Help for veterans

The Veterans' Home Care program helps eligible veterans and war widows/widowers with low level care needs to remain in their homes for longer. Available services are similar to HACC services such as personal care, home help and home modifications.

For more information or to arrange an assessment, ask your doctor or ring the Veterans' Home Care agency on 1300 550 450. Information is available on the Department of Veterans' Affairs' website at: www.dva.gov.au

Assistive technology

Assistive technology and equipment can help with modifying your home to meet your changing needs. The above services can assist you with looking at these options.

You can also contact the Independent Living Centre of Western Australia on 1300 885 886.

Concession or rebate

Cost of Living Rebate

Annual payment to assist with rising living expenses for eligible seniors.

Seniors Safety and Security Rebate

Rebates for eligible personal safety devices and upgrade/replacement of security devices following a break-in (conditions apply).

Energy rebates

Account establishment fee rebate, Cost of Living Assistance Payment and reduced meter test fee. Subsidies for life support equipment, air conditioning (in hottest parts of the state) and cooling/heating costs for people with thermoregulatory dysfunction. Hardship Utility Grant Scheme (HUGS) assistance for electricity, gas or water bills.

Local government rates

Rebates or deferment on annual property rates for eligible seniors.

Water

Water Corporation discounts

Who to contact

Department for Communities
Seniors Card Centre
(08) 6551 8800 or
1800 671 233 (country)
www.communities.wa.gov.au

Contact your energy retailer
or the Public Utilities Office
on (08) 6551 1000
www.finance.wa.gov.au

Contact your local
government

Water Corporation
1300 659 951

Assistance with living costs

You may be eligible for assistance to help with living costs. The following page shows some housing related concessions or rebates that are available if you have a WA Seniors Card.

You may also be eligible to receive assistance with licence fees, public transport, tourist attractions and intrastate travel. To find out more about what is available contact the Seniors Card Hotline on (08) 6551 8800 or 1800 671 233.

Ruah Community Services has a booklet, *Getting By... Getting Ahead. A guide to concessions and other ways of keeping costs down*, which covers non-government as well as government assistance. For a copy call (08) 9485 3939, or visit www.ruah.com.au/page/General

Payment difficulties

Whether a pensioner or self-funded retiree, there are times when you may experience financial difficulties. Financial counsellors can often help at these times. They can assist with budgets, debt and negotiate on your behalf, if you give your consent.

Financial counsellors are employed by local community organisations and sometimes by local councils. To find one close to where you live contact the Financial Counselling Hotline on 1800 007 007.

If you need more time to pay a bill, always contact the company as early as possible. Arrangements may be available to accept instalments. Ringing early can prevent overdue charges.



9 Aged care

Residential aged care is for older people who can no longer live independently. Aged care homes provide assistance whether you just need help with day-to-day tasks or 24-hour care. The distinction between high care and low care has been removed.

This means that, once you are assessed, you can seek a place at any residential aged care service that meets your needs. Some aged care homes offer the full range of care services, which allows you to stay in one place if your care needs change. Residential aged care can be offered as either permanent or short-term care. Short term care is called respite care.

Aged care homes are regulated by the *Aged Care Act 1997* (Cwlth). To ensure high standards of care and accommodation, the Australian Government applies an accreditation system.

What services are provided?

Services provided can include:

- assistance with daily living such as bathing, showering and dressing;
- assistance with medications;
- meals, taking into account special dietary needs;
- laundry services and cleaning services; and
- social activities.

For residents with high level care needs, services can also include such things as basic medical supplies, nursing and therapy services.

Some aged care homes provide what is called 'extra service'. These are a higher standard of accommodation and services, which will cost you more.

What costs are involved?

While most aged care services receive funding from the Australian Government, residents are usually required to pay certain fees and charges. The government regulates these fees.

There are three types of care fees that you may be asked to pay:

- a basic daily fee; and
- a means-tested care fee (depending on your income, assets and level of care); and
- fees for optional services.

You may also be asked to pay either a refundable accommodation deposit or a daily accommodation payment.

If you can't afford to pay the fees and charges, there are hardship provisions that may reduce or waive the costs, depending on your circumstances. If you are granted assistance, the Australian Government pays a subsidy to the home so that you receive the same standard of care, regardless of your capacity to pay.

If eligible, the Department of Veterans' Affairs will pay your basic daily fee. You will not pay any income tested fees.

In calculating the amount of accommodation deposit or charge you have to pay, your income and assets will be assessed. The value of your family home is excluded from your assets assessment if:

- you have a spouse, partner or dependent child still living in the family home; or
- a close family member has lived in the family home for at least five years, and is eligible for an income support payment eg Centrelink payment; or
- a carer has lived in the family home for at least two years and is eligible for an income support payment.

What do I need to do?

Before you can request government subsidised residential aged care, you must be assessed by an Aged Care Assessment Team (ACAT) as being eligible. ACATs provide free assessments.

ACATs assist you and your family to make informed decisions about the level of care needed. ACATs provide information on care options and can help arrange referral to residential or community care services.

ACATs may approve you to receive one or more of the types of aged care that are funded by the Australian Government.

You have the right to be consulted about the type of aged care that best meets your needs. A member of an ACAT will visit you and ask you questions to help work out the best care option for you. A carer, friend or family member can be present. With your approval, your doctor may tell the ACAT member about your medical history.

If the ACAT does not approve you to receive funded aged care services, or the type of services you believe you need, you can appeal against the decision. You will be sent a letter explaining how you can appeal an ACAT decision.

What is residential respite care?

Residential respite care provides short-term care when you need it. Respite care can be provided in your own home, in a respite care centre or in an aged care home.

Residential respite care may be used if you are ill, or to help if your carer is absent for any reason, such as illness or holidays.

If you receive Australian Government subsidised respite care in an aged care home, you will be asked to pay a basic daily fee, which is a flat fee. You may also be asked to pay a booking fee to secure your respite place. This fee cannot be more than a full weeks fee or 25 per cent of the fee for the entire stay, whichever is the lower.

You do not have to pay an accommodation payment or an income tested fee for government funded respite care. You do need an ACAT assessment to access residential respite care.

Finding the right home

The decision to move into full time residential care or respite care is a major one. It is important to choose a home that meets your needs and preferences. It is important to understand what type of home you are considering, such as one that offers extra services as this may affect the cost and the services that you will receive.

Commonwealth Respite and Carelink Centres can help you with information about aged care homes in your area, and what they offer. ACATs, family, friends and your doctor may also be able to help you find a suitable aged care home.

The best way to find a home that suits you is to visit a range of homes. Visiting them will help you to find out what they can offer you and what the accommodation is like.

Where can I get more information?

For more information about aged care, respite care, income and asset assessment or to find your local ACAT, contact:

- My Aged Care on 1800 200 422;
- your local doctor or local health centre;
- the Commonwealth Respite and Carelink Centre on 1800 052 222;
- the Department of Human Services on 1800 227 475; or
- visit the My Aged Care website: www.myagedcare.gov.au

Let these services know if you need or prefer an interpreter.

10 Accessing equity

In planning housing and lifestyle options, some people consider refinancing options that allow them to access equity built up in their existing home. Equity is the difference between the value of your home and any amount you still owe on it.

In considering your options, as with any major decision, it is important to:

- get advice from an independent and qualified expert;
- check and understand any contract; and
- discuss your intentions with your family.

Reverse mortgages

Reverse mortgages allow you to use the equity in your home to obtain money by way of a loan. Interest is charged as fixed or variable and there are fees and charges, just like any other loan, except you don't have to make repayments while you live in your home. No repayments are necessary until you sell your home, move out permanently, default on the loan or die. Because of this, reverse mortgages can be attractive to people who have built up equity in their home but who don't have enough income to pay off a normal loan.

The loan is often between 10 to 45 per cent of the home's value. Reverse mortgages may be obtained for many reasons, for example, holidays, a new car or renovations. The money can be paid in instalments, as a lump sum or as a line of credit.

What can go wrong?

Reverse mortgages have advantages but they are complex and there are potential pitfalls that you need to consider. For example, a reverse mortgage may impact on your eligibility for a pension.

The debt can rise quickly as the interest compounds over the term of the loan.

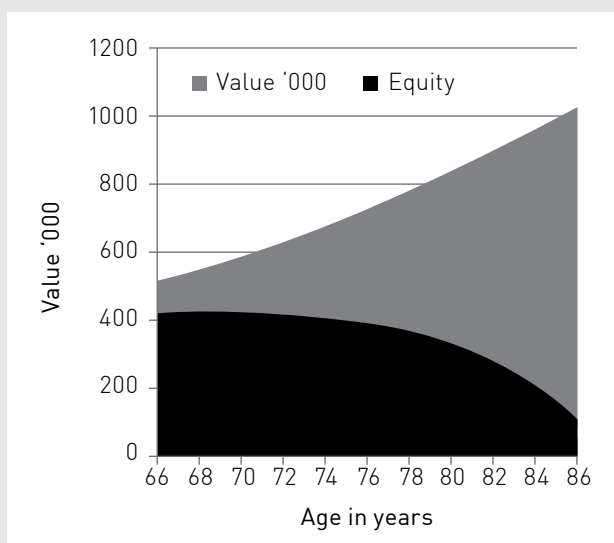
Equity is steadily eroded. A large proportion or all of the proceeds from the sale of your home may be required to pay off the loan. You may end up with not enough money left for aged care or other future needs.

Some reverse mortgages have wide ranging default clauses. If you are in breach of one of these clauses, the lender can charge expenses, which could be at a higher interest rate or ask for repayment of the loan. You may have to sell your home if you cannot repay the amount owed. Default clauses can include not maintaining insurance, not paying rates, or doing something that decreases the home's value. In a worst case scenario you could find yourself evicted, your house sold and still owing money.

If you are the sole owner and someone lives with you, that person may not be able to stay in the home if you move into aged care or die. Some contracts protect the right of a resident who isn't a borrower to stay in the house after the borrower/s have died.

Nick and Maria

At 65, Nick and Maria decide to take out a reverse mortgage for \$128,000 on their home valued at \$500,000 for a lump sum of \$80,000 to renovate and take a trip, plus \$400 per month in payments for 10 years to help with living costs. Twenty years later, Nick dies and Maria decides to sell her home and move into a retirement village. Assuming that the interest remains set at 10 per cent and the value of the property increases at 3.5 per cent pa, when Maria is 85, the value of the home is over \$994,000, the mortgage is about \$830,000 and the equity is around \$165,000.



Protecting equity

If the debt increases so that it exceeds the home value, you are said to have negative equity in your property. The terms of the loan contract can be arranged so that the debt cannot exceed the value of the home. This is called a no negative equity guarantee (NNEG).

You can buy equity protection that quarantines a proportion of the property value once the house is sold. Another option is being able to transfer the loan to another property if you move house.

Pension Loans Scheme

Centrelink and the Department of Veterans' Affairs offer another way to release equity in your home through the Pension Loans Scheme. The scheme allows pensioners on a part pension and some people not eligible for a pension to increase fortnightly income by applying for a loan. The loan is paid in fortnightly instalments, to bring the total payment up to the equivalent of the full pension. You cannot apply if you are a full pensioner as you already receive the maximum amount of pension.

Under the scheme, real estate that you or your partner own is used as security for the loan. You do not have to use the full value of your asset as security – you can have a guaranteed amount kept aside from the total value. This ensures an amount of equity is preserved in case you need or want it later.

Interest is charged on the outstanding amount and there are costs for securing the loan.

Other products

There are other financial products that may allow you to access the equity of your home. Some financial institutions offer products where they provide you with a lump sum in return for a right to share in a proportion of the sale proceeds of your house when it is sold.

Where can I get more information?

The National Information Centre on Retirement Investments can give you information about how home equity arrangements work. You can call 1300 636 878 or visit their website: www.nicri.org.au

11 Contracts and family agreements

Contracts

Whether building, buying, renting, moving to a retirement village, purchasing services or refinancing, you are likely to be entering into a legal contract between yourself and another party.

Some of these contracts may have terms that are agreed verbally. However, for the purchase and sale of real estate, retirement villages and park homes, by law contracts must be in writing. It is a good idea to always try and have a contract in writing. Verbal contracts are very difficult to prove if things go wrong.

Contracts can be thought of as setting rules between you and another party or parties. The contract rules, called terms or conditions, set out what each party will do for the other, the time by which such actions will be done and what happens if any party fails to play by the rules.

The contract should set out all the rules so there is no uncertainty. The law treats contracts seriously and you should be very careful before entering into a contract. If you sign a contract, you are agreeing to abide by the terms set out in the contract. This will be enforceable through the courts.

For many contracts the law in Western Australia does not require that the contract contain a cooling off period. If the contract does not include a cooling off period, you cannot get out of a contract because you have changed your mind.

Contract checklist

- ☐ Make sure all things that are important to you are clearly included in the contract.
- ☐ Take as much time as you need to read and understand a contract — don't be rushed! Before signing anything, ask for a copy of the contract to take away with you to read carefully and to show to a friend or advisor.
- ☐ Consult a lawyer when adding your own terms to a contract so that they are clear and enforceable.
- ☐ Cross out and initial any terms in a contract that you want to delete or change and ask the other party to initial the changes and deletions as well.
- ☐ Don't use liquid paper on a contract.
- ☐ Don't sign a blank contract or allow details to be filled in later. Draw a line through any blank spaces that do not need to be filled in.
- ☐ Remember that every person who is a party to the contract is usually responsible for making sure that the terms of the contract are followed.
- ☐ If buying, make sure that the person/s you are buying the property from is/are legally entitled to sell the property.
- ☐ Ask for a copy of any contract you sign, you are entitled to a copy.

Where can I get more information?

Seniors' Housing Centre
1300 367 057

Legal Aid Information Line
1300 65 05 79

Family agreements

A family agreement is an arrangement made between an older person and another party, usually family, friends or carers. The older person agrees to sell or transfer their home, assets or large amounts of cash to relatives in exchange for accommodation and current or future care. Family agreements can take a number of forms and are often verbal.

Examples of when you may enter a family agreement are if you:

- gift or loan money to family, carers or friends to buy a house or establish businesses;
- provide financial guarantees/security to family, carers or friends to buy a house or establish businesses;
- transfer a house to children on the understanding that you will have a right to remain living there;
- pay to build a granny flat on another's property; or
- co-purchase a property to share accommodation.

Family agreements are often entered into for all the right reasons, but people need to stop and think about possible pitfalls.

Disposing of assets may affect your pension, incur a large taxation bill or affect your eligibility for government-sponsored housing. You risk fines and penalties if you do not declare these transactions.

It is important to think about how the arrangement will work not only now but also in the future. Consider what would happen in changing circumstances, such as marital break-up or if you want to move somewhere else.

Protect your interests and talk to people you can trust. You should never be pressured or harassed into making a decision.

Kim-Ly

Kim-Ly decided to sell her home. With the proceeds she paid for an extension to her son Trang's house so that she could live there with him and his wife, Lilly. Kim-Ly also gave Trang \$100,000 to assist him expand his business.

The arrangement worked well for three years. Then Trang's business went bust and his marriage broke down. The home was sold and the proceeds split between Trang and Lilly. Kim-Ly received nothing.

Trang decided to move up north to look for work and at the age of 72, Kim-Ly had no choice but to find a new place to live without much money or assets.

Family agreement checklist

- ☐ Seek legal and financial advice. Don't enter into an agreement without knowing the legal or financial implications.
- ☐ Be clear about what you expect from the agreement and your family, now and in the future.
- ☐ Talk to Centrelink, the Australian Taxation Office and other relevant bodies to check any impact on your liabilities or income.
- ☐ Put the agreement in writing with each party signing and getting a copy.
- ☐ Protect your interest by putting your name on any new title.

Where can I get more information?

The Department of Communities has a guide on Family Agreements. For a copy call the Seniors' line on (08) 6551 8800 or visit the website at: www.communities.wa.gov.au

The Older People's Rights Service may also be able to assist, call (08) 9440 1663.



12 Contacts and more information

For all general enquiries about any of the topics in this guide contact the Department of Commerce's Seniors' Housing Centre on 1300 367 057. If you require an interpreter call the Translating and Interpreting Service (TIS) on 131 450 and ask for connection to 1300 367 057.

Type of enquiry	Who to contact
Title searches	Landgate (08) 9273 7373 or 1300 556 224 (country) or www.landgate.wa.gov.au
Building	Building Commission 1300 489 099 or www.buildingcommission.wa.gov.au
Subdivisions	Western Australian Planning Commission (08) 6551 9000 or www.planning.wa.gov.au
Retirement villages	Western Australian Retirement Villages Residents' Association (WARVRA) 0448 812 888 or www.warvra.org.au Retirement Living Council, 03 9664 4234 or www.retirementliving.org.au
Renting	Tenancy WA (08) 9221 0088 or 1800 621 888 (country) or www.tenancywa.org.au Commonwealth Rent Assistance: Centrelink 13 2300
Help with staying at home	Home and Community Care (HACC) 1300 785 415 or www.health.wa.gov.au/hacc/home/ Commonwealth Respite and Carelink Centre 1800 052 222 Department of Veterans' Affairs 13 32 54 or www.dva.gov.au Independent Living Centre of Western Australia 1300 885 886
Aged care	My Aged Care 1800 200 422 or www.myagedcare.gov.au Commonwealth Respite and Carelink Centre 1800 052 222 Department of Human Services 1800 227 475
Concessions and rebates	Seniors Card Hotline (08) 6551 8800 or 1800 671 233
Budgets and debts	Financial Counselling Hotline 1800 007 007
Financial information	Centrelink Financial Information Service 13 2300
Reverse mortgages	Senior Australians Equity Release Association of Lenders (SEQUAL) (02) 9858 1179 or www.sequal.com.au
Pension Loan Scheme	Centrelink 13 2300 or Department of Veterans' Affairs 13 3254
Family agreements	Older People's Rights Service (08) 9440 1663
Legal information and advice	Legal Aid 1300 650 579 or www.legalaidwa.gov.au
Finding a private lawyer	Law Society of Western Australia (08) 9322 7877

Acts and regulations

Copies of the Acts listed in this guide can be found at the State Law Publisher (08) 9426 0000 or www.slp.wa.gov.au

Publications

The following publications are available from the Department of Commerce:

- *Boarders And Lodgers – Your Rights And Responsibilities*
- *Buying Land Or Property – Off the plan*
- *Getting A Place In WA – Guide For Indigenous People*
- *Home Building – Complaints Disputes And Appeals*
- *Home Buyers Survival Guide*
- *Keeping A Place In WA – Guide For Indigenous People*
- *Leaving A Place In WA – Guide For Indigenous People*
- *Park Living*
- *Renting a home in Western Australia: a tenants guide*
- *Renting out your property: a lessor's guide*
- *So you're thinking of moving into a retirement village*

To obtain a copy please visit:
www.commerce.wa.gov.au/cp/publications

Publications from other government departments include:

- *A Guide to Strata Titles.*
For a copy call Landgate on (08) 9273 7044.
- *Thinking of using the equity in your home? An independent guide to using the equity in your home.*

For a copy, visit the MoneySmart website Australian Securities and Investment Commission at: www.moneysmart.gov.au or email: feedback@moneysmart.gov.au to order a CD (audio) copy of the publication.

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This publication may be available on request in alternative formats to assist those with special needs. Call the Seniors' Housing Centre on 1300 367 057 to discuss your requirements. If you require an interpreter, call the Translating and Interpreting Service (TIS) on 131 450 and ask for connection to 1300 367 057.

This publication was produced with the assistance of a focus group made up of agencies that assist seniors. The Department of Commerce thanks the focus group members for their participation and feedback.