



THE LAW SOCIETY
OF NEW SOUTH WALES

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8 February 2013

Retirement Villages Amendment Regulation
Fair Trading Policy
PO Box 982
PARRAMATTA NSW 2124

By email to: policy@services.nsw.gov.au

Dear Sir/ Madam,

Draft Retirement Villages Amendment (Standard Contract) Regulation 2013

The Law Society is grateful for the opportunity to comment on the Draft *Retirement Villages Amendment (Standard Contract) Regulation 2013* (Draft Regulation).

The Society's Property Law Committee (Committee) has considered the Draft Regulation. The Committee is comprised of experienced and specialist property law practitioners, drawn from the ranks of the Law Society's members, who act for various stakeholders in the conveyancing process.

General comments:

The Committee notes that the proposed commencement date for the Draft Regulation is 1 September 2013. Assuming the final form of the Regulation is settled promptly and is published on the Legislation Website by, say 30 April 2013, the Committee regards this as sufficient time for affected parties to prepare for the new requirements. Additionally a fixed commencement date should aid consumer awareness and assist the retirement village industry in making a smooth transition to the new requirements.

In the Committee's view, the proposed standard form contract is only appropriate for a village contract that is a residence contract or a residence and service contract. The standard contract would generally be inappropriate where the parties to the contract are the village operator and a service provider and the contract is solely for the provision of services.

In reviewing the Draft Regulation, the Committee considered a number of drafting issues and has made several suggestions for further consideration as set out in Attachment "A".

The Committee appreciates the opportunity to comment on the Draft Regulation. Should you have any queries in relation to this letter, please contact Gabrielle Lea, Policy Lawyer for the Property Law Committee on (02) 9926 0375 or by email to gabrielle.lea@lawsociety.com.au.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'John Dobson', written in a cursive style.

John Dobson
President

Schedule 1 Amendment of Retirement Villages Regulation 2009	
ITEM/ ISSUE	COMMENT
Subclause 15A(2)(a)	The Committee suggests that the word "or" appears to be missing from the end of subclause (2)(a).
Subclause 15A(2)(b)	This subclause appears to be inconsistent with references in the standard contract to a strata scheme, company title schemes and community land scheme, for example the options under the heading Registered interest holder towards the end of page 17 of the Draft Regulation.
Part 1A Disclosure statement	
ITEM/ ISSUE	COMMENT
Last sentence of third introductory paragraph	The Committee suggests that after the word "should", the words "consider obtaining independent advice and" might be inserted, consistent with other similar references in the documentation and legislation.
Occasional use of the word "we".	Throughout the disclosure statement, the majority of references are to "the village" rather than "we". Consideration should be given to replacing the few references to "we" with "the village" for consistency and ease of reading the document. Additionally on page 12, the fourth last bullet point, the reference to "our waiting list policy" could be changed to "the village waiting list policy".
Schedule 2 Standard form of village contract	
ITEM/ ISSUE	COMMENT
<i>Registered long-term lease</i>	The Committee suggests that in the explanation of whether this box should be ticked which appears at the foot of page 17, the words "including options to renew," should be moved and inserted after the words "50 years or more".
Registered interest holders:	The Committee notes the comments at the top of page 18 under this heading and suggests further consideration should be given to the position of a resident whose purchase has settled but transfer has not yet been registered.
Contract subject to separate contract	In the Committee's view, for layout consistency, this second paragraph on page 18 should be given a heading such as "Is this contract subject to a separate contract?". The words in bold "Contract subject to separate contract" should be replaced with the word "Yes". Additionally the word "Yes" should be inserted after the words "If this box is ticked".

ITEM/ ISSUE	COMMENT
Additional terms	The Committee notes that the standard contract contemplates additional terms may be added to the standard terms either at the end of the contract or within the general terms and the Committee supports this flexibility. Instead of additional terms being designated by grey shading as proposed, the Committee would prefer that the words "Additional term" preface each additional term. The Committee prefers this approach due to the existence of numerous shades of grey and the question of compliance this may raise.
FINANCIAL TERMS A. Entry payment	On page 18, under the heading Entry payment, the reference to "(ingoing contribution/purchase price/assignment fee)" on line three may be confusing and may require further clarification, particularly the reference to "purchase price".
FINANCIAL TERMS Items B to I	The Committee notes some improvements have been made to the layout of pages 19 to 21 but still considers that there is scope for further improvement.
FINANCIAL TERMS Items J, K and L.	The Committee notes there is a set of items J, K and L for <i>registered interest holders</i> and then a set of items J, K and L for <i>non-registered interest holders</i> . The Committee regards this as confusing and would prefer that on page 23 items J, K and L be labeled N, O and P respectively.
COSTS OF SALE Item M	The Committee considers this item would not apply where the resident is a registered long term lessee whose leasehold interest is not assignable.
GENERAL TERMS	The Committee notes that some improvements have been made from the earlier draft contract, but many of the points made by the Committee in its submission dated 17 May 2012 remain relevant, such as the need to insert a GST clause and an inconsistency clause (to resolve a situation where the details in the underlying contract for a registered unit holder differ from details in the standard form village contract).
Clause 1.2 – definition of "permanently vacate"	Paragraph (b) of the definition contains a typographical error – "or" where secondly appearing should be "of". Paragraph (d) of the definition requires amendment because it is inconsistent with paragraph (d) of the definition in section 8 of the <i>Retirement Villages Act (1999)</i> . It does not replicate the words "or is taken to be a resident of the premises by the operation of section 4(2)". A registered interest holder who moves out and leases/subleases may not have permanently vacated.
Clause 12.2 – Are you entitled to appoint a selling agent of your choice?	The Committee considers this clause would not apply where the resident is a registered long term lessee whose leasehold interest is not assignable.

Attachment "A"

ITEM/ ISSUE	COMMENT
Execution page 39	The Committee suggests that the references to "legal advice" in the signature clause for the Resident should be a reference to "independent legal advice" except for the last reference in respect of not obtaining legal advice.