



# Retirement village repairs



## IMPORTANT

*This factsheet does not apply to common property within a strata retirement village.*



## QUICK TIP

*The provisions of the Act that deal with this issue are sections 92 to 102.*

## Who pays for capital repairs and replacement?

Enquiries are often received about who should pay to fix or replace various items within a retirement village. This factsheet outlines the responsibilities of residents and operators in this area.

### What is an 'item of capital'?

The *Retirement Villages Act 1999* sets out who should pay to repair or replace what are called 'items of capital'. An item of capital is broadly defined to include most items found in a village. It includes:

- buildings and other structures
- plant, machinery or equipment
- items of infrastructure (eg roads)
- fixtures, such as stoves, hot water systems and carpets
- fittings, such as taps and lights
- furnishings (eg curtains, blinds)
- non-fixed items, such as tables and chairs.

### Who pays to fix or replace an item of capital within a resident's unit?

From time to time an item within a unit, such as the hot water system or stove, may need to be repaired or replaced. Under the *Act* the resident concerned is not responsible for arranging or paying for the repairs or the replacement of the item. This applies despite what it may say in a contract entered into before the *Act* began.

Of course this rule does not apply to an item owned by the resident, such as a fridge or microwave they bring with them when they move in.

Neither does it apply to items damaged by the resident, or their visitors and guests, beyond normal fair wear and tear.

### Who pays to repair or replace items of capital?

It depends initially on whether an item of capital needs to be repaired or replaced. If replacement is required it then depends on whether it is a fixed or non-fixed item. These various scenarios are discussed in detail below.

#### Replacing fixed items of capital

Under the new *Act* the operator must bear any costs of replacing fixed items of capital within the village. This includes fixed items of capital in the premises of residents.

Examples of replacing fixed items of capital would include replacing carpets that have worn out or replacing hot water systems and stoves that no longer work.

The operator must arrange and pay for the replacement of fixed items out of its own funds. Money from the village's Capital Replacement Fund can be used if one exists. Statements of expenditure should not include an allowance for replacing fixed items, either directly or via depreciation. The only exception is where the operator does not charge any fee or ingoing contribution for a resident to gain entry to the village. In these few situations the ongoing recurrent charges paid by residents can still be used to fund capital replacement.

#### Replacing non-fixed items of capital

Non-fixed capital items include items such as a village bus, lawnmowers, tables, chairs, whitegoods, portable air conditioners, filing cabinets, computers, fans and curtains.

The operator can use the recurrent charges paid by residents, or its own funds, to replace or purchase non-fixed items of capital.



## IMPORTANT

Capital replacement includes improving items of capital as well as the refurbishment of premises.

If an operator wishes to spend recurrent charges in this way they must specify the item and the amount in the statement of proposed expenditure given to residents before the start of each financial year. The consent of residents is then required.

### Maintaining items of capital

With regards to maintenance it does not matter whether the item is fixed or non-fixed. Both are treated the same under the *Act*. Likewise it does not matter if the item that needs repair is on common property or inside a residents' unit.

Examples of maintenance within a village could include:

- cleaning carpets
- servicing air conditioners
- painting the village (both outside and inside premises)
- servicing the village bus
- fixing cracks in paths
- replacing tap washers or
- replacing faulty stove elements.

It is a matter for the operator to allocate a sufficient amount for all types of maintenance when preparing a statement of proposed expenditure. Funding can either be from the recurrent income for the coming year or from the village's long term maintenance fund. Individual residents are not responsible for arranging or paying for maintenance (see above).

### What can a resident do to get maintenance carried out?

Under the *Act* the operator must ensure that all items of capital in the village are maintained in a reasonable state of repair. As to what is 'reasonable' will depend on:

- (a) the age of the village
- (b) its prospective life
- (c) the amount of ingoing contributions; recurrent charges and departure fees paid by residents and
- (d) the amount of money available for 'maintenance' allocated in a statement of approved expenditure.

A resident who is unable to get repairs carried out by approaching the management can apply for an order from the Consumer, Trader and Tenancy Tribunal.

The Tribunal has the power to order the operator to carry out maintenance work within a specified time. The Tribunal also has the power to award compensation to a resident as well as make an order that recurrent charges be paid to the Tribunal until the work is carried out.

### Other fair trading information

- Business names
- Running a business
- Co-operatives
- Tenancy
- Property management
- Selling your home
- Conveyancing
- Strata schemes
- Home building
- Product safety
- Buying a car or boat
- Credit
- Shopping
- Retirement villages
- Residential parks
- Other fair trading issues

### Where to get more information

#### Fair Trading Centres

Tel. 13 32 20

TTY Tel. 9338 4943


*Telephone service for hearing impaired.*

Language Assistance Tel. 13 14 50

*Ask for an interpreter in your language*

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

This fact sheet must not be relied on as legal advice. For more information about this topic, please refer to the appropriate legislation.

 13 32 20  
business hours