



# Discussion Forum

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The comments and opinions expressed herein do not necessarily reflect those of the Retirement Village Residents Association (RVRA) or its Members.

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## Air Conditioners in Residential Units.

Mike raises an interesting point.

The Section of the Retirement Villages Act 1999 that relates to this issue is Section 97 and the Clause in the Regulation is 29:

### **97 Funding of certain capital maintenance and capital replacement**

(1) The operator of a retirement village may fund the cost of capital maintenance in respect of which the operator is responsible from the following sources:

- (a) the capital works fund for the retirement village (if any),
- (b) recurrent charges.

(2) The operator of a retirement village must bear the cost of capital replacement in respect of an item of capital for which the operator is responsible.

(3) This section does not authorise the funding of any of the following from the capital works fund or recurrent charges for the retirement village:

- (a) the construction of a new building or a new stage of the retirement village,
- (b) any work arising from the breach of a statutory warranty (within the meaning of the *Home Building Act 1989*) in respect of which proceedings may be commenced under Part 2C of that Act,
- (c) the depreciation of items of capital,
- (d) the refurbishment of vacant residential premises within the retirement village,
- (e) such other things as may be prescribed by the regulations.

### **29 Matters that cannot be funded from capital works fund or recurrent charges**

For the purposes of section 97 (3) (e) of the Act, anything prescribed under clause 5(1) (b) as not being capital maintenance is not authorised to be funded from the capital works fund or recurrent charges of a retirement village.

The above has to be read in conjunction with Section 4 of the Act "4 Definitions":

**"item of capital"** means:

- (a) any building or structure in a retirement village, and
  - (b) any plant, machinery or equipment used in the operation of the village, and
  - (c) any part of the infrastructure of the village, and
  - (d) any other item prescribed by the regulations,
- but does not include any item excluded from this definition by the regulations.

And in the Regulation:

**4 Item of capital**

For the purposes of paragraph (d) of the definition of *item of capital* in section 4 (1) of the Act, the following items in a retirement village, including those in residential premises in the village, are prescribed:

- (a) fixtures (for example, bench tops, built-in cupboards and wardrobes, floor coverings, hot water systems and stoves),
- (b) fittings (for example, light fittings, taps and sanitary fittings),
- (c) furnishings (for example, curtains and blinds),
- (d) non-fixed items (for example, whitegoods, portable air conditioners, fans, tables and chairs).

Clause 5 of the regulation "Capital Maintenance" also has to be considered:

**5 Capital maintenance**

(1) For the purposes of the definition of *capital maintenance* in section 4 (1) of the Act:

(a) *Repealed*

(b) the following are prescribed as not being capital maintenance:

- (i) work done to substantially improve an item of capital beyond its original condition,
- (ii) work done to maintain or repair an item of capital in circumstances where it would have been more cost effective to replace the item of capital.

The way I see it is that if Resident "A" and Resident "B" have installed at his/her cost an air-conditioning unit and it requires repairs, then Resident "A" or "B" pays for such repair.

Then if Resident "A" moves out and the unit complete with air-conditioner is sold to Resident "C" and the air-conditioner then requires a repair, then that cost is met from recurrent charges and consequently paid for by all of the village Residents.

Therefore Resident "B" not only has to pay for his/her air-conditioner repairs but also contribute to Resident "C" repairs.

A totally unfair situation and another example of the inadequacy of the Retirement Village legislation.

***John Cooper***

5th March 2011

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