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## Western Australian Retirement Villages Residents Association Inc

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### INFORMATION PAPER No. 6

## RECURRENT CHARGES PAYABLE BY FORMER RESIDENTS

### New Rules

The *Retirement Villages Amendment Act 2012* made some new provisions dealing with the payment of recurrent charges (sometimes called maintenance levies or common service fees and usually paid monthly). At this time, the sections have not been proclaimed, awaiting the completion of necessary regulations which are expected in early 2014.

The new rules place a time cap on the payment of recurrent charges by non-owner residents who have permanently vacated their residential premises in a retirement village and permit any charges arising after the premises have been permanently vacated to be deducted from the premium repayable to a former resident.

### Former Resident Defined

"**Former resident** means a former resident of a retirement village who has permanently vacated residential premises in the retirement village and who does not have an interest in the retirement village as a tenant in common or as an owner of a lot under the *Strata Titles Act 1985* in relation to the residential premises in the retirement village that he or she formerly occupied." (*Retirement Villages Act* section 23 (1))

**Note** that these provisions do not apply to "strata title villages" or "purple title villages" but do apply to all forms of lease, loan-lease, loan-licence or licence to occupy villages.

### Permanently Vacated Defined

"**Permanently Vacated**, in relation to a former resident and residential premises in a retirement village means:

- (a) if required by the residence contract, the administering body has been given notice of the former resident's intention to vacate the residential premises; and
- (b) the goods and belongings of the former resident have been removed from the residential premises; and
- (c) the former resident has ceased to reside in the residential premises; and
- (d) the right to exclusively occupy the residential premises has been given up by the former resident (or, if the former resident is deceased, by the estate

of the former resident) by returning the keys to the residential premises to the administering body." (*Retirement Villages Act* section 23 (1))

**Note** that all four of these conditions must be complied with. **Note also** that any person(s) acting for the resident must have full legal authority to do so (such as a power of attorney or a grant of probate or letters of administration).

**"Recurrent charges** means recurrent charges:

- (a) that are payable in respect of residential premises in a retirement village that a former resident formerly occupied; and
- (b) that arise –
  - (i) after those premises have been permanently vacated by the former resident; and
  - (ii) on or after the commencement of the *Retirement Villages Amendment Act 2012* section 11." (*Retirement Villages Act* section 23 (1))

### Who do these new rules apply to?

These new rules apply to a former resident whether the former resident permanently vacated the residential premises before or after the commencement of the *Retirement Villages Amendment Act 2012* section 11

### What is the time cap?

The time cap on paying recurrent charges will be set in the Regulations. The Ministerial Explanation in introducing the Amendment Act indicated that the time to be set is six months for residents already in a retirement village (or who have left a retirement village and are still paying recurrent charges) and three months for residents who enter into a residence contract after the Regulations are proclaimed.

### Delayed Payment

A former resident, or a former resident's legal personal representative, may elect in writing to pay any recurrent charges for which he or she is responsible by deduction from the amount of any premium repayable. Interest may be charged on the amounts outstanding a rate prescribed by the Regulations or at some agreed lower rate.

### Documenting your actions

It is expected that some administering bodies may be very rigid in applying these new rules (they have to meet any recurrent charges forgone under these rules). To assist former residents or their legal personal representatives in complying with "permanently vacated" procedures we are providing a work sheet on the next page for you to document your actions.

*Disclaimer: WARVRA has made every reasonable effort to ensure the information given on this sheet is accurate, but it is not to be construed as legal or financial advice. Each person should seek advice and verify information themselves.*



## RECORD OF STEPS LEADING TO "PERMANENTLY VACATING" RETIREMENT VILLAGE PREMISES

### 1. Notice Given to Administering Body (Owner/Manager):

Sent in writing on \_\_\_\_\_ (date)

Keep a copy of your letter.

### 2. Goods and Belongings Removed from the Residential Premises

Last items removed on \_\_\_\_\_ (date)

Arrange for the Manager to inspect and agree that all items belonging to the former resident have been removed.

### 3. Resident has ceased to reside in the Residential Premises

The resident moved out on \_\_\_\_\_ (date)

Let the manager know.

### 4. Keys Returned to the Administering Body as a sign the Right to Exclusive Occupation of the Residential Premises has been given up

Keys returned to the Village Manager on \_\_\_\_\_ (date)

Obtain a receipt.

*The completion of these four steps fulfils the requirements of the Retirement Villages Act to establish that residential premises in a Retirement Village have been permanently vacated.*