

## ADDRESS BY PETER HILL at the RVRA AGM:

### Residents Paying the General Service Charges for Vacant Villa's & Units in the Village

There appears to be an emerging practice in the industry for operators to spread the general service charges for vacant villas across residents generally through their recurrent charges where the former occupant is no longer liable for these costs. This can arise in a variety of circumstances;

- a villa has reverted back to the operator and there is no longer any liability on the part of the former resident;

- or an operator has taken villas off the market altogether to further develop an area in the village or to restructure accommodation.

The *Retirement Villages Act 1999* ("the Act") specifically addresses the question in so far as the liability of an **individual resident** is concerned for their unit under the provisions of section 152 and section 153 of the Act for registered and unregistered interest holders respectively. In short, and generally speaking, registered interest holders (i.e. they have a registered lease) will continue to pay recurrent charges on their unit for the first 42 days and thereafter will share that cost on the same basis as they share the capital gain with the operator. For unregistered interest holders, s153 makes it clear that the occupier wears the cost after 42 days.

There appears to be some misconception amongst operators that the above-cited provisions provide the basis to determine the liability issue for **resident's collectively / generally** in circumstances where a former resident has no liability.

In some villages the operator has either 're-purchased' the villa from the former occupier, or it has reverted back to them in some way, and they are in the process of re-organising accommodation. It can also arise where say for example, new villas are being built in the village and they have not been offered for sale before. So, what is the situation here for residents generally still in the village? Are residents required to pick up the general service charges for units that are vacant in this way?

The answer is no. For new residential premises in the village (that is new units or villas that have never been the subject of a village contract), section 103 of the Act provides that the operator must pay the recurrent charges for the general services on these units.

But what about pre-existing units or villas?

Often these costs are disputed by residents through the annual budgetary process, where the operator has tabled a budget and requested that they be approved.

Section 115 (4) creates a general principle that an operator is liable for so much of the expenditure as it considers was not reasonable or necessary to pass on to residents. It is difficult to envisage a situation where it would be reasonable for the operator to pass on to residents collectively or generally, through their service charges, these costs.

The resident clearly has no control over the operator's intention or timing in relation to the accommodation. In villages with ageing accommodation, residents are likely to be already footing the cost for much needed maintenance work and obviously this practice

will add to these costs. In these instances and in instances where a large number of units are being re-developed, the revenue base may be under pressure because it is either not attractive to prospective residents or a large number are not on the market, and it would be patently unfair for residents to have to make up the difference because the operator wishes to defray the charges from their balance sheet onto the residents.

In the Queens Lake Village decision, His Honour, Justice Levy stated that "...in the context of a consumer protection statute, profitability is not the dominant consideration and fairness to consumers is at least a dominant balancing consideration to be weighed in the exercise". So the moral of this story is for residents, at budget time, to review their budgets closely and see how the operator is spreading the costs for vacant units. If the moral of the Queens Lake case is made good, it is that greater transparency on the part of operators is now a fact of life, but residents need to be vigilant to ensure these hard won gains are put into practice.

**PETER HILL, HILL & CO LAWYERS**