

TRANSCRIPT

STANDING COMMITTEE ON LEGAL AND SOCIAL ISSUES

Subcommittee

Inquiry into the retirement housing sector

Melbourne — 29 November 2016

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Mr Charles Adams.

The CHAIR — I declare open the public hearing on the inquiry into retirement village housing. I welcome Mr Charles Adams. Thank you, Mr Adams, for your submission 112 to the inquiry and also for the presentation which was forwarded to the committee yesterday. Before I invite you to make some opening remarks, I will just caution that all evidence taken at this hearing is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by this privilege.

We have allowed about half an hour for our time with you today. As I said, we have received your submission and your PowerPoint presentation. I invite you to make some opening remarks, and thereafter we will have questions. Thank you for being with us today.

Visual presentation.

Mr ADAMS — Good morning. Thank you very much for the opportunity to speak. It is over 13 years since I moved into a retirement village. A couple of months later, they increased the service fee by 50 per cent. The service fee is the main fee that people recognise as the cost of the village. It does not happen to be the main cost, but it is the one that people recognise.

Retiree downsizing is great. The only thing that is wrong is the convoluted contracts facilitated by poor legislation or particularly poor definitions in the act.

Today I am speaking only about retirement villages. I am not talking about lifestyle villages, manufactured homes or any of the other variations — ordinary rentals, no. My sister lives in a manufactured home park. Her son, my nephew, owns it and runs it. They have got three others going at the moment, so I get some information from that side of things, but the most relevant fact I want to draw to your attention today is that the US has a better system, with straight residential tenancy retirement villages. It is simple because it gives full disclosure of prices before you move in and basically one figure for the whole time you stay there.

The principal defect in the legislation which produces most of the effects that worry me is the definitions. There are two of them. The main definition is skewed to the disadvantage of lessees. I understand it was given to the people who drafted the legislation back in 1986 by a committee of four developer-operators; no doubt they had vested interests. It produces so-called deferred management fee contracts, usually comprising three or so separate documents of about 60 pages. The deferred management fee, usually abbreviated to DMF, is an effective way of hiding the costs — or the cost rate, I should say. This is the primary definition of a retirement village. It means:

a community ... the majority of which is retired persons who are provided with accommodation —

that is the only effective part of it in reality —

and services other than services that are provided in a residential care facility —

some overlap, but of course residential care facilities are controlled by the commonwealth government, so it is just an artificial restriction. Many people in villages get services that that would apply to. Many people in villages get services that that would apply to. The other requirement is:

to pay an in-going contribution ...

That last phrase is the critical aspect of the legislation that complicates all these contracts. That is on page 12. You will note that it says 'an in-going contribution'. The current definition of 'in-going contribution' means a donation. Actually what it means is a capital replacement fund for the operator. It does not say that anywhere in the legislation. It is plain bloody ridiculous. It specifically excludes a rental tenancy situation. That seems to work very well in the US, and probably in Canada, although I have not been to Canada — recently, that is — so I do not know. The rest of Australasia takes the Victorian definitions without ever legislating for them and takes the Victorian contracts that result from those definitions.

Primarily the definitions produce the deferred management fee. It is only partially deferred, but all the disclosure is really deferred until about four months after you exit a village. It makes for incomprehensible contracts. There are many operators that have gone broke because they do not understand the implications of the legislation. Our village has been owned by four or maybe five operators. It is only 20 years old. There are some out in the western suburbs that have had six or seven operators, because the operators cannot understand the

legislation either. It is anti-competitive because the DMF effectively hides the price rate. The operators have a very, very sophisticated marketing method. They say, 'Oh, take our contract to your legal adviser', implying that, well, if your legal adviser is happy with it, then you can sign it in complete satisfaction. It is a total waste of money. I have been to four legal advisers with three different village contracts and none of them mentioned the downside. They do not understand it either, from what I can see.

Possibly the reason our fee went up in the first instance was it might have been set at a bait rate. That is what the DMF allows you to do, especially if you do not understand the contracts. If people are dissatisfied with the village, some of them want to leave. But the way the DMF is structured, with most contracts the main costs are right up in the first couple of years. So if you want to get out, your capital has been greatly depreciated. It does not trap many because most people are very happy. They do not understand the contracts, they are happy with their social situation and so on.

It does discriminate against older residents. If you come in at 80, say, you might have a limited life expectancy and that means that your rate will be very much higher than someone who comes in earlier. A woman at 55 who might live 30 or 35 more years pays a much, much lower rate. That would be fixed if you had residential tenancy contracts.

I think the return on these investments, if you know what you are doing, is such that it tempts a lot of shonky contractors. There are a lot of people who have not survived that long. We had three in ours before we got the current one, and one of them was someone who is quite significant in the Australian financial business. We came in and they said, 'Oh, we pay the rates'. What they did not tell us was that the residents pay the rates out of the service and maintenance fee and the residents also pay the rates directly for our own small units.

Units in a retirement village do not depreciate. It is not very well spelt out in the contracts and it is not at all covered in the legislation, but the arrangement usually is for the operator to convince the exiting resident, if he is able or not dead, to produce another \$5000, \$10 000, \$15 000 or \$70 000 to refurbish or completely replace the interior of the unit. So the units never depreciate.

Incentive compensation schemes tend to make things a little difficult to get the real truth. It is kind of surprising but one of the bigger cost elements of being in a retirement village is the forgone interest on the ingoing donation or ingoing loan or whatever you like to call it — the capital replacement for the operator. Virtually no-one takes that into account, but it is a cost for the benefit of the operators.

The maintenance fee is about the only other thing that is disclosed at entry, and of course that is subject to a number of variables. The so-called deferred management fee is a misnomer, and some villages have sinking funds and some do not. It makes it a little difficult if you have not been in one of these situations before. And, surprisingly enough, very few people have been in retirement villages and have any experience before they move in.

There are a number of ancillary costs that are also involved: your agent's fees and your legal adviser, which is a waste of time. Bill Bishop, who presented here earlier, made the point that you would be well advised to get an accountant to check the figures provided by these operators when you move out. By that stage, you could be in a nursing home or you could be 6 feet under. Unless you have got your executor all boned up, that is probably not going to happen.

This is just a list of all the things you really need to know before you start analysing these contracts, and they are all fairly simple. Some of them are variable. Things like sinking funds are often spelt out in the contract. The cost of service is, but only as a variable, because it is based, in most instances, on the outgoing price, not the ingoing price — and who knows what is the outgoing price is going to be 6 months, 6 years or 26 years later? You are signing an open cheque when you sign into a retirement village.

I hope you can see that. You cannot see the figures, I guess. The red line peaks at about \$9000 for the monthly equivalent rental rate with a DMF, on that particular village. The second one peaks at \$3000 and it has got a bump in it. That is where the so-called deferred management fee schedule cuts out. People think, 'Oh, we've paid all our money; it's not going to cost us any more'. But people are just not educated, informed or trained. It took me a few years to figure all this out. The bottom one is a newer operator, who has got a financial officer that knows how to set up deferred management fee schedules. It runs out to 22 years to get that rather flattish-looking figure. Those three are typical from three of the bigger developers.

I have come across dozens of them. There can be an infinite array of deferred management fee rate schedules. You might have one that pays 20 per cent day one of year two. You might have one that pays 5 per cent for the first six years. You can have one that pays 2½ per cent for 12 years. The bottom one there goes for 22 years, and it is varied. Most of the others are constant. People cannot do these calculations. They are fairly straightforward on a spreadsheet if you can use a spreadsheet, and if you can get the information. I have had to get information from people exiting our village to be able to construct this with any level of accuracy.

They are the main things that affect the cost. The first one, of course, is the one figure that is disclosed before you get in that does not change. It is the ingoing donation or whatever you like to call it. The management fee rate is the deferred management fee. ‘Deferred’ ought to be struck out of all those contracts; it is a misnomer. The duration of the fee schedule is important. Is it one year, is it 22 years or is it somewhere in-between? And how do you calculate for all of those? I have never seen an accountant’s analysis, and I helped form the RRVV. I have talked to a lot of people in several states; I have been to the meeting of the property council. This information just is not available. The sinking fund: some villages have them, some do not. In some villages a proportion of the capital appreciation accrues to the lessee; some do not. Some base it on the ingoing figure, which means zero capital appreciation, and some base it on the outgoing, and of course the service fee rate is affected by CPI.

The CHAIR — Mr Adams, just while you are going through the next page, we do need to allow time for questions.

Mr ADAMS — I have gone through about three pages. This slide is not my own; this is by Dr Timothy Kyng, represented here a couple of weeks ago. It is interesting to see the figures compared to those on the previous presentation. He is quoting 4000 for the first five years, 5000, 3150. I assume all the data is based on a common ingoing capital cost, but I really do not know, and of course there are a lot of fees to be added to that.

I worked in the US for a number of years and I had some friends over there. I visited six villages, and I got this as the disclosure statement from a person I knew who lived in one. You will note the disclosure statement has basically three figures. The top figure is the weekly or daily or monthly rental; the second figure is contents insurance if you want it; and the third figure is telephone. All the rest is covered by retirement villages in the US, whereas we have about six pages of disclosure statement that no-one really understands until they have been in a village for a good few years.

The CHAIR — Are you nearly finished your presentation, Mr Adams, because we need to allow some time for questions?

Mr ADAMS — I am about two-thirds of the way through.

The CHAIR — If you could perhaps summarise the final third expeditiously, that would be appreciated.

Mr ADAMS — That is my suggested definition for a retirement village, and some of the figures quoted by specialist marketing organisations on the return you can get from a retirement village unit. Tim Kyng’s comments are pretty explicit, and I would agree 100 per cent. He has got a way to go yet; he has never lived in a retirement village. That is about the minimum recommendation if we are going to do anything constructive. There are the names of the various people I have been to over the last 13 years, so I am pleased to see you guys listening. Any questions?

The CHAIR — Thanks very much for your presentation, Mr Adams, and obviously your passion for change and reform in this area. What do you say to the proposition that the deferred management fee model enables people to access retirement villages at a lower cost coming in?

Mr ADAMS — I could sum it up with one word: BS.

Ms HARTLAND — Can you explain why?

Mr ADAMS — I do not know why they would make the statement except marketing. It is a bit like asking people to go to their solicitor to check out that the contract is good. It is just a marketing technique, pure and simple.

Ms HARTLAND — So you think that when people — because it looks quite attractive —

Mr ADAMS — It does.

Ms HARTLAND — and so then — from other evidence I have heard or from people I have spoken to — often the people who get caught are the children trying to deal with it after the death of a parent and trying to deal with all of those things. So instead of the deferred management fee — you have made a number of suggestions about what could be done — would you eliminate deferred management fees? Is there another way of structuring that?

Mr ADAMS — No. I would change the wording to make it meaningful. But essentially you need a residential tenancy contract, with the deferred management fee type of contract as an option, and of course the operators will not like that because they do not get the return of their capital when they start up. So they are not going to agree with this in a million years. But it does have one advantage: it makes for middle income taxation benefits, because they invest their money in this so they do not have money to earn an income and so they qualify for the pension. It is a significant element. A lot of people see that as an advantage. So I believe we ought to have the two options. That would simplify it. People would then have to ask, ‘Well, what is the difference? What does it mean to me in cost or what advantage is one or the other?’. Now I suspect the operators are going to want to stay exactly with the deferred management fee-style contract, so it is going to have to be handled adroitly, but I think it can be.

The US system seems to work a lot more effectively than here. I went to six villages. They are very comparable to here. Prices are comparable. When you know what the price here is, but first up what you see here as an ongoing cost is just the service fee. Over there you see a residential tenancy rental, and it will be \$2000 or \$3000 a month, whereas ours is \$500 or \$600 a month. It confuses people who do not know the facts. It took me six years to find out, and surprisingly it came from a solicitor, talking to the Consumer Action Law Centre. The man I talked to at Consumer Action Law Centre said, ‘My solicitor tells me that nothing will change until the definition has changed’, and I have to say he is the only honest or straightforward solicitor I have heard of. I never found out who it was. The man at CALC did not tell me, and I did not ask at the time.

Ms HARTLAND — One follow-up question. You were talking about the American system and the Australian system, and in the American system they pay \$3000 a month. So that is a straight rental, rather than what happens here, where you buy into the village and then you pay a fee? So in America, do they buy the unit?

Mr ADAMS — No.

Ms HARTLAND — It is just a straight rental?

Mr ADAMS — It is just a straight rental, but you do have secure tenancy. But there are 51 states I think at the moment, and they have probably all got somewhat different acts, just as we have somewhat different acts here in Australia. You ought to look at the definition of ‘retirement village’ for the ACT — it is even more ridiculous than the one we have.

The CHAIR — Mr Adams, I am interested in your comments about legal advice, because that has been a consistent theme through the inquiry. I do not know if you want to make any further comment, but it does appear from the evidence we have received there is perhaps a lack of understanding from elements of the legal profession about these particular contracts and the advice that is being provided to clients about the impacts of those contracts.

Mr ADAMS — I suspect it is a lack of understanding, but it may also be just a marketing technique where the operators know that the solicitors are not going to do anything, so it gives the prospective customer a positive belief that they are buying something that is reasonable. I mean I cannot prove it, but my experience suggests it. I have never heard of a solicitor — I have heard of one solicitor recommending someone not go into a place, and they went in anyway.

The CHAIR — I was also interested in your recommendation of village managers having a minimum of 120 hours training, given again some of the criticism we have heard from others about village manager training and that the property council course, whilst a step forward, is still only a day or two, I understand.

Mr ADAMS — It would have to be independent training, not by the operators. They will gild a lily, and what we want is plain lilies these days — speaking at 85, I know.

Ms HARTLAND — Following on from that, so something along the lines of the course that someone has to do to work with vulnerable children or work with children — so a TAFE-accredited course?

Mr ADAMS — Yes, a formal qualification.

Ms HARTLAND — Yes, that sounds — —

Mr ADAMS — I know it adds cost, but if they were properly trained, I think it would save some of the troubles. It will not stop bullying; bullying goes on occasionally in various villages. We have had seven managers in the last 13 years, some of them good, some of them okay. None of them are really bad, but they do not have any training. They are just there to answer the phone and try and keep the residents happy, and they sometimes have a hard time — not that I give our manager a hard time; she cannot do anything.

Ms HARTLAND — Thank you.

The CHAIR — Thank you, Mr Adams, for your presentation and, again, for going into that detail. We appreciate that very much; thank you.

Witness withdrew.