

Retirement villages: good practice to address key issues – a guide for residents

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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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Introduction

In 2011, the Victorian Government worked with a number of peak bodies representing the retirement village industry and residents to develop protocols that managers could use to address commonly-arising issues.

Their purpose is to prevent disputes arising and to promote good relations in villages to enhance the experience of residents. The protocols are not legally binding, but managers are strongly encouraged to apply them.

This resident's guide includes a brief description of the issue the protocols aim to address, and the related good practice protocols.

The full protocols can be found in *Retirement villages: good practice to address key issues*, available at [Consumer Affairs Victoria – Good practice protocols](http://consumer.vic.gov.au/rvgoodpractice) <consumer.vic.gov.au/rvgoodpractice>.

General principles

Communication

The common theme in the 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 disputes from arising.

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

If you raise an issue, the manager should:

- talk to you
- put their message in writing to you (which allows you to consider and discuss it with others)
- meet with you (to answer questions and allay concerns).

Handling a complaint

There are specific steps for handling complaints between residents and managers, determined under the laws that govern retirement villages.

All Victorian retirement villages must have an internal dispute resolution procedure which provides a clear dedicated avenue for you, as a resident, to pursue any issues you might have with management.

Consumer Affairs Victoria's (CAV) guide, *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, there is a specific three-step process to deal with grievances with lot owners. General information about these requirements can be found on the [Consumer Affairs Victoria website](http://consumer.vic.gov.au) <consumer.vic.gov.au> or from the relevant manager of the owners corporation.

Resolving a complaint

The protocols encourage all parties to try to resolve complaints quickly. The longer a complaint goes on, the more difficult it can be to resolve. The protocols provide that it is good practice for managers to:

- remain impartial and not become personally involved
- listen carefully to the complaint and re-statw it for acceptance
- identify and call upon independent witnesses (where necessary)
- take action as the law requires
- reschedule the meeting with you to the next day if you are too angry or distressed to work through the issues in a calm manner
- seek help from CAV or the Dispute Settlement Centre of Victoria (DSCV), if appropriate.

DSCV helps resolve disputes if they can't be resolved through the village's internal dispute resolution process.

Your role

If you have an issue with the running of the retirement village or the manager, you should first try to resolve it within the village. If that is unsuccessful, you can seek CAV's advice, and help resolving the dispute from DSCV. If you are still not satisfied, you can consider going to the courts or to the Victorian Civil and Administrative Tribunal (VCAT).

Before taking legal action, consider the effect of doing so may have on you, the manager and the village generally. Legal action can be costly and time consuming. It is recommended that you consult other residents or a community service (such as Housing for the Aged Action Group) or a family member and consider approaches that will help to maintain ongoing village relationships.

Retirement village protocols

The protocols cover seven common areas of dispute:

- Protocol 1: Changes to services
- Protocol 2: Maintenance: charges and process
- Protocol 3: What is covered by service and capital charges
- Protocol 4: Presentation of the annual financial statement
- Protocol 5: Marketing procedures for a unit when a resident leaves
- Protocol 6: Ongoing charges after a resident leaves
- Protocol 7: Refurbishment and reinstatement of units

Protocol 1: Changes to services

Managers can alter the services they offer you, as long as any changes comply with the contract you have with the village. Changes to services can be confusing and stressful; to minimise residents' concerns, managers are encouraged to adopt the following protocol when proposing changes.

Protocol

Good practice for managers:

1. Consult with the residents' committee before changing or cancelling a service. If there isn't a residents' committee, or if it isn't practicable to consult with it (for example, if the committee is purely social) the manager should first let residents know about the change by letter, then arrange a meeting).
2. As part of that consultation, explain:
 - when the proposed change will take effect
 - why the change is needed
 - how it will affect residents
 - what the residents' and manager's rights and responsibilities are under the residence contracts
 - what process the manager intends to follow when implementing the change
 - what residents can reasonably expect with the standard of the service
 - options for providing the new service, including provider and cost (where feasible)
 - payment options (where feasible).
3. Attempt to reach an agreement with the residents' committee/residents about introducing the change.
4. To write to all residents letting them know of the outcome of the discussions and to include details of agencies that can provide help and assistance if they are not happy with the proposed changes.

Protocol 2: Maintenance: charges and process

Maintenance issues frequently arise in retirement villages. These include:

- how maintenance charges are allocated
- why they increase
- carrying out maintenance work
- dealing with maintenance requests
- delays processing insurance claims for damage to units.

Managers are encouraged to adopt the following three protocols with maintenance issues.

Protocol on increases in maintenance charges

Good practice for managers:

1. Consult with residents (in writing with a follow-up meeting) on proposed increases, particularly when they're above CPI. Break down the charges so residents can see how the components relate to the increase, showing:
 - what part relates to providing services. If this increase is above CPI, residents' approval is required
 - what parts are composed of:
 - rates/taxes/charges applicable to the village
 - salaries/wages paid to village employeeswhich can be increased above CPI and do not require residents' approval.
2. Include any options for cheaper alternatives, or for avoiding the increase.
3. As soon as the manager becomes aware that the residents' share of maintenance charges for vacant/unbuilt units is likely to become an issue, advising them in writing (with a follow-up meeting) on:
 - how the charges are shared between the manager and residents
 - how it is likely to affect residents in the current financial year
 - what is being done to address the vacancy problem
 - where applicable, the reason why residents' shares are calculated differently from their share of the general charge (or from their owners corporation fee).
4. If the problem is ongoing, continue this process at subsequent annual meetings.

Protocol on the maintenance process

Good practice for managers:

1. Produce a simple document for each resident, explaining which items of maintenance the manager and residents are responsible for carrying out, and how these items are paid for. This document should include the management contact person and the procedure for making a maintenance request.
2. Where possible, respond immediately to a maintenance request (for which management is responsible). If that is not possible, consider a recording process (which should be monitored daily) that includes:
 - the resident's name
 - the nature of the request
 - the date the request was made
 - whether the request is urgent or non-urgent
 - the employee/contractor responsible for attending to the request
 - how long it is likely to take to resolve (consider within 24 hours for urgent matters and within 14 days for non-urgent matters)
 - written acknowledgment of the request with an estimate of how long it will take to resolve and the name of the person attending to the problem
 - advice to the resident if the estimated resolution date is missed, and a proposed new date
 - when and how the matter was resolved
 - confirmation from the resident that the matter has been resolved.
3. Check the log daily for missed timelines and update it where necessary.

Protocol on insurance claims

If a resident's property has been damaged because of something covered by the village's insurance policy, good practice is for the manager to consider getting it fixed before accepting the claim or, if that is not feasible, after it is accepted (even if the payout has not been received). If the damage can't be fixed before the claim is accepted but the manager can arrange it before the payout is received, or if neither option is feasible, the manager should explain this to the resident.

Protocol 3: What is covered by service and capital charges

What is covered by the service charge and what is covered by any capital replacement fund (sometimes called a sinking fund) in a retirement village contract can be complex and difficult to understand.

To ensure residents are more comfortable about how charges are spent, to reduce disputes, and to support transparency, managers are encouraged to adopt the following protocol.

Protocol

Good practice for managers:

1. Ensure residence or management contracts have clear definitions of capital (sinking) funds and service categories. Clearly explain who pays for the items in each category. Ensure contracts are accompanied by an explanatory document with illustrative examples of items under each category.
2. If the contract does not have clear definitions, consider creating them (and illustrative examples) in consultation with residents. Once this is in place, consult with residents or the residents' committee on difficult-to-categorise items.
3. Consult with the residents' committee and residents (in writing with a follow-up meeting) on proposals to use the service charge or any sinking fund for:
 - new capital items that the village owner will own, particularly new buildings
 - improving capital items that the village owner owns, beyond their original condition
 - refurbishing vacant units
 - repairing capital items that the village owner owns that would be more cost-effective to replace.
4. For substantial works proposals, explain to residents (in writing with a follow-up meeting) the need for the works and the process for awarding the contract (including the choice of contractor) in a way that shows alternatives have been adequately explored.
5. Explain why and how head office expenses are allocated to the village. The manager may consider using the annual financial statement for this, or the explanatory document referred to in point 1 above.
6. Even if the residence or management contract allows the following uses of maintenance charges, consult with residents (in writing with a follow-up meeting) before using charges for:
 - the cost of marketing the village and vacant units
 - head office overheads that do not benefit the village
 - manager-specific items such as fees for memberships of industrial or professional associations (as distinct from accreditation fees for a scheme that has been developed to benefit the village by promoting good practice).
7. In a loan-licence village without a long-term maintenance plan for major capital items, for the manager to discuss the need for one with residents, using the *Owners Corporations Act 2006* template as a guide.

Protocol 4: Presentation of the annual financial statement

The annual financial statement and the annual general meeting, are designed to ensure that residents are presented with the most important financial information about the village. However, residents often find that financial statements are difficult to read, have too much or too little detail, or raise queries that managers may not respond to promptly ahead of the meeting. To ensure that the annual financial statement informs residents properly, managers are encouraged to adopt the following protocol.

Protocol

Good practice for managers:

1. Ensure the financial statement is as simple as possible.
2. Provide a financial statement even if the village is exempt from the requirement for one.
3. Give residents sufficient time to consider and discuss the statement. Providing the statement at least 14 days before the meeting is good practice. Managers should also consider releasing a preliminary 'discussion' draft at an earlier stage.
4. Invite residents to discuss issues with them before the meeting.
5. Ensure the statement clearly states the rationale for how expenditure items are allocated.
6. Ensure the statement provides sufficient detail of expenditure items to enable residents to assess each one (for example, whether the item is necessary and appropriate, and whether there are alternatives). The statement should not disclose the salary/wages of identifiable individuals.
7. Ensure the statement shows all proposed categories of expenditure (without grouping unlike categories).
8. If an item has been apportioned (its cost divided between different villages or businesses), show how this has been calculated.
9. If any residents are paying significantly higher charges than others, ensure the statement shows how expenditure is apportioned between the categories of residents.
10. Ensure expenditure items associated with head office or management/administration fees are broken down to show the goods and services they relate to and their approximate cost.

Protocol 5: Marketing procedures for a unit when a resident leaves

The marketing of a unit in a retirement village is different to a conventional property. It necessarily focuses on the village – its services, amenities and lifestyle.

If you sell or re-lease your unit, you and the manager will both have a strong interest in the process, including appointing the selling agent and the marketing strategy.

It is in both your interests to re-sell or re-lease the unit as soon as possible and at the best possible price; but how this is done can raise issues of conflicting interests, or at least the perception of them.

This issue can be further complicated, depending on whether you entered into your contract before or after 1 August 2006, when the *Retirement Villages Act 1986* was amended to give greater control to residents in the re-sell or re-lease of their unit. You can find a summary of the law concerning this issue in *Retirement villages: good practice to address key issues*, available at [Consumer Affairs Victoria – Good practice protocols](http://consumer.vic.gov.au/rvgoodpractice) <consumer.vic.gov.au/rvgoodpractice>.

The following protocol, which managers are encouraged to adopt, seeks to balance the interests of management and residents or their families, and reduce misunderstandings and concerns which often arise during this process.

Protocol

The following applies as soon as practicable after the manager receives advice of the resident's intention to vacate, or of their death.

General

Good practice for managers:

1. Meet with the resident or their legal representative to explain how the marketing of a retirement village unit is different from a conventional property.
2. If a resident has died, tactfully advise their family that delays will be reduced if an administrator is appointed if the resident left no will or, if there is a will, if probate is obtained as soon as possible.
3. Consult with the resident or their legal representative about measures to make the unit more marketable, such as inspections, refurbishment or reinstatement (see [Protocol 7: Refurbishment and reinstatement of units](#) on page 16).

Setting a selling price – where the manager sets the price

Good practice for managers:

1. Write to the resident or their legal representative explaining the process used to determine the value of the unit and the selling price, then meet them to discuss any objections. Price ranges for recent sales/leases of other units in the village should be included; this can help manage the expectations of residents or their families.
2. If objections cannot be resolved, let the resident or their legal representative obtain their own valuation, or agree on a process for valuing the unit and setting the price.

3. When the price is agreed:

- advise the resident or their legal representative as soon as possible in writing
- include an explanation of any difference between the selling price and any valuation or estimation
- detail the resident's exit entitlement for each proposed selling price.

Setting a selling price – where the resident sets the price

Good practice for managers:

1. Consult the resident or their legal representative about what reasonable time they need, including to obtain a valuation.
2. Provide details of price ranges for recent sales/leases of other units in the village, noting that the eventual price is dependent upon market forces, and also set out in writing the resident's exit entitlement for each proposed selling price.

Selecting a selling agent

Good practice for managers:

1. Consult the resident or their legal representative about selecting an agent, the timelines for selling/leasing the unit, how offers will be dealt with, and the reporting process.
2. If the manager proposes to be the agent or to nominate one, advise the resident or their legal representative in writing about:
 - the reasons why this is preferable to appointing a third-party agent
 - the proposed timelines for selling/leasing
 - the proposed process for keeping them informed of progress
 - the proposed process for dealing with offers (if the manager has the power to accept or reject offers, this should include that the manager will not refuse an offer unreasonably)
 - the manager's undertaking to use all reasonable endeavours to re-sell/re-lease the unit and not to impose unreasonable charges
 - the manager's conduct being regulated by the Estate Agents Act 1980 and regulations (where applicable).
3. If the resident or their legal representative engages their own agent, not to interfere with the sale/lease or request a commission. Note that the resident/legal representative should provide reasonable information if the manager requests it.

Advertising/marketing: general

If the manager or their agent is handling the advertising and marketing, good practice is:

1. To consult the resident or their legal representative about how much the advertising will focus on the village and on the unit; and to explain the advertising schedule, the media and marketing strategy and the cost, including the resident's share.
2. When the proposals are finalised, to advise the resident or their legal representative in writing.
3. If the manager proposes a marketing strategy that prioritises certain units for sale, ensure that the document explains the reasons for this.

Advertising/marketing: hard-to-sell units

If the unit is proving hard to sell, good practice is for the manager:

1. To continue to engage with the resident, their legal representative or their family, even if there are increasing difficulties and complaints.
2. Confront problems at an early stage.
3. Ensure that marketing updates cover what charges will continue to be levied and for how long (see [Protocol 6: Ongoing charges after a resident leaves](#) on page 15).
4. Set dates to discuss the marketing strategy with the resident or their legal representative.
5. Consider the pros, cons and timing of handing control to the resident or their legal representative (including setting the selling price and advice on advertising costs); or engaging a third party agent.

Protocol 6: Ongoing charges after a resident leaves

The residence or management contract details the charges residents will have to pay after vacating the unit until it is re-sold or re-leased. How long residents can continue to be charged will also depend on whether the contract was entered into before or after 30 January 2006. You can read more about this in *Retirement villages: good practice to address key issues*, available at [Consumer Affairs Victoria – Good practice protocols](http://consumer.vic.gov.au/rvgoodpractice) <consumer.vic.gov.au/rvgoodpractice>.

Issues about ongoing charges can sometimes arise at a difficult and emotional time, especially if the unit is taking some time to sell or re-lease and residents or their families are not aware that the contract permits ongoing charges. Concerns can be heightened if the exit entitlement is needed to fund the resident's move to an aged care facility, or it forms part of an inheritance.

For managers, the issue is that village overheads continue to be payable and may not vary or may vary only marginally with the level of the village occupancy. For the other residents of a village, particularly a loan-licence village, the issues is the equitable sharing of the burden of these costs between outgoing and ongoing residents. In aiming to balance these interests Managers are encouraged to adopt the following protocol.

Protocol

Good practice for managers:

1. As soon as possible after receiving advice of a resident's intention to vacate, or of their death, meet with the resident or their legal representative about marketing strategies (see [Protocol 5: Marketing procedures for a unit when a resident leaves](#) on page 12).
2. At that meeting, advise what charges are payable and for how long (this should be followed up with written confirmation of all charges. If owners corporation fees and village charges have previously been rolled together, they should be separated out into their components).
3. When a unit is proving difficult to sell and ongoing charges are accumulating, consider alternative solutions and strategies and/or discuss the issue with higher management. Advise the resident or their legal representative of any such change in direction.
4. When a resident is under a contract not subject to statutory limits on the length of time they must pay ongoing village maintenance charges and personal services fees, consider treating the resident as if they did have those protections.
5. For all residents paying ongoing charges, consider an open offer to the resident or their legal representative to defer the payment, or further payment, of charges until resale or re-lease, and deduct them from the sale proceeds or exit entitlement.
6. Provide monthly invoices that list the village maintenance charges, the owners corporation fee and personal services fee and show the period for which each component is payable. This will increase transparency and help reduce disputes.

Protocol 7: Refurbishment and reinstatement of units

The residence or management contract may require residents to refurbish or reinstate their unit when they leave. Reinstatement means repairs that bring a unit up to the standard it was in when the resident moved in. Refurbishment means repairs that improve it beyond that standard.

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. However, issues can arise if a resident would prefer the unit to be re-leased/re-sold 'as is' or with minimal improvements when the contract requires refurbishment.

Some contracts also entitle the manager to refurbish the unit, at the resident's cost. Residents are sometimes concerned with aspects of this and problems can arise if there are delays in completing the work and/or if actual costs exceed the quote obtained by the manager.

Residents and their families may be under considerable stress when the issue of refurbishment or reinstatement arises.

The following protocol is intended to support managers in informing residents about contractual obligations and the process for undertaking refurbishment or reinstatement of a unit. They are intended to help reduce disputes and, in some cases, to balance the interests of the manager and the residents or their families.

Protocol

Good practice for managers:

1. Ensure all parties are clear about whether the contract permits reinstatement, refurbishment, neither or both; and about whether the outgoing or incoming resident is liable for the resident's share of the cost.
2. If refurbishment is permitted, make residents and the residents' committee aware of changing standards of refurbishment that apply in the village.
3. As soon as practicable after the receiving advice of a resident's intention to leave, or their death, consult with the resident or their legal representative about measures to make the unit more marketable, such as reinstatement or refurbishment.
4. If the resident has died, tactfully explain to their family that delays will be reduced if probate is obtained, or an administrator is appointed, as soon as possible (see also [Protocol 5: Marketing procedures for a unit when a resident leaves](#) on page 12)
5. Detail in writing to the resident or their legal representative:
 - whether the manager proposes reinstatement or refurbishment
 - what the contract provides in relation to proposed works (and include a copy of any general refurbishment policy previously advised to residents)
 - the expected completion time (which should normally be within 90 days of when the contractor is engaged).

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 tender process known to residents, or it is agreed that the works are to be carried out by the contractor who normally does maintenance for the village, discuss with the resident or their legal representative the process for obtaining quotes and a contractor.
7. Keep the resident informed of the progress of the works, including any delays and cost overruns (see also [Protocol 6: Ongoing charges after a resident leaves](#) on page 15 regarding updates on the level of charge accruals).

8. Deal with any significant delays or cost overruns as soon as they arise and discuss them with the resident or their legal representative.
9. Consider alternatives when significant delays or cost overruns occur, including when to discuss allowing the resident or their representative to take over control of the works (including health and safety requirements).
10. Provide a fully itemised account for the works. If the manager is entitled to add on a percentage for supervision that may be unreasonable, consider charging only on the basis of actual time spent on the job and the manager's normal hourly rate.
11. If the resident or their legal representative believes they would be better off if no works were done, options for the manager include:
 - explaining to the resident or legal representative the reasons why they would be better off
 - explaining how the works will benefit the village
 - considering how to proceed with the works in a way that minimises any loss for the resident
 - considering contributing to the cost.

Further information and advice

Consumer Affairs Victoria

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

Phone 1300 55 81 81

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.

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Callers who use Speech to Speech Relay dial 1300 555 727, then quote 1300 55 81 81.

Housing for the Aged Action Group (HAAG)

HAAG provides free, confidential information and advice to older people on housing issues, including on retirement housing.

[Housing for the Aged Action Group website](http://oldertenants.org.au) <oldertenants.org.au>

[Email Housing for the Aged Action Group](mailto:haag@oldertenants.org.au) <haag@oldertenants.org.au>

Phone 03 9654 7389 or 1300 765 178

Residents of Retirement Villages Victoria

RRVV is an organisation that provides advice and assistance to residents and prospective residents of Victorian retirement villages.

Residents of Retirement Villages Victoria website <rrvv.org.au>

Email Residents of Retirement Villages Victoria <secretary@rrvv.org.au>

[Residents of Retirement Villages Victoria website](http://rrvv.org.au) <rrvv.org.au>

[Email Residents of Retirement Villages Victoria](mailto:secretary@rrvv.org.au) <secretary@rrvv.org.au>

Phone 03 9015 8402

Seniors Information Victoria (SIV)

SIV provides free information to older Victorians on a range of issues including on accommodation options. It is a service of the Council on the Ageing.

[Seniors Information Victoria – COTA website](http://cotavic.org.au/info/siv) <cotavic.org.au/info/siv>

[Email Seniors Information Victoria](mailto:askcota@cotavic.org.au) <askcota@cotavic.org.au>

Phone 1300 135 090

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 cannot deal with disputes between residents, although it can deal with disputes between owners corporation members that are limited to owners corporation issues.

[Victorian Civil and Administrative Tribunal website](http://vcat.vic.gov.au) <vcat.vic.gov.au>

Phone 1300 01 8228 (1300 01 VCAT).

Law Institute of Victoria – Legal Referral Service

The Law Institute of Victoria can provide a referral to a member solicitor practising in the relevant area of law.

[Email Legal Referral Service – Law Institute of Victoria](mailto:referrals@liv.asn.au) <referrals@liv.asn.au>

Phone 03 9607 9550

Consumer Affairs Victoria

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

1300 55 81 81 (local call charge)

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October 2018

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