

## **Leura Fairways Partnership v Residents of Leura Fairways Retirement Village**

**Village:** Leura Fairways Retirement Village

**Operator:** Leura Fairways Partnership



**The Advocates:** Initially the Residents Committee of Leura Fairways asked the RVRA for assistance. John Wheeler who was Treasurer of the RVRA at the time, took on the role of Advocate for the Residents Committee. Later, the new Chairman of the Committee, who had legal experience took over the case.

### **The Dispute:**

The Operator submitted the 2010/2011 proposed budget based on the 44 completed units (29 occupied). This raised the proposed recurrent charge from \$393 to \$600.63 per month, (53% increase). The residents rejected this budget.

**Background:** There are two Features that distinguish this Tribunal Hearing:

- Tribunal use of “An Estoppel” (The proposed expense budget reduced by half.)
- The use of a Forensic Accountant.

When Leura Fairways Retirement Village was established some 10 years ago, the expectation was that, ultimately, 56 units would be built. For some 10 years that ‘56 unit model’ was used as a basis for calculating the recurrent charge. However, after 44 units were completed, and, 29 occupied, the Operators application to council for constructing further units was rejected.

### **The Case History:**

The residents submitted evidence that all their Disclosure Statements contained the following clause in bold letters.

**“The Village is not fully occupied so that the village operator meets the majority of expenditure”**

Residents submitted statutory declarations stating that they relied on this clause when signing their contracts.

During the hearings, the Resident Committee Chairman, in advocating for the residents, requested a “Forensic Accountant” to examine the finances of the village.

### **The Result:**

The Tribunal directed that –

- Such a statement, included in all Disclosure Statements’ is a relevant matter to take into account under Subsection 115(6) (c).
- ‘an estoppel’ should arise in relation to allocation of expenditure from year to year. In relation to the 2010/2011 expenditure of \$317,137.00 the Tribunal directed that half of this amount \$158,568.00 would be included in the recurrent charge calculation. So that the Operator would incur no further loss this amount was spread over the 29 occupied units.

This resulted in a recurrent charge of \$450 per month for the 2010/2011 financial year, as opposed to the \$600.63 per month proposed by the Operator.

The Residents' Advocate is entitled to receive a significant proportion of the costs (\$ 5,500) which he properly expended in obtaining an opinion from a Forensic Accountant, because of the failure of the Operator to be transparent in relation to maintenance (No compliance with Sect. 98). Cost was awarded in the sum of \$2,750.00.

**What has been learnt?**

Residents must always have their documents relating to their contract and Disclosure statement on hand to ensure that the operator is complying with the agreement they made on moving into the village.

\*\*\*\*\*