

Problems experienced in Retirement Developments in Categories of Ownership and Tenancy – A summary of personal selection criteria for those looking for guidance.

Having an extensive and representative base of retired members throughout the country, it stands to reason that SAARP is approached by members who are experiencing difficulties which have come to the fore after purchasing their Retirement Homes. The rationale for documenting a number of these cases is that for many people it is too late. This should serve as warning which highlights potholes to be avoided, and not as a means of reparation.

Mainly, there are four types of ownership one has to contend with, and mostly problems seem to arise from the fact that communal living is in fact a “trade-off” that the retiree makes when moving into a gated community. The very fact that there are differences between the rights and benefits a person has in traditional housing versus the different rights, benefits and “restrictions” in communal retirement properties, (with a far greater legislative accent and enforcement thereof) is often one of the root causes leading to dissatisfaction and conflict.

Having to compare far more than the bricks and mortar when looking at a Retirement Purchase means that doing your homework is not merely a recommendation but a prerequisite. In brief summary one can log the four forms of ownership in order to start drafting some sort of selection instrument for yourself excluding the types of ownership that are not acceptable to you. You can then also embark on more focused research on the kind of ownership that is acceptable to you before entering into a contract.

1. Share block Purchase:

This is actually not a property ownership, but purchase of a block of shares in a company that is tied: an occupational right to a portion of the property owned by the company. There are many possible negativities or risks that can be associated with this type of ownership. Most of them are legally technical in nature and the Companies Act is probably the main basis of most of the possible risks. The most negative possibility is that you could lose your home because the company is improperly or illegally managed, because the company could be liquidated, and you are living in a “Share Certificate”. Purchase in this category should definitely be driven in conjunction with your attorney.

2. Life Right Purchase:

Possibly the most misunderstood category of Retirement Security, this type of purchase could be summarized by saying you pay one big rental which will be returned to you (or your heirs) after certain documented happenings. Your “tenancy” is supported by comprehensive legislation and regarded as a “real right” in terms of Act 65 of 1968. The Act also provides that this real right ranks in priority over any other right, giving the holder of an occupational life-right special protection in the event of the owners insolvency. Inter alia the following provisions are amongst the more than 20 regulations made for your protection:

- It lays down contractual formalities
- It lays down the content of contracts
- It defines right of occupation to have the status of a registered lease
- It requires occupation alienation to be subject to a title deed endorsement
- It lays out consequences of cancelled contracts
- It defines relief a court may grant in respect of contracts.

In fact the contract of purchase is your de facto title deed, and the prerequisites in the Act merely lay out the minimum legal requirements, not precluding anything else the developer may include in the contract that are not prescribed.

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3. Sectional Title purchase:

From a legislative point of view, there are a number of laws that have been promulgated regarding sectional title besides the Sectional Titles Act (Act 95 of 1986) itself and this makes for a firm grounding when acquiring a retirement property, and provides a solid point of departure for settling almost anything which has to do with rights and entitlements which may come to the fore. These are amongst others are:

- The Sectional Titles Schemes Management Act (Act 8 of 2011)
- The Sectional Titles Schemes Management Regulations.
- The Community Schemes Ombud Service Act (Act 9 of 2011)
- The Constitution of the development.

Management of the development is key to living happily in a community area and having a good chat to residents who live in the complex is always a good idea, because rules and regulations can be positively or negatively implemented depending on the management culture within the development.

Interacting with residents irrespective of what type of ownership you are looking at is always highly recommended.

4. Individual Title

Many developments are actually regarded as “complex” from a management point of view, because more than one type of ownership can be sold in one development. Individual title means that you have a title deed to your property and can point out your boundary pegs. This does not mean however that you can do necessarily everything you used to do in your large home in the suburbs.

Although getting a mortgage is much easier than in other forms of ownership, you must understand that moving into a separate Title home in a retirement village still makes your residence subject to a set of rules which the Homeowners Association will provide

Rentals

Many people find that they are happier to not spend money on ownership and prefer to rent, because of a number of reasons which run from the intent to move somewhere else at a later date to believing that they can invest their money and obtain a bigger return, or even that they feel liquidity leaves them with more choice.

The potential negatives are that: a) The owners may want to occupy the property themselves at some future date (if the property is individually owned) b) The tenants do not have any real control over the rental charged or c) If a move is an imperative for medical or other reasons the unaffected person may be left in a position of having to shoulder a very large responsibility that is often totally unexpected or unplanned for.

5. General

5.1 In essence the rules which many feel merely place some restrictions upon you are usually mitigated by the need to obtain benefits that you never had, or had to

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pay for if you wanted them when you were residing “outside”. These are things like security, proximity to or being part of a group of people who have access to specialised medical attention etc. Your levy may also cover certain entertainment and social events and even meals in many developments.

- 5.2 In short, you win (added benefits) and you lose (certain freedoms like working in the evenings in the garage & making a noise) just as an example.
- 5.3 The reason one should be able to obtain a Life Right property a bit cheaper than an individual title property or a sectional title property of the same size and quality is financially usually based on the fact that you write off the capital growth portion of the investment in lieu of paying less. You can therefore afford to purchase a larger property for less money, but understand the price you pay for having the privilege. On the other hand, it can come down to a question of denying yourself the option of leaving an inheritance to children. Circumstances, viewpoints and preferences differ – each to his own.
- 5.4 We are not saying one should always look at property size, because when viewed long term one needs less and less in terms of space. It does however mean that you can look at putting aside the savings into an emergency medical fund should you need it. We have seen too many people omitting that aspect of retirement planning with disastrous consequences.
- 5.5 One of the “hidden” potential negatives that could be applicable in many developments whilst they are still in the throes of the development process (not Life Right developments) is that the Developer usually reserves a “veto” right for themselves in the structure of the management committee Trustees until the last of the units have been transferred. Thereafter they have no further say, but until that stage, even if the elected Trustees are unanimous about an issue they can be “outvoted” by the Developer Trustees although they may be totally outnumbered. For this reason, there is greater stability of management strategy in developments that have been fully developed.

A very good look at the documentation for any particular development should bring this matter to the fore so that you can be aware, and a chat to the Trustees regarding this aspect will decidedly do no harm.

The fact that one can purchase without paying any transfer fees when buying Life Right is also a major factor that will allow the money normally spent on this item to be put aside into your “emergency fund” which is normally not budgeted for.

6 A few examples of kinds of problems that can arise if you don't do enough homework:

- 6.1 We were contacted by a lovely lady who found it very difficult to accept that no animals were allowed even though she had paid a substantial figure for her unit and she insisted that her beloved Collie wouldn't hurt anyone and would stay in the flat unless she took him out on a leash. The house rules she signed were very specific, but she did not bother to read them and just assumed animals were allowed. This is decidedly not a reason which can be validly tabled to cancel a contract of purchase.

The summary of this type of situation is that it is always easier to say “NO” to a purchase than trying to reverse the situation. This is naturally a universally valid fact, and means that reading the documentation in detail is not just a

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recommendation, it is essential.

6.2 When a small and vociferous group of owners in a development were unhappy about decisions that had been made and implemented by management, one of the questions we asked was whether they attended the AGM where the decision was made? Their answer was that they didn't because they didn't think it was necessary.

6.2.1 Documentation provided to purchasers when they sign a contract of sale and purchase are extremely important for your future serenity in a retirement village. Remember that many of the documents may not form part of your offer to purchase but decidedly play a very large part in your daily lives, and being ignorant of the contents because you did not think them and their effects through will not leave you in a happy space.

These documents cover a multitude of things and can be contained in provisions in a Constitution, in House Rules or even management policies implemented to make levy payments easy for the Trustees and management team. The way things are done may not be to your taste. Just being aware makes it no surprise and therefore no disappointment. It is part of the process of deciding whether to buy or not.

6.3 A while back we had a query regarding a development that was already "middle aged" as far as property goes. The Trustees were asked a number of questions by residents regarding the financial wellbeing of the development when the trustees wanted to implement a special levy because the approved annual budgets had been eating away at reserves, and there was no more reserve available to address various essential repairs and maintenance.

6.3.1 The Trustees had been annually re-elected almost on an "automatic" vote at the AGM's for years, and management had almost become an exclusive "club" with positions such as the Chair not changing over many years. Investigation into the management appeared to show that many of the laws and changes to legislation had been ignored because nobody was ever called to account.

Ultimately the residents (owners) were faced with major legal expenses in order to rectify what amounted to electing irresponsible, illegal and unqualified decision-makers as Trustees, and then not calling them to account by ignoring the legal opportunities offered to query and call trustees to account. Please make sure you do not shoot yourself in the foot – attend the meetings and ask questions! Keep honest people honest. The law requires Trustees not only to make themselves available, but to ensure they are skilled and knowledgeable enough to do the job they were elected for. Be sure you elect appropriately skilled Trustees.

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- 6.4 A regular query we receive is about the time it sometimes takes to settle finances after a Life Right property has been put on the market by the Retirement development owners, irrespective whether it is the sellers that leave the village, or the beneficiaries in the event of the purchasers having passed on and having left the proceeds to a particular heir.

As pointed out in the beginning of this article, the answer lies in asking all the right questions when purchasing, and then getting the answers in writing unless they are already answered in the purchase agreement. It is common for the developers/owners to reserve the exclusive right to re-sell the properties prior to returning the financial amounts due to owners or beneficiaries. This right to resell is not the core issue – it is the return of finance and the time it takes to achieve that goal that is the real question. Very few arguments based on morality ever trump the legal situation when it comes to money. Naturally the financial muscle of the developer / owner is usually the deciding factor when this matter is tabled.

- 6.5 Mortgages (bonds) and rentals aren't normally a problem, but if circumstances change and you have to leave your property for an extended period of a few years to go overseas for example, rentals can become an issue. If you require the ability to "eat some of your bricks" for cash flow purposes as a result of illness for example, then these issues can possibly arise.

The type of ownership on which you have acquired your property is the issue that will allow you to obtain a bond (if you are able to obtain one) or enter into a rental contract on your property provided you have not purchased Life Right. On a Life Right purchase you do not own the complete property and obtaining a mortgage when ownership ceases with death of the last dying (normally the spouse) just isn't possible. Rental is normally not permissible for the same reason, (although some developers do allow rentals for a limited time from date of purchase) because a tenant is entering into an agreement with you, not the bare dominium holder. The chances of these matters coming up are of course very low, but for background information, you should take note.

Every individual or couple is unique and the requirements for everyone differs. In short - only you can decide for yourself/s what is the right thing taking all your circumstances into account. By all means make your own decision, but do your homework first, because you will live with the benefits or the detrimental results of what you decide.

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