

Association of Residents of Queensland Retirement Villages (Inc)

PRESIDENT
Phil Phillips
10 Edenlea Village
Townsend Road
Buderim 4556
Ph. 5476 8706
retvill@bigpond.net.au

ARQRV

www.villagers.org.au

HON. SECRETARY
Bill Runciman
Villa 18 Monterey
58 Furness Drive
Tewantin 4565
Ph. 5449 9391
dareli@bigpond.net.au

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NEWSLETTER

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The Amended Act

Once again we give pride of place to the Amendments to the Retirement Villages Act 1999. The amendments contained in the Retirement Villages Amendment Act 2006 were passed by the Parliament on the 1st March and given assent on the 15th March 2006. From that latter date the amendments became law, except for a few transitional and other provisions, which take effect from 1st January 2007.

We learn that some residents have been told by their village managers that the amendments apply only to new contracts. That is most certainly not the case. Unless a certain provision notes otherwise, the amendments apply to all contracts which are current at the 15th March 2006. We do not pretend that we have got our heads around all the little nuances of the wording of the amended Act, (when is plain English not plain English?) but if you are in any doubt about any of the amendments it would probably be unwise to ask your village manager about them. Better to ask us.

We want to reiterate that although the Act is now distinctly improved from residents' point of view, it does not provide a panacea for all our woes. More needs to be done before any fair minded person could claim that there is an



equitable balance between residents and owners. A problem this Association had was not just to get some much needed improvements to the Act, we had first to demolish those unbelievably anti-resident amendments proposed by the Department of Fair Trading to an already anti-resident piece of legislation. Fortunately there is little evidence of the Department's baleful pro-owner bias in the Act as now amended. And remember that we must make operators abide by this law! Nobody else will.

Some members of the Queensland Government are now proclaiming how they and the Beattie Government supported the amendments to give Retirement Village residents a 'better deal'. We observe, somewhat wryly, that it was a Beattie Government which was responsible for the 1999 Act in the first place. Perhaps the 26 pages of our views on the Department of Fair Trading's proposals, which we sent to all Queensland MLAs, helped with their redemption.

The Retirement Villages Act 1999, complete with the 2006 Act amendments, is now available for downloading from the Queensland Government web-site or can be purchased from the Government Printer, 'Go Print', 371 Vulture St. Woolloongabba Brisbane, 4102. Phone. (07) 3246 3399

It is worth drawing particular attention to some of the main changes to the Act that will affect us:

Residents' Participation (Part 7)

S.127. [two new subsections - (4) and (5)] Scheme operators may attend and address residents' committee meetings **only by invitation**. They may not stay unless invited to stay.

S.129A This new sub-section should never have been. We have opposed it from the start but it has, admittedly, been much watered down from the Department of Fair Trading's original proposal. Residents' committees are voluntary bodies but here we have legislation telling them how to conduct themselves. There is nothing strange in keeping minutes of meetings etc; what we object to is residents being required to do what they are told - by Government or anyone else. There is, however, one sub-section worth quoting: *“At the request of a resident, the residents' committee **must** give the resident access to or a copy of the minutes of a residents committee meeting”* A copy of them is to be preferred and the best procedure is for Committee minutes to be read to meetings of residents.

This amounts to what we have said in the past - the committee, if there is one, and there ought to be, is accountable to the residents and must keep residents informed of everything it does. The committee functions on behalf of residents and before being able to act on behalf of residents it has to find out from meetings of residents what it is that residents want. As we will all recognise, that is the essence of democracy.

S.129B This new sub-section allows a committee to **require** a scheme operator to attend a meeting of the committee to discuss the budgets. The meeting is to be held before the start of the financial year to which it relates and the scheme operator is to be given 28 days notice. This sub-section is deficient in that it doesn't

indicate how long before the start of the financial year so don't leave it too late. And make sure your voice is heard!

S.132. As with committee meetings, scheme operators may attend residents' meetings **only by invitation**. The exception is where the scheme operator has called a meeting of residents. This is unlikely to happen except to present the annual financial statements in accordance with **S. 131**.

S.133 - Voting. The change here is fundamental. It is now one vote per Unit and not per resident. The representatives of owners, at a meeting at which the writer was present, expressed indifference about it so why this change has been made is a bit mystifying. The argument seems to be that as what we pay in a retirement village relates to our accommodation (not everything does) so therefore should our voting. Another argument is that as the majority of village residents are single ladies they should be protected, voting wise, against couples. We certainly need consumer protection - but not against each other! Although otherwise flawed, the argument does have merit and we are certainly not critical of residents making the decision and not village owners.

The new voting rule will start looking a bit silly when we vote on what sort of Christmas party to have, cater for ourselves or have outside caterers; whether we should have a new bowls mat or a table tennis table or darts board. In compliance with the new law we are supposed to take steps to ensure that even such matters are decided by one vote per Unit.

However, the law does provide that residents can change it back to one vote per person by 'special resolution'.

There are other changes to voting entitlements which are significant:

1. No person may exercise a proxy for more than two residents (something we did with our ARQRV Constitution a couple of years ago.)
2. Scheme operators (including managers) **may not** exercise a proxy vote for a resident.
3. **Any person**, not just another resident, may exercise a vote for a resident either as an appointed proxy or by power of attorney.

Although it is not a change, there is something else of which we should remind ourselves: A residents' meeting is still a residents' meeting no matter who calls it. That means that the residents' chairman still chairs the meeting. Reflect on the following extracts from the amended Act which refer to postal voting, **S.133(7) & (8)**:

(7) *The scheme operator must not open, or allow to be opened, the container before it is delivered to the chairperson of the meeting.*

(8) *The scheme operator must deliver the container to the chairperson of the meeting immediately before the chairperson opens the meeting.*

This obviously contemplates that a resident, not the scheme operator or village manager, is to be the chairperson.

We shall try to bring some elucidation of other amendments in future newsletters but do ask us about things that are not clear. (Some are less than clear to us!)

Cheating operators

There is one amendment that some scheme operators are likely to ignore. Since the Act came into force on 1st July 2000, Exit Fees, for residents who came into their village on or after that date, have had to be calculated as at the date residents vacated their Unit. But the Hibiscus group of villages have repeatedly ignored that and increased the exit fee by a full year at each anniversary of first occupation. Several times they have been challenged on this and on each occasion they have had to recant, because they know it is unlawful. But they continue to try it on.

And they continue knowingly to issue PIDs which contain such unlawful provisions.

As a result of the recent amendments to the Act, **all** exit fees, regardless of resident's date of entry into the village, must be calculated as at the date the resident vacates the Unit. If you are leaving your village and you think you are being diddled over the exit fee, let us know.

Minimum Entry Age

In general, villages have set a minimum entry age of 55 years. Some of us will be aware that there has been a fairly concerted move by village operators led, it seems, by Forrester Kurts Properties (Australian Retirement Homes) to raise it to 65. That would very obviously have restricted the number of prospective residents able to lease or buy our Units when we leave and hastened the payment of exit fees to operators.

However, following spirited resistance and application to the Commercial & Consumer Tribunal by residents at the Gold Coast 'Domain' village, a mixture of freehold and leasehold, FKP had legal advice from Minter Ellison that such a change might possibly be unlawful. (who'd a thought M.E. would be on our side!). As a result, FKP have withdrawn the proposal to increase the minimum entry age for the Domain village. We are not certain whether they have applied that to all their villages. That possible unlawfulness may apply to all villages where there are PIDs which stipulate a minimum entry age of 55 but it probably won't apply to future villages if they start with a minimum entry age of 65. That more rapid turnover, or 'churning', is something that delights the coffers of retirement village operators.

Again, the Department of Fair Trading which, one has to assume, was notified of the proposed change has shrugged its shoulders at something which impinges adversely on

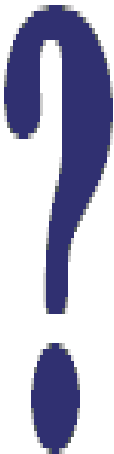
residents. The Department simply doesn't care about following a main object of the Act - the promotion of Consumer Protection.

Puffery

RSL are advertising their new up-market village at Alexandra Headland. It is being built where there is apparently already an Aged Care Establishment. This co-location, says RSL, is important because residents can access different levels of care without having to leave the area. That is misleading. RSL, who should and do know better, do not mention that a retirement village resident, like anyone else, who wishes to go into an Aged Care Establishment has first to be assessed by the Department of Health & Aged Care and found in need of such care. There is no guarantee of staying in the same location.

The advertisement also says that RSL offer one of the best financial deals. It doesn't. There is nothing unusual or 'better' about offering departing residents half the capital gain (less exit fees!) Some villages offer all the capital gain (less exit fees of course!). And RSL undertakes to buy back at the price paid by the resident if it isn't sold after six months. What, and then sell it and keep all the capital gain?

More Puffery

 Ted Sent, erstwhile managing director of Prime Life Corporation is back on the retirement village scene, building a village at Moreton Bay. *"It will be Australia's first fully integrated master planned retirement resort."* he claims. What exactly does that mean? It is also, he claims:

"Australia's first internationally certified retirement resort"

Oh dear, and what exactly does that mean.?

Annual General Meeting

It may seem a little early but September is only a couple of newsletters away. It is now four years since we had an AGM in Brisbane so we think it is time we met there again. It would be at the Dept. of Primary Industries Building in Ann Street. More details at a later date.

Please think about coming on to the Association's Committee. Some of the present committee members, including the President and Secretary, will be running again. However, with our increased membership and, happily, more members choosing to refer disputes to the Commercial & Consumer Tribunal, some changes will have to be made. Bill Runciman's time would be far better spent advising on and helping with applications to the Tribunal than on being Secretary.

So we do need someone to be Secretary. Someone to take minutes at monthly meetings, they are not voluminous, to prepare agendas, they are simple, send out brochures to residents on request and keep membership lists up to date.. It will not involve correspondence. We also need someone to be Treasurer. This will involve receiving annual subscriptions from members and banking them and keeping our very simple accounts. There will be all the assistance necessary from other committee members. We simply need to organise our time and resources to better effect.

Until next time then,

PS. When you have read this newsletter why not pass it on, or lend it, to another village resident who is not yet a member and suggest they might join, After all it is only \$10 a year.

Phone
5441 1044

Butler McDermot & Egan - Solicitors.
66 Howard Street, Nambour, Qld. 4560
Specialists in retirement village issues.

Fax
5441 5096