

Association of Residents of Queensland Retirement Villages (Inc)

President
Les Armstrong
PO Box 1361
Buddina
Qld. 4575
Ph. 5493 7112
vi.lesarm38@bigpond.com

ARQRV

www.villagers.org.au

Secretary
Grace Rutherford
PO Box 1361
Buddina
Qld. 4575
Ph. 5444 4690

No 68

NEWSLETTER

September 2008



From the President



A major content of this Newsletter relates to the Annual General Meeting scheduled for 15 September 2008 at Maroochydore. The proxy and nomination forms are included on pages 3 & 4. The Agenda will be available at the meeting.

The ARQRV is acknowledged as the principal agency within the Retirement Village industry for Consumer protection of retirement village residents in Queensland. Expanding membership and the improved legislation gained from effective lobbying at Government level and from favourable Tribunal decisions has kept the committee involved. This year has witnessed some desire to step down such that the majority of the current committee will not seek re-election. As required by our Constitution all nine positions will become vacant on 15 September. If you are willing and able to contribute to our continued success, now is the time for action. All nine positions must be filled, but we especially need nominations for: Secretary and Newsletter Editor/Compiler.

Tragedy at Urimbirra. The feature article in this Newsletter centres on Urimbirra Retirement Village. Jim Holland writes on behalf of his mother, a long-term resident at this village. The message Jim conveys is quiet clear! Appalling 1

management, absolutely no concern whatsoever for residents' entitlements and complete disregard of the legislation by the Scheme Operator may eventually culminate in closure of the village and the remaining residents not being paid their full Exit entitlements. The Urimbirra situation illustrates a major problem in the Retirement Living industry: trusting/gullible retirees being duped by an unscrupulous Operator. Such actions adversely affect the entire industry, residents and operators alike. At a Ministerial Working Party convened in late-June 2008, the key players: Aged Care Qld, on behalf of Operators, our Association on behalf of all Residents and the Office of Fair Trading, united in an attempt to solve the problem. ARQRV Legal Adviser, David Wise, will work with Peter Boyce from Butler McDermott Lawyers (representing the Urimbirra residents) and legal staff from the Attorney-General's department, to develop a comprehensive case against this recalcitrant Operator, aimed at securing enforceable Orders, non compliance with which would mean severe financial penalties.

During July/August, Association representatives visited 19 villages, attended four Preliminary Negotiation meetings, four Mediation hearings, a Supreme Court judicial

At the foot of the back page you will find a proxy form to use if you wish to appoint someone to vote for you at the AGM. At the foot of page 3 there is a nomination form to use if you wish to nominate somebody for the Committee. Nomination and proxy forms should be posted to our P.O. Box as shown at the head of the Newsletter. ASAP.

review, and a full bench Tribunal hearing. Two of the mediation sessions were settled in favour of the Residents. The Supreme Court decision is not expected until mid-September but ARQRV Counsel is quietly confident of a favourable outcome. The Tribunal case, which was the first of a number of disputes relating to overcharging of Exit fees and Costs of Sale, was heard on the 20th August. Each of these cases has wide significance; we will keep you advised.

Recent correspondence from residents indicates a disturbing trend towards major changes in Public Information Documents - none to the benefit of Residents. Additionally, a number of members are concerned about meeting procedures and voting entitlements and there is also a perception that some Residents' Committees are becoming more concerned with solving Operator's problems than with presenting residents' requirements. Also, in some Freehold title villages, there is confusion regarding the relative roles of the Body Corporate committee and a Residents' committee. The ARQRV position on the PID changes appears below. An article is being formulated on Committee-related questions and will be included in a subsequent Newsletter.

Our "Visit the Villages" program, although time-consuming and expensive, provides an opportunity for members to discuss issues and concerns, offer suggestions and generally "have a whinge". Each visit usually generates an increase in workload, but on the credit side many new memberships have resulted.

Changes to PIDs

RV Act Section 36 provides that Operators must advise a resident of any change to a PID if it becomes inaccurate in a way that may materially affect the resident. In many cases, this advice is in the form of a directive implying that the change, having been advised to the resident, is now in force and thus applicable to that resident. Not so! The receipt by a resident of such advice does not automatically obligate the resident to accept the change. Dispute resolution is in train at a North Queensland village following advice by the Operator that residents would no longer participate in the capital gain on their Unit and

that this change would be applicable to current and future residents. Remember that your PID is an integral component of your Residence contract, which may not be unilaterally changed to your disadvantage. Watch future Newsletters for progress on this matter.

Legal Aid

Members frequently seek advice on eligibility for Legal Aid, aside from that available on village issues through this Association. Legal Aid Queensland has advised as follows: Effective 1 July 2008, Legal Aid Queensland's Means Test has been changed to ensure that more financially-disadvantaged Queenslanders can access legal services.

The Legal Aid Queensland Board has agreed to:

1. Increase the amount of equity allowed in an applicant's home from \$146,000 to \$255,000 (to be reviewed annually) in order to qualify.

2. 1. Increase to \$510,000 the amount of equity allowed in the home of applicants who are 60 years of age or over if:

- a. The applicant receives an income-tested allowance or benefit and has:

- i. either lived in their home for five years or more or

- ii. moved out of their home or bought an alternative residence because of disability or ill health. The board has also developed guidelines to help identify applicants who would not usually meet the LAQ means test but deserve special consideration because they experience multiple disadvantages.

These can be viewed at www.legalaid.qld.gov.au LAQ has also reviewed its income test thresholds, in line with the current Centrelink rate, and these will also take effect from 1 July 2008. The income thresholds will now be reviewed along with the home equity thresholds on 1 July each year. ARQRV members who may be effected by these changes can obtain further information by writing to LAQ at GPO Box 2449 Brisbane QLD 4001; or by telephone to 13365118.

Wills & Powers of Attorney

Butler McDermott Lawyers have considerable experience in Retirement Village legislation and are representing the Urimbirra Residents in a Dispute hearing. The firm also specialises in Will preparation and Powers of Attorney. The following article outlines the benefits to Residents of these services.

We all accept that one day we will die.

When that day comes, if you don't have a Will your assets could be distributed in a way that you would never have intended. Leaving no Will could force the sale of the family assets to meet the claims of other beneficiaries entitled to a share as provided in the Succession Act. To ensure that your assets are distributed in accordance with your wishes you should have a Solicitor prepare your Will. In our experience "do it yourself Wills" are rarely completed properly and are often invalid.

We all accept that one's health can fail or one could be involved in a serious accident.

You can be too ill or injured to make choices about your medical treatment, or you could suffer a disability (such as a stroke) that prevents you from communicating the health care decisions you want made, where you want to live and the control of your finances. You can make an Enduring Power of Attorney in advance rather than leave the decision making up to a person nominated under legislation. You can appoint who you want to act for you as your attorney and save your family or friends from having to bring a case before a tribunal to

be formally appointed. In addition you may make a Health Care Directive which details your health care wishes in certain circumstances.

You can take control now through good planning. Contact either of the experienced Solicitors listed below to discuss your needs and to review your current documents to ensure your goals are achieved.

Mahoney Neuwirth Phone 0754411044

Email: mneuwirth@butlermcdermott.com.au

Adam Barrell Phone 07 5441 1044

Email: abarrell@butlermcdermott.com.au

Retirement strife

The Following is an edited version of a letter from Jim Holland. The complete text will be presented in a Statement of Claim in the combined case against the Operator.

"For my Mum and late Dad, moving into a retirement village after a lifetime of hard work should have been an enjoyable and contemplative time. As it turned out it has been anything but enjoyable, in fact a trial, and a painful process.

"In the beginning everything looked wonderful. A small but well kept village, great gardens, and centrally located at Hervey Bay. Really, it was everything that one could want in a retirement village. But it never worked out like that.

"My Mum & Dad then in their 80's moved from Sydney and bought into their retirement village in June of 1993. The village consisted of 49 leasehold self-contained units. They paid \$76,000 for the 'right to reside' for 99 years under lease.

"In January of 1994 (just 6 months later) another Sydney based company took over ownership of the retirement village. From that point on the amenity and atmosphere at the village took a steep turn downwards. The relationship between the scheme-operator and some of the leasehold

Association of Residents of Queensland Retirement Villages Annual General Meeting 15th September 2008 Nomination for Committee membership

I, of Village,

Nominate of Village

to be (*)..... of the ARQRV. Seconded.....

I,accept the nomination.....
(nominee) (signed by nominee)

(*) Insert President, Secretary, Treasurer or committee member.

residents progressively became worse over time to the point where the remaining 12 leasehold residents, along with a few former residents, have been in dispute with the scheme-operator for more than 11 long years.

“At the beginning of the new ownership, as residents sought to leave the village they were confronted with a management resale style that ultimately left them being responsible for selling their 'right to reside'. With no option other than to accept the Operator's buy-back offer on very unfavourable terms. Although independent valuers had assessed the properties at \$125,000 each, the Operator's offer was only \$55,000. The reduced offers arose following the Operator's declarations that the Village was to be de-registered. Not surprisingly, the potential buyers withdrew and the market collapsed. Continual refusal by the Operator to maintain and present the Village in good condition further reduced the marketability.

“Over time, a number of Residents succumbed to the pressure and accepted the reduced 'buy-back', with the result that only 12 Units remain with original residents. In a further ploy to complete the takeover, the Operator commenced renting the re-acquired units, but refused to include the rental income in the Village accounts. Given this substantial rental income there is even less imperative for the scheme-operator to market or on-sell the vacant village units.

“My Mum's failing health at age 95 years combined with other pressures to eventually force her from the Village, under very unfavourable terms. But her departure was not to end her problems. My Mum's unit remains unoccupied since she left the village on 20 April 2006. The scheme-operator and OFT have recently advised that my Mum and I are still responsible for the ongoing care and maintenance of the inside of her unit until such time as the 'right to reside' is sold. Even though the RVA 1999 says that Mum is only responsible for paying monthly service fees for a 9 month period after she left the village on a

permanent basis.

“To top it off the scheme-operator has continued to invoice my Mum and me for the monthly fees. And the scheme-operator has taken me and two other former residents to the CCT trying to force us to pay what is claimed as outstanding monthly service fees. There is indeed a message here for existing and future retirement village residents in Queensland. Even though you may now live in a well managed retirement village and there are no apparent problems with your situation, what has happened to my Mum and the other leasehold residents at Hervey Bay could happen to you. As long as the Retirement Villages Act 1999 is not strengthened, and the Office of Fair Trading is not made accountable for their lack of 'duty of care' or interest in how retirement village residents are treated, then there is a probability that more retirement village residents will find themselves confronted by similar difficulties. You will need to keep your fingers crossed and hope like hell that your scheme-operator is honest and does the right thing (most do), or you are in big trouble.

“All my family and I ever wanted was for Mum, and Dad (who is now deceased), to spend the last years of their lives in peace. This whole awful experience has certainly taken it's toll on my parents, as well as my family. I should have helped them buy a small house or a unit instead of buying into a retirement village and they would have seen their investment grow over time. All we have ever asked for is that the process should work properly and that Mum is entitled to a 'fair deal'. There is much more to this story that is not included in this article. I have not discussed the effects on the lives of the 32 former village residents and their families, as well as the remaining 12 leasehold residents led by a dedicated village residents' committee, or the behaviour of the scheme-operator or her employees or the assistance received from politicians and the media. I do hope that things start to look up soon, but given how our Government works and the indifferent attitude of the disparate groups involved, I don't hold out much hope that it will happen.”

Jim Holland August 2008

ANNUAL GENERAL MEETING

ASSOCIATION OF RESIDENTS OF QUEENSLAND RETIREMENT VILLAGES

To be held at Millwell Rd Community Centre, 11 Millwell Rd, Maroochydore

On **MONDAY 15 SEPTEMBER 2008** at 10.00am

Car parking is available opposite the Community Centre and in adjacent streets.

Morning tea will be provided in the Centre commencing at 9.15am

Annual General Meeting 15th September 2008

Proxy Form

I of.....Village

authorise:..... ofVillage

To be my proxy to vote for me on my behalf at the above Annual General meeting.

Signed..... signature of member giving proxy