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No 56

NEWSLETTER

March 2006

Retirement Villages Act Amendments

Pride of place, indeed practically the whole place, in this newsletter must go to the Bill to amend the Retirement Villages Act 1999. The Retirement Villages Act Amendment Bill, 2006, has been introduced into the Queensland Parliament by the Minister for Fair Trading, the Honourable Margaret Keech. We have campaigned long and hard to have the Act amended in such way as would redress some of the unfair disadvantages which residents experience vis a vis village owners and operators. We will not pretend that we have achieved all the changes which we sought but by and large we have been well served. The proof of that particular pudding is in the displeasure and hand-wringing of village owners.

As all of us are well aware, the Minister undertook to amend the Act to make it more resident friendly and that she has done. We can feel encouraged by knowing that the Minister has turned an attentive ear to our supplications and responded to them. As she introduced the Bill into the Parliament on the 14th February, St Valentine's Day, you could be forgiven for sending her a belated Valentine's Day card!



as is often said, the devil is in the detail and we do not yet have the detail of how exactly the amended Act will present. Nevertheless, we have been sent, at the Minister's behest, a comprehensive synopsis of the main thrust of the amendments. We reproduce them in the following paragraphs and have shown the Sections of the Act to which the amendments apply.

S. 104 Continuing Fees

On leaving the village an ex-resident is presently liable to continue payment of the General Services Fee, at least in part, until the Unit is sold or re-leased to the next resident. That could be, and in some cases has been, for years. The amendment to the Act will cap that period at nine months. Not as good as the six months for which we tried but better than the twelve months which the Department of Fair Trading proposed and a lot better than no cap at all, which is how it is at present.

S.58 Reinstatement

As former residents know too well, scheme operators always try to make former residents pay to have the Unit returned to pristine condition. Whether necessary or not, whether reasonable or not, repainting, new carpets, new stoves, new kitchen sinks, new worktops, indeed

new everything they can think of. The amendment to the Act will stipulate that reinstatement will be only to the condition of comparable Units in the village. Furthermore, the resident will not be required to pay all the reinstatement costs. Costs are to be shared between operator and resident in the same proportion as they are to benefit from capital appreciation. No capital gain to the resident, no reinstatement cost! We are conscious that the amount of capital appreciation which accrues to a resident is presently eroded by the Exit Fee and we believe that such erosion will not be allowed. We are, of course, still fundamentally of the opinion that residents should not be responsible for any fair wear and tear of the owner's income producing property; that the responsibility should be as for landlord and tenant as in the Residential Tenancies Act. But we have got somewhere on this issue.

Arrive at the following year's budget. We must make them give us satisfactory explanations.

Part 7 Several Sections Residents' Participation

What the Department of Fair Trading proposed would have given scheme operators an almost draconian control over residents' meetings. It was probably the most hateful of their proposals. That has been set aside. We paraphrase what is in the Bill: The operator will be allowed to attend a residents' meeting, including committee meetings, only if invited. Gone are the Department's proposals that operators have a right to attend residents' meetings and that residents should be required to give the scheme operator copies of minutes. Residents meetings are to be just that; private to them unless they decide otherwise. This is very good news; it restores to us that freedom of assembly that is a birthright in a democratic society.

S.106 Increases in Fees

It was established by the Commercial & Consumer Tribunal that increases in S.106 items were to be examined on a line by line basis. This, we have to concede, does bring its difficulties, for residents as well as for operators. As amended the Act will require that the whole basket of S.106 items does not exceed the CPI movement without residents' agreement by 'special resolution'. This does give us pause. We shall have to consider the likely dodges which some scheme operators might get up to.

Voting

The Minister has adopted the Department's proposal that voting should be per Unit. This is not the same as the Commercial & Consumer Tribunal's ruling in a recent case that all entitlement, including electoral entitlement, arose from the residence contract, with which we disagree. But the amendment provides that in any village residents can, by special resolution, decide to have a one resident one vote system if they wish. We cannot and do not complain that residents are to be able to decide; that, after all, is what this Association is all about. What we oppose is scheme operators' claims that it is for them to decide. However, we are not altogether in favour of it being a special resolution to establish one vote per resident. It would in our view have been better to provide one vote per resident and given residents the right to change it to one vote per Unit, but by ordinary, not special, resolution.

S.112 Financial Statements

Simple quarterly notices of how much has been spent will not be enough. Additional information can be required from the scheme operator. The information must explain variances between budgeted expenditure and actual expenditure. What this means, what we must make it mean, is scheme operators can no longer get away with significant overspendings and then, to add insult to injury, add the CPI to that overspending to

S.99 to 101 Repairs & Maintenance v Replacement

The only guidance that there has been on what is repair and what is replacement, that is for what do we pay and for what does the scheme operator pay, is to be found in Tax Rulings made under the Income Tax Acts. Those Rulings have been very useful on occasions in the past but there has still been a need to more closely define just what is repair and what is replacement. The amendments to the Act propose to do that and possibly to make the distinctions as a regulation pursuant to the Act. Providing they are not inconsistent with the new definitions, the Tax Rulings will remain as the ultimate arbiter.

S.110 Insurance

This is one aspect of the amendments with which we are quite unhappy, on which some clarification will be sought. Scheme operators are to be allowed to take out insurance policies with an 'excess' of up to two thousand dollars without residents' agreement. A small point is: does that mean overall or does it apply separately to each of buildings and public liability? The major points are:

- i) that repairs and replacements must be carried out regardless of insurance, in accordance with Sections 91 to 99. If the event is insured against so well and good, but repair or replacement must not be made contingent upon the Insurance.
- ii) On the assumption, which we hope is wrong, that residents will be levied to fund what the insurance company does not pay, an excess of \$2,000 in a village of only fifty Units is going to cost each resident a lot more than in a village of four hundred Units. That would be unfairly penalising residents of smaller villages
- iii) Residents must not be required to pay personally for what the insurers will not pay (the excess) and must not be told, as many residents

have been, that the repairs will not be carried out until they do. That is blackmail.

The Act requires only that replacement buildings and public liability be insured. We know, however, that some scheme operators are making residents pay for professional indemnity of Directors and for insurance against loss of profit. That is scandalous and not in accordance with the Act. We must demand sight and scrutiny of Insurance policies and refuse to pay for such cover.

Commercial & Consumer Tribunal

The amendment proposed by the Department of Fair Trading would have confined representation of a resident to a lawyer or another resident in the same village. That idea has been scotched. A resident may be represented by a spouse or a close family member or, with the Tribunal's agreement, another person, such as a member of this Association. This preserves the status quo. The amendment in effect reinstates the former S. 200 of the Act which provided that each party must pay its own costs, unless the Tribunal orders otherwise.

That is of course how it should be but it is not enough. Scheme operators, in trying to defend against an action brought against them in the Tribunal, will often spend considerable sums on getting legal advice and on getting accountants to put a mitigating spin on the village's financial inadequacies. Such costs are hidden in the general run of village expenditure and residents as a whole therefore pay for the scheme operators costs, although the case is never brought by residents as a whole but by a few residents or even only one resident.

Last but by no means least, the Act is going to contain another 'Main Object'. It is that the Retirement Villages Act is intended to be Consumer Protection legislation; that is a

considerable philosophical improvement. When cases are brought before Courts, including the Commercial & Consumer Tribunal, the intention of the legislators is often an important factor. This new 'main object' is likely therefore to be of legal significance.

Conclusions

What we have set out above is only the main thrust of the Bill, and at this stage we are unable to go into any detailed explanations. As soon as we can, we will. Meanwhile, do write to us with your reactions to what we have passed on to you. Please forgive us if we do not reply but we will pay attention to what you say. We already have many questions to ask about detail, some of which are indicated above, but we must be patient. Much of our disquiet may be dissipated when we see the full result of the amendments and the detail, in which case we will certainly reassure you.

Before all the Is are dotted and Ts crossed and meanings agreed and understood, there will no doubt be more meetings between stakeholders, that is this Association, Aged Care Queensland, representing the owners, officers of the Department of Fair Trading and staff from the Minister's office, the latter of whom have been very understanding and helpful. We shall continue to represent your interests to the best of our ability.

Of course, it is one thing for us to have much improved legislation, it is another thing to see that it is respected and complied with. We have not in the past had any enforcement by the Department of Fair Trading so it is still going to be very largely for us to police.

So, what's left. Nothing very much for this issue except, perhaps, to enter a reminder that annual

subscriptions for the current calendar year were due on 1st January 2006 and to acknowledge that they are steadily rolling in. Keep it going so that we may keep it going.

From our Secretary

All members of the Association owe considerable thanks to Phil Phillips who as our President has led the way in recent years drafting the many submissions to the Queensland Government regarding changes and amendments needed to the Retirement Villages Act 1999.

More than anyone else Phil has lobbied strongly on behalf of our members and residents generally. He has attended many meetings with the Minister, Departmental Staff and Scheme Operators. On reading the proposed amendments it is clear that on the face of things his submissions and representations have been heeded and for that we are all in his debt.

Bill Runciman, Hon. Secretary
ARQRV (Inc)''

In many areas of life **size matters** and your present Executive Committee would like to see our membership reach 10,000 by the end of this calendar year - if you have not already forwarded your subscription for the year ending 31 December 2006 please do so now. Send it either to your village Liaison Officer or forward it direct to the Secretary

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