

Inquiry Response on Retirement Village Act Definitions and Resulting Skewed Contracts only.

We moved into a 60% finished Burwood Terrace in 2003 because my wife was partially disabled because of a stroke.

Before we signed the contract, (after looking at about 20 villages), we asked “was the operating budget balanced”? “It was planned to be when completed”, was the reply.

A few months later, the developer/operator told us that the service/maintenance fee for the operating account would have to rise 50%. It took about 3 years of negotiating and the sale of the village for, we understand the 4th or 5th time, and is a long story, but a staged rise **and a reduction in service** was eventually accepted.

The Victorian Retirement village Act 1986 was **emasculated, before being legislated** allowing contracts to be skewed in the developer/operators favour..

Back before the Victorian Retirement Village (RV) Act 1986, they, as the only (vested interest) experts, provided the two key definitions to use in the Act, the first on page 12 required residents before they were accepted into a village to pay an “ingoining contribution” as an interest free loan. The second definition on page 5 defines an “in-going contribution” as a “donation”.

That allows higher prices surreptitiously, because they are not finalized until the contracts are terminated, and there is no way of the lessees or anyone else accurately figuring out the declining equivalent monthly rental . That will depend on the duration of the contract, and a number of other variables.

Retirement Villages are great, it is just the contracts that degrade a very good concept. The present Act facilitates fundamentally deceptive and unfit for purpose contracts, by allowing the contracts to front load the cots.

It makes for long convoluted contracts that only the developer/operators fully understand.

The contracts trap some lessees who would like to escape; but because of the high early Capital Improvement Fees, “**deferred**” management costs masked by the complexity of the contracts, caused by the two legislated definitions, they can’t afford to escape.

It also discriminates against more elderly entrant lessees because of the enormous early costs.

- **Revise the RV Act** to force the **option** of a residential tenancy type contract with secure tenure, to every future potential lessee.
- Appoint a **Retiree Lease housing Ombudsman**. He won’t solve the majority of RV lessees’ problems because most come from the effects of the obscured contract costs.
- Mandate that **all village managers must have a week’s independent educational institute formal training** on the RV Act, the RV regulations, dealing with sub-contractors and interpretation of lease contracts **before they are appointed**.
- **Outlaw the use term “deferred”** management fee in contracts, it is misleading, as it is used to give lessees the false and misleading impression that the fees are not taken till the contract terminates.

I have spent years investigating retirement village contracts and here and overseas and would appreciate the opportunity to discuss these issues with the inquiry.

Charles Adams


[REDACTED]

From: Charles Adams [REDACTED]
Sent: Wednesday, 8 June 2016 8:28 AM
To: [REDACTED]
Subject: Inquiry response on Retirement Villages only 2
Attachments: Inquiry response on Retirement Villages only 2.docx

Please find attached a submission to the Inquiry. I would appreciate confirmation that you have received this safely, including the photo.

Also I hope you will be permitted to group the submissions into their 3 separate Acts, namely:-

- Retirement Villages
- Owners Corporations
- Residential Tenancies

Without segregation into the various Acts doing this inquiry will be even more confusing than it appears now.

After 13 years in a village it is now apparent that the Retirement Village Act 1986 has two definitions that skew the contracts heavily in favour of the developer/operators, by obscuring the true costs.

I will be putting in a separate submission on that issue.

Regards.

~ C

Submission to Legislative Council Inquiry Retirement Village Manager - Training

Over 13 years in this RV I have seen **gross waste** because village management is untrained, often un-killed and inexperienced.

There was a small tiled area where cars pulled up in front of the main building entrance. The tiles were in sand on a 15 cm reinforced concrete slab. The sand eventually moved so the manager decided to replace it with an all concrete slab. The sub-contractor spent 3 days with a jack hammer breaking up the perfectly satisfactory slab, then poured a new one thicker to replace the whole thing. It cost about 4 times as much for no benefit, as just adding to the existing slab which would have been a minor job.

A perfectly serviceable grey wrought pair of iron front gate were replaced with a completely new more ornate pair when the only the remote operation system failed

Whole interiors gutted, with everything put in a skip to go to the tip. This includes all appliances, all electrics, taps, toilets, basins showers, doors, kitchen cupboards, and all internal plaster, at the exited lessees expense typically **4 months after he had vacated the unit to terminate. All this material is perfectly serviceable. This is referred to as, "updating"**. It is widely practiced by the big four corporate developer/managers.

See a photo attached of one of several skips from one unit.

One widow resident had an air-con fail. The manager's favourite contractor came and quoted \$7000 to fix it. One of the other lessees recommended another contractor who fixed it for \$700.

The legislation, allows the contracts to rip off lessee/residents because they never see the real prices, so completely obscured by the contracts.

- **Revise the RV Act** to force the option of a residential tenancy type contract with secure tenure, **to every future prospective lessee.**
- Appoint a **Retiree Lease housing Ombudsman**. He won't solve the majority of RV lessees' problems because most come from the effects of the obscured contract costs.
- Mandate that **all village managers must have a week's independent educational institute formal training** on the RV Act, the RV regulations, dealing with sub contractors and interpretation of lease contracts **before they are appointed.**
- **Outlaw the use term "deferred"** management fee in contracts. It intentionally misleads, as it gives lessees the false and misleading impression that the fees are not taken till the contract terminates.

These lease contracts are so difficult that even CAV cannot provide coherent guidance for prospective lessees to effectively evaluate the real cost, before they sign.

I would appreciate the opportunity to discuss these issues with the inquiry.

Charles Adams




Legislative Assembly Inquiry

Retirement Villages Act 1986 Submission first-hand experience.

Someone I knew had just moved into another Lend Lease Village and I went to see them on a Saturday afternoon without knowing their phone or unit number. The office was unattended so I went outside to find where they might be located and came across a woman walking; she said yes, and would show where to go. As we walked, I mentioned I was on the committee of the RRVV and asked if she was in it. She was not, and wanted to know about it. When I explained, she got excited and asked me to come and see the damp walls, skirting and wardrobe, and the holes in the ceiling of her unit.

Cautiously I went with her: they were as she said. I looked through the hole in her bedroom ceiling and could immediately see where the flashing was not present at the edge of the roof structure so that with wind, rain water would be constantly driven in onto her ceiling and would run down the internal walls and make everything damp. The skirting was rotten.

She had been there 7 years and through 4 managers had not been able to get any to address the problem successfully. Later she found out that the rotten floor had been replaced, before she was allowed to move in.

With two emails and photographs, one to the Lend Lease regional manager and one to CAV I was able to arrange a meeting, which enabled the problem to be solved.

The female manager then subjected the elderly resident to bullying, for causing trouble!

The resident eventually could not stand the pressure and decided to exit: and was offered some sort of settlement, which she would not discuss as it was covered by a confidentiality agreement.

- **Revise the RV Act** to force the **option** of a residential tenancy type contract **with secure tenure** for all potential future residents.
- Appoint a **Retiree Lease housing Ombudsman**. He won't solve the majority of RV lessees' problems, because **most come from the effects of the biased definition of a retirement village and the definition of the "in-going contribution" obscuring the cost rate in conforming contracts.**
- **Mandate that all village managers must have a week's independent educational institute formal training on the RV Act, the RV regulations, dealing with sub-contractors and interpretation of lease contracts before they are appointed.**
- **Outlaw the use term "deferred"** management fee in contracts, it is misleading, as it is used to give lessees the false and misleading impression that the fees are not taken until the contract terminates. That word traps some lessees.

The two key RV **definitions** in the **legislation**, allows the **contracts** to surreptitiously rip off all residents because they never see the real price and cannot see the real equivalent monthly rental until usually about 4 months after they move out and the contract terminated, if then, in a nursing home or 1.8m underground .

The Retirement Village Act 1986 prevents free and open competition in this sector of the housing market until the definitions are revised.

I would appreciate the opportunity to discuss these issues with the inquiry. I would bring a PowerPoint Presentation.

Charles Adams

The Victorian Retirement Village Act -1986 Consequences

As enacted this legislation, or more specifically the **two definitions of a “retirement village” and the “ingoing contribution”** in it, effectively hide, by deferral, the cost and cost rate until months after the complying contracts terminate, maybe 10 or 20 years later.

The Act, superficially may seem suitable but, **via the resultant contracts**, enables systemic exploitation of the lessees “loan”, by the lessees lack of specialist information, and inability to get adequate financial analysis and advice from their legal advisers.

That is because very few lawyers understand all of the financial and other implications inherent in these skewed contracts. If they do understand, very, very, few disclose it. Operators always recommend referrals to legal advisers, or mandate it. This is **a very skilful marketing ploy**, which also serves as a gravy train for solicitors. The only people that full understand, are the operators’ accountants, and they are not in the sales force.

The Victorian Retirement Village Act -1986 is not fit for purpose, as protective legislation for consumers. Consumer Protection Legislation should not sanction complex consumer deception.

Furthermore:-

- Retirement Village contracts documents, typically comprise a lease, a loan agreement and a deed, are so long and complex, as to be incomprehensible to most, and a disincentive so that some reject the concept entirely. Australasian contracts and other associated explanatory information will be 70 or more pages. In the US where retirement villages operate essentially as residential tenancy, contracts are direct and short typically under 20 pages. I have provided copies and can provide another.
- Contract costs generated under this legislation are biased against the interests of the retiree consumers having generally seven or more variables, which effect the final prices, so it is impractical to make realistic cost estimates.
- Contracts under the Act transfers all property risks to the lessees, which allows operators to upgrade faults in community buildings, roads, lifts, and fire protection systems, at lessees expense, for the benefit of future lessees. There is no place for depreciation in village operating budgets.
- This legislation provides middle class welfare, by means of pensions to lessees, for the ultimate benefit of the retirement village operator and their managers’ incentive compensation bonuses, by obscuring the high price of the lucrative contracts.
- If a lessee wishes or needs to terminate early in a lease the effective cost rate is so high as to be prohibitive in some cases. Some, who are not satisfied, or wish to leave for family reasons, will be trapped in villages.
- By skilled marketing to the legislative drafting team by four “leading” operators, back in 1985-6 the legislation enables the operators to avoid contract cost comparison and competition with alternative downsized housing; that is basically what a retirement village provides.

The only known solution to this chronic exploitation of retirees seeking downsized dwellings is to open the pricing up to free market competition by requiring all future offers to prospective lessees, to require a conventional residential tenancy option. That model, is the norm in the USA, and would allow free market competition in the Victorian market, for the first time since 1986.

The inquiry will get very few complaints from RV lessees, they don’t know the price they pay, are past their prime, and only very, very limited number are motivated enough to write anything at all, let alone a complaint that they fear might alienate and incur the displeasure of their corporate landlord.

I would like the opportunity to expand on the above directly to the Inquiry.

Charles Adams [REDACTED]

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The Victorian Retirement Village Act -1986 Consequences

This legislation, or more specifically the **two definitions of a “retirement village” and the “ingoing contribution or donation”** in it, effectively hides, by deferral, the cost and cost rate until months after the complying contracts terminate, maybe 10 or 20 years later.

The Act may seem suitable but, **via the resultant contracts, in combination with** the lessees’ lack of specialist background, enables their systemic exploitation.

That is because very few lawyers understand all of the financial and other implications inherent in these skewed contracts. If they do understand, very, very, few disclose it. Operators always recommend referrals to legal advisers, or mandate it. This is **a very skilful marketing ploy**, which also serves as a gravy train for solicitors. The only people that fully understand, are the operators’ accountants, and they are not in the sales force.

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Retirement villages are great; it is the Act that enables the contracts, which spoils an otherwise excellent concept.

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Charles Adams

Exploitation systemic 6 1s28/06/2016 4:22 PM