ARQRV

The Association of Residents of Queensland Retirement Villages Inc

REINSTATEMENT VS REFURBISHMENT (OF ACCOMMODATION UNIT) WHEN LEAVING A RETIREMENT VILLAGE

The ARQRV is a strong consumer protection organisation that represents the interests of residents in retirement villages to governments and scheme operators.

We are a not-for-profit organisation run by volunteers who are themselves residents in a retirement village, so we have first-hand experience of the issues affecting all residents.

We act to inform members of their rights under the *Retirement Villages Act 1999* (RV Act) (as amended) and provide on-going information about issues that are significant to the retirement village lifestyle.

This fact sheet provides detailed information with regard to reinstatement and refurbishment of an accommodation unit when a resident leaves a retirement village.

Reinstatement vs Refurbishment under Division 5 of the *Retirement Villages Act 1999* (Qld)

Division 5 of the *Retirement Villages Act 1999* (the Act) sets out the procedure to be followed when a resident leaves their accommodation unit and the “right to reside” is to be offered to the market.

The number of alternatives created by differing contracts to reside makes a ‘one size fits all’ statement impossible to write when the objective is to optimise the outgoing resident’s financial recovery. Therefore, the following is rather a route map by which this may be calculated.

Division 5 Section 58 of the Act sets out that “necessary reinstatement work” is to be carried out prior to the unit being placed on the market. Note that the Act only refers to **reinstatement** which in layman’s terms means that, if the outgoing resident’s contract so specifies, the accommodation unit must be returned to the condition it was in when the resident moved in.

If the unit was new with all new capital items fitted (cooker, hob, air conditioning equipment, dishwasher etc.) some scheme operators will insist that the existing ones must be new complete with the manufacturer’s warranty (at the departing resident’s expense) while others will accept a previously used item in first class ‘as new’ condition. The same applies to the unit itself where some scheme operators have been known to rip out everything down to the bare shell and fit new ‘everything’ from tiles, to carpets and even light fittings. This has led to several disputes between former residents and scheme operators.

If the unit was not new and the reinstatement carried out prior to the outgoing resident having moved in rendered it in “acceptable and good habitable condition” then a case can be made to return the unit to that condition.

Section 58 (1) of the Act requires the former resident and the scheme operator to “agree in writing on any reinstatement work to be done”. From the above, it can be seen that this is likely to create contentious issues in some instances.

The fact remains that the outgoing resident is responsible for 'reinstatement' only.

When a unit has been occupied for some years and comes onto the market it may not be, despite the obligatory "reinstatement" as above having been carried out, be to the standard that would make the unit attractive to current buyers. In this instance the scheme operator may want (or suggest) a **refurbishment** of the unit to bring it up to the expectation of those potential residents in the market.

It is at this point that things get messy because of the 'who pays' and to 'what standard' does the unit get raised to. As in the case of an ordinary family home it is easy to 'over capitalise' by which is meant to spend more than that will be added to the reinstated value of the unit.

The simplest way to deal with this is for the former resident and the scheme operator to agree to a 'hypothetical value' of the reinstated unit where the former resident has paid the reinstatement figure for which he is obliged under his contract (and have his exit entitlement calculated on that figure) and the scheme operator takes over with the refurbishment as he wishes at his cost but retains all the added value generated. The benefit of this is that the unit should sell in less time and the scheme operator should make an additional profit on the refurbishment cost and (as in some instances where the refurbishing company is either an 'in house' operation or a separate company that just happens to have the same directors as the scheme operator) make a second profit from the refurbishment work.

Some scheme operators will try to get the departing resident to finance the refurbishment on the promise of enhancing their exit entitlement. A careful 'cost benefit analysis' needs to be done and each will be different so no 'one size fits all' rule is possible as stated above.

As an example of the above, if the former resident agrees to pay $10,000 for the unit to be refurbished and gets another $10,000 on the sale price, this would be a poor deal because that $10,000 would be subject to the deferred management fee (of say 30%) meaning that the former resident would only be $7,000 better off. A net loss of $3,000. But if the resident put in the same $10,000 and got an extra $20,000 for the unit, then the $20,000, once subjected to the 30% deferred management fee, would become $14,000, leaving the former resident with an additional $4,000, and most likely a quicker sale.

A sound understanding of the figures involved with each proposition is needed to make the correct decision possible. To be kept in mind also, is that if the unit sells for less than the figure that the scheme operator forecasts, then the departing resident will be liable for the total of the shortfall (less the exit fee payable on that amount).

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July 2018