

Notes for the Review of the Retirement Villages Act

Prepared by Ron Graham- resident [REDACTED]

The notes are prepared based on the "Question for Consideration" numbers set out in the Issues Paper

1- Ingoing contribution

I consider that it should not be the only factor to define a retirement village as there are now operators who offer a rental based occupation and these should be included to protect residents and operators obligations

2- Definition of Retirement Village

There are some operators who are making offers to live in a Lifestyle Village with a minimum age of 50 and may have persons who are residents still actively working.

As there are many residents in defined retirement villages still working and usually have an age minimum of 55, I believe that they should be included to again protect the resident and operator with some obligations.

3- Current purpose of RV Act

I consider the act in its present form does not provide sufficient obligations to developers and operators to protect the interest of residents and the community in general. The need for mandatory registration, control of contracts, defined long term maintenance and capital funding are just some of the areas needing review, especially in line with other States.

4- Improvements to the register of retirement villages

As stated above the need for mandatory registration is paramount together with full details of contracts, services being provided and possibly the lodging of the approved Planning Permit issued by the Local Authority to ensure appropriate approvals have been given to operate the village .It also should include the details of the proposed manager ad their qualifications and experience. Other regulations that are being required by the NSW government should also be considered.

5- Other information to be lodged

As per question 4 there should be some accreditation requirements such as presently used by the Property Council of Australia that is only at present a voluntary obligation of operators. These accreditation requirements also include Village Managers. Other obligations are covered elsewhere.

6- Consideration of a 21 day "cooling off" period

I consider that firstly a 21 day cooling off period is appropriate, however the current details of the NSW Act to have a settling in period should also be considered.

This would be an incentive for proposed purchasers who would feel more comfortable to know they could leave within the first 90 days without a significant penalty which does cause many possible residents not enter a village because they feel it may not suit them. From experience, most residents wished they had entered sooner.

7- Advertising price of village Units

The need for more transparency is needed in selling details including deferred management fees and monthly costs. Copies of Annual Budgets should be provided and details of long term forecast maintenance should be provided. The latest obligation to indicate estimates of 1,5 and 10 year with approximate CPI adjustments.

In addition, the type of sale such as Loan/lease or Freehold should be stated.

8- Factsheet and Disclosure statement.

The factsheet was not provided when I purchased in 2008/9 and details were somewhat brief but these should be a minimum and details of contract from a village should be available either in paper form or website to allow a prospective purchaser to be fully informed before considering making any offer.

9- Further improvements to prospective purchaser

The need for owners to be required to set out full financial details for both incoming costs and departure need to be clearly set out in schedule form.

Many contracts have a little hidden clause advising when leaving the owners may or shall apply a 1% sales costs plus the need for the resident to pay for the owners legal costs on departure.

10-Time frames of Factsheet and Disclosure statements.

The time frames seem ok but improvement to the amount of details should be reviewed.

11- The requirements as set out from 2014 improved the residents understanding of the contracts.

Overall there has been some improvement, however a basic contract type for the industry should be considered to ensure this sets out what should be included as a minimum for the protection of future residents of villages.

12-Unnecessarily complex contracts

Many contracts are complex due to the need by some owners trying to cover all aspects of the operation of the village. This includes where there is Residents committees. In addition, where policies have been introduced these are often incorporated into the contracts. The comment in question 11 may assist owners to ensure that only the individual contract with a prospective purchaser is addressed.

13- Further improvements to contracts.

The inclusion of a settling period may assist decisions to allow the many complex items trying to be incorporated may minimise this situation

14- Entering village with or without deferred management fees being disclosed.

Firstly, they must be disclosed as the need to fully advise of any purchaser their obligations if they wish to leave under any circumstances MUST be mandatory.

These details should be set out in a schedule in the contract so purchasers are aware of their future expectations when leaving a village.

However, currently there are some operators offering alternative options in regard to both what fees will be paid on departure together with options on any capital gain that may result in any future sale of a unit. These options should be given some review by Government under the RV Act and also understand the ATO's assessment to the commercial operations of the owners.

15-Should defer management fees be on a pro rata basis.

This item should be legislated to be a pro rata basis as some owners have deliberately delayed sales to increase their return by only several days with a 3 to 5% gain for them. This should be stopped by making it based on a daily factor thus stopping inappropriate actions by owners.

16-When should owners advise residents an estimate of departure fees.

A resident should be able to request this detail at any time while in residence in the village but no more than once a year depending on the circumstances. Some residents may need to review their ability to stay due to financial hardship. Others may be reviewing their assets to seek government assistance or assessing the need for future care.

17-Mandatory Accreditation

The benefits are mainly directed for the benefit of residents to ensure owners and Resident Committees maintain a standard of service to the benefit of residents.

However its form and detail needs full review by both owners and residents so it does not become a ticking of boxes every year.

It also means it may increase annual running costs and a cost benefit needs to be assessed.

18-What elements needed for accreditation

Firstly, such accreditation needs to be carried by an independent organisation.

As villages age such accreditation will ensure that the village will be kept to a reasonable standard.

19-Benefits to voluntary accreditation

This will allow owners to utilise such accreditation for sales benefit only. Any benefit to residents will be minimal

20- Alternatives to improve standards and quality of retirement villages

There are many methods to improve the standards of villages and these can be achieved through providing managers who are qualified through facilities management or appropriate in house being offered by some of the larger operators. A major skill in village management is to ensure they have People management so that the social life of residents is maintained.

21- Additional limitations or requirements to operate a village

To ensure the safety and wellbeing of residents all village staff should have a Police check prior to employment. In addition a member of staff should be qualified in a nursing background .

22- Benefits to have mandating training for village employees.

This would ensure any accreditation would be achieved and give residents a sense security and a knowledge that they would have an environment where appropriate persons would manage the facility. However it also means that running costs of a village may increase thus reducing the incentives to consider living in such conditions and as such the levels of qualifications need to be monitored.

23-Ways to ensure retirement villages staff have appropriate skills to carry out their responsibilities.

Large corporations currently provide “in house” training due to the large amount of villages being managed by these companies. It would be appropriate that such companies provide details of their training to the CAV as part of there registration. Also government education should be expanded to provide courses to understand how villages are managed and ensure future villages being developed will be able to resource appropriate staff. These could be through either universities and TAFE colleges.

24- Other ways to ensure staff can obtain the appropriate skills.

To manage a village there are many similar work skills that can be utilised to successfully manage a village. In addition the Property Council could set up in conjunction with an education provider to advance skills for the retirement industry.

25-Current powers of Residents Committee

Most committees act for the benefit of all residents and having a good management process will ensure that they carry out their powers appropriately.

26-Should resident committees be involved in dispute resolution between residents

If a dispute is based on “non-compliance” with a condition of a contract this should be reviewed by the committee. However, if such dispute is based on matters outside of the requirements of village contract requirements then such matters should NOT be part of the committees role to consider any adjudication.

27-Should Residents committees have power to approve increases in above CPI increases to charges.

The committee should be able to make recommendations to the whole village BUT not be able to approve of such increase.

28-Should Owners/Managers be involved or prohibited from Resident Committee meetings

To ensure appropriate running of a village the owner or manager should be part of the Residents committee to ensure a harmonious running of the village. A separate meeting should only be carried out if there is a dispute between the parties involved and this is where an appropriate Ombudsman in the industry should be available.

29-Level detail of financial activity adequate for residents.

In general most details provided to residents in to the financial statements are suitable to ensure the running of the village is appropriate. The main area that needs to be addressed is what status of the owner to carry out future capital development of a village or to the current financial ability of an owner to operate.

Perhaps mandatory requirements for owners to provide an Auditors statement confirming the owner is financially stable to maintain ownership of the village.

30-Should residents be provided with financial statements before a Annual Meeting and what period.

Yes these should be provided and at least a period of 7 days minimum before the meeting.

31-Are there any other matters should be addressed in the reporting requirements

Details of Long Term Maintenance forecasts should be provided for at least five years ahead and what funds are available to cover these forecasts.

32-Mixed tenure village

Not applicable for my village and cannot make any comment.

33-RV Act to address responsibility timeliness for repairs and maintenance

It would be appropriate for the act to have a direction that contracts must have include that the owner or manager must ensure maintenance and repairs be carried within a fair and reasonable time and must not cause any risk to the residents at any time.

34-What are the problems being more prescriptive to retirement villages in all types of circumstances

As villages have varying facilities and different environments such as being in country areas, suburban and inner city high rise it would be difficult to be over prescriptive. However there should be a minimum of items that need to be defined where action is required and these are Electricity, Water supply, Sewerage, drainage and security of a village.

35-To what extent should the RV Act regulate maintenance and capital items

The NSW act provides some extensive details in this area and should be considered by Victoria as a guideline for future amendments. (The NSW also have significant requirements under the Owners corporation areas for strata titles).

36-Should all Villages have maintenance and or capital replacement plans

Yes, these should be a requirement for all villages.

37-If agreed to question 36, what minimum requirements should apply.

The Queensland acts for retirement villages have set out considerable rules for these areas and should be considered as a basis to be applied under the Victorian RV Act.

38- Not applicable

39-No

40- Private funded care services to villages

This item is getting outside the responsibility of a village as most villages are based on Independent living and most village contracts require residents to consider alternative locations if unable to maintain ability living in the village.

41-Role of village operators to provide safety and welfare of their residents.

As per question 40 the only ability is to assist seeking Local Authority assistance and as Government offer Aged care Plans these need to be suitable to enable the resident to maintain independent living. Any change to that requires the resident to relocate to an appropriate aged care facility.

42-RV Act role in sale or releasing of a retirement village unit

The comparisons from other states indicate that both SA and QLD have a 18month stator buyback and I consider this should be the minimum requirement for Victoria

43- RV Act balance to interest of departing residents.

The Queensland details in respect to renovation is a starting point and should be considered as an amendment to the act.

44- On going charges to departing residents

Current requirements to have 6 months for loan lease contracts and unspecified for Freehold need review as the requirement for a owner to repurchase after a fixed period of 18months should also apply to freehold units and have a max of 6 months for charges.

45-Should RV Act regulate to Cap Gains or losses

There is a need for this item to be regulated as owners are offering different options with contracts at the present time and as it also comes under the areas of reinstatement and refurbishment. Residents should be able to share the Cap gains as most Deferred Management fees are based on the final price and as such the owner obtains a benefit due to the final selling price.

46- Proposals to potential improvements to internal dispute resolution procedures.

See response to Question 26. Where there is a conflict of interest it would appear it may reflect a contract clause and this should be a matter for the ownwr to resolve and not the committee.

47-Should a resident seek resolution to a dispute by accessing to VCAT be required to first seek an internal procedure.

YES

48-Should mediation go through DSCV prior going to VCAT

This is where a an appointment of a Ombudsman specifically for the Retirement Village industry should be considered in lieu of using DSCV.

49-See answer to Question 48

50-Are the enforcement provisions incorporated to RV act sufficient.

Based on what has happened to date I feel that better enforcement should be considered.

51- Should the Director of Consumer Affairs Victoria be given additional powers.

This should be given serious review to ensure the protection of residents of villages in Victoria.