Complex contracts and the 'lifestyle village' swindle

By ABC's Alan Kohler

Posted 9 hours 37 minutes ago

Like financial advice, regulation of the retirement village and aged care industry doesn't go far enough. What's more, consumers may be swindled by complex contracts, writes Alan Kohler.

PHOTO: Retirement villages and "lifestyle communities" are a convoluted maze of separate state regulatory systems. (jonrawlinson: www.flickr.com)

The worst thing about retirement living and aged care in Australia is its complexity. So cruelly, skilfully taxing for the elderly mind are the intricacies of the system that one can only conclude that it is deliberate.

In fact the arrangements for something as simple as spending one's twilight years in a small community of similar people are often so unintelligible that even the adult children can't work it out, let alone the septuagenarian customers.

I'd call for urgent intervention by the Government, but every time the bureaucrats go near this business they only make it worse.

The changes to aged care regulation that began on July 1 - designed by the Labor government, promised to be scrapped by the Coalition and then, quietly gone ahead with - were supposed to make things simpler but definitely made them worse.

Aged care in Australia is now a nightmarish maze of bonds and means tests, of which even the industry is struggling to make sense.

But at least aged care - what used to be called hostels and nursing homes - is ruled by one government, the Commonwealth, with one set of laws. The phase of life immediately before that - that is, retirement villages and "lifestyle communities" - is a much more convoluted maze of separate state regulatory systems, each vying to be the most complicated and the most full of traps for the unwary.

The latest boom is in what's called "over-55 communities", or "lifestyle communities" or "lifestyle villages". These are not actually retirement villages, as they often are portrayed to be: they are governed by state caravan park laws. They are essentially caravan parks, except you don't put a caravan on the plot of land - you buy a building that sits on it.

And as with caravans, you don't buy the land - you rent it, sometimes on a short lease.

Units in these villages can cost as much $900,000 or even $1 million, for a building that can cost no more than $250,000 to build, and where you don't own the land it sits on - in other words, you get the depreciating asset, not the one that appreciates.

The developer retains full ownership of the land and once it appreciates in value can decide to do something else with it. In at least some states it can serve a notice to vacate with six months' notice.

Residents in this situation have sometimes been forced to cut the building into pieces small enough to go on the back of truck and take it somewhere else.

The good news is that because you're renting the land, you can get rent assistance. Rachel Lane and Noel Whittaker in their book Aged Care, Who Cares? explain that the rent must be above $103.60 per fortnight for singles and $168.60 for couples to qualify for rent assistance.

However, according to Lane and Whittaker this has led to accusations of inflated rents, because the park owners expect the residents to get rent assistance from the government.

A retirement village is a place where you buy a unit and contract to give the developer anything from 30 to 100 per cent of the proceeds when you or your deceased estate sells it.

That's called a deferred management fee (DMF) and is justified by the idea that it allows the up-front purchase price to be kept low. In theory it's a form of reverse mortgage, allowing retirees to send part of the bill for their retirement lifestyle to their children.

For the developer, the DMF is the profit margin, because in most states they are not allowed to make a profit on the ongoing managements fees charged each month. The trouble is that these days many retirement villages charge full price to sell the units, and still keep the full DMF.

And there is a bewildering array of DMFs, sometimes in the same contract. The basic one is 3 per cent per annum capped at 10 years, or a total of 30 per cent, but that's not standardised. Unfortunately for developers the average stay is seven to eight years, so they don't usually get the full 30 per cent to which they are entitled.

As a result some charge a much higher percentage of the sale price, or add in a large percentage of the capital gain on top of a percentage of the original purchase price. I have heard of some villages charging 100 per cent of the sale price as a deferred management fee.

Sometimes you get to keep the capital gain, but only after the DMF is taken out, which usually means there is no capital gain at all.

And of course, there are the ongoing management fees, which are not deferred, and are paid monthly. In most states village owners are not allowed to make a profit from this payment; the profit comes entirely from selling the units and the deferred fees.

And of course, like body corporate fees in a normal strata title unit, the management fees are payable even if the unit is empty and waiting to be sold. Families are complaining that fees are demanded for months and sometimes years after the death because the unit can't be sold.

Like financial advice, regulation of the retirement village and aged care businesses is based on disclosure rather than prescription, but this can result in contracts of more than 100 pages that are simply impossible for most elderly people to take in.

As with financial advice, disclosure alone does not work because it's either not read or, if it's read, not understood.

In these situations governments can't simply say they have enforced disclosure and then say it's buyer beware. Consumers need to be protected, and a good start would be to enforce simplification.

Alan Kohler is finance presenter on ABC News. He tweets at @alankohler. View his full profile here.

Topics: community-and-society, aged-care, government-and-politics

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17 Jul 2014 7:22:04am

the yank:

Complexity is all around us for our entire life but I would agree that it gets more complex as I get older.

Maybe we should have educated our children better so they wouldn't take such cruel advantage of us as we get more feeble of mind.

Reply Alert moderator

17 Jul 2014 10:37:18am

Curious party:

Its not the young people taking advantage of the elderly. Its the wealth holders - those with enough capital to construct these myriad ways of divesting others from their wealth. Those people are generally more from the boomer generation.

Reply Alert moderator

17 Jul 2014 11:15:02am

the yank:

I think at this point in time the boomers are starting to get their advice from their children's generation.

Reply Alert moderator