

INQUIRY INTO THE RETIREMENT HOUSING SECTOR
BY THE LEGISLATIVE COUNCIL
STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

A submission by Michael Julian

[REDACTED]

5 October 2016

My name is Michael Julian; I reside with my wife [REDACTED]. Firstly, I would like to say to the Committee how much I welcome the opportunity to make this submission. I hope it will assist you in your work in identifying opportunities for improvement and reform of the retirement housing sector and in particular retirement villages.

Introduction

In my submission, which initially outlines our experience in moving into a retirement village, I wish to address the following aspects of the Inquiry's Terms of Reference:

- (1) (b) proper consumer protection, simplified management standards dispute resolution procedures and regulations
- (1) (c) focus on dignity, respect, and appropriate care and quality of life for retirees
- (4) the option to appoint a Retirement Housing Ombudsman

Entry into [REDACTED]

We moved into our villa on Friday 13 June 2016. Understanding this was a new build villa we were conscious of the fact it was likely there would be defects to be attended to as is often the case with new construction. We were not however, prepared for the significance and number of defects to be undertaken.

Some 44 defects are recorded on our Incoming Condition Report with a further 36 items identified during the first few weeks living in the villa. The more significant being the need for the builder to replace all the tiles in the 2 bathrooms and the splash back in the kitchen due to installing the wrong colour scheme. This delayed our entry into the village by two weeks. The need to unblock toilet and shower drains after the first night in residence and the need to replace two thirds of the wooden floor, due to poor workmanship and scratches by tradespeople during the fitout process after the wood floor had been laid rather than before. Several windows were replaced because of severe scratching.

The majority of the items on the defect list were as a result of poor work by tradespersons and non-existent quality control by both the builder and operator when taking over the property from the builder. These defects should have been identified and remedied before the Villa was handed over to us.

Coping with the frustration in completing the numerous forms which had to be submitted itemising the defects, sending repeated requests for progress reports in completing the defect rectification was both time consuming and stressful. Little feedback was provided on when defect items would be fixed. The Three Month Inspection helped in so far as identifying the 22 outstanding items at that stage and the Twelve Month list which still had 10 items!

While this was a quite stressful and lengthy period we were able to cope with it and resolve our concerns. Others, in a different situation, may have the need to consult someone independent such as an Ombudsman to resolve the more significant items when a dispute arises.

I am pleased to say that after 27 months I was able to cross off the last remaining defect a couple of weeks ago. Although one landscaping matter in the front garden still needs to be addressed.

Coming to grips with the many by laws in relation to what we can and cannot do in the Village is also a challenge, in particular what we are permitted to do with our front garden. One bylaw states it is Management's responsibility to maintain all Common Area lawns and gardens in a presentable condition. As far as maintaining the front garden this is mainly left to the residents to undertake, despite residents paying for this service through the maintenance charge. This aspect has been a major concern to the majority of residents as many elderly residents are not able to do this work.

My wife and I have both come to the view it was easier for us to cope with moving into a retirement village in our 70's than in our 80's. Had either of us been a single person the impact of the experience would have been more severe.

Village management were sympathetic to our concerns and supportive of resolving matters, however, in several items their hands were tied as the defect rectification process was in the hands of the builder.

Moving into a retirement village should reflect "a focus on dignity, respect, appropriate care and quality of life for retirees". More needs to be done, to avoid repetition of our experience by improved management and quality control standards. Better communication by the Operator with individuals would make residents feel more welcome.

Notwithstanding the above observations and experiences we are pleased we moved into [REDACTED], we are very happy here and enjoy the lifestyle and the company of likeminded people in the village.

Future Concerns

The Agreement to Lease and the Lease document that we signed before entering [REDACTED] are complex legal documents based on the *Retirement Villages Act 1986* which itself is a complex piece of legislation.

Consumer Affairs Victoria provides a wealth of information on how retirement villages operate including "Good practice protocols for retirement village operators. While these protocols are not legally binding, there is an expectation that they will be applied. Retirement Village operators should make copies of these protocols to all residents.

Turning to the content of our lease documents, while we recognise we were advised to seek advice from a Solicitor before signing them, we also recognised it was our intention to move into [REDACTED] because of its high quality and being a 'new build' retirement village. Its location was also appealing.

The Lease documents provide far greater benefits to the Operator than they do to the Resident and need to be reviewed to provide a more level playing field.

For example Part G – Termination and transfer is weighted heavily in favour of the Operator. In particular, the requirements that comes into effect on the death of the last resident. There are two major concerns; firstly the amount and nature of reinstatement work that might be required by the Operator and the time frame of 14 days after the death of the last resident to determine the scope of reinstatement work to be undertaken.

According to the Lease document, Reinstatement Work (Clause 16.2) means the work needed to be done to the Unit in order that it is in the better condition of the Condition Report issued on entry, (as determined by the Operator acting reasonably), and the condition required to achieve the maximum resale amount or as close to that condition as possible, notwithstanding fair wear and tear.

It includes such items as, and I quote “ cleaning, repainting, replacing carpets and any floor coverings, repairing damage, treating for pests, and replacing Unit Items (as defined in Item 5 of the Lease) such as, ovens, dishwasher, cooktop, range hood, microwave, ducted heating and cooling and the emergency alarm. Alterations of the whole or part of the interior of the Unit including of or to the Unit Items, cupboards, walls, kitchen and bathrooms. If the Unit has been Altered (whether before or during the Term of this Lease) then Reinstatement Work may include the removal in full or in part of the previous Alteration unless either:

- (A) that alteration is structural and the Operator has not given notice that the alteration is to be removed; or
- (B) the Operator imposed a condition when approving the Resident’s works that the alteration was to remain” unquote.

This Reinstatement Clause is quite confusing and unclear; it requires revision providing greater clarity.

As previously mentioned the lease stipulates the parties must attempt to determine the scope of Reinstatement Work within 14 days of the death of the last resident, failing which the Operator will procure from a suitably qualified tradesperson a statement of works and quotation to complete the Reinstatement Work. The parties agree that the statement of works will be the Reinstatement Work, and that the statement of works is binding on each of the parties.

Two observations of the reinstatement process:

1. I would suggest that there is scope for significant disagreement between the Operator and the Executor of our will to reach agreement on the scope of work required.
2. The 14 day period from our death to complete the above process, before the Operator takes over and unilaterally decides what reinstatement is required is far too short particularly at a time when our children will be grieving our death. 30 days or more would be more realistic.

Issues Relating to Sale of Villa on Termination

Consumer Affairs Victoria, in their Protocol 7 titled Refurbishment and Reinstatement, provide advice to retirement village operators, stating:

“If the resident or their legal representative believes they would be better off if no works were done your options include:

- Explaining the reasons why they would be better off
- Explaining how the works will benefit the village
- Considering how you could proceed with works in a way that minimises any loss for the resident
- Considering contributing to the cost”

None of the content in paragraph 5 is reflected in the Lease we have with our Operator.

This is one example where it is recommended that the Committee considers legislation to require Retirement Village Operators to adopt a fairer and more equitable approach and maybe include the option of not undertaking reinstatement works or where parties agree to reinstatement then the costs of reinstatement is shared equally between the Operator and the resident or their legal representative.

This would result on both parties benefiting equally from the reinstatement woks. Our lease at clause 20.3 (v) requires the resident to pay the full cost of reinstatement works.

Clause 20 payments following termination, at 20.1 (b) provides that the Termination Payment paid by the Operator to the Resident or their legal representative consists 50% of the capital gain, if any.

Almost every retirement village resident establishes a courtyard garden, at their own cost, many add awnings, or pergolas even fish ponds; some spend upwards of \$20,000 to \$30,000 which on resale adds to the value of the Villa. Others have made improvements to their villa such as installing shutters and blinds worth several thousand dollars.

Currently this results in the Operator gaining a benefit of 50% of the capital gain from the above mentioned improvements which were paid in full by the resident.

Again it is recommended that the Committee considers making a recommendation that requires Operators to adopt a more equitable approach and to take into consideration paying 100% of the

capital gain from courtyard and other improvements. This would require an independent valuation to determine the value of such improvements.

A likely outcome of the above concerns is there will be significant dispute between the Operator and our Executor, requiring the need for an independent person such as an Ombudsman to review, assist and make a fair and appropriate binding decision.

In the absence of an Ombudsman we have felt it necessary to advise our Executor to engage a solicitor to oversee the Reinstatement process and sale of our villa we have. This will clearly be a significant cost to them.

I note that the Residents of Retirement Villages Victoria Inc. has made a very comprehensive submission to the Inquiry into the retirement housing sector, which is available on their website. I commend them for it and support their findings and proposals.

In summary I request the Committee to recommend the following:

- (i) Lease documents used by Retirement Villages be fully analysed for fairness and a standard lease document be created for the varying types of Retirement Villages
- (ii) The revised lease documents should be simpler, written in plain English and provide a more equitable output to both the resident and the operator
- (iii) In particular, the clauses in relation to reinstatement be reviewed to ensure fairness to both parties in every respect, including sharing the cost of reinstatement works required on termination of a lease and payment to residents or their legal representative of 100% of the value of additions to villas paid for by the resident over the course of their tenure
- (iv) The Office of Retirement Housing Ombudsman be created to:
 - a. seek redress for residents of the retirement housing sector when they have unresolved complaints and who cannot afford to go to court
 - b. be an independent arbiter whose services are free of charge
 - c. make compulsory findings and where they identify injustice they are in a position to put this right

Michael Julian

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