

From: [Inquiry into the Retirement Housing Sector POV eSubmission Form](#)
To: [LSIC](#)
Subject: New Submission to Inquiry into the Retirement Housing Sector
Date: Tuesday, 28 June 2016 4:22:45 PM

Inquiry Name: Inquiry into the Retirement Housing Sector

Alf Jenkins

[REDACTED]

[REDACTED]

SUBMISSION CONTENT:

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I am a Resident living in a retirement village I have also been a Committee member on the Residents Association the following are some of the things we have had to deal with over the years at this village.

- Owner putting its Marketing Objectives over the wants and needs of the Residents residing in the village causing hardship to pensioner on fixed income.
- Owner refusing to do what it is required to do under the Contract to support Residents to maintain quiet enjoyment of their home
- Owner using passive aggressive pressure to force change
- Owner Bullying the Committee and Residents to force change in employees
- Owner not attending to defects in the building
- Owner taking advantage of Residents at End of Lease

The problem with the retirement industry is there is no one identity that residents, who are normally on limited financial means, can address these blatant and discriminating tactics to without engaging expensive lawyers.

With a projected aging community there is an urgent need to have a Commissioner or preferably an Ombudsman to adjudicate on these and other industry matters.

Examples

Surrender of Lease issues

The problems associated with this component of retirement village contracts can only be described as horrendous. The only party to dictate terms as to what is required by the outgoing resident to refurbish the unit is the owner.

I wish to draw your attention to a paragraph of all 31 different contracts in my village, Quote, The lessor must then as soon as practicable give to the Lessee a copy of the inspection report referred to in clause 5.6.(a). The Lessee may, within a period of 14 days after receiving the inspection report, object by notice in writing to the Lessor, to the cost (BUT NOT THE CONTENT) of the measures detailed in the inspection report. Unquote,.

When Australian Retirement Communities built and owned the village, refurbishment costs were between \$10,000 and \$ 12,000. This amount covered the cost of returning the unit back, as far as possible, to its original condition and included painting throughout, new carpet, curtains, wall oven, stove top,

dishwasher, range hood, if required, and making good any alterations. [REDACTED] became the new owners in 2008 and continued this practice. In 2012 [REDACTED] announced at a meeting of the residents that as units became vacant they would be upgraded, the residents would still pay for the refurbishment, but [REDACTED] would pay the extra for the upgrade. This practice remained in place for approximately 18 months. Then residents started receiving Work Pricing Documents which quoted refurbishment costs of \$55,000 or \$57,000. The owners were trying to move the upgrading costs from themselves to the outgoing residents or in most cases the executors of the resident's estate, most of which would not know where the contract was, let alone what was in it.

In every case that the resident or the estate have engaged lawyers and argued against the cost as well as the scope of works they have had serious reductions in the revised cost. E.g. \$57,000 reduced to \$16,000 and \$55,000 reduced to \$22,000.

I have four complete dossiers with all the correspondence that passed between [REDACTED] the Lawyers and the resident's including the revised quotes. I am prepared to table these documents as I have the approval of the resident or the executors to do so.

On all occasions [REDACTED] were attempting to get the resident or the estate to, pull out and replace the kitchen and all white goods totally, as well as all the bedroom built in wardrobes, the bathroom and floor tiles to be replaced, new shower screen, removal of the bath and to disconnect the floor heating and pay to have new air-conditioning installed. Under no circumstances could this be considered as refurbishment, as the only legal obligation of the outgoing resident is to return the unit as far as practical to its original condition?

The problem with the retirement industry is there is no one identity that residents, who are normally on limited financial means, can address these blatant and discriminating tactics to without engaging expensive lawyers.

With a projected aging community there is an urgent need to have a Commissioner or preferably an Ombudsman to adjudicate on these and other industry matters.

Permanent Member issue

The residents feel that a Resident Committee should only have the residents as members. The Owner is forcing further control by trying to have permanent members (Permanent member allows the Owner to have 3 votes on a Committee, no decisions can be made without their attendance due to the lack of a quorum) on these Committees. In the past they have used underhanded tactics to gain control of these Committees to advance their corporate objective. In many instances it has been a conflict of interest. Due to the Owners lack of detail the Permanent Members lapsed and instead of meeting with the Committee of Management in an open transparent manner they tried to force change and lie as to the rational as to why there needed to have a Special General meeting to update their records. The Committee had to go over the member's records to establish who the Permanent Members were and seek legal advice as to what action they could take. The legal advice over the years has stated that the Owner has plenty of control and does not need to interfere with a Resident Committee which leads the residents to the conclusion that they are just wanting to further their corporate objectives without the checks and balances the Committee's provide.

Problems with the Reticulated Water System

The original builder/owner of the retirement village submitted drawings to the council for approval of the layout of the underground water system. These plans were subsequently approved, and the village was built. Within 2 years of completion the first problem presented itself with a broken water pipe. The village secured a copy of the plans from the council and found to our surprise

that the water system as laid out had no relevance to the original drawings. Within 12 months the water system again began to leak. After much trouble and expense the problem was identified at the main underground Valves. The plumber had used mild steel bolts in the flanges instead of stainless steel, and osmoses, due to the clay soil, had eaten away the mild steel metal bolts. The owner then decided to bury the whole pipe structure with a load of concrete, with only the spindles of the valves protruding.

In more recent years two fire fighting hydrants, out of five have sprung a leak, the problem has been identified by the plumber, and engineers, as having been incorrectly built. The concrete post which should have been built behind the hydrant to prevent the water pressure from moving it underground was not installed.

So far the cost to the resident's has been \$16,800 for the two hydrants to be repaired and installed correctly. However the owner has not accepted that the pipes were incorrectly laid and has not reimbursed the residents for the cost of reinstatement.

The Chairman of the Committee of Management has always insisted that the residents of this village are Lease Holders and not Freehold Owners, and as such, are not responsible for the infrastructure that was not built correctly. It is the owner's responsibility to do their due diligence when they buy an asset but they also buy the liability that goes with it.

To attempt to get resident's to pay for the deficiencies in the asset they bought is morally and we believe legally wrong, but without resorting to expensive legal action justice will not be served. The resident's will always be at a disadvantage without Government intervention by changing the Retirement Village Act. It is respectfully suggested that a low cost Tribunal be established so residents may have their grievances heard.

Owner using passive aggressive pressure to force change

██████████ it is an externally managed retirement village managed by the Residents Association.

The Owner makes no secret of its' intentions to internalise all externally managed villages and the continued attempts by the Owners representatives to coerce the Village Manager to encourage internalisation is nothing short of attempts to undermine the Association and could be seen as bullying the Village Manager.

██████████' Association has successfully managed the Village for 15 years. We are a very financial Village and our management rates in the national top percentile within the ██████████ portfolio. We have a reputation, with an external risk assessment company of being one of the best managed villages in their scope.

The Owner's attempts to encourage internalisation through the Village Manager include enquiries of the manager's opinions, statements to the manager including words to the effect of "...if you want to internalise, just let me know, I'll help you..." ultimately trying to put the onus of the idea upon the manager.

More recently, it appears the tact has changed and the plan of attack is by omission. In the past all Village Managers were regularly required to attend head office for workshops designed to keep managers informed of changes, process, procedures etc. In the last 18 month to two years, this has changed, and external Village Managers are not invited to these workshops, occasionally receiving a brief email, and ultimately hindering the manager's ability to effectively manager certain areas of the job due to lack of information from the Owner.

The push seems to be coming from the Owner from all sections of the business.

When dealing with the legal team when residents are in the process of moving into a care facility, the process has, on occasion been hindered by the delay in receiving important information from the Owner. When asked if the information can be passed on via the Village Manager's email address the response is in the negative, stating it is a conflict of interest and it would be different if the manager was an employee of the Owner.

Owner refusing to act in a timely manner to defuse a situation in the village as they are required to do under the contract.

Our Village, whilst owned by [REDACTED], it is managed by the Residents Association, hence the existence of a Service Agreement or Management Contract, with the Owner, the Association and the Resident as parties to the document.

Enforcing the Owner's Promises section of this document has been a challenge over the years, with Stockland being the third owner in the sixteen years of the Village. The challenges have existed with all three owners, several of which have resulted in lengthy drawn out processes and costly legal fees borne by the Resident Association.

In more recent times the Association has needed to engage legal representation for issues that could easily have been resolved with the support of the Owners, who simply sit on the sidelines waiting to see what happens.

For example, a resident's daughter moves into the village with her mother to act as carer, permission is granted by the Association and the Owner as required by the Service Agreement, conditional upon the daughter abiding by the rules of the Association. When the daughter continuously breaks the rules causing her mother to be in breach of her contract with the Owner and the Association, we looked to the Owner for support in revoking permission for the daughter to reside in the Village, to which the Owner responds with words to the effect of "...She is not a resident, it's not our problem..."

Whilst this has been a difficult case for all concerned, there is a distinct lack of involvement on the Owner's part, barring the odd telephone call from the Area Manager to the Village Manager for a welfare check and an update on the matter, leaving the Association to deal with contractual matters that should be addressed by the Owner in support of the Association. The result again, being 24/7 Nursing

Rule 5.5 of the Association promises states that the Association must use its best endeavours to ensure that the emergency call centre is manned 24/7 a day by a nurse or nurses. The contract only requires nursing services to be provided during normal working hours, historically 9am until 5pm Monday to Friday. However, the Owners were insisting of 24/7 coverage. At the time this would have cost the Association \$355,000 per year to satisfy all the legalities of the Nursing Unions requirements.

The Association sought alternative measures and decided that INS could provide 24 hour coverage at a reasonable cost to the residents to ensure that the contract, as it was written, was adhered to.

Due to a difference of interpretation of the contract the Owner insisted that the Association conduct a 6mth trial of using INS. The trial was overseen by three members from the Association and three representatives appointed by the Owner.

After the six month trial it was determined that the use of a nurse during normal working hours and INS for 24/7 coverage was found to be the best combination at a reasonable cost to the Association.

The Owner opposed this decision and it wasn't until the Association engaged a solicitor that they agreed that this was a viable alternative.

The implementation proved to be successful and the Owner agreed that this was the best fit for the Village and has subsequently installed this system into all new Villages in their portfolio since 2008.

Had the Association been able to access an Ombudsman, the expenses incurred during the previous years would have been avoided when 24/7 on-site nursing was provided. The Association would have saved many thousands of dollars and alleviated a great deal of stress to the residents.

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File1:

File2:

File3: