

# 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](http://www.villagers.org.au)

Hon. secretary  
Bill Runciman  
Villa 18 Monterey  
58 Furness drive  
Tewantin 4565  
Ph. 5449 9391  
dareli@bigpond.net.au

No 59 NEWSLETTER September 2006

## Intimidation

In our last newsletter we drew attention to a Tribunal mediation process involving residents of Wellington Manor and the scheme operator, the Manor Group. It was a case in which this Association had been involved from the word go. Oh, dear, oh dear! Within days they had set the dogs on us; the dogs being their lawyers, McCullough Robertson. We were threatened with all sorts of dire consequences for publishing confidential information unless the front page of our next newsletter featured a retraction of what we had published in July, an apology and a promise never to do it again. Manor will no doubt read this newsletter but they will look in vain for any retraction or apology on this page or on any page. We are not naughty schoolboys to be chastised. Manor Group's letter to us and our reply to it can be seen on our web-site. Go to: [www.villagers.org.au](http://www.villagers.org.au)

Inadvertently revealing how silly their attack on us is, Manor sent each resident a note, over no name and an indecipherable signature disclosing that they (Manor) had reformatted Wellington' Manor's previous year's accounts and the following year's budget, particularly in respect of Sections 106 & 107, so as to comply with the Act. And also telling them how much was being refunded. That was a result of the case residents of Wellington Manor brought against the Manor Group. Confidential?

Still on intimidation and still on the Manor Group, about three years ago the manager of Cleveland Manor village, in an effort to silence a couple who had been questioning some safety aspects of electrically operated village gates, sent a letter to the residents' committee disclosing private information about those residents. The residents concerned took a complaint to the Federal Privacy Commission which found that the manager had breached their privacy. It was a long and sorry saga with the Manor Group dragging their feet, drumming up all sorts of delaying tactics, and refusing to issue the proper apology and compensation as required by the Commission. In the end they had to do so to escape being so ordered by the Privacy Commissioner.

The terms of the settlement we cannot disclose; suffice to say that the two residents are satisfied that all they sought has been conceded. Those residents relentlessly pursued justice and they deserve to be regarded as heroes by retirement village residents everywhere.

Why do some retirement village operators go to such lengths to conceal their transgressions? Surely it would be better simply not to transgress in the first place, to be honest and straightforward in their dealings with residents, to abide by the law and, as we pointed out to the Manor Group, have higher regard for Section 3 of the Act.

Well, Manor got its front page, if not exactly as they instructed us!

One of the ironies of the Manor Group case is that often, when asked for information about something, usually salaries or wages or, in some cases, like the their directors' fees, (improperly charged in our view) the manager's answer is that to reveal such information would be in breach of the Privacy Act. That is usually bunkum; most village managers don't know one end of the Privacy Act from the other, as the case reported above shows, but they will attempt to evade questions by citing it.

## Correction

In our July issue we quoted Section 127 of the Act. Unfortunately we had a 'typo'. We omitted the very important word “may”. Without it, what we quoted could seem to make the establishment of a residents' committee mandatory, which it is not. It should have read *“The residents of a retirement village may establish, by election conducted among themselves, a residents' committee”* We apologise for that.

## Insurance

Although not a mistake, for the sake of clarity we ought to emphasise that our reference in the July newsletter to insurance excesses referred only to the insurance of capital items owned by the scheme operator. In a freehold village that is confined, usually, to facilities provided by the scheme operator, community hall, pool, roads etc.

It did not refer, in freehold villages, to the insurance of capital items for which the Body Corporate & Community Management Act makes the body corporate, that is the lot owners, collectively responsible. And it does not, of course, refer to a lot owner's, that is a resident's, personal possessions.

## Owners' Rules - or Rule!

In July we brought you the story of the lady who slapped, almost, a village general manager's face because he behaved offensively towards her. And how he failed in the Tribunal to have her evicted. In this issue we report another Tribunal decision, 2

made on the 8th August 2006, against the same respondent, the Palm Springs village at Wynnum, operated by Jodaway Management Pty. Ltd.

Residents had elected, in accordance with the Retirement Villages Act, a residents' committee. But the scheme operator refused to recognise the committee. Indeed, he tried to prevent residents from electing one by removing residents' notices from the village notice board, repeatedly, and letter boxing residents telling them they did not need a residents committee. And then calling a meeting himself to, among other things, consider: *“the need or otherwise to establish a residents' committee....”*

The scheme operator was blatantly trying to usurp the right of residents to elect a committee.

The Commercial & Consumer Tribunal found that the residents had validly established a residents committee and, since the scheme operator had denied its legitimacy and had prevented it from operating in residents' interests since its establishment in February 2005, ruled that it would be the residents' committee for twelve months from the date of the Tribunal's decision, ie from the 8th August 2006.

Featuring in all this were Mr Andrew Fleming, the 'slapped' general manager and director, and Mr & Mrs Williams, the onsite managers, all of whom, as witnesses at the “lady slaps manager” eviction case, were found by the Tribunal not to be credible witnesses. We have to question whether they are fit persons to manage a retirement village.

In this residents' committee case, the Tribunal presumed that Mr Issakidis, Director of Jodaway Management Pty Ltd., relied on a provision of the residents' PIDs which provides that notices may not be put on the notice board without the scheme operator's, consent, in practice the manager's consent. The Tribunal remarked that Mr Issakidis in removing or ordering the removal of residents' notices from the village notice board acted in a heavy handed way.

The Tribunal told management that, in order to function properly in accordance with Section 129 of the Retirement Villages Act, the residents' committee needed to be able to place notices to residents on the community notice board without obtaining the scheme operator's consent.

There are many ways in which some scheme operators, as in the Jodayway case above, try to restrict or override residents' rights by pointing to something in a PID. The Tribunal drew attention to Section 45(2) of the Act, which provides that: ***“a provision of a residence contract is of no effect to the extent that it is inconsistent with this Act or purports to restrict or exclude the operation of a provision this Act.”***

(A residence contract includes the PID which forms part of it.)

## Repairs & Replacement

We often write on this subject because it is in this area, more than in any other area, except perhaps for Exit Fees, in which scheme operators of leasehold and loan/licence villages try to make us pay for what we shouldn't have to pay - for repairs, maintenance and replacement of fixtures, fittings etc. in our Units. Even though they are the property of the scheme operator and part of what is leased to the resident. And even though we pay for repairs and maintenance via our monthly General Services Fund fees. Taking advantage of the lethargy of the Retirement Village Section of the Office of Fair Trading, scheme operators are putting provisions in their PIDs requiring residents personally to pay for maintenance, repairs and replacements. Very commonly, where a repair or replacement is covered by an insurance policy, the scheme operator will tell residents that they must pay the excess, that is the amount which the insurance company does not pay.

In May 2005, a resident of Edenlea village had an accident in her Unit in which there was some fire damage. Repair and replacement was paid for by the insurance company but she was required by the village manager to pay the excess. In a quite

separate incident, in October 2005, she was required to pay personally for some plumbing repairs.

The resident was unhappy with that and, with the assistance of this Association, took both matters to the Commercial & Consumer Tribunal, pleading that such charges were improper. The scheme operator cited several provisions in the resident's contract to support its decision to make the resident pay but the Tribunal rejected them because they were either irrelevant or conflicted with other provisions of the contract or PID and were in any case inconsistent with provisions of the Retirement Villages Act.

The Tribunal ordered, on the 21st August 2006, that the resident be refunded what she had been charged for the plumbing costs and the insurance excess she had been required to pay and also the cost of bringing her case to the Tribunal (\$54)

This case highlights fundamental issues which are probably of wider significance to residents than any other case which we have brought. Most residents who came into commercially operated leasehold villages in the last four or five or so years will find in their contracts the following passage or something very much like it, relating to maintenance, repairs and replacement:

***“To regularly maintain and properly repair or replace (with items of the same or similar quality to those in use when they were last replaced) fixtures, fittings, equipment, appliances, furniture, furnishings and other property in, on or fixed to the interior or exterior of the Accommodation Unit that are made available by the scheme operator”***

(That happens to appear at Clause 7.5.2 of the 'Standard Terms' of the resident's contract.)

We have always taken the view and have expressed it in our newsletters and elsewhere, that such provisions in a contract are inconsistent with the provisions of Sections 91 to 101 of the Act, those Sections covering the Capital Replacement Fund and the Maintenance Reserve Fund.

In the case which we are describing, the Tribunal took the same view. In addressing the passage which we have quoted above, the Tribunal ruled:

***“Clause 7.5.2. (of the resident's contract) on which the respondent (Edenlea) relied is clearly inconsistent with both Section 97(4) and with the definition of “general services” and is of no effect pursuant to Section 45(2).***

We have quoted S.45(2) of the Act at the end of the Jodayway case on page 3.

In respect of the resident being made to pay the insurance excess, the Tribunal had this to say:

***“In the circumstances, I find that the 'excess' of \$250 should have been paid by the respondent (Edenlea) from the capital replacement fund as part of its obligation to meet the cost of replacement of capital items.”***

So, if your scheme operator tries to make you pay personally for any maintenance, repair or replacement, or any insurance excess, refuse to pay and tell us about it. Full details of the above cases can be seen on, and downloaded from, the Tribunal's website: [www.tribunals.qld.gov.au](http://www.tribunals.qld.gov.au)

## Consequences

As a result of the Tribunal's decision, the contract excerpt ***“to regularly maintain etc...”*** which we quoted in the previous column, has become inaccurate. In accordance with Section 36(2) of the Act, scheme operators in whose contracts it features must now disclose that inaccuracy to the Office of Fair Trading and to all residents who are or are likely to be affected. There is a maximum of 540 penalty points for not doing so. We shall expect the Office of Fair Trading to pursue this matter; we shall certainly do so.

## Being Political

We are sometimes criticised by some scheme operators for being political. It is usually done in a veiled fashion, such as the following comment from the management of the Oasis (Hibiscus group) village on the Sunshine Coast. The comment was upon the newsletter produced by the Residents' Committee of the village - which management tried to take over.

***“The monthly newsletter needs to be a publication full of village activities and reports from our various wonderful sport, art and craft groups not used as a political forum.”***



Well, of course the newsletter should report on village activities. But why should it not also contain other issues, such as where residents are having discussions, disagreements even, with management? Why did management make a snide criticism of a residents' committee? Of residents who are also members of the ARQRV and who are prepared to discharge their role as advocates of the residents of the village - as prescribed by the Act.

Until after the AGM!

**Phone  
5441 1044**

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

**Fax  
5441 5096**