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8 April 2020

The Hon Marlene Kairouz
Minister for Consumer Affairs, Gaming and Liquor Regulation
Level 16, 121 Exhibition Street
MELBOURNE VIC 3000
By email: marlene.kairouz@parliament.vic.gov.au
CC: miriam.phillips@minstaff.vic.gov.au

Dear Minister Kairouz,

Regulatory change to financial liquidity challenges for Retirement Living providers.

On the 30 March, the Property Council contacted the Department of Consumer Affairs seeking assistance in addressing the significant financial exposure facing retirement village operators caused by restriction on auctions and open houses.

Specifically, we requested an amendment to the regulation that exists in respect of contracts entered into between August 1 2006 and 1 August 2017, which requires village operators to advance an outgoing resident's refundable accommodation deposit when a resident transitions into aged care, to be suspended and instead allow villages to fund residents' entry to care via the Daily Accommodation Payment.

We received the following advice from your office in response to this request:

- The Retirement Villages Act 1986 (RV Act) does not govern arrangements regarding Refundable Accommodation Deposits or Daily Accommodation Payments. As these payments relate to the provision of aged care services, they are governed by Commonwealth legislation.
- Where such payments are provided for in Retirement Village residence contracts, this would be a private contractual matter between parties.
- It would be appropriate for the Property Council to raise its concerns with the Commonwealth Department of Health and/or the Minister for Aged Care.
- The following correspondence addresses the advice received and calls again for assistance in addressing this issue through regulatory reform.

Regulatory obligation

Residents leaving a retirement village to enter a residential aged care facility must pay an accommodation bond (known as a Refundable Accommodation Deposit – RAD), or a weekly payment (Daily Accommodation Payment – DAP) to the aged care facility operator. This requirement is regulated by the Aged Care Act 1997 (Cth).

The *Retirement Villages (Contractual Arrangements) Regulations 2017 (Vic)* at Regulation 7 require:

1. With respect to any resident who entered into the village after 1 August 2006 and prior to 30 July 2017, where that resident leaves the village to move into a residential aged care facility and is required to pay a RAD or a DAP, that the village operator do pay an amount equal to the lesser of the RAD and 85% of the amount due to be repaid to the resident under their village contract, to the resident within six months from the date that the resident vacates their unit at the village. This amount is payable even if a new resident to occupy that retirement village unit has not been located and paid the new incoming contribution for occupancy.
2. With respect to any resident who entered into the village after 30 July 2017, where that resident leaves the village to move into a residential aged care facility and is required to pay a RAD or a DAP, that the village operator do pay an amount equal to the DAP to the resident up to a maximum of 85% of the amount due to be paid to the resident under their village contract.

This is not a contractual matter. The Regulations apply regardless of any terms of any contract entered into between the resident and the Operator.

The Property Council has submitted that the Regulations should be temporarily amended to provide that the requirement set out in paragraph 2 above apply to any resident who entered into a village after 1 August 2006.

Mechanism to address issue

The position outlined above could be achieved by temporarily suspending Regulation 7(2) and (3) for a period of less than 12 months, and in particular, the duration of the current state of emergency.

In our submission it is not necessary for a Regulatory Impact Statement to be undertaken as the suspension is for a period of less than 12 months and is essential in order to allow for the continued economic viability of retirement villages in Victoria as set out below.

Impact on retirement village residents

When retirement village residents enter an aged care facility the lump sum amount of accommodation deposit / payments is agreed as part of the entry requirements and then they have 28 days after entry to elect to pay it by a RAD or a DAP. The aged care provider cannot stipulate in advance that residents must pay a RAD instead of a DAP.

That being the case, outgoing residents of villages are in no worse position vis a vis entry into aged care by being limited to a DAP even if they wished to and were able to pay a RAD.

The Property Council understands that the peak bodies for aged care are in advanced discussions with the federal government to put a moratorium on the refund of RADs so as to mitigate the cash outflow for aged care providers. It would make sense that the federal government will agree to this, as the Commonwealth guarantees the refund of RADs.

If the federal government does not proceed to put a moratorium on the refund of RADs, it is still the case that there is not disadvantage to the exiting retirement village residents in making the change to the Regulations proposed by the Property Council, as it will not impact the transition to a place in an aged care facility.

Impact on retirement village owners / operators

The advantages for the owners of the retirement villages is that their liquidity will be significantly improved and the chances of insolvency are accordingly lessened. This is of particular concern for smaller retirement village owner / operators that make up a majority of villages in Victoria.

It is well expected that a soft residential property market will have an equal, if not greater, impact on sales of units in retirement villages. As the vast majority of residents fund their entry into villages by way of a sale of the family home, a slower residential market will mean a slower resale of units in villages, thus putting owners under severe cash flow pressure if they are required to fund RAD payouts.

Next Steps

The implementation of this solution will not create a financial obligation on the State Government and will ensure the security of housing for older Victorians living in smaller Retirement Villages throughout the State.

We look forward to continuing to support the Covid Crisis Council and Consumer Affairs in delivering solutions that support Retirement Villages as they strive to meet the challenges created by the pandemic.

If you require further information or clarification, please contact Emily Young, Senior Policy and Communications Advisor, on 0475 161 328 and eyoung@propertycouncil.com.au.

Yours sincerely



BEN MYERS
Executive Director – Retirement Living