

ESTIMATES OR GUESSTIMATES

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The effects of the “economic downturn” have been and continue to be in the news and are affecting many businesses. Retirement villages are not immune and as the residential housing market has slowed, so have sales of units in villages.

A consequence of this is that, as is well known, as housing prices drop there is often an adjustment required in the pricing of retirement village units. There are pitfalls for operators and residents in the sales process which can be avoided if careful processes are put in place and followed.

When residents are thinking of leaving a village, they often request an estimate of the amount they might receive on termination. Operators should be careful to ensure that they give an explanation with the estimate that clearly sets out the factors affecting the return to the exiting resident.

Naturally, where there is an amount that is amortising or reducing, this is effected by timing. Where there is capital gain sharing, then any estimated increase should be conservative. The factors affecting the amounts to be received in both these cases should be clearly and simply spelt out.

Refurbishment costs that are to be met by a resident are another area where care should be taken to ensure that the estimate is accurate and a clear explanation of what might be involved and the process for determining what refurbishment is to be carried out and how the pricing is decided is most important.

Operators should not forget that the contracts for many residents require the exiting resident to bear any reduction in price. In this present market, residents should not be led to the assumption that they will necessarily receive back in full the fixed component of the payment for the unit.

Particular care should be taken with estimates if a resident is purchasing an alternative property. The last thing anyone would want is for an exiting resident to enter into a contract to purchase another dwelling on the basis of an estimate of the sale proceeds of the unit to be paid to them and then receiving less money than they expected from the sale of the unit.

Operators, managers or sale managers should strongly advise residents who wish to purchase elsewhere to make sure that their contracts for purchase are conditional on their receiving sufficient money from the sale of the unit to enable them to complete their purchase.

In addition to the predicament that exiting residents may find themselves in, an operator will wish to avoid the stress associated dealing with disgruntled former residents or the families of deceased residents when their expectations as to the amount they will receive on the sale of the unit are not met.

An estimate of an amount to be received by a resident is not, generally speaking, a binding agreement. However, if there is an incorrect

estimate or statement given, then there may be remedies open to a resident where there has been negligence on the part of the person making the statement and the resident has relied on the statement and suffered financial loss. The circumstances where such a claim would succeed are extremely rare, but even a remote risk underlines the need to take care when providing estimates.

A resident may well be able to take a complaint to the Disputes Panel if they dispute the amount they are to receive or have received on settlement of the disposal of their unit. The Disputes Panel must consider the legal basis of such a claim and it may well not succeed. An operator will wish to avoid the management time involved and uncertainty of outcome of such a claim.

It is clear that there can be no substitute for careful processes that include appropriate cross-checks during the sales process.

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