



T I S H E R L I N E R & C O .

L A W Y E R S

The Ins and Outs of Retirement Villages

1. Introduction

- 1.1 Today's presentation is Retirement Villages from the perspective of the Purchaser, and their Practitioner. I have had the opportunity over recent years to act for Purchasers buying a unit in a Retirement Village. Secondly in my other life I am a President of an Aged Care facility that is about to embark on an expansion of its numbers in two parts. Firstly by an addition of the number of beds for high care residents, and secondly by building 19 Independent Living Units (ILUs).
- 1.2 A "retirement village" is defined in the Retirement Villages Act 1986 as requiring at least one resident to pay an ingoing contribution for entry to the village.

2. Residential Care post-1997

- 2.1 The turning point in the recent history of the aged care industry was the Federal Government's Residential Aged Care Structural Reform package, which in its broadest sense, resulted in the merging of the Nursing Home and Hostel sectors into a single funding system; a single resident classification system to ensure that residents with similar care needs are funded equally no matter what type of facility they live in; the implementation of user charging arrangements including the payment of accommodation bonds ; the adoption of Accreditation standards to ensure the best level of care is given to all residents; and the Certification of premises to ensure that buildings provide acceptable levels of accommodation.
- 2.2 The issue of the quality and suitability of premises used for accommodation of residential care residents is an issue more for the other speakers. Ingoing residents are required to pay accommodation payments which are an arrangement between the resident (or their representative) and the approved provider. The accommodation payment is either an accommodation charge or an accommodation bond.
- 2.3 Accommodation charges are payable by residents of high level care facilities (bonds are capped at \$1), with reduced payments for concessional residents (a person with assets below \$27,500.00). Accommodation charges cease after 5 year's occupation by a resident.
- 2.4 Accommodation bonds are monies paid by a resident of a low level residential aged care facility. The provider can draw down an amount for 5 years up to \$3,052.00 a year (as at July 2003), and the balance is refundable to the

resident or their estate on departure, irrespective of their length of occupancy. Interest received on bond monies is also retained by the care provider. A resident can pay interest in lieu of the bond, and that interest is also retained by the provider. There are concessional supplements for persons with assets of less than \$27,500.00.

- 2.5 In addition to the above, residents pay a daily care fee. There is a basic government subsidy which is based on the assessment of the resident as categorised by an ACAS assessment over 8 particular standards. Residents now entering an aged care facility are subject to income testing, which can increase the daily care fee and reduce the Government subsidy for more affluent residents.

3. Residential Facilities where a lease Agreement is in operation

- 3.1 Many facilities operate where the operator provides a Lease Agreement to the resident, whereby they purchase an interest in a dwelling/residence/unit for an agreed price. In some cases the Lease is granted by the owner/developer. In other cases the operation is run by a business proprietor, who has entered into a lease from the owner. For the consideration paid by the resident, he/she/they are granted a lease of the dwelling on terms set out in the Agreement that is given to the resident. The dwelling is part of a communal facility, with areas and facilities set aside by the operator for the common use of all the residents. Those facilities may include such things as driveways, pathways, lawns, gardens, swimming pool, gymnasium, card room, library and restaurant, and so forth.
- 3.2 The resident pays the agreed price and has the right to occupy the Residence until certain situations, which should be examined carefully by the practitioner advising the client. They are:
- the right of the resident to give notice (at the end of a period, say 90 days) of their intention to terminate the Agreement by leaving the Residence;
 - there is a breach of the conditions of the Agreement;
 - two or more qualified medical practitioners (one nominated by the Resident and one by the operator) certify that the Resident needs care of a kind not available at the facility;
 - the death of the resident.
- 3.3 As soon as the resident's right to occupy the dwelling ceases, the operator should immediately attempt to find a new resident at a price which is usually the valuation or market price a member of the public will pay for a lease of the Residence on the terms then applying to leases at the facility. Again the practitioner should examine carefully the rights and obligations of the resident and the operator in respect to finding a new resident, and payment of the price to the outgoing resident.

- 3.4 If after a reasonable period from the date that the resident's right to occupy the Residence ceased, the operator cannot find a new resident at the valuation price, the operator can enter into a new Lease at the highest new sale price readily available from a suitable new resident. You should ascertain when the moneys payable by the operator to the outgoing resident (or their Estate) will be paid. In many cases the refundable amount is not payable until a new Resident enters the Residence. Questions may arise also as to the valuation price.

4. Fees payable out of the Price

- 4.1 The first payment to be considered is the **Deferred Management Fee(DMF)**.

Currently the DMF arrangements are not regulated and are determined according to either what the market dictates or what the operator considers they can "get away with". They are usually charged at a percentage of the original ingoing price of the unit/residence (ranging between 1.5% and 2.5% p.a.) for a minimum of two years and a maximum of 10 years (although longer can be sometimes observed). This charge is designed to provide the operator with a revenue base to ensure the ongoing viability of the development and in turn the future of the residents' investment, is maintained.

- 4.2 **Maintenance Sinking Fund (MSF) or Maintenance Fund**

This is charged usually at between 0.5% and 1% p.a., so that the total of the DMF and MSF are 3% p.a. It is usually charged on the original ingoing price for a minimum of 2 years and a maximum of 10 years. It is designed to provide the operator with a provision to ensure the ongoing maintenance of the development. Many developments either have an ongoing contribution or take a portion of the DMF for maintenance.

Practitioners should also check whether the Maintenance Fund is maintained in a separate bank account or is mixed with general funds. The operator usually has the sole discretion on utilizing the Fund for purposes deemed necessary or beneficial to the development.

- 4.3 **Capital Gain.**

Some developments have a charge for any capital gain, which is calculated by subtracting the original purchase price (or ingoing price) from the new selling price. If the share of the gain is 50%, then the gain is shared between the operator and the outgoing resident.

- 4.4 **Selling Costs**

Selling costs may be charged, and deducted from the share of capital gain. Usually they are fixed at a % of the selling price, and should not exceed 2% of the new price. In addition there will be a charge for the GST on the selling costs, and any costs in advertising.

4.5 **Refurbishment costs**

All costs reasonably incurred by the operator in refurbishing the residence (including cleaning, repainting, making good any damage caused by fair wear and tear) with a view to achieving the maximum new price. Such costs are usually deducted from the share of capital gain, or the proceeds of sale

4.6 **Maintenance or Management Fees**

These are fees paid to the operator by the Resident as the resident's contribution towards the operating costs. Operating costs are usually paid monthly. Practitioners should check to see what is included in "Operating Costs". It may be equated in some instances to the expenses of a Body Corporate in a subdivision. It includes insurance of various sorts on the structure, cleaning, lighting power to communal facilities, caretaking expenses, maintenance and repairs to communal facilities, maintenance of security systems, gardening and landscaping, and rates and taxes in respect to areas of the development (to the extent that they are not separately assessed or apportionable in respect of individual dwellings).

4.7 **Extra Services**

Residents may be entitled to extra services which are charged by the development as per a detailed schedule and provided such services are available.

5. Conclusion

Care must be taken to examine carefully the provisions relating to disposal of a Residence, the circumstances permitting same, and the costs and charges which will be deducted from the subsequent selling price to a new Resident.

There is often differences from one Retirement Village development to another. Whilst DMF and MSF are usually charged, differences can arise if they are calculated on the ingoing or outgoing price. Sometimes if they are charged on the ingoing only, then there may be a charge for a share of the capital gain, based on the outgoing price. Not all developments charge for a share of any capital gain. Issues may also arise as to when the outgoing resident will receive the payment.

Practitioners should advise their clients to examine these aspects carefully, compare different places and point out to them the differences and the various charges in writing to their client when they are purchasing the Residence.

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