

NEWSLETTER

No. 47 July 2004

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Apologies

In our May newsletter we drew attention to a practice of requiring village residents to pay, via their General Services Fund, for the cost of leasing a village bus, instead of it being provided by the scheme operator as a capital item. We also drew attention to Directors' fees being charged to residents in the same way.

Regrettably and mistakenly we attributed those practices to Forrester Kurts (Australian Retirement Homes) villages. When we became aware of our error we immediately retracted the article from our web-site and substituted an apology to Forrester Kurts. Through the columns of this July newsletter, we again apologise unreservedly to Forrester Kurts for our mistaken attribution.

The Manor Group

Having made our May mistake, perhaps the criticisms we then made should now be sheeted home to the proper mast. It is in the Manor Group, Cleveland Manor, Wellington Manor and Victoria Manor, that a village bus is leased for use by the three villages and the cost apportioned out to those villages and charged to residents' General Services Funds. The bus is a capital item, to be provided by the scheme operator. Its running costs may properly be charged to residents' general services funds but the cost of providing it should not be. We should be interested to get a copy of an early PID and sales literature. Perhaps a resident would send us some. We'll return it.

It is also in one, at least, of that group of villages that Directors' fees are being charged to residents' General Services Funds. Notes to accounts refer to "*Corporate Administration Costs - Payment to Directors for time spent on village matters*". Directors' Fees should be paid from the profits of the village, not treated as a village running cost. And that is in addition to a share of salaries and wages paid to Manager, Administration Officer, and 'Facilitator' whose time and costs seem to be shared between the three villages.

Salaries and wages at Wellington Manor seem to be totalling about \$150,000 per annum and then there are 'salary on-costs' of about \$31,000 per annum. What are these on-costs that are twenty percent of the salaries and wages? The financial statements offer residents no explanation of that.

Security Gates

At Cleveland Manor they have a security gate. Trouble is - if there's a power cut it stays closed. Residents then can't drive in or out of the village. Young and robust residents (joking of course) might be able to remove a lynch-pin and open the gate. We wonder if ambulance and other emergency services drivers know how to gain access to the village in those circumstances

There is an easy solution to this somewhat absurd state of affairs. It is to have a battery back-up system, which should sensibly have been installed with the gates in the first place. Residents have drawn the scheme operator's attention to the unsatisfactory situation and the scheme operator seems to have agreed that a battery back-up could be installed - but only if residents pay for it. This is capital improvement, a necessary one upon which a resident's life may one day depend. Section 90(1) of the Retirement Villages Act 1999 requires the scheme operator to pay for capital improvement and that should be done in this case.

Wishart Christian Village

The residents of this village have had a case before the Commercial & Consumer Tribunal for a considerable time. It is very complicated because the scheme operator is an Incorporated Association... of which residents are required by their contracts to be members! Both the residents and the scheme operator are members of the Association which runs the village. How's that for a pretty kettle of fish? The Tribunal has had to step very carefully between what is a village issue over which it has jurisdiction and what is an Incorporated Association issue which falls under the jurisdiction of the Supreme Court.

It is fair to say that the Tribunal has severely criticised the scheme operator, that is the Wishart Village Association's Management Committee, and made a number of interim Orders with which the Management Committee have got to comply before the matter can proceed further. It has been very much, although not solely, a case of unsatisfactory accounting for residents' funds and inadequate financial statements. Increases in fees imposed improperly have been set aside by the Tribunal. A report on the case so far, all twenty six pages of it, can be found on the Commercial and Consumer Tribunal's web-page.

Increases in Fees

Time and time again the former Retirement Villages Tribunal and, more latterly, the Commercial and Consumer Tribunal have been critical of the way in which some scheme operators have calculated increases in General Services Fees. Many scheme operators are providing residents with supporting financial statements that fail to comply with the Retirement Villages Act, as interpreted in a number of cases which have been brought before those Tribunals.

As the fee increasing season is now upon us, we think it would be a good idea to remind residents and, more significantly, scheme operators of what the law, the Retirement Villages Act 1999, requires.

Many scheme operators calculate increases in fees by comparing successive annual

estimated budgets That is they are, at the present time, taking what they estimated a year ago for expenditure in 2003/2004 and comparing that with an estimate they have made for 2004/2005, with no apparent reference to what was actually spent in 2003/2004. Anyone with any experience in forward estimates would find that ludicrous.

The requirement of the Act is as set out in our October 2003 newsletter. Relating it to the current year, there have to be shown, on one paper, columns showing:

- 1 Estimated budget for the year to 30 June 2004
- 2 Actual expenditure for the year to 30 June 2004
- 3 Estimated budget for the year to 30 June 2005

Expenditure must be categorised into that falling under Section 106 of the Act and that falling under Section 107. All items of expenditure are to be separately and consistently shown so that meaningful comparisons can be made between the figures in each column. The items falling under S.106 are to be dealt with item by item and if any increase is proposed in excess of the increase in the Consumer Price Index it must first be approved by village residents by special resolution or limited to the CPI increase.

The latest Tribunal ruling, handed down in the Carlyle Gardens Residents v PrimeCRS case, against which leave to appeal was refused by the Brisbane District Court, was as follows:

“The Tribunal considers that the S.106 capped items of expenditure should be dealt with in a budget on an item by item basis. The Tribunal considers this is necessary to identify any proposed increase over and above actual expenditure on each item in the previous year. In the event that an increase is proposed then the CPI increase can be applied to each item to determine whether the increase proposed exceeds the percentage increase in the CPI. ”

THAT IS THE LAW.

Increases in fees cannot therefore be determined until the actual expenditure for the previous financial year, the S.113 financial statements, is made available. The CPI figure to be used is that for the year to the last published CPI figure before the residents' meeting is held, that is the Section 131 meeting - of which residents must have 21 days notice **after** the financial statements are made available.

The Audit, invariably a “special purposes report”, should take little time, but it is unlikely that accounts would be available before the end of July. In that case, the S.131 meeting is unlikely to be held before the end of August. If residents are given a month's notice of any fees increase, a customary requirement, it is unlikely that they can be imposed before the beginning of October. This brings a welcome village accounting consistency.

Scheme operators who seek to increase fees from the beginning of the financial year will just have to come to terms with the fact that it cannot be done within the law. If your scheme operator informs you that your fees are to be increased and does not provide you with the information we have described then he is in breach of the law.

You would be entitled to refuse to pay the increase and we urge you to apply to the Tribunal to have such improperly calculated increase set aside.

Goods and Services Tax

We didn't expect to be writing again on this subject but the Retirement Villages Association (of scheme operators) has raised it in relation to serviced apartments. We should first state that living Units in leasehold villages, including serviced apartments, and including gardens, grounds and common facilities, are "input taxed"; there is no GST to be paid for their supply.

However, services such as laundry, house cleaning, preparation of meals, provision of dining rooms and nursing services, quite common in serviced apartments, are "taxable supplies" and the GST should have been included in the costs charged to residents for those services. That has been the case since the inception of the GST, on 1st July 2000, and has remained unchanged despite the continuing lobbying of government by this Association and other States' Residents Associations and by village owners' Associations.

The ATO position has been quite clear since the consultative issues paper it published in March 2000 and the industry has been well aware of that. The industry cannot justifiably now cry Foul. The ATO is not backdating the GST in respect of serviced apartments; it has always been payable since the 1st July 2000. Like it or not, and we don't like it, the ATO's position has been consistent.

We need to bear in mind that it is not the end consumers, in our case residents, who are liable to the ATO for the payment of GST. It is the supplier, that has never been in any doubt. Sensibly, the supplier will allow for the GST for which he is liable when determining what he charges his customers. If the supplier has not been paying the GST to the ATO he may be in considerable trouble but that is not the fault of the customer. A supplier, including a retirement village scheme operator, may not now recover from a resident any GST that wasn't charged when it should have been. Nor may any ATO penalty for non-payment be passed on to residents. If there is any increase in your fees now, even from a current date, attributed to the GST, you should check back to 1st July 2000, to see whether your fees have already been increased to allow for the GST. There is to be no double dipping.

Churning

An interesting article titled "Grey Money" appeared in the Courier-Mail about three weeks ago. It was about the profit to be had by investing in the ownership of retirement villages, ranging from villages providing board and lodging for a rental of the maximum Age pension plus rent allowance, to leasehold and freehold tenures where there is, as well as monthly management and maintenance fees, a substantial up front payment, refundable but reduced by a hefty "deferred management fee", more honestly described as deferred profit. As a resident was quoted as saying: "the money is really in people dying. It's as simple as that because the quicker the turnover the more they make!" It's called 'churning'.

It is very likely that in the foreseeable future, given their profitability, commercially operated retirement villages will be concentrated in the hands of very few operators.

Annual General Meeting

As we announced in our March 2004 newsletter, our Association's 2004 annual general meeting is to be held on Monday the 27th September at:

Returned Quay Bundaberg Queensland beginning at 10.00 am	Services	League	Club Street 4670
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The meeting room will be open at 9.00 am, from which time tea, coffee and biscuits will be available.

Most members of the present committee, including the President and Secretary, will be standing for re-election and we do have around us a team of ten willing to carry on what we hope you regard as the good work. But we invite further nominations and a form for that purpose is set out at the foot of page three of this news letter. On this page is a Proxy form, so if you wish someone who is coming to the meeting to vote on your behalf, please use the form. You can cut off the forms and use them or copy them.

As required by our Constitution, completed nomination forms must reach the Secretary by the 13th of September and completed proxy forms by the 20th September. By all means send them in together by the 13th September if you wish.

'Til next time.

Association of Residents of Queensland Retirement Villages (Inc.)

Annual General Meeting to be held at 10.00 am on Monday 27th September 2004 at the
Returned Services League Club, Quay Street, Bundaberg

APPOINTMENT OF PROXY

I, of Village, Unit No.....

hereby appoint of Village

to be my proxy at the annual general meeting to be held on Monday 27th September 2004 or at any adjournment thereof.

Signed.....(Member authorising the Proxy)

This proxy form should be completed and returned to the Secretary at:

Villa 18, Monterey, 58 Furness Drive, Tewantin, Qld. 4565, so as to reach him by the 20th September 2004.

The simplest way to print a copy of this form would be to select the whole panel, copy it and paste it into a new page in your word programme. Then print it.

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