

Association of Residents of Queensland Retirement Villages (Inc)

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NEWSLETTER

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Delivery

You will all no doubt have been surprised to receive your newsletter by direct mail; we hope your surprise was an agreeable one. We have come to an arrangement whereby Australia Post will print and distribute our newsletters. It will cost more than previously but it will be more direct, it will save us a lot of precious time and it will relieve our hard-working Liaison Officers of some delivery responsibility. Please let us know of your reactions to this new move.

Associations & Residents' Committees

Especially in the light of amendments to the provisions in regard to residents' participation, a little more on associations and committees seems warranted.

In quite a number of villages, residents have formed a residents' Association, some have gone so far as to make the association an Incorporated Association. We have to say that we see little merit in that. Formal Associations, incorporated or not, are voluntary, no-one can be compelled to join and those who do can resign when they wish.

With Associations it is also customary to charge a membership subscription and if you ¹

are not a member you may not take part in its activities or vote at or even attend its meetings. If it is incorporated it has a management committee, has certain statutory financial and reporting obligations and must have rules which follow the 'Model Rules'. Such is, necessarily, our Association of Residents of Queensland Retirement Villages.

The Rules in relation to committee composition and election, in relation to meetings, motions and voting are quite different as between the Associations Incorporation Act and the Retirement Villages Act. A further distinction is that the RVA now says one vote per Unit whereas the Associations Incorporation Act says one vote per member. In retirement villages the RVA must prevail. We know of villages where the management committee of the Residents' Association has denied residents a vote in resident matters because they are not paid up members of the Association. No Association, incorporated or not, has the right to regulate who may vote in a retirement village. To attempt to do is inconsistent with the Retirement Villages Act.

Come what may, no resident can, on any pretext, be denied participation in village affairs, meetings and voting. So, if you are to stay inside the laws of the Retirement Villages Act, which you must, you should tell the Office of Fair Trading that you wish to abolish your incorporated association. And you must then

make sure that any Constitution that you do have complies with the Retirement Villages Act. The Act provides, at Section 127, that:

“the residents of a retirement village establish, by election conducted among themselves, a residents' committee”.

Section 129 recites:

“The function of a residents' committee is to deal with the scheme operator on behalf of residents about the day to day running of the village and any complaints or proposals raised by residents.” The Act allows residents to have a Constitution providing it is not inconsistent with the Act. That's not very sensible because it could be argued that without a formal Association there can be no Constitution. And a formal Association may be and an incorporated one certainly will be incompatible with the Act.

In most villages, residents have also elected a Social Committee. Most of us see such a committee as highly desirable, they usually do a very good job but a Social Committee is not (except coincidentally) the Residents Committee and there are no statutory rules by which a Social committee has to abide.

Anything to do with residents' committees, elections or meetings is a matter for residents. Scheme operators or village managers have no right to be involved and, as we emphasised in our last newsletter, apart from meetings called by the scheme operator or to consider a special resolution, scheme operators may not attend meetings unless invited. Residents' meetings are residents' meetings, not management meetings. Any scheme operator or manager not conforming commits a breach of the Act and may be taken before the Commercial & Consumer Tribunal

One more thing on committees. As we have written previously, a committee has no authority simply by virtue of being a committee. It is always accountable to those who elected it, that is YOU the residents. A committee does not have the authority to make on your behalf decisions required by the Act, for such decisions cannot

be delegated. It must refer issues for decision to a general meeting of residents. It does not have an inherent authority to invite management to residents' meetings or to stay at meetings; that is something for you to decide. It has been said somewhere that the only way to appreciate a right is to exercise it. We urge you to exercise yours as retirement village residents.

Insurance

Sections 109 and 110 of the Retirement Villages Act require a scheme operator to insure all of the village to full replacement value and against public liability. Because it generally reduces the premiums, most policies contain an excess clause. When damage or loss occurs that results in an insurance claim, some scheme operators are charging the 'excess' to the residents' general services fund or, if it occurs to the Resident's accommodation Unit, to the resident personally.

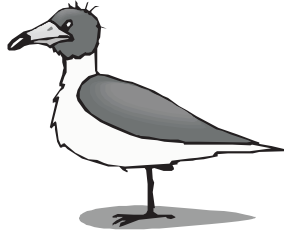
This is not to be countenanced. Any replacements that are required, whether or not their replacement is covered by the insurance policy, are to be charged to the Capital Replacement Fund in accordance with Section 91(1)(a) of the Act. If there is any recovery under the village's insurance policy, it is to be credited to that Fund in accordance with Section 94(1)(a) of the Act.

Only where a resident has deliberately damaged a capital item or subjected it to accelerated wear, as referred to at Section 96, can a resident be held personally responsible for replacement. Similarly with repairs, they should be paid for from the Maintenance Reserve Fund, into which we all pay every month. Although some scheme operators try it on, there should be no personal charge to the resident.

Whether things have to be repaired or replaced, it is not up to you to commission a tradesmen to

do the work, that is up to village management. Do not yourself commission the tradesman to do the work. He is likely to present you with the bill and you would be obliged to pay him and then recover from the scheme operator; a nuisance to say the least. You need have no relationship with the tradesman or the insurance company. Your relationship is only with the scheme operator or village management.

Don't be gulled



Australian Property Custodian Holdings manages the Prime Retirement and Aged Care Property Trust, which owns several retirement villages in Queensland - Buderim Gardens and former Hibiscus villages. This same entity is intent on building an Aged Care Establishment next to Buderim Gardens Village, encroaching on some of the village land, and has sent residents of all its villages a questionnaire. It seeks answers to ludicrous and impertinent questions, sixty of them on eight pages. The worst thing about it is that the accompanying blurb is misleading. It says: “...which will assist in providing care to the Prime Trust group of villages in the region”. That quite clearly implies that the facility is meant primarily for residents of their retirement villages. The object of the questionnaire is to get residents of their villages, particularly those of Buderim Gardens village to support the establishment of the facility. But it misleads. Residents of APCH's villages will be required to go through the same Department of Health and Ageing's needs assessment, the same waiting for a bed, as any one else. Residents of APCH's villages will not be entitled to preferential treatment and are unlikely to get it.

Residents were given two days to complete and return the questionnaire! Why the urgency? Probably one of 'Don't give them time to think or they will file the questionnaire in the WPB', which is where it belongs.

Recent Tribunal Cases

Wellington Manor

With the assistance of this Association, residents of Wellington Manor village applied to the Commercial & Consumer Tribunal for settlement of a dispute over the accumulation of a huge surplus in their General Services Fund, obviously occasioned by residents having been charged excessive fees way beyond expenditure. The matter only got as far as mediation at which the Manor Group conceded the case. The upshot was that each resident had to be refunded approximately \$750. The village has about 163 lessees so that will give you a good idea of the amount of the surplus improperly accumulated.

Palm Springs

At this freehold village at Wynnum, Brisbane, the village manager tried to evict an elderly lady and tried to get the Tribunal to enforce his eviction notice. He had been abusive of the lady, who then slapped his face and the manager then called the police to allege assault. He alleged that the lady in question (all five feet of her!).... recklessly caused injury to one Andrew Fleming, the village manager” The police constable's testimony to the Tribunal did not support the village manager's claim of being injured. The Tribunal observed that it preferred the lady's testimony to that of the general manager and the onsite managers, whom it described as being unreliable witnesses. The Tribunal restrained the scheme operator from pursuing the eviction notice. Full record of the findings is available on the Commercial & Consumer Tribunal's website: www.tribunals.qld.gov.au Let us be sure to absorb the lesson:

Don't let the bully boys (or girls) bully you, threaten you, intimidate you or attempt to evict you. Stand your ground, challenge them, in the tribunal if necessary.



Act Amendments

Some of the legislated amendments to the Act will not start to operate until the 1st January 2007. One of them is a new Section 102A. However, in practice it is only the last part of the new S.102A which will be thus delayed, the part about carrying forward surpluses and deficits. What was otherwise meant for S.102A, about budget meetings and residents' involvement, is to be found at a new Section 129B. It is now too late to request a meeting fully in accordance with it but a scheme operator should not deny such meeting because of that. He should have regard for those objects of the Act which feature at Section 3(2)(a) &(c):

“To encourage best practice standards by the retirement villages industry”

And

“to facilitate participation by residents who want to be involved, in the affairs of retirement villages”

We recall a Disputes Tribunal Chairman remarking that, having given residents information for which they have asked, a smart scheme operator should ask *“is there any other information you would like to have.”*

As we predicted in our May 2006 newsletter, already the absurdity of the new voting rules is making itself felt. It was never ever intended, even by the Office of Fair Trading, that the new voting regime should apply to anything other than issues between residents and scheme operators. The trouble is that the Amendment Bill as prepared, presumably, by the Parliamentary Draftsman for presentation to the Parliament, was not first scrutinised by this Association.



Annual General Meeting

As foreshadowed in our May Newsletter, our 2006 AGM will be held at:

**The Primary Industries Building,
80 Ann Street,
Brisbane.**

On Tuesday the 19th September.

The meeting will start at 10.00 am but coffee and tea will be available from 9.30 am.

Following recent practice, the Association will pay half the cost of hiring a coach to transport a group of 25 or more members attending from outside the greater Brisbane area.

There will be three resolutions which the Committee will recommend to the AGM:

1. To confirm the changes to the Constitution made by the AGM of September 2005.
2. As allowed by Section 4.1(ii) of the Constitution, to make Philip and Marion Phillips life members of the Association.
3. To create a new subsection, 4.1(v) to provide an additional class of membership Financial Life Member whereby any resident eligible to be a member of the Association may choose to be a Financial Life Member on payment of a once only subscription of ten times the annual subscription. That means, at present, \$100.

Do please think about these proposals so that there can be discussion. The decision will be for the meeting to make.

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