

Retirement Village Residents Association (RVRA)

Submission requesting clarification of a critical aspect concerning “90 Day Settling In Period” as stated in the Retirement Villages Act 1999 (as amended) Division 2.

Settling in period for residents.

Who is receiving this submission?

- *Premier of NSW*
- *Leader of Opposition*
- *Minister for Office of Fair Trading*
- *Policy Section of the Office of Fair Trading (OFT)*
- *Deputy Commissioner for NSW Fair Trading*
- *Shadow Minister for Office of Fair Trading*

What clarification is needed?

- *Clarification of legislation to ensure that a resident who elects to vacate a village dwelling within the “90 Day Settling In Period” can recover the “entry” fee paid without having to wait until the dwelling is re-occupied.*
- *Define operators’ responsibilities to inform new residents of residents’ rights under Sections 44A to 44D.*

Why are we asking for clarification about the “90 Day Settling In Period”?

- *Publicity covering Sections 44A to 44D of the Act has been widely promoted by OFT as a major benefit to residents but nowhere in legislation are there stipulations requiring operators to repay “Entry” money to outgoing residents at the time they relinquish their occupancy within the 90 days period*
- *The intent of Parliament (see the following Background Statements) is clear that residents must not be unfairly deprived.*

Where is the unfairness?

- *There is presently a lack of legislative clarity to enforce operators and/or lawyers to disclose true facts to incoming residents before signing the contract*
- *A resident who elects to leave a village within the statutory 90 day period is entitled to receive their “entry” money back at the time of vacating without having to wait until the premises have been reoccupied by a new occupier, as can be the case now.*

How should changes be enacted?

- *We submit the following suggested amendment to Section 44D:*

Deletions in **RED** and additions in **GREEN**.

Retirement Villages Act 1999 (as amended):

Division 2. Settling-in period for residents

44D Time for making of payments

- (1) Except as provided by subsection (2), a refund or payment under this Division is to be made within 14 days after the termination of the village contract or within such other period as the Tribunal may order.
- (2) A payment referred to in section 44C (a) or (b) that is to be made to a former occupant **who was a registered interest holder is to be made within the period after the termination that is the same period as that required for a payment under section 180 (2) to a former occupant following the sale of premises. within 14 days of the resident vacating the property.**
- (3) If a payment that is required to be made under this Division is not paid within the time required by this section, the operator or former occupant may apply to the Tribunal for (and the Tribunal may make) an order requiring the amount to be paid within a specified time.
- (4) If the operator of a retirement village and a former occupant are unable to agree on an amount required to be paid under this Division, the operator or former occupant may apply to the Tribunal for (and the Tribunal may make) an order with respect to:
 - (a) the amount of fair market rent (if any) required to be paid under section 44B (1) (a), or
 - (b) what damage (if any) to the residential premises is in excess of fair wear and tear, and the amount (if any) required to be paid under section 44B (1) (b), or
 - (c) the reasonable administration fee (if any) required to be paid under section 44B (1) (c).
- (5) The Tribunal may consider, but is not bound by, the rent (if any) specified in the village contract when determining the fair market rent for the purposes of making an order under subsection (4) (a).
- (6) The Tribunal may consider, but is not bound by, the administration fee (if any) specified in the village contract when determining a reasonable administration fee for the purposes of making an order under subsection (4) (c).

(7) The operator is responsible for any recurrent charges attaching to the premises until a future sale is completed.

Note: It is the intention of this Section that the ingoing contribution made by the incoming resident be refunded in full, (less any legitimate charges for the period the residence is occupied) within 14 days of termination of the contract.

When should be changes be enacted?

- *OFT should immediately bring out an interim "ruling" without waiting for the next review of the Act*
 - *Members of Legislative Assembly should take steps as soon as possible to introduce a "Private Members Bill" to modify the wording of Section 44D as shown above.*
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Background Statements to support this submission:

At the time of introducing the Retirement Villages Amendment Bill into the Legislative Assembly in July 2008 the then Minister **Ms LINDA BURNEY** (Canterbury—Minister for Fair Trading, Minister for Youth, and Minister for Volunteering) speaking to the **Agreement in**

Principle amongst other things said:

"These amendments should help to better inform prospective residents by providing the right sort of information at each appropriate stage in the decision-making process. A significant new change is the introduction of a 90-day settling-in period for incoming residents. During this time if a resident passes away, needs to move to a nursing home or hostel, or finds that retirement village life is just not for them and elects to move out, they will be **liable only** for fair market rent for the period of their occupancy and a reasonable administration fee."

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RVRA comments:

There is nothing in the statement "they will be liable only for fair market rent for the period of their occupancy and a reasonable administration fee" by the then Minister that would indicate that a resident could be deprived of their ingoing contribution for months or very often for years, until another occupier for the dwelling could be found.

During the Second Reading in the Legislative Assembly, it was stated by Ms MARIE ANDREWS (Gosford) on 28 August 2008:

"The bill also provides for further consumer protection measures in the immediate period after a new resident has moved in. It is unfortunate but true that, in a small number of cases, it can turn out that a new resident in a self-care retirement village is either incapable - or will soon become incapable - of living without a reasonable degree of assistance in his or her daily activities. In such cases it may be necessary for the resident to move to a different village or other form of accommodation where the required level of assistance was available. In other cases, new residents might find that retirement village living does not really suit them, or that the village they are in does not meet their anticipated needs.

To allow for rearrangements in such circumstances, a new concept of a settling-in period will be introduced. This period could be defined as a type of cooling-off period and would cover the first 90 days after the new resident was entitled to occupy the premises concerned. If a resident vacates the premises within that period he or she would only be liable to pay fair market rent for the period of occupation and any reasonable administration fee as set out in the contract. **All other moneys would need to be refunded**, and departure fees and other fees that are usually payable by an outgoing resident would not be able to be charged. Residents and operators alike generally supported this reform proposal. Harmonious community living is not helped when an unhappy resident is unable to leave because he or she cannot afford to get out of a contract."

RVRA comments:

It is clear from the statement "All other moneys would need to be refunded" was the intent recorded in Parliament prior to the Bill being passed by the Legislative Assembly to the Legislative Council.

During the **Second Reading** in the Legislative Council **The Hon. PENNY SHARPE** (Parliamentary Secretary) on behalf of the Hon. Ian Macdonald said amongst other things:

"A significant new change is the introduction of a 90-day settling-in period for incoming residents. During this time if a resident passes away, needs to move to a nursing home or hostel, or finds that retirement village life is just not for them and elects to move out, they will only be liable for fair market rent for the period of their occupancy and a reasonable

administration fee. However, I should point out that the outgoing resident's entitlements will not be affected if the new resident decides to leave."

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RVRA comments:

The statement "I should point out that the outgoing resident's entitlements will not be affected if the new resident decides to leave" is again a clear indication of the Parliament's intent.

The following is taken from the OFT web site:

Settling-in period

New residents who terminate their contract by permanently vacating their premises within the first 90 days of moving in are **only** required to pay a fair market rent for the period of their occupancy and a reasonable administration fee to the operator. The maximum administration fee the operator can charge is \$200.

RVRA comments:

As can be seen from the above there is nothing to indicate that a resident upon vacating a property in a retirement village within 90 days would have to wait until the property is "on-sold" to another buyer before the outgoing resident receives their "entry" or purchase money back.

The following quote is from a transcript of the ABC's Stateline TV program "**Village Victims**" aired on Friday, 9th July 2010. Rod Stowe, who is Deputy Commissioner of the Office of Fair Trading, made the following public statement:

"There's a significant number of reforms that improve the position of residents. One of those for instance is the 90-day settling-in period which means that if a resident moves into a retirement village, find it's not for them, they can extricate themselves out of the contract without financial penalty."

RVRA comments:

"Without financial penalty". This is an instance of a false statement being made to the public in general by a spokesperson for the Office of Fair Trading, a State Government Department under control of a Minister.

The aims of the Office of Fair Trading, are, as taken from their web site:

“The primary role of the NSW Fair Trading is to manage these consumer laws and to look after the rights of consumers. At the same time, we advise businesses and traders on fair and ethical practices. Our aim is to achieve fairness for all in the marketplace.

Informing consumers and traders on their rights and responsibilities is an essential ingredient of a fair marketplace. Being informed is the best defence consumers and traders can have against scam artists.”

RVRA comments:

It is evident that the Office of Fair Trading do not abide by the guide lines they are charged with.

At the time of the **Consideration of the Legislative Council amendments** by the Legislative Assembly on the 4th December 2008 **Ms VIRGINIA JUDGE** (Strathfield—Minister for Fair Trading, Minister for Citizenship, and Minister Assisting the Premier on the Arts) in speaking to the Legislative Council amendments Nos 1 to 19, said amongst other things:

."... introducing a 90-day settling-in period for new residents during which they may terminate a contract and only be responsible for market rent and an administration fee;"

RVRA comments:

"and only be responsible for market rent and an administration fee" is another indication of the intent of Parliament.
