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Speech by Adam Graycar:

"Resident-funded aged accommodation"

delivered in Perth, April, 1986.

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Adam Graycar

Resident Funded

Perth

April

1986

Accom

Don't photograph / shoot
Epidemiological
in A.

Price houses - less moving - supply led
- checked / supported

- Desire to move - Romantic holiday by sea
- ...

Whilst the reasons most often given for moving into retirement accommodation invariably come from the following list, no attitudinal or behavioural research has been conducted to measure the relative significance of each factor in the ultimate decision making process.

Many factors - 10 relevant

- Desire for independence and identity:
- friendship and avoidance of loneliness:
- Smaller house, yard space:
- To reduce ongoing maintenance responsibilities:
- Financial and physical security - improve liquidity by "trading down":
- To improve access to ongoing care, viz., hostel, nursing home:
- Access to emergency after hours care, fear of incapacity:
- Lifestyle enhancement.

Clearly the approach of agencies involved in the marketing of the village approach to retirement accommodation has, as already indicated, been to emphasize:-

- lifestyle:
- security:
- safety:
- access to emergency care:
- privacy:
- freedom of choice:
- access to amenities.

3.1 Lifestyle Enhancement - A Misnomer?

As part of their marketing strategy, promoters of retirement villages offer a lifestyle which will ensure happiness, security and fulfilment.

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Unfortunately it is not possible to assess the relative importance of the lifestyle factor in the decision to move into retirement accommodation. Much has been written of a subjective nature on the question, but no comprehensive research has as yet been undertaken.

The lifestyle question has special significance for ^{promoter} ~~for the Cottage Homes~~, given that we are about to enter the ~~resident funded unit~~ market. Do we enter the market offering lifestyle enhancement through village living and security through ongoing care?

To be successful in the market place, we must offer more than simply a place to live.

General Issues

Philosophy

Building & Design

Services

Organizing care

Funding

Adel memo

1980 3
1985 30
now 30 more

There are many types of "retirement villages", some operated by charitable or religious bodies, some by public authorities and some by commercial developers. People wishing to move into such a village generally must be in good health and of a minimum age.

wise - good judgment
↓
exp
↓
bad judgment

The term "resident funded" means that costs are borne by the residents and anybody contemplating moving into resident funded accommodation should seek professional (including legal) advice.

The financial arrangements are quite complicated, but in general people may pay somewhere between \$50,000 and \$150,000 for a unit and in addition pay a weekly maintenance fee of around \$25. - often much more. Despite the outlay of a large sum of money, people do not actually buy the unit. What they buy, is a licence to occupy the unit. The financial and legal arrangements are quite complex and when thinking about such a purchase people should enquire about what happens if they wish to move out and who decides if they should move out.

In most cases the developer will guarantee a return in excess of 75% of the price paid or about 75% of the current market value should somebody move out. The percentage that is not refunded goes to establishment and maintenance costs. Remember a unit in a resident funded village is not a straight capital investment as is, say buying a house or unit.

Instances have come to the attention of the Corporate Affairs Commission of retirement villages, where an offer is made to the public to invest in the village, and there has been a failure to comply with the existing legislative requirements.

~~The retirement villages to which I refer are those that are~~ Resident funded" ^{and} ~~which are~~ marketed to the public on a commercial basis as an investment in retirement accommodation. In these developments the potential resident buys the right to occupy the unit in the village for a lump sum consideration, and agrees to pay a further maintenance fee which is designed to cover weekly rates and taxes, the upkeep of the unit, and the maintenance of the communal facilities.

~~This means that~~ ^{9/10/1977} Organisations promoting the scheme must comply with those provisions of the Code which regulate the offering to the public of an

investment opportunity. These provisions do not ensure that a correct investment decision is made, but rather their purpose is to ensure that a decision is made on the basis of full disclosure of the relevant particulars. This regulation encompasses advertising which if it were not regulated, may well be of an emotive nature, and contain false or misleading claims as to the facilities available to the residents of the retirement village and the security of tenure available.

N. H.
T. M. C. M.

At a meeting of the Ministerial Council for Companies and Securities held on the 1st May, 1985, it was resolved that ~~retirement villages would be excluded from the definition of "prescribed interest" with effect from the 1st July, 1987, and that each State/Territory would regulate retirement villages in the manner considered most appropriate to the needs of that State/Territory,~~ *not covered under Con & Sec 14(1).*

Given the substantial amount of money required to secure accommodation in retirement villages and the possible vulnerability of the persons seeking this accommodation, it would be irresponsible to have no regulation in this important and rapidly growing market. ~~In consequence interim regulation up to the 1st July, 1987 will be undertaken by the Corporate Affairs Commission which has a delegation to exercise all of the powers of the National Companies and Securities Commission in relation to retirement villages.~~

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Prior to 1 July, 1987 the Government will, in consultation with interested parties seek to develop proposals that can be the basis of regulation of investment and other aspects of this important area. ~~It should be noted that the Corporate Affairs Commission has~~ ^{will} already held discussions with representatives of the voluntary care sector and private developers on this matter with a view to the development of a basis for regulation in this interim period. ~~The Commission will grant appropriate exemptions from the strict requirements of the Companies Code where it is satisfied that it is appropriate to do so.~~

In the most common resident funded situation, the potential resident is required to pay a substantial sum for a licence to occupy a unit in the village. Because this interest cannot be registered on the title to the land, the licensee is at risk if the village is sold by either the promoter, or by a mortgagee exercising a power of sale. Many licensees may not realise

that they are not getting freehold title, or that a licence may well include conditions which place the licensee at the mercy of the developer. While I am not for one moment criticising the licence concept, which may well be the only way to maintain the character of a retirement village development, it is essential that some security of tenure be afforded to those who have paid large sums of money for what they often believe is the right to occupy a unit for life. It is equally important that licensees should be aware that the lump sum payable to secure the licence, a portion of which is, subject to the contractual relationship in each particular case, repayable on a subsequent resale following the licensee's death or departure from the village, is not the only payment which the licensee is required to make. As I indicated earlier in this Statement, all licensees must contribute towards rates and taxes and maintenance in an amount which will probably increase over the years.

There are two important matters that should be emphasised. The first is that promoters of retirement village schemes should be aware of the likelihood that their scheme is regulated as a prescribed interest under the Companies (South Australia) Code where an offer has been made to the public and that they should seek legal advice as to documentary requirements and permissible advertising. On the 19th September, 1985 on the application of the Corporate Affairs Commission, the Supreme Court made an order restraining the promoter of a retirement village and an Adelaide daily newspaper from further publication of an advertisement which had not been approved by the Commission. The second matter to be emphasised is to express the concern of the Government that persons entering retirement villages at considerable cost, should have security of tenure in the sense that the village will not be sold out from under their feet for whatever reason, and be fully informed as to their rights and obligations.

That the ~~concern of the Government~~^{an} is justified is borne out by recent events in Victoria. In Victoria as reported in "The Age" newspaper of 19 September, 1985 a very large retirement village promoter is unable to pay its debts, and has sought help from the Victorian Government. Not the least of these debts are amounts aggregating almost \$500,000 due to the estates of former residents who are deceased. In the imposition of both the interim and the long term regulation, a balance will be struck between the need for developments of this kind to be viable commercially, and the need to give

residents security commensurate with the cost of entry into this type of accommodation.

~~In the majority of RF units tenancy is no more than~~ ^{work} a licence to occupy - a contractual agreement not capable of registration on the title to the property, ~~Not may~~ ^{may not} the resident use his or her so-called investment in an RF unit as security in any financial sense; it is not "real estate" (not theirs at least). Their situation is the economic equivalent of the renter of a unit on the open market - usually with stricter (sometimes draconian) conditions of tenancy and few or none of the legal rights of open market tenants in most states.

In these circumstances developers may encumber (or mortgage) villages and in the event of their inability or failure to meet the terms of the encumbrance....be sued for breach of contract by a resident. The result of such a (protracted) process may be that no funds are available from the failed promoter to reimburse the (by now) displaced resident - if funds had been available foreclosure would not have occurred to begin with. ~~The scenario has been played out in Queensland and was likely to happen to the Frankston group in Victoria and S.A.~~

Despite good intentions to provide the market with a competitive and desirable product - a "retirement living package" there exist ^{some} among developers less good intentions to simply accrue profit rapidly or find a quick solution to present day consumer preferences in a short-term marketing context only.

Australian governments of all/most political colours have shown a desire to recognise the need of consumers to receive fair treatment and the particular need of older Australians to be accorded appropriate social resources and status: to be much more than the objects of short-term marketing strategies.

*changing home, - ted navel - microfiche - silicon chip
can't fiche a chip*

Just as a house is not a home a RF unit is not a future. Are we as a community subject to the moral and political danger of assuming that tenuous occupancy, marginal financial security, and the often unrealistic hope of support services in many RVs are good enough?

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RFRVs can be described as a boom industry of the 80s. When we talk about other contemporary rapid-growth businesses such as health foods,¹ insurance brokerage, tourism promotions, videos, we tend to tut-tut about taking large risks with other people's money, exploiting the gullible, and scandals of sharp-dealing and bankruptcy. We tend to sympathise with small-scale developers with good intentions who "got fingers burnt". What will be the predominant community feeling about large-scale developers who inadvertently or otherwise subject retirees to the risk of dispossession? - Be they private entrepreneurs or the heads of church and charitable organisations? I suggest that our response will be cynicism or apathy, unless we begin ^{now} to work ~~now~~ to educate the community - and ourselves - on the economic rights of its ageing members, unless we begin to create legal mechanisms which will afford greater protection to the ageing.

The injunction "buyer beware" should be sufficient, some might say. Common law and code law afford protection and impose controls among a range of economic interests in Australia but law is conservative and selective in that it usually protects established interests before innovative interests and usually protects large financial interests ahead of small. In the case of retirement villages, Australia has established in a very short period an industry with capital assets measured in hundreds of millions of dollars (large) ^{to people} whose source of income is ~~small~~ ^{often low} ~~excess of 25,000 one or 2-person households~~. These households are virtually the smallest ^{economic units} in the community, are on fixed incomes, and arguably vulnerable.

For many

older people making a clean sweep, uprooting, and moving to different accommodation is a profoundly intense and significant experience.

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2001 - black draft

The fears surrounding growing frailty in a family-type suburban home, geographically isolated from friends and relatives on whom one is reluctant to impose or depend, with limited transport or confidence/competency in the use of it, are weighed against the gains of emotional and physical security, freedom from gardening and maintenance tasks which may be considered "too much", and the promises of peer support and prompt emergency assistance which a Retirement Village may provide. The wider community does not place a high value on elderly Australians, tends to regard older people as non-participants and tends in effect to encourage their withdrawal. The notion of a segregated "holiday at home" village for the ageing is fuelled by these community attitudes. And the move into RF accommodation can be an effective retreat from and abdication of personal, social, financial and legal competencies, undertaken in a mood of resignation or a state of relative powerlessness.

For some older people moving is an important and necessary activity and it makes life easier and more comfortable, provides a less stressful lifestyle and gives people a new lease of life. For others it is deeply distressing, as old ties are broken and a journey into the unknown begins. The point to note is that the efforts of moving are very different for different individuals, and there is no simple right or wrong. What may be just about perfect for one person may be an absolute disaster for another.

Must approach - pos. - O.K. for most. work together

~~The move can equally be a positive embrace of a lifestyle and sense of self better adapted to the physical and familial realities of the young-old stage of the life cycle. The fact that it is not for many people, together with indications that thousands of RF licensees in Australia now stand at risk of dispossession, are reasons enough to do much more than simply tell the buyers to beware.~~