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Submission to Inquiry into the Retirement Housing Sector 17 June 2016

Authors Background

For the last 5 years my wife and I have been residents of [REDACTED] Village ([REDACTED]) a Loan Licence Retirement Village owned by Retirement Communities Australia (RCA) this is a new Village built over the last 6 years and recently completed. Arising out of my experience over that period as a resident and as a former committee member I am submitting the following for consideration by the Inquiry.

Complexity of Contracts and Rules

PCV is governed and controlled by the following :

1. Retirement Villages Act and regulations.
2. Contracts between the residents and the owner.
3. The rules of the [REDACTED] Village Services Association Inc. ([REDACTED] VSA).
4. Various bylaws which can be varied.

Details of Contracts and Rules

1. In [REDACTED] V there are 3 versions of the contract between residents and the owner one pre 2014 and two after.
2. The rules of the [REDACTED] VSA who are responsible to manage the Villages day to day operations were written in 2009 and have not been updated to cover changes since the introduction of the Associations Reform Act 2012. Therefore they must refer to two sets of Association rules, namely the old existing rules and the new rules required under the Act to check which rules are applicable.
3. There are also bylaws which have been changed on several occasions since the Village commenced some to enhance the Owners sales opportunities.
4. The [REDACTED] VSA was originally set up by the Owner with three permanent owners representatives. It then provides for an additional seven resident elected members to form the rest of the committee. This is advertised as "an active management model" by the owner in its sales brochures and although it does give the resident elected members some input into how they spend the residents (their own) money to maintain the Owners assets it also takes a considerable work load and responsibility off the Owner and passes it on to elderly retired volunteers. This in itself seems contrary to the idea of a Retirement Village being a place we all come to retire and enjoy ourselves and raises the question are residents better off not having representation on the committee and passing the work load back to the owner. Residents could always call a general meeting of the Association or elect a separate Residents Committee to pass residents views, requests, etc. to the Association for the 3 owner members to implement.

2.

Entry/Exit and ongoing maintenance costs to maintain buildings and infrastructure

1. Residents pay a one off life time licence fee to occupy their Unit and cover items such as building costs of the Club House and facilities.
2. There is an exit fee of up to 32.5 % of the sale price of the Unit after 10 years.
3. Residents pay a monthly fee to the [REDACTED] VSA to maintain the Club House, all facilities ,the exterior of their Units and infrastructure within the Village including Roads, Pipes,Drains,wiring and all common areas etc.
4. RCA is the owner builder of the Village and has carried out the building works under the company RCA Constructions which has the same Directors.
5. The standard of some of the building work has been questionable and residents have at times had trouble having work rectified even though it is still under the Building Warranties.

As the Owner and Builder have the same Directors getting building defects corrected can be a problem as the owner will invariably say they are satisfied with their builders work. However under their contract the residents may have pay to rectify the work at a future date.

6. Residents have resorted to consulting Consumer Affairs Victoria and Domestic Building Advice and Conciliation regarding some works and both Authorities admit that there is an anomaly in the process in that although the residents pay an upfront fee in excess of the building cost of the Unit for the right to life occupancy they are unable to make a claim directly on the Builder to rectify building faults under the building warranty as they do not actually own the unit,

Disputes Resolution Procedures

This is another area where multiple rules and regulations apply which can make it difficult for residents to understand their rights.

1. The Retirement Villages Act makes provision for there to be procedures for disputes resident against resident and resident against Management (in this case the [REDACTED] VSA).
2. The 3 versions of the Contracts between residents and RCA make provision for disputes as required under the Retirement Villages Act.
3. In the case of [REDACTED] V the [REDACTED] VSA rules also make provision for disputes member against member but seem to exclude member against the Association, however being old rules they need to refer to the new Associations Reform Act 2102 to see if they cover all new requirements.
4. Within the Accreditation documents there are a Human Resources Policy and an Occupational Health and Safety Manual which both list disputes procedures.
5. Then there can be the case of a staff member complaining against a resident which gives question of where can the resident go for a fair hearing for example the federal Fair Work Commission does not cover a complaint by an employee against a resident.

These multiple locations of Disputes Resolution Procedures make it difficult for a resident and in fact the [REDACTED] VSA as Manager to understand how to go about making and dealing with complaints. This is an area that my wife and I have both recently experienced and the matter is still ongoing. The trauma and psychological stress this has placed on us trying to get a fair hearing should not be experience by persons of our age and further reinforces the need for a simplified single point of contact such as an Ombudsman.

3.

Proposal to appoint a Retirement Housing Ombudsman

I believe it would be an excellent idea to have an Ombudsman who has a knowledge of the Retirement Villages Act, the Associations Reform Act 2012 , their accompanying Regulations and the variety of Retirement Village Contracts.

Many residents of Villages are reluctant to make a complaint or raise issues because of fear of reprisal. The appointment of an Ombudsman would provide a person residents would be more likely to approach who would have the knowledge and ability to advise on the procedures to help resolve their disputes problems and concerns in a non confronting way.

The Acts,Contracts,Association Rules,Bylaws,etc. resident are faced with on entering a Retirement Village are still very complex and extremely difficult for the majority of residents (and in many cases their solicitors) to understand.

Conclusions

1. contracts,rules,bylaws,associations as managers,etc. are still far too complex to understand and administer.
2. entry,exit and ongoing maintenance costs are excessive particularly when an owner/ builder can build Villages to any standard and then expect the residents to maintain and replace the Owners assets.
3. disputes in many cases are not handled properly and in accordance with procedures.
4. appointment of an Ombudsman could simplify the handling of disputes and give residents easy access to a person to help resolve their complaints.

I would be happy to attend in person and provide additional information if required.

Graeme Anderson

[REDACTED]

Ph [REDACTED].

email [REDACTED]