

NEWSLETTER

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Trustees

We have written before about owners coming to an arrangement with a trustee company so that the trustee can act as the village owner's agent in entering into residence contracts with prospective residents and then, somewhat curiously, purport to represent the interests of the residents of the village. Is it likely that a trustee would represent the interests of residents against those of the village owner who appointed him in the first place? Hardly likely is it?

By delegating village residence contractual matters to a trustee, a village owner can become an absentee landlord and that is the prime purpose of having residents pay for the appointment of a trustee, not for their protection. And on top of that, residents still have to pay a manager or management company.

Residents of villages where trustees are involved still question their usefulness and our reply is still that trustees are a waste of residents' money. It is the residents, not the owner, who pay the cost of having a trustee. Moreover, in the unlikely event that a trustee did enter into some dispute or action on residents' behalf, any costs, legal or otherwise, would not be paid for by the owner or the trustee. They would be a further charge on the residents.

Insurance

We have recently had drawn to our attention a situation where a leasehold village owner has insured against loss of profit. To be sure, it is only where such loss has been occasioned by an event against which the village is insured, fire, lightning, storm and the like. (at residents' expense of course).. Well, a village owner may insure against whatever risk he wishes but he may not charge whatever insurance premiums he wishes to village residents. The risks against which a scheme operator must insure and for which the premiums may be charged to residents' General Services funds are as prescribed in S.109 of the Retirement Villages Act. That prescription does not include loss of profit by the owner.

For that reason and others, residents should question their scheme operator about the extent of the village insurance at the time of the annual Section 131 meeting, at which the annual accounts have formally to be presented. They should require the policy and the current certificate of insurance to be produced to them for their inspection. That is also an occasion for residents to require their scheme operator's categorical assurance that the village is insured in accordance with the Act - not insured (at residents expense) beyond

the requirement of the Act, not under-insured and not with an avoidably large excess.

As we have described to you before, there have been instances of under-insurance and in one case of which we have been informed the under-insurance was not discovered until the owner sold the village, whereupon the new owner instituted an enormous increase in residents' General Services fees to cover the purported increased cost of fully insuring the village. Of course, for such under-insurance, which was in breach of Section 110 of the Retirement Villages Act, the Department of Fair Trading could and should prosecute the former owner...no laughter please!.

Intimidation

Most of us are aware of the intimidation, often subtle but sometimes not so subtle, to which some managements subject some residents in some villages. The advice which is given to residents who are bold enough to question and disagree is often that they do not have to stay in the village. That is at best a suggestion that they should leave and at worst a scarcely veiled threat of eviction.

Far from being intimidated by such threats, you should remember that a scheme operator or management cannot evict you just because they don't like you. And you cannot be expelled for being a thorn in teacher's side! If you are ever thus threatened or intimidated remind your management of Section 169 of the Retirement Villages Act. and of the Anti-discrimination Act under which he might be prosecuted. And please let us know.

More Intimidation

Well now, residents are not alone in being threatened. Your Association, our Association that is, is also being threatened; not with eviction but certainly for being a thorn in teacher's side. Teacher being some managements and owners.

In our May newsletter we practically complimented the general manager of the Hibiscus villages for affirming to Hibiscus residents that the lease that a resident signs cannot subsequently be changed by the scheme operator. But we were also critical of what we saw as improper deductions which Hibiscus proposed to make from a resident's Exit Entitlement

Hibiscus then got their lawyers, Thompson McNichol, to threaten us with dire consequences if we did not retract and apologise for our statements. They even instructed us on the wording of the apology which we should make for our "*untrue, misleading and wholly unfounded*" statements. We are not at all certain what exactly is supposed to be false and without foundation.

Needless to say we do not apologise for publishing the truth. Scheme operators really should not behave in such way as to find themselves troubled by the truth.

Also getting in on that intimidation bandwagon is Primelife Corporation. In our July newsletter we explained at some length the implications of Tribunal rulings, particularly one which went against Primelife, in relation to how increases in our General Services fees

were to be calculated and the way in which CPI limitations were to be applied. Rulings which were supported by the Brisbane District Court when Primelife sought leave, unsuccessfully, to appeal the Tribunal's rulings. That, we said, is the law. And so we believe it to be.

But Primelife who, more than anybody, know the truth of what we claimed have set their "Senior Legal Counsel" on to us. They are still saying that the ruling of the Tribunal in the Carlyle Village case was a "confidential and private ruling" despite the fact that they, Primelife, quite knowingly removed its confidentiality by taking it before a public and open Court, the Brisbane District Court. Of course, Primelife didn't think that their barrister would lose against unrepresented residents. Well he jolly well did but Primelife seem bent on trying to deny it.

The object in both the above examples, involving the Hibiscus villages and those operated by Primelife, is an attempt, via their lawyers, to intimidate the ARQRV. They have not attempted nor will they attempt to counter our arguments and statements with reasoned argument of their own; they simply attempt to shut us up. They would like to prevent the only body representing the interests of Queensland retirement village residents from advocating their cause and from drawing attention to scheme operators' transgressions. But threats will not silence us; we will not be intimidated.

It is worth reflecting on some of the Retirement Village Tribunal's reasons in ruling against Primelife in the Carlyle Gardens case.

The Tribunal considers that such an approach is consistent with fairness and transparency and therefore best practice. The method which the Tribunal considers ought to be adopted is consistent with the objects contained in Section 3 of the Act, in particular sub-paragraph (b), to promote fair trading practices in operating retirement villages and in supplying services to residents and sub-paragraph (e), to encourage the adoption of best practice standards by the retirement village industry.

In handing down its decision the Tribunal gave a very clear exposition not only of the law but of the philosophy of the law. The lack of fairness and transparency by scheme operators in their financial reporting has been remarked upon in earlier Tribunal decisions but there is little evidence yet that scheme operators are taking much notice. They know that it is not the Tribunal's role to pursue breaches of the Act and they know that the Department of Fair Trading, whose role it is, will not do so. So far, thanks to the Department, scheme operators are on a feather-bed wicket.

Goods and Services Tax

Some residents will have read that retirement village residents are going to be exempted from the GST. It is only an expressed intention of the Government and there's many a slip twixt cup and lip. It certainly isn't yet law. But residents generally should not allow their hopes to be raised because any relief from the GST would apply only to the residents of Serviced Apartments. The personal services supplied to serviced apartment residents: meals, laundry, housework etc., have always had the GST added to the cost of the service supplied, just as are such personal services (*not general services*) supplied to

any other retirement village residents (a little different in freehold villages).

We have never seen why serviced apartment residents, who generally have those services because they need them, should be treated less favourably than residents in Commonwealth Aged Care establishments, who are not required to pay the GST on top of the services supplied. For that reason and others we have always been critical of the Commonwealth Government for making serviced apartments residents pay GST on those services. We have long campaigned and lobbied Government in opposition to it. So too, it has to be said, has the village owners' lobby. It looks as if the GST may be removed from those services provided to serviced apartment residents.

Accreditation

In August 2003, we drew the then Minister for Fair Trading's attention to a somewhat absurd provision in a Regulation made pursuant to the Residential Services (Accreditation) Act 2002, which actually contradicted the Act itself. You may remember our saying so in our July 2003 newsletter. The Minister replied, on the 4th September 2003, that she had passed our letter to the Commissioner for Fair Trading who would consider the matters we raised.

Well, having been treated to a deafening silence from then until January 2004 we had the temerity to ask as to the progress of the Commissioner's "consideration". We had a swift reply to the effect that the matter was being treated seriously but, the Government being in "caretaker mode", it was not appropriate to formulate a policy response until after the election. That was five months after we first wrote.

Seven months later, on the 4th August 2004, patience wearing a bit thin again, we wrote again enquiring about progress. To date there is no reply. If this is how it treats those who write to it, can the Department of Fair Trading really be surprised at the bad Press it has had recently?

Meanwhile, of course, by its refusal to pay any attention to our protests, Fair Trading have been pushing its absurd Accreditation Regulation and promoting the voluntary accreditation by Aged Care Queensland. It remains for us to ask Fair Trading, now that the time limit for voluntary ACQ accreditation has expired, if unaccredited villages are now being required to submit to accreditation assessment under the Residential Services (Accreditation) Act. And we wonder whether the time limit for ACQ accreditation is being extended to enable villages to continue to escape falling foul of the regulation.

As we said in our August 2003 newsletter, we don't believe that on a plain reading of the Act the Residential Services (Accreditation) Act can even apply to Retirement Villages. We believe that the Regulation is just a plug for Aged Care Queensland's accreditation. As we have also said before, we don't have to care two hoots about their accreditation, so long as we are not expected to pay for it.

Village or Metropolis

Prospective residents are usually given to understand that there will be only a certain

number of Units built in a village; generally to be built in stages. Not infrequently, however, the village owner subsequently decides to expand the village onto adjacent land which he either already owns or subsequently acquires. That often means that residents are required to accept a village of much larger size than they were led to believe it would be. And that often means a significant increase in the number of residents using the same facilities. What is certain is that residents are never consulted.

Expansion is, owners claim, a commercial decision and nothing to do with residents. In the absence of compelling contrary evidence the law is likely to support that view. The amount of money involved in the expansion of a village would in any case take the issue out of the jurisdiction of Tribunal and District Court. Who can afford a higher Court?

To successfully oppose village expansion one would need, on entering a village, a categorical undertaking by the scheme operator that it would in no circumstances expand beyond a certain clearly stated maximum number of Units.

Review of the Act

It seems that we have been referring to this review for ever; hardly a newsletter goes by without a mention of the review of the Act. But we make no progress at all, or rather the Department of Fair Trading doesn't. The review was promised by the then Minister, Judith Spence, MLA, when she steered the Act through the Parliament in December 1999. It was supposed to begin on 1st July 2001 so it is now into its fourth year.

The Act revealed a lamentable lack of understanding of the retirement village scene by those responsible for the legislation, or perhaps it was simply their disdain for the Residents' interests; an attitude still very apparent. It was cobbled together in an appallingly slipshod manner but to take over three years to amend it is beyond belief. What is it about the Retirement Village industry that has the Department of Fair Trading, the "Office of Consumer Affairs" so reluctant to put any of its weight behind consumers in retirement villages?

And what is the Queensland Government doing about it? Does it know? Does it care? It seems not to be the slightest bit discomposd that a Government Department cares so little about an increasing section of its elderly citizens. Perhaps we should remind Government that those disadvantaged by the Department of Fair Trading's bias and inertia are some of those "*valuable elderly people in our community*" about whom the Government is so fond of publishing glossy brochures. Are they all just empty (and expensively produced) rhetoric? Is this Association and its members, and retirement village residents generally, all ranging from elderly to very elderly, to be disadvantaged because it cannot afford expensive political lobbying? Do we have to buy political clout to get a fair go from Government?

Annual General Meeting

(note from President)

This year, as we have already announced, is to be held on the 27th September at the RSL in Quay Street, Bundaberg. The meeting will commence at 10.00 am but the meeting room

will be open and refreshments available from 9.00 am; We are looking forward to, certainly hoping for, a record turnout this year of members in the Wide Bay prevented by distance from attending previous AGMs.

We shall be electing a new Committee. Remember that Committees are accountable to Members, not vice versa. The present Committee will endeavour to account for its activity over the past year. It is for those of you at the AGM or present by proxy to indicate, through debate and by vote, whether or not you still share and support the present Committee's philosophy or want a change of direction.....

Phil Phillips.

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Butler McDermot & Egan - Solicitors
66 Howard Street, Nambour, Queensland,
4560.
Telephone: 5441 1044 Facsimile 5441
5096
Specialists in retirement village issues