

June 2007

# Retirement Villages: The Social, Legal & Financial Implications

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## Introduction

The ageing of the population in Australia will inevitably result in an increased demand for retirement living.

Over recent years there has emerged a distinct marketing strategy promoting retirement living as an enjoyable and rewarding change of life.

A move to a retirement village has a number of social, legal and financial implications that should be carefully contemplated prior to making the decision to move.

## Social Implications

A move to a retirement village is a significant change in personal and social circumstances.

Typically, a move to a retirement village necessitates the sale of the family home and a move away from a familiar neighbourhood and the facilities and services located nearby.

In this context, the following should be considered before making the decision to enter retirement village living:

- Do you know what kind of retirement village you are looking for and what services you will require both now and into the future?
- Do you know where you want to live?
- If your purpose for relocating to a retirement village is to be closer to family, have you discussed with your family what their future accommodation plans are?
- Are you prepared to live in a shared environment and comply with rules that govern interactions between residents?
- Have you enquired about the village's policy in relation to pets, car parking and visitors?
- What activities and other social activities are offered by the village?
- Are there restrictions on how you use your unit and other village facilities?

## Legal Implications

Upon entering a retirement village, you will be asked to sign legal documentation that will govern your accommodation at the village.

It is essential that prior to signing any such documentation, you read it, obtain legal advice on it and be sure that you understand its implications for you.

Retirement villages are governed by the *Retirement Villages Act 1986*. The contractual documentation should be reviewed to determine whether or not it complies with the provisions of the Act.

In considering retirement village alternatives, you should also compare the contracts of different potential villages before making a final decision.

You should satisfy yourself that you are aware of the nature of your interest in the retirement village. For example:

- Are you purchasing the unit in which you will be living?
- Are you being offered a long term lease or licence to live in a village unit in return for the payment of an ingoing contribution?
- Are you buying shares in a company that owns the village with rights to occupy a unit in the village?

It is essential that you understand the precise nature of your interest and the consequences of the structure that will apply to you.

### Financial Implications

The financial implications of a move to a retirement village can be complicated. In making the decision to move to a retirement village, you should be aware that it will not necessarily be a profitable financial decision.

In most cases, a prospective resident to a retirement village will be required to make an up front payment regardless of whether or not they are purchasing the unit or taking a lease, licence or other interest.

In addition to the purchase price or ingoing contribution, you will have an obligation to pay recurrent expenses to meet the maintenance and other costs of operating the village.

It is likely that you will be contributing to the upkeep of common areas such as BBQ areas, bowling greens, swimming pools and other common areas even if you do not use them.

The departure from a retirement village will also have financial implications.

At the point of signing an agreement to enter into a retirement village, you should familiarise yourself with the nature and extent of any deferred management or other fees that are payable on departure.

Deferred management fees can be complex and are rarely ascertainable at the time of entering into the resident agreement. They are usually calculated as a percentage per year of occupation of either your ingoing contribution or purchase price or, in some cases, the ingoing contribution or purchase price of the new resident. Therefore, an understanding of the method of calculation is essential.

Similarly, provisions dealing with the benefit of capital gain arising throughout your occupation should be carefully reviewed.

### Conclusion

A move to a retirement village represents a significant change of lifestyle. However, in focusing on the benefits of village living, the other social, legal and financial implications should not be ignored.

# Special Disability Trusts

## Estate Planning and Disabled Beneficiaries

### Introduction

Recent changes to the Social Security Act 1991 ("Act") and mirror amendments in Division 11B of the Veterans' Entitlements Act 1986 potentially offer some aged pensioners new asset and estate planning opportunities.

Since 1 January 2002, estate planning for people with a disabled beneficiary has been problematic.

Part 3.18 of the Act introduced an asset attribution test that altered the effectiveness of trust arrangements in preserving pensioner entitlements payable to a disability support pensioner and aged pensioner.

As a result of the introduction of the attribution test, any assets set aside in trust for a profoundly disabled person or assets left by way of inheritance to or for the benefit of a disabled beneficiary were assessed against the means test threshold and in many cases either significantly reduced or eliminated the disability support pension entirely.

Further, any capital disposed of by a parent or another family member in receipt of an aged pension was subject to the normal Centrelink deprivation rules.

### Amendments to the Social Security Act

The amendments, contained in Part 3.18A of the Act that came into effect on 20 September 2006, provide for the creation of a new form of trust known as a "Special Disability Trust".

A Special Disability Trust can either be created by deed or by Will. However, only one trust can be created for any particular disabled beneficiary.

### Consequences of Amendments

The implications of the amendments are potentially significant for a number of reasons:

1. The assets of a Special Disability Trust up the assets value limit (\$500,000.00 indexed annually from 1 July each year) are not included as assets of the disabled beneficiary for Centrelink assessment purposes. In addition to the assets value limit, the value of any right or interest that the trust has in the disabled beneficiary's principle home is also disregarded.
2. The income generated by the trust is not attributed to the disabled beneficiary for the purposes of the Act.
3. The amendments modify the normal Centrelink deprivation rules on the disposal of assets by an aged pensioner. Therefore, a family member of a disabled beneficiary can gift up to \$500,000.00 (not indexed) to a Special Disability Trust and the value of the gift ceases to be assessed against the aged pensioner for asset test purposes. The Act contains a definition of immediate family members which includes parents, legal guardians, brothers, sisters, grandparents and others.

## Features of the Special Disability Trust

In order for a trust to qualify as a Special Disability Trust, the requirements for Part 3.18A of the Act must be complied with.

### Beneficiary Requirements

The legislation requires that the trust can only have one principal beneficiary (the disabled beneficiary). This beneficiary must satisfy the impairment or disability conditions as set out in the Social Security Act.

To satisfy these impairment conditions, the beneficiary must have a severe disability. The Act sets out the conditions that must exist in order for a beneficiary to qualify as "severely disabled".

### Sole Purpose Requirement

The Act also requires that the sole purpose of a Special Disability Trust must be to meet the "reasonable care and accommodation needs of the beneficiary".

A Special Disability Trust can only pay for:

- the costs of accommodation for the person with a severe disability; and
- extra care costs arising from the disability; and
- incidental expenses such as fees for professional trustees, investment and accounting expenses.

Apart from accommodation, the trust can only be used to pay for items which are necessary because of the disability. A Special Disability trust cannot pay for things that a person with a disability would ordinarily buy or be used to meet ordinary day to day expenses.

Guidelines have been prepared to assist in determining what is regarded as "reasonable care and accommodation".

The sole purpose requirement is narrow and for this reason a careful review of what is an allowable expense and what is not should be undertaken prior to the creation of a Special Disability Trust.

## Other Matters

The Act also sets out other matters relating to:

- the types of assets that can be transferred to the trust
- the treatment of the trust at cessation
- trustee qualification and appointment
- trustee obligations including recording and auditing requirements

## Conclusion

The amendments allowing for the creation of Special Disability Trusts are aimed at altering the effect of the means test and the deprivation rules as they relate to a disabled person and their family.

The amendments potentially offer estate planning opportunities for aged pensioners who have a disabled beneficiary or for other family members who have a disabled relative. However, given the narrow purpose to which the income and capital of the trust can be applied, advice should be sought to determine the viability and effectiveness of the trust on a case by case basis.

# Eligibility Rules for Age Pension Relaxed

On September 20 this year, a significant change will be made to the way Centrelink assesses eligibility for the Age Pension. New asset test rules will mean that many people who have previously been ineligible for the pension will now be able to qualify for a benefit and for the sought after Pensioner Concession Card. Many other people who already receive the Age Pension will receive an increase in the amount that they receive.

## *So what is this change all about?*

At present, a home-owning couple is ineligible for a pension if their assets (excluding their home) exceed \$523,500. After September 20, this figure will be increased to approximately \$818,000. For home-owning singles, the existing figure of \$338,500 will be increased to \$515,500.

There are a number of strategies available that can assist people to obtain or increase the amount of Age Pension they receive. One of these strategies is to purchase a Term Allocated Pension, an investment that is similar to an Allocated Pension. If purchased before 20 September, 50% of the capital value of a Term Allocated Pension will be excluded from assessment by Centrelink. The two case studies below show how this investment can be used as part of an investment portfolio, and its impact on Age Pension eligibility.

### **Case Study 1**

John, age 65, is a single homeowner who is currently working part-time earning \$200 per week. He has \$350,000 in assessable assets (mainly bank deposits but no superannuation). Currently he is not entitled to an Age Pension as the current assets disqualification limit is \$338,500. However, on 20 September 2007, due to the changes, John will be entitled to receive a pension of approximately \$7,000 pa.

However, if John contributes \$150,000 to superannuation and uses these funds to purchase a Term Allocated Pension, his assessable assets will be reduced by \$75,000 to \$275,000. He will then be entitled to a pension of approximately \$5,000 pa. This will be further increased to approximately \$9,900 pa from 20 September 2007.

### **Case Study 2**

Phil (age 65) and Kerry (age 63) are homeowners. They have \$800,000 in assessable assets, including \$400,000 in super (in John's name) and bank deposits. Currently they are not entitled to an Age Pension as the current asset test disqualification limit is \$523,500. After 20 September 2007, Phil and Kerry may be entitled to a small combined pension of around \$1,520 pa.

However, if Phil purchases a \$400,000 Term Allocated Pension, the couple's assessable assets will be reduced by \$200,000 to \$600,000. While they will not currently qualify for an Age Pension, they will be entitled to a pension of approximately \$9,300 pa from 20 September 2007.

**Article supplied by  
Garry Snell CFP DipFP**

# Exempt Funeral Investments

## Federal Budget Announcement

In the recent federal budget it was announced that pensioners wishing to establish a funeral fund will be able to take advantage of an increased assets test exemption from 1 January 2008.

The current assets test exemption of \$5,000.00 will be increased to \$10,000.00 from the start of 2008.

In order to qualify as an exempt funeral investment, the funeral bond or funeral fund, must:

- mature on the death of the funeral fund holder or their spouse
- not relate to a funeral to which another funeral investment or pre-payment of funeral expenses relates
- not be redeemable
- not have more than \$10,000.00 invested in it (from 1 January 2008).

Interest paid on the funeral investment is also exempt provided the contributions to the investment do not exceed \$10,000.00.

After the commencement of the changes, if a customer invests more than \$10,000.00 in a funeral investment, the funeral investment will not be regarded as an exempt asset and the whole amount invested will be assessable for the income and assets test.

The \$10,000.00 will apply to each member of a couple provided they each have an individual investment of \$10,000.00.

We are able to introduce you to a funeral director who can assist you with a prepaid funeral.

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### The Moores Legal Elder Law Team

We have a range of practitioners who are able to assist with any minor queries or major issues you may have. If you require further information, please contact a member of our Team

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