

Queensland



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**No. 79 of 1988**

**An Act to provide with respect to the establishment and  
conduct of retirement villages and for related purposes**

[ASSENTED TO 11TH NOVEMBER, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

#### PART I—PRELIMINARY

**1. Short title.** This Act may be cited as the *Retirement Villages Act 1988*.

**2. Commencement.** (1) Section 1 and this section shall commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as is provided by subsection (1), this Act or the provisions thereof specified in the Proclamation shall commence on a day or days appointed by Proclamation for the commencement of this Act or, as the case may be, those provisions.

**3. Arrangement.** This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-14);

PART II—SCHEMES FOR RETIREMENT VILLAGES (ss. 15-20);

PART III—RESIDENCE CONTRACTS (ss. 21-31);

PART IV—CHARGES ON RETIREMENT VILLAGE LAND (ss. 32-40);

PART V—SECURITY OF TENURE OF RESIDENTS IN RETIREMENT VILLAGES (ss. 41-43);

PART VI—OPERATION OF SCHEMES FOR AND CONDUCT OF RETIREMENT VILLAGES (s. 44-46);

PART VII—RESIDENTS' PARTICIPATION (ss. 47-51);

PART VIII—MISCELLANEOUS (ss. 52-60).

**4. Intention concerning Act's application.** It is the intention of the Parliament that this Act should apply in relation to any scheme for a retirement village, the person or persons who operate any scheme for a retirement village and inducements and invitations to participate in any scheme for a retirement village where—

(a) the retirement village is or is to be situated in Queensland irrespective of where the scheme for the retirement village is operated or the inducements or invitations to participate in the scheme are given, uttered or published;

or

(b) the scheme for the retirement village is operated in Queensland irrespective of where the retirement village is or is to be situated or the inducements or invitations to participate in the scheme are given, uttered or published,

except where a contrary intention appears or such an application of a provision of this Act would be in excess of the legislative power of the Parliament.

**5. Limited preservation of authority of Commissioner for Corporate Affairs.** A person who immediately before the commencement of this section is authorized by the Commissioner for Corporate Affairs to conduct a retirement village is entitled—

- to conduct the retirement village;
- to promote the retirement village;
- and

to make residence contracts and other contracts in relation to the retirement village,

pursuant to and in accordance with that authority for a period of 12 months commencing on the date of commencement of section 16 and while he exercises his entitlements conferred by this section within that period the provisions of this Act, other than this section, shall not apply in relation to the retirement village.

**6. Interpretation.** (1) In this Act, except where a contrary intention appears—

“advertisement” includes an advertisement made—

- (a) by publishing a statement or claim in any newspaper, magazine, circular, pamphlet, handbill, notice or document;
- (b) by communicating a statement or claim by means of a broadcast transmission, television transmission or cinematograph;

or

- (c) in any other prescribed manner;

“annual meeting” means—

- (a) in respect of a retirement village to which section 47 (2) does not apply the annual meeting convened under section 47 (1);
- (b) in respect of a retirement village to which section 47 (2) applies, the annual general meeting of the body corporate conducting the retirement village held according to law;

“by-laws” means provisions relating to—

- (a) the control, management, administration or use and enjoyment of a retirement village;

or

- (b) the provision of goods or services to residents in a retirement village,

other than provisions of that description that are conditions of a residence contract, or other contract made between a resident or prospective resident of the retirement village, and the person who operates the scheme for the village or the manager of the village, being provisions expressly set out in the contract;

“existing retirement village” means a retirement village that is being conducted at the commencement of section 15;

- “in-going contribution” means a payment that is made with a view to securing, by itself or with other acts, a right (whether enforceable or not) to reside in a retirement village but does not include a payment made recurrently by way of rent, fees or charges;
- “manager” means in relation to a retirement village the person in charge of the day to day conduct of the village;
- “Minister” includes any Minister of the Crown for the time being performing the duties of the Minister;
- “owner” does not include the Crown and, in relation to land held on leasehold tenure from the Crown, means the lessee thereof;
- “prescribed period” means—
- (a) in respect of a retirement village for which there is not a body corporate within the meaning of the *Building Units and Group Titles Act 1980-1988*, the period of 12 months ending three months before the date on which the annual meeting is to be held;
  - and
  - (b) in respect of a retirement village for which there is a body corporate within the meaning of the *Building Units and Group Titles Act 1980-1988*, the period to which the accounts presented to the annual meeting of that body is required by the provisions of that Act to relate;
- “refundable in-going contribution” means so much of an in-going contribution as is, under a residence contract or this Act refundable or payable to any person or to an estate upon the death of a resident or the occurrence of any other event;
- “registrar” means the person for the time being holding the appointment, Registrar of Retirement Villages, referred to in this Act and includes any person for the time being performing the duties of the registrar;
- “residence contract” means a contract made under a scheme for a retirement village with a person controlling the operation of the scheme or his agent that purports to confer on a person or gives rise to a right to reside in a retirement village or that provides for or gives rise to obligations on the part of any person in connexion with residence (whether by that person or another) in a retirement village;
- “resident” means in relation to a retirement village a person who is entitled to reside in the village pursuant to a residence contract;
- “residents’ committee” means a committee formed under Part VII by residents in a retirement village;

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“retirement village” means premises conducted or promoted as suitable for the use (exclusively or primarily) by elderly or retired persons in respect of which premises—

- (a) a person acquires, in consideration of the payment of an in-going contribution—
  - a right of residence, from whatever right, title or interest the right of residence may accrue;
  - and
  - a right to receive a service, pursuant to one contract or more than one contract if, in the case of more than one contract, the making of each contract is dependent on the making of each other contract; and
- (b) the person who has the right of residence either—
  - cannot validly dispose of that right to another;
  - or
  - is subject to a restriction as to the manner in which or the person to whom he may dispose of that right during his lifetime to another;

“retirement village land” means the whole of land used or to be used for the purposes of a retirement village and in the case of land included on a building units plan within the meaning of the *Building Units and Group Titles Act 1980-1988* includes the lots and common property into which that land is subdivided;

“service” means any of the following:—

- (a) management and administrative service;
- (b) gardening, repair or maintenance service;
- (c) hospital, nursing or medical services including accommodation;
- (d) shop or other service for the provision of goods to residents;
- (e) hostel accommodation;
- (f) laundry service;
- (g) the provision of meals;
- (h) service or facility for the recreation or entertainment of residents;
- (i) any other service for the benefit, care or enjoyment of residents;

“special resolution” means a resolution which—

- (a) is passed at a meeting of residents of a retirement village of which meeting at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given to all such residents;

and

- (b) is passed at a meeting such as is referred to in paragraph (a) by a majority of not less than three quarters of the persons entitled to vote and voting at that meeting;

“utter” means, in relation to a document or other writing, to use or deal with or to attempt to induce any person to use, deal with or act upon the document or other writing.

(2) For the purposes of this Act, a scheme for a retirement village includes—

- (a) particulars of all buildings and recreational facilities that are or will be available in connexion with the scheme upon the completion of the final stage thereof;

- (b) particulars of the land on which such buildings and facilities are or will be erected;

and

- (c) particulars of the terms, conditions, entitlements and obligations by reference to which persons are or will be invited to participate in the scheme.

**7. Administration of Act.** (1) This Act shall be administered by the Minister and subject to him by the registrar.

(2) There shall be appointed from time to time a person to be Registrar of Retirement Villages and there may be appointed from time to time such number of deputy registrars and other officers as is necessary for the proper administration of this Act.

(3) A person appointed to the office of registrar or deputy registrar may hold that office in conjunction with any other office he may hold in the Public Service of Queensland.

**8. Role and powers of deputy registrars.** (1) A deputy registrar and any person acting in the office of a deputy registrar shall act in aid of the registrar.

(2) In the event of a vacancy in the office of the registrar or of the absence or incapacity of the registrar, a deputy registrar or other person acting in that office shall have and may discharge and exercise all of the functions, duties and powers of the registrar.

(3) It is competent to a deputy registrar or a person acting in the office of a deputy registrar to discharge and exercise the functions, duties and powers of the registrar, subject always to any directions given or supervision exercised by the registrar in respect thereof and such discharge or exercise of such functions, duties and powers shall be as valid and effectual as if it were carried out by the registrar.

**9. Appointments and signatures need not be proved.** It shall not be necessary to prove the appointment or signature of the registrar, deputy registrar or a person acting in the office of any of them in any court or to any person acting judicially or holding any position of a public nature

and every such court or person shall presume that every document purporting to have been issued by the registrar, a deputy registrar or person so acting has been duly made and issued unless the contrary is proved.

**10. Protection in administering Act.** No act or thing done or omitted by a person in the administration of this Act or done or omitted in good faith and without negligence by a person purporting to be acting in the administration of this Act shall render the Crown, the Minister, the registrar or that person liable in damages in respect thereof.

**11. Act not to apply in certain circumstances.** (1) This Act shall not apply to nursing homes conducted in accordance with a licence granted under Division XIA of Part III of the *Health Act 1937-1987*.

(2) Any religious or charitable organization or any organization that renders services for the benefit of the community may apply to the Minister to have the organization declared an exempt organization for the purposes of all or any of the provisions of this Act.

(3) Any person or persons who operate or propose to operate a scheme for a retirement village may apply to the Minister to have that retirement village declared to be an exempt retirement village for the purposes of all or any of the provisions of this Act.

(4) An application under subsection (2) or (3)—

- (a) shall state why the exemption is sought;
- (b) shall state whether the exemption sought is from the application of all provisions or particular provisions only of this Act and, if the latter, shall specify which provisions.

(5) The Minister may require an applicant for exemption to give such further information in respect of the application as he sees fit, and may, if he thinks it appropriate, refer the application to the registrar for his comments.

**12. Power to exempt.** (1) The Governor in Council, upon the recommendation of the Minister, may, by Order in Council, make any of the following declarations, whether or not an application therefor has been made under section 11:—

- (a) that an organization, such as is referred to in section 11 (2) is an exempt organization;
- (b) that a retirement village is an exempt retirement village.

(2) An exemption declared under subsection (1)—

- (a) may be unconditional or subject to conditions, as the Governor in Council thinks fit;
- (b) may be without limit of time or for a limited period, as the Governor in Council thinks fit;
- (c) may be an exemption from the application of all provisions of this Act or of the provisions of this Act specified in the Order in Council, as the Governor in Council thinks fit.

**13. Power to withdraw or vary exemption.** (1) The Minister may cause notice to be given to an organization that is exempt pursuant to an order made under section 12 or to a person who operates or proposes to operate a retirement village that is exempt pursuant to an order made under section 12 calling upon the organization or person to show cause, at a time and place and to a person specified in the notice, why the exemption should not be withdrawn or varied.

(2) If at the time and place specified in the notice or other time and place to which the show cause proceeding may be adjourned cause is not shown, to the satisfaction of the Minister, why the exemption in question should not be withdrawn or varied, the Governor in Council, upon the recommendation of the Minister, may, by Order in Council, withdraw the exemption or, as the case may be, vary the terms of the exemption.

**14. Notification and consequence of exemption etc.** (1) Notification in writing of an exemption declared under section 12 or of a withdrawal or variation of an exemption pursuant to section 13 shall be given, as soon as is practicable, to—

the organization that the exemption concerns;

or

the person who operates or proposes to operate the retirement village that the exemption concerns.

(2) For as long as an exemption continues and the conditions (if any) of the exemption are complied with, the organization that the exemption concerns or, as the case may be, the person who for the time being operates or proposes to operate the retirement village that the exemption concerns shall not be subject to the application of the provisions of this Act to the extent specified by the exemption.

(3) Where the terms of an exemption have been varied the exemption referred to in subsection (2) is the exemption as last so varied.

## PART II—SCHEMES FOR RETIREMENT VILLAGES

**15. Notification of retirement villages.** Every person who operates a scheme for an existing retirement village shall within three months after the commencement of this section, furnish to the registrar full and complete particulars of the scheme.

Penalty: where the offender is an individual, 50 penalty units;

where the offender is a corporate entity, 200 penalty units.

**16. Promotion of retirement village requires approval.** (1) A person who operates a scheme for a retirement village shall not—

(a) induce or attempt to induce, or invite any person to participate in a scheme for a retirement village, whether by way of his residence in the village or his making of an in-going contribution or his doing any other act;

(b) utter any document or other writing or publish any advertisement calculated to induce or invite any person



(whether a particular person or not) to participate in a scheme for a retirement village in any of the ways referred to in paragraph (a);

or

(c) extend any existing retirement village in Queensland,

unless—

(d) the approval of the registrar has first been obtained in respect of the scheme for that retirement village;

(e) such of the conditions to which the approval is subject as are required to be complied with by the person who operates the scheme prior to his taking any action of a kind referred to in paragraph (a), (b) or (c), are complied with;

and

(f) all other conditions to which the approval is subject are complied with by that person within the period or periods of time specified for that purpose in the instrument of approval.

Penalty: where the offender is an individual, 100 penalty units or 2 years' imprisonment or both;

where the offender is a corporate entity, 400 penalty units.

(2) For the purposes of subsection (1), a scheme for a retirement village that has been approved by the registrar shall be deemed not to have been so approved if any particular of the scheme as furnished to the registrar has been altered materially without the approval of the registrar.

(3) Paragraphs (a) and (b) of subsection (1) apply in respect of existing retirement villages and retirement villages that come into existence after the commencement of this section.

**17. Application for approval.** (1) Application for approval of the registrar to a scheme for a retirement village shall be lodged with the registrar.

(2) The registrar shall not approve of a scheme to which an application relates unless he is satisfied—

(a) that he has knowledge of the name and place of residence of every person who is or will be in the foreseeable future controlling the operation or the promotion of the scheme and the qualification (if any) of each such person;

(b) that he has been informed of the method of service of documents on the person or persons controlling the operation of the scheme and that he approves of that method;

(c) in relation to—

(i) the financial ability of the person or persons controlling

- 
- the operation of the scheme to establish the retirement village and to continue to operate the scheme;
- (ii) all particulars of the scheme, including the provisions thereof to be utilized upon a failure of the scheme;
  - (iii) the contents of all documents relating to the scheme that are to be published for the information of the public;
  - (iv) all other matters that are prescribed or that the registrar considers relevant;
- (d) that Local Authority approval has been given to the establishment of the retirement village on the site indicated in the application where that approval is required by law.
- (3) The registrar shall not be satisfied in relation to the matter referred to in subparagraph (iii) of paragraph (c) of subsection (2) unless the document in question contains the following particulars:—
- (a) the tenure on which or the authority under which residents of the retirement village occupy the premises occupied by them and the term for which they are entitled to occupy those premises;
  - (b) the entitlement (if any) of residents of the retirement village to use parts of the village other than the premises occupied by them;
  - (c) notification of all services to be provided to residents of the retirement village under the scheme for the village;
  - (d) the form and contents (so far as they are established) of the contract to be made under the scheme for the retirement village with persons wishing to become residents of the village;
  - (e) notification of the documents that will be given to residents of the retirement village as evidence of their entitlements therein;
  - (f) notification of the control (if any) over the retirement village to be exercised by the residents of the village.
- (4) For the purposes of the law relating to defamation it shall be accepted that—
- (a) the registrar and officers acting in aid of him in relation to approving of any person for the purposes of this Act have an interest in knowing the truth concerning the reputation and character of that person;
- and
- (b) there are reasonable grounds for belief by any person of whom enquiry is made for information that the registrar and such officers have the interest referred to in paragraph (a).

**18. Registrar may impose conditions on approval.** (1) The registrar may—

- (a) subject his approval of a scheme for a retirement village to such conditions as he thinks fit and specifies in the instrument of approval;
- (b) by instrument in writing given to the person or persons controlling the operation of a scheme for a retirement village, impose conditions on his approval of the scheme previously given;
- and
- (c) by instrument in writing given to the person or persons controlling the operation of a scheme for a retirement village, vary or add other conditions for the conditions to which his approval of the scheme is for the time being subject.

(2) Without limiting the generality of subsection (1), the registrar may subject his approval of a scheme for a retirement village to a condition that every in-going contribution and every other payment of money whether by way of deposit or otherwise in respect of a residence contract shall be paid directly into such trust account as is specified by the registrar and retained therein until all conditions in respect of the construction of the retirement village or, if the retirement village concerned is to be constructed in stages, of the relevant stage of the retirement village, are complied with.

If the provisions of this subsection are inconsistent with a provision of the *Land Sales Act 1984-1985*, the provision of that lastmentioned Act to the extent of the inconsistency shall prevail.

(3) For the purposes of this Act, the registrar's approval of a scheme for a retirement village shall be taken to be subject to conditions to which it was subjected in the first instance, or which are imposed on it by the registrar at any time, or as varied or substituted for the time being by the registrar, as the case may be.

**19. Revocation of approval.** If the registrar is satisfied that revocation of his approval of a scheme for a retirement village is necessary in order to protect the persons who may be invited or induced to participate in the scheme, whether by way of residing in the village or of making an in-going contribution or doing any other act—

- (a) he shall give to each person controlling the operation of the scheme 14 days' notice in writing of his intention to revoke his approval of the scheme;
- and
- (b) he may, upon the expiry of the period of such notice, by instrument in writing given to each such person revoke his approval of the scheme,

whereupon the scheme shall be taken to be one in respect of which the approval of the registrar has not been obtained.

**20. Ministerial review of registrar's decisions.** (1) A person aggrieved by the registrar's—

refusal to approve a scheme for a retirement village;  
conditional approval of a scheme for a retirement village;  
or

revocation of his approval of a scheme for a retirement village,  
may, within 14 days after his receipt of notification of the registrar's decision, apply to the Minister for a review by the Minister of the decision.

(2) The Minister's decision upon such a review shall be deemed to be that of the registrar and shall be given effect accordingly.

(3) Where the Minister's decision overturns a revocation of the registrar's approval it shall be deemed that the revocation has not taken effect.

### PART III—RESIDENCE CONTRACTS

**21. Residence contracts exempt from certain sections.** Section 22, 24, 27 or 28 does not apply in relation to a residence contract made before the commencement of that particular section.

**22. Residence contracts to be under approved scheme.** (1) A person controlling the operation of a scheme for a retirement village or his agent shall not make a residence contract in relation to the retirement village unless the registrar's approval of the scheme has first been obtained.

Penalty: where the offender is an individual, 100 penalty units or 2 years' imprisonment or both;  
where the offender is a corporate entity, 400 penalty units.

(2) Subsection (1) does not apply to a residence contract made to pass or surrender to a person controlling the operation of a scheme for a retirement village or his agent ownership of a part of the retirement village or a right of residence therein.

(3) For the purposes of subsection (1) a scheme for a retirement village that has been approved by the registrar shall be deemed not to have been so approved if any particular of the scheme as furnished to the registrar has been altered materially without the approval of the registrar.

**23. Public information documents incorporated in contracts.** (1) Where the registrar has approved a scheme for a retirement village he shall enter in a register kept by him a copy of each document relating to the scheme that is to be published for the information of the public and the contents of each such document so entered shall be deemed to be incorporated in and to form part of every residence contract made under the scheme by a person controlling the operation of the scheme or his agent.

(2) If, having regard to the circumstances material to a retirement village at a particular time, the registrar considers that a document entered in a register under subsection (1) should be altered, he may, by instrument in writing, require the person or persons controlling the operation of the scheme to which the document relates to submit to the registrar a fresh document of a similar description but altered in the manner considered by the registrar to be required with a view to the fresh document being considered and accepted by the registrar.

(3) When a fresh document referred to in subsection (2) has been accepted by the registrar it shall be entered as prescribed by subsection (1) and the contents of the fresh document shall be deemed to be incorporated in and to form part of every residence contract such as is referred to in subsection (1) in lieu of the contents of the document that it has replaced, being a contract made after the registration of the fresh document and before the fresh document is itself replaced by a further document entered as prescribed by subsection (1).

**24. Certain provisions of residence contracts negated.** A provision of a residence contract made by a person controlling the operation of a scheme for a retirement village or his agent that—

- (a) purports to exclude the operation of any provision of this Act or any of the contents of a document registered under section 23 (being contents that under that section are to be deemed to be incorporated in and to form part of the contract);
- (b) purports to or operates so as to restrict the discretion of any person in his nomination of a holder of money or of documents in escrow under section 28;  
or
- (c) is inconsistent with any of the contents of a document referred to in paragraph (a),

is, in the case referred to in paragraph (a) or (b), null and void and, in the case referred to in paragraph (c), of no effect to the extent of the inconsistency.

**25. Enforcement of residence contracts.** (1) Subject to section 26 in relation to refundable in-going contributions, a residence contract, whether made before or after the commencement of this section, is enforceable against—

- (a) a party to the contract;
- (b) a person who is not a party to the contract if at the time the contract is made that person is—
  - (i) a person controlling the operation of the scheme;  
or
  - (ii) an owner of the retirement village land;
- (c) a person who is not a party to the contract if at the time the contract is to be enforced that person is—
  - (i) a person controlling the operation of a scheme for that retirement village;

or

(ii) an owner of the retirement village land.

(2) A person referred to in paragraph (c) (ii) of subsection (1) who is not also a person referred to in paragraph (b) (ii) of that subsection is liable to have a residence contract enforced against him only if, at the time enforcement is sought, the land in question is being used for the purposes of a retirement village.

(3) A residence contract may be enforced, pursuant to this section, against a person who is not a party to the contract as if he were such a party, and for this purpose he shall be deemed to be a party to the contract having the same obligation thereunder as the person who under the contract has the obligation that is sought to be enforced.

**26. Exception to recovery of refundable in-going contribution.** An obligation arising under a residence contract to honour an entitlement to recover a refundable in-going contribution or part thereof is not enforceable against a person referred to in paragraph (c) (ii) of section 25 (1) who is not also a person referred to elsewhere in that subsection if he became owner of the retirement village land by his being a bona fide purchaser for value of that land from a mortgagee exercising power of sale under a mortgage created over that land before the commencement of section 33.

**27. Avoidance of residence contracts.** (1) Withdrawal of an exemption granted pursuant to section 11 or revocation of an approval granted pursuant to section 19 shall not affect the validity of or entitlements or obligations under a residence contract made before the withdrawal or revocation takes effect, but the party to the contract who made it with a view to securing a right of residence in the retirement village concerned may—

(a) in the case of the withdrawal of an exemption, within seven days from and after he becomes aware of that withdrawal;  
or

(b) in the case of the revocation of an approval—

(i) where no application for review is made under the provisions of this Act against that revocation, within seven days from and after the last day for the making of such an application for review under this Act or within seven days from and after the day he becomes aware of that revocation, whichever period is the later;

(ii) where an application for review has been duly made under this Act against that revocation, within seven days after he becomes aware of a decision being made by the Minister not to overturn that revocation of approval,

rescind the contract as prescribed by subsection (4) on the ground of such withdrawal or revocation.

(2) A residence contract is not invalid or unenforceable by reason that it was made in contravention of section 22 (1), but the party to

the contract who made it with a view to securing a right of residence in the retirement village concerned may, within seven days after he becomes aware of the contravention, rescind the contract as prescribed by subsection (4) on the ground of such contravention.

(3) A party to a residence contract who made it with a view to securing a right of residence in a retirement village may, at any time within seven days after the day on which he entered into the contract, rescind the contract as prescribed by subsection (4).

(4) Rescission of a residence contract pursuant to this section may be effected by notice in writing given by or on behalf of the rescinding party to the other party or parties to the contract or to the solicitor for the other party or each of the other parties.

**28. Property disposed of pending rescission under s. 27 (3).** (1) If a party to a residence contract who is entitled under section 27 (3) to rescind the contract pays money or assigns other property for the purposes of the contract before the time within which he may rescind has expired, this section shall be complied with.

(2) Money referred to in subsection (1) shall be paid directly to the Public Trustee constituted by the *Public Trustee Act 1978-1985* or, if the parties to the residence contract agree, to—

(a) a person whose name is on the roll of solicitors of The Supreme Court of Queensland and who practises as a solicitor in Queensland;

or

(b) a real estate agent licensed under the *Auctioneers and Agents Act 1971-1988*,

specified in the contract, to be held in trust in accordance with this section.

(3) An instrument of assignment of property referred to in subsection (1) together with the relevant instrument of title (if it is available) shall be deposited in escrow, in a place nominated by the assignor, conditioned as prescribed by this section.

(4) Upon rescission of a residence contract pursuant to section 27 (3)—

(a) money held in trust pursuant to subsection (2) shall be paid to the person by whom it was paid for the purposes of the contract;

(b) an instrument of assignment held in escrow pursuant to subsection (3) shall be released to the assignor;

and

(c) an instrument of title held in escrow pursuant to subsection (3) shall be released to the person from whom it was received into escrow.

(5) Upon expiry of the time within which a residence contract may be rescinded pursuant to subsection 27 (3), if the contract has not then been rescinded—

- (a) money held in trust pursuant to subsection (2) shall be applied to the purposes of the contract;
- and
- (b) an instrument of assignment or of title held in escrow pursuant to subsection (3) shall be released so as to give effect to the contract.

**29. Procedure in face of breach of s. 28.** (1) A person who, contrary to section 28, has acquired property by way of assignment made in performance of a residence contract by or on account of a party to the contract who has duly rescinded the contract pursuant to section 27 (3) shall, forthwith upon such rescission, assign the property, free of all interests, mortgages and charges to which the property has become subject since he acquired it, to the person from whom he acquired it or as that person directs in writing.

(2) A person who has in his control an instrument of title that relates to property referred to in subsection (1) shall, upon the request of or on behalf of the person to whom the property is to be assigned as required by that subsection, produce the instrument for registration of the assignment and issue of a fresh instrument of title and a release of all such interests, mortgages and charges as are referred to in that subsection.

(3) The costs, expenses, duties and charges associated with an assignment required by subsection (1) to be made shall be the liability of the assignor and shall not be charged against the assignee.

(4) This section shall be construed subject to section 27.

**30. Case where s. 29 cannot be complied with.** Where a person who has acquired property as referred to in section 29 (1)—

- (a) has disposed of ownership thereof so that he no longer has control of it when he is required by that section to assign the property;
- or
- (b) is unable to discharge such interests, mortgages and charges as are referred to in that section when he is required by that section to assign the property,

the person controlling the operation of the scheme for the retirement village concerned shall be liable (and if more than one, jointly and severally so liable) to pay to the person from whom the property was acquired or as he directs in writing the full and true value of the property as at the time the residence contract in question was rescinded.

**31. Recovery of money due and enforcement of ss. 28 to 30.** (1) A person entitled pursuant to section 28 (4) or 30 to payment of money may recover the amount thereof in any court of competent jurisdiction



as a debt due and owing to him by the person required by the relevant provision of this Act to make the payment.

(2) Without prejudice to the jurisdiction of any court in an action for a debt referred to in subsection (1), it is declared that the Supreme Court's jurisdiction includes jurisdiction to make all such orders as appear to it to be necessary or desirable to enforce the provisions of section 28, 29 or 30.

#### PART IV—CHARGES ON RETIREMENT VILLAGE LAND

**32. Application of Part.** (1) This Part applies only in relation to a retirement village or a part of a retirement village where entitlement to reside in the village or that part depends upon the holding of a tenure or a right other than an estate in fee simple in any part of the retirement village.

(2) Where this Part applies in relation to a part only of a retirement village the expression "the retirement village land" when used in this Part means the whole of the land used or to be used for the purposes of a retirement village in that part.

**33. Creation of charge over retirement village land.** (1) As soon as practicable after he has approved a scheme for a retirement village the registrar shall, by notification in the prescribed form lodged with the public officer charged with maintaining a register of title to the retirement village land, give notice that on and from the date of his approval of the scheme (which date shall be specified in the notice) there exists a statutory charge over the whole of the retirement village land identified in the notification.

(2) Upon the giving of notice under subsection (1) the whole of the retirement village land to which the notice relates shall become and be subject to a statutory charge that secures for the benefit of each resident in the village the entitlements referred to in section 34.

(3) A statutory charge created under this section shall be deemed to have come into being and to encumber the subject land on the date of the registrar's approval of the scheme for the retirement village whose land is subject to the charge.

(4) The public officer with whom a notice is lodged under subsection (1), upon request made by the registrar, shall cause to be made in the appropriate register maintained by him all such entries as are necessary to record the existence of the statutory charge on the title to the land identified in the notice.

This subsection shall be given effect notwithstanding—

- (a) that there exists a caveat affecting the retirement village land;
- or
- (b) that any copy of the relevant instrument of title is not produced for endorsement.

(5) A notice given under subsection (1) and a request to register the same are exempt from the payment of stamp duty under the *Stamp Act 1894-1987* and no fees are payable in connexion with giving effect to subsection (4) in respect thereof.

**34. Nature of charge.** A statutory charge notified under section 33 secures in the manner prescribed—

- (a) due performance of every residence contract made under the scheme for the retirement village to whose land the notice given under section 33 relates;
 

and
- (b) payment of all money payable to any person in connexion with a residence contract made under the scheme for the retirement village to whose land the notice given under section 33 relates, whether payment of the money is provided for by the residence contract or by this Act.

**35. Priority of charge.** A statutory charge notified under section 33 has priority over all interests, mortgages and other charges existing in or over the retirement village land to which the notice given under that section relates other than—

- (a) interests, mortgages and charges existing in or over the land at the time this section commences;
 

and
- (b) a charge created by any Act or law of the Commonwealth, which pursuant to that Act or law has priority over other charges;
 

and
- (c) a charge created by any Act or law of the State which pursuant to that Act or law has priority over other charges.

**36. Enforcement of charge.** (1) Where a court order—

- (a) for the payment of damages on account of non-performance of a residence contract;
 

or
- (b) for the payment of other money for which this Act provides in connexion with a residence contract,

to a resident, a former resident or a prospective resident of a retirement village or to any other person is not satisfied within a period of six months from the making of the order or from the expiry of a period within which it should have been satisfied according to the terms of the order (whichever period is later to expire) and the retirement village land to which the residence contract relates is subject to a statutory charge created under section 33, a person in whose favour the court order was made, upon serving notice on the registrar of his intention to make such an application may, subject to subsection (2), apply to the Supreme Court for an order that the retirement village land subject to the statutory charge be sold.

(2) Where the unsatisfied court order requires payment of a refund of an in-going contribution it is not competent to a person to undertake recovery of the judgment by way of application under subsection (1) unless the amount of the refund involved exceeds \$10 000 or such other amount as is for the time being prescribed by the regulations for the purposes of this subsection.

(3) Unless the court orders to the contrary, where application for an order to sell is duly made the applicant shall cause the occupiers of the retirement village land subject to the statutory charge to be given notice of the application informing them of their right to be heard thereon.

Every occupier of retirement village land to which the application relates and every other person who appears to the court to have a sufficient interest in the matter of the application is entitled—

- (a) to be joined as a party to the proceedings;
- (b) to be heard on the matter of the application.

(4) If the court that hears the matter of the application is satisfied—

- (a) that the court order on which the application is founded remains unsatisfied and is not likely to be satisfied by any other recourse open to the applicant;

and

(b) that—

- (i) all the residents of retirement village land subject to the statutory charge have consented to the making of the application;

or

- (ii) it is in the best interests of all the residents of retirement village land subject to the statutory charge that the application be granted,

the court may order a sale of the retirement village land subject to the statutory charge (by auction, tender or private treaty as the court thinks fit to order) and may appoint a person to act as vendor's agent to arrange, negotiate and complete the sale in accordance with the court's order and jurisdiction is conferred on the Supreme Court accordingly.

(5) An order for the sale of retirement village land shall be sufficient authority for the sale of the estate, title and interest therein of the owner of the retirement village land free of all existing encumbrances liens and interests except such encumbrances liens and interests (other than the statutory charge created under section 33 to which the application related) as the court thinks should be preserved and specifies in its order, notwithstanding the existence of any caveat affecting the land or the exercise of any lien on the relevant instrument of title or the provisions of any other Act and the vendor's agent appointed by the court is empowered to pass and convey to the purchaser that estate, title and interest.

(6) The proceeds of sale of retirement village land pursuant to a court order made upon an application under subsection (1) shall be applied as follows:—

- (a) firstly, in payment of the costs of the sale and the applicant's costs in seeking an order for sale of the land;
- (b) secondly, in payment of moneys duly payable under any mortgage or charge that ranks in priority ahead of the statutory charge created under section 33 and to which the application related, being a mortgage or charge to which the land sold is not to continue to be subject following the sale;
- (c) thirdly, in satisfaction of the court order on which the application was founded;
- (d) fourthly, in payment of refunds of in-going contributions payable to persons, whose whereabouts are known, pursuant to residence contracts made under the scheme for the village or pursuant to the scheme itself, being residence contracts or a scheme that are or is not to continue in being in relation to the land sold following the sale;
- (e) fifthly, in payment of moneys payable under any mortgage or charge that ranks in priority after the statutory charge created under section 33 and to which the application related, being a mortgage or charge to which the land sold is not to continue to be subject following the sale;
- (f) sixthly, in payment to or at the direction of the person who was owner of the retirement village land immediately before the sale.

**37. Extinguishment of charge.** A statutory charge created under section 33—

- (a) shall be extinguished in respect of the retirement village land subject to it upon its release by the registrar pursuant to this Part;  
and
- (b) shall be extinguished in respect of retirement village land subject to it that is sold under a court order made under section 36 upon the sale of that land under the order, except where the land is to continue to be used for the purposes of a retirement village.

**38. Where land ceases to be retirement village land.** (1) Where land has wholly ceased to be used for the purposes of a retirement village the person who controlled the operation of the scheme for the retirement village on the land may apply in or to the effect of the prescribed form to the registrar to release the statutory charge created under section 33 to which the land is subject.

(2) Upon making such an application the applicant shall cause to be given to each person currently residing on the land who was a

resident there when the land was being used for the purposes of a retirement village a notice in writing informing him—

- (a) that the application has been made for release of the statutory charge;
- (b) what the consequences to him will be if the statutory charge is released;
- and
- (c) that he is entitled to lodge with the registrar an objection in writing to release of the statutory charge within 60 days of the receipt by him of the notice.

(3) When he has complied with the provisions of subsection (2) the applicant shall lodge with the registrar—

- (a) a statutory declaration made by the applicant as to—
  - the facts of his compliance;
  - and
  - whether he has any knowledge or reason to suspect that any person has commenced or is likely to commence proceedings leading to enforcement of the charge under section 36;
- and
- (b) a copy of the notice (if any) given to residents in compliance with subsection (2).

(4) If the registrar is satisfied that—

- (a) an application for release of a statutory charge duly made to him is one permitted by this section;
- (b) the applicant has complied as necessary with subsections (2) and (3);
- and
- (c) having regard to any objections by residents lodged with him within the period of 60 days referred to in subsection (2), it is appropriate to grant the application,

the registrar shall, by notification in the prescribed form lodged with the public officer to whom notice of the statutory charge was given under section 33, give notice that the statutory charge is no longer effective.

**39. Land to be excised from retirement village land.** (1) If the person who controls the operations of a scheme for a retirement village proposes that part of the land used for the purposes of the village should cease to be so used, he may apply in or to the effect of the prescribed form to the registrar to release the statutory charge created under section 33 to which the land is subject, so far as it relates to that part.

(2) Upon making such an application the applicant shall cause to be given to each resident of the retirement village a notice in writing informing him—

- (a) that the application has been made for release of the statutory charge so far as it relates to the part in question;
- (b) what the consequences to him will be if the statutory charge is released;
- and
- (c) that he is entitled to lodge with the registrar an objection in writing to release of the statutory charge within 60 days of the receipt by him of the notice,

and identifying for the resident the part in question.

(3) When he has complied with the provisions of subsection (2) the applicant shall lodge with the registrar—

- (a) a statutory declaration made by the applicant as to—
  - the facts of his compliance;
  - and
  - whether he has any knowledge or reason to suspect that any resident has commenced or is likely to commence proceedings leading to enforcement of the charge under section 36;
- and
- (b) a copy of the notice given to residents in compliance with subsection (2).

(4) If the registrar is satisfied that—

- (a) an application for release of a statutory charge duly made to him is one permitted by this section;
- (b) the applicant has complied with subsections (2) and (3);
- (c) the part to which the application relates is identifiable by an existing plan of survey from the rest of the land used for the purposes of the retirement village;
- and
- (d) having regard to any objections by residents lodged with him within the period of 60 days referred to in subsection (2) it is appropriate to grant the application,

the registrar shall, by notification in the prescribed form lodged with the public officer to whom notice of the statutory charge was given under section 33, give notice that the statutory charge, so far as it relates to the part in question is no longer effective.

**40. Public officer's duty concerning release of charge.** (1) The public officer to whom is given notice under section 38 or 39 that a statutory charge created under section 33 is no longer effective shall, upon the request of the registrar to release the charge, cause to be made in the appropriate register maintained by him all such entries as are necessary

to record the release of the charge in respect of the land specified in the notice.

This subsection shall be given effect notwithstanding that there exists a caveat affecting the land in respect of which release of the charge is sought.

(2) A notice given under section 38 or 39 to a public officer and a request to release a statutory charge created under section 33 are exempt from the payment of stamp duty under the *Stamp Act 1894-1987* and no fees are payable in connexion with giving effect to subsection (1) in respect thereof.

#### PART V—SECURITY OF TENURE OF RESIDENTS IN RETIREMENT VILLAGES

**41. Residents' deemed interest in land.** (1) A resident of a retirement village if he has not otherwise an estate or interest in the part of the retirement village land on which he is entitled to reside shall, for the purposes of this Part, be deemed to be seised of an interest in the part of the retirement village land on which he is entitled to reside pursuant to a residence contract or which he is entitled to use pursuant to a residence contract in connexion with his occupancy of any part of the retirement village land.

(2) A person who is ordinarily a resident of a retirement village shall be taken to remain a resident of that part of the village ordinarily occupied by him notwithstanding his temporary absence therefrom, unless it be shown that he has abandoned his entitlement to reside therein or that the residence contract pursuant to which he was a resident therein has been duly rescinded or discharged.

(3) An interest in land deemed pursuant to subsection (1) to be held by any person is not an interest sufficient to entitle that person to prohibit the sale, mortgage or other dealing with the retirement village land or any part thereof by means of a caveat under the *Real Property Act 1861-1986* or the *Real Property Act 1877-1986*.

**42. Right to apply for injunction.** (1) If a resident of a retirement village—

- (a) is threatened with removal or is removed from the retirement village;
- (b) is threatened with deprivation or is deprived of his entitlement to reside on that part of the retirement village land that he is entitled to occupy or use pursuant to a residence contract or the scheme for the village;
- (c) is threatened with restriction of or is restricted in his use of the retirement village land in accordance with a residence contract or the scheme for the village;

or

- (d) is threatened with or suffers conduct that can be reasonably said to interfere with peaceful enjoyment of an entitlement referred to in paragraph (b),

the resident may make application to the Supreme Court for grant of an injunction under this Part or may apply to the registrar to act in his stead in making application to the Supreme Court for grant of an injunction under this Part.

(2) An application to the registrar shall be in or to the effect of the prescribed form.

A person who, in an application made to the registrar under subsection (1), furnishes information that is false and which—

he knows to be false;

or

he furnishes without caring whether it is true or false,

commits an offence against this Act.

(3) The registrar may, upon an application made to him under subsection (1), having regard to the physical, mental and economic condition of the applicant and the alleged facts of the case, agree to act in the stead of the applicant in making application to the Supreme Court for an injunction under this Part.

(4) If the registrar agrees to act in the stead of an applicant the costs of and associated with making application to the Supreme Court shall be costs of the registrar.

**43. Jurisdiction to grant injunction.** (1) Where upon application made to it under section 42 the Supreme Court is satisfied—

(a) that the applicant or the person in whose stead the registrar is acting in making the application is a resident of a retirement village;

(b) that the applicant or person referred to in paragraph (a) is seised of an interest in that part of retirement village land to which the application relates;

and

(c) that the removal, deprivation, restriction or conduct (suffered or threatened) to which the application relates—

(i) is or would be a breach of the relevant residence contract or the scheme for the retirement village in question and is not in the interests of the applicant or person referred to in paragraph (a);

or

(ii) is not or would not be justified for any adequate reason, the court may grant an injunction in such terms and for such period as the court determines to be appropriate to the circumstances, and jurisdiction is conferred on the Supreme Court accordingly.



Without limiting the generality of this subsection, the court, in determining whether or not to grant an injunction, may have regard to the rights and interests of all persons who may be affected by the granting of an injunction.

(2) Where application is made to the Supreme Court under section 42—

- (a) notice shall be given to the manager (if any) of the retirement village concerned;
- or
- (b) the court, if satisfied that the delay caused by giving notice would or might entail irreparable or serious mischief, may dispense with the giving of that notice and hear and determine the application *ex parte*.

(3) Application for consolidation of two or more applications made to the Supreme Court under section 42 may be made by any person who in the court's opinion has an interest in the matter of each of those applications.

#### PART VI—OPERATION OF SCHEMES FOR AND CONDUCT OF RETIREMENT VILLAGES

**44. Insolvent person debarred.** (1) A person who is an insolvent under administration—

- (a) shall not participate in promotion of a scheme for a retirement village;
- (b) shall not participate in selling residence rights in a retirement village;
- and
- (c) shall not be concerned, directly or indirectly, in management of a retirement village.

(2) In subsection (1) the expression “insolvent under administration” has the same meaning as in the *Companies (Queensland) Code*.

**45. Subsisting conviction acts as bar.** A person against whom there stands a conviction, wherever incurred, of—

an offence involving fraud or dishonesty punishable, at the time the conviction is or was recorded, by imprisonment for a period not less than three months;

or

an offence involving physical violence to the person of another—

- (a) shall not participate in promotion of a scheme for a retirement village;
- (b) shall not participate in selling residence rights in a retirement village;

and

- (c) shall not be concerned, directly or indirectly, in management of a retirement village.

**46. Records and accounts of retirement villages.** (1) A person controlling the operation of a scheme for a retirement village—

- (a) shall cause to be kept and retained for the retention period at a place in Queensland such records and books of financial and other records relating to the operation of the scheme as are prescribed by the regulations or, so far as the regulations do not so prescribe, as truly reflect the operation of the scheme;

and

- (b) shall cause to be made such audits of the scheme as are prescribed by the regulations.

(2) A person who manages a retirement village—

- (a) shall cause to be kept and retained for the retention period at a place in Queensland such records and books of financial and other records relating to the affairs of the village as are prescribed by the regulations or, so far as the regulations do not so prescribe, as truly reflect the conduct of the village; and

- (b) shall cause to be made such audits of the retirement village as are prescribed by the regulations.

(3) A person who falsifies, mutilates or destroys any record relating to the operation of a scheme for a retirement village or the conduct of a retirement village commits an offence against this Act.

(4) For the purposes of this section, “retention period” means—

- (a) in relation to a financial record, the period of seven years after the year in which that record is made;
- (b) in relation to any other record, the period of seven years after the year in which the record is made or came into possession by or on behalf of the person required by this section to retain the record.

(5) Where by this Act a person is required to produce or furnish any record, contract or other document it is to be construed that he shall produce or furnish it in writing in documentary form.

## PART VII—RESIDENTS’ PARTICIPATION

**47. Annual meetings.** (1) In each year the manager of a retirement village shall convene an annual meeting of all residents of the retirement village.

(2) Where the manager of a retirement village is a body corporate constituted by the residents of the retirement village and there is a requirement of law that the body corporate hold an annual general

meeting the duty prescribed by subsection (1) shall be sufficiently discharged in a particular year if the body corporate holds in that year a general meeting in compliance with the requirement of law and at that meeting no vote was cast under the authority of a proxy given by a resident of the retirement village, before or after becoming such a resident, at the behest of a person controlling the operation of the scheme for the retirement village or of his agent.

**48. Proceedings at annual meetings.** (1) The person who operates a scheme for a retirement village shall present or cause to be presented to the annual meeting a statement in writing in the prescribed form signed by that person and setting out the following:—

- (a) whether all refundable in-going contributions that became payable during the prescribed period have been duly paid and, if any has not, the amount or amounts outstanding, details of the delay and the reasons for the delay;
- (b) whether the person who operates the scheme for the retirement village is aware of anything whereby he may be prevented from meeting debts as and when they will fall due in the period of 12 months from the end of the prescribed period, and if he is aware of any such matter, details of the matter.

(2) The manager of a retirement village shall present or cause to be presented to the annual meeting a financial statement signed by him showing in respect of the prescribed period—

- (a) the source of income received by way of charges for the provision of goods and services for the village by the manager;
  - (b) details of expenditure on the provision of goods and services for the village by the manager, including the amounts spent and the items to which the expenditure relates;
  - (c) details of the provision (if any) made for future extraordinary or major works in the village;
  - (d) details of anticipated expenditure on goods and services for the village;
  - (e) details of any proposed increases in services charges to be paid by residents;
- and
- (f) details of any special levies that it is proposed to ask residents to pay.

(3) A statement to be presented under subsection (2) shall be audited by a registered company auditor within the meaning of the *Companies (Queensland) Code* unless, at the annual meeting held in the year immediately preceding the year in which the statement is to be presented, the residents present at that meeting decide by special resolution to dispense with the auditing requirements.

(4) The requirements of this section are in addition to those of any other Act that prescribes for the holding of a general meeting of the members of any body.

**49. Residents' committee.** (1) This section and sections 50 and 51 do not apply in relation to a retirement village in respect of which there is a body corporate subject to the *Building Units and Group Titles Act 1980-1988*.

(2) The residents of a retirement village may establish and maintain, by election conducted amongst themselves, a residents' committee.

(3) If a residents' committee is established, the following provisions of this subsection apply to it:—

- (a) A member thereof shall hold office for one year from the date of his election but is eligible for re-appointment;
- (b) A member thereof may be removed at any time by special resolution of a meeting open to all residents in the retirement village who are empowered by subsection (1) to maintain the committee;
- (c) It may conduct its meetings as it thinks proper;
- (d) It may form and determine the procedure of sub-committees;
- (e) It or any of its sub-committees may call a meeting of all residents in the retirement village.

(4) A residents committee shall give notice in writing to both the person who operates the scheme for the retirement village and the manager, giving particulars of all complaints or proposals raised at a meeting of the residents committee in respect of which the committee decides that further action should be taken.

**50. By-laws.** (1) Notwithstanding anything to the contrary contained in any residence contract or other contract made by a resident or prospective resident of a retirement village or contained in a by-law—

- (a) in the case of an existing retirement village, a meeting of residents of the village may, by special resolution—
  - (i) make by-laws that are not inconsistent with by-laws made prior to the commencement of this section;
  - (ii) alter or revoke by-laws made after the commencement of this section;
- (b) in the case of any other retirement village a meeting of residents of the village may, by special resolution, make, alter or revoke by-laws.

(2) A person who operates the scheme for a retirement village and the manager of the retirement village are entitled to attend any meeting of the residents of the retirement village held for the purpose of making, altering or revoking a by-law pursuant to subsection (1).

This subsection shall not be construed to entitle that person or manager to address a meeting referred to in this subsection.

(3) The powers conferred by subsection (1) are in addition to and not in substitution for any other powers that exist in respect of the making, alteration or revocation of by-laws.

**51. Increases in services charges.** (1) In this section—

“adjusted services charge” means a services charge as varied in accordance with this section;

“consumer price index” means the table described as “Consumer Price Index Numbers—All Groups, Brisbane” published by the Australian Statistician under the Census and Statistics Act 1905 of the Commonwealth, as amended and in force for the time being;

“quarter” means each period of three months ending on 31 March, 30 June, 30 September or 31 December;

“services charge” means a recurring charge made by the manager of a retirement village and payable by a resident of the retirement village in consideration of the provision of goods or services or both by the manager to the resident;

“special levy” means a payment which is made by a resident of a retirement village to the person who operates the scheme for the village or to the manager of the village and which is not—

(a) a services charge;

or

(b) a payment made in consideration of residence in the village.

(2) Notwithstanding anything to the contrary in a residence contract, any other contract made by or on behalf of a resident or prospective resident of a retirement village or the by-laws a resident of a retirement village is not required to pay a services charge to the extent to which it is greater than the adjusted services charge.

(3) An adjusted services charge shall be determined in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

(a) for a retirement village that has levied a services charge on or before the date of commencement of this section—

A is the services charge payable for the quarter immediately preceding the date on which this Act is assented to by or on behalf of Her Majesty;

B is the consumer price index last published at the time the adjusted services charge is to be determined;

C is the consumer price index published in respect of the quarter immediately preceding the date on which this Act is assented to by or on behalf of Her Majesty;

and

(b) for any other retirement village—

A is the services charge payable for the first completed quarter of the second year of the operation of the retirement village;

B is the consumer price index last published at the time the adjusted services charge is to be determined;

C is the consumer price index published in respect of the first completed quarter of the second year of the operation of the retirement village.

The amount of an adjusted services charge determined in accordance with the appropriate formula prescribed by this subsection shall not be calculated beyond one decimal point.

(4) A manager of a retirement village is not liable in any civil action for breach of contract in respect of the manager's failure to provide goods and services to residents of the village if—

(a) to cover the cost of the provision of the goods and services it would be necessary to levy a services charge greater than the adjusted services charge;

(b) the residents have not approved the payment of a services charge greater than the adjusted services charge;

and

(c) in all the circumstances the manager acted reasonably.

(5) Subsection (2) does not apply if the payment of a services charge that is greater than the adjusted services charge has been approved by resolution of a majority of the residents of a retirement village at a meeting of the residents or is approved by resolution of the residents' committee.

(6) Subsection (2) does not apply to the payment of a services charge that is greater than the adjusted services charge to the extent to which the greater amount is attributable to—

(a) rates, taxes or charges in respect of retirement village land or the use of retirement village land levied by or under an Act;

or

(b) salaries or wages payable to the manager or other person engaged in the conduct of the retirement village in accordance with an industrial award or industrial agreement made or registered under—

(i) the *Industrial Conciliation and Arbitration Act 1961-1987*;

or

(ii) a Commonwealth Act.

(7) Notwithstanding anything to the contrary in a residence contract, any other contract made by or on behalf of a resident or prospective

resident of a retirement village or the by-laws, a resident of a retirement village is not required to pay a special levy unless—

- (a) the residents have not been required to pay a special levy within the period of 12 months preceding;  
and
- (b) the special levy has become payable in one of the following ways:—
  - (i) the expenditure that the levy is intended to meet must be incurred by reason of requirements of or under an Act or of an order of a court;
  - (ii) the residents of the retirement village have authorized the making of the special levy by special resolution passed at a residents' meeting;
  - or
  - (iii) the residence contract, such other contract or a by-law provides that the residents of the retirement village are responsible for the expenditure or the class of expenditure that the special levy is intended to meet.

#### PART VIII—MISCELLANEOUS PROVISIONS

**52. Powers of registrar etc.** (1) The registrar and any officer authorised in writing by him to assist him for the purposes of this Act—

- (a) may, subject to subsection (2), enter any retirement village and any premises therein and make inquiry into the affairs of the village and the operation of the scheme for the village and into matters connected therewith;
- (b) may, subject to subsection (2), enter any premises or place where he suspects on reasonable grounds any financial or other record, contract or other document relating to the affairs of a retirement village or the operation of the scheme for a village are to be found;
- (c) may require any person who has under his control any such financial or other record, contract or other document to produce it to him or as he directs;
- (d) may inspect and make copies of and extracts from any such financial or other record, contract or other document;
- (e) may seize and retain any financial or other record, contract or other document where he considers it necessary to do so for the purpose of possible proceedings against any person in respect of an offence, whether against this Act or any other Act;  
and
- (f) may require any person whom he believes to possess appropriate knowledge to furnish to him or as he directs information concerning any financial or other record, contract or other document relating to the affairs of a retirement

village or the operation of the scheme for a retirement village or any item therein or concerning any transaction in connexion with a retirement village or the scheme for a retirement village.

(2) The power of entry conferred by subsection (1) shall not be exercised without the consent of the occupier concerned or a search warrant that authorizes such entry except where the registrar has reasonable cause to suspect that entry forthwith is necessary to prevent the destruction of evidence that an offence has been committed against this Act.

A justice who is satisfied upon the complaint of the registrar or any officer authorised by him to assist him for the purposes of this Act that there is reasonable cause to suspect that in any place there is to be found evidence that an offence against this Act has been committed may issue his warrant directed to the complainant to enter that place with such assistance as he considers necessary for the purpose of exercising therein the powers conferred on him by this Act.

The warrant shall be, for a period of one month from the date of its issue, lawful authority for the person to whom it is directed and all persons acting in aid of him—

- (a) to enter the place to which the warrant relates;  
and
- (b) to exercise therein the powers conferred on him by this Act.

In this subsection a dwelling-house or part of a building used for residential purposes does not include the curtilage thereof.

(3) Where any financial or other record, contract or other document has been seized and retained pursuant to subsection (1) the person from whose possession it was seized shall be entitled to obtain, free of any charge and within a reasonable time, a copy certified by the registrar as correct and in all proceedings before courts such certified copy shall be received in evidence as if it were the original thereof.

(4) Where in the exercise of his powers under subsection (1) the registrar or any officer authorised to assist him requires a solicitor or barrister-at-law to disclose a privileged communication made by or on behalf of or to that solicitor or barrister-at-law in his capacity as a solicitor or barrister-at-law, the solicitor or barrister-at-law is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made agrees to the solicitor or barrister-at-law complying with the requirement.

Where the solicitor or barrister-at-law so refuses to comply with a requirement, he shall, if he knows the name and address of the person to whom or by whom the representation was made, forthwith furnish that name and address in writing to the registrar or the officer authorised to assist him.



**53. Duties of persons under Act. (1) A person shall—**

- (a) provide to the registrar or any officer authorised by him to assist him for the purposes of this Act full and free access to all financial or other records, contracts and other documents relating to the affairs of a retirement village or to the scheme for a retirement village;  
and
- (b) comply with a requisition directed to him pursuant to section 52,

unless he has a lawful excuse for his failure to do so.

Except as is provided by section 52 (4), protection of the confidentiality of any financial or other record, contract or other document or of the identity or affairs of any person does not constitute such lawful excuse.

A failure by the registrar or officer seeking such access or making such requisition to produce evidence of his identity and, in the case of an officer, his authority upon demand therefor constitutes such lawful excuse.

(2) Where a person who produces any financial or other record, contract or document to comply with subsection (1) has objected to doing so on the ground that to do so might incriminate him in the commission of an offence against this Act the record, contract or document shall not be admissible in evidence upon a charge against that person of an offence against this Act other than an offence defined in paragraph (b) of subsection (3).

**(3) A person shall not—**

- (a) obstruct, hinder, threaten or intimidate the registrar or any officer authorized by the registrar to assist him for the purposes of this Act in the exercise of his powers or the discharge of his functions under this Act or any person acting in aid of the registrar or any such officer;
- (b) in response to a requisition directed to him pursuant to this Act for information, furnish information that is, to his knowledge, false or misleading;  
or
- (c) retake or attempt to retake any financial or other record, contract or other document seized pursuant to this Act.

(4) Where under any provision of this Act two or more persons are subject to the same obligation it shall be sufficient compliance with that provision if one of those persons discharges the obligation, whereupon the other person or persons shall be free of the obligation to the extent that it has been so discharged.

**54. Offence to advertise unlawful retirement village.** If an advertisement published in respect of any premises—

- (a) describes those premises as a retirement village;  
or
- (b) can be reasonably construed as stating or implying that those premises are or are to be conducted as a retirement village,  
a person who instructed the publication of the advertisement commits an offence against this Act unless—
- (c) there exists in relation to those premises a scheme for a retirement village approved by the registrar;
- (d) at the time the advertisement is published this Act does not apply in relation to those premises by reason of section 5;  
or
- (e) the consent in writing of the registrar has first been obtained.

**55. General offence provision.** (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act and, unless some other penalty is specifically provided for by this Act, is liable to a penalty—

- (a) where the offender is an individual, 40 penalty units;
- (b) where the offender is a corporate entity, 100 penalty units.

(2) Proceedings in respect of an offence against this Act shall be taken in a summary way under the *Justices Act 1886-1987*, within one year after the commission of the offence or within six months after the offence comes to the knowledge of the complainant, whichever period is the later to expire, upon the complaint of the registrar or a person authorised by him in writing in that behalf.

**56. Evidentiary provisions.** (1) Judicial notice shall be taken of a signature purporting to be that of the registrar.

(2) A certificate purporting to be that of the registrar as to any of the following matters shall, upon its production in any proceedings, be accepted as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein, that is to say:—

- (a) that a particular scheme for a retirement village has or has not been approved by the registrar as at a time specified in the certificate;
- (b) the conditions to which an approval by the registrar of a particular scheme for a retirement village is or was subject at a time specified in the certificate;
- (c) the documents that are or were, at a time specified in the certificate, registered under section 23 in respect of a particular scheme for a retirement village;
- (d) that a requisition made under this Act was directed to a person specified in the certificate and, where the requisition was oral, the substance of the requisition;
- (e) that a response was or was not made by a person to whom a requisition made under this Act was directed and, if a response was made, the nature and extent of that response;
- (f) any matter within the control or knowledge of the registrar and relevant to the proceedings.

(3) A writing certified by the registrar to be a true and correct copy of any financial or other record, contract or document shall, upon its production in any proceedings, be accepted as evidence as if it were the original thereof.

(4) In proceedings in respect of an offence against this Act—

(a) it shall not be necessary to prove the authority of the complainant to take the proceedings unless the absence of such authority is alleged;

and

(b) it shall not be necessary to prove the authority of any officer authorised by the registrar to assist him for the purposes of this Act.

**57. Address for service.** (1) An applicant to the registrar for the purposes of this Act shall, in his application, specify an address for service of documents on him.

(2) Any document to be given for the purposes of this Act to a person who makes or has made an application to the registrar shall be taken to have been duly given to him if—

(a) it is served personally on him;

or

(b) it is left at or sent by pre-paid post addressed to him at the address for service specified in his application.

**58. Act's remedies not exclusive.** The provision by this Act of a remedy to a party to a contract is without prejudice to any other remedy had by that party under the law apart from this Act.

**59. Annual report to Minister.** (1) The registrar shall prepare and submit to the Minister no later than 30 September in each year a report on the discharge by the registrar of his functions under this Act during the period of twelve months terminating on 30 June last preceding the submission of the report.

(2) The Minister shall table a copy of a report submitted to him under subsection (1) in the Legislative Assembly within seven sitting days after his receipt of the report.

**60. Regulations.** The Governor in Council may make regulations, not inconsistent with this Act, whether general or to meet particular cases, with respect to—

- (a) the form and content of application to be made under this Act for the registrar's approval;
- (b) the form and content of advertisements and documents to be published for the information of the public concerning a scheme for a retirement village;
- (c) the form of register to be kept by the registrar for the purposes of this Act and the manner of keeping the register;
- (d) the accounts and records to be kept in connexion with the operation of a scheme for a retirement village and the manner of keeping those accounts and records;
- (e) fees payable for the purposes of this Act and the purposes for which such fees are payable;
- (f) the manner in which the registrar and officers authorized by him to assist him for the purposes of this Act are to discharge functions or exercise powers under this Act;
- (g) defining offences against any regulation and prescribing penalties for such offences not exceeding 10 penalty units;
- (h) all matters required or permitted by this Act to be prescribed where another means of prescription is not prescribed;
- (i) all matters that in his opinion are necessary or convenient for the administration of this Act or to achieve the objects and purposes of this Act.