

Review rv act

From a resident of a retirement village.

2/12/2019

The Manager Consumer Affairs.

Thank you for the opportunity to provide a submission on the revision of the RV Act.

Additional and supporting information is available upon request.

Q3. Views on the current purpose of the RV Act.

There is an imbalance of power between residents and operators who have access to expert advice, and complicated contract (containing 54 pages) protecting their rights. Disclosure will not work, protection must be written into the RV Act.

An extract on the purpose from The Queensland Retirement Villages Act states:-

“To promote consumer protection and fair trading practices in operating retirement villages and in supplying services to residents by :-

- (1) Declaring particular rights and obligations of residents and scheme operators.”
- (2) Plus additional clauses

Areas to be considered for inclusion in the revised RV Act include:-

- Advertising. The contract is a lease. The price is the DFM/Departure Fees.
- Deferred Management Fees are not substantiated in all situations.
- The Financial Statements must meet basic accounting standards, including disclosure of related party transactions. The Auditor must be responsible to the residents.
- The owner must maintain and pay for the common buildings and areas which is the position for Queensland and South Australian residents.

### 3.2.1 Q7 Disclosures Obligations. Advertised Price

The nature of the contract is a lease and should be stated. The real price for the lease is “Rent”/ Occupancy Fees payable on Departure. The ingoing going contribution is not the purchase price.

The price advertised must be:-

Villa No. 150 for Lease.

Incoming Contribution, non- interest bearing, fully refunded \$750,000.

Occupancy Fees payable on departure are \$40,000 p.a. for 8 years = maximum of \$320,000.

A complex scheme can- not show a dollar figure for occupancy fees. For example the Deferred Management Fees are on Re-Sale ingoing contribution which is unknown at the time of signing the lease. Residents have the risk of ownership for the whole village. The residents keep the capital gains which will depend on the timing of the property market, the age of the village, and if the owners model is still competitive. The capital losses are unknown.

To evaluate one would need advice from a property expert, financial planner, and solicitor. Perhaps a sale of property with the risk of ownership is with the lessee is outside of the RV Act and be treated as a contract of freehold property?

(2)

3.2.2 Q8 Has the provision of the fact sheet improved understanding? Yes, but additional provisions would be helpful.

- The opportunity loss of interest on the incoming contribution to be included. For \$700,000 at 3% for 5 years = \$111,000. This should be stated in the fact sheet.
- In the estimates of exit entitlements which include capital gains at 3%. The estimate should also include a worse case position, or the amount that the resident is committed to under the contract, plus capital loss on sale.
- Complex, there is notional DMF, Notional CMV (market value at commencement date) etc

Q9 Further improvements to improve prospective residents' understanding.

Our village operator has sales brochures that state step 1 ingoing,  
"Pay the purchase price of your new home"

And "BOTTOM LINE.A deferred Management Fee contract lets you buy a home at a more affordable price and defer part of the costs of living in a retirement village, until later."

Comment. Residents are not buying the villa they are buying a lease. The concept of deferred management depends on people thinking they are buying a villa at say \$900k and the real price is \$1000k, therefor it is ok to pay \$200k deferred management fee. The amount they are paying is not clear for them to evaluate if they are getting money for value. Why pay an incoming contribution at market value, pay monthly service fees, and then a substantial fee for exit costs?

3.3 Contracts – form and complexity, financial models and the deferred management fee.

Q14. Yes, the price is the deferred management fees. (refer response under Q7.)

Under my contract the deferred management fee is based on the next incoming contribution and the dollar value of the DMF is not known until the villa is sold. This RV Act should require the DMF be based on the ingoing contribution of the resident.

Additional responses to the deferred management fee.

- The deferred management fee is defined under my contract as the amount calculated using the formula. **The contract does not define** what the deferred management fee is.
- The guide given to buyer's, explains DMF is payment towards resident's final payment towards living in a retirement village. The costs cover the establishment of the village – a cost that was not paid upon entry.
- A unit in the village first sold for \$700k. Sold last year from expression of interest for \$1200k. Is there still "a cost that was not paid upon entry?"
- Why is the Fee charged on the re-sale incoming contribution to the previous buyer?
- These charges lack substance that supports \$200k type charges. It is misleading, community standards now required that these type of charges need to be based on direct costs and not arbitrary assumptions.

(3)

#### Residents committees

Q27. No the committee should not have power to approve above CPI increases they are not paying for the increases the residents are. The current system works and it is a rare occurrence and it is not difficult to have a meeting of residents. Also the security the increase has to be recommended by the committee and approved by the residents.

#### Annual meetings and reporting.

Q29 re level of detail required to be included in the financial statements.

- No it is not adequate. The accounts need to be prepared on an accrual basis. A Statement of Financial Position is required which shows cash at bank operating , Bank balance of the Long Term Maintenance Fund, debtors, creditors and provision for Long Term Maintenance, and Residents Funds.
- There are no requirements to comply with any accounting standards. In some cases income is directed into a slush account from which expenditure is paid, or expenses increased to reduce a surplus.
- Over 50% of charges are related party transactions. How these are calculated and what handling % are not disclosed.
- There are no restrictions on what can be charged or how it is classified.
- The audit report is to the owner only to satisfy their reporting requirements of the RV Act. The residents pay for the audit but the auditor has no responsibility to the residents.

#### Recommendations for changes to the RV Act.

- A statement of Financial Performance, and Statement of Financial Position is required. (current this is done for our village, with accruals)
- The Financial Statements must comply with the proposed basic Australian Accounting Standards for small reporting entities. These are standards for Recognition and Measurement, and include disclosures covering related party transactions. (The South Australian RV Act 33 (7) requires the financial information provided must comply with and any standard or principle prescribed by regulations.)
- The Auditor's report must be for the users and the Auditor must have a responsibility to Residents.
- The RV Act should include a restriction of certain charges. Refer S.A. Retirement Act section 31. Add to the South Australia list. Charges are for the direct cost only. Also embedded water and electricity charges can- not exceed the direct cost of these services.

(4)

Maintenance and capital replacement funds. Q33 to 37.

- My contract does not state the owner is required to maintain the common areas, building etc. in good repair. It does not state who is responsible for shortfalls in the capital reserve, even though resident's contributions under the contract are capped at 10% of village operating costs. Residents are verbally advised that the village is self-funding and the owner has no responsibility for shortfalls in the capital/long term maintenance reserve.

Recommendation

- The RV Act must make the owner responsible for maintaining the common areas, buildings etc. in good repair in a timely manner.
- The owner must be responsible for funding any shortfall in the fund. It is an unknown amount to the resident with limited funds. The owner can increase the price to cover the risk if this is necessary.
- The **Qld RV Act, 91 (2) "The scheme operator is solely responsible for the capital replacement fund."** 92 (5) "if the capital replacement fund is less than the capital replacement reserve, the operator must decide the amount the operator must pay to the fund to reach the capital replacement reserve." Also Qld RV Act, 92 (6) The scheme operator must top up the fund anytime it falls below the capital replacement reserve.
- **The South Australia RV Act 31 "Cost and charges must not be charged to residents" 31 (a) "costs relating to the depreciation, amortisation or writing off assets of the retirement village and must not attempt to recover these amounts by increasing the recurrent charges payable by residents"**.
- Victorian residents should have similar protection as they are paying substantial DFM and departure fees.
- Maintain a minimum balance in the Capital Reserve to cover the next 3 years anticipated expenditure.
- Q35. Re what constitutes maintenance and capital. By adopting basic accounting standards would give broad definition of maintenance and capital. The auditor would then review that the allocation is correct.