

Newsletter

Things to consider when choosing a Retirement Village

Making the decision to move to a Retirement Village can often be a hard decision to make. Selecting the right Retirement Village to suit your needs can be overwhelming. There are several things that you should keep in mind when comparing different Retirement Villages and what they have to offer.

One of the main considerations when choosing a Retirement Village is the cost. You will be required to pay an ingoing contribution to secure your right to reside in the Village. The ingoing contribution can vary greatly between Retirement Villages. The size of an Apartment, Villa or Unit and the types of facilities offered will generally determine the amount of ingoing contribution that you pay.

When you enter a Retirement Village you are required to pay General Services Charges. These fees are paid monthly to the management of the Retirement Village ("the Scheme Operator") and the charges vary according to the size of the Apartment, Villa or Unit which you purchase. This fee is payable for services supplied to all residents and includes the gardening and minor maintenance, management and administration of the village.

Some Retirement Villages offer extra Personal Services which are charged on a user pays basis. These services are useful for residents who require extra care and support while living in the village. The Personal Services may include linen, meals, housekeeping, personal and nursing services. As each village is different, we recommend that you inquire about the Personal Services that may be on offer.

Many Retirement Villages offer an array of facilities on site which you will have access to as a resident. These facilities vary from village to village. When comparing Retirement Villages you should investigate the types of facilities that are on offer. Most Retirement Villages offer dining and laundry facilities, emergency and recreational facilities. Some of the larger villages also offer shopping facilities, hairdressing salons, swimming pools and bowling greens.

One of the main concerns people raise when looking at Retirement Villages is the exit fee that is payable when you leave the village. All Retirement Villages charge an exit fee to the resident when they terminate their right to reside in the village. The amount of exit fee payable is determined by the length of time that you reside in the village. There is a minimum and maximum exit fee that is payable. These fees vary between villages. When comparing exit fees, you need to take into consideration the type of lifestyle that the village offers to you.

When you leave the village, you will receive an exit entitlement. This fee is calculated depending on the amount of ingoing contribution you pay, the time that you have resided in the village and the subsequent resale value. Some villages will share 50% of the capital appreciation of the Apartment, Villa or Unit with the resident. However, any capital depreciation that occurs will generally be a loss to the resident.

Making a comparison between Retirement Villages is the only way you will know that you have selected the right lifestyle for you. The above information may be helpful to you when you start searching for the right Retirement Village for you.



Who Is Responsible For Mistakes Of Employees At Work?

We've all heard the term "everyone makes mistakes" and we all know this is true. But have you ever considered whether or not if you make a mistake at work, that you may be liable to pay for the mistake?

If you are employed by someone, you probably think that your employer would bear the financial responsibility for mistakes you honestly make at work. If a mistake led to a legal claim it is normal for the person suing to pursue the entity with the "deepest pockets". For example, there would be little point in pursuing an apprentice who has nothing to their name if they were to negligently damage your house while carrying out repairs. It would be normal practice in this type of case to sue the employer of the apprentice, under a legal principle known as vicarious liability. This principle essentially makes an employer responsible for an employee's negligence.

But what happens if the employer has little money, or goes bankrupt? In such cases, the person suing might have no choice but to pursue the employee.

In late 2006, this exact scenario was the subject of a case decided in the High Court. In the case, a web design company was sued when two of its employed web designers stated that their company had the skill and capacity to establish a custom made website. The company failed to carry out the work to that standard and the company was sued for the misrepresentations made by the employees. However the company being sued subsequently became insolvent and the employees were then sued individually. The court found the employees liable for the misrepresenting the capacity of the web design company to complete the work and they were liable to pay very substantial amounts in damages and court costs.

So what does all this mean? Essentially it means different things depending on whether you are an employer or an

The End Of Building Covenants?

The Queensland Government has introduced the Sustainable Planning Act, to replace the repealed Integrated Planning Act. The Sustainable Planning Act now regulates all planning, development and building in Queensland.

As a result of the new legislation, changes to the Building Act came into force on 1 January 2010, incorporating new sustainable housing laws to improve the water and energy efficiency of homes and encourage smarter design.

Property Developers commonly use building covenants to control home designs in residential estates. These covenants can restrict or prohibit the use of energy efficient or sustainable building features.

The aim of the new legislation is to prohibit developers from restricting the use of sustainable building and design features for new houses. This will be achieved by invalidating any Building Covenants entered into after 1 January 2010 that restrict an owner –

(1) from occupying a home before landscaping, driveways or similar work is completed; or

(2) from using selected sustainable and affordable features, such as –

- light roof colours
- window treatments (e.g. tinting)
- smaller minimum floor areas

- fewer bedrooms and bathrooms
- types of materials and finishes for external walls and roofs
- single garage, and
- appropriate location for solar hot water systems.

For some features, if it can be shown that the reason behind the prohibition or restriction is not just for the appearance of the building, then it could be enforced against an owner. For example a developer may be entitled to prohibit or restrict highly reflective or untreated corrugated iron roofing where the reflection or glare off the roofing would cause a nuisance to neighbours or adjoining owners.

Buildings will still need to comply with the performance requirements of the Building Code of Australia and any local government planning scheme requirements such as visual amenity or the streetscape requirements.

Developers will still be able to enforce Building Covenants entered into prior to the introduction of the new legislation.

The new legislation will also prohibit Body Corporates from introducing By-laws that restrict owners incorporating sustainable features in their units.

Overall, the new legislation will lessen the effect of Building Covenants, and developers will have to be more circumspect when drafting Building Covenants.

employee. For employers, it is essential that you hold insurance – not just insurance on your assets, but a policy that will cover you for professional indemnity and employee negligence. It also means that employers can technically sue their employees for negligence that occurs in the workplace even if the mistake is honest, and the employee is acting in good faith. For employees, it means that you could be open to liability for your own negligence if your employer goes bankrupt, holds no insurance, or if the person suing simply decides to make you a party to the litigation. The risk for employees increases in proportion to their seniority and professional rank.

The most important ramification of this case is for people who own their own business. The structure of your business may dictate whether under the law you are deemed to be an employee or not, but in many instances, the Trade Practices Act and Fair Trading Act will deem, particularly in small businesses, that a company structure will not necessarily protect the employees working beneath that structure. This is particularly so when there is essentially only one or two employees within the structure. If you carry on your own business, it is essential that you have proper asset protection strategies in place to protect you from claims. It is important not only how the business is structured, but also how you present your business to outsiders, as sometimes courts will determine cases based on how a business structure is perceived by the person dealing with it.



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Does The Retail Shop Leases Act Apply To Your Lease?

Historically, leases prepared by landlords were drafted to protect landlord's interests. Tenants were seen to be in a weaker position when dealing with landlords and negotiating the terms of a lease. As a result, the Retail Shop Leases Act was enacted to protect the tenant's interests in our new age of consumer protection.

To receive the protection of the Retail Shop Leases Act, the leased premises must either be in a “retail shopping centre” as defined in the Act, or the predominant use of the premises must be a retail activity which is defined in the Regulations. The activities defined in the Regulations are extensive and if you are in any doubt whether the Act applies to your lease you should contact our office. Some activities, such as body piercing and hair dressing are not ordinarily considered retail – but are defined as such in the Act.

What Does The Retail Shop Leases Act Mean To Your Lease?

There are many implications of a lease being a Retail Shop Lease under the Act. However the most commonly encountered provisions are that a landlord is required to make certain disclosures prior to the tenant entering into the lease including details of outgoings payable under the terms of the Lease. A landlord is not able to recover the cost of preparation of the lease documentation from the tenant. Tenants are required to obtain legal and financial advice in relation to the terms of a lease prior to entering into the lease.

Early Determination Of Market Rent Upon Exercise Of An Option For Renewal Of Lease

When Leases are renewed, rent is normally reviewed to market. The Retail Shop Leases Act sets out a mechanism by which tenants may ask for an early determination of the market rent prior to exercising an option for renewal. If a tenant wants an early determination of rent they must comply with strict time limits set out in the Act. If you require any information in relation to this process you should contact our office.

Guarantors Beware

It is always an onerous responsibility to guarantee the obligations of another. This is no less the case when directors guarantee the obligations of their tenant company under the terms of a Retail Shop Lease.

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Interestingly, the Retail Shop Leases Act Amendment Act 2004 provides some consumer protection by releasing a tenant (the seller) from its obligations to a Landlord under a Retail Shop Lease when the lease is transferred to a buyer. The release operates from the date of the transfer provided all statutory requirements are met.

However, the September 2004 Amendment unlike some legislation in other States, does not extend this release to the guarantors of the lease.

It is therefore important that a landlord be asked to release the guarantors upon a transfer of a Lease. If the landlord does not agree then the guarantors may remain liable for the balance of the term of the lease despite the transfer.

Conclusion

Retail Shop Leases are a different species to normal commercial Leases. Different rules apply. Disputes are dealt with in different Tribunals. Consumer protection laws make it more difficult for Landlords. If you are involved in a Retail Shop Lease, whether as Landlord or Tenant, it pays to get legal advice before signing a Lease.



Making Wills and leaving charitable bequests

Charities are attempting to stay engaged with people throughout their lives in order to maintain one of their major sources of funding – bequests (leaving money to charity in a will).

The website, Include a Charity, estimates that more than 10,000 bequests are left to Australian charities each year and says that bequests are often responsible for keeping charities operating. Research group Givewell found that bequest fundraising accounted for 18 percent of charity income in Australia last year.

However, it is estimated that around 40 percent of Australians have not even made a will. Anyone over the age of 18 of sound mind, memory and understanding can make a will and, although wills can be drawn up by anyone, they must meet strict conditions or else they may not be valid.

A will can deal with all kinds of property including real estate, personal property such as jewellery, cars, boats, bank accounts and shares, and insurance and superannuation policies. You should talk with Judy Smith or Juliet Smith to ensure that your best interests are protected and that any “home made will” has been properly signed, witnessed and dated.

Smith & Stanton News

Welcome to Matthew

– no family secrets now!



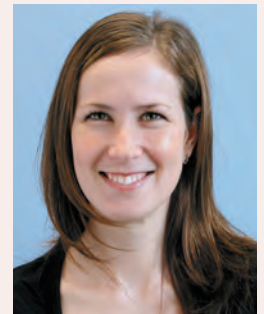
Bruce and Judy are proud to announce that their son Matthew started with the firm in May. Matthew is finishing his final law subjects this semester and has joined the firm as a trainee lawyer. Matthew is working in a part time capacity until the end of this year, after which we will all look forward to his admission as a legal practitioner and him coming on board as a full time employee of the firm.

Welcome to Jane

We welcome Jane Doherty to our Smith & Stanton team who replaces Naomi as our receptionist. Jane started with us on Monday 7 June, so next time you are in the office please make yourself known to her.

Naomi – going but not far

We mentioned in our last newsletter that Naomi, our bright receptionist at Smith & Stanton has started studying for her law degree. In keeping with our policy to progress the staff through the firm, Naomi will now be assisting Anita de Dominco in the conveyancing division. We are confident that Naomi, who already has many skills in this area, will add value to our client service in property matters.



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