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Commercial Law e-alert

Retirement Villages Regulation 2009

The Retirement Villages Regulation 2009 is due to commence on 23 December 2009. The draft Regulation has recently been released for consultation purposes. Based on the draft Regulation minimal changes will be required to Disclosure Statements and village contracts but there will be some important changes to the way Retirement Villages are managed.

The closing date for submissions is Wednesday 4 November 2009. Copies of the Regulatory Impact Statement and the proposed draft Regulation are available from the Fair Trading website: www.fairtrading.nsw.gov.au.

The changes proposed in the draft Regulation are not as extensive as they might have been. For example, the requirements for Disclosure Statements and the prescribed list of matters that must or must not be included in village contracts are largely unchanged. But there are other significant changes.

The significant changes include:

- A new definition of **capital maintenance** that includes lists of matters that can or cannot be regarded as capital maintenance. For example, painting of internal surfaces is in whereas painting of external surfaces is out. Other exclusions include work that is required by law (such as complying with fire safety regulations) and maintenance of an item of capital that is carried out for the purpose of enhancement or improvement of the item (whatever that may mean).
- The Regulation specifies those representations that cannot be made by the operator of a retirement village. They include that a person is likely to obtain a capital gain at the time of vacating the village or an estimation of possible variations to future recurrent charges.
- The Retirement Villages Act specifies that the legal and other expenses incurred by the operator in connection with the preparation of a village contract are to be shared equally between the operator and the resident. However, the Act also states that the amount a resident can be charged may be capped. The draft Regulation caps the maximum amount that a resident may be charged at \$200 per village contract.
- The time by which a condition report must be given to a prospective resident – at least 14 days before the prospective resident and the operator enter into a village contract or, if the premises are still being constructed, 14 days before the prospective resident occupies the premises.
- The Regulation lists matters that must not be financed by way of recurrent charges. These include costs associated with marketing vacant units within a retirement village, payroll tax unless it is solely attributable to the operation of the retirement village, certain costs associated with the operator's head office and any flat rate management or administration fee.
- Matters that must be included in the agenda for the annual management meeting will also be prescribed.
- If a village contract is terminated during the 90 day settling in period, the former resident is liable to pay fair market rent, costs incurred in relation to the unit at their specific request and a reasonable administration fee which cannot exceed the amount prescribed by the Regulation. That amount has been set at \$200.

In due course we will advise on the final form of the new Retirement Villages Regulation.

In the meantime, if you have any questions about the draft Regulation please contact:

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