

RRVV

NEWSLETTER

Residents of Retirement Villages Victoria Inc.

No 21 March 2011

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TRANSITION TO AGED CARE- Productivity Commission's Draft Report "Caring for older Australians"

Most residents of retirement villages are very concerned that when the time comes to enter an Aged Care Facility a suitable place is difficult to find and the costs may be beyond their means.

This problem has been considered by the Productivity Commission and a number of recommendations made. Unfortunately, the Commission chose not to listen to a number of industry submissions recommending alignment of the retirement villages and aged care legislation to enable the residents easy transition from a retirement village to aged care.

The argument against was based on the usual premise that aligning regulations would impose additional administrative burden on the operators and that the extra effort would divert some of the resources employed in the aged care.

Other recommendations include changes in funding arrangements for aged care, the most important being establishment of an Australian Pensioners Bond Scheme. This would allow pensioners to buy a CPI indexed government bond on the sale of primary residence which could be used to finance the cost of aged care. These bonds would not be included in the asset test.

The Commission also recommended establishment of an Australian Aged Care Regulation Commission. The functions of the Commission would include, among others, assisting and educating providers with compliance and continuous improvement, handling consumer and provider complaints and reviews and providing information to stakeholders, including dissemination and collecting data and information.



The Committee of Mingarra RV

Back Row (from left) Gerry O'Brien (past President),
Jim Sinclair, Willem Van Dortland (Treasurer),
Ivor Lewis, Terry Macdonald (President).

Front Row (from left) Anne Coffey, Ellen Pallot,
Shirley Clarke(secretary)

Ours is a happy Village!

An example of how a Village can be operated, where Owner, Manager and Residents work harmoniously and effectively whilst following all of the requirements of the laws that apply to a Retirement Village. My Village as such a place.

The Village is Mingarra, in Croydon, and a part of the AVEO chain. It is mainly Lease/Loan contracts. There are currently 100 residences and 140 residents.

There is an Independent Residents Committee (genuinely independent!) which has a mutually positive relationship with our Manager. At our monthly meetings, we invite the Manager to have a time for comment, responses and questions of us, and to receive our questions and comments. Whilst there are some issues where Manager and residents differ, these discussions are still conducted with mutual

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RRVV From the President's desk

Dear Members,

Your Committee is beginning the New Year determined to persuade the Government to change its attitude to provision of clear and unambiguous rules by which the retirement villages' industry must operate.

It is time for the Government and the operators to recognize that absence of clear rules that the residents and the operators can follow has resulted in considerable damage to the industry and its reputation.

The operators' argument that regulation and "overregulation" will increase costs to the residents is not sustainable - they just have to examine the management costs included in the village accounts to see that in most cases there is ample capacity for additional effort required to comply with any new regulations.

*The position of RRVV in this regard is quite clear- **The Association's aim is to prevent disputes, not to create them.** It is not RRVV policy to seek cheap publicity of disputes that are capable of resolution by negotiation or by government intervention. Such publicity may cause long term damage to the interests of the retirement village residents the Association is expected to protect.*

RRVV is ready, within the limits of its resources, to assist individual members or members' committees or even village management in finding a pragmatic resolution to most problems encountered in the villages. The more important ones usually arise due to misinterpretation of the relevant regulations or due to absence of any regulatory provisions. The parties then must find a path to amicable resolution themselves before applying for assistance to Consumer Affairs or VCAT. There is no certainty that once this action is commenced, the results will lead to a happy village.

See you all at the Forum!

Arnold Paeglis

Ours is a happy village

Cont. from page 1

respect and the outcome is mutually accepted. At these committee meetings the Manager reports on any complaints and the action taken and often mentions operational or financial issues as necessary.

Each year at the Village Annual General Meeting the Manager presents the Annual Report on the Village and introduces the Proposed Annual Budget for consideration by residents before requesting ratification by the residents. This Proposed Budget has already been presented to the Residents Committee for discussion and for the answering of queries by the Manager. Only once the Proposed Budget is agreed by the Residents Committee is it presented at the Village AGM.

The Manager and his small staff group are always available for queries, requests and suggestions about the operation and maintenance of Village systems and facilities. As well, all are well known to Residents and are respected for their dedication to the Village and for their friendly personalities. At our Christmas Dinner Evening, the staff were all invited as our guests for the night as a "Thank You" for their role in the Village.

To my knowledge there are no legislative or statutory requirements which are not satisfied by the Owner or Manager, and yet there is a spirit of togetherness and friendship between staff and residents which makes for a very enjoyable climate at Mingarra. I hope that there are (or will be) many other such Villages.

One closing mention must be made of the financial issues involved in our residence at the Village. Many are aware of, and unhappy with, the levels of Deferred Management Fees and other charges that are a part of the contract we all signed. These issues are part of RRVV's proposed actions and will be brought up with Government as appropriate. As they are not part of the daily operation of the Village, I have left them for another time.

Terry Macdonald (Vice President)

RRVV submission to the Minister for Consumer Affairs Victoria requesting a review of the retirement villages' legislation

Dear Minister,

02.01.2011

There are 400 retirement villages in Victoria accommodating more than 27,000 residents. The number of villages has grown by 11% over the past four years and the total accommodation units in Victoria has increased by 7.2% to about 23,500 units. Nationally, there are more than 35,000 units in the pipeline, with 30% of the units temporarily deferred due to shortage of funds. It is estimated that at present 4.9% of the population over 65 reside in retirement villages. In USA this number is around 8%, indicating that there is a considerable growth potential in Australia.

A *'laissez faire'* attitude to regulation of this industry by the previous Government caused considerable damage to the industry, the results of which are increasingly becoming apparent. There has been little appreciation by the Government that retirement village residents, due to old age and inexperience in dealing with matters of finance, need special consideration and protection. It is the duty of the Government to ensure that the rules provided by the legislation are clear and fair to all parties in the industry, the residents and the operators alike. This is not the situation at present and we request you to initiate a complete review of the relevant Act and Regulations – Retirement Villages Act 1986.

The Residents of Retirement Villages Victoria (RRVV) has prepared policy recommendations for changes and additions to relevant sections of the Act that, if implemented, would alleviate most causes of disputes and distress for the residents of retirement villages. Urgent Government policy review and amendments to the legislation are necessary for the following :

1. Disclosure Statements
2. Residence Contracts
3. Dispute Resolution
4. Financial Management
5. Village Administration

Our reasons for the request of the review of Government policy in the above matters are

explained in the Attachment to this letter. RRVV would welcome an opportunity of discussing our recommendations with yourself and the officers of the Consumer Affairs Victoria at the earliest opportunity.

Yours sincerely,
Arnold Paeglis
President

encl.

1. Disclosure Statement

The Disclosure Statement referred to under Sect 19 or Sect 3(e,f) does not provide any useful information to prospective residents. Information contained in the glossies distributed by the operators often has just a passing resemblance to the terms included in the residence contracts. Any prospective village residents relying on this information will eventually discover that their financial obligations far exceed those mentioned in the glossy handouts while the obligations of the operator are skilfully submerged in the legal jargon.

Appropriate Acts and regulations must be quite specific as to the kind of information that must be provided to the prospective residents before any contract is signed. The Statement must include all financial information that is necessary for evaluation of the financial status of the operator and to provide information for comparison with other villages.

RRVV recommend that Sect 19.2(b) is amended to include Disclosure Statement Regulations. The draft Regulations provide sufficient information for a prospective resident to make assessment of village's suitability for his needs. Obviously, provision of complete financial information is the most important part of the Statement.

The above comments relate to loan/lease/license type of financial structure of a village operating under Retirement Villages Act 1986. The Sect. 151 of Owners Corporation Act 2006 has adequate provisions for disclosure relating to estates in fee simple under the Transfer of Land Act 1958.

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2. Residence contracts

The attitude of the previous Government has been to allow market forces to determine supply and prices. This could be acceptable in a market where the powers of participants are equally distributed. This is not the case in retirement villages. Many residents entering the villages have only a vague understanding of the contracts that they have signed or of the conditions they agreed to accept. Very few lawyers are experienced enough in advising the prospective residents of the implications of various contracts that have been created by different operators to suit their own particular agenda.

This suggests that legislation is required to achieve some form of standardization of contracts. While it may be difficult to design a standard contract form to suit every possible contingency, it must be possible to design a set of rules that could provide a legal structure for every retirement village's contract. One of the basic rules should be that a contract must be written in simple language that can be understood by the average village resident.

RRVV recommend that Sect. 19 of Retirement Villages Act 1986 is amended to include provision for Retirement Villages Regulations (Contracts) xxxx. This Section not to apply to land that are estates in fee simple under the Transfer of Land Act 1958.

3. Dispute Resolution

Vulnerability due to old age and incapacity of the majority of retirement village residents to understand their commitments and predatory activity of a number of operators often leads to disputes that require prompt and effective resolution. Unfortunately, the existing provisions in the Retirement Villages Act 1986 are too complex for an average resident to understand and often require recourse to expensive legal advice. Unresolved disputes create unhappy feeling in the village that transcends the boundaries of a particular village and affects the reputation of the whole industry.

This, in particular, is the case when disputes involve interpretation of a clause in the contract

or by-law that can not be resolved by application to the Consumer Affairs. In RRVV experience most of these cases remain unresolved. This explains a sometime comment from Consumer Affairs that only few disputes originate in the retirement villages – the residents are simply unable to progress their claims and many cases are outside the boundaries of the Consumer Affairs charter.

It was recommended in the 2004 Review of Retirement Villages Act that the a “one -stop shop” for dispute resolution be established where the process of dispute resolution can progress from lower to a higher level, depending on the complexity of the case. The recommendations included an appointment of an independent adjudicator to resolve more complex issues.

RRVV considers that it is vitally important in the interests of everyone involved in the industry, including the Government, to revisit this recommendation and for the Government to appoint a Commissioner for Retirement Villages. The appointment of the Commissioner and his operating provisions should be supported by appropriate Regulations that should be as clear and wide as possible to eliminate any doubt as to the powers of the Commissioner to mediate and resolve retirement village disputes, including those that are at present within the charter of VCAT.

RRVV recommends that the Commissioner of Retirement Villages could also have an industry facilitator role: conducting research into matters relating to or affecting retirement villages; publish reports and disseminate information relating to retirement villages.

The new regulations should also apply to retirement villages registered under Transfer of Land Act 1958 in addition to powers prescribed in Part 11 of the Owners Corporation Act 2006.

Sections 4 and 5 of the Submission to the Minister of Consumer Affairs will be reprinted in the June 2011 issue of the Newsletter



RRVV Membership Subcommittee
From left Trevor McPhee, Pat Willmott and John Lumley

INSIDE AN RRVV COMMITTEE MEETING

We thought that many of you might wonder what we Committee members get up to in these Committee Meetings that you hear about. So, here's a very informal account of what goes on and who said what!

At our meeting at 10.00 on January 19th 2011 we had a full rollup of nine Committee members (Arnold Paeglis, Terry Macdonald, Howard Campey, Gerry Backhouse, Rennie Coutts, John Lumley, Trevor McPhee, Pat Wilmott and Charles Adams).

Arnold opened the meeting and told us of the reply he had received from the new Minister for Consumer Affairs to his letter about RRVV and its views. I then reported that I was in contact with two other Ministers (David Davis and Michael O'Brien) about taking part in our Forum in April.

In this early stage of the meeting we admitted Rennie and John as Members of the Committee, and welcomed them to the team.

We then finalised the list of who would be on which Sub-committees for this year. There are currently nine Sub-committees such as Executive, Newsletter, Membership, Village Visits and Budget etc., and each member is on more than one, to help fill our time between meetings!

The Newsletter and our Advertising came next, with Charles Adams tabling a draft of a RRVV leaflet we will be preparing. Charles is also handling our Website upgrade and IT in general.

A report by Trevor McPhee, our Membership Officer, was presented, covering our current level of membership (over 5000) and the plans we have for increasing this. The staging of Regional Forums in country areas of Victoria is being considered.

Howard and Gerry informed the Committee of the situations at their Villages with disputes declared with the owners, Stocklands. We also discussed current working arrangements with the Retirement Villages Association, including a Working Group on Rate Reduction, on which I am RRVV's representative.

We closed the meeting at 12.15, having covered a lot of ground. And we'll be back again in mid February!

Terry Macdonald

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MAJOR OPERATOR REFUSES TO ACCEPT UMPIRE'S DECISION

Queens Lake Village - NSW case

Last May the residents of the Queens Lake Village rejected the budget and the increase in recurrent charges proposed by the operator. Both parties, the operator and the residents, being unable to resolve the dispute made an application to the Tribunal for determination.

The application concerned three issues:

1. The non-payment of Recurrent charges
2. Insurance, and
3. Management Fees

The matter of unpaid Recurrent Charges was resolved by the operator agreeing to submit a revised budget resulting in a decrease in the charges by about \$17, 800. The remaining two issues were presented to the Tribunal for a full hearing.

After five weeks' consideration, the Tribunal ordered that the residents' claims are satisfied: – regarding the insurance claim, the residents have to pay only for those items of insurance covering the cost of public liability insurance and the cost of reinstating the buildings to the condition when new. Regarding the cost of management expenses, the Tribunal was unable to decide on proper allocation of

expenses because the operator failed to supply sufficient information regarding management functions performed at the village level. This information must include line items of each expense category.

The residents had won the first round of the dispute, however, the operator did not comply with the decision of the Umpire and lodged appeal documents in the District court. This presented the residents with the potential legal bill of more than \$40,000, that was well beyond their ability to pay. The only option was to shame the operator to retreat from their intention to commence legal action. This was accomplished by an intensive and effective press campaign waged by the residents' representatives and the NSW retirement villages residents' Association.

The result of this action was that the operator made a commitment to pay all residents' legal fees regardless of the decision of the Court. The press campaign obviously was very successful and provides a good example of residents' power when properly applied to resolve a specific problem, as in this case.

The Court hearing is listed for 14 March and we all will be very interested in the outcome, that regardless of the State borders, will have some bearing on the behaviour of the operators in the State of Victoria.

BREAKING NEWS :

A submission to the ATO to CPI index the turnover threshold of \$150,000 to up-grade to \$162,750, for not-for-profit bodies to be GST-free, has been rejected on the basis that the 50% lift from \$100,000 to \$150,000 effective July 2007 more than covers the actual CPI increases of 32.82% increase since its introduction in 2000.

However, the secondary issue of future indexation was unresolved as it is "outside their scope", but it has opened the door for a direct approach to the Federal Treasurer, and consequently, a submission has been lodged directly to Wayne Swan.

In summary, it claims that if a small village with a turnover under \$150,000 is exempt from being registered for collecting GST on its service fees, then it is an unconscionable discrimination against larger villages which bear that burden.

If successful, this would require repeal of Section 23.5 (b) of the New Tax System (Goods and Services Tax) Act 1999 and all villages would be GST-free.

If unsuccessful, a further argument will be put, as the collection of GST from the residents of retirement villages, who are unable to reclaim the expense through input credits is morally and legally 'obscene'.

Jim Burrowes (Treasurer)

Point of view

The licence/ loan scheme.

When I returned to Australia 10 years ago I wanted a small modern townhouse, villa or apartment on one level and in the location of my choice. I needed a home quickly, right now. In 2000 I could not find that so I bought a unit in a retirement village; the company did not offer title but a "licence" to occupy, marketed as independent living. My unit is comfortable, in a pleasant environment, no luxury despite the marketing and sales hype, but quite adequate for my old age. Although my solicitor was negative about the village, he did not offer any analysis of the licence scheme. "No! No! You can do better", but at that time in that location I could not find better. Eventually, after I settled in I began to see what my contract was capable of delivering. In 2000 I paid the owner/manager an initial upfront fee (in plain clothes a bond) of \$700,000. That payment invested by the owner/ manager initially for 5 years at 7% and a further 5 years at the going rate of the day also at 7% compound interest p.a. Compound interest would have returned a further \$677,000, total \$1,377,000. Should I leave after 10 years my Deferred Management Fee, so called (but in plain clothes just another capital charge which is collected every time a unit changes hands) would be 30% of my licence fee, or of the new licence fee at resale, whichever is the higher, plus another 3% (approximately) for refurbishment, selling and legal costs, including those for the new contract. A total of 33%. Estimated current value of my unit is \$800,000, return on my investment would be \$800,000 less \$274,000 equals \$536,000.

1. In ten years I have paid monthly service fees and other charges, an average \$9,000 p.a.– \$90,000.
- 2 The construction cost of my unit in 2000 is estimated at no more than \$300,000
3. Management is currently proposing increased fees and levies to cover the shortfall in operating costs.

I acknowledge the initial cost of the village project including interest on bridging finance and capital costs, the responsibility of the owners assessing what the local market will bear and their licence

price. Is there bad planning, too much debt, bad management or too ambitious profit margins? How can I tell ? With hindsight I blame myself for walking into a honeytrap for old players. I certainly could and should have done better, I do not like to admit this, better not talk about it, save face and find a new solicitor. My children understand this; nice kids, they do not want me to lose face, nor do they intend to make the same mistake. For my peace of mind I pull down a blind in the window of my mind, but I can not disregard what I have seen. Occasional quiet discussion with friends in other places has shown me retirees are life wise, street wise and in humor very cynical. Some have taken the village life not as their first choice, but other options in the open market are so limited even in 2011, They chuckle at my expense – sorry old boy – you do not have a title – that is essential . Your lot can do anything they like. I quite agree, in my village independent living has been replaced in current marketing hype by "buy a lifestyle". An owner/management contract with a preference for non transparency in many matters and controlling aspirations aided by a so-called advisory committee of management. My company contract is 50 pages and includes a faulty plan of my unit.

It is hard to believe that both state and federal government have paid little attention to the structure, regulation and administration of this rapidly growing segment of the housing industry. Under the RV Act 1986, despite a little tinkering around the edges, the industry seems to be largely self-regulated. In this century of the new generation of retirees with rapidly changing lifestyles, it is essential that the village system is reviewed and reformed;

1. Amend or abolish the licence/loan scheme. Current arrangements deter or prevent consumers from exercising their choice when they are dissatisfied with their village. No market forces put any pressure on the owning companies.
2. All villages to be strata titled under the Owners Corporation Act with residents holding a certificate of title for their unit. Residents then would have legal framework within which to formally negotiate with management. Residents' satisfaction, peace of mind and the reputation of the village would be enhanced,

RRVV Member

Forum 2011

Attend and meet other
RRVV Members
Learn what we're doing
PARTICIPATE!

WHEN: Wed. 27 April 2011

- Registration from 9.30 AM
- Forum from 10.00 to 4 PM

**WHERE: North Melbourne
Town Hall**

(crn Errol & Queensberry Sts) Melway 2AJ10
-Tram Route 57 fro Flinders St Station passes
the door

COST: Earlybird \$10.00 (before 27/3)
Reserved \$15.00/person
Pay at Door \$20.00
(includes all catering all day)

PROGRAM:

Morning - 2 Keynote Speakers
-Stories from the villages!

Afternoon- Discussion Groups (comprised
of attendees) considering members views on
issues which have been sent in to RRVV by
members

- 1. PUT THIS IN YOUR DIARY!!!**
- 2. FULL DETAIL WILL SOON BE ON
THE RRVV WEBSITE**

3.SEND YOUR REGISTRATION:

RRVV Forum
Your Name

Village.....

Your address.....

Enclosing Cash/Cheque/Amount \$.....
Send to: P.O.Box 4316
Knox City Centre Vic 3152

**Join the Discussion at FORUM
2011, whether you're there or
not!**

RRVV is a Member based organisation, and we appreciate the views of our Members, because you are those who are experiencing the good and the bad of Village life. Your willingness to tell us your views is important, because it will be valuable if we can use them to help protect others in the future.

For FORUM 2011 we are giving that opportunity to all Members to be a part of the afternoon segment, whether they are attending or not!

We now invite all members to send in three subjects they see as needing some consideration. As we sort your subjects we will be able to pick out of the multitude at least ten or so subjects which are seen by significant numbers of Members as worthy of consideration at FORUM.

On the day, we will announce the topics and invite all FORUM attendees to select one topic for their attention. Those for each topic will be seated together at one table and will have 45 minutes for discussion and report to the total group. During the discussion period, members of the RRVV Committee will be circulating around the tables to facilitate discussion or to clarify issues. Re-commendations will be recorded and will be used to guide the Committee on each issue as 2011 proceeds.

Send your three subjects to me either by email – terry.macd@bigpond.com or by mail to: Terry Macdonald, Unit 67 Mingarra Village, 77-115 Mt Dandenong Road, CROYDON, Vic 3136.

Don't miss it!

Robert Phillips
Barrister and Solicitor
and Elder Law Consultant

author of "**Older Residents and the Law**"and consulting lawyer for Elder Rights
Advocacy for more than 15 years
Phone 03 5473 3487 Mob: 0412 745 105

**IS RETIREMENT VILLAGE LIFESTYLE FOR YOU?
EQUITY AND COST CONSIDERATIONS**

Much is made of the important lifestyle advantages of retirement village living – security, 24/7 nurse-call system, ‘no worries’ home with garden and outside maintenance provided, unit design suited to the needs of seniors, community of interests, extensive range of facilities, affordable service charges etc. These are the very attractive ‘selling points’ and are heavily promoted by village owners.

The attitude of many potential residents when considering village life is that the exit situation is not going to be of serious concern to either themselves or their estate. This is precisely the point at which judgement can be clouded, as contract conditions can effectively lock residents into a village when resident dissatisfaction, health or family reasons make relocation necessary.

Contract conditions are generally non-negotiable and operate to give the owner maximum return, 40% on capital is not unusual, a figure way ahead of normal business returns, and residents find themselves in a situation where they have little or no involvement in management decisions.

In a loan/lease type contract a substantial up front contribution (a ‘loan’ which is considerably more than the bricks and mortar cost of the building or even its market value) is required to be lodged in return for a licence to occupy.

Thus the true cost of the lease is disguised by the non recognition of the opportunity cost of the resident **NOT having these funds available to invest.** Instead the **village**

owner has the funds available to invest or use for further development!

The term DMF (Deferred **Management** Fee) is widely used by owners and residents alike without much explanation being given by owners or much thought being given by residents to what this means or its effect on resident equity. Just how can **management** be deferred? It would be much more honest of owners if the charge (which typically varies between 20 and 30% of the original loan, depending on duration of occupancy) was referred to as a Deferred **Capital Charge** because that is precisely what it is!

Cost of leasing is further clouded by the variety of arrangements that apply for sharing the capital appreciation (or lease reallocation) value. It is contended that since the resident effectively provides all of the capital they should receive all or most of the capital appreciation. There are however arrangements in place which give the lion’s share, even as much as 80%, to the village owner for doing very little to earn it once village services and infrastructure are established.

Calculating the combined effect of service fee, DMF and minimal capital appreciation leads to the rather surprising, and unexpected, annual cost for lessees to be of the order of \$45,000 per annum, (without the foregone opportunity cost) depending on when occupied and for how long.

It is considered that Strata Titles without management contracts and straight rental arrangements provide the only transparent business models and are considerably more equitable. It is not being suggested that villages are being operated outside the law but there are certainly areas requiring stricter regulation in the interest of vulnerable seniors for whom the lifestyle is attractive.

GHB January 2011

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QUESTIONS and ANSWERS

Q. In our village the owner charges flat fee of \$15,000 for refurbishment of units. Does it comply with the regulations?

A. Unfortunately the Retirement Villages Act 1986 and Regulations do not specify who pays for the refurbishment of the units and the residents must be guided by the provisions in their residence contracts. The units in a village are the property of the owners who are responsible for refurbishment for wear and tear and replacement, as required, of fixtures and fittings that were originally provided for the unit, incl. heaters, washing machines, hot water services and floor coverings. The resident is responsible for damage in excess of wear and tear and removal/replacement of fittings purchased and installed by the resident, or a previous resident.

The owner must provide a quotation for work to be done and obtain the resident's agreement to pay his share of costs before commencement of work. If agreement can not be reached, the resident should consider applying to Consumer Affairs for mediation.

Q. The income and expenditure shown in the accounts provided by the village operator does not agree with the total of fees charged in the village. The operator does not provide any explanation of the discrepancy.

A. The total of fees in an established village must agree closely with the maintenance expenses incurred by the village. Any considerable divergence results in unbudgeted surplusses or deficits and the latter, if accumulated over several years, must eventually be covered by a levy on the residents.

To avoid it, the village resident committees must insist that the expenses do not exceed income-the total of fees raised in the village and that the fee increases are within the limits permitted by the legislation.

Somewhat different situation arises in new villages still under development. It is not unusual

for the operators to include some of their costs in the village residents' accounts, thus inflating the base fee on which all subsequent fee increases are based. It is important to ensure that the operator pays his proportion of costs attributable to unoccupied units and the part of the village still under development.

The underlying principle is the same as in fully functioning village - the total expenses must agree with the total of fees charged, including the proportion of operators costs included in the total expense. Similar situation arises when a substantial number of units in a village remain unoccupied - the operator must pay his share of the total expenses proportionally to the total units in the village.

Q. At our last AGM the owner could not provide any information on provision for major maintenance expenses. Should these expenses be included in the financial accounts?

A. At the AGM the operators must provide details of what expenses have been incurred for major works during the year, what provision has been made for major works and what is the balance of the maintenance fund account.

The money in the maintenance fund must not be used for general maintenance expenditure. While the legislation is, as usual, silent on this matter, it is important that the accumulated funds are kept in approved interest bearing Trustee accounts, and are not used to support the operator's commercial activities.

SITUATION VACANT

Following the retirement of our Treasurer, we invite any interested member to apply for the role. There are only an average of 30 bank transactions per month to process and print-off P&L and Balance Sheet statements.

The role is honorary as are all Committee members but out- of-pocket expenses are reimbursed. If you would like to join us in this activity, please contact

Jim Burrowes

Tel 9899 2848 or Mobile 0409 255 530
or email jim@starbiz.com.au to discuss.

Have you read your contract?

A number of our members have advised RRVV that a major/developer/operator have advised their Retirement Village Service Associations about the introduction of a new form of service agreement.

The letter stated:

We enclose a new form of service agreement for your information.

The new form of service agreement: :

- ◆ *Is more reader friendly –the document reads as if addressed to the resident, contains a table of contents, section Headings and has been restructured to group like subjects matter together;*
- ◆ *Incorporates comments that we received from Consumer Affairs Victoria when they conducted a review of our residents contracts;*
- ◆ *Is consistent across all like villages; and*
- ◆ *Is consistent in style with new lease and loan documentation that we intend to introduce for all new residents.*
- ◆ *Noted that the promises made by various parties in the “proposed changes to existing and future service agreements” dated 10th September 2010’ remain essentially unchanged as this new agreement is to promote easier understanding because it is in plain English.”*

A working party of committee members of two of those associations expended approximately 12 man days comparing the old service agreement with the proposed new service agreement, noting that the preamble to the introduction of the new Agreement appeared to be very misleading.

Having carried out the comparison/critique the two associations replied to Stockland rejecting the proposed changes stating that their associations must not be asked to accept any additional liability as a rewrite of the proposed service agreement. This action was taken as a result of the comparison of the old and new service agreement where it was clear that the “new form of service agreement contained many important differences:

Comparison of differences as the result of legal opinion:

- ◆ It is not a requirement to give Power of Attorney to Owner/operator and we have been very strongly advised not to do so. An Instrument of Delegation is more appropriate in the circumstances.
- ◆ Changes are believed to be outside the Consumer Law and Fair Trading Acts.
- ◆ Changes are alleged to contain unfair terms that should not be in Consumer Contracts.
- ◆ Changes in the Lease Agreement Deed: damage occasioned by fair wear and tear, are at variance. This is the only place in the entire contract documents where it is mentioned. It is then assumed that fair wear and tear is accepted but it is not allowed for in the owner/operator’s Refurbishment Program.
- ◆ Entire Agreement, Page 21, Residential Lease Deed, Par. 28.
- ◆ Extension to Village page 22, 29.1(b)

Service Agreement.

There are 9 items that are unacceptable to our Associations and our Associations reject them:

First Schedule: There are 5 items that are unacceptable to our Associations and our Associations reject them

Second Schedule: There are 4 items that are unacceptable to our Associations and our Associations reject them

Third Schedule There is 1 item that is unacceptable to our Associations and our Associations reject them

Action carried out:

As the result of this the residents of these villages supported their Associations rejecting the new service agreement and contract and agreed to support the Associations notification of a dispute to Consumer Affairs Victoria-CAV.

Additionally each resident also made a complaint to CAV.

The chairmen of two of these villages wrote to the remainder of the other Village Associations

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Have you read your contract?

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Chairmen advising them in writing of the outcome of their meeting and the action taken.

The Chairmen of the nearby retirement village contacted the Chairmen of the two villages and obtained full details of the action they had taken and were determined to take similar action.

Consumer Affairs Victoria Contacted the Association Chairmen from the two concerned villages inviting them and the representatives from their villages to attend a meeting at CAV. CAV at the end of the meeting advised that they could conciliate only and that as the result of the matters placed on the table during our discussion the following actions should be considered by the Chairmen:

1. By the Village Chairmen and representatives present at the meeting:

- ◆ Your Associations should write a joint letter to The Minister for CAV outlining the dispute/problem, bringing it to his attention and calling for his support and CAV's assistance.
- ◆ Advise Residents of Retirement Villages Victoria (RRVV) and Retirement Village Association (RVA) of the details of the dispute.
- ◆ As you have said that you believe this is a public interest matter, consider writing to the other Village Resident Associations advising them of your concerns.
- ◆ Continue your dialogue with the operator to obtain a satisfactory outcome
- ◆ Report back to CAV the progress of these discussions.

2. CAV will contact:

- ◆ The owner/operator and ask them to consider the concerns raised by your Associations and work to resolve them.
- ◆ CAV will contact your Associations and advise you of any feedback from the owner/operator.
- ◆ Will speak to The Minister red flagging the issue

As the result of contact made by the Chairmen of these two villages and contact from other retirement village residents/Chairmen, RRVV have refrained from speaking to members of other villages if they also have had approaches from the owner/operators. It would appear that there is concerted effort being made in an attempt to "claw" back changes implemented post the changes of the RV Act changes in 2006.

If you are aware of any changes being sought by your Owner/operator to future Service Agreement/ Contracts in your village be aware that these changes could adversely affect your continued enjoyment of your village life, due to unforeseen charges and changed conditions that could be financially detrimental to you and your family in the future. Remember it is your money "Ralph" and current and future exit surcharges could be ripping you from your life- time hard earned nest egg..

Make sure you ask your Association's Committee have they been approached re changes to the future Service Agreement/ Contracts and if they have, what have they done about it? If they have accepted changes without advising you, consider calling a Special General Meeting to overturn the unconstitutional changes they have introduced on your behalf; make a complaint to CAV and the Minister of Consumer Affairs the Hon. Michael O'Brien MP.

If you live in any of the retirement villages mentioned above or other owner/operated villages and your Association has been approached to accept a revised service agreement or Contract (make sure that you, the resident asked them have they made a decision on their behalf). Then be advised, that it requires a Special General meeting to be called and a special resolution to be passed which will require the support of at least 75% of the residents.

H.Campey

Disclaimer. The views expressed in this Newsletter are not necessarily those of RRVV nor does the Association or the Editor accept responsibility for errors and omissions. The Editor of this issue is Arnold Paeglis