Regulatory Guidelines for Retirement Village Scheme Operators

Topic:

Insurance Excess Payments

Regulatory Services, Department of Communities Housing and Digital Economy

Purpose

The purpose of this document is to provide guidance to retirement village operators about:

- **Insurance Excess Payments –** which retirement village fund an insurance excess payment should be paid from (general service fund, maintenance reserve fund or capital replacement fund)

Regulatory Services, Department of Communities, Housing and Digital Economy is responsible for the regulation of retirement villages in Queensland under the *Retirement Villages Act 1999* (the Act) and the *Retirement Villages Regulation 2018* (the Regulation).

Regulatory Services investigates complaints from retirement village residents relating to alleged breaches of the Act and implements any subsequent education, engagement or enforcement action as required.

Complaints made to Regulatory Services and enquiries within the retirement village industry have highlighted inconsistencies and uncertainty around the treatment of insurance excess payments. Regulatory Services is aware of some instances where scheme operators have debited insurance excess payments from incorrect retirement village funds.

The following information reflects the minimum standards required to achieve compliance with the sections of the Retirement Villages Act 1999 and Retirement Villages Regulation 2018 relating to insurance and payment of an insurance excess.

What is an insurance excess?

Under section 110 of the Act, a scheme operator must insure and keep insured, to full replacement value, the retirement village, including the accommodation units (other than accommodation units owned by residents), and the communal facilities.

Many insurance policies include an excess. An excess is the amount an insured has to pay towards the repairs/replacement of an insured item if they make a claim on the policy.

An insurer may allow a policy holder to choose an amount of excess which can reduce or increase the cost of insurance. Generally, a lower excess results in a higher insurance premium and a higher excess results in a lower insurance premium. Some insurance policies may have a standard excess amount.

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Which fund should a retirement village insurance policy excess be paid from?

Operational, repair and replacement costs for retirement villages are classified into different cost categories which are subsequently paid for from different funds.

Each retirement village is required to have three funds – a general services charges fund (funded by residents), a maintenance reserve fund (funded by residents) and a capital replacement fund (funded by the scheme operator).

Retirement village insurance forms part of the general services provided by the scheme operator, so the cost of village insurance premiums is paid by residents through their general services charge.

When a scheme operator makes a claim on an insurance policy to cover damage or loss of retirement village property, an insurance excess may be payable. The way that an excess is payable by the scheme operator depends on the terms of the insurance policy and the circumstances of the claim. An insurance policy may either require the scheme operator to pay an excess to the insurer or may reduce the insurer's liability under the policy by the amount of the excess.

Section 107 of the Act contemplates that insurance excess payments are paid from the general services charges fund. A scheme operator may increase the annual total general services charge in excess of the Consumer Price Index (CPI) limit under section 106 if it is attributable to an increase in insurance premiums or insurance excesses paid.

A scheme operator may pay an excess amount from the general services charges fund.

In some circumstances, the scheme operator may be able to pay the insurance excess from a different retirement village fund, depending on the terms of the insurance policy.

Insurance excess amounts paid from the general services charges fund

Where an excess is required to be paid by the scheme operator directly to the insurer, then the excess may only be paid from the general services charges fund. That is because the excess is not an amount paid by the scheme operator for the replacement or repair of retirement village capital items.

Insurance excess amounts paid from the maintenance reserve fund or capital replacement fund

There may be some circumstances where an insurance excess may be paid from the maintenance reserve fund or capital replacement fund. This will depend on the terms of the insurance policy and the circumstances of the claim.

Where an insurance claim is made and the insurer pays the scheme operator or the supplier/repairer the claimed amount less any excess amount, and the operator is responsible for paying the excess amount directly to the supplier/repairer, then that amount payable by the scheme operator may be categorised as a payment for repair or replacement of the retirement village's capital items. On that basis, it may be paid from the maintenance reserve fund or capital replacement fund.

If the excess was paid for the purpose of repairing a village capital item, it would be paid from the maintenance reserve fund.

If the excess was paid for the purpose of replacing a village capital item, it would be paid from the capital replacement fund.

Relevant sections of the Retirement Villages Act 1999

Section 94 of the Act (Payments into the capital replacement fund) provides that a scheme operator must ensure any amounts received under insurance policies for the destruction of items of a capital nature are paid into the capital replacement fund.

https://www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.94

Section 107(c) of the Act (Allowable increase in total general services charge) provides that an increase in the total general services charge for a financial year is allowed to the extent it is attributable to an increase in insurance premiums, or insurance excesses paid, in relation to the retirement village or its use.

https://www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.107

Section 110 of the Act (Scheme operator must insure village) requires that a scheme operator must insure and keep insured, to full replacement value, the retirement village, including the accommodation units, other than accommodation units owned by residents, and the communal facilities.

https://www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.110

Section 113 of the Act (Annual financial statements) requires that a scheme operator must show particulars of any amounts received for insurance claims relating to the retirement village during a financial year in the annual financial statement for the village.
https://www.legislation.qld.gov.au/view/html/inforce/current/act-1999-071#sec.113

Penalties may be imposed for non-compliance with legislative requirements regarding the requirement to insure a retirement village, or for incorrect use of funds from the general services fund, maintenance reserve fund or the capital replacement fund.

If you have any questions in relation to this information, please contact Regulatory Services by phone on (07) 3013 2666 or email regulatoryservices@chde.qld.gov.au.

Disclaimer:

This guideline contains general information intended to inform persons about how the chief executive interprets and administers the Act. The information set out in this guideline reflects the chief executive's attitude to the minimum standards required to achieve compliance with the sections of the Retirement Villages Act 1999 and Retirement Villages Regulation 2018 which relate to insurance excess payments. Operators and residents should:

- not rely on this guideline as legal or financial advice; and
- carefully review the Retirement Villages Act 1999 and Retirement Villages Regulation 2018 to identify their rights and obligations; and
- obtain independent legal or financial advice about their own circumstances.

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