



Disclaimer

Because this publication avoids the use of legal language, information about the law may have been expressed in general statements. This guide should not be relied upon as a substitute for the *Retirement Villages Act 1986* or professional legal advice.

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Our partners

Consumer Affairs Victoria would like to thank the following organisations that participated in the development of the protocols.



Introduction

The Victorian Government is working with peak bodies representing the retirement village industry and residents to develop protocols managers can use to address commonly-arising issues in the

From July to December 2011, Consumer Affairs Victoria brought together a working group that met monthly to develop these protocols.

The representatives were:



General principles

Communication

The common theme in these protocols is the importance of communication between village managers and residents in reducing and resolving disputes. Good communication channels build strong relationships and may prevent such situations arising.

It is good practice for managers to have a policy about day-to-day communication with residents, which includes how and when residents can contact the manager and what to do in an emergency. Managers should give the policy to all new residents and display it on a notice board.

If a resident raises an issue, communication is best achieved by the manager:

- talking to the resident
- putting their message in writing to the resident (which allows the resident to consider and discuss with others)
- meeting the resident (to answer questions and allay concerns).

Handling a complaint

Good complaint-handling procedures work in partnership with good communication. The *Retirement Villages Act 1986* and the Retirement Villages (Records and Notices) Regulations 2005 set out detailed procedures

Retirement villages: Internal dispute resolution guidelines for retirement village owners and managers, has detailed information on this issue.

If a village has an owners corporation, the *Owners Corporations Act 2006* sets out a separate three-step process to deal with grievances with lot owners. Consumer Affairs Victoria can provide more information on this process. See [Consumer Affairs Victoria contact details](#) on page 27.

Resolving a complaint

If a complaint is made, all parties should try to resolve it quickly because the longer it goes on, the more likely it will escalate and become intractable. Good practice for managers in handling complaints includes:

- not becoming personally involved
- listening carefully to the complaint and re-stating it for acceptance
- identifying and calling upon independent witnesses (where necessary)
- taking action according to the statutory procedure
- rescheduling the meeting with the resident to the next day if they are too angry or distressed to work through the issues in a calm manner
- seeking assistance from Consumer Affairs Victoria or the Dispute Settlement Centre of Victoria (DSCV) , if appropriate.

Training for managers in managing disputes is available through the DSCV

Since 30 April 2018, DSCV has provided advice and dispute resolution assistance to both managers and residents if a dispute could not be resolved through the internal dispute resolution process.





Retirement villages: good practice to address key issues

For emergencies, most villages have provision for the repairs to be made immediately and without waiting for the claim to be processed.

However, where, for non-emergency repairs, the insurance process is likely to be lengthy and the affected resident is likely to be substantially inconvenienced in the meantime, the resident may ask for the repairs to be done as soon as possible and before a payout is received.

In addressing such a request, the problem for the manager may be that fixing the damage before the insurer has assessed it may jeopardise the acceptance of the claim, or that fixing it before receiving a payout may cause cash-flow problems.

This protocol supports better communication by managers with residents about these matters to help reduce disputes.

Applicable law

The residence or management contract is the document that governs:

- what services are covered by the maintenance charges
- how the charges for vacant/unbuilt units are to be shared between the manager and residents
- what maintenance is provided by whom, when and how.

Section 38 of the Act states that maintenance charges cannot be increased by more than CPI unless taxes, charges, wages or salaries.

Protocol on increases in maintenance charges

Good practice is for the manager:



Protocol on the maintenance process

Good practice is for the manager:

1. To produce a simple document for each resident explaining what items of maintenance the manager is responsible for carrying out and what items residents are responsible for carrying out, and how these items are paid for. This document should include the management contact person and procedure for making a maintenance request.
- 2.



Protocol 3: What is covered by service and capital charges

Issues



it would be cheaper if certain expenses were handled at the village level.

It may not be clear that handling items, such as insurance, at an aggregate level can benefit ind



3. For the manager





Protocol

Good practice is:



Applicable law

Pre-1 August 2006 contracts (owner and non-owner residents)



Retirement villages: good practice to address key

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Protocol 6: Ongoing charges after a resident leaves or dies

Issues

Residents (and their families) may object to paying maintenance charges and personal services fees when they are no longer receiving these services.

Maintenance charges and personal services fees can accrue over time, particularly for hard-to-sell units. These charges are incurred on top of owners corporation fees, council rates, utility charges and the interest charged on any aged-care accommodation bond. Combined, they may significantly reduce

When owners corporation and retirement village charges are rolled together, it can hide the fact that different statutory provisions apply to increases in each charge and that there is or may be a different

Rationale

Issues about ongoing charges can sometimes arise at a difficult and emotional time for residents and their families. This is usually because the relevant unit is taking some time to sell or re-lease, and is often -care facility or it forms an inheritance.

Residents and their families may sometimes object to the idea that charges are payable even though the services are no longer being received, regardless of what their contract says. This can be a particularly difficult issue if the resident or their family is not aware that the contract permits ongoing charges.

They may not recall that even in a normal unit sale, they would at least be liable to pay owners corporation



Applicable law

Pre-30 January 2006 contracts (all village fees all residents)

The residence or management contract is the document that will contain the obligations of the resident to pay charges after vacating the unit and before the unit is re-sold/re-leased.

Post-30 January 2006 contracts

Village fees for personal services all residents

Section 38A of the Act prohibits the charging of fees beyond 28 days after the resident has vacated the unit.

Village maintenance charges non-owner residents

Section 38B of the Act prohibits the charging of fees beyond six months after the resident has vacated the unit.

Village maintenance charges owner residents

The residence or management contract is the document that will contain the obligations of the resident to pay charges after vacating the unit and before the unit is re-sold/re-leased.

Owners corporation fees owner residents

These fees are payable until the unit is resold and can only be waived or deferred by resolution of the owners corporation.

Protocol

Good practice is for the manager:

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Protocol 7: Refurbishment and reinstatement of units

Issues

- The necessity for, and the standard and cost of the proposed refurbishment.
- Whether the residence contract entitles refurbishment or reinstatement.
- The process for obtaining quotes and a contractor.
- Accounting for the cost.

Rationale

n when the resident

In most cases, the manager and the resident have a shared interest in getting the unit in the best possible condition for re-leasing or re-sale. This may speed up the re-lease or re-sale, maximise the ingoing

However, in some cases, the resident may prefer the unit to be re-leased/re-improvements because they believe that:

- the refurbishment will not speed up the re-leasing/re-sale
- the cost of the refurbishment will outweigh the benefits of a quicker re-leasing/re-sale
- any higher ingoing contribution/sale price obtained by the refurbishment will be offset by:
 - o the cost of the refurbishment
 - o the higher ongoing charges incurred because of the delay in putting the unit on the market
 - o the increased deferred management fee (where it is a percentage of the ingoing contribution/sale price).

Some residents may not understand that their residence or management contract may entitle the manage700008871 0 rT.



the contractor is contracted at head-office, multi-village level.

The manager may be reluctant to allow the resident to arrange the contractor because they fear delays will arise from ensuring that the specifications are met and from the possibility of having to re-do unsatisfactory work.

The issues involved in refurbishment or reinstatement can sometimes arise at a difficult or emotional time for the resident and their family. The amount of the ingoing contribution obtained and the speed with which the unit can be re-estate.

This protocol supports managers better informing residents about these matters so as to help reduce disputes and, in some cases, to balance interests with those of the residents, or their families.

Applicable law

The residence or management contract is the document that governs powers to determine the works that may be carried out, the process for undertaking the work and who is liable for the cost. If the contract only provides for reinstatement, any refurbishment must be as agreed with the resident.

the manager to deal only with the resident, legal



If the contract only provides for reinstatement, any refurbishment must be agreed between the manager and the resident or their legal representative.

6. Unless there is a general, competitive tender process in place that is known to residents or unless it is agreed that the works are to be carried out by the contractor who normally carries out maintenance for the village, for the manager to discuss with the resident or their legal representative the process for obtaining quotes and a contractor.



Further information and advice

Consumer Affairs Victoria

[Consumer Affairs Victoria website](http://consumer.vic.gov.au) <consumer.vic.gov.au>

Phone 1300 558 181

Regional services

Services from Consumer Affairs Victoria are also available in Ballarat, Bendigo, Box Hill, Dandenong, Geelong, Mildura, Morwell, Reservoir, Shepparton, Wangaratta, Warrnambool, Werribee and Wodonga. Our mobile service regularly visits rural communities. For details on the office or mobile service nearest you, ring 1300 55 81 81 or visit the [Consumer Affairs Victoria website](http://consumer.vic.gov.au) <consumer.vic.gov.au> and follow the Contact Us link.

Dispute Settlement Centre of Victoria

The Dispute Settlement Centre of Victoria provides a free dispute resolution service. It also offers a range of informal conflict resolution training sessions and workshops.

[Dispute Settlement Centre of Victoria website](http://disputes.vic.gov.au) <disputes.vic.gov.au>

Phone 1300 372 888

Victorian Civil and Administrative Tribunal (Civil List)

A contractual dispute between a retirement village operator and resident can be taken to the Victorian Civil and Administrative Tribunal (Civil Claims List) for a decision that is binding on both parties. **Note:** VCAT



