

**General Questions submitted by residents for the Annual General Meeting of Evergreen
Lifestyle Bergvliet held on 14 June 2022**

LEGAL

1. If unexpected changes by Evergreen are imposed on us, please explain the benefits of having an Evergreen Life Right agreement, and also the benefit of having a life right in a unit when the majority of life right holders receive less for their units on resale, and EPI gets the upside in resale? (Richard Eastwick Unit 110)

Answer: In the AGM residents were advised that no changes can be made to a LRA but an addendum can be drawn up and agreed upon between both parties being the LRH and Owner. No unexpected changes are just made to the LRA.

2. Why Despite overwhelming support from residents across the Western Cape does ELV refuses to accord legitimacy to the Concerned Residents Group which consists of professional and retired business executives who are Life Rights Holders at various villages and who are prepared to offer their experience and expertise in a genuine Partners for Life relationship.

The continued reliance on Rescom's which meet in a siloed fashion and with a restricted mandate specified in both LRA's and House Rules, has been shown to be an inadequate method of communication between residents and ELV when topics are common across Villages.

In particular, the current topics of healthcare, catering, head office costs and building insurance have been poorly communicated by Evergreen and have consequently provoked the need for a different approach. The purpose of the CRG is to attempt to address what is seen by many as unreasonably and poorly handled issues. (Alan Baxter Unit 14)

Answer: Each village has its own nuances as well as elected Rescom members and we therefore caution to try and provide a "Cookie Cutting" management style. Residents and Rescom are welcome to collaborate on matters they wish to; it is not the first time that individual village Rescom's have spoken to each other on certain topics. Management promotes an annual social get together of all village Rescom's.

3. When I bought my Life Right, Evergreen Lifestyle Village promised us that we would have Health Care and Catering Services, that these were covered in my levies, except that I had to pay for all consumables. Why are you breaking these promises (Yvonne Jackman Apt 08)

Answer: In the AGM it was noted that this is not the case and Healthcare and Catering are not covered by the basic facilities and services levy

4. What is the current position regarding new life rights being sold in Bergvliet for healthcare and catering? What are you telling prospective new life rights residents about Healthcare and Catering? (Yvonne Jackman Apt 08)

Answer – Any Life Rights sold post March 2022 has a separate Catering and Healthcare Levy.


5. What if some residents are prepared to pay for the Healthcare levy and other residents are not prepared to pay the Healthcare levy? Yvonne Jackman (APT 08)

Answer: At the AGM it advised that ALL residents would have to be in agreement and an addendum would then be circulated for all LRH's alternatively it would be like a Membership to a club/facility where there would be different rates for members and non-members. There are however different ways to approach this matter and management and Rescom are working on a solution.

6. Will ELV please revisit the recent contradictory and incomplete guides called among other things Maintenance Protocol, and clarify what constitutes residents' responsibility in terms of the maintenance, repair and insurance of their units. In addition, can ELV please identify precisely where this is covered in the Life Right Agreement that residents signed (please note most residents did not sign nor see the House Rules when signing their Life Right Agreement
(Anthony Woof Unit 16)

Answer: As per your LRA it states that House Rules are available at the office during office hours and has also been sent out twice in the last year for Residents to be reminded of. Copies of both documents were in your Handover pack. Refer to LRA and House rules regarding Maintenance. In the near future we will set up a session for those residents who are interested to talk through the Maintenance Protocols.

- 15.7. The Life Right Holder shall, at all times, observe, adhere to and be bound by the House Rules, Evergreen Maintenance Protocol and any other rules or regulations of conduct and management as the Operator may impose and/or amend from time to time, all of which are deemed to form part of this Agreement and which shall be available for inspection at the office of the Village Manager and the office of the Operator, weekdays from 08h00 until 17h00, excluding public holidays.

INITIAL HERE:
 K.W. AW

7. Scenario

The Evergreen proposal to alter the Levy cycle is a basic change to the Life Right Agreement. What if some residents do not wish to change their LRAs in this regard?

- How does Evergreen propose to react should residents not wish to sign the Amendment to the LRA ie. Will this be forced on us?
- If not implemented, what will happen to this proposed change?
- Is evergreen prepared to make some form of concession to residents, apart from the "Increase holiday" as an act of good faith negotiation? (Brian Dalton -Apr 116)

Answer: The levy cycle change requires acceptance by each and every life right holder across all Villages. In the case where LRHs don't agree, levy cycle will remain as is and increases will be effective from 1 September 2022. Management believes that it would be short sighted from LRH not to agree to this change, as it will simplify cycles (to fall in line with ELV financial year, and LRHs will receive 6 months relief of no increase. Residents have everything to gain and nothing to lose. To clarify, the levy cycle change is not dependant or on condition of any of the other proposed changes being accepted. This means even if we can not find a solution to the proposed Healthcare and Catering Levy in the meantime the cycle change and financial benefit for residents can still be implemented.

8. Why should LR holders pay for building insurance through an increase in their levies? EPI is the owner, has the insurable interest and will benefit from growth in the value of the assets. The LRA I signed provides that the" Owner shall insure the buildings comprising the Scheme. The LR holder has the obligation not to do anything which invalidates the insurance or increases the premium. The Disclosure Schedule annexed to the LRA in compliance with the Retired Persons Act also records that the Owner shall insure the buildings forming the Scheme including the unit. Evergreens proposal is unfair and not consistent with the LRAs and should be withdrawn please. (John Drake Aprt 3)

Answer: Insurance expense forms part of basic facilities and services, (Either Clause 12 or 13 in respective LRA's) and thus covered by the monthly basic facility and service levy charged on the levy statement. Up to August 2018, Insurance was included in the management accounts in the respective Villages. The LRA is though clear that insurance should be included as part of basic services, thus the inclusion since FY22. Basic levy will not increase due to the insurance cost inclusion in expense base. The basic levy remains unchanged.

9. At the 2021 AGM there was much discussion about the surplus of R1.2 million being returned to residents in some form or other. In minute 7.2.10 of the AGM the chairperson said Mr Levine and other residents had been meeting with ELV negotiating and talking about the surplus matter. Can the chairperson of the AGM please advise on the progress and outcome of these negotiations? (Mike Smith -67)

Answer: This was acknowledged at the AGM and will be further discussed at a meeting between Management and Finance sub-committee soon. Further feedback to follow after the meeting.

10. Question number 2 - Attendees at the AGM - why did the notice for the AGM say that any proxy for the meeting has to be a fellow resident and therefore that the proxy could not, for example, be another family member (for example a son or daughter) or in some instances, for those Life Right Holders not familiar with AGMs or the business operations of the village, their respected professional advisor who is more qualified to attend AGMs? There are some very onerous financial implications for older people that are being discussed, which some folk may not fully understand or appreciate, or some matters may be bespoke to some affected residents, and therefore is it even legal not to allow one's own proposed representative to attend the meeting so as to look after one's own best interests?
(Mr. Colin Levine)

Answer: The Village AGM is a matter that pertains to Life Right Holders and therefore the Proxy is to be given to another Life Right Holder. In saying this, we have in the past allowed non-Life Right Holders to attend AGMs on the request of a Life Right Holder. The Rescom and the Finance Sub-Committee are there to support residents with any questions or concerns they might have.

DEVELOPMENT & MAINTENANCE

11. We are concerned that few residents submitted comments regarding the Clubhouse building alterations. Will EPI please delay whatever plans it has in place for these and allow the new Rescom to engage in a survey and meet with the residents, and thereafter submit a coordinated response to the plan design layout, while respecting the EPI budget allocated. We do not believe this will delay the achievement of a satisfactory result, and with my ideas as an architect may be achieved with far less disruption (Richard Eastwick - 110)

Answer: This matter has been delayed per the request, proposed/suggested changes received and EPI will be meeting with Rescom Representative shortly to discuss the suggestions made

12. The ELV sales team told residents "Imagine turning your house upside down, everything which might fall out is the resident's responsibility and they should also insure it, the remainder is Evergreens responsibility and we will insure it". The same Sales team also said that a benefit of an evergreen Life Style Agreement is that I will not be responsible for maintaining the exterior of my unit.
Please explain why residents: are now being charged for snags which were reported and not attended to when they took occupation: others are being charged for blocked sewerage pipes where the underground drainage system has sagged and is clearly a structural failure? (Anthony Woof Unit 16)

Answer: I believe that the insurance matter was cleared up in the AGM and explained by the panel. In terms of snags, management will gladly investigate specific items and should it be an Evergreen responsibility it will be dealt with as such.

13. Geyser servicing, why are residents responsible for this and not the owner as is preventative maintenance? (John Drake Apt3)

Answer: This was a suggestion from a Resident that we proposed. As fair wear and tear is not covered as per the maintenance protocol for the geyser fittings hence it was that some Residents wanted these items checked and serviced. Kindly refer to the question 6 above in terms of the maintenance protocol.

FINANCE

Introduction of Catering Levy and Healthcare Levy

14. We are against the introduction of additional levies for catering and healthcare and ask what the implications would be should we refuse to accept them. (Brian and Jackie Marquis)

Answer: Your comments are noted. Management and the Rescom will work closely together to find a solution to this matter.

15. Has Evergreen Property Investments (EPI) / Evergreen Lifestyle Villages (Pty) Ltd (ELV) the right to impose these levies without our consent. Brian and Jackie Marquis)

Answer: Any changes to terms and condition in the Life Right Agreement require acceptance by both EPI and the Life Right Holder, in the form of an addendum. If LRHs don't want to sign an addendum, the T&C remain as per the current LRA.

16. Has EPI / ELV the right to add these levies to our monthly levy debit order without our consent(Brian and Jackie Marquis)

Answer: Refer question 15

17. We perceive a cash flow crisis in Evergreen Groups business as all capital expenditure in various villages is on hold, snags that were reported years ago are taking too long to be fixed, and you are adding new charges to resident's levies. (Jane Horovsky APT10)

Answer: Thanks for your statement. It is clearly not correct. As mentioned above, village management will investigate any and all specific snag matters and deal with them accordingly.

18. Is the ELV group in financial difficulty and, if not, why are all capital expenditures on hold?
(Jane Horovsky APT10)

Answer: No, The Evergreen Group is not in financial difficulty. No sure why you believe all capital expenditure is on hold.

19. I have recently compared my monthly costs with those of a friend a Tokai Estate. Our municipal service costs are fairly similar. The main differences that stand out are rates and levies. The higher rates at Tokai appears largely related to size of unit- 210 sq. m cf. 135 sq. m at Evergreen. However, my levy is R7378 compared to R4314 at Tokai where the facilities are significantly superior. Even allowing for the difference in unit numbers 130 cf.100 my levy is 30% higher. Why are Evergreen so uncompetitive? (Mike Smith -67)

Answer: Compatibility depends on facilities and services provided. Refer to your LRA for the list of facilities and services to be covered by the basic levy. Looking at our portfolio of Villages and range of services on offer we believe that we are extremely competitive.

20. Introduction

The financial report presented at last year's Annual General Meeting on 12 May 2021 reflected an operating surplus of R1.243 million for the year ended 28 February 2021 (FY2021). This surplus arose mainly as a result of budgeted expenses not being spent on the village due to Covid (for example, garden maintenance, village maintenance and catering costs).

Evergreen management subsequently and unilaterally adjusted the previously reported FY2021 financial results by charging a further R1.862 million in costs which resulted in the elimination of the surplus of R1.243 million and a resultant operating loss of R619 000.

Additional costs

Details of the additional costs are as follows:

	<u>R 000's</u>
Depreciation	507
Building maintenance provision	620
Insurance	219
Head office cost allocations	343
Covid related costs	173
Total Additional Costs	1 862

Members of our Rescom's finance sub-committee on finance met with Evergreen management on several occasions during 2021 to try and resolve differences of opinion on the above costs. It was accepted that the Covid related costs of R173,000 could justifiably be charged against income.

There is ongoing discussion with Evergreen management relating to both the principle and quantum of the head office cost allocations and insurance charges and the matter remains

unresolved not only with our village, but with others as well. Accordingly, I do not deal with them at this time.

Without formally acknowledging that our finance sub-committee's stance was correct and that the charges for depreciation and building maintenance were unjustified and incorrect, Evergreen management seems to have tacitly accepted that these 2 cost categories were not chargeable because they were not included in any future monthly management accounts of the village nor are they included in the draft budget for the current financial year (FY2023)

Answer: There was a substantial discussion at the AGM around this matter between Garry Reed, James Wilson and David Walker. This matter will be further discussed at the upcoming engagement with Management and the Finance Sub Committee and we will provide further updates after this meeting.

21. The charges for depreciation and building maintenance amounting to R1.127 million in FY2021 are unjustified. I therefore request that the financial report submitted as part of the 2022 AGM pack be amended to include an additional R1.127 million in income for the 2022 financial year and that Evergreen management advise the meeting as to how this additional income (equivalent to R11 270 per unit) will be dealt with.

Answer: No changes will be affected to FY21 and FY22.

22. Introduction to Question regarding adding new charges to levies

1.1. Bergvliet residents do not accept Evergreens (ELV) proposals.

The results of a survey supplied to ELV show that Bergvliet residents overwhelmingly reject ELV's proposal to increase levies with additional charges for Head Office Expense, Building, Insurance, Health Care and Catering.

1.2. The legality of ELV proposals is questioned below.

Life Right Agreements (LRA's) of which there are numerous versions are circuitous, and often contradictory. Few clauses are complete therefore determining the extent of either parties rights involves reading multiple clauses simultaneously. In the typical LRA, the link between levies payable and the list of facilities provided by ELV is vague, however

1) The Retired Persons Act demands that the Contract (LRA) between the Developer (EPI/ELV) and the Purchaser (Resident), will state the basis* upon which any levy will be calculated. My LRA provides this basis in Annexure D, and the value this levy calculation produces is also contained in Annexure D. (*Per the Cambridge dictionary basis means "the most important facts, ideas, etc. from which something is developed")

2) A levy is described in the Retired Persons Act as a contribution to costs, and in the LRA as a "

A fixed facilities and services charge in respect of the Facilities and Services detailed in Clause 12 of the agreement as set out in the table Below".

However, the word detailed is misleading as the list is general and vague

3)A table then lists the value of the levy calculated on the basis described in

1) above with the words “escalating annually in line with the increased cost of provision of the facilities and services detailed in clause 12 of the Life Right Agreement”. Again, the word detailed is misleading, the list is general and vague.

4) Clause 10.3 states that the sum of the thus estimated levies to be paid by all the Life Right Holders of the scheme (Bergvliet Village) will be sufficient to cover the estimated Total Operating Cost of the village

5) Annexure C 1.1. provides’ an estimate of the Total Operating Costs.

6) Thus, a basis is used to calculate the levy, and the LRA states that this levy, when collected with the levies of other residents is equal to the Total Operating costs of Bergvliet Village.

LRA Holders are informed, via the above, that the facilities and services they will receive in the Bergvliet scheme, are included in the levy disclosed at the time of their signature on the LRA.

There is no legal footing in the HDSRPA or the LRA for altering the basis on which the agreed upon levy is calculated, nor as in this case adding a new charge for something which is already being provided. (Mr Alan Baxter)

23. Question regarding adding new charges to levies in order to satisfy residents legitimate concerns, will ELV please supply details of the legal opinions on which ELV’s proposals are founded. (Mr Alan Baxter)

Answer: Management believes that the LRA is clear on these matters and there is no confusion. The agreement, like any other agreements, must not be read in isolation nor should it be quoted in isolation. The particular clause pertaining to the levies being disclosed for 24 months further makes mention of the word “estimate” as it is impossible to predict the increase in costs in a country where inflation rates are unpredictable. Should the resident want management to go through their LRA point by point, we are available.

24. Municipal Rates and the Rates shortfall

1. Evergreen Property Investments (Pty) Ltd (“EPI”) is the owner of each individual property/section (“Unit”) in the village.
2. As EPI is the owner of each individual Unit in the village it is contractually responsible to the Council for the individual municipal rates account for each individual Unit.
3. The individual monthly rates accounts received from the Council for each Unit in the village are specifically recorded in the name of EPI (as owner of the individual Unit).
4. EPI is solely responsible for negotiating Life Right Agreements with individual Life Right Holders and the remaining Life Right Holders in the village have no say whatsoever in the agreement that EPI makes with other Life Right Holders when it comes to discussing financial matters, including levies or rates.

5. EPI, through the Life Right Agreements, specifically deals with the recovery (or not) of the individual rates amounts from each Life Right Holder.
6. The municipal rates are specific to each individual Unit in the village and those rates accounts relating to individual Units are not a communal expense for the enjoyment of all Life Right Holders (communal expenses are for the likes of security, garden maintenance, pool usage, rates for the common areas (e.g. the manor house), etc.).
7. The majority of Life Right Holders (approximately 68 in number) have specific clauses in their LRAs stating that ... "municipal rates as levied by the Local Authority from time to time in respect of the Unit shall be charged to the Occupant on a monthly basis". Accordingly, EPI collects municipal rates from the majority of Life Right Holders in terms of a separate line item contained in the monthly levy invoices, thereby recovering the municipal rates that it (EPI) is contractually obligated to pay to the council.
8. Ideally, if all 100 Life Right Holders had the same reimbursive municipal rates clause in their respective LRAs then EPI would recover 100% of the rates it is responsible for paying to Council and there would be no rates deficit in the monthly management accounts each month. However, the "Early Adopters" (a term used for those Life Right Holders who were entrants into the village upon its establishment or shortly thereafter) do not pay municipal rates to EPI, as their LRAs negotiated with EPI specifically records that their monthly levy is inclusive of municipal rates and taxes. There are approximately 32 "Early Adopters" that do not specifically pay towards EPI's municipal rates and taxes.
9. There is a line item in the village's monthly management accounts showing the municipal rates under-recovered from Life Right Holders each month and the village currently runs at a rates deficit of between R60,000 and R70,000 per month.

It is contended by a number of Life Right Holders that the municipal rates under-recovery should solely be an EPI expense and not a communal expense for recovery, via general levies, as an operating expense in the management accounts, for the following reasons:

- a. EPI is the owner of all of the Units in the village and the municipal rates accounts are specific to each individual Unit and are not a communal cost;
- b. The rates recovery shortfall is shown as being an operating expense of the village and this is not correct, because operating expenses are expenses incurred for the general operations of the village and the municipal rates are not a general cost for the village but are rather a specific cost to EPI and to individual properties;
- c. If certain Life Right Holders have been given rates holidays by EPI when negotiating their specific contracts then that is contractually an agreement made between EPI and the particular Life Right Holder in question and not charging for rates cannot be held to be to the detriment of the remaining Life Right Holders;
- d. By putting the rates deficit through the general monthly management accounts of the village as an operating expense EPI is then asking the majority of the residents who have already paid municipal rates on their individual properties to further contribute for a second time to the rates of other Units that EPI is responsible for paying;

- e. It should be noted that part of the rates under-recovery expense also relates to properties in the village that are empty (unsold) or that are in the process of being refurbished, and accordingly those rates accounts should solely form part of EPI's costs as owner of the property and should not be for the account of the Life Right Holders;
- f. The argument cannot be made by EPI that because it picks up any shortfall or deficit in the village's income it therefore makes no difference if there is a rates under-recovery which contributes to the deficit - the reason being is because without the municipal rates recovery expense of between R60,000 and R70,000 per month there would be no deficit in the management accounts and in fact there would be a surplus.

Why are municipal rates (the expense and the recovery) included in the monthly management accounts of the village when municipal rates is specifically an EPI cost for EPI's own income statement and balance sheet, in particular when if all 100 units paid rates on their individual Units then there would be no monthly deficit (it would be a breakeven position)?

Surely the rates deficit is EPI's own specific cost for its own set of financial statements if (i) EPI is the owner of each individual Unit in the village and (ii) EPI negotiates with Life Right Holders whether they will or will not pay for these rates costs – this negotiation to pay or not to pay rates surely cannot be made to the detriment of all Life Right Holders who are then responsible for picking up this monthly shortfall/deficit? 3 Put another way, why should Life Right Holders pay for EPI's specific ownership costs in terms of municipal rates and why is this recovery and expense item even recorded in the village's monthly management accounts
(Coline Levine)

Answer: This question was attended to by Alet Du Plessis and James Wilson in the AGM and is so minuted. Further discussion around this topic will take place in the upcoming engagement between management and the Finance Sub-Committee. Further communication to follow.