

16 May 2017

Consumer Property Law Review
Policy and Legislation Branch
Consumer Affairs Victoria
GPO Box 123
Melbourne VIC 3001

By email: consumerpropertylawreview@justice.vic.gov.au

Dear Sir/Madam

Estate agents and conveyancers: options for reform

Residents of Retirement Villages Victoria (RRVV) welcomes the opportunity to comment on the Consumer Property Law Review's Options Paper on estate agents and conveyancers.

About RRVV

RRVV is an independent, not-for-profit organisation representing the interest of retirees who live in retirement villages and retirees considering living in retirement villages. Attachment 1 gives further information.

Buying into a retirement village

Buying into a retirement village is not easy. The contracts and related disclosure documents are complicated and have little in common with those involved in the purchase of a family home. Similarly, living in a retirement village is not the same as living in a family home. Accordingly, the purchase process is a new experience for retirees. Retirees (some of whom are vulnerable to exploitation) buying into a retirement village, therefore, rely more heavily on the integrity of the sales person than the general population.

Question 1. What other issues should be addressed in the revised definition of estate agent and what is your evidence of the issue?

Option 1 proposes to retain the right of retirement village operators to market and sell their own property without engaging the services of an estate agent.

Requiring retirement village operators to engage a licensed estate agent might well be a significant departure from the status quo. Nevertheless, prospective residents' greater need for protection justifies departing from the status quo.

Residents of Retirement Villages Victoria Inc.

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It is technically open to residents to bring an action for damages if they purchased property or entered a loan-lease contract based on misleading representations. Although residents frequently complain about misleading statements and undertakings made by sales staff, very few take such a course of action. The barriers to residents, particularly elderly residents or distressed relatives, accessing justice through court or tribunal proceedings are well established. The submissions and evidence given to the Parliament's Legal and Social Issues Committee Inquiry into Retirement Housing clearly demonstrate this.

RRVV submits that ensuring in-house sales staff are adequately licensed and regulated is the preferable option for reducing instances of misconduct.

Estate Agents Remuneration

Option 21 proposes removing the ban on commissions under section 55 of the Estates Agent Act but adding some additional protections for sellers. RRVV submits this proposal is unsound

Retirement village operators with strata-titled villages tend to buy units from departing residents and put them back on the market. Most use their in-house estate agent. The process is wide open to manipulation, particularly given that the vendor is almost always either (a) of advanced years and moving into care or (b) is a grieving executor. Allowing the in-house estate agent to charge commission would increase the incentive to manipulate the process. For a specific example, see Attachment 2. Why permit the operator to extract more money from the transaction when there is no question of the current prohibition being unfair?

RRVV submits that if there is unfairness in particular situations (e.g. in country towns) then the appropriate course of action is to address that specific unfairness with a targeted exemption.

Conflicted Remuneration

RRVV submits it is poor public policy to condone conflicted remuneration, except in very limited circumstances, and draws your attention to the public debate on the topic over the past 6 years concerning financial planners.

Rebates, incentives and soft-dollar benefits paid to real estate agents certainly constitute conflicted remuneration. The whole point of the practice is to induce estate agents to change their behaviour from that which is in the best interests of the seller towards something that reflects their own interests.

RRVV also submits that disclosure of unsound practice does not automatically turn it into sound practice. Moreover, many retirees of advanced years do not have the energy for sceptical review of disclosures. Some, unwisely, see disclosure as evidence of trustworthiness. Accordingly, disclosure can be counterproductive.

For these reasons, RRVV supports Option 22A over 22B. The prohibition on agents receiving benefits should be retained and strengthened. This option also proposes to enhance disclosure of certain rebates and benefits. While transparency is necessary, RRVV remains of the view that disclosure is not an effective antidote for the poisonous effects of conflicted remuneration.

Should you have any queries about this submission, please contact me at lawrie.robertson@bigpond.com or on 0411 462 344.

Yours faithfully,



Lawrie Robertson
Vice President
Residents of Retirement Villages Victoria

About RRVV

Residents of Retirement Villages Victoria (RRVV) is a volunteer organisation serving and representing residents of retirement villages and like housing communities with around 7,700 paid up members.

RRVV works to support the lives of residents of retirement villages by:

- Defending the good features of retirement village living
- Assisting prospective residents' decision-making
- Helping resolve resident problems
- Promoting continuous improvement
- Encouraging innovative industry development programs

A committee of nine members supported by 110 resident liaison officers (village level coordinators) administers its affairs.

RRVV has four primary activity streams:

- Member support
- Research
- Government relations
- Industry relations

RRVV devotes the greater part of its resources to member support. This includes:

- Responding to telephone and e-mail queries and requests for help with problems (around 1,000 queries a year)
- Publishing four newsletters a year
- Holding two primary member events a year
- Visiting villages
- Advocating on behalf of residents making complaints
- Provision of the website www.rrvv.org.au as a service to members and a source of information for people interested in retirement villages.

RRVV research explores the retirement village satisfaction, interactions with management, problems encountered, disputes, access to information and residents participation in decision making.

RRVV meets regularly with retirement village operators to explore areas of mutual interest and resolve differences.

Case Study – Alexandra and Ian

Alexandra and Ian (pseudonyms) decided to leave the leasehold village they had lived in for over two years to move into a unit under construction in a small development.

Alexandra and Ian considered appointing an independent estate agent to manage the sale of the lease but after discussions with ex-residents of the operator who had used an external agent and found the operator did not cooperate with independent agents marketing plans and so decided to use the in-house service.

The village manager handled all sales in the village. Alexandra and Ian met with the manager to sign the paperwork to initiate the sales process. The village manager insisted that they give notice that they would vacate their villa within six months. They agreed even though they knew this might be awkward. If the builder of the new unit did not stick to the schedule, they might have to move into temporary accommodation.

Alexandra and Ian also knew that if the builder of their new unit did stick to the schedule and there was no buyer willing to settle on the due date they would have to default on the building contract because they needed the proceeds of the sale of the villa to settle with the builder.

Alexandra and Ian had added various items to the interior and exterior of the unit that could easily be removed without in any way damaging the villa. They stipulated they were happy to leave them if doing so facilitated a sale consistent with their timetable but otherwise wanted to take them to their new unit.

After some weeks, the village manager advised that he had found a prospective buyer. Alexandra and Ian asked if the prospect understood their conditions. The village manager said yes.

Ian and Alexandra asked the village manager to ask the prospect for an offer. He declined.

A little later the prospect did make a formal offer, but the proposed date of settlement was after the date Alexandra and Ian had stipulated for the inclusion of the additional items. They advised the village manager. He insisted they remain part of the deal.

The prospect varied the offer to push out the settlement date. Alexandra and Ian again pointed the new date was later than the deadline for inclusion of the additional items and that in any event, it did not allow them to buy the new unit and so they were unable to leave on the date they had reluctantly agreed to.

The operator made an offer to buy back the unit and the additional items at the price offered by the prospect. Alexandra and Ian accepted the offer. The operator charged them a re-leasing fee (i.e. the term used in the contract for commission).

Alexandra and Ian assert that the village manager did not handle the sale of the lease competently, was never clear whether he was working for them or the prospect and was only saved from bungling the process by the operator's decision to buy back the lease. They also assert that it was unethical of the operator to charge a commission when the operator was also the buyer.