

13 August 2012

Research Director
Queensland Parliamentary Service
Parliament House
Cnr George and Alice Streets
Brisbane Qld 4000

Dear Sir/Madam

I am a resident of Sapphire on the Esplanade, a new "up market" vertical retirement village of 60 apartments under the control of RSL Care Limited as operator. Unfortunately, after 3 years on the market there are still more than 30 apartments vacant. This facility is not an aged care facility; no care facilities being available on site.

My wife and I were the fourth "residents" to occupy the building (October 2009) and were encouraged by the on-site manager to establish a residents committee. Having had some legislative experience in the Queensland Government and having held executive positions in retirement on the Burrum Heads Progress Association Inc for 10 years prior to moving into Sapphire, I had a fair working knowledge of the Associations Incorporation Act and the responsibilities of office bearers of such an organisation.

Residents Committees/Associations - composition

I had been provided with the constitutions of several "residents committees" which were widely disparate in their approach and by and large seemed simplistic. As the constitution of the Burrum Heads Progress Association Inc and model rules for incorporated associations were familiar to me I formulated a constitution which created the Sapphire Apartments Residents Association, an unincorporated organisation (copy enclosed). This was approved by all the residents of Sapphire at the time and accepted by RSL Care Limited. I did not seek legal advice in preparing the constitution, believing what we had was superior to those constitutions of residents committees which I had had the opportunity to view and in the knowledge that it could be amended later when more residents were in residence.

I was nominated for the position of Secretary at the inaugural AGM and held that position until the AGM held on 1 August 2012. I was recently made aware by a solicitor that in his opinion, one particular aspect of the constitution was amiss. Clause 2 of the constitution provided that "Membership automatically is all of the Residents of Sapphire." I did this in the belief that all residents were entitled to attend and vote at meetings of the residents "association." I have been advised that no-one can be forced to be a member of a "club" and that there should have been some mechanism for residents to apply for membership. Perhaps this could have been achieved by providing that residents needed to apply in writing to be accepted as members even though there may be no application or membership fee involved.

The legislative requirements for an incorporated association appeared to be too formal and complex for what we saw as being necessary to establish a residents committee envisaged under the Retirement Villages Act. That was left as a future possibility. It appears to me that there is a distinct need to provide for the establishment of an entity that is a hybrid of a residents committee and an incorporated association which allows all residents to be members. I have since had a look at the model rules for residents committees under the New South Wales legislation (Retirement Villages Act 1999 - NSW and Retirement Villages Regulation 2009 - NSW). Had I been aware of such rules, I may have had more regard to those.

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One problem I have found, especially in such a small community, is the difficulty in getting any residents to be involved in any form of committee. The first year my wife and I offered and took on the roles of Treasurer and Secretary, being the only nominees for any position on the committee. With some encouragement, we did manage to get someone to act as President for a few months until he exited the facility. The second year was even worse. We could get no President or Vice President but managed to get two reluctant starters to take on non executive positions so that we could at least operate a bank account. One of those resigned shortly afterwards. At every meeting of residents since the first and only president left, it has not been possible to get any other resident to chair a meeting. On every occasion bar one I was elected to chair the meeting. With such apathy, it would be difficult to get a residents committee of any sort established. If residents had to apply for membership of an association it would be worse. That is why I took the approach of stating that all residents were automatically members of the association.

I might point out that although there was an executive committee structure, all correspondence and matters were fully discussed at general meetings of the association and decisions made there. I saw the role of the committee as being able to research and consider various options on any matter with a view to coming up with a recommendation to the general meeting. Two matters that were helped by this approach were the establishment of non-smoking areas and guidelines for the use of the community bus (9 persons). General discussion on both topics were getting no-where at general meetings. After the committee (largely my input) thought about and developed proposals for consideration by residents the outcome was made considerably easier to achieve.

While there are a number of different occupancy arrangements (loan & licence; leasehold; rental; strata title; company title etc) I am only familiar with the first. At Sapphire, and I believe RSL Care villages in general, the nature of residents' occupancy of an apartment is through a "loan/licence" arrangement embodied in a Residents Agreement. By lending RSL Care Limited what amounts to a capital sum equivalent to purchasing an apartment (around \$500,000) a resident is granted exclusive occupancy of the apartment for life or until prior exit. I see the Residents Committee in much the same way as a body corporate is established in a strata title situation. In this case, though, RSL Care is the owner/operator and takes on responsibility for maintenance and refurbishment of the building. Perhaps some structure where more input to the running of the facility is able to be made would be an advantage, particularly in relation to budgetary matters.

Voting

You will note that the constitution of the Sapphire Apartments Residents Association provided for each member (resident) to have a vote. While consideration of a one vote per apartment was considered (and perhaps may be seen to be fairer to single occupancy apartments in some circumstances) it is felt that on many, if not most issues, each member of a couple may have completely different views. We have found this to be the case in determining smoking/non-smoking areas, bus usage policy, pet policy etc. On the other hand, if voting on matters where the effect is likely to have more impact on individual units or residences, such as budgetary matters, I can see that one vote per unit would be fairer. Perhaps the types of matters voted upon could be classified in some way so that voting one way or another was either on a unit basis or by individual residents.

Budget and Charges for general services

Sections 102A and 129B of the Retirement Villages Act 1999 (Qld) provide for much the same thing ie the operator to "adopt a budget" and then, on written request by a residents committee (too bad if there isn't one) attend a meeting of residents to discuss a draft budget.

This would appear to need some more thought. One would expect that the intention is for the operator to discuss a draft budget with residents or the residents committee prior to its adoption. Moreover, there should be some provision for comments or requests by residents to be taken on board by the operator. RSL Care refuses to involve residents unless legislation requires them to do so.

I find it a little difficult to understand the intention of Sections 106 and 107. It appears to me that Section 106 is intending to limit total increases for the general services levy to the CPI (subsection 1) but *excludes* from that total an increase in charges approved by a special resolution at a residents meeting (increases to section 106 items by more than the CPI) and an increase in charges falling under section 107. While this seems a reasonable approach there appears to be scope for an operator to manipulate charges to make it appear that costs are not increasing as much as they are.

As an example, I will cite a particular circumstance relating to this facility. In the 2012/13 budget Section 106 items did not increase but Section 107 items did by a significant amount largely through a miscalculation of general rates charges by the operator. The total increase in charges from the previous year would have been more than 22% but for the fact the operator decided to absorb some of the wages costs which limited the increase to 15.22%. At the time, the operator still had 36 of 60 units in the facility to "sell." One wonders whether the general services levy has been kept artificially low until more units are occupied. Of course, when the true costs of wages are included in the budget, no approval of residents will be necessary for the increase. This could mislead intending purchasers as to the true cost of the general services levy.

Compliance and Enforcement

Part 8 of the act contains the enforcement provisions which seem totally inappropriate for circumstances which may arise in a retirement village. They seem to have been lifted from some other Act more related to controlling some criminal activity (powers of entry and to seize evidence etc). There is a need to ensure the Act is complied with but not in such a manner. I cannot envisage the circumstances where these provisions would apply.

At a much lower level, there would seem to be some necessity to provide for enforcement or compliance with the constitution of the Residents Committee and the Village Rules or By-Laws. Section 128 (3) requires the committee to conform with the constitution; but what about residents? Section 130 provides for residents to make, change or revoke by-laws (not the Residents Committee). There seems to be some inconsistency there. And nowhere is there any provision or penalty to require either residents or the operator to comply with any rules or by-laws so made.

A couple of scenarios may help to convey my thoughts. (1) Residents agree (with the approval of management) areas of communal property where smoking is not permitted. I presume this would be regarded as a village rule or by-law. What penalty or recourse do residents have if this is not complied with? (2) The residents committee establishes guidelines (with the approval of management) for use of the village bus including charges based on proposed kilometres travelled, procedure for arranging trips etc. Trips are then arranged (with the approval of or even by the manager) where a charge for use is not made or is on a different basis to the guidelines.

In an enlightened society one would expect compliance with rules and procedures would be the norm. However, as is often the case, it only takes a small number of persons of a different view (usually the vocal minority) to jeopardise the status quo. One might think that in this retirement village environment the manager (operator) could intervene or exercise some

control or at least support the Residents Committee. One thing I have found is that the majority of residents have entered a retirement village with the intention of being relieved of many of the responsibilities of living independently and are not willing to get involved, even if it is to their detriment. Many are afraid of challenging or even making requests of the operator for fear of possible retribution or at least the fear of the operator being unobliging. This may be more so in facilities providing care.

Complaints and Disputes

There is possibly a need to define a complaint and a dispute. I think a complaint either results from a request that has not been dealt with appropriately or is a strong request for something to be corrected. A dispute is not defined in the Act but I would think it results from an unresolved complaint. Section 153 of the Act appears to confine dispute resolution to a dispute about a contract. Even the preamble on the QCAT website <http://www.qcat.qld.gov.au/matter-types/other-civil-disputes/retirement-village-disputes> discusses only “disagreements between residents and retirement village operators (operator) regarding the residence *contract*.” Both form 03-Dispute notice for referral to mediation and form 31-Application for a tribunal hearing are identical except for Part C; and Part D of both forms request details relating to *contracts*.

My experiences here at Sapphire in the last 3 years has shown that there are many situations where there is potential for complaints to be made other than contractual. Even the internal processes of RSL Care to resolve complaints or disputes is ineffective and apart from contractual disputes there appears to be no recourse to an outside body.

One significant issue which the Residents Association took up with RSL Care was in relation to a decision to allow a resident to have *two* dogs live in a fourth floor apartment despite RSL Care having a “no pets” policy in place (Several residents had had to dispose of their pets in order to take up residence). Despite that resident initially admitting to other residents and to RSL Care that the dogs were pets, RSL Care later asserted that it was satisfied that the dogs were “assistance dogs” under the *Disability Discrimination Act 1992*.

At a heated general meeting of residents it was unanimously decided to write to RSL Care pointing out that this was not a public place and that the Act did not apply. Even if it did, there were provisions under that act and the *Guide, Hearing and Assistance Dogs Act 2009* which required assistance dogs to be trained and accredited. The Residents Association made a formal written complaint to the Executive Manager Operations who was the person charged with resolving complaints. No reply to the Residents Association letter was ever received. Instead the EMO, after numerous phone calls and emails, attended this facility and announced to residents that even if RSL Care had not made the correct decision, there was no way they would retract it and that we should learn to live with it or obtain our own legal advice. Unfortunately, this resulted in much disharmony between residents some of whom have since exited the facility as a result. Residents were at a loss as to what could be done.

Other complaints have been made concerning inappropriate actions of staff in managing the facility, but again, no investigation was made. Neither of these issues seem to fit the requirements that complaints must be in relation to either contractual obligations or breaches of the Act.

Tenure issues

As I mentioned before, the tenure arrangements at this facility are by way of loan/licence. The licence agreement provides for an “Ingoing contribution” of an amount that would not be inconsistent with the market value of a similar strata title. In fact I think there is a premium for being under the Retirement Villages Act. On exit, there is an exit fee or deferred management

fee calculated at 6% for the first year and 3% pa for the next 6 years with a maximum of 21% which is deducted from the "sale price" and any capital gain (or loss) is shared 50/50. Although the Ingoing contribution is considered by Centrelink in the same way as a bond is in an aged care facility and the resident is considered a "homeowner" a resident is not an "owner" as defined under the Local Government Act. This means residents do not qualify for the Pensioner Rates Subsidy Rebate provided to home owner pensioners. This is despite the fact that the General Services Levy is based on the full amount of rates for the property being included as an item of expenditure in the budget. Nor do residents qualify for rent assistance from Centrelink.

Another problem arises with insurance. While contents insurance is able to be obtained, it does not seem possible to obtain insurance to cover breakage or damage to property within the unit as distinct from the building as a whole. Matters such as accidental breakage of glass or fire or water damage to the inside of an apartment is of concern to residents. These matters are not covered by the building insurance the operator is required to maintain and is not available to non homeowners generally.

I don't know whether the review could consider these aspects of retirement village living

While this submission has been rather lengthy, I have only touched on some aspects without delving into detail. Should you require elaboration on any aspect I am happy to provide it.

Thank you for the opportunity to make a submission.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'R Masson', written in dark ink.

Robert Masson

CONSTITUTION AND RULES OF THE SAPPHIRE APARTMENTS RESIDENTS ASSOCIATION

Preamble

“Act” means the Retirement Village Act 1999 as amended from time to time.

“Association” means the Sapphire Apartments Residents Association.

“Committee” means the duly elected Residents Committee of the Association.

“Management” means the Retirement Living Coordinator and any other person representing RSL Care responsible for the management of Sapphire Apartments.

“Resident(s)” and “Member(s)” means those persons who have an existing and continuing licence to occupy an apartment in Sapphire granted by RSL Queensland War Veterans Homes Ltd.

“Sapphire” means the retirement village known as Sapphire On The Esplanade at 48 Watson Street Pialba.

1. Name of the Association

The name of the association is Sapphire Apartments Residents Association, which is an unincorporated not-for-profit entity.

2. Membership

Membership automatically is all of the Residents of Sapphire.

3. Objects

The objects of the Association are:

- (a) to communicate and negotiate with Management about the day to day running of the village and any complaints or proposals raised by Residents;
- (b) to act in the protection and promotion of the interests of Residents in regard to their lifestyle, health and well being;
- (c) to foster the interest and involvement of the Residents in village activities;
- (d) to assist Residents in gaining the maximum benefit from communal living in a safe, peaceful and harmonious manner;
- (e) to coordinate social activities for Residents

4. Powers

The powers of the Association are:

- (a) to conduct business consistent with the Association’s objects and with the Act;
- (b) to do all such other things as are incidental or conducive to the attainment of the Objects of the Association;
- (c) to publish a Newsletter as seen to be supportive of the Objects.

5. Residents Committee

(a) The Residents Committee is comprised of a President, Vice President, Secretary, Treasurer (known as the Executive Committee) and such number of other members as the members at an Annual General Meeting of the Association (AGM) or a General Meeting may from time to time elect or appoint, not exceeding eight Committee members in total. Members so elected shall hold office until the next AGM.

(b) Any member of the Association is eligible to be nominated for election to the Committee.

(c) At an AGM, the members of the Committee shall retire from office, but shall be eligible upon nomination for re-election.

6. Function of the Residents Committee

- (a) To carry out the objects of the Association in accordance with decisions made by members at Special and General Meetings;
- (b) To establish sub-committees to advise the Residents Committee on any specific matter, including the establishment of a Social Committee. At least one member of the Residents Committee shall be a member of a Sub-Committee to facilitate reporting to the Residents Committee on the activities of the Sub-Committee;
- (c) To establish procedures for Sub-Committees to follow;
- (d) To interpret the meaning of these Rules and ensure they are observed;
- (e) To oversee the publication of a Newsletter for Residents to assist their understanding of decisions made or taken; to foster interest in taking part in communal activities and to allow expression of ideas to be conveyed to other Residents.

7. Election of Residents Committee

- (a) Any two Residents may nominate any other resident in writing on a Nomination Form provided, such form being signed by the Proposers and the Nominee to signify acceptance of his/her nomination.
- (b) Nominations shall be lodged with the Secretary at least fourteen (14) days before the AGM and the names of candidates shall be posted on the notice board in the recreation centre at least 7 days before the date of the AGM.
- (c) If there are no written nominations received for any position, the Chairperson of the meeting shall request nominations from the floor for any such position.

8. Voting – General Meetings

- (a) Except at the AGM or any Special Meeting, voting shall be on a show of hands or division of those members who are present at the meeting.
- (b) Each member present shall have just one vote on a question or matter.
- (c) If in a ballot there is an equality of votes, the chairperson has a casting vote as well as a primary vote.

Voting – AGM and Special Meetings

- (d) Voting shall generally be on a show of hands or by division but if at least 20% of those in attendance request a secret ballot, the chairperson shall appoint two persons present to conduct the secret ballot in the manner the chairperson decides.
- (e) At an AGM or Special Meeting, a person may vote by proxy in lieu of attending the meeting.
- (f) A proxy must be in a specified form in writing and must be given to the Secretary before the start of a meeting and may either allow the proxy to vote in a specified manner or as the proxy decides.
- (g) If there is an equality of votes at an AGM for any executive Committee position, subsequent ballots shall be held until there is a clear decision.
- (h) If there is an equality of votes at an AGM for a non-executive Committee position, the nominee shall be accepted as elected to the committee, even if this means there may be 9 Committee positions in total.
- (i) If there is an equality of votes at an AGM for any other matter put to a vote, the Chairperson shall have a casting vote.
- (j) For a vote to be carried at a Special Meeting, at least 75% of those voting (present and proxies) must be either in favour of or against the motion as may be the case.

9. Annual General Meeting

- (a) The first AGM shall be held as soon as practicable after the adoption of this Constitution and Rules.
- (b) The AGM shall be held in August each year after the first AGM.
- (c) A notice of the AGM shall be given at least one month prior to the proposed date of the meeting by notice on the notice board in the Recreation Centre.
- (d) The business to be conducted at the AGM shall be:
 - (i) to read and confirm the minutes of the previous AGM and any Special Meetings held during the year;
 - (ii) to hear a report on the activities of the Association for the preceding year;
 - (iii) to consider the Financial Report presented by the Treasurer; and
 - (iii) the election of members of the new Committee.
- (e) A quorum at the AGM shall be a number of Residents greater than the number of members on the Residents Committee.

10. Special Meetings

- (a) The Secretary shall convene a Special Meeting:
 - (i) when directed to do so by the Committee; or
 - (ii) when a request in writing has been received from at least 10 Residents which must specify the reason why such a Special Meeting is being requested.
- (b) The issue or reason for calling a special meeting is the only item of business to be conducted at a Special Meeting.
- (c) The Secretary shall give at least one month's notice of a Special Meeting.
- (d) A quorum at a special meeting shall be a number of residents greater than twice the number of members on the Committee at the time the meeting is held.

11. General Meetings

- (a) A General Meeting of Residents shall be held prior to 15th of each month unless it be decided otherwise at a previous General Meeting.
- (b) A quorum at a General Meeting shall be at least twice the number of persons who hold positions on the Committee at the time.
- (c) If, after 10 minutes from the time appointed for the start of the meeting a quorum is not present, the meeting shall be postponed till the following month, but discussions not requiring a vote may be held, notwithstanding there is less than a quorum present.

12. Residents Committee Meetings

- (a) A Committee meeting shall be held every month unless it is decided otherwise at a previous Committee meeting.
- (b) A quorum at a Committee meeting shall be 3 or at least half of the then Committee, whichever is the greater, two of which must be from the Executive Committee.
- (c) If, after 10 minutes from the time appointed for the start of the meeting a quorum is not present, the meeting shall be postponed or abandoned, but discussions not requiring a vote may be held, notwithstanding there is less than a quorum present.

13. Residents Committee Vacancy

- (a) The Committee may fill a casual vacancy of any Executive Committee position by appointing any member of the Association until the next AGM.
- (b) A Committee vacancy may otherwise be filled by nomination and voting at a General Meeting or left vacant until the next AGM.
- (c) The continuing members of the Committee may act despite a casual vacancy not being filled. However, if the number of members of the Committee is less than a quorum, the remaining Committee members may only act to:
 - (i) increase the number of Committee members to at least the number required for a quorum; or
 - (ii) call a general meeting of members of the Association.

14. Meetings generally

- (a) The Secretary may invite a representative of Management to attend a particular meeting or any meeting whether it be General, Special or the AGM.
- (b) If Management attends a meeting and a discussion or vote on a particular matter is required, the Chairperson may ask that Management withdraw from the meeting while the discussion or voting takes place.
- (c) The President will normally chair any meeting.
- (d) If there is no president, or if the President is not present within 10 minutes after the time fixed for a meeting, the Vice-President is to preside as chairperson at the meeting.
- (e) If the President and the Vice-president are not present within 10 minutes after the time fixed for a meeting, the members present may choose one of their number to preside as Chairperson at the meeting.

15. By-Laws or Rules

- (a) The Committee may make, amend or repeal by-laws or rules, not inconsistent with these Rules or the Objects of the Association for the orderly conduct of the Association's business or for the orderly use of the communal facilities at Sapphire.
- (b) A by-law or rule so made may be set aside at a General Meeting of members on Notice of Motion having first been promulgated to members by the Secretary at the time the notice of meeting was made or at a Special Meeting called specifically for the purpose.
- (c) Any amendment of this Constitution and Rules of the Association may only be made by a Special Resolution carried at a Special Meeting called for the purpose.

16. Financial Matters

- (a) The funds of the Association must be used solely in promoting the objects of the Association and in exercising the Association's powers and functions.
- (b) The financial year of the Association ends on 31 June each year.
- (c) The funds of the Association shall be deposited in a financial institution approved by the members.
- (d) Accounts and books shall be kept showing the financial affairs of the Association and the particulars usually shown in books of account of like nature.
- (e) All expenditure shall be approved or ratified at a meeting of the Association. Up to an amount set from time to time by the members at a General Meeting, the Committee may approve certain expenditure of a minor nature.
- (f) Withdrawal of funds may only be made under the signature of two of the Executive Committee members, not from the same Unit in Sapphire.
- (g) An annual Statement of Income and Expenditure shall be prepared by the Treasurer as soon as practicable following the end of the financial year for presentation at the AGM.



**Fair
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MODEL RULES FOR RETIREMENT VILLAGE RESIDENTS COMMITTEES

IMPORTANT INFORMATION

The *Retirement Villages Act 1999* allows the residents of a retirement village elect a Residents Committee if they wish to. A Residents Committee may be established if more than 50% of residents who vote at a meeting of residents agree to form one. Other committees can also be formed in the village for other purposes, but there can only be one Residents Committee.

Residents Committees are free to set their own procedures, as long as they are not inconsistent with the law. The attached optional model rules may be adopted by a Residents Committee without change, or may be modified to suit an individual Residents Committee's needs.

An information sheet on Residents Committees is available from www.fairtrading.nsw.gov.au or by calling 13 32 20.

Part 1 – Preliminary

Part 2 – Membership

Part 3 – Sub-committees

Part 4 – Conduct of meetings

Part 5 – General

Appendix A Matters which require residents' consent under the Retirement Villages Act and Regulation

Appendix B Voting requirements for residents' consent

Part 1 – Preliminary

1. Definitions

In these rules:

Chairperson means the person holding office as Chairperson of the Residents Committee.

Committee means the Residents Committee.

Resident means a person as defined in section 4(1) of the Act and clause 8 of the Regulation.

Returning officer means a resident (who is not a member of the Residents Committee and is not standing for election to the Residents Committee) selected by a show of hands at a meeting of the residents.

Secretary means the person holding office as Secretary of the Residents Committee or, if no person holds that office, the Chairperson of the Residents Committee.

the Act means the Retirement Villages Act 1999 (NSW).

the Regulation means the Retirement Villages Regulation 2009 (NSW).

Treasurer means the person holding office as Treasurer of the Residents Committee or, if no person holds that office, the Chairperson of the Residents Committee.

2. Name

The name of the Committee is: 'The [insert name of village] Residents Committee' hereafter referred to in these rules as 'the Committee'.

3. Objects

The objects of the Committee are:

- (1) to advance and protect the interests of all residents of the village;
- (2) to discuss issues requiring the consent of residents under the Retirement Villages Act and Regulation, or any other matter affecting the management and operation of the village;
- (3) to call general meetings of all residents for the purpose of considering and voting on matters requiring the consent of residents;

- (4) to conduct voting in accordance with the Act and Regulation and report on the results;
- (5) to undertake functions bestowed on the Committee by the Act and Regulation and to provide any documentation held by the Committee to residents upon request;
- (6) to facilitate communication between residents and the operator;
- (7) to assist in dispute resolution by raising concerns or complaints with the operator, or taking or defending action before the Consumer, Trader and Tenancy Tribunal (with the Tribunal's consent), on behalf of a resident, a group of residents or all residents of the village; and
- (8) to welcome new residents into the village.

Part 2 – Membership

4. Residents Committee members

The Residents Committee consists of the following office bearers¹:

- (1) Chairperson
- (2) Secretary
- (3) Treasurer
- (4) [insert number] ordinary Committee members.

and the following sub-committees [delete or add as appropriate]:

- (a) Financial sub-committee – to consider proposed variations in recurrent charges, proposed annual budgets, examine quarterly accounts and other matters relating to financial management;
- (b) Social sub-committee – to arrange social functions and outings for interested residents;
- (c) Serviced apartments sub-committee – to consider issues specific to those residents living in serviced apartments within the village;
- (d) Other (specify)².....

5. Functions of office bearers

- (1) The functions of the Chairperson are to:
 - (a) chair meetings of the Committee and meetings of residents;
 - (b) advise the operator of all decisions made by residents about matters requiring consent under the Act;
 - (c) rule on any procedural matters raised at meetings of the Committee or meetings of residents or queries as to the meaning of these rules;
 - (d) represent the Committee in meetings with the operator;

¹ Residents may choose to have other office bearers, for example, a Deputy Chairperson and Returning Officers.

² The Residents Committee may establish a sub-committee for any purpose.

- (e) seek clarification, where necessary, from NSW Fair Trading about the rights and obligations of residents under the Act and Regulation; and
 - (f) make or defend applications before the Consumer, Trader and Tenancy Tribunal (with the Tribunal's consent) on behalf of a resident, a group of residents, or all residents of the village if the Committee agrees it is appropriate to do so.
- (2) The functions of the Secretary are to:
- (a) keep a register of office bearers of the Committee;
 - (b) keep a written record of decisions made at meetings of the Committee or meetings of residents, in particular the votes on matters requiring the consent of residents under the Act;
 - (c) notify Committee members of the date, time and venue for meetings of the Committee and all residents of any general meeting of residents;
 - (d) keep the noticeboard in the village updated with relevant information;
 - (e) conduct and receive correspondence on behalf of the Committee and table copies at each meeting of the Committee;
 - (f) liaise with the operator regarding the provision of administrative assistance to the Committee;
 - (g) chair meetings of the Committee and meetings of residents required under the Act in the absence of the Chairperson;
 - (h) welcome new residents into the village; and
 - (i) update these rules when amended in accordance with rule 14.
- (3) The functions of the Treasurer are to:
- (a) make sure that money due to the Committee is collected and receipted and that payments authorised by the committee are made;
 - (b) make payments through a petty cash system or by cheque signed in conjunction with such other signatory or signatories as authorised by the Committee; and
 - (c) submit a report at each meeting of the Committee and meeting of residents that details all receipts and payments made since

the previous report, accompanied by a list of unpaid accounts and monies outstanding up to and including the day of the meeting.

6. Qualifications for membership

Only a resident of the village is eligible to become a member of the Committee or a sub-committee or to nominate a resident for membership.

7. Term of membership

- (1) Each member of the Committee, or a sub-committee, is to be appointed for a period of 12 months.
- (2) An office bearer is not eligible to hold the same office, or an office performing the same (or substantially the same) functions, for more than 3 consecutive years³.

8. Nominations for office bearers and ordinary Committee members

- (1) When a meeting of residents is held at which a Committee is elected, all positions on the Committee are to be declared vacant. The first business item at the meeting must be the election of the Committee for the coming year.
- (2) At the first meeting of the residents held to elect the Committee, an acting Chairperson is to be appointed with the consent of those residents present at the meeting for the purposes of running the meeting. For subsequent meetings held to elect the Committee, the Chairperson from the previous year is to act as chair of the meeting until the position of Chairperson has been filled.
- (3) Any resident present at the meeting can nominate themselves or another resident to be a Committee member.
- (4) An existing member or former member of the Committee may nominate again, or be renominated to be a member of the Committee.
- (5) Nominations must be seconded and accepted by the nominee before that person becomes a candidate.
- (6) If only one nominee for an office bearer position is received, or if the number of nominations received for ordinary Committee members

³ Under Clause 54 of the Retirement Villages Regulation 2009, a person may hold the same office on the Residents Committee of a retirement village for more than 3 consecutive years if the retirement village has less than 20 residents or the annual budget of the retirement village is less than \$50,000.

is equal to or less than the number of vacancies to be filled, the persons nominated are taken to be elected.

- (7) If more than one nomination for an office bearer position is received, or if the number of nominations received for ordinary Committee members exceeds the number of vacancies to be filled, a written ballot is to be conducted to elect members and office bearers.

9. Election of office bearers and ordinary Committee members

- (1) A separate ballot is to be held for each office bearer followed by a ballot for ordinary Committee members.
- (2) Office bearers are to be elected in the following order:
 - (a) Chairperson
 - (b) Secretary
 - (c) Treasurer
 - (d) Any other office bearers.
- (3) If the previously elected Committee included a returning officer, then the returning officer is responsible for conducting the ballot and counting votes.
- (4) If the Committee does not include a returning officer, then a resident who is not standing for election to the Committee is to be selected by show of hands and is responsible for conducting the ballot and counting votes.
- (5) Voting papers must be prepared listing the name of each nominee in alphabetical order including the position for which they are nominated (i.e. office bearer position or ordinary Committee member), and must be given to each person at the meeting.
- (6) The voting paper must not identify the person who is voting.
- (7) Votes may be cast with a tick, or cross, or numbered, but each voting paper must not contain more votes than the number of positions being filled.
- (8) The Chairperson, or acting Chairperson, has the power to rule votes invalid if a vote cannot be reasonably determined.
- (9) The nominee receiving the greatest number of votes for each position is taken to be elected to that position.

- (10) If the votes for two nominees for one office bearer position are equal, either another ballot for that position must be held or the candidate can be chosen by a draw.
- (11) Voting papers are to be retained by the returning officer for 14 days and may be inspected by any resident.

10. Announcement of election results

- (1) The names of successful candidates must be announced at the meeting at which the election is held. There is no need for the number of votes received by each nominee to be announced.
- (2) The names of the residents elected should be advised to the operator and placed on the noticeboard at the village within 7 days of the election.

11. Vacancies

- (1) A vacancy is created when:
 - (a) a member of the Committee ceases to be a resident during their term of appointment; or
 - (b) a member of the Committee resigns by notice in writing to the Secretary; or
 - (c) all positions are declared vacant in accordance with section 8(1) of these rules.
- (2) Vacancies relating to office-bearers are to be filled by way of an election among the other members of the Committee. The Committee may determine whether or not vacancies of ordinary Committee members need to be filled.

Part 3 – Sub-committees

12. Formation of sub-committees

- (1) The Residents Committee may decide to appoint a sub-committee at its own discretion during the year if the need arises.
- (2) The Committee may determine which ordinary Committee members will be on a sub-committee.
- (3) The Committee may appoint a resident who is not a Committee member to assist a sub-committee.

13. Operation of sub-committees

- (1) The Residents Committee will determine how often a sub-committee will meet.
- (2) Sub-committees are to report back to the Committee on their activities.
- (3) All sub-committees must be responsible and accountable to the Committee and must not incur debts, enter contracts or deal with the operator directly without the prior approval of the Committee.

Part 4 – Conduct of meetings

14. Residents Committee meetings

- (1) The Residents Committee is to meet [insert number] times in each period of 12 months at a place and time the Committee determines.
- (2) The Chairperson may convene additional meetings of the Committee.
- (3) The Chairperson presides at all meetings of the Committee at which the Chairperson is present. If the Chairperson is absent from any meeting, the members of the Committee present at that meeting must appoint a member to preside at that meeting during the absence of the Chairperson.
- (3) Any person who is not a member of the Committee must not attend a meeting unless invited by the Chairperson.
- (4) Committee members are to submit written requests to the Secretary for items to be placed on the agenda.
- (5) The Secretary must give oral or written notice of a meeting to each member of the Committee at least 72 hours before the meeting. The notice is to include an agenda for the meeting.
- (6) Matters for which notice has been given are to be discussed at the meeting and other matters may be raised as general business.
- (7) There is no minimum number of Committee members required to be present to constitute a quorum.
- (8) Decision making is by a majority vote.
- (9) Each member present at the meeting is entitled to one vote.
- (10) In the event that a vote on an issue is equal the Chairperson of the meeting is entitled to exercise a second or casting vote.

15. Meetings of residents

- (1) The Residents Committee is to call a meeting to which all residents of the village will be invited at least once each year.
- (2) Other general meetings of residents may be called during the year if issues arise that require the consent of residents under the Act or for any other matter.

- (3) Residents are to submit written requests to the Secretary for items to be placed on the agenda.
- (4) Written notice of a meeting of residents under (1) or (2) must be given by the Secretary to each resident and/or placed on the village noticeboard at least 7 days before the meeting. The notice is to include an agenda for the meeting.
- (5) Matters for which notice has been given are to be discussed at the meeting and other matters may also be raised as general business.
- (6) No resident is obliged to attend or vote at a meeting of residents.
- (7) A resident who does not attend a meeting may appoint someone to act as a proxy. The resident must use the proxy appointment form in Part 3, Schedule 1 of the Retirement Villages Regulation 2009. The proxy appointment has no force if the resident attends the meeting and votes in person.
- (8) No person may hold more than two proxy votes at the same time.
- (9) The following persons are eligible to be appointed as a proxy:
 - (a) a friend or relative of the resident;
 - (b) the resident's guardian;
 - (c) a member of the Residents Committee; or
 - (d) another resident of the retirement village.
- (10) The following persons are not eligible to be appointed as a proxy:
 - (a) an operator; or
 - (b) a close associate of the operator.
- (11) A person who is not a resident must not attend, or remain at, a meeting unless the residents at the meeting consent to the person's presence. This does not apply to the holder of a valid power of attorney, or a proxy, or the NSW Trustee and Guardian.

Notes to section 15:

For matters requiring residents' consent, voting must be held in accordance with the *Retirement Villages Act 1999* and Retirement Villages Regulation.

Appendix A lists the matters that require majority consent of residents and the matters that require a special resolution.

Appendix B summarises the voting procedures set out in the Act and Regulation.

Part 5 – General

16. Use of funds

- (1) Membership fees and/or contributions shall be determined at the annual meeting of residents. Residents may choose not to have any membership fees.
- (2) The Residents Committee's income and assets may only be used in accordance with the objects set out in rule 3.
- (3) Members of the Committee are appointed in a voluntary capacity. No payment, goods or benefit is to be made to members of the Committee other than to reimburse them for expenses incurred with the approval of the Committee.

17. Confidentiality

- (1) The Residents Committee shall not divulge any information provided to it by residents unless it has the consent of the residents concerned.
- (2) The Committee may seek advice from a Government agency or another body or person, on behalf of residents, provided that no action is taken or costs incurred without the residents' consent.

18. Changes to these rules

- (1) These rules may only be altered, rescinded or added to at a general meeting of residents with majority consent.
- (2) These rules are subject to the provisions of the *Retirement Villages Act 1999* and Retirement Villages Regulation. If a rule conflicts with the Act or Regulation the provision of the Act or Regulation prevails.

These rules were adopted/last amended on [insert date]

Appendix A

Matters which require residents' consent under the *Retirement Villages Act 1999*

The following matters require majority consent:

- (a) establishment of a Residents Committee [section 70];
- (b) allowing persons other than residents to attend or remain at meetings [section 75(2)];
- (c) proposed variations of recurrent charges otherwise than by a fixed formula, if the variation exceeds the variation in the Consumer Price Index since the recurrent charges were last varied [section 107(1)];
- (d) proposed annual budgets, unless the recurrent charges have not varied or if the variation does not exceed the variation in the Consumer Price Index since the recurrent charges were last varied [section 114(1)];
- (e) a proposed amendment to an approved annual budget [section 117(1)];
- (f) the appointment of an auditor if audit fees are paid by residents and the auditor to be appointed did not audit the accounts for the previous year [section 118(2)];
- (g) to consent to not having the accounts audited if, in the year in which the consent is given, the total amount of the recurrent charges does not exceed \$50,000, or such other amount as specified in the Regulation [section 119A(1)];
- (h) to revoke the consent referred to in (g) [section 119A(4)];
- (i) to consent to not be given a copy of the quarterly accounts if, in the year in which the consent is given, the total amount of the recurrent charges does not exceed \$50,000, or such other amount as specified in the Regulation [section 119B(1)];
- (j) to revoke the above consent referred to in (i) [section (119B(2))];
- (k) for the operator to distribute the whole or part of any budget surplus to the residents [section 120B(1)];
- (l) whether the whole or part of any surplus portion of the capital works fund should be distributed to residents [section 99(5)];
- (m) to consent to not being supplied with a proposed annual budget if, in the year in which the consent is given, the total amount of the recurrent charges does not exceed \$50,000, or such other amount as specified in the Regulation [section 112(9)];
- (n) to revoke the consent referred to in (m) [section 112(9)].

The following matters require consent by special resolution:

- (a) proposed variations in services or facilities [section 60(3)];
- (b) a proposed amendment to the village rules [section 51(3)];
- (c) a request for the operator to provide a village emergency system [section 59(1)]; and
- (d) using a surplus to make good a deficit that accrued before 23 November 2006 [Schedule 4, clause 20(4)].

Appendix B

Voting requirements for residents' consent

Majority consent

Schedule 1 of the *Retirement Villages Act 1999* sets out how the residents of a retirement village give their majority consent to a proposed measure or action as follows:

- (1) The residents of the village are taken to have given their consent to a particular measure or action if more than 50% of the residents who vote (whether personally or by proxy) on the measure or action consent to it.

This does not apply to a measure or action that requires a special resolution.

- (2) A vote may be taken by means of:
 - (a) a show of hands; or
 - (b) a written ballot conducted in accordance with the Regulation.
- (3) The operator of a retirement village must accept the residents' decision reported to the operator by:
 - (a) an officer of the Residents Committee, or
 - (b) if there is no Residents Committee established for the village, a resident elected as the representative of the residents of the village in relation to the measure or action concerned.

Special resolution

Schedule 7 of the Retirement Villages Regulation 2009 sets out the requirements for a special resolution as follows:

- (1) A resolution concerning the action or measure must be put to a meeting of residents of the retirement village.
- (2) At least 21 days written notice of the meeting must be given to all residents of the village.
- (3) The notice must:
 - (a) set out the resolution;
 - (b) specify that the resolution is to be put as a special resolution;

- (c) specify that residents of the village may submit their vote prior to the meeting in writing (and give directions as to the manner in which such a vote is to be recorded and submitted); and
 - (d) be accompanied by a ballot paper initialled by the returning officer.
- (4) A special resolution must not be considered unless there is a quorum present to consider and vote on the resolution.
- (5) There is a quorum if:
 - (a) a minimum of 5 qualified voters, or 25% of qualified voters (whichever is the greater) attend the meeting; or
 - (b) where the village has fewer than 10 occupied residential premises: the qualified voters from a majority of the occupied residential premises.
- (6) If a quorum is not present within half an hour after the relevant resolution arises for consideration at the meeting, the meeting stands adjourned for at least 7 days.
- (7) At the adjourned meeting, if a quorum is not present within half an hour the qualified voters present personally or by proxy or postal vote constitute a quorum for considering that resolution.
- (8) A special resolution is carried only if it is passed by at least 75% of the number of residents who participate in the ballot.

Notes:

In the case of a majority consent or a special resolution, a former occupant of a retirement village may vote on a measure or action relating to the village if the former occupant is, or would have been, entitled to vote on the measure or action as a resident.

A 'former occupant' is a resident who is no longer living in the village, but who continues to have rights or liabilities under a village contract.