

Association of Residents of Queensland Retirement Villages (Inc)

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NEWSLETTER

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Egg on our Face

First thing in this issue will be to try to scrape some egg off our face. In our last issue we reported that the Meridien Group, a new player on the retirement village scene, had bought up Argyll and Carlyle villages in the Wide Bay area. In fact it was only one in that area, Carlyle Gardens at Bargara, that they acquired. Other Carlyle and Argyll villages in the area have been bought up by the Prime Retirement and Aged Care Property Trust, to which we referred in our last issue. As we have remarked before, it is a bit difficult to keep abreast of who is buying whom.

Incidentally, the Meridien Group, which has also taken over the Manor group, has re-named 'Victoria Manor': 'Renaissance'. We hope that there will also be a renaissance in the management style because, according to some residents in the Manor villages, it left something to be desired.

The last bit of egg to scrape off is to do with Forrester Kurts deciding to rename all their villages 'Aveo'. We understand from residents of Aveo, Carindale, which used to be known as Carinya, that residents there were in fact consulted by Forrester Kurts about the change in name to Aveo, Carindale.

We trust we have thus expiated our sins.

Insurance

This article relates to damage to the scheme operator's capital items but excludes those which are the responsibility of the body corporate in a freehold village. It also assumes that any damage to a capital item is not deliberately caused by, or the result of, accelerated wear by the resident. Even so, scheme operators persist in trying to relate village insurance, required by Sections 109 & 110 of the Act, to who pays for repairs and replacements. Let us try to make it clear. If something needs repairing, it must be repaired and its cost charged to the general services fund if a minor repair or otherwise to the maintenance reserve fund. Necessary replacements must also be made but charged to the capital replacement fund.

In this respect it matters not whether there is adequate insurance or none at all; the item has to be repaired. If the event leading to the repair is an insured risk then any payment from the insurance company is to be credited to the Fund to which the cost of repair was charged in the first place. If the insurance policy had an 'excess', the cost will not be fully recovered and the Fund not fully reimbursed. Nevertheless, the scheme operator is not to charge the excess to the resident, neither individually nor via the Village Funds to which

they contribute. (see Holt v Edenlea VH004-06, August 2006).

If your scheme operator tries to involve you with the insurance company, either directly or through the broker, do not have a bar of it. The insurance is a matter between the scheme operator and the insurer. Your relationship is only with the scheme operator.

Glossy Brochures

In our last issue we did an article on the sales pitches of village advertisements, all trying to allure one into becoming a happy carefree resident of their village or villages. Prospective retirement village residents would do well to heed the cautionary article in Choice magazine a few years ago, part of which was:

“The financial aspects of retirement village life are complicated with many pitfalls for the unsuspecting. It is easy to become swept up in the lifestyle choices but ignoring the important financial implications can be disastrous.”

The glossy brochures do not tell it as it really is. There is always that old maxim to observe: *“Caveat Emptor”* - let the buyer beware! Unfortunately for those who did not beware and wished they had, it is a bit too late. Leaving a village is always very expensive.

Tribunal Cases

Since our last newsletter we have a case on which we can report. It is a case brought in the Commercial & Consumer Tribunal, entirely successfully, by residents of St James Village, a village owned and run by the Anglican Church's Diocesan synod of North Queensland.

It was a case of the Village being less than transparent in its dealings, deceitful even, right from before the particular residents signed a contract to become residents. In the first place, in contravention of S.84 of the Act, the residents were not given a PID before they signed up and as a consequence were unaware that there was a provision in it whereby a prospective resident could pay a holding fee of \$100 a month, as a deposit, if unable to pay the ingoing contribution immediately. Instead, the Diocese required the couple to pay the full GSF contribution for three

months prior to moving in. That, the Tribunal ruled, was contrary to the PID which the diocese had failed to provide at the proper time.

The diocese tried to claim that it was an arrangement reached between the applicant and the previous lessee in which the diocese was only the 'broker'. No evidence of such alleged arrangement was produced and the Tribunal found it to be unsubstantiated and unacceptable. The diocese was ordered to repay the applicant residents the improperly charged GSF contributions of over \$900 and to undertake, at its expense, reinstatement work which had not been done before the residents moved in.

It also had to reimburse the applicants their Tribunal hearing application fee.

Membership Subs.

With our last Newsletter we enclosed a little subscription reminder notice to those members who, according to our records, had not yet renewed for the current year. It seems to have been a good idea because it brought in getting on for 200 additional subscriptions. We believe that was a better way of keeping membership up to date than simply stopping sending newsletters to 'unfinancial' members. We hope you think so too. It was also very useful for the purpose of getting our computerised data base into good order because we were aware that it was not entirely up to scratch. Where we were wrong you have put us right. We're getting there!

Our Web-Site

It had been suggested to us by a fair number of residents that posting our newsletters on our website simply enabled some village residents (and many others) to keep abreast of what we are doing without actually subscribing to our cause. The Committee discussed the issue and reached the conclusion that we should discontinue that practice. This and future issues will therefore no longer be posted to our web-site. If we are inundated with protests from you we shall of course think again.

C & C Tribunal

Some of you who have been involved have complained to us, quite justifiably we believe, about the length of time it seems to be taking to get cases through the Commercial & Consumer Tribunal. "Justice delayed is justice denied", we wrote a couple of years or so ago, quoting an eminent English Lord Chancellor. Some cases have been dragging on for months and months and one case has been dragging on for well over a year and is still not finally heard.

We do not believe one should blame the Tribunal. It is empowered to adjudicate on disputes arising under sixteen different Acts of the Queensland Parliament and Retirement Villages cases represent a very small proportion of them. One is bound to conclude that the Tribunal is very under-resourced. The length of time taken would be dismaying for any applicant but for retirement village residents in their eighties, which so many of us are, to have these things hanging over our heads can be totally unnerving. The Government needs to pay very close attention to this.

7th Day Adventist Capricornia Village

Residents at this village are being told that they must pay for the village's membership of Aged Care Queensland and for the cost of that body's accreditation. The CEO of the enterprise, Mr. Don Bain, claims to have received advice from their lawyers, Minter Ellison, that such costs are normally and properly passed on to residents as a reasonable management cost. There has to be doubt about that claim because Minter Ellison know full well that the Commercial & Consumer Tribunal has ruled that the cost of ACQ membership is not to be charged to residents. Surely such a large and ubiquitous law firm wouldn't advise a village to disregard a Tribunal ruling, would it? Mr. Bain also claims that the 'Board' of Aged Care Queensland has given him similar

advice but ACQ also knows about the Tribunal's ruling. The plot thickens. If Mr. Bain is to be believed, we have the village owners' lobby, Aged Care Queensland, and their lawyers, Minter Ellison, ganging up on residents and dispensing inaccurate and misleading information. And Mr. Bain is also aware of the Tribunal's ruling because residents of the village have told him about it. He could easily have checked on the Tribunal's website.

The Law & elderly people

In August 2006 the federal Attorney General set up a parliamentary committee enquiry into "older people and the law", to which submissions were invited from the public. In November 2006 this Association, along with many others, made a submission on the subject. It was made, as one would expect, from the point of view of elderly people in retirement villages. There will be some meetings of the committee around the country in July. In Brisbane on 16th and Buderim on 17th. Watch your local press for announcements.

Voting

One vote per resident or one per Unit. The law says one per Unit but it allows that residents may change it to one per resident by special resolution. Opinion is divided on the issue but the only opinion that matters is the collective opinion of residents in a village. If residents resolve to make it one per resident, well and good, but if they do not then the law stays at one per Unit. Once the residents have decided, that is it. The issue is settled, let us leave it at that. Although any resolution can be rescinded, it would be quite wrong for dissident voices to persist in trying to resurrect the issue.

2007-2008 Budgets

In January's newsletter we drew attention to the new Sections 102A and 129 B of the Retirement Villages Act which provides for budgets and for budget meetings that the scheme operator can be required to attend. The object is to give residents greater say in how their money is to be spent. We must take advantage of this Villages Act

and its 2006 improvement in relation to the setting of budgets. A Residents' committee can require the scheme operator to give it a draft of the general services charges budget (Section 102A) and also attend a budget meeting (Section 129B). If you have not already done so, ask for them now. There is nothing optional about them for the scheme operator; they are mandatory but the residents committee has got to initiate them. It's actually a little late now but it would be an extremely unworthy scheme operator who would avoid them for that reason.

Remember, too, that any proposal to increase any 'Section 106' item of expenditure beyond the CPI increase requires your approval by special resolution. So see that there are no increases in Section 106 items of the proposed budget exceeding the CPI increase. If your scheme operator says it doesn't matter so long as the total increase does not increase beyond the CPI, invite him to look carefully at the definition of '*total of general services charges*' at Section 106.

Section 112 provides that if a resident asks for one, the scheme operator must give him or her a quarterly financial statement on the three funds - general services, maintenance reserve and capital replacement. That includes the quarter ending 30th June even though there has to be an audited annual statement as at the end of June. That annual statement will not be forthcoming for anything up to five months. Meanwhile hasten to compare total expenditure on the June quarterly statement, especially S106 expenditure, with the proposed budget for the following year.

NSW Amendments

A Bill to amend their Retirement Villages Act has gone before the NSW Parliament. Some of the significant amendments are that the cooling off period on entering a village contract will be 90 days, with minimal penalty.

Budget deficits are not to be carried forward but borne by the scheme operator. Payment of fees after vacating the Unit on leaving the village to be capped at six weeks.

That would make scheme operators get a move on instead of taking an inordinate time refurbishing the Unit, as they invariably do in Queensland and no doubt everywhere they can get away with it.

Dissident Cabal

Between November 2001 and May 2002 the Office of Fair Trading instituted what it referred to as the 'Reference Group' to start the review of the Retirement Villages Act. Its members were representatives of ARQRV, Aged Care Queensland, representing owners. They met under the auspices of the Office of Fair Trading. The last such meeting was in May 2002. Failing to be re-elected to the ARQRV Committee in September 2002, three members who were on that reference group failed to renew their membership of our Association. That of course was their right. But we have become aware that that little cabal of disaffected erstwhile members, Messrs. Hogan, Bernau and Ms Byrnes, has recently been trying to resurrect itself under the name 'Retirement Villages Reference Group'. It is covertly importuning our ARQRV liaison officers to join their 'group'. That too is their right but is their motive to undermine the efforts of this Association instead of supporting it? Shades of 2001/02! That can only give succour to those operators' lobby groups who see ARQRV as a threat to their supremacy.

Annual General Meeting

This year's annual general meeting will be held on Monday the 24th September at the Maroochydore RSL club in Memorial Avenue. It is pretty well at the centre of Maroochydore business district and close to the RACQ and the Courthouse. More about the AGM in our next newsletter. 'Til

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