

Association of Residents of Queensland Retirement Villages (Inc)

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NEWSLETTER

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And in the Beginning

So, here we are in this year of Grace 2006. We should like to have had some laurels upon which to rest the new year but we shall not know about that until the Retirement Villages Act 1999 receives some long awaited amendments. Then, as they say, the proof of the pudding will be in the eating. We can but hope that it will be well-cooked, to the taste of residents, with no indigestible bits - for residents that is!

And after the beginning ?

It would be wishful thinking to entertain the idea that all our ills will be remedied by the Amendments to the Act. Whatever greater degree of fairness the amendments bring to the retirement village scene we shall still have to be very much on our guard. Scheme operators and their lobbyists and their lawyers will be using their best endeavours to make residence contracts ever more oppressively unfair. If one were to compare a Public Information Document issued some half a dozen years ago with one issued yesterday, one would wonder if they were issued on the same planet, such has become the increasing unfairness of residence contracts.

It is perhaps worth quoting again something we quoted in an earlier newsletter; it is a remark made by a Labour MP in 1999, while the present Act was wending its way through the Parliament

“the major stumbling block to effective reform of this industry has been the complexity and variety of residence contracts that have been developed over the years. Once we legislate to do something, the owners and developers will try to come up with a contract that will absolve them from responsibilities in regard to people who are in their villages”

This brings us to something else we reported on nearly a year ago.

Unfair Contract Terms

Early in 2004, perhaps before, the heads of Fair Trading Departments in the Australian States, formed a standing committee on “Unfair terms in contracts”. For the most part, unfair contracts are those, and they are common where consumers are concerned, where one party, the supplier, presents to the other party, the consumer, a lengthy contract to sign on a take it or leave it basis - sign it or there is no deal! There is no real negotiation of terms between the supplier and consumer. Retirement Village

residents will recognise that as exactly the sort of contract, or residence agreement, which they have been required to sign.

That incipient campaign against unfair contract terms, which is being pursued in the UK and the European Union, seems to have sunk without trace here; we have heard nothing more. Has the idea, and it was a very good idea, been scuttled in Australia by the suppliers' lobby?

Disputes Tribunal



There is nothing really to report from the Tribunal front.

Some cases are before the Tribunal and we shall bring news of decisions when they are available. There has been an adverse decision on residents' voting rights but we are still considering the implications of the Tribunal's reasoning. It is likely that the ultimate decision will be determined on a point of law by the Supreme Court. There is also a number of other cases in various stages of preparation and we expect them soon to become applications to the Tribunal.

There has recently been a case of a resident moving out of his Unit in the Oasis village (Hibiscus group) and having to pay the usual Exit fee. This resident came into the village after 1 July 2000 and therefore, in accordance with Section 15(2) of the Retirement Villages Act, the Exit fee should have been calculated as at the date the resident vacated the Unit. But no, the scheme operator calculated it right up to the next anniversary of the date the resident came into the village. That is a feature of most commercially operated village contracts and PIDs but it is unlawful in relation to post 1 July 2000 residents.

Had this not been challenged, the resident would have been cheated of over \$4000.

As it happened, the resident consulted us and decided to send a dispute notice to the

Commercial & Consumer Tribunal. This Resulted in the customary Tribunal arranged mediation at which, inevitably, the scheme operator conceded. This is the third occasion to our knowledge, in which we have been involved, that that has happened to a Hibiscus village ex-resident. How many other cases have there been of which we have no knowledge? We hope that the new scheme operator, Australian Property Custodian Holdings Ltd., will bring more probity to their custodianship.

It is easy for the scheme operator. It is the resident, or ex-resident, who has to challenge, who has to pay the necessary fee to the Disputes Tribunal (although it isn't much) and make all the running. All the scheme operator has to do is send one of his minions along to the mediation process to go through the motions. If he loses he simply has to pay up what he should have paid up in the first place. Why can't they be scrupulously honest and observe Section 3 (b) and (e) of the Retirement Villages Act:-

(b) to promote fair trading practices in operating retirement villages and in supplying services to residents.

(e) to encourage the adoption of best practice standards by the retirement village industry.

Bullies galore



All of us who refuse simply to accept the dictates of unreasonable scheme operators or their village managers are quite well aware of how we are often then denigrated by the scheme operator and management. Regrettably, in some villages there seems always to be a handful of residents, sometimes those who have got themselves elected to the residents' committee, who seem to prefer to identify with management rather than with the real interests of residents as required by Section 129 of the Act. They

become to all intents and purposes management acolytes.

Those of us willing to stand up and be counted and speak out against management excesses and unlawfulness and seek the Tribunal's adjudication are labelled troublemakers and management is not backward in preaching that particular gospel. It is difficult to take any effective action against defamatory utterances because it is rarely put in writing and is often snide innuendo. However, in one case we know about two residents did successfully bring a case before the Anti-Discrimination Commission.

We have referred to the issue of voting rights, a case brought against the management of Edenlea Village. Submissions on the issue were made to the Tribunal by both a resident (Phil Phillips) and the village manager. Although one part of what was submitted to the Tribunal was a total calumny, I cannot bring an action for defamation against the village manager because such submissions to and what may be said in the Tribunal by the parties are, as in any Court of Law, privileged. But maligning me under the protection of Court privilege doesn't prevent me from reporting, outside the Tribunal, part of the village manager's submission. I quote:

"As stated, the applicant has not discussed the issue with the scheme operator at any time nor has a formal written complaint been made. The only comments voiced were during the September 2004 meeting when other residents were trying to ask questions and the applicant was shouting over them. Such displays of unacceptable behaviour will not be given notice (sic) as other residents behave in a mature and productive manner." Not a word of that is true.

Don't be bullied or hectorated by a village manager; don't be subservient. Remind him or her that you pay their salary, not vice versa. And remember: if you answer back or in any way criticise management or argue with

them you cannot simply be evicted for it, although that too has been tried - and lost, at very considerable expense to the scheme operator who tried it on.

Government Functions



On the 17th November 2005 President Phil Phillips attended a cocktail function hosted by the Minister for Fair Trading and the Director-General of that Department. It was to welcome Ms. Julie Kinross, the new Commissioner for Fair Trading, to whom he was introduced by the Minister.

He also attended the Premier's Annual Cabinet Christmas Reception on the 17th December 2005. Let us hope these invitations augur well for the year 2006.

Landowner or Tenant?

Pensioners who live in the general community and pay rates are allowed, by the State Government, a rebate on the Rates which they pay to the local Council. But if those pensioners reside in a leasehold retirement village they can't have it because they are not regarded as ratepayers. What a spurious argument when we all know that the rates the village owner pays are collected from residents. But in this regard the State Government sees us as tenants.

Depending, of course, on their financial circumstances, a rent paying tenant in the general community can get 'Rent Allowance' from the Commonwealth Government, through Centrelink. But residents in a leasehold retirement village, although in effect paying rent, in advance, cannot get that rent allowance because they are not regarded as tenants but as landowners. Governments have placed the stools very carefully so that we fall between them.

For the purpose of obtaining a rental subsidy retirement village residents are deemed to be owners while for the purpose of obtaining a rates rebate they are deemed to be tenants. Residents can easily be made to feel like a bladeless knife without a handle! That is we are deemed to be nothing. Or, put another way, Heads they (Governments) win Tails we (residents) lose!

General Services Charge

Scheme operators are fond of telling us that what we pay each month by way of General Services Fees is calculated only to meet actual costs and does not provide any profit to the operator. That is generally, though not always, the case even though their calculations are so often very suspect. However, in one village at least, the currently issued PIDs announce that the minimum monthly fee, exclusive of Maintenance Reserve Fund contribution, will not be less than a certain figure, no matter, it seems, what the actual costs are. So, what happens to any large surplus that is revealed at the end of the year? And what about earlier residents whose PIDs do not make that provision? It cannot be made to apply to them.

Capital Appreciation

In many of our residency contracts and PIDs, we are assured that we will get all the capital appreciation or some of the capital appreciation, depending on what option, if there is any, we have chosen. But what we are never explicitly told is that the Exit Fee which we have to pay is not (it very rarely is) calculated on our original in-going contribution but on the in-going contribution of the next lessee.

That means that of the capital appreciation, we are likely to lose, depending on our contract and length of tenure, as much as forty percent of it.

tenure, as much as forty percent of it. So many ex-residents are taken completely by surprise by this but it is by then too late. It was in our contract and we are stuck with it.

B. A. P. A.

We have in the past drawn attention to the British Australian Pensioners Association, which has been striving to bring justice for British pensioners in Commonwealth countries, including Australia, who have their pensions frozen from the date they first receive them. Our retirement villages contain many British expatriate pensioners.

It has been an interesting saga, so far, though without success to date. The case has passed through all the British Courts including the highest in the land, the House of Lords.

The next stage will be to the European Court of Human Rights. You can read all about progress in the battle on the BAPA website at www.britishpensions.org.au

Membership

One wishes that the Association could function without member subscriptions; life would be much easier for us if it were so. Alas, it is not so, we have to solicit your subscriptions. This then is just a little reminder that they are now due for the calendar year 2006.

Till March then.

In the meantime keep up your strength against all adversity and stand by to cheer on our own Commonwealth Games team in March.



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