

**What is a Retirement Village ?**

**Q1** Requisite for payment of an Ingoing Contribution could inhibit more equitable and accessible financial arrangements.

More appropriate would be to consider the nature of the operating company , qualifying age of prospective residents, accessibility, security, availability of alarm service and other facilities.

Styling as a “not-for –profit” organisation does not mean that they will not make money but rather that excess income will be ploughed into new ventures.

**Purpose of the RV Act**

**Q3** Purpose should be extended “... to preserve the rights **and interests** of persons in retirement villages..”

**Registration of a RV**

**Q4, 5 and 50** If villages are not required to register with CAV, the inference is that

- a) those not registered are not subject to the RV Act
- b) managers are not liable to penalties under the Act and
- c) notification to the Registrar of Titles is not required.

All of the above place the rights and interests of residents at risk and c) should be included in the CAV register.

**Consideration and Cooling Off periods**

**Q6** The consideration period of 21 days is appropriate but the NSW provisions for cooling off and settling- in are more realistic.

**Disclosure Obligations**

**Q7** Advertisements which include price should have a prominent rider to the effect that “other fees may apply during occupation and on departure”

**Contracts**

**Q11 to 13** As with construction contracts, for example, complexity and variability in content and format give rise to uncertainty. The use of plain English is imperative.

There is otherwise scope for varied interpretation by the supplier (village operator) and the purchaser ( the resident).

This uncertainty and variability can and do give rise to disputes, but a significant corollary is that the confidence of the parties relies on the skill with which the terms are drafted and scrutinised. In the case of RV contracts there are at least as many contracts as there are villages thus, while many contracts will have apparently similar terms, many others will be significantly different. The time and cost of getting legal oversight is therefore unnecessarily high.

Many villages have more than one contract format.

Understandably governments have been reluctant to be prescriptive on contract clauses although the Standard Form of Village Contract comprising Schedule 2 of the NSW Retirement Villages Regulation 2017 is a promising departure.

Otherwise standard conditions of contract produced under the auspices of such organisation as Standards Australia could alleviate the problems. Such a standard has no legal power until specified and accepted by the parties, but it would soon develop its own case history and prove its value through more common usage and much reduced disputation.

Jurisdictional variations and differences in type of financial model can be accommodated by a suite of similar but adapted standards.

### **Deferred Management Fees**

**Q14** Where DMF is applied to the ingoing price it can be adequately covered in the disclosure document, but where it is related to the outgoing price it can vary year by year. To be the subject of yearly review would involve operators in acquiring or making sales value assessments and making yearly calculations related to each resident's period of occupation. These tasks are non-discretionary and could be outsourced.

**Q15** For the reason quoted in the discussion paper, DMF should certainly be calculated pro rata on a monthly, or preferably daily, basis.

**Q16** Operators should be required to provide a resident with an estimate of their departure costs on request and at commencement of pre-sale discussions.

A rider to this is that operators should be required to regularly update the expected resale price of units, by type rather than individually, and make them available to residents on request.

### **Accreditation**

**Q17** Mandatory accreditation would give existing and prospective residents confidence that the operator is expected to perform to an industry defined level.

**Q18** Necessary elements would include

- . the fact sheet and disclosure statement and
- . a record of audits performed by the accrediting body

**Q19** The costs and benefits will be apparent to the operator and residents, reflected in a compliance cost and turnover data in the annual report.

**Q20** Improvements to standard and quality of service can otherwise be ensured by regulatory inspections such as those which apply to licenced premises.

The more conscientious and sympathetic operators respond to complaints and suggestions with or without accreditation or registration.

The issue of a Code of Practice similar to that issued by the NZ Dept. of Building and Housing (2008) would be beneficial.

**Q21 to 24** Whatever qualification regime is applied it should emphasise the need to achieve equity between the legitimate interests and rights of the residents and the business interests of the operator.

### **Residents Committee**

**Q23** A requirement for the residents committee to be incorporated under the Associations Incorporation Act 2012 would clarify powers and responsibilities.

**Q26** The power to take a role in resident to resident disputes should always be with the consent of the disputing parties.

**Q27** The approval of above- CPI increases in operating costs should be through a general meeting of residents called by the committee, at which the committee would be required to present the outcome of their discussions.

**Q28** Prohibition is too strong in a relationship which should be engendering mutual respect and trust.

### **Annual Meetings/ Reporting**

**Q31** . Manager should be required to report on all management complaints

### **Maintenance**

**Q33 to 35** The Queensland regulations appear to be appropriate in what can be the the most contentious element in RV living.

The issue of a Condition Report as provided in Part 3 of the NSW Retirement Villages regulation 2017 would be a good basis on which to assess liability for costs.

**Q36 and 37** A capital replacement plan should be required particularly where residents are required by contract to contribute to a sinking fund or similar.

There should be a corresponding requirement for annual reporting on progress against the plan.

Fund income and expenditure should be budgeted and reported annually.

### **In-home Care**

#### **Q38 to 41**

Provision of care services in a RV is a philosophical matter and entirely subject to Board policy.

As a matter of personal preference, reliance on home care should be restricted to short/medium term health conditions.

One operator philosophy is that people prefer to remain in their own (RV) homes for as long as possible. This seems to disregard the probable shortcomings of design and construction, the anxiety of residents in the later stages and the load imposed on relatives in providing a degree of care and arranging relocation when that becomes inevitable.

### **Moving to residential Aged Care**

**Q 42 and 43** Operators claim that the best resale or re-lease value of a unit will be achieved if renovations are carried out i.e. work in excess of that required to bring it up to the standard of the incoming condition report (see Q 33to 35). This is rational but the operator should be required to provide an itemised and costed schedule of proposed work and to agree with the resident that work which can be carried out.

The Queensland link between cost of renovation and share of capital gain seems eminently sensible.

### **Ongoing Charges/Capital Gain**

**Q 44 and 45** It would be preferable to link the period of ongoing charges to operator performance in maintaining the standard of village maintenance. Sharing over 6 months in the same proportions as capital gain would be equitable.

### **Dispute Resolution**

**Q46** . Definition of “complaint” would be a good starting point

. Requirement to take into account compliance with protocol should be an advantage to all parties.

. Complaints about managers should be directed in the first place to the operator, but preferably to an Ombudsman if that office is created.

. for comment on resident’s committee involvement in resident to resident dispute see Q26

**Q47to 49** In the absence of an Ombudsman pursuit of the internal procedure, plus mediation if required, appears to be the preferable preliminary to VCAT or the courts.

However there should be a strict timeline on each stage to prevent further aggravation and cost.