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Committee Secretary,
House of Representatives Legal and
Constitutional Affairs Committee,
P O Box 6021 Parliament House
Canberra ACT 2600.

J A Sanderson

BY: LACA

21.11.06

Dear Secretary,

My name is John Adams Sanderson, I submit two cases herein.

Case 1. The first part of this submission is unavoidably convoluted because the subject matter is legally, chronologically and structurally complex as a result of direct control by two Queensland Acts of Parliament.

This community was developed as a commercial venture under the Retirement Villages Act and the Body Corporate and Community Management Act, both of Queensland. Residential Units are sold to persons who are aged at least 50 years, our average is over 70 and for whom this is their primary residence. The minimum age limit for ownership is controlled by a Lease - Lease Back structure between the Scheme Operator and the Unit owner.

The R V Act requires that there be a Scheme Operator as Administrator of the Retirement Village, whereas the BC & CM Act requires that Unit Owners form a Body Corporate and that it be administered by an elected Committee. Under the structure set up by this Developer the Committee members were Directors of a Registered Company, " Management Pty Ltd," which was the Scheme Operator. Following perceived misuse of the Directorships of that Company it was later dissolved and the position of Scheme Operator was transferred to the Body Corporate to give control to that body, rather than to individuals.

Among the Services required to be provided by the Scheme Operator was the Maintenance of the Common Property and the collection of Refuse. These duties were provided by a person, contracted under a legal Agreement with the Developer as Scheme Operator, this Agreement was transferred as part of the complex, from the Developer to the Body Corporate, with a Termination date of the 8th of May 2005

The first full committee, following the hand over of the Retirement Village to the Residents, had become unpopular and it was clear that it would lose office at the forthcoming AGM of 2004. Shortly before that event, executive members of that committee, acting as Directors of the Scheme Operator Company, arranged with the solicitor, also inherited from the Developer, to have a new Agreement drawn up between Management Pty Ltd and the Gardening Contractor, which in effect extended his tenure from the 8th of May 2005 until the 30th of June 2009. As his charge for these services was considered to be grossly excessive and as the action had been taken covertly, there was outrage among the residents and the incoming committee resolved to attempt to rectify the situation.

- After discussing the Scheme Operator's action with the Solicitor for the Body Corporate and his participation in that action, his services were terminated.

- Another solicitor was given details of the problem and agreed that we had a case, but had to withdraw on discovering a conflict of interest.
- A new Chairman, acting against the advice of the committee, consulted a solicitor, known to have acted for Retirement Village Owners in losses against Residents, in several cases in the Tribunal. He advised that we had no case.
- That Chairman then consulted a large Brisbane Solicitor's office for several months, at a cost of several Thousands of Dollars, his advice too was negative.
- When that Chairman resigned in late March 2005, his replacement consulted another solicitor who agreed that, a procedure we had considered shortly after our election, was safe. He agreed to present this plan at a scheduled EGM.
- At the EGM, held in early May 2005, the matter was resolved in the recommended manner, the effect was that our Gardening costs are now \$20,000.00 less per annum than under the old agreement.

Three of the five legal firms consulted had charged substantial fees for their services, despite two of those having given incorrect and misleading advice.

Unfortunately the involvement of two separate Acts in these cases, allows for such anomalies and more seriously, precludes effective involvement by either the ARQRV,* or the less relevant Unit Owners Association of Queensland.

Case 2. This involves a person who has recently purchased a Unit in this village under exactly the same circumstances as all previous transactions, but he alone has been refused exemption from State Duties on the transaction.

A close examination of all of the facts available, by an unqualified elderly resident, has revealed, what appears to be evidence of either, a badly prepared application by a solicitor's office, or a mistake, or two within the office of the government department concerned. This is being pursued further.

These events show how easy it is for elderly persons with little or no experience in legal matters to, not only spend large amounts of money, often to no avail, but also to suffer a great deal of mental and emotional stress and to waste far too much of their rapidly diminishing time on such matters.

It is therefore essential that easy access to sound legal assistance is necessary for the elderly, particularly when living communally.

** If it were not for the altruism of two ageing gentlemen who have dedicated their time and talents to the welfare of the residents of Retirement villages in this state as Chairman and Secretary respectively, of the Association of Residents of Queensland Retirement Villages, ARQRV, we would lack protection from the unconscionable actions taken by all too many unscrupulous Scheme Operators. They are both concerned as to what will happen when they have gone. Hopefully your investigation will result in a solution to this dilemma.*

Yours Sincerely,

J A Sanderson.