

I have been very involved with the Residents Committee for almost 10 years since the first manager asked me to set up a residents committee. I have had health problems recently and had to resign from the committee last year but am helping the current committee with resolving issues, so I asked Alan Ward, Secretary of the Residents Committee to present the following issues at the RV Ambassadors meeting in Albury.

ORIGINAL QUERIES RAISED.

Kensington Gardens Albury

Registered Interest Holder versus Non Registered Holder

In Kensington Gardens Albury there are 2 forms of contract

- 1. Over 50 Year Lease PLUS over 50% Capital Gain = Registered Interest Holder**
- 2. Over 50 year lease but no capital gain = Non Registered Interest Holder**

Residents Rights which allow for residents to attend and vote at meetings

According to the Act, Contract 1 allows for residents to have a Residents Right but only if the lease is registered which **can and has taken up to 2 years.**

The ACT specifies “Residents Rights” for meetings and voting, so does contract number 2 conform with the ACT?

What can be done to ensure that registration of leases is completed in a timely manner?

Speeding.

A major problem at many retirement villages and in particular our village which has 20K signs that are frequently ignored by residents, employees, contractors and visitors, including hoons.

We have only one speed hump at the entrance but no other method of controlling or adequately monitoring speeders. The design of the village includes long major streets where there is ample time to build up speed whereas many other villages have short streets with speed humps at each junction.

What options are available/used to enforce the speed limit?

ONE OTHER ISSUE I WOULD LIKE TO RAISE. Is it possible to publish a list of accredited Retirement Village auditors for access by residents/residents committees? The accounts at this village are very difficult/confusing for the residents.

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I received 3 phone calls after the Ambassador meeting in Albury and I realised more information was required by you so I did some more research and have included references to reinforce our agreement that there are anomalies in the ACT, particularly registering of leases.

I submit the following to clarify the issues I am concerned about where residents in this village are classified differently. (Approximately 50/50)

a) Registered interest holder

Lease 1. Residence contract is in the form of a **registered long-term lease** (99 years) includes a provision that entitles them to at least 50 per cent of any capital gain.

(These residents are **entitled to a Residents Right**)

b) Non Registered Interest Holder •

Lease 2. Resident contract is in the form of a registered long term Lease (99 years) but the resident is **not** entitled to capital gains •

(Not entitled to Residents Right see Section 7 highlighted below)

All contracts/leases are registered (with Lands.nsw.gov.au) as per Real Property Act Sections 31B, 80A and 96B, although management are taking up to 2 years to actually register and return a copy of the registration to the residents.

Although we agreed during our discussions that SRS would be the best option to follow up the problems with leases, under the RV ACT there is a section 39 relating to the Registration of leases (see highlighted text below).

Retirement Village ACT

LEASE REGISTRATION

39. Operator to give residents and prospective residents copies of village contracts

(3) If a **residence contract** is in the form of a lease that is to be **registered** under the *Real Property Act 1900* , the **operator** must:

(a) lodge the lease for registration within one month after the lease is given to the **operator** in registrable form,

and

(b) provide the **resident** with a copy of the fully-executed lease within 14 days after the lease is returned to the **operator** following its registration.

Maximum penalty: 50 penalty units.

Section 7

Meaning of “registered interest holder”

(1) For the purposes of this Act, a person is the *registered interest holder* with respect to residential premises in a retirement village if:

(c) the person’s residence contract is in the form of a registered long-term lease that includes a provision that entitles the person to **at least 50% of any capital gain.**

(2) *registered long-term lease* means a lease registered under the *Real Property Act 1900* that:

(a) has a term of at least 50 years (including any option to renew),

or

(b) is for the life of the lessee.

residence contract means a contract that gives rise to a **residence right.**

PROBLEM: Currently the people who are Registered Interest Holders are unfairly treated when compared to Non Registered Interest Holders, particularly when exiting the village, except in issues such as insolvency by the operators and the new reform does not adequately address the problem.

Outline of the reform

Registered interest holders will have a maximum period of 6 months for a village in the Sydney Metropolitan Area, and 12 months for villages in other areas, to be paid their exit entitlements by the operator. The provisions of Section 180(2) will still apply. An exit entitlement can be paid by the operator earlier than these two periods if a premises is sold and one of the provisions of section 180(2) is met.

NOTE: 66% of Retirement Villages are outside of the Greater Sydney Area

Issue noted in Inquiry:

The Inquiry noted that the sale of premises by a resident who wants to leave and terminate their contract can be delayed by a number of factors that don’t affect other property markets.

“In particular, the Inquiry noted the power the operator has over the sale of a resident’s premises. For example, former residents reported that operators often promoted the sale of their new developments in a village over residents’ current premises.”

The Act also requires that a contract for a sale of a premises must include a provision that the sale is conditional on a purchaser entering into a service contract with the operator. This can also be a cause for the delay of a sale.

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Confirmation of Inquiry

From my observations and discussions with people who have tried to leave this village I believe that, in villages that are still under development, the operators major objective is the sale of new homes rather than established homes.

There are instances of people in this village who tried to sell for up to 2 years but eventually they gave up, usually due to lack of buyers referred to their homes by management.

Local real estate agents appear reluctant to be involved.

Financial and Mental Stress

People who wish to leave a RV often have the majority of their funds invested in their lease and in many cases are facing a worse financial state than when they entered the Retirement Village due to exit fees and the increase in the cost of other accommodation such as nursing homes and hostels.

Under the current system, particularly for Registered Interest Holders, if they cannot access those funds from their lease for up to 12 months, for example, when they need to go into a hostel/nursing home or to move to where they have a family support base, then they are placed in a very difficult and stressful situation until they can move from the village.

There should **not be any difference in the** ACT between city and regional areas as we find that many of the new residents sell their homes in the cities and move to country areas because they make a profit from the sale of their home which means that they are more able to finance their retirement. Others simply want to get out of the heavily populated areas.

The increasing number of Retirement Villages outside of Sydney is an indicator that operators also recognise the opportunities for profit in regional areas.

So I cannot see the justification for penalising the Registered Interest Holders in this manner.

I totally agree that most of the problems noted in the inquiry are replicated in this village but at last we have more chance of ensuring that residents are treated better.

I hope these comments clarify the issues I have raised and in closing I believe that the changes to the ACT will go a long way towards making a fairer system for Retirement Village residents.

Regards

Ray Healy

23 – 07 - 2019