

5 HOUSING AND ACCOMMODATION

5.1 Introduction

The housing options for older people depend upon their financial resources. Home ownership continues to be an important focus for older Australians. Statistics show that older Australians prefer to stay in their own homes as they get older. Governments have acknowledged this preference and are giving increasing assistance to people who wish to remain in their own home.

This chapter aims to help older Australians and those who care for them, with important lifestyle and housing decisions. It includes information on how to make sure older people get the care they need, how to get help in the home, the accommodation choices that are available and how these choices may affect entitlements to payments and services.



5.2 Home Ownership

The buying and selling of a home is usually the most important transaction that people undertake. There are many financial and legal implications and a large amount of paperwork that must be completed. Most people employ agents to sell a home and a solicitor or conveyancer to make sure the ownership is legally transferred.

5.3 Buying and selling a home

(a) Agents

The first step you might take in selling your house is to engage a real estate agent. Before an agent can sell the property for you, you will need to enter into a contract with the agent called an agency agreement. This will give the agent authority to take steps such as advertising the property for sale and managing inspections. The agency agreement should set out the services the agent will provide you and details of all of costs you will be liable for, including any commissions. While the agreement comes in a printed form, you still have the right to negotiate the terms before signing it.

(b) Auctions

Recent changes to the law mean that you are not able to bid at an auction of residential property in NSW unless you give the selling agent your name and address and show proof of your identity. Your details are recorded by the agent in the Bidders Record and at the auction you are given a bidder's number. Registering for an auction does not mean you must bid. Registering simply gives you the right to bid.

The auction is conducted under certain conditions that are set by law. The auctioneer should have these conditions on display before the auction so that you can read them. The auction conditions include:

- (i) the highest bidder is the purchaser, subject to any reserve price;
- (ii) the seller of the property is entitled to one bid only;
- (iii) before the auction, the auctioneer must announce if the seller has reserved the right to make a bid;
- (iv) the auctioneer must announce when the seller's bid is made (if it is used);

- (v) the auctioneer can refuse a bid that is not in the interests of the seller;
- (vi) the auctioneer has no authority to accept a late bid, that is, a bid after the fall of the hammer;
- (vii) if there is a disputed bid, the auctioneer is the sole arbitrator and makes the final decision;
- (viii) the successful buyer's name must be given to the auctioneer as soon as possible;
- (ix) it is an offence to collude with someone to interfere with free and open competition at the auction, for example, by arranging to make 'dummy' bids. Those involved may be prosecuted and fined up to \$22,000.

If you want someone else to bid on your behalf, they must give the auctioneer a written authority from you, before the auction starts. The letter must include your name, address and details of proof of identity, such as your driver's licence or passport number.

Before auctioning a property, the seller will nominate a 'reserve' price that is usually not told to the interested buyers. The reserve price is the lowest price that the seller is willing to accept. If the bidding continues beyond the reserve price, the property is sold at the fall of the hammer. If the highest bid is below the reserve price, the property will be 'passed in'. The seller will then either try and negotiate a price with interested bidders or put the property back on the market.

If you are the successful buyer at auction, you must then sign the sale contract and pay the deposit on the spot (usually 10%). The cooling-off period (the period in which you can change your mind about purchasing the property) does not apply if you buy at auction (or if the property is passed in but you end up exchanging contracts on that same day). This means you will not be able to change your mind without incurring the loss of your 10% deposit, and possibly a claim by the seller for damages.

(c) Conveyancing

The legal work involved in preparing a sales contract, mortgage and other related documents is called conveyancing. It is possible to do your own conveyancing, however, most people get a licensed conveyancer or lawyer to do the work for them. The Office of Fair Trading issues licenses for conveyancers to do legal work such as preparing documents and explaining the implications of those documents. The following paragraphs explain what is involved in conveyancing.

While conveyancers and lawyers are equally qualified to do conveyancing work, lawyers can also give you legal advice about other matters. Both must have professional indemnity insurance to protect you in case they make a mistake or are negligent in their work.

A lawyer or conveyancer is professionally experienced at making sure that all relevant steps for your conveyance are completed. Most offer a fixed cost for the service. If you choose to do your own conveyancing, you will be taking responsibility for anything that goes wrong. As you will not have the insurance of a professional, you will not be covered for any loss suffered by the other party because of your negligent actions or omissions. The exercise to save some money may end up costing you significantly more.

You should not use the same lawyer as the seller in order to "save costs", as the lawyer for the seller will have a conflict of interest if the transaction becomes complicated and your interests diverge from the seller's.

(d) The contract

A residential property cannot be advertised for sale until a contract for sale of land has been drawn up. You have the right to examine the contract at any time during the buying process, even before you make an offer. Exchanging sale contracts is the legal part of buying a home. Before exchange, the agreement is usually just verbal and not enforceable.

After you have discussed the contract with your lawyer or conveyancer and all the proper enquiries have been made, you will be ready to exchange contracts. There will be two copies of the sale contract: one for the buyer and one for the seller. You each sign one copy before they are swapped or 'exchanged'. This can be done by hand or post and is usually arranged by your lawyer, conveyancer or the agent. At the time of exchange you will be required to pay a deposit, usually 10% of the purchase price. You should discuss with your lawyer whether insurance over the new property should be taken out after exchange.

After you have exchanged contracts, you have five business days to change your mind and get out of the contract – this is known as the "cooling off period". If you do change your mind after that time, the seller is entitled to keep 0.25% of the sale price. However, the parties can agree to waive this cooling-off period, in which case if you change your mind at any time after exchange, the seller will be entitled to keep 0.25% of the sale price.

(e) Settlement

Settlement usually takes place about six weeks after contracts are exchanged. This is when you become the legal owner of the property. The balance of the purchase price and other adjustments are paid on this date.

(f) Fees & Charges

Apart from the purchase price of the home, there are a variety of fees and charges involved in the transaction. These include:

- (i) fees for the professional services of a lawyer or conveyancer (if you have used one);
- (ii) disbursements (costs incurred on your behalf) by the lawyer or conveyancer. For a purchaser, these costs are likely to include the cost of obtaining building certificates, pest inspections and other searches that ensure the property is not encumbered by a mortgage or caveat etc;
- (iii) stamp duty payable within three months of the making of the contract;
- (iv) insurance, which should be arranged to be effective from exchange or settlement.

5.4 Strata Title Units

For some people, looking after the family home and garden becomes too much work. One alternative is to move into a strata title unit where some of the burdens of maintaining a residence are taken care of by the owners' corporation.

If you choose to purchase a strata title unit you should become familiar with your rights and responsibilities as a unit owner. You will be purchasing a lot in a strata scheme. You will become a member of the owners' corporation and will acquire an interest in the common property.

As a member of the owners' corporation you are entitled to vote at an annual general meeting (AGM). The AGM is held each year and all lot owners in the strata scheme are entitled to attend. Important decisions are made regarding the management of your strata scheme at the AGM and you should attend to vote on decisions which may affect you.

As an owner you will be responsible for your own unit while the owners' corporation will be responsible for the common property.

The common property is all the land and buildings which do not belong to any particular lot. This usually includes the outside walls of the building, stairways, hallways, gardens and any lifts. If you are uncertain as to which part is common property or lot property you should speak to your strata manager. It is important to know this because you cannot alter or do work to common property without the consent of the owners' corporation. The owners' corporation usually owns equipment necessary to maintain and repair the common property.

In a strata scheme all owners will periodically be required to contribute money into the administrative fund and sinking fund established by the owners' corporation. This money is used for the general running of the scheme and includes payments for maintenance and upkeep of the common property and insurance policies.

As a member of the owners' corporation you will be bound by the by-laws which apply to your scheme. By-laws are rules regulating the day-to-day living in strata schemes (such as whether pets are allowed). The developer of the strata scheme decides the initial by-laws. By-laws can be changed by the owners' corporation when necessary. Changes in by-laws must be registered with Land and Property Information NSW. The change is then recorded on the Certificate of Title for the common property.

Many owners' corporations appoint a managing agent to carry out the many duties imposed on owners' corporations by legislation. A strata managing agent must be licensed.

The Strata Schemes and Mediation Services Branch of the Office of Fair Trading can provide assistance where there are disputes relating to strata properties and its contact details are listed in Chapter 14.

5.5 Building your own home

To protect consumers, the NSW Government has legislated to regulate contracts between consumers and builders for the performance of residential building work. The *Home Building Act 1989* deals with residential building contracts, the licensing of builders, home warranty insurance, and residential building disputes. Each of these is dealt with briefly below.

5.6 Residential building contracts

The *Home Building Act 1989* provides minimum requirements for contracts, including statutory warranties, or terms, that will form part of any residential building contract.

The *Home Building Act* applies to "a contract under which the holder of a licence undertakes to do, in person or by others, any residential building work". It also applies to contracts involving the supply of kit homes and to owner-builder work.

(a) Residential Building Work

Residential building work means any work involved in co-ordinating or supervising any work in the construction of a dwelling, the making of alterations or additions to a dwelling, or the repair, renovation, decoration or protective treatment of a dwelling.

It also includes specialist work such as plumbing, gasfitting or electrical work and may include certain refrigeration and air-conditioning work.

It is important to note that the legislation defines "dwelling" to mean a building or portion of a building that is designed, constructed or adapted for use as a dwelling, which is a wide definition. It also includes any swimming pool or spa constructed for use in conjunction with a dwelling.

(b) The contract

All contracts for residential building work must be in writing. The legislation also requires that the contract must include certain matters. For more information on these issues, you should read the Consumer Building Guide issued by the Office of Fair Trading, which must be attached to all contracts. Contact details for the Office of Fair Trading are located at Chapter 14.

(c) Cooling off period

Home building contracts must contain a cooling off period allowing a person to rescind a contract (ie, act as though it were never in force) for residential building work within 5 days after the person signs the contract.

5.7 The licensing of builders

The *Home Building Act* prohibits any residential building work and specialist work unless the person, contracting to do the work, holds a licence which authorises him or her to do the building work. The Office of Fair Trading is responsible for issuing such licences.

Before entering into a contract with a builder for residential building work, including renovations and repairs, you should check that the builder is licenced to do the type of work that you want done. You can do a licence search through the Office of Fair Trading whose contact details are set out in Chapter 14. Additionally, if you do work as an owner builder you need to obtain a licence to do owner-builder work from the Office of Fair Trading, together with Home Warranty insurance.

5.8 The Home Warranty insurance scheme

The Home Warranty insurance scheme provides protection for homeowners against defective and incomplete building work that the builder is responsible for, including faulty design if provided by the builder. The scheme applies to work done, or to be done, under a contract entered into on or after 1 May 1997. A builder must not do residential work under a building contract valued above \$12,000 unless a contract of insurance exists. The Home Warranty insurance scheme covers owners for seven years after the date the works are completed.

The beneficiaries of the insurance policy include the person who has contracted with builder, the person who buys off the plan from a developer; and subsequent owners of a property. A copy of the certificate of insurance should be attached to every contract for the sale of land where building work has been undertaken in the previous seven years. Accordingly, you should ensure that your conveyancer or solicitor obtains the certificate of insurance if you are purchasing a house or unit that is less than seven years old.

For policies issued after 1 July 2002, homeowners must pursue the builder in the event of defective or incomplete work. Home Warranty insurance can only be claimed if the builder becomes insolvent, dies, or disappears. However, since there are time limits for notifying an insurer of a potential claim, you should notify the insurer immediately of defective or incomplete work. This will protect your right to make a claim later on if you can no longer pursue the builder.

For multi-storey residential buildings, the scheme only applies to building work commenced prior to 31 December 2003. A multi storey building is one with more than 3 storeys and at least 2 separate dwellings.

Accommodation specially designed for the aged is excluded under the scheme unless it is provided in self-contained units. However, from 1 September 2004, self-contained units within a retirement village are also excluded from the scheme. Accordingly, the scheme may or may not apply to a retirement village unit depending on the circumstances and you should obtain legal advice as to whether your unit is covered.

5.9 Residential building disputes

Where a dispute arises between an owner and a builder in respect of defects to residential building work, an owner may refer the dispute to the Office of Fair Trading, which will appoint a building inspector. The building inspector will meet the owner and builder on site, inspect the works and help the parties reach a resolution. The building inspector may issue a rectification order requiring the builder to take steps to ensure that the work is completed or the defects or damage rectified.

The rectification order may also require the owner to comply with certain conditions including the payment of outstanding money by a specified date. Non-compliance with the rectification order by the builder may result in disciplinary action as well as other action taken by the owner.

If the building inspector has not been able to resolve the dispute, both the owner and builder can apply to Consumer Trader and Tenancy Tribunal (CTTT). You can also appeal directly to the CTTT against a denial of a home warranty insurance claim, however time limits do apply so be careful that any claim is made within time.

You may need to obtain legal advice as to whether a claim can be made against the builder and as to your rights generally.

5.10 Defects and damages

It is unrealistic to assume that your home will be perfect and free of defects.

Defective building work claims can be very complex and it is difficult to determine who is responsible for the defective building work and what the cost of rectification will be. It is usually necessary to obtain a building report from a suitably qualified expert who will itemise each defect, its cause, and estimated cost of rectification.

As a general rule, an owner is entitled to building work that conforms to the contract plans and specifications. Where the works are defective, the appropriate measure to determine damages is the cost to make the works conform to the contract.

The CTTT may deal with disputes if the amount claimed is less than \$500,000. The District Court may hear claims up to \$850,000, and the Supreme Court for any amount above that.

5.11 Private rentals

A tenancy is where a right to occupy premises is granted in exchange for rent. In NSW, the rights and obligations of landlords and tenants are heavily regulated by the *Residential Tenancies Act 1987*. This Act applies to about 645,000 households in NSW. It does not, however, apply to hotels, motels, educational institutions, clubs, hostels, nursing homes or hospitals. It also does not apply to boarders or lodgers, or holiday homes rented for less than 2 months.

Tenants can obtain free advice about the application of these laws from the Tenants' Advice and Advocacy Service, or the Tenants' Union. Landlords (and tenants) may obtain free advice from the Office of Fair Trading Renting Services. Contact details are set out in Chapter 14.

5.12 Residential tenancy agreements

An agreement between a landlord and tenant is called a "residential tenancy agreement". There is a standard form of residential tenancy agreement available but it is possible to produce your own agreement. The landlord cannot remove or add terms that contradict the *Residential Tenancies Act*. For example, an agreement that provides for penalties for late payment of rent, or requires steam cleaning of carpets, will be void.

Each residential tenancy agreement must include a condition report (setting out any defects or damage to the rented premises or fixtures). The condition report is very important and can avoid many disputes at the end of your tenancy. You have seven days from when you receive the form to complete it and return it to the landlord. Make sure you keep a copy. It is also advisable to take photos at the commencement of the tenancy.

5.13 Real estate agents

Many landlords engage real estate agents to manage the rental property for them. If you own property that you wish to rent out, it can be a good idea to engage the service of a real estate agent who specialises in property management.

5.14 Starting a tenancy

When applying for a tenancy, you may be asked for a reservation fee. A landlord or real estate agent may charge this fee while your application to rent the property is considered. The maximum fee a landlord can charge is one week's rent. They can also only hold one reservation fee at a time. If your application is granted then the fee automatically goes towards your rent. If you decide not to rent the property the landlord may keep some of the reservation fee. If your application is refused, you will be refunded the fee in full. You are entitled to a full refund if your application is conditional on the landlord doing repairs and landlord fails to do so. It is very important to request a receipt describing the reservation fee and any conditions attached.

Once you have been approved there are several costs that you will need to pay. They include: preparation of the residential tenancy agreement (maximum \$15), rent in advance, and rental bond.

If your rent is less than \$300 a week you can only be expected to pay 2 weeks rent in advance. If the rent is above this amount then you can be asked to pay a month's rent in advance. It is an offence for the landlord to charge more than these amounts.

5.15 Rental bond

The rental bond is a security deposit paid by the tenant to the landlord. Bonds are regulated by the *Landlord and Tenant (Rental Bonds) Act 1977*. Bonds must be lodged with the Rental Bond Board by the landlord. If the landlord fails to do so he or she may be fined up to \$2,200. If you rent unfurnished premises the maximum bond you have to pay is the equivalent of 4 weeks rent. If the place is furnished and your rent is less than \$250 a week, you may be liable for an amount equivalent to 6 weeks rent. If the rent is above \$250 (for a furnished place) there is no maximum bond and it is up to the landlord and tenant to negotiate a fair bond.

The tenant is entitled to the return of the bond on leaving the premises subject to the condition of the premises on vacating (fair wear and tear, however, cannot justify a deduction from the bond). For more information about rental bonds call the Rental Bond Board, which is part of the Office of Fair Trading. Contact details are set out in Chapter 14.

5.16 Rights and obligations of landlords and tenants

Tenants have the right to privacy and quiet enjoyment. In accordance with this right the landlord cannot enter the premises at any time without giving proper notice, unless in an emergency or to address urgent repairs (such as a burst water service or a gas leak). You must not alter, add to or renovate the premises without receiving the landlord's permission. It is necessary to document any agreement in writing.

It is the landlord's obligation to provide premises in a reasonable state of cleanliness and fit for habitation. The premises should also be reasonably secure. The landlord must do repairs. Put your repair request in writing. If the landlord refuses to do the repairs then you can make an application to the

CTTT within 30 days of the date of refusal. You, as the tenant, must in return keep the premises in a reasonable state of cleanliness and notify the landlord of any damage. Tenants should not cause or permit any damage to the premises and can also be liable for damage caused by their guests.

5.17 Rent increases

Rent increases are strictly regulated. If the tenancy agreement is for a fixed term the rent cannot be increased unless it is in accordance with the rental agreement. Where there is no fixed term tenants must be given at least 60 days notice in writing by the landlord before the rent can be increased. If the increase is excessive, you may apply to the CTTT within 30 days to review the increase. However, if you are a tenant of the Department of Housing and you receive a rent rebate, you cannot make an application to the CTTT about excessive rent.

5.18 Ending tenancies

A residential tenancy agreement may be terminated by either the landlord or the tenant by providing notice in writing. How long that notice period needs to be depends on the grounds of the termination. If the tenancy is for a fixed period, you or the landlord can end the agreement by giving 14 days' notice prior to the end of the fixed period. The same notice is required if the landlord wants to end the agreement early because of a breach by you of the agreement (for example, if you are more than 14 days behind in rent).

If no notice is given at the end of a fixed term agreement, then the agreement becomes a "continuing" agreement. A landlord cannot ask you to leave the premises that you occupy under a continuing agreement without giving you at least 60 days' notice (other than for a breach of the agreement). If the landlord is selling the property during a continuing agreement, the landlord must give you at least 30 days' notice

A termination notice is not final. If you do not leave when the notice of termination expires, the landlord must apply to the CTTT for orders of possession (that is, to remove you). The CTTT will then decide whether the tenancy will be terminated. You will be given a chance to be heard by the CTTT. A landlord cannot remove you without a CTTT order. A landlord who locks you out (ie, by changing the locks) without a CTTT order may be liable for fines of up to \$22,000. If this happens, you can apply to the CTTT for an urgent hearing to re-enter the premises. The landlord could be liable for compensation due to the illegal lockout in addition to being liable for fines.

You, as a tenant, can end an agreement before the fixed term ends. However, you may be liable for any lost income and costs suffered by the landlord. The landlord has an obligation to minimise his or her losses (eg, by taking steps to find a new tenant). If the landlord is happy to end the agreement without recovering costs from you, it is vital that you get such an agreement in writing. You may be able to terminate a tenancy if the landlord breaches the agreement. The CTTT also has power to terminate tenancies, but may order you to pay the landlord's costs. If you are thinking of ending your tenancy early, contact the Tenants' Union or Renting Services. Contact details are set out in Chapter 14.

5.19 Tenancy disputes and the CTTT

If there is a tenancy dispute, you should seek advice and try to negotiate with the other party. Always get agreements or undertakings in writing and keep a tenancy diary. If the dispute cannot be resolved then you can have the CTTT hear the dispute. The CTTT will first try to resolve the dispute through a conciliation process. If you cannot reach an agreement through conciliation, the matter will progress to a hearing before a CTTT Member. You will then have your chance to state your case. The hearing is informal and generally it will be without lawyers. The CTTT Member will make a decision that will be binding. If you are considering a CTTT action or have received a notice to attend the CTTT, you should seek some practical advice by calling the Tenants' Union or Renting Services. Contact details are set out in Chapter 14. If you are unhappy with the CTTT's decision, there may be scope to seek review of (or appeal) that decision before a court. You should seek legal advice on how to exercise those rights.

5.20 Special categories of tenants

(a) Protected tenants

Protected tenants live in premises controlled by the *Landlord and Tenant (Amendment) Act 1948*. They have greater protection against eviction and rental increases than tenants under the *Residential Tenancies Act*. However, landlords are under no obligation to undertake repairs to premises.

You may be a protected tenant if you moved into your home or flat before 1 January 1986, the building was built before 16 December 1954, and if your home was converted to a flat before 1 January 1969. If you have received an eviction notice or a rental increase or you are having trouble with repairs and you think you may be a protected tenant, contact the Tenants' Union. Contact details are set out in Chapter 14.

(b) Residential park residents

Residential parks include caravan parks, manufactured home estates, and relocatable home parks. Permanent residents of residential parks are protected by the *Residential Parks Act 1998*. The majority of older residents own their own dwelling, however they do not own the land their dwelling is on.

Residential parks differ in quality and size. You should investigate what facilities are offered before settling in one. Although residents have similar rights and obligations to tenants under the *Residential Tenancies Act*, in reality the manager has considerable power over every aspect of a resident's life (from roads and water to access to phones and newspapers).

Most parks have a set of park rules that deal with issues surrounding visitors, pets and recreational facilities. These rules cannot be inconsistent with the *Residential Parks Act*. The park owner must give you a copy of these rules before you enter the agreement. These rules can be amended by the park owner by giving 60 days written notice to the residents. If you live on a park with more than 20 sites then the park owner must convene and maintain a Park Liaison committee. This committee is made up of management and residents representatives.

Park closures are also governed by the *Residential Parks Act*. If you rent or live in a mobile home or caravan without a rigid annex you are entitled to 60 days' notice. If you own a manufactured home or caravan with a rigid annex you are entitled to 180 days' notice *and* the cost of relocation to a new residential park.

For advice and information, call the Parks and Village Service, which is part of the Tenants Advice & Advocacy Services. Contact details are set out in Chapter 14.

(c) Boarders and lodgers

Boarders and lodgers are exempt from the *Residential Tenancies Act* and therefore have only limited rights and protections. Whether a person is a tenant or a boarder/lodger is usually determined by the control they exercise over what they rent. Free legal advice is available to a person who wants to enquire about their status (call the Tenants' Union, whose contact details are set out in Chapter 14).

In general terms, a lodger is someone that pays money to occupy a part of the premises, but the proprietor maintains general control. There are usually strict house rules, the room is furnished, linen may be provided, the proprietor or caretaker resides on the

premises and utilities are covered in your weekly payment. The main difference between a boarder and a lodger is that a boarder receives meals as a part of their agreement.

Boarders and lodgers have no security of tenure, no access to an affordable formal dispute body and are vulnerable to rent increases. It can be very difficult for a boarder to get repairs carried out or to maintain basic services. Boarders and lodgers can be evicted from their accommodation at any time with no notice and for no reason. The only protection is that there is an implied promise that the licence will not be revoked in a manner that is contrary to the intention of the parties.

5.21 Public housing

Public housing is government owned housing that provides accommodation to people on low incomes who cannot sustain a tenancy in the private market. Public housing tenants with low incomes can also apply for a rent subsidy. The Department of Housing is the State's largest landlord. The waiting lists for public housing is very long and there are extensive eligibility criteria.

(a) Eligibility

Application forms are available from the Department. To be eligible you must be an Australian citizen (or permanent resident) who lives in NSW, have the ability to sustain a successful tenancy and repay any debts you might owe to the Department of Housing from a previous tenancy with them, and, most importantly, satisfy the income and assets test (see below).

Additional criteria apply to former public housing tenants who have a less than satisfactory or unsatisfactory tenancy history. (For more information, see Policy ALL0030A: "Eligibility for Public Housing", available on the Department of Housing website or telephone the Department for a copy to be sent to you – contact details are set out in Chapter 14.)

To be eligible, the gross household income must be less than or equal to the weekly income limit listed in the table below.

Household size	Weekly income limit
1 person	\$395
2 people	\$500
3 people	\$580
4 people	\$665
5 people	\$720
6 people	\$775

Household income means the total gross income of all people included in the application for public housing, and includes wages, pensions and allowances, interest on investments, child support and maintenance payments. The Department will include in its calculations any Centrelink income you are eligible for, whether or not you apply for it.

(b) Housing assistance for elderly clients

Elderly clients are entitled to progress faster up the public housing waiting list if they meet the general eligibility criteria and are aged 80 years and over (or 55 years and over for Aborigines or Torres Strait Islanders). If you are an elderly person who has been approved for housing in a high demand zone, you are not required to satisfy the locational needs assessment.

(c) Priority housing

The Department of Housing also offers priority housing. You must prove that your housing need is more urgent than the needs of others on the waiting list. Generally, you will need to be facing homelessness or imminent risk of homelessness. To apply you need to complete both the general housing form and the priority housing form.

(d) Rights and responsibilities of public tenants

Public housing tenants have the same rights and obligations as other tenants under the *Residential Tenancies Act*. The Department, however, is exempt from some of the requirements. For example:

- (i) the Department does not have to provide rent receipts;
- (ii) when a tenant dies or moves out, the remaining occupant cannot apply to the CTTT to be recognised as a tenant;
- (iii) the Department does not have to give 60 days' written notice of a rent increase; and
- (iv) a tenant cannot challenge a change in rent when receiving a rent rebate.

Public housing tenants also have to comply with the Department's policies (such as providing income information in order to receive a rental subsidy). These policies can be found on the Department of Housing's website, contact details of which are set out in Chapter 14.

The Department of Housing must carry out reasonable repairs and maintenance, provide reasonable security and give proper notice to visit the premises. To get repairs done, call the maintenance line on 131 571 and lodge a complaint. It is important to keep a record of the job number and the date of the call. Also put the complaint in writing. If the Department of Housing does not carry out repairs, you can go to the CTTT to get orders forcing the Department to make the repairs.

The Department of Housing must provide proper notice for the tenant to vacate and apply to the CTTT if it wants to regain possession of the property. Most public tenants receive termination notices for rental arrears. The Department of Housing has additional powers to evict "anti-social" tenants. You may be responsible for the behaviour of other members of your household and guests. If you are facing eviction, free legal advice and assistance is available. Contact details for the Tenants' Union are set out in Chapter 14. Once you are evicted from public housing it can be extremely difficult to secure another public housing tenancy.

(e) Rental subsidies

The Department of Housing sets market rent for all its properties. If your household has a low income, then you can apply for a rental subsidy to reduce the amount of rent you need to pay.

Rental subsidies are not automatically granted. You must separately apply and provide evidence of the income received by all household members aged 18 and over. Most tenants will pay a maximum of 25% of the household income in rent. For more information contact the Department of Housing (Chapter 14 has contact details) and ask for a copy of its Policy SUB0044A: Rental Subsidies to be sent to you.

It is very important that you to notify the Department of Housing within 28 days of any changes in household income. If you fail to do so the rental subsidy might be cancelled and the rent re-set to market levels. You may be required to pay back the difference from the point in time when the household income changed. This can leave you with a large amount of rental arrears. The Department can also pursue termination proceedings. If this happens to you, you should seek legal advice.

(f) Modifications to accommodate disabilities

The Department of Housing will modify its dwellings to suit people with disabilities if it is economically viable to do so. This may include handrails for the elderly. Modifications to homes owned by the Department are done at no cost to you.

(g) Rentstart

The Department also offers housing assistance such as Rentstart, which helps you establish a tenancy in the private rental market or assist you to maintain your existing tenancy. Rentstart assistance can only be sought once every 12 months, and is not available to public housing tenants. There are three types of assistance offered, the Department may: contribute up to 75% of the cost of the bond; up to 4 weeks rental arrears; or, in severe financial and housing circumstances, the full amount of bond and two weeks rent in advance. You should ask the Department about these alternatives.

(h) Public housing rental bonds

The Department of Housing has recently begun to request rental bonds for public housing.

5.22 Community Housing

Like public housing, community housing offers affordable, long-term rental housing which is supported by the government. The difference is that community housing is run by community housing organisations, which are non-government, not-for-profit organisations. Community housing properties are either rented from the private market or owned by the government.

The most common way for you to become a community housing tenant is to apply directly to a community housing organisation. If accepted, you will be placed on a waiting list, the length of which varies depending on the organisation and area. When applying for public housing, you can also nominate to be considered for community housing. The community housing provider will assess the housing needs of each applicant and determine who is best suited to the property.

Like any other landlord, a community housing organisation must follow the *Residential Tenancies Act*. This means you must be provided with a written residential tenancy agreement and the organisation must do repairs (including urgent repairs) and respect your right to privacy. For further information, see the Office of Community Housing (contact details are set out in Chapter 14).

5.23 Disputes involving social (public or community) housing

The CTTT can hear disputes between social housing providers and tenants regarding ordinary tenancy disputes. However, the CTTT does not hear disputes concerning housing applications, selection, transfers, or rental subsidy decisions. These matters can be dealt with through the Department's internal appeals procedures.

There are two levels of appeal. You can ask for a decision to be reviewed if you believe that inadequate consideration has been given to your individual circumstances, the decision is contrary to policy or involves poor interpretation of policy, or the procedures used to reach the decision were incorrect. You

must request a review in writing within three months of the Department's decision. The first level of appeal is an internal review carried out by a more senior officer than the one involved in making the original decision. If you are still dissatisfied, the matter can be taken to the second level of appeal: the Housing Appeals Committee (**HAC**). HAC is an independent review body. You must apply to HAC within 3 months of the first level of appeal decision. HAC is an advisory body only and does not have the power to overturn the Department's original decision. It can only make recommendations.

You can also raise housing concerns at any time with the Department's Client Feedback Unit, the Minister for Housing, your local Member of Parliament, or the NSW Ombudsman.

5.24 Retirement villages

A retirement village is a small community where retired people live in private accommodation and contribute financially to the purchase of shared services such as health, recreation, and property maintenance. The *Retirement Villages Act 1999* is a state Act and sets out the rights and obligations of prospective residents, actual residents and village operators. The Act does not, however, cover nursing homes or aged care hostels.

There are various styles of retirement villages and you should investigate which one best suits your current and future requirements. Entry contributions and the level of services and facilities available can vary drastically between the various retirement villages. Some retirement villages have little or no facilities. It is imperative that you obtain trustworthy, independent advice about the possible financial and legal consequences of purchasing in a retirement village. The Office of Fair Trading has produced a booklet called "Retirement Village Living". Copies are free and can be obtained from any Fair Trading Centre, contact details of which are set out in Chapter 14.

5.25 Types of retirement village accommodation and service packages

There are four different legal structures commonly used in retirement villages:

(a) Loan/Licence

Under this scheme, the village developer retains ownership of the village, and the licence gives you the right to live in the village and occupy your unit, subject to the conditions set out in your contract. The schemes are more affordable than other types of village schemes. A contribution (usually an interest free loan or donation) is generally required. You cannot transfer the licence to another person, and the right to occupy ends when you leave the village or pass away. A refund is generally made to you or to your estate; however the refund may be reduced by a departure fee.

(b) Lease

Under a lease arrangement, the village developer retains ownership of the village. You pay a contribution, in the form of a lease premium or prepaid rent, in turn for the use of the unit and the right to share the village amenities. The lease (which is a long-term lease) ends when you pass away, or give notice to surrender the lease. On surrender or death, a refund of the lease premium is made to you or to your estate, less a reduction for departure fees and other charges.

(c) Strata

Under this scheme you own the unit in which you live and are entitled to the sales proceeds when the unit is sold. However the village operator may be entitled to a departure fee and a portion of the capital gain acquired. There will usually be a service agreement between the village operator and the owners' corporation which may limit the

voting powers of unit owners. As with other strata schemes, owners are required to pay outgoings during the period of ownership.

(d) **Company title**

Under this structure, the village property is owned by the village company, and shares in the company are sold to the residents of the village. The ownership of shares entitles you, as a shareholder, to live in the unit and to use village amenities. Residents under a company title are required to pay recurrent charges proportionate to the shares held. If you sell your shares, you will be entitled to the proceeds of the sale less a portion of the capital gain and a departure fee. The village company enters into a service agreement with an operator who is responsible for the day to day management of the village.

5.26 **Disclosure statements and cooling off periods**

The operator of a retirement village must, at least 14 days prior to entering into a village contract with a person, provide a prospective resident (or a person acting on behalf of a prospective resident) with a disclosure statement containing detailed information about the village.

You may, within the cooling off period (7 business days after entering into a village contract), back out of the contract.

5.27 **The cost of living in a retirement village**

Before entering into a retirement village, it is important to consider any capital gain or loss implications. Many people obtain the money to fund their entry to a retirement village by selling their homes. If you decide to move out of the village, you may find you will lose a substantial amount of your initial capital outlay. It is best to get detailed financial advice from an adviser to guard against this as far as is possible.

Some of the other costs you may have to pay when moving into a retirement village are listed below:

- (a) *Entry contribution*: this is like (but not the same as) the cost of buying property. If it is a donation, you will not get it back if you decide to leave. If it is a bond, part of it will be returned to you if you leave. Bonds typically are not invested, so you will not get any interest paid on this amount.
- (b) *Maintenance fees*: the weekly or fortnightly expenses levied for the services provided by the village and for administration costs.
- (c) *Special levies*: one-off costs that management might require for special projects.
- (d) *Deferred management fee* (usually only in privately owned villages, as opposed to those managed by, for example, charitable groups): a fee for deferred maintenance charges must be paid if you decide to leave the village.
- (e) *Ongoing fees*: you might have to continue to pay ongoing fees after you move out (at least until management is able to find another person to occupy your unit).

5.28 **Village residents' rights**

You cannot be made to leave the village unless an order has been made against you by the CTTT, and only in the following circumstances:

- (a) you have breached a condition of the contract and, in the circumstances, it is justifiable to ask you to leave;

- (b) you have injured other residents or staff, or have damaged the premises;
- (c) you would cause the management “undue hardship” if you do not leave; or
- (d) your health has deteriorated such that you can no longer look after yourself.

5.29 Information about the financial affairs of your village

Management must consult village residents about the village finances by giving them a draft budget for the next financial year. This budget cannot be finalised without the residents' agreement. The village must also provide you with an annual audited financial report for the previous financial year by 31 October of each year. If this does not happen contact the Office of Fair Trading (details are set out in Chapter 14).

5.30 Further information about retirement villages

The Aged-Care Rights Service can provide advice and assistance to retirement village residents. Contact details are set out in Chapter 14.

5.31 Residential aged care

Residential aged care homes provide accommodation as well as personal and nursing care (which includes staffing, meals, cleaning services, furniture and equipment) for people who can no longer manage to live in their own home.

5.32 Types of residential aged care

Residential aged care homes were previously called nursing homes and hostels. Levels of care provided range from low level care (equivalent to hostel care) to high level care (equivalent to nursing home care). Most aged care facilities (whether private or public) operate under the *Aged Care Act 1997* (Cth) so they can receive federal subsidies. However in NSW, the *Public Health Act 1991* also provides that aged care facilities must comply with certain minimum staffing requirements.

5.33 Finding residential aged care

An Aged Care Assessment Team (**ACAT**) is a group of aged care health professionals who will assess your need for care. Should you need residential care, they can assist you in finding an aged care facility to suit your needs. Usually, ACATs are based at hospitals, aged care centres or community health centres. Your doctor can refer you to an ACAT for an assessment.

5.34 Eviction from residential aged care facilities

There is little protection from eviction for residents of aged care facilities. If the premises operate under the *Aged Care Act*, the resident can challenge a decision to evict him or her, but it is the resident who must initiate the appeal. There is no such protection under the *Nursing Homes Act*, however the operator must assist in finding alternative accommodation if the resident requests it to do so.

5.35 Fees for residential aged care

Residents pay contribution fees for the ongoing and capital costs of residential care. Contracts with residential aged care operators can be very complex, and can lead to arrangements that are not in your best interest. For example, some contracts may allow the operator to transfer your property to the facility rather than to your family. Advice should be sought from a legal or financial adviser before entering into a residential aged care contract.

There are two main types of fees (daily care fees and accommodation payments) you will be expected to pay (determined according to your care needs, income and assets):

- (a) *Daily care fees* include a basic fee (maximum \$34.76 per day, or \$27.86 per day for pensioners) and an additional fee (for non pensioners). The additional fee will depend both on your income and your care needs. The maximum amount anyone may be asked to pay each day is \$83.58. To be required to pay the maximum amount you would need to have an annual income of \$74,306 (for singles) or \$147,884 (for couples).
- (b) *Accommodation payments* are contributions which must be used by residential aged care facilities to improve building and accommodation standards and the services provided. This payment can take the form of a bond or a charge.

Accommodation bonds vary, but you cannot be charged a bond that would leave you with less than \$30,000 (single person) or \$60,000 (if married) in assets. A bond can be paid as a lump sum, or periodic payment, or a combination of both. When you leave, the bond is refunded less a maximum of \$265.50 a month or \$3,186 a year for up to five years. Interest may be charged in relation to outstanding bond payments at a rate not exceeding 9.68% per annum.

People needing high (nursing home) level care may be asked to pay an annual accommodation charge in periodic instalments. Whether you will need to pay a charge, and the size of the charge, will depend on your income and assets. The charge is capped at \$16.63 a day to be paid no more than a month in advance.

Deferring the accommodation charge: You can agree with the residential care provider to defer the payment of the accommodation charge and have it paid from your estate. However, interest may be charged (at a maximum of 6% per annum).

If you are unable to make any form of accommodation payment, you will still be able to get a place. The government requires all aged care facilities to provide places for people who cannot afford to make an accommodation payment and provides additional funding for them.

5.36 Disputes involving residential aged care

Providers of aged care residential services that receive subsidies from the Commonwealth under the *Aged Care Act* must establish a process to deal with complaints at the first instance. If this is ineffective, complaints may be made to the Complaints Resolution Scheme (CRS) of the Commonwealth Department of Health and Ageing. Complaints may be made about anything relating to aged care services. The CRS has a three stage mechanism to resolve disputes, including negotiation, mediation and determination.

Complaints about the standard or service or care in facilities licensed under the *Nursing Homes Act* can be made to the NSW Private Health Care Branch (PHCB) of the NSW Department of Health. The PHCB may investigate complaints and has the power to enter facilities and examine documents. Complaints can be anonymous.

If you need advice, advocacy or other help and you are a resident of a facility which operated under the *Aged Care Act*, you can get free help from the NSW Aged Care Rights Service. Contact details can be found in Chapter 14.

5.37 **Staying at home**

If you decide that staying in your present home suits you better, there are services available which can make life easier for you. One such service is the Home and Community Care (**HACC**) Program. Some of the services available through HACC include:

- (a) domestic assistance;
- (b) home maintenance and modification;
- (c) transport;
- (d) meals;
- (e) personal care;
- (f) community nursing;
- (g) allied health care;
- (h) in home respite care;
- (i) centre day respite care; and
- (j) social support.

The type and availability of HACC services may vary depending on where you live, and depending on the resources available for the particular service you require. There are a range of providers with the majority being non-government organisations. The largest government provider is the Home Care Service of NSW. In addition to the government funded HACC program, there are a range of private agencies providing these services. Information on other community services available in your area can be obtained from your local Council or the ACAT at your local hospital.

5.38 **Staying with family**

Many older people live with their children under an informal agreement either in the same household, or in an adjoining granny flat. Sometimes the older person has transferred the property to their family under the condition that they will continue to reside there. If you enter into such an arrangement you may endanger your financial interests, security and independence as there is little security in these kinds of arrangements. You could even lose your home if there is a family breakdown.

You should seek legal advice regarding your ability to enforce any informal agreement you make with your children before moving in or letting your children move in. If the child you are living with is getting divorced, you may be able to intervene in any court proceedings under the *Family Law Act 1975* (Cth) to protect your interests. Unfortunately, the litigation process may further harm family relationships.