



## *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.**

Comment: I certainly agree that cost of maintenance of air-cons in premises (like any other item of capital) MAY be funded by the operator from recurrent charges under S97(1). So too MAY other such expenses like 'insurance' and 'corporate recharge' (both the subject of QLV's present court appeal) but that is PROVIDING the residents give their consent to any such charges(i.e. residents have a choice to either consent or not to consent because S97(1) uses the word "may" but not "must").

But does it not also follow that if there is a contrary Section of the Act or a Regulation that could override S97 (1, then that piece of legislation would prevent such costs being imposed on residents.

It would seem that S101 (linked to the resident's lodgement of OFT's Form 26 with the village operator within the prescribed time) is specifically designed to prevent maintenance responsibilities for items of capital in a resident's premises being 'directly' or 'indirectly' passed to residents.

Is it not then possible that:

1. 'responsibility' under S101 includes 'cost'?
2. 'directly' means the operator cannot charge a resident personally (i.e. out of one pocket)?
3. 'indirectly' can therefore be interpreted to mean the operator cannot charge all residents via Recurrent Charges (i.e. out of another pocket)?
4. any contract passing responsibility for maintenance, directly or indirectly is unenforceable?

I'd be interested in other opinions on this subject. If there is sufficient interest, perhaps RVRA may officially refer the question to OFT and/or TARS for their opinions?

I quote S101 now for those who may not know of it's wording (note: I have used the CAPITAL letters for emphasis and draw attention the use of the word "or" and not "and"):

101 Operator not to sell items of capital to residents

(1) The operator of a retirement village must not sell any item of capital for which the operator is responsible, OR PASS RESPONSIBILITY for any such item of capital (whether DIRECTLY or INDIRECTLY), to a resident or prospective resident of the retirement village under a village contract or otherwise except as provided by the regulations.

Maximum penalty: 20 penalty units.

(2) Any contract, agreement or scheme is unenforceable to the extent that it purports to sell OR PASS RESPONSIBILITY FOR THE MAINTENANCE or replacement of items of capital in contravention of subsection (1).

(3) This section does not apply to the sale of residential premises within a retirement village, including fixtures in any such premises.

*Neil*

16th March 2011

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