

*“ Retirement villages
Internal dispute resolution
guidelines for retirement
village owners and
managers ”*

Consumer Affairs
Victoria



Disclaimer

Because this publication avoids the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation, specifically the *Retirement Villages Act 1986* and other applicable legislation.

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“ Why an internal dispute resolution scheme? ”

All Victorian retirement villages are required to have an internal dispute resolution scheme in place by 30 January 2006. This comes as a result of amendments to the *Retirement Villages Act 1986* following a 2004 legislative review. One of the concerns raised in the review was retirement village residents' access to an affordable and effective dispute resolution regime. Internal dispute resolution has benefits for both residents and managers and means that:

- disputes can be dealt with efficiently and effectively within the village, often without the need to involve an external dispute resolution body
- residents are offered a highly accessible option to resolve problems
- minor problems can be addressed early so they don't develop into a major dispute.

What does the internal dispute resolution scheme cover?

The dispute resolution scheme applies to:

- complaints about management, and
- complaints about another resident or residents ('resident vs resident' disputes).

Residents do not have to use the internal dispute resolution scheme. For management complaints, they may choose to seek assistance from Consumer Affairs Victoria, the Victorian Civil & Administrative Claims Tribunal (VCAT) or another external service or dispute resolution body. For resident vs resident complaints, they may choose to resolve the matter with the assistance of the residents' committee or seek the advice of Consumer Affairs Victoria. Although Consumer Affairs Victoria cannot intervene or conciliate in resident vs resident complaints, it can offer information about alternative avenues for dispute resolution.

What does the new legislation require retirement village managers to do?

The *Retirement Villages (Amendment) Act 2005* (Part 6A, Division 3) obliges the retirement village manager to provide an internal dispute resolution scheme that fulfils certain requirements. The basic requirements are summarised below.

The retirement village manager must:

- Put in writing the procedures for:
 - handling management complaints, and
 - mediating resident vs resident disputes.
- Inform residents of the dispute resolution procedure and make copies of the documented procedure readily available.
- For all complaints, record the date, nature of complaint, parties to the dispute and the outcome or action taken.
- For any complaint not resolved within 72 hours (not counting weekends and public holidays), establish a separate record and keep it up-to-date.
- Present a report on complaints to the annual meeting of residents, including the number and types of complaints/disputes handled in the year, action taken to resolve them and outcomes, and any changes made or proposed to address any issues identified as requiring a broader response. This report **must not** identify the parties to the dispute.

Note: Consumer Affairs Victoria recommends that copies of procedure documents be accessible to residents to see or take away with them without their having to ask anyone.

The retirement village manager must not:

- Require residents to make complaints in writing.
- Take action to resolve a dispute without the consent of the parties.
- Deal with a resident vs resident complaint if it is already being dealt with by the residents' committee¹.
- Deter a resident from complaining.
- Cause detriment to a resident because they have made a complaint or plan to make a complaint.
- Prevent a resident who makes a complaint from being represented throughout the resolution process by another person.
- Put in place a procedure that is inconsistent with or overrides existing law (for example, the *Privacy Act 1988*) or the terms of the resident's contract.
- Identify parties to a dispute in the report to the annual meeting of residents.

¹ If a resident seeks to open a management complaint based on the manager's alleged failure to address another resident's disruptive behaviour and the residents' committee is dealing with the matter as a resident dispute, the manager should still advise the resident to withdraw from the residents' committee's mediation process before complaining to the manager - the manager can't assume that the making of the complaint means the mediation process is over.

What does the written internal dispute resolution document include?

The document must set out:

How residents can complain

Including:

- the times and places at which complaints can be made
- the name of the person/s who can take complaints.

The nominated times and places for making complaints must not be unreasonably restrictive. As noted above, residents must not be required to put complaints in writing. However, it is appropriate to describe how a resident wishing to lodge a written complaint may do so.

How the complaint will be handled

This must set out both the process for handling management complaints and the process for mediating resident vs resident disputes.

Consumer Affairs Victoria recommends that at least the following be included:

- how the complaint will be acknowledged
- standard steps the manager will take in attempting to resolve complaints and disputes and, where possible, the expected timeframes (for example, obvious first steps in dealing with a resident dispute would be to confirm in writing with the complainant the essential issues to be resolved and outcomes sought, put this written summary to the resident who was the subject of the complaint, and invite that resident to respond to the manager within a specified time that is reasonable in all the circumstances; responding to a management complaint will also require confirmation of the issues and desired outcomes, after which a period will often need to be allowed for investigation by the manager of the facts and options for addressing the resident's concerns.)

- how the resident/s concerned (or their representatives) will be kept informed of progress and advised about outcomes
- the manager's procedures for complying with the statutory obligations to record and report on complaints and disputes.

Information about other options for dispute resolution

The document must inform residents that they may:

- seek advice on disputes from Consumer Affairs Victoria and provide Consumer Affairs Victoria's contact details
- choose to have resident vs resident disputes handled by the residents' committee.

Consumer Affairs Victoria recommends that the procedure document also include details of what information must be recorded about a dispute or complaint under the Regulations (see next section).

What information must be recorded about a dispute or complaint?

For disputes or complaints that are resolved within 72 hours (not counting weekends and public holidays), retirement village managers do not need to keep detailed ongoing records. However, they must still keep a record of these complaints that captures the date of the complaint, the parties to the dispute, the nature of the problem, and the outcome or action taken.

The Retirement Villages (Records and Notices) Regulations 2005 set out the requirements for creating and maintaining a written record of disputes or complaints that the manager is unable to resolve within 72 hours (not counting weekends and public holidays). The Regulations require the manager to:

- Establish a separate (physical or electronic) file for each complaint or dispute.
- Immediately record in the file:
 - the date of opening the file
 - the name and address of the resident raising the complaint/dispute
 - contact details for the resident or the resident's representative
 - whether the matter was raised orally or in writing
 - whether the matter is a resident dispute or a management complaint
 - detailed particulars of the dispute/complaint
- Immediately place in the file copies of any correspondence or other documentation given to the manager by the resident.
- As soon as practicable, place in the file:
 - a dated copy of written advice to the resident summarising the manager's understanding of the matter to be resolved
 - the steps the manager intends to take
 - the date by which the manager will advise the resident further.
- As soon as practicable after **each subsequent occasion** on which the manager advises the resident of the manager's understanding of any relevant issues to be resolved, steps the manager intends to take or has taken, or the date by which the manager will advise the resident further, place in the file a dated copy of the advice or, if the advice was not in writing, a detailed description of the advice.
- As soon as practicable after the relevant event, place in the file:
 - file notes of every action taken by the manager to resolve the complaint/dispute
 - copies of all correspondence or other documentation received or sent by the manager in relation to the complaint/dispute
 - either a copy of written notification given to the resident that the manager regards the dispute/complaint as resolved and setting out the details of its resolution or,
 - where the manager has concluded that the dispute/complaint cannot be resolved, a copy of written notification of this to the resident, setting out the reasons and advising that the resident may contact Consumer Affairs Victoria for assistance or seek personal legal advice or advocacy services.
- Retain the file for 7 years from the date the complaint is recorded.

In some cases, the resident or the resident's representative may wish to inspect the file. Unless there are special circumstances which make this unreasonable, Consumer Affairs Victoria recommends that the manager allow inspection of the file.

Note: recording may also involve collecting relevant documentation and evidence, for example photographs where the issue in dispute involves the condition of the grounds, or advertising material where the dispute revolves around a resident's expectations of provision of facilities upon entering the village.

What are managers' reporting responsibilities?

The retirement village manager must present a report at the annual meeting of village residents, which without identifying the parties, details for the relevant year:

- the number and nature of management complaints and residents disputes
- the outcome of each complaint or dispute, including any action taken to resolve them, and
- any changes made or proposed to be made to address issues arising out of a complaint or dispute.

How can all residents be made aware of the policy and procedures?

It is desirable that the procedure document be easily available, not only to existing residents as required by law, but to their families and to prospective residents.

Plain, non-technical language is the most easily understood. To ensure that all residents are informed as required, it may be necessary for the document to be made available in alternative formats for people with different needs (eg, an audio version for the sight-impaired or translated version for non-English speaking people).

Reiteration helps in ensuring that information is communicated. It is desirable that managers remind residents regularly of the scheme using a variety of communication channels – many of which are likely to be already used within the village including:

- Newsletters or other information provided regularly to residents.
- Posters and/or leaflets in common and/or high-use areas.
- Reminders during resident meetings.
- Pre-contract and contract information for new residents.
- Mail-outs to residents' families.

Whenever there is some change in village dispute resolution procedures, managers should make sure that this is publicised and that the procedure document is immediately updated.

What is considered a complaint?

A complaint is the reporting of an issue, problem or grievance that is affecting the quality of the resident's life at the village. It may relate to behaviour (an action or a failure to act) and/or the physical environment.

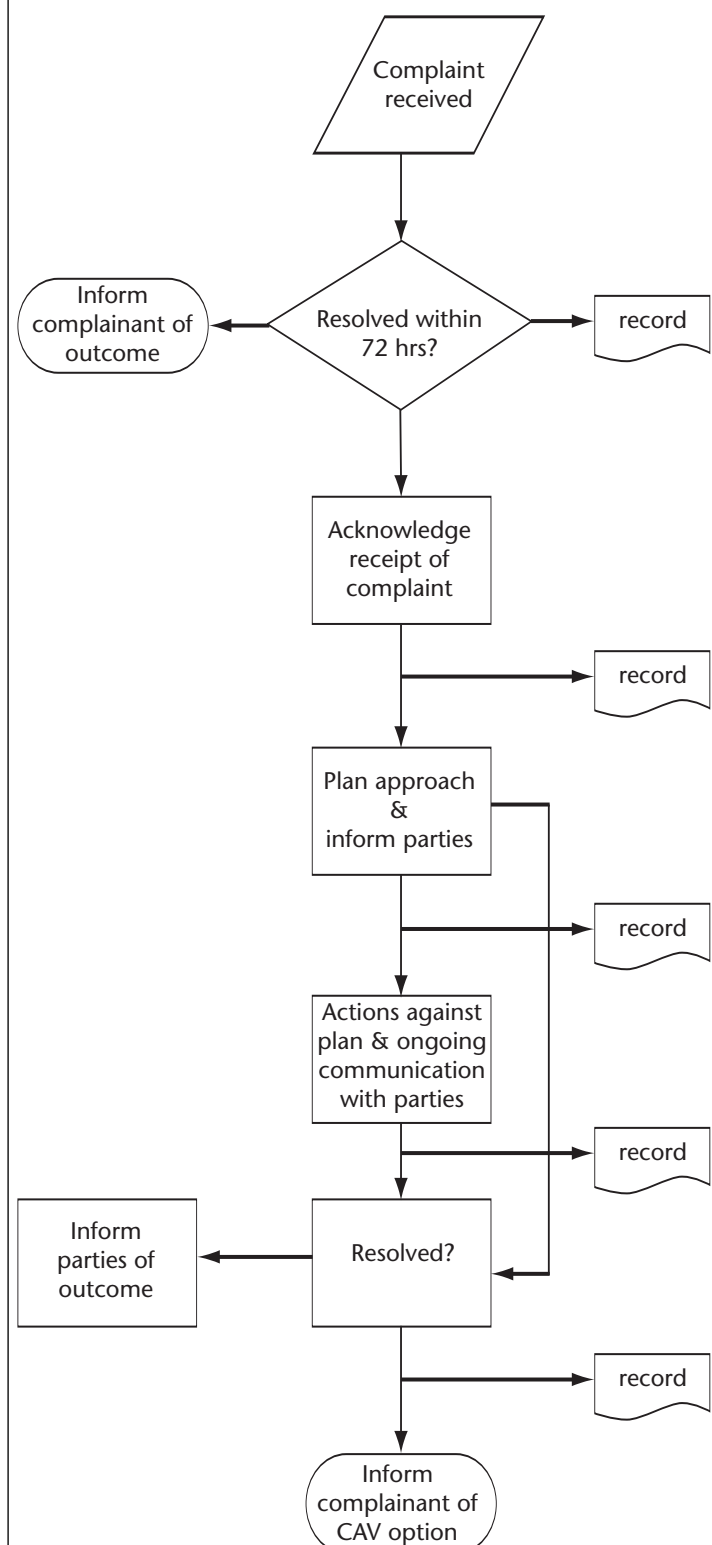
A management complaint is any resident complaint about the operation of the village by the manager, action or inaction by the manager that affects residents' use or enjoyment of the village land, or the provision or non-provision of services by the manager. In essence, a management complaint is an allegation that an obligation is not being or has not been met. These obligations do not have to be contractually mandated, although, in practice, many management complaints will probably involve contractual issues.

What is the process for resolving a complaint?

How a village goes about resolving disputes is up to the manager, and will depend on the nature of the dispute and the parties involved. However, there are some obvious steps in the process, outlined in the flowchart below. Whether the actions to resolve the complaint are meetings, an exchange of correspondence, the provision of information, mediation sessions, etc, it is important that each action and event is recorded as it happens.

Flowchart example

This is an example only. It includes both mandatory and suggested elements, to provide an outline of a commonsense approach to effective internal dispute resolution.



What happens if the complaint can't be resolved?

From 23 May 2005, terms in retirement village contracts that provide for arbitration of disputes are void.

An unresolved dispute can be referred to an external agency for resolution: Consumer Affairs Victoria is a convenient first point of contact for advice on all disputes, although its dispute resolution services do not currently extend to resident vs resident disputes.

Where the dispute is a contractual one, Consumer Affairs Victoria can conciliate between residents and a manager and make representations to the manager on behalf of a resident. The parties to the dispute also have the option of taking the matter to the Victorian Civil & Administrative Tribunal (VCAT) for a decision that is binding on both parties.

What do we mean by 'conciliation'?

Consumer Affairs Victoria's conciliation process involves negotiating between the parties to a dispute to bring them to an agreed resolution of the issues. Where there is no voluntary agreement between the parties and there is no clear breach of legislation, Consumer Affairs Victoria cannot compel either party to provide the outcome desired by the other and is unable to make a binding determination on the matter.

What if the complaint is unjustified or the complainant vexatious?

In some cases, the manager may feel that the resident has unrealistic expectations about what can or should be achieved as a result of their complaint, or is being uncooperative in seeking a resolution.

In these circumstances, it may be beneficial to involve an independent person to bring some objectivity to the dispute. A mediator, facilitator or advocate may assist to identify the key issues in dispute and suggest a range of compromises or solutions.

Where internal attempts to satisfy the resident are unsuccessful, the manager may suggest that the resident exercises their right to complain to Consumer Affairs Victoria, so that it can review the dispute, including the documentation of internal attempts to resolve it.

What if one of the parties becomes violent?

Retirement village managers should not attempt to resolve complaints or disputes involving violence using the internal dispute resolution procedure. Issues of this nature should be reported to the police.

How can the complaints be reported confidentially?

The best way to maintain confidentiality in the reporting process is to collate the specific information that has been recorded about individual disputes into a range of broad categories. Some examples of how managers can break the required information into categories are set out below:

The **number** of complaints received

Time frames for resolution

The **nature** of the complaints, eg:

- Condition of village grounds
- Maintenance issues
- Contractual issues
- Noise
- Quality of service
- Disputes between residents

Action taken, eg:

- Provision of information
- Apology
- Public meeting
- Mediation/facilitation session
- Resident interviews or meetings
- Consultation with residents' committee
- Independent/expert advice or report obtained
- Corrective action (for example maintenance work, repairs)

Outcomes, eg:

- Resolved to satisfaction of both parties (for disputes between residents)
- Resolved to the satisfaction of the complainant (for management complaints)
- Resident advised to seek external advice
- Referred for external dispute resolution
- Agreement change to a village policy or process
- Complaint withdrawn
- Unsuitable for dispute resolution – referred to relevant authority (eg, police, local council).

References

- A Good Practice Guide for Effective Complaints Handling, Commonwealth Ombudsman's Office 1997
- Australian Retirement Village Accreditation, Retirement Village Association Ltd, 2002
- Australian Standard AS 4608 – Dispute Management Systems, Standards Australia International Ltd 2004
- Benchmarks for Industry-based Customer Dispute Resolution Schemes, Commonwealth Department of Industry, Science and Tourism 1997
- Complaints Handling Kit (Residential Aged Care Homes Resource Materials) Commonwealth Department of Health and Ageing
- Conciliation Policy, Consumer Affairs Victoria, 2004

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