

SUBMISSION TO THE VICTORIAN PARLIAMENTARY INQUIRY INTO RETIREMENT HOUSING

Subject: Structure of Residence Contracts

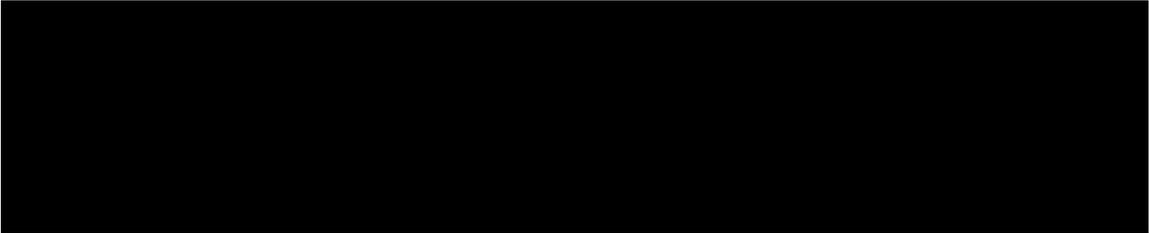
The Issue: Our residence contract is a Loan/Lease agreement with a Company which owns the retirement village and has a sole owner.

The contract was drawn up by the owners solicitor, covers 26 pages including four schedules, has no shortage of legalese and several references to the Retirement Villages Act 1986. As such much of it is incomprehensible to an elderly person wishing to come to a 'retirement village' but with no previous experience of residence contracts, faced with complex and different contractual details and wording from prospective establishments. As an example of wording confusion our Village uses the term 'Long Term Maintenance Fund' (LTMF) whereas some others refer to a 'Sinking Fund'. In my case we paid a fee for legal advice but this was for final assurance regarding the one village we had essentially decided on. Moreover I would be surprised if our Solicitor's review was more than cursory.

In my opinion parts of our contract are slanted in favour of the owner- for example in the event that a resident vacates their 'house' after 11 years approximately 40% of the then sale price will be deducted to cover the costs of a new lease, refurbishment, administration fee, contribution to the LTMF and a Deferred Management Fee for the owner. Of these the last at 27.5% is by far the largest. The LTMF includes capital replacements and improvements for which the owner is entitled to a tax deduction from depreciation and would also benefit should the Village be sold.

Recommendations:

1. That the definitions of terminology in Residence contracts be standardized across the industry
2. That Residence Contracts be in two parts as follows -
 - i. Items or clauses that are common to all Residence Contracts
 - ii. Items that are specific to a particular housing entity
3. That, so far as possible, legalese is avoided and references to 'The Act' are replaced with a concise statement of the specific requirement
4. That all residence contracts in the State of Victoria be required to be approved by an independent body such as an Ombudsman's department charged with verifying the fairness of the Contract to both parties signing it.
5. That an upper limit to the total of exit fees payable on sale of premises at a retirement village, including any GST, be set and stated in the regulations



3 June 2016

SUBMISSION TO THE VICTORIAN PARLIAMENTARY INQUIRY INTO RETIREMENT HOUSING

Subject: Building & Other Defects

The Issue: Construction of our Retirement Village commenced some 10 years ago, has been developed in stages and the fifth of these was completed only a few months ago. Further stages may be added but the sole owner has no firm development plans at present.

In the four years I have been at the Village there have been numerous and continuing complaints from residents regarding building and other defects both in individual residences and in common areas and car parks. For example:

- Water leaks into the basement car parks of a multi-level block of apartments, appearance of stalactites and other examples of concrete leaching and concerns from residents regarding the long term integrity of the structure
- Instances of water spilling over from spoon-drains and other sources in these same car parks after heavy rain causing minor flooding of the floor areas which may take several days to evaporate
- Water leaks from the balconies of many multi-level dwellings entering the ceiling cavity and/or otherwise splashing onto those below
- Water leaks into dwellings through defective window seals, sub-standard brickwork and other sources
- Garage door cables that failed in a matter of months after occupation of the dwelling
- Sub-standard installation of many garage door motors leading to instances of collapse of this ceiling-mounted equipment with risk of serious injury and damage to a residents vehicle on one occasion
- An Air-Conditioner not working and not fixed for 2-3 months after a new resident moved in to a previously occupied Unit

The question of warranties for individual residences has been raised with the owner who has verbally nominated 12 months by way of a warranty for individual Units. It is not clear whether this would apply to re-sold residences nor is there any time limit on rectifying such defects.

With respect to long term but potentially more serious defects such as water leaks via cracks in the concrete 'ceiling' of basement car parks it has taken several years, much argument, the formation of a residents Sub-Committee to address and underline this issue at a general residents meeting and persistent requests to the owner to correct the situation. Low cost efforts to address problems were eventually tried, mainly funded by the owner but without much success.

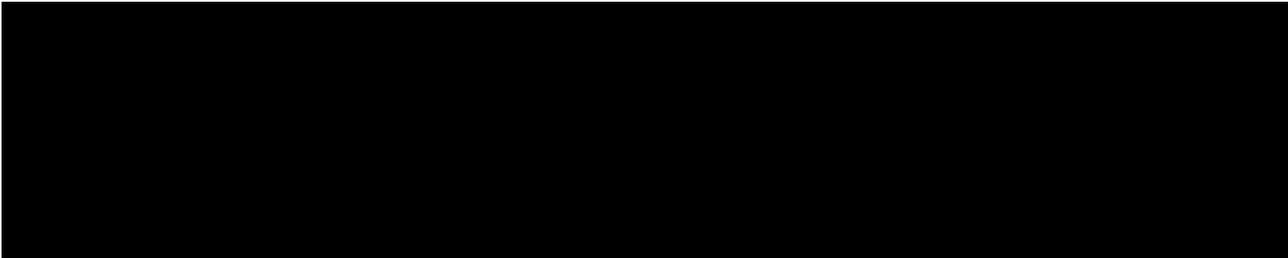
Some rectification work however was paid out of resident's fees, not by the owner who it appears was delaying expenditure until recently when the Village has reached full occupancy after which the owner refuses to contribute any more funds to dealing with outstanding building defects. This means any further works will be funded from the Villages 'sinking' or 'long term maintenance' fund in the terminology of our residence contract.

A related issue to the question of funding rectification of defects is the situation with builder's insurance. Residents who have had careers in the building industry refer to a 10 year period of coverage. However we

have seen very little of the builder and the owner advises that claims for construction type defects such as concrete cracks are difficult to realise, subject to counter-arguments from 'movement' of the structure and far from guaranteed even if pursued in court. This means that, at least for our Village, rectifying outstanding current and future water leak problems of less than 10 years will be funded from our 'sinking fund'.

Recommendations:

1. That the Retirement Villages Regulations include a statement regarding the warranty cover and duration required of owners/developers regarding nominated defects in the construction of individual dwellings, car parks and shared common areas/buildings
2. That Residence Contracts be required by law to include a statement of the terms of warranty cover and duration regarding defects in fixtures and fittings provided in individual dwellings
3. That 1. & 2. above include a clear statement of warranty claim requirements, for example:
"Claims for warranty cover must be made in writing, include the date reported which must be within the stated warranty period. Once accepted or validated by order of a recognised legal entity all associated costs will be at the owner's expense"
4. That Residence Contracts be required by law to identify who (owner, resident or operating budget) is required to cover the cost of rectifying damage to internal items such as carpets and skirting boards as a result of water entering the building via shortcomings or defects in the construction or inadequate maintenance of external walls/roofs/windows/doors. Presumably this may differ before or after a warranty period.
5. That a means of applying for resolution of disputes arising from warranty issues via an independent body such as an Ombudsman's department with appropriate powers be established to avoid expensive legal costs to village residents whose only current choice is VCAT.



9 June 2016

SUBMISSION TO THE VICTORIAN PARLIAMENTARY INQUIRY INTO RETIREMENT HOUSING

Subject: Authorisation of Expenditure from 'Sinking Funds'

The Issue: Our Village has a 'Long Term Maintenance Fund' (alternatively called a 'Sinking Fund') which, under our Loan/Lease Contract, is for carrying out *improvements, major maintenance, repairs, replacements, renovations, upgrading and improvements to common areas and the external surfaces of any building or structure at the Village*. The fund is also available for *items of expenditure for the well-being and betterment of residents and any other items of expenditure approved by the management advisory committee*.

Consultation with the management advisory committee, a committee of residents elected by residents, is called for in the residence contract. Funds accumulate in this fund when a residence at the Village is vacated and sold as a percentage up to 5.5% of the sale price and are required to be held in a separate bank account.

However we are told by the owner that any decision to spend monies from the fund is at his sole discretion regardless of the opinion of the advisory committee and that he has received legal advice from his solicitor to this effect. Moreover payments from the fund, normally by cheque, are authorised solely by the owner or alternatively by his accountant; to my knowledge there is no requirement for dual signatories. The same arrangement applies to payment of day to day operating expenses - all monthly fees are credited to the owner's company account and payments of Village expenses are made from this account. Financial statements presented at the Annual General Meeting are extracted from that account.

I don't have any significant concerns regarding the current owner but do not regard this as a satisfactory arrangement in the longer term. Owners can sell to one more unscrupulous. Owners can get into financial difficulties and access to a fund which in time may accumulate a substantial balance must be tempting, especially if coupled with a relocation overseas.

Recommendations:

1. That the bank account of 'Sinking Funds' for all retirement villages be required by law to have dual signatories to authorize payments from the fund.
2. That the signatories be any two of the Owner, Accountant or Village Manager. However should legislation changes require that Resident/Advisory Committees become legal corporate entities then I would recommend that a representative appointed by this Committee be a mandatory signature on all accounts that accumulate funds from residents and that such accounts be separated from those of the owning entity.
3. That an independent mechanism, for example an ombudsman with appropriate powers, be established to resolve any disputes with residents.