

**Submission  
No 13**

## **INQUIRY INTO UNFAIR TERMS IN CONSUMER CONTRACTS**

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Standing Committee on Law and Justice.

YOUR INQUIRY INTO UNFAIR TERMS IN CONSUMER CONTRACTS

Retirement Village Contracts come under the Consumer Protection legislation.

Most contracts appear to be straight forward and regrettably many Solicitors/Lawyers do not know about the Retirement Villages Act (1999) and most Contracts are unconscionable and tie up the purchaser in such a way that he/she has little chance of escaping by the time he/she realises, and only that is if they are a thinking person, what they have signed up for and generally that is too late to take any action.

Recently the President of the South Australian Law Society sought some information on a similar subject and below is a copy of the correspondence that I sent to her that covers this subject as well.

1. Contracts have to be in plain and simple English.
2. Contracts need to be standardised for the particular Industry's use.
3. Solicitors/Lawyers need to be educated to ensure that they do not unwittingly commit a purchaser to something that they should not sign or are incapable of meeting the terms of the contract.
4. Contracts should contain a clause that states that it complies with the legislation that governs this contract, also contracts should state that the particular legislative act that governs it. If not adhered to such contracts are automatically voided.
5. Contracts need to contain a defined "cooling off" period and that should be prominently displayed in any consumer legislation if not already incorporated.

Unfortunately Retirement Village Contracts, Lease Documents and Trust Deeds intend to be unwieldy and therefore only get a cursory glance by a lot of Practitioners, because if they were to study every clause then time and costs to the purchaser would be astronomical, which I believe is one of the main reasons that people get caught.

Thank you for giving me the chance to forward this submission.

Robert Harvie.

## "M/s Deej Eszenyi - Read the Fine Print

I read with interests your comments in "The Advertiser" 10<sup>th</sup> Apl 06 and state that I applaud your effort. I am aware that most "Law Firms" owe their existence to "Big Business" and it is not often that the "little guy" gets a look in. However I would appreciate that if you would consider going a little further in advising some of the items to look at, when dealing with this industry. I realise that your state's laws are different to those of mine (NSW), but basically they cover very similar ground and have the same 'intent' and that is to protect the vulnerable elderly.

My reasons for making the following statements is that I have lived in a retirement village for 6 ½ years and in that period of time have seen and experienced many of the undermentioned items and would like to pass that knowledge on. I am well aware that some of the statements pertain to my own village, but it is not unique in this field. Despite taking many precautions to find out what 'Retirement Living' was about prior to entry. I still got 'conned' and am locked into a situation that I cannot escape from. However I will not go in to this here, but I will put down some of the information, that you may be able to use and advise your colleagues accordingly.

1. The Glossy brochure that retirement villages put out about themselves needs completely pulling apart and **every statement carefully examined for its truth, authenticity, as well as its delivery**. Many have been found to carry inaccuracies and misinformation. If these documents were a prospectus and that is what they virtually are. I believe, they could be scrutinised under the Companies Act section relating to 'Prospecti'.

2 The contract needs also the same attention and *by a solicitor, who is 'au fait' with the State's Retirement Village Act* otherwise the prospective villager could literally 'put their head in a noose'. Why do I make this statement, because it is many of the innocuous clauses that a solicitor could gloss over as a standard statement in any contract without garnering the real impact, ramifications and effects that such clause could have on his/her client.

3 Visiting the Village this is essential, as well as speaking to Villagers. However the latter statement can be fraught with danger in what the prospective resident **is not told**. Generally there is nothing wrong with living in a village. Most villagers will tell someone new how good it is. But it is the undercurrent that they are not told about that runs through the village that is the problem. Bear in mind that most villages are populated by elderly women. Making up approximately 80% is the figure bandied about in this State, as well as their Age group 75-85+. These women are unfortunately the most vulnerable in that they can be easily coerced, intimidated, harassed etc either by the operator (management) or by a Residents' Committee that has aligned itself with the operator. In other words the Res. C'tee acts only as a mouthpiece for the management and not for the residents.

4. The make up of management company and its ownership is another item that needs careful attention, exploration and scrutiny, as well as a visit to ASIC is recommended, so that you know, who you are dealing with. Can decisions be made on the spot? or do they have to be externally whether interstate or away from the village? E.g. A village in Port Pirie with the Operating Company's head office in Adelaide. The Elderly are very susceptible to delays and if a matter drags on they are more inclined to give up if anything is delayed for a lengthy period. There is a saying "**that justice delayed is justice denied**" and this what many village managements trade on. In other words the longer we can string out something the easier it will be to get its approval generally to the detriment of the villagers.

5. Good Management, Accountability, Integrity, etc. of the operating Company or management, however this is one of those nebulous matters that when you are trying to find information that is very hard to pin down. It is an essential that needs to be thoroughly explored to ensure that one makes the right decision. Whilst it cannot be fully ascertained visits to the 'net' looking particularly at the 'Tribunal', 'Hansard', other state websites,

associations etc. are just a few that come readily to mind . However many of the elderly are not familiar or have the skills in computer to carry out these checks, but those that are should be advised to do so as the information that they glean, through these skills may save them a lot of anguish and heartache in the future.

6. I would suggest that you should advise your members that extreme wariness in this sort of 'home' choice should be exercised before they allow their clients to append their name and signature to such contracts. This is possibly the last real estate transaction that many of these elderly folk will make and it is necessitous that they make the right decision to ensure they live their twilight years as they want to and not as some others want them to. I know there are many good and fair operators of villages and these people should be weeding out the so-called 'cowboys' who are giving the industry a bad name that indirectly affects the industry to its detriment. A member of your legislature when the Retirement Village Bill was in the parliament stated during the debate on the Bill, that they had listened to the Industry at the previous time, when it was reviewed, but it (industry) had not cleaned up its act and if it is necessary then there will be no alternative, that these unscrupulous operators will be 'stitched up' by legislation in need to ensure that the elderly are not unfairly treated.

Finally many Companies inter and intrastate are moving into this field. Globalisation will make it more difficult to ensure that the vulnerability of the elderly is not affected as they are currently governed by State legislature and I would like to see it remain that way. What is often overlooked, by many operators is that the current residents of villages have supplied them with a fair 'whack' of their **working capital**. I know they need to make a profit, but they should not do it by exploiting the 'vulnerable elderly', who pay for the running costs of the village. In other words what a glorious situation to be in to have the use of many millions of free dollars, as well to have those someones to cover all the running costs of the village and also grow your asset at the same time. A Win/Win situation is the ideal and there is no need for much of the exploitation that goes on in the industry. Greed and avarice is rife in many instances. The elderly do not mind meeting their commitments and there are many of us, who are aware that we are being ripped off. Unfortunately there are many 'mushrooms' and those who would 'stick their head in the sand' and pretend such exploitation does not affect them nor will they tell a prospective resident of the problems that the village faces for fear of the retribution that the operator will kick them out of the village. This is I might say one of their (operators) usual ploys when some one does not agree with the way that they run or want to run things. (I might add the bulk of current residents in many villagers are only pensioners with the exception of the Resort Style Villages) and therefore do not have the wherewithal. A 'Fair Go' is all that is asked for and your Society can help this achievement by acquainting incoming residents of what they could be getting themselves into and some of the facets that they need to sincerely look into prior to taking this all important step. I have recently heard and gathered by the advertisements in some of the Senior journals and others that are available in this State that many villages are not selling their unit/villas and I believe it is because of a lot that I have outlined above.

Thank you for your article it was timely as we are expecting new legislation and hopefully it will go some way to alleviate the stress and strain that is occurring here.

Rob Harvie."