

Commercial Property Client Alert

28 May 2009

Retirement Villages (Contractual Arrangements) Amendment (Formula) Regulations 2009

The much anticipated *Retirement Villages (Contractual Arrangements) Amendment (Formula) Regulations 2009* ("**New Regulations**") came into effect on 19 May 2009.

The New Regulations are almost identical to the draft regulations which were released earlier this year. The New Regulations effectively provide as follows:

- 1 Maintenance charges at all retirement villages can only be increased once in every financial year of the village.
- 2 Unless the approval of the residents can be obtained, the maintenance charge can only be increased by the percentage increase between the sum of the CPI (Melbourne All Groups) index numbers for the financial year in which the maintenance charge is sought to be increased, and the sum of the CPI (Melbourne All Groups) index numbers for the 4 consecutive quarters for the previous financial year.
- 3 In determining the amount of the maintenance charge for any year, if higher than CPI increases in the maintenance charges had previously been imposed, the amount of the increase which is over and above that calculated by reference to the CPI, is to be disregarded.
- 4 If a retirement village previously had higher than CPI increases to its maintenance charge, the actual maintenance charge **cannot** be used as its base for the purpose of calculating the first increase based on the new CPI formula contained in the New Regulations. The New Regulations specifically provide that when calculating the first increase after 19 May 2009, the base is to be the maintenance charge "*that would have been payable for the last relevant financial year ...*" under the previous regulations. In other words, a retirement village which did have higher than CPI increases to its maintenance charge since 26 May 1998 must now calculate what its maintenance charge would be if only CPI increases had been imposed since that date ("**Notional Maintenance Charge**"). This Notional Maintenance Charge will then be the base for the purpose of calculating the new increase under the New Regulations. If the increased Notional Maintenance Charge works out to be less than the village's current maintenance charge, then the retirement village will have to seek approval from a majority of the residents to the new maintenance charge.
- 5 Once the increased maintenance charge has been determined, that amount may be rounded to the nearest multiple of 10 cents.

By way of example, if a village has a July to June financial year, has a maintenance charge of \$300 per month for the year ending 30 June 2009, and the village has only ever had CPI increases since 26 May 1998, then the maintenance charge for the financial year ending 30 June 2010 will be \$311.60 per month (rounded up to the nearest 10 cents). The revised maintenance charge is calculated in the following manner:

$\$300 \times B/C$, where

B = the sum of the CPI (Melb) index numbers for June 2008 (162.5), September 2008 (164.4), December 2008 (163.5) and March 2009 (163.9); and

C = the sum of the CPI (Melb) index numbers for June 2007 (155.6), September 2007 (156.9), December 2007 (158.5) and March 2008 (160.6).

*Index numbers sourced from the Australian Bureau of Statistics.

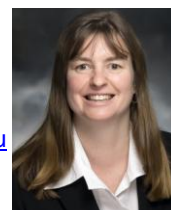
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