

SUMMARY OF THE ACTIVITIES UNDERTAKEN BY

THE ISRAEL ASSOCIATION OF SENIOR HOUSING RESIDENTS

TO PROMOTE AND PROTECT RESIDENTS' RIGHTS



August 2018

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Dear associate residents,

We are glad to announce that the amendment of Clause 27 of the Protected Housing Law, the clause securing our deposits, has passed the 2nd and 3rd reading by the Knesset. Full details of this amendment can be found with your Va'ad and the Association's web site. It is our pleasure and privilege to outline herewith the principles of the new Clause 27 and all the other achievements of the Association during the last years.

Founding the Association, its Status and Goals

The Israel Association of Senior Housing Residents was founded in the year 2000, its objective being the protection of the rights of residents in protected housing facilities. At that time there was a legislative vacuum in this domain. The founder of the Association is Mr. Shlomo Kochavi, resident of Achuzat Rishonim in Rishon Lezion. The Association counts today 10,000 members and is managed by a group of residents elected periodically, all of them acting on a pro bono basis to promote the rights and conditions of protected housing residents.

In 2004 the Association was awarded, by the Ministry of Justice, the status of "Consumer Organization" which confers it the universal right of representing all the residents. This opened the door for the Association to go to court on a number of very important issues. We have achieved some major rulings, some of them constituting precedents in the protected housing domain.

The Protected Housing Law Initiated and Completed by the Association

The formulation of the Law started in October 2005 and continued with endless meetings and deliberations in various forums for about seven years. In 2012 the Law passed the final reading in the Knesset and was published in the Official Gazette on June 3rd 2012. All the members who served on the board during these long years, such as the late Yigal Peleg and Zvi Alderoti, contributed their time, efforts and knowhow towards achieving this goal and all as a pro bono activity.

This long process was accompanied and supported by representatives of the Ministries of Welfare and Justice and with the diligent assistance of the Association's

lobbyist in the Knesset Lawyer Ruth Preminger of "Prilog – Strategy, Government Relations & Regulation" as well as the great work of the legal consultants Lawyers Zeev Weiss and Dana Malichi-Hakmon of the Weiss Porat Law Firm.

The Law encompasses all the aspects of protected living facilities and provides the legal framework of the rights of the residents. The Law includes licensing and inspection regulations, establishes the legal status of the Residents Representative Board (Va'ad), it limits the possibilities of raising the monthly maintenance fees above the Cost of Living Index, it allows the residents to hire and lodge a personal caregiver in the dwelling unit and many more important matters. The full version of the Law in Hebrew and English can be found on the Association's website.

Promoting the Publication of the Regulations to the Law

Since the official publication of the Protected Housing Law, the Association has continuously acted to promote the regulations thereof since without them the Law "has no teeth". The following is a list of the regulations and their current status:

1. Due Diligence Document - published in the Official Gazette
2. Dwelling unit Specifications - published in the Official Gazette
3. Residents Committee (Va'ad) - published in the Official Gazette
4. Manager's Qualification - published in the Official Gazette
5. Application for License – depends on finalizing Financial Stability Regulations
6. Financial Stability Assessment – is still debated prior to submission to the Labor, Welfare and Health Committee
7. Terms & Conditions for Operation - have to be signed again, prior to approval by the Knesset Labor, Welfare and Health Committee
8. License Fee – still debated by various ministries. Has to be approved by the Knesset Finance Committee.

The Amendment to Clause 27 – Securing the Residents' Deposits

The following are the main parts of the Amendment to Clause 27:

1. First Mortgage – it will be registered in the Land Registry (TABU) in favour of the resident or the depositor through the services of a trustee who will be appointed by the majority of votes of the residents' general assembly and whose fee will be determined by the Va'ad and the licensee, who will pay it. Where the home is registered as a condominium, the licensee may register the first mortgage regarding the specific dwelling unit to the name of the resident or the depositor.
2. Alternative Securities – Instead of the first mortgage the licensee may

provide the resident or the depositor with a bank guarantee or set up a trustee fund consisting of 40% of the deposit received.

3. Erasing the Mortgage- In the case of a trustee, he will be the one to erase the resident's name from the Land Registry once he receives proof that the balance of the deposit has been returned to its legal owner/s. Where the mortgage is registered directly to the resident or the person appointed for this matter (who has to be someone completely unrelated to the licensee), it will be erased after receipt of the balance of the deposit.
Should a request to erase the mortgage not be acted on within 14 work days then the lawyer appointed by the licensee may submit the request. Where the resident dies without appointing a trustee to receive the balance of the deposit, then the licensee may appoint a lawyer who will act as a trustee on behalf of the resident's heir/s and he will have the right to erase the mortgage (when it was registered directly as part of a condominium) and keep the deposit in escrow until it can be handed over to the legal heirs of the residents.
4. The licensee will carry the costs involved in any kind of security given to the resident. In no way can these costs be debited to the resident. The resident cannot waive the right to a security.
5. Realization of the Security provided in accordance with this Law will occur in a case of the licensee becoming insolvent or declared bankrupt (including the state of Procedures Freezing Order, Assets Freezing Order, Dissolution Order or Appointing a Receiver Order) or where there is absolutely no way or means to return the balance of the deposit.
6. Exceptions Committee will be set up by the Minister of Welfare. The committee will have the power to exempt the licensee completely or partially from providing a security for the deposits or any other demands, if it has been convinced that there is a real difficulty, non-dependence on the licensee, to register a mortgage in favor of residents and that he has taken every possible measures at his disposal, and if the substitute security is sufficient. The exemption is limited to two periods totaling not more than five years.
7. Financial Stability Assessment of the Licensee –The Supervisor of Protected Living Facilities may demand that the licensee prove that he has the suitable financial stability in accordance with the, yet to be finalized, Financial Stability Assessment Regulations. Should the Supervisor think, amongst other things, that in the light of information he has received, there is reasonable doubt as to the licensee's inability to meet the requirements

of the 'going concern' standard (in accordance with the International Standards of Auditing), or that his ability to return the residents' deposit will be compromised, or that his liabilities exceed the value of the securities he has provided the residents with, according to this Law, then the Supervisor may relate it to the residents so that they can take appropriate steps. At the same time the Supervisor has the power to suspend or revoke a license.

8. Funding Health-related Expenses in an Insolvency State. The licensee will deposit sums, as is determined in the addendum to the Law, in a fund which will serve to cover residents' health-related expenses (specifically nursing and elder care) in the instance where the licensee has been declared insolvent and said resident has not received the deposit. The fund will be managed by the Administrator General.
9. Funding Management Costs in an Insolvency State. The licensee will deposit sums, as is determined in the addendum to the Law, in a fund which will serve to finance management-related expenses in the instance where the licensee has been declared insolvent. The fund will be managed by the Administrator General.
10. The Law will take effect within 18 months of its official publication and it will also apply to contracts signed before the Law has come into effect. Clauses E till H will be effective within 6 months of the official publication.

Land Registry Cautionary Notice to Protect Residents Rights

Clause 126 of the Real Estate Law is the basis for the residents' right to register a cautionary notice in the Land Registry, which secures their right to inhabit the dwelling unit and return of the balance of their deposits. This was a major activity of the Association in providing some kind of security prior to the Amendment of Clause 27.

Actions taken Regarding Raise of Maintenance Fee above the Index

As per the Protected Living Law, the monthly maintenance fees are subject to fluctuation of the Cost of Living Index depending on changes in operational costs of the home, but can never exceed the percentage specified in the contracts. This issue has been brought up several times by the Association in various legal forums. The main result of all this was a court ruling declaring that in Protected Living Homes raising the fees cannot be based on the sole determination of the management. Transparency is required vis-a-vis the residents and/or their representatives. A number of

homes have now adopted this policy and procedures.

The Association assists with legal advice as well as with accounting issues in implementing the transparency process.

Weiss Porat Law Firm, together with C.P.A. Offer Beck, prepared, at the request of the Association, a set of rules as to how to make the various computations regarding this raise.

Actions taken toward Annulment of VAT carried by the Resident

Monthly maintenance fees and the annual reduction of the deposits are liable for VAT payments. Some of the residents are also debited with VAT on Conceptual Interest. The Association appealed to the High Court, asking the residents should be exempt of all these VAT charges but the appeal was rejected since the Court deemed our contracts to be a combination of rent and services and not a typical pure rental contract. The Association has adopted a new approach to the issue. Activity has just started.

Actions taken to Allow Employing and Lodging a Personal Caregiver in the Dwelling Unit and Reducing the Extra Cost Demands

The result of a claim made by the Association resulted in a sentence which determined the residents' right to employ and lodge a personal caregiver in the dwelling unit. This principle was later integrated in Clause 33 of the Protected Living Law.

Further, the Association has commissioned the economist Yigal Gal to conduct a survey of the actual extra costs incurred by the protected living homes resulting from the presence of the personal caregivers. The sums he came up with ranged from NIS 108 up to NIS 369. This encouraged the Association to support a class action against 3 homes with especially high cost demands. The result was the agreement for all the residents of the Migdalei Hayam Hatichon Group to pay a reduced amount of NIS 585 + VAT per month, and for all residents of the Bayit Bakfar Group to pay NIS 753 + VAT (half of the previous amount demanded). These agreements were made public and got the preliminary sanction of the Court.

Discounts in Municipal Taxes & Exemption from VAT thereupon

Several years ago a great number of homes included the municipal taxes in the monthly maintenance fee. The result was that residents paid VAT on these sums which are supposed to be exempt and did not enjoy the discounts they were entitled to such as senior citizens, handicapped, holocaust survivors, etc.

Due to the Association's intervention, most houses started abiding by the law and made the necessary changes for residents to get their due benefits and not pay VAT on Municipal Taxes. The few remaining homes are being sued by the residents with the help of the Association.

Bi-lateral Update of Residents' Health Files – Sick Funds and Homes

Representatives of the Ministry of Welfare, the Association and A.B.A (the association of the licensees) have worked jointly to promote the synchronization of medical information of the residents' medical files managed by the sick funds (Kupot Cholim) and those managed by the home they live in. Very important in providing the right and accurate treatments and at the same time while maintaining Physician–patient privilege.

Maccabi sick fund was the first to respond and act. We all hope the other sick funds will follow suit. The agreement and technical arrangements are that the doctors of the protected living homes will get access to the resident's medical file, read all the information regarding diagnoses, sensitivities, medications, lab results, hospital reports, etc. This will happen when the resident provides his Maccabi card to the home doctor. The doctor is then also able to write his report and attach it to the medical file of the sick fund. Homes have to install the necessary technology gadgets.

Supporting Claims of Residents

Throughout all the years, the Association, as a Consumer Organization, submits claims to the courts in support of crucial issues in the life of residents in protected living homes.

Website Update and Improvements

During the last 3 years the Association had updated and advanced its websites using modern technology. The website brings all the relevant information to residents, their family members and future residents.

Protected Living Information Manual

The Association worked hard to put together the maximum relevant information regarding protected living. The manual was issued two years ago and was distributed to the members. It can be read on the website.

Regular Meetings of the Board with A.B.A Representatives

We have finally reached an ongoing, periodical dialogue with the representatives of the licensees.

Ongoing Power of Attorney

Since the new legislation regarding Guardianship Laws (Amendment 18 to the Law), the Association initiated and is paying for presentation of the subject to the residents, since this is really very important to all.

Wishing all of us to continue to succeed in the protection of our rights,
תשע"ט To stay in good health and be joyful and happy in the New Year.

Avraham Bar David, Chairman of the Board.

