



WHY PURCHASING IN RETIREMENT SCHEMES IS DIFFERENT

In South Africa there are attractive opportunities for retirees who have the means, to re-settle in schemes that offer a range of facilities. These 'lifestyle' or 'retirement' schemes typically include a full spectrum of outdoor and indoor facilities, lock-up-and-go security, and frail care services with or without an option of assisted living. As these schemes cater for retirees which group may include persons who are becoming vulnerable and less savvy in current business practices, legislation exists that aims to prevent abuse. The Housing Development Schemes for Retired Persons Act 65 1988 (the Act) was introduced to regulate retirement development schemes and to afford buyers in such schemes some minimum level of protection relating to both the development and the ongoing management of these schemes.

DISTINGUISHING THE DIFFERENT FORMS OF RESIDENCE IN RETIREMENT SCHEMES

When you buy into a retirement scheme it is of utmost importance to ascertain which type of rights are acquired, because the underlying legal construct differs greatly with the different types of schemes. Retirement villages are generally based on one of the following legal structures:

- **Sectional title ownership**, which will give a purchaser outright ownership of the unit in the retirement village. Registration of ownership of the unit in the purchaser's name is registered in a deeds registry and the purchaser will receive a title deed to the property.
- **Share block ownership**, which implies that the development is registered in the name of a shareblock company and each unit is allotted a number of shares in the

company. The shares which are acquired gives the purchaser the right to use the residence and the complex's facilities, but ownership of the property is not transferred. The purchaser receives no title deed to the unit, but will receive share certificates reflecting his/her shares in the company that owns the land on which the retirement village was developed.

- **Life rights**, which give the purchaser the right to occupy a particular unit or apartment for the rest of his or her life. The purchaser does not acquire ownership of the underlying property.
- **Full title ownership** where ownership in the property is registered in the purchaser's name. Often the retirement scheme will be managed by a homeowners' association to maintain public areas and provide security and other services.

ARE 'LIFE RIGHTS' SIMILAR TO RIGHTS UNDER A LEASE, OR IS THERE MORE TO IT?

A life right is a 'housing interest' in terms of the Act which is granted for the lifetime of the purchaser, although it can be for a limited term. Life rights offer much more to the holder thereof than a tenant has under a lease agreement, because:

- The holder of a 'life right' acquires the right to occupy a unit in a scheme for as long as he lives. What happens upon death is regulated in the contract of sale between the developer of the scheme and the purchaser.
- The Act determines that the holder of a life right has, for all purposes, the same rights as those conferred upon a lessee

in terms of a registered long lease. Practically this means that the holder of a life right has a real right to occupy the property for the full term of the interest. Therefore, should the land be sold, the holder of this life right may remain in occupation for the remainder of his/her interest.

- The Act determines further that the real right of the 'life right'-holder will rank in priority over any other right, no matter whether this other right is registered over the property and no matter the time when this other right was registered. In other words, the Act says that the right of the 'life interest'-holder will rank above that of a mortgage bond holder, holder of a servitude, and so forth.

HOW OLD MUST ONE BE TO BUY INTO A RETIREMENT SCHEME?

The Act determines that no person other than a retired person (50 years or older) or his/her spouse, may *reside* in a retirement scheme. However, anyone regardless of age may *invest* in a retirement scheme. A child of a retired person may for example purchase an apartment or life right for his parents to stay in a retirement scheme.

There are many more considerations to take into account when considering a purchase in a retirement scheme.

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