

## Summary of findings and conclusions

Moving into a retirement village is a big move. Older people are typically moving from being an owner occupier to purchasing a License to Occupy which gives them a right to occupy a retirement village dwelling. There are many conditions, rights and responsibilities between operator and resident, and they are set out in four key disclosure-types of documents: the Disclosure Statement itself, the Code of Residents Rights, a Code of Practice. Most importantly, the mutual responsibilities, rights, obligations and conditions between retirement villages and residents are set out in the Occupation Right Agreement (ORA). The ORA is the key contract between resident and operator.

To help older people to think carefully about their decision and to help them understand the effect of an ORA and its implications, the law requires that any intending resident of a retirement village must receive independent legal advice before signing an ORA. The law recognises the potential vulnerability of intending residents.

Some intending residents have the resources to leave a retirement village if they find that retirement village living is not to their taste. But many would find leaving and re-housing themselves difficult financially if they find village living is not for them. The law requires lawyers to provide their advice in a manner and language appropriate to the age and understanding of intending residents and certify that they believe the advice is understood.

The Commission for Financial Capability (CFFC) monitors the retirement village sector. Each year they take a different focus. In 2017 the CFFC wanted “to determine the level of effectiveness of independent legal advice for intending residents making a decision to move to a retirement village.” It commissioned independent monitoring research to do so which:

- Reviewed previous CFFC monitoring research and other research into retirement villages and their residents.
- Collected new data through surveys, in-depth interviews and focus groups.

## Findings

Overall satisfaction with current requirements for legal advice is high among intending residents, and the framework and advice practices of lawyers are effective and appropriate. Intending residents tend to seek advice from lawyers with whom they already have a relationship. Advice related to retirement villages is frequently undertaken in tandem with advice relating to other property, estate, and succession planning matters.

Lawyers typically have experience in the retirement village sector and firms provide supervision and support to less experienced lawyers. All lawyers see their core obligations as explaining the contractual terms of the ORA. Some lawyers largely focus on the terms as they are set down, but others take in addition a more pastoral approach and even a negotiator approach to ORAs. Most lawyers consider that they have sufficient information

to advise intending residents but some think that their ability to advise clients could be enhanced with better information and understanding of developments within the retirement village sector.

Independent legal advice is important because of the serious financial and lifestyle commitment intending residents are making. There is widespread awareness among intending residents that the purchase of a license to occupy in a retirement villages is of use value, not of asset or investment value.

New retirement village residents overwhelmingly only considered the retirement village option when thinking about their housing options. Intending residents are diverse and broadly fall into three categories: those who are highly informed and have done considerable research into retirement villages; those who engage actively with their lawyers and ask questions about the conditions and implications of an ORA; and those who understand the advice they are given but are passive recipients of it and rely on their lawyers to protect their interests.

### **Key conclusions**

- Intending residents are aware of the requirement to receive independent legal advice prior to signing an ORA.
- Most intending residents see their lawyer only at the point of signing an ORA.
- Most intending residents report understanding the information they receive.
- Most intending residents are satisfied with the legal advice they have received.
- Intending residents do not want to use a lawyer specialising in retirement villages, most wish to use their usual legal advisor or firm.
- There is no demand among intending residents for financial investment advice, although tools to assist them to think about budgeting under different scenarios would be welcomed.
- Many residents find Disclosure Statements overly legalistic, inaccessible and too often duplicating the ORA.
- Lawyers recognise that many intending residents are psychologically committed to a retirement village and:
  - Emphasise and follow-up on the cooling off period.
  - Provide oral and written advice.
  - Attempt to ensure that family are informed while maintaining the independence of the intending resident and their understanding of the ORA.
- Lawyers recognise that the retirement village sector is dynamic and would welcome:
  - Additional information around directions in the sector.
  - More opportunities to network and receive training.
  - Access to websites and resources to which they can refer clients.