

Janice Reilly (Jan),
 [REDACTED]

By email: [REDACTED]
 [REDACTED]

Dear Sir/madam

Submission to consumer property law Review: Issue paper 2-Owners Corporations and Retirement Villages.

INTRODUCTION

I live in a strata title retirement village. I am an old age pensioner. Change is vitally needed to the law, and law enforcement procedures, controlling strata title retirement villages. Consequences for the illegal activity of management companies are almost non-existent. Managers use their greater financial power to effectively silence lot owner/residents, especially in regard to financial matters. The nature of the Service Agreements forced upon residents is one sided in the manager's favour when lot owner/residents buy a unit. If they refuse to sign unfair agreements, the sales do not go through to completion. It could be seen as housing blackmail.

Owner/residents here do not even know the details of how their own money, paid in fees to the manager, is spent, or if perhaps it is even just retained by the manager. The manager has provided no proof of said account, despite frequent requests from the OC committee. . We *can't* decipher the exact financial position of our own village.

Owner/ residents cannot afford to go to VCAT. The large management companies can virtually spend it whatever it likes on legal costs. They exploit the unequal power balance. Pensioner residents desperately need a dedicated ombudsman or the like to enforce each of the laws relevant to strata title villages. Telling us to take cases to VCAT is almost completely useless.

I will detail below the inappropriate, if not illegal, actions taken by the manager of this village.

No Separate bank account

The OC manager [REDACTED] has refused to establish an account for which an OC officer is a signatory, despite legislation requiring it. It says it has a "separate account" for the OC *within* its own bank account, but refuses to provide evidence of such. Our inequitable service agreements with the manager mean that fees have to be paid into a bank account nominated and controlled by AVEO. This may mean the agreement is void, but we cannot afford legal help to challenge it.

Failure to follow OC instructions re urgent expenditure.

[REDACTED] has refused to follow the instructions of the OC regarding expenditure. It demands that we can only use contractors "approved of" by a company it has nominated. Sometimes the OC has sought alternative tenders for jobs. Almost invariably the independent quotes have been for lesser

amounts. The manager has then stalled in organising the work, despite the OC's instructions. Almost 12 months later we are still waiting to get a broken reverse cycle air conditioner replaced at the lower quoted cost. [REDACTED] has used a series of excuses to defer the work indefinitely. We have frequently heard "Head office has not approved the expenditure yet".

Illegal custody of the Common Seal

The OC act requires that the Common Seal be kept and used only by the OC. [REDACTED] has persistently refused requests to return it to the OC despite many requests. Consequently, the OC committee is unable to not contract directly with a third party.

Absence of a legal written "Contract of Appointment with a Managing Agent"

The newish legislation of 2007 demands the use of a statutory multi- page document to appoint a manager. [REDACTED] presented a draft contract to the 2008 AGM .It was rejected by majority vote. [REDACTED] said it would return with an adjusted contract. *It did not*. It still, in 2016, has not done so. When asked by CAV to produce said document, [REDACTED] protested that such a contract *did* exist it but failed to produce it

Fees do not conform to the Retirement Village Act (RVA)

The regulations associated with the RVA before 2007 outline a formula detailing how fees must be set and increased. When I entered the village the formula involved fees charged in 1998 and CPI numbers. Upon investigation I found that [REDACTED] was not using the mandated formula. I was being over charged. Several lawyers have investigated and unanimously agree that [REDACTED] owes me \$3,000. I will attach a copy of my barrister's opinion on the matter. As you will see, he was adamant that all residents should pay the same fee and have the same service agreement; [REDACTED], however, seems to increase the fee in each new resident's service agreement. Even though the RVA now only refers to annual allowable increases the previous formula still exists as the basis of the fee.

Expenditure on health and safety measure delayed

Even though [REDACTED] says it has a separate account where it keeps OC monies, it procrastinated for many months on several essential safety issues, such as a broken light over steep stairs. The local village manager just repeated "It will be done soon", but did not organise the repair. She agreed that the stairs were dangerous but her only suggestion was to "Get a torch". I did get one: the stairs were still dangerously dark

False Promises

The manager said certain services would be provided to residents, but later denied them. Examples are that the Deferred Management Fees (DMF) would be spent on village amenities, that a 24 hour "nurse on call" would be available, and that, if the resident had money problems, the monthly fees could be halved and paid later when the unit was sold. .

Expensive cosmetic alterations to common property without permission from the OC

█ has carried out several major cosmetic projects with OC money, without consulting the OC. Presumably it is trying to create a good impression on potential new buyers. If asked, the OC would probably have preferred a new air conditioner.

False Claims of a Lease over the Common Property.

█ protests that it has a lease over the common property and can therefore do whatever it likes to it. Such a lease has *never* been granted. The manager tried, under false pretences, to gain such a lease in 2006. The lot owners rejected the lease and condemned the process.

The manager is converting a free hold village to a leasehold village.

The manager is converting new unit sales straight to management-held leaseholds. However, it claims that, due to a clause in the service agreement, other lot owners are unable to lease their units. The strata title nature of our village, the very reason some of us bought here, is being changed. Such action could be illegal but lot owners cannot afford to bring a legal case and are effectively powerless again.

Inaction by CAV

CAV workers say they cannot enforce OC or RVA legislation. I was told by a CAV manager that this had been a “bureaucratic decision”. Complainants have even been harassed when they have tried to make themselves understood. As a result, village managers take advantage of the legal impotence of resident/lot owners. I do not understand why CAV can take action against a market trader who gives less than the stated weight to customers, but remains inactive when hundreds of thousands of dollars are involved in important breaches of the Retirement Village and Owners Corporation legislation.

CONCLUSION

This inquiry needs to establish both stronger laws and stronger enforcement capacities for government agencies. A specific Retirement Village Ombudsman would probably be the most affective change agent,

Yours sincerely,

Janice L Reilly