

Association of Residents of Queensland Retirement Villages (Inc)

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NEWSLETTER

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Our Lords & Masters

We have from time to time remarked that we never know who owns us. Villages are being bought and sold right left and centre; we are a very lucrative milch cow. Usually, residents are the last to know although rumours get around. Australian Property Custodian Holdings, managing entity of Prime Retirement and Aged Care Property Trust (we defy you to remember all that!) are fairly new upon the scene but are buying up as fast as they can. They now own half a dozen or so villages in the Sunshine Coast area. We hope that there have not been as many 'mezzanine' investors, as there were in the Westpoint scandal. We say that because one of the Westpoint players who had his assets frozen by ASIC was very much involved in raising money for the Trust and was the non-executive chairman of APC until December 2005. Beware, beware, aged investors.

Forrester Kurts Properties, under their pseudonym Australian Retirement Homes, have also been increasing their stake at a rate of knots. They have decided to call all their villages 'Aveo', followed by the name of the suburb they're in. No, they didn't consult the residents.

The newest player on the scene is another group rejoicing under the name of 'Meridien'. They have bought up or are in process of buying the 'Manor Group', located a little south and west of

Brisbane, and the Carlyle and Argyll villages in the Wide Bay and Townsville areas. Of their three Directors and founders, Roberts McCart and Barrett, two of them started out as lawyers - who might have decided that property development is much more lucrative, and managing director Russell McCart, who seems always to have been in property development. Their Meridien background has been in developing resorts and marinas. Despite that nautical connection we have no reason to believe that they will call any of their villages 'The Moorings' or the accommodation Units in them 'Berths'! The company can be investigated a little at its website - www.meridien.com.au

The Glossy Brochures

Retirement villages are widely advertised in both television and newspaper; happy smiling forty something year olds in some luxurious setting. What could be better? There is a new website:- www.villages.com.au. It purports to be a directory including Units for sale (the right to reside in non-freehold villages.), village news, articles and tips. It is of course a marketing tool and the Retirement Villages Association of Australia (a village owners' association) is closely involved. The web-site doesn't really tell one much at all; certainly nothing is written from a residents' point of view. It has a seven member advisory board

which includes: a director of Primelife Corporation, one from the Prime Retirement and Property Trust (mentioned earlier), Loretta Byers, director of Village Care - a village management company whose contract at 'Living Choice' villages was recently terminated, due largely to resident dissatisfaction at at least one Sunshine Coast village. And how many 'residents' members of that advisory board? You guessed it - none!

Retirement Utopia

From the foregoing 'Villages' we can wonder at the following extracts from a piece by, it is claimed, a village manager. How far it is from our experience.

"The people who are attracted to village management are a special kind of person; we all have a similar attitude. At the end of the day, our job is about giving service to our residents. This is their home, and we are there for them 7 days a week."

Such an empathetic manager would not last long!

"I have worked in every area of the village. The accounts, cooking for 7 villages at one time, the laundry, the lot....."

A Jill of all trades?

"As a village manager you have to be very aware, down to earth and practical. You need to have a basketful of abilities – horticulturist, cleaner, cook, lawyer, an OH&S and legislation expert. You also need to be a councillor to families on Mum not being so good, and a manager of grief – including guiding our staff on how to cope"

Ho-Hum - where is this omniscient manager?

"We have 16 staff here plus 4 contracted gardeners and 6 kitchen staff. My staff includes 4 in the office, 2 hairdressers, 2 in sales, 5 cleaners and one handyman. We look after 300 residents."

Perhaps she left off a 0. Wonder what the fees are? Certainly not a retirement village - more like a retirement metropolis.

"Being awarded the RVA Manager of the Year was a great privilege, but one that all my staff should share with me"

Well, yes. All 40 of them in her 'village'!

Urimbirra

In our January issue we brought you news of the Residents' win in the Commercial & Consumer Tribunal against a case brought against them by their scheme operator, Milstern Retirement Services. The residents refused to accept an improperly constructed budget and the Tribunal agreed with them.

Residents of that village recently invited the local MLA and a member of the local press along to the village to discuss with them the problems they were having and had been having for half a dozen years. The village manager, Jim Garven, criticised by the Tribunal in the case referred to above, became aware of it and, according to the press reporter of the local 'Chronicle', ordered them all off the property.

The reporter, according to the 'Chronicle', was verbally abused by him until she left. MLA Tim Nicholls refused to leave and the manager threatened to call the police, presumably to have him removed. Should have called the manager's bluff because that's what it was - simply bluff. No law was being broken; the police would have had no reason to remove anybody.

Leaving the Village

Favourable though they generally are, the amendments to the Act failed to simplify confusing legislation in relation to reinstatement, (Section 62), which scheme operators generally try to bend to their own advantage. Why the Office of Fair Trading succumbed to the operators' lobby and retained the distinctions made by Section 62 defies common sense.

What we are most concerned about at present is the way in which we believe scheme operators defy Section 15 of the Act and insist on charging a full year's exit fee for a part year of occupation. Before the 15 March 2006 amendments it was permissible in respect of pre 1 July 2000 contracts but not since. We

currently have five cases of what we consider to be breaches of Section 15 which we have referred to the Tribunal for its decision. We had hoped to write something quite definitive about it all in this newsletter but the cases we had in mind have yet to be heard by the Tribunal. All told we have eleven cases lined up for the Tribunal.

Undoubtedly we shall be able to report on the Exit fee issue in our next newsletter. But we felt we undoubtedly could in this issue and were wrong! As Bill Runciman would have said: *“The best laid schemes of mice and men gang aft agley”*

\$ Costs of selling \$

Section 68 of the RV Act deals with this. In this we still have the unfair treatment of “existing resident contracts” (pre 1 July 2000) in which operators can still charge a sales commission. For post 1 July 2000 contracts it is outlawed, whatever the operator chooses to call it. Costs of sale must be properly identified; contribution toward salaries of sales staff is not good enough. Legitimate costs are to be shared, in accordance with S. 68.

BC&CM and Residents Committees

Some villages are freehold villages, also known as strata title. In such villages the ‘lot owners’ have freehold title to their Units. Each lot owner is a member of the body corporate and the body corporate elects a body corporate committee. Such freehold villages are subject to two distinct Acts of the Queensland Parliament: The body corporate and everything to do with it is subject to the Body Corporate & Community Management Act. Apart from that, the non-body corporate relationship between ‘residents’ and scheme operator is subject to the Retirement Villages Act. In the unlikely event of an inconsistency between those two Acts, the latter Act prevails.

Residents may and do elect a residents committee under Section 127 of the RV Act. It is essential for residents of freehold villages to understand the differences between residents’ committees and body corporate committees. Their functions are different although not opposed. The body corporate committee is concerned with matters relating to the Community management statement: body corporate levies comprising the administrative fund and the body corporate sinking fund. They are to do with the accommodation Units and the common areas.

A residents’ committee is to deal with the scheme operator on matters as provided by Section 129 of the RV Act. That is mostly in relation to facilities provided by the scheme operator, village by-laws and the like. Involved in this are the fees the scheme operator charges in respect of the facilities: general services fund and maintenance reserve fund, just as in a leasehold/licence village. The scheme operator is also required to maintain a capital replacement fund, as in leasehold/licence villages. The two committees may possibly have some of the same people on both but they must be mindful of their different roles. The residents’ committee is in no way subservient to the body corporate committee or vice versa. Every resident has a stake in both! Co-operation between the two committees is quite possible and eminently desirable.

Tribunal decisions

Often when a resident or residents tell their scheme operator or manager of a certain decision reached by the Commercial & Consumer Tribunal he says that it does not apply to their village, only to the particular village in respect of which the decision was reached. Well of course, like any Court decision. The point is that if it is a Tribunal ‘Category A’ decision it will be a precedent for identical cases brought before it.

Don’t be put off by that less than honest managerial spiel about it not applying.



Owners or Renters

From time to time we have reflected on the fact that when it comes to the State Government Rates rebate, those of us who live in leasehold or loan/licence villages are not ratepayers and are therefore not eligible. The federal Government, in its turn, holds that we are not paying rent so are ineligible for rent allowance from Centrelink. As we have observed before, we fall very neatly between two stools and Governments will not let us sit on either of them.

Actually, leaseholders do pay rent because the Australian Tax Office regards what leasehold residents do not get back when they leave the village, ie the Exit Fee we pay, as rent in advance.

Residents at Carlyle Gardens at Bargara did a little survey a couple of months ago. It was not clinically stringent and covered only 132 out of 400 odd residents but was rather revealing. Although theoretically possible to get rent allowance, the criteria and thresholds are so impossibly pitched that these days it is virtually if not literally beyond reach. Be that as it may, when federal election time comes around we should all buttonhole our local candidates and ask them what they will do about the undoubtedly unfair disadvantage we retirement village leaseholders face in respect of: no State Government rates rebate, no federal Government rent allowance. Invite the candidates to your village community hall and question them. Don't let your village manager veto the idea. It's your village, you lease and pay for it all, including the hall. Don't ask him if you can, tell him you are going to. If he tries to prevent it, tell him you will take him before the Tribunal under Section 169(1)(c) of the Retirement Villages Act.

Membership

We have a data base on our computer on which we have every member's name and address in all the villages in which we have members. An extract of it we send to Australia Post when they print and despatch our newsletters. It was compiled by David Waterhouse, who has long been our webmaster and who gives our newsletters their colouring and lay-out.

Very soon now, David will send the liaison officer in each village where there are a dozen or so members or more, a print out of the data base showing all our members showing which have renewed their subscription for 2007 and which are, for one reason or another, not yet paid up. It will also of course include new members.

We hope there are no mistakes - please let us know if there are. Please take up any data base issues with David directly. He can be reached via our post Office box or, even better, via his e-mail address at yeomanoz@westnet.com.au

Which brings us to a reminder. We shall soon have to purge from our data base members who have not renewed their subscription for 2007. So please do renew without delay, if you have not already done so.

Til' next time then.



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