

# Retirement villages: good practice to address key issues

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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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## Additional copies

This guide is available from the [Forms and publications page on the Consumer Affairs Victoria website](#) <consumer.vic.gov.au/forms> or by phoning 1300 55 81 81.

## Our partners

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

- Housing for the Aged Action Group Inc (HAAG)
- Residents of Retirement Villages Victoria Inc (RRVV)
- Aged & Community Care (ACC)
- Council on the Aging (COTA)
- Retirement Village Association (now the Retirement Living Council (RLC) of the Property Council of Australia)
- Stockland

# 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 state's retirement villages.**

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

The representatives were:

- Retirement Village Association (now, Retirement Living Council of the Property Council of Australia) and member representatives
- Residents of Retirement Villages Victoria
- Aged and Community Care Victoria
- Council on the Ageing
- Stockland
- Housing for the Aged Action Group.

We welcome feedback on these protocols. They may be updated or expanded as circumstances change, and issues are identified.

Following a review of internal dispute resolution processes under the *Retirement Villages Act 1986* (the Act) undertaken by Consumer Affairs Victoria in 2017, minor updates have been made to the protocols to clarify a number of elements.

In order to increase the level of awareness of the existence of the protocols amongst the residents a summary of the protocols has also been developed – *Retirement villages: good practice to address key issues – a guide for residents*. While both the protocols and the summary guide are available at [Consumer Affairs Victoria – Good practice protocols](http://consumer.vic.gov.au/rvgoodpractice) <consumer.vic.gov.au/rvgoodpractice>, managers are encouraged to make the summary guide available to residents.

## About these protocols

These protocols provide a benchmark of good practice to guide retirement village managers, residents and Consumer Affairs Victoria in addressing commonly-arising issues. They are intended to complement legislative requirements of the Act and accompanying regulations and the Australian Consumer Law which regulates unfair contract terms, misleading and deceptive conduct and unconscionable conduct.

Protocols are different from codes of conduct. Protocols specify agreed, good-practice measures that can be applied by an industry's members. While protocols are not legally binding, there is an expectation that they will be applied.

Codes of conduct set out specific standards of conduct for an industry about the manner in which its members deal with each other and their customers. Codes of conduct may be legally binding.

These protocols specify measures that retirement village managers can take to prevent commonly-arising issues from causing friction in villages. The Government and Consumer Affairs Victoria expect that managers will work to implement the protocols in their villages. The purpose of the protocols is to prevent disputes arising and to promote good relations in villages to enhance the experience of residents.

If a dispute comes to the Dispute Settlement Centre Victoria (DSCV) for dispute resolution advice and assistance, DSCV will look to see if the protocols have been followed.

# 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 for formal handling of management complaints and resident disputes. Consumer Affairs Victoria's 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, 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 village's internal dispute resolution process.

## The residents' role

If a resident has an issue with the running of the retirement village or the manager, they should first seek to resolve it within the village. If that is unsuccessful, they can seek advice from Consumer Affairs Victoria and dispute resolution assistance from DSCV. If the resident is still not satisfied, they can consider going to the courts or to the Victorian Civil and Administrative Tribunal.

Any decision to proceed to litigation in the courts or in the Tribunal should be made bearing in mind the possible effects on the parties and the village generally. Litigation can be costly and time consuming. It can disrupt the village and take a mental and emotional toll on the parties. Therefore, alternative approaches to the issue that will help to maintain ongoing village relationships should be carefully considered by the resident, and consultation with other residents is recommended.

## Handling disputes between residents

When a dispute arises between residents, the manager should encourage communication between them. Advise residents to discuss their complaint with each other—simply talking the issue through may lead to a solution.

If the manager becomes involved in disputes between residents, follow the points set out previously, but also:

- be fair to both parties—don't take sides
- come up with several options and let the residents decide on a solution
- advise the parties that they can contact the DSCV for free, independent dispute resolution assistance.

# Retirement village protocols

## Protocol 1: Changes to services

### Issues

Proposing to cancel or change a service provided to residents.

### Rationale

The diversity of residents and the communal nature of retirement villages mean that management consultation with residents about changes to services needs to be structured in a way that avoids confusion, which can lead to anxiety for residents.

If the manager sets out the proposed changes in writing it allows residents to consider and discuss the proposal with each other and with family members. Following this with individual and/or group meetings allows residents' questions to be answered and fears allayed.

### Applicable law

The residence or management contract is the document that governs the manager's power to cancel or change a service and the process for doing so.

Section 38(3) of the *Retirement Villages Act 1986* protects the manager from civil liability for a reduction in services where the residents have not approved an above-CPI increase in the maintenance charge, provided the manager has acted reasonably.

### Protocol

Good practice is for the manager:

1. Before implementing a decision to cancel or change a service, to consult with the residents' committee (if there isn't one, or if it is not practicable to consult with it, for instance, if the committee is purely social, the manager should first let residents know about the change in writing, then arrange a meeting).
2. As part of that consultation, to explain:
  - when the proposed change will take effect
  - why the change is needed
  - how it will affect residents
  - what the rights and responsibilities of the residents and manager are under the residence contracts
  - what process the manager intends to follow when implementing the change
  - the reasonable expectations of residents about the existence and standard of the service
  - options for providing the new service, including provider and cost (where feasible)
  - payment options (where feasible).
3. To attempt to reach an agreement with the residents' committee/residents on implementing the change.
4. To write to all residents to let 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

### Issues

- How the maintenance charges for vacant/unbuilt units are shared.
- Increases in the charges.
- Responsibility for carrying out maintenance work.
- The process for dealing with maintenance requests.
- Delays in processing insurance claims for damage to units.

**Note:** the separate issue of what matters are covered by the service charge and what matters are covered by the capital replacement fund is covered in Protocol 3.

### Rationale

#### Maintenance charges

Residents may be unfamiliar with what their contracts say about their maintenance charges and with the provisions of *Retirement Villages Act 1986* (the Act) governing increases in the charges.

Residents may believe that the Act restricts all increases in the charges to CPI and that they must approve any increases above CPI. They may not understand that the manager can increase the charges above CPI, without their approval, when rates, taxes or charges applicable to the village, or wages or salaries of village employees, have increased.

Even when residents accept the manager's right to increase the charges above CPI, they may expect to be consulted about alternatives.

Vacant units awaiting re-leasing or re-selling can present problems regarding how the charges for them are shared between the departing resident and the remaining residents. This may raise the sensitive issue of increased costs for residents, particularly for those on fixed incomes. This dilemma can also arise for new villages where only some of the units have been built or sold, resulting in residents bearing a larger share of the charges than they might have expected in a fully built and occupied village.

Further, there may be a difference between residents' contractual liability for the charges for vacant units and their expectations. In loan-licence villages, some residents may expect that they will contribute according to their share of the general charge, and in strata-title villages, some residents may expect that they will contribute according to their lot liability. These expectations may not accord with the position under their residence contract.

#### The maintenance process

Residents may be unclear about the process for carrying out maintenance work. It benefits the manager, and the residents, if there is a transparent process for the carrying out of maintenance work; a process that addresses timeliness, cost, and who carries out the work.

#### Insurance claims

Where a unit has been damaged and the damage is covered by the village's insurance policy, the time taken for the claim to be processed and for a payout to be made can sometimes be lengthy.

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 approved by the residents or residents' committee, or unless the increase arises from increases in rates, taxes, charges, wages or salaries.

## Protocol on increases in maintenance charges

Good practice is for the manager:

1. To consult with residents (in writing with a follow-up meeting) on proposed increases in maintenance charges, particularly where it is above CPI. In order that residents can see how the components of the charge relate to the increase, the manager should break down the charge to show:
  - what part relates to the provision of services, which requires their approval if above CPI
  - what parts are composed of:
    - rates/taxes/charges applicable to the village
    - salaries/wages paid to village employees, which can be above CPI and does not require their approval.
2. To include any options for cheaper alternatives or for avoiding the increase.
3. As soon as the manager becomes aware that residents' share of maintenance charges for vacant/unbuilt units is likely to become an issue, to advise 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, to continue this process at subsequent annual meetings.

## 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. Where possible, to respond to a maintenance request (for which management is responsible for carrying out) immediately but if that is not possible, to consider a recording process (which should be monitored daily) that includes the following:
  - the resident's name
  - the nature of the request
  - the date the request was made
  - whether urgent or non-urgent
  - the employee/contractor responsible for attending to the request
  - the estimated time for resolution (consider within 24 hours for urgent matters and within 14 days for non-urgent matters)
  - written acknowledgment of the request with the estimated resolution date 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 estimated resolution date
  - when and how the matter was resolved
  - confirmation of resolution by the resident.
3. To 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 that is covered by the village's insurance policy, good practice is for the manager to consider the feasibility of fixing the damage before acceptance of the claim or, if that is not feasible, before receipt of the payout. If it is not feasible to fix the damage before acceptance of the claim but the manager can do so before receipt of the payout, or if neither option is feasible, the manager should explain this to the resident.

## Protocol 3: What is covered by service and capital charges

### Issues

- Resident expectations about what is covered by the service charge and what is covered by any capital replacement fund (sometimes called a sinking fund).
- Expectations about whether the resident or the manager is liable for the cost of a particular item.
- Transparency of the process for awarding works contracts.

### Rationale

Residents may be on fixed incomes and issues relating to the service charge and any separate sinking fund charge are therefore of great importance to them.

Residents may be unfamiliar with what their contracts say about these matters. They may rely on their own understanding or expectation about what the service charge covers, what any separate sinking fund charge covers (or should cover) and who is liable for the cost of a particular item.

In particular, residents may not expect the service or sinking fund charges to pay 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, without their request or consent
- repairing capital items that the village owner owns that would be more cost-effective to replace
- marketing the village and vacant units
- head office overheads
- manager-specific items such as fees for membership of industrial or professional associations.

Some residence contracts state how different types of works are funded, for example:

- ‘capital improvement’ works by the manager
- ‘capital replacement’/‘capital repairs’/‘capital maintenance’ works from the sinking fund
- ‘general village maintenance’ from the service charge.

However, the allocation of specific works to a category can sometimes seem inconsistent or illogical to residents.

Some residence contracts specify that all works be funded from the service charge, or from a sinking fund, including capital items owned by the village owner. Residents may sometimes object to this, saying that they are paying for the enhancement of the village owner’s equity in the village.

The complexities of the village’s business model, where higher charges are offset by lower going contributions and vice-versa, is not always well understood by residents. Residents may not understand that although the village owner owns certain assets purchased from the service charge or from the sinking fund, they and future residents will use and benefit from them.

How and why head office expenses are allocated on a village basis can be complex and residents may consider that:

- head office expenses are unrelated to their village
- the allocation process is not equitable

- 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 individual villages.

Residents may also question the use of their charges for:

- the cost of marketing the village and vacant units
- head office overheads that do not benefit the village, even indirectly
- 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).

When substantial works contracts are awarded without consultation, residents may sometimes believe that cheaper or better alternatives were not adequately explored.

This protocol supports transparency about how works are categorised and how works contracts are awarded, to ensure that residents are more comfortable about how their charges are spent and to help reduce disputes over these issues.

## Applicable law

The residence or management contract is the document that governs what matters the service charge covers and what is covered by any (capital) sinking fund. It may also set out who is liable for the cost of a particular item.

The relevant contract may also contain provisions about the process for awarding works contracts but this is typically at management's discretion.

If the village has an owners corporation with fees in excess of \$200,000 in a financial year, or more than 100 lots, the *Owners Corporations Act 2006* states that the owners corporation must have a maintenance plan for the common property that sets out:

- major capital items scheduled for repair or replacement over the next 10 years
- the present condition of those items
- when they will need to be repaired or replaced
- the estimated cost of their repair and replacement
- their expected life once repaired or replaced.

A sinking fund must be established to implement the plan.

## Protocol

Good practice is:

1. For residence or management contracts to have clear definitions of capital (sinking) funds and service categories and to clearly explain who pays for the items in each category, and for contracts to be accompanied by an explanatory document that contains illustrative examples of items under each category.
2. If the relevant contract does not have clear definitions, for the manager to consider creating them (and illustrative examples) in consultation with residents. Once this is in place, good practice is for the manager to consult with residents or the residents' committee on difficult-to-categorise items.

3. For the manager to consult with the residents' committee and the 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, for the manager to 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 that alternatives have been adequately explored.
5. For the manager to 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).
6. Even if the residence or management contract allows the following uses of maintenance charges, for the manager to 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

### Issues

- Adequacy of time for residents to examine the statement before the meeting.
- Confusion and lack of understanding of the financial statement.
- How expenditure is divided when residents are paying different amounts.
- The level of detail of expenditure items in the statement.
- The opportunity for residents to clarify issues before the meeting.

### Rationale

Annual general meetings should be transparent and provide information that is easy to understand.

Some residents may not be familiar with financial concepts and terminology and they may find it difficult to read financial statements. This can lead to confusion and distress.

Residents may also have expectations about what should be included in the financial statement. The *Retirement Villages Act 1986* (the Act) only requires a statement of income and expenditure relating to village charges, and statements of ingoing contribution refunds and expected solvency. However, some residents may feel the statement should reflect all financial activity for the year.

Disputes can arise if a financial statement is difficult or confusing to read, has too much or too little detail or if residents' queries are not handled appropriately.

This protocol supports greater transparency and understanding of annual financial statements and aims to reduce disputes arising from misunderstandings and a lack of notice, transparency and communication regarding annual general meetings.

### Applicable law

Unless your retirement village is a not-for-profit that has obtained an official exemption from the need to comply, section 34(3) of the Act requires the manager to present a financial statement to the annual general meeting, setting out:

- income received from village charges
- expenditure on goods and services for the village,
- what provision (if any) has been made for future extraordinary or major works
- anticipated expenditure on goods and services
- any proposed increase in maintenance charges
- proposed special levies.

The Act does not require the manager to present a complete financial statement of the village, only a statement of income and expenditure relating to village charges.

This protocol does not relate to section 34(1) of the Act, which requires the manager to present a statement detailing:

- whether all refundable ingoing contributions have been refunded
- if the manager is aware of anything that would prevent the village from paying its debts on time.

## Protocol

Good practice is:

1. For the financial statement required under section 34(3) of the Act to be as simple as possible.
2. For the manager to provide a financial statement even if the village is exempt from the requirement for one.
3. For the manager to give residents sufficient time to consider and discuss the statement with other residents (provision by no later than 14 days before the meeting is good practice and consider releasing a preliminary 'discussion' draft at an earlier stage).
4. For the manager to invite residents to discuss issues with the manager before the meeting.
5. For the statement to clearly state the rationale for how expenditure items are allocated.
6. For the statement to provide 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); however, it should not disclose the salary/wages of identifiable individuals.
7. For the statement to show all proposed categories of expenditure (without grouping unlike categories).
8. For the statement to show how an item has been apportioned, if an expenditure item represents an apportionment between various villages or businesses.
9. If any residents are paying significantly higher charges than other residents, for the statement to state how expenditure is apportioned between the categories of residents.
10. For expenditure items associated with head office or management/administration fees to be 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 or dies

### Issues

- Setting the selling price.
- Selecting the selling agent.
- Advertising: whether the focus is on the village or the unit.
- Marketing strategy: relative marketability of units.
- Providing information to the resident on progress.

### Rationale

The re-sale or re-lease of a unit often happens at a difficult and emotional time for the resident and their family. The price obtained and the speed with which it can be re-sold/re-leased are critical to the resident's ability to relocate or their family's capacity to settle the estate.

However, other units in the village may also need to be re-sold/re-leased; and the manager will want to maintain a strong interest in the process.

The reality is that the marketing of a unit in a retirement village involves different considerations from those involved in the marketing of a conventional property. This includes the marketing necessarily focusing on the village – its services, amenities and lifestyle - rather than on individual units, which only feature when potential purchasers visit the village. Retirement villages also do not attract investor or 'impulse' buyers.

Nevertheless, there may be conflicting interests (or at least the perception of conflicting interests) about setting the selling price (particularly where the manager has an option to purchase the unit), about selecting the selling agent and about which units should be the focus of the marketing strategy. The families of residents may not always understand the special nature of the market for retirement village units.

The residence or management contract may say that the resident's contribution to marketing and advertising costs relates to the village, not their specific unit. However, this may not be the expectation of many residents or their families.

Misunderstandings can sometimes arise about the manager's motivation and priorities. Where village and owners corporation charges are accruing, council and utility rates continue to be payable, and/or an aged-care accommodation amount is payable, the mutual interest in a speedy sale at the best price can be forgotten, particularly with hard-to-sell units. Even without that problem, where charges are accruing and/or an aged care accommodation amount is payable, the resident or their family may be less able than the manager to wait until the preferred selling price is met.

Residents who entered a village before 2006 cannot rely on the changes to the *Retirement Villages Act 1986* (the Act) enacted in that year. They are more vulnerable to lengthy sale delays (and therefore accrual of charges and delay in refunding exit entitlements) and to lower-than-expected sale prices/exit entitlements.

Balancing the interests of management and of residents, or their families, is the basis of this protocol.

## Applicable law

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

The residence or management contract is the document that will contain the manager's power to appoint the selling agent, set the selling price and market the property.

### Post-1 August 2006 contracts

#### Owner-residents

Part 5A of the Act which:

- voids a term in the residence or management contract that enables the manager to be, or to appoint, the selling agent, and stops the manager from interfering with the sale
- entitles the resident to set the price and to appoint the agent, and to require the manager to provide certain information
- requires a resident who appoints a third party agent to provide the manager with certain information
- prohibits the manager from requiring the resident to pay a commission, if the manager is not the agent.

#### Non-owner residents with prescribed terms

This category comprises non-owner residents with prescribed terms under section 26(2)(c) of the Act and regulation 6 of the Retirement Villages (Contractual Arrangements) Regulations 2017.

The terms and regulations state that:

- the resident is allowed to require the manager to appoint an agreed selling agent
- if the manager is the agent, the manager must use all reasonable endeavours to re-lease the unit or to instruct a third party agent to do so
- the resident has control over the asking price and veto over the selling price, but must not act unreasonably
- the manager is required to not unreasonably refuse an offer, to provide certain monthly information, and to not impose unreasonable charges.

#### Non-owner residents without prescribed terms

This category comprises non-owner residents without prescribed terms and where the refund of an exit entitlement is conditional on re-sale.

The residence or management contract is the document that will contain the manager's power to appoint the selling agent, set the selling prices, conduct the marketing and accept offers.

### Post-30 January 2006 contracts (non-owner residents without prescribed terms and where the refund of an exit entitlement is conditional on re-sale)

Under sections 38I(1)(d) and 26(2)(b) of the Act, the manager must refund the exit entitlement, at the latest, six months after the resident vacated the unit.

## General

During the resident's life, privacy considerations require the manager to deal only with the resident or the resident's attorney regarding the matters under this protocol. Not all powers of attorney empower the holder to deal with the matters under this protocol; for example, a medical power of attorney.

The death of a resident automatically terminates any power of attorney. If the resident left a will, the executor becomes the resident's legal representative. If the resident did not leave a will, the person appointed by the Court as the administrator of the estate becomes the resident's legal representative.

Where the manager acts as the selling agent, the manager must comply with the *Estate Agents Act 1980* and regulations made under that Act.

## Protocol

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

### 1. General

Good practice is for the manager to:

1. Meet with the resident or their legal representative to explain how the marketing of a unit in a retirement village involves different considerations from those involved in the marketing of a conventional property.
2. In the case of a deceased resident, tactfully raise with the resident's family that delays will be reduced if an administrator is appointed, where the resident left no will or, where there is a will, if probate is obtained as soon as possible.
3. Consult with the resident or the resident's legal representative (whether the resident's attorney, executor or administrator) about measures to make the unit more marketable, such as refurbishment or reinstatement (see [Protocol 7: Refurbishment and reinstatement of units](#) on page 24) and inspections.

### 2. Setting a selling price – where the manager sets the price

Good practice is for the manager to:

1. Detail in writing to the resident or their legal representative the process by which the manager determines the value of the unit and the selling price and then meet them to discuss any objections (details of price ranges for recent sales/leases of other units in the village should be included, as this can assist in managing expectations among the parties).
2. If objections cannot be resolved, give the resident or their legal representative the opportunity to obtain their own valuation, or reach agreement 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
  - set out in writing the resident's exit entitlement for each proposed selling price.

### 3. Setting a selling price – where the resident sets the price

Good practice is for the manager to:

1. Consult with 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 to set out in writing the resident's exit entitlement for each proposed selling price.

#### **4. Selecting a selling agent**

Good practice is:

1. For the manager to 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, to advise the resident or their legal representative in writing of:
  - 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 fact that the manager's undertaking to use all reasonable endeavours to re-sell/re-lease the unit and not to impose unreasonable charges
  - that the manager's conduct is regulated by the *Estate Agents Act 1980* and regulations made under that Act (where applicable).
3. If the resident or their legal representative engages their own agent, for the manager not to interfere with the sale/lease or request a commission in relation to the sale/lease, although the resident/legal representative should provide reasonable information if the manager requests it.

#### **5. Advertising/marketing: general**

If the manager or the manager's agent is handling the advertising and marketing, good practice is for the manager:

1. To consult with 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, the document should explain the reasons for this.

#### **6. Advertising/marketing: hard-to-sell units**

If the manager or the manager's agent is handling the advertising and marketing, good practice is for an increased level of communication and for the manager to:

1. Continue to engage with the resident, their legal representative or their family, despite increasing difficulties and complaints.
2. Confront problems at an early stage.
3. Ensure that marketing updates include updates on the level of charge accruals (see [Protocol 6: Ongoing charges after a resident leaves or dies](#) on page 21).
4. Set dates with the resident or their legal representative to discuss and, if necessary, revisit, the marketing strategy

5. Give consideration to when the pros and cons of handing control over to the resident or their legal representative should be discussed (including the setting of the selling price and advice on advertising costs) or engage a third party agent.

## 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 residents' exit entitlements and may sometimes leave them in a position of negative equity.
- 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 basis for residents' liability for each charge.

### 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 heightened where the exit entitlement is needed to fund the resident's move to an aged-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 fees, council rates and utility charges up to the transfer date; and that if they terminated a normal lease before it expired, they would be liable for the rent until the landlord found another tenant (or the lease expired).

As time progresses, charges and interest accumulate and this can make it harder for the resident or their family to wait until the preferred selling price can be obtained.

Residents who entered a village before 30 January 2006 are not covered by the changes to the *Retirement Villages Act 1986* (the Act) regarding ongoing charges that came into effect on that date. They are therefore more vulnerable to lengthy sale delays and the consequent accrual of charges.

Finally, rolling together owners corporation fees and retirement village charges can sometimes confuse owner-residents. Owners corporation fees are subject to different constraints than those applicable to village maintenance charges.

For instance, owner-residents' liability to pay owners corporation fees is based on their lot liability but their liability to pay village charges, as set out in their residence or management contract, may be different. If so, owner-residents may find it difficult to ascertain whether their rolled up charge has been correctly calculated.

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 village occupancy. For the other residents of a village, particularly a loan-licence village, the issue is the equitable sharing of the burden of these costs between outgoing and ongoing residents. The aim of this protocol is to balance these interests.

## 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:

1. As soon as possible after receiving advice of a resident's intention to vacate or of their death, to meet with the resident or their legal representative about appropriate marketing strategies (see [Protocol 5: Marketing procedures for a unit when a resident leaves or dies](#) on page 16).
2. At that meeting, to advise the resident or their legal representative of what charges they will have to pay and for how long (this should be followed up with written confirmation of all charges and 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, to consider alternative solutions and strategies and/or discuss the issue with higher management, and to advise the resident or their legal representative of any such change in direction.
4. When a resident is under a contract that is not subject to statutory limits on the length of time they must pay ongoing village maintenance charges and personal services fees, to consider treating the resident as if they did have those protections.
5. For all residents paying ongoing charges, to consider providing 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. To provide monthly invoices that list the village maintenance charges, the owners corporation fee and personal services fee and that show the period for which each component is payable, as this will also increase transparency and help reduce disputes.



## Protocol 7: Refurbishment and reinstatement of units

### Issues

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

### Rationale

'Reinstatement' refers to the repairs necessary to bring a unit to the condition it was in when the resident took occupation; 'refurbishment' refers to works that improve the unit beyond that level.

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 contribution/sale price, and maximise the resident's exit entitlement.

However, in some cases, the resident may prefer the unit to be re-leased/re-sold 'as is' or with minimal 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:
  - the cost of the refurbishment
  - the higher ongoing charges incurred because of the delay in putting the unit on the market
  - 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 manager to refurbish their unit and/or they may have an expectation that they only need to pay for reinstatement.

Where the manager wants to use their own contractor, the resident may ask for alternative quotes to be obtained or may believe that the work can be done quicker and cheaper by a contractor they choose. Such concerns may be magnified where the manager:

- receives a percentage of the cost for supervision
- does not allow prospective residents to inspect the unit until the work is completed, or
- is using one contractor to reinstate/refurbish multiple units in the village.

Problems can also arise if there are delays in completing the work and/or if actual costs exceed the quote.

The manager will want a uniform and appropriate standard for units for re-leasing/re-sale, in order to accelerate the re-leasing/re-sale of units (including to recoup the reinstatement/refurbishment costs that the manager has been holding), to maintain the required standard of the village, and to ensure its ongoing marketability.

The manager may prefer to use the contractor of their choice because:

- the manager knows the contractor is qualified and insured, and understands the health and safety laws for which the manager is responsible
- the manager knows the standard of work they will get

- 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 resident's 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-leased are critical to the resident's ability to relocate or their family's capacity to settle the estate.

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

## Applicable law

The residence or management contract is the document that governs the manager's 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.

During the resident's life, privacy considerations require the manager to deal only with the resident, legal representative or power of attorney. If there is a power of attorney, the manager should check what powers it gives the holder before discussing anything with them.

The death of a resident automatically terminates any power of attorney. If the resident left a will, the executor becomes the resident's legal representative. If the resident did not leave a will, the person appointed by the court as the administrator of the estate becomes the resident's legal representative.

## Protocol

Good practice is:

1. For all parties to be clear about whether the contract permits reinstatement, refurbishment, neither or both; and about whether the outgoing or the incoming resident is liable for the resident's share of the cost.
2. If refurbishment is permitted, for the manager to promote awareness among residents and the residents' committee of changing standards of refurbishment that apply in the village.
3. As soon as practicable after the manager receives advice of a resident's intention to vacate or their death, for the manager to consult with the resident or the resident's legal representative (whether the resident's attorney, executor or administrator) about measures to make the unit more marketable, such as reinstatement or refurbishment.
4. If the resident has died, for the manager to tactfully explain to the resident's 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 or dies](#) on page 16).
5. For the manager to detail in writing to the resident or their legal representative:
  - whether the manager proposes reinstatement or refurbishment
  - the contractual basis for the 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 engagement of the contractor).

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.
7. For the manager to keep the resident informed of the progress of the works, including the possibility of delays and cost overruns (see also [Protocol 6: Ongoing charges after a resident leaves or dies](#) on page 21, regarding updates on the level of charge accruals).
8. For the manager to deal with any significant delays or cost overruns as soon as they arise and discuss them with the resident or their legal representative.
9. For the manager to consider alternatives when significant delays or cost overruns occur, including a time to discuss the pros and cons of allowing the resident or their legal representative to take over control of the works (including discussing health and safety requirements).
10. For the manager to provide a fully itemised account for the works (and where the manager is entitled to add on a percentage for supervision that may be unreasonable, to consider, instead, 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, the 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.

## 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 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 website](mailto:referrals@liv.asn.au) <referrals@liv.asn.au>

**Phone** 03 9607 9550

## 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](#) <[oldertenants.org.au](http://oldertenants.org.au)>

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

[Email Residents of Retirement Villages Victoria](#) <[secretary@rrvv.org.au](mailto: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](#) <[cotavic.org.au/info/siv](http://cotavic.org.au/info/siv)>

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

**Phone** 1300 135 090

## Retirement Living Council of the Property Council of Australia

A Division of the Property Council of Australia, Australia's peak industry body for property

[Property Council of Australia website](#) <[propertycouncil.com.au](http://propertycouncil.com.au)>

[Email Property Council of Australia](#)

Phone 03 9650 8300

## Leading Age Services Australia

LASA is the peak body for providers and other organisations associated with aged and community care, including providers of retirement housing.

[Leading Age Services Australia](#) <[lasa.asn.au](http://lasa.asn.au)>

[Email Leading Age Services Australia](#) <[info@lasa.asn.au](mailto:info@lasa.asn.au)>

**Phone** 1300 111 636

## Consumer Affairs Victoria

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

1300 55 81 81 (local call charge)

[Facebook page of Consumer Affairs Victoria <facebook.com/ConsumerAffairsVictoria>](https://www.facebook.com/ConsumerAffairsVictoria)

[Twitter page of Consumer Affairs Victoria <twitter.com/consumervic>](https://twitter.com/consumervic)

[YouTube page of Consumer Affairs Victoria <youtube.com/consumervic>](https://www.youtube.com/consumervic)

Services from Consumer Affairs Victoria are also available at Ballarat, Bendigo, Box Hill, Dandenong, Geelong, Mildura, Morwell, Reservoir, Shepparton, Wangaratta, Warrnambool, Werribee and Wodonga. Our mobile service regularly visits rural communities.

October 2018

## TIS

Translating and Interpreting Service **131 450**

## TTY

Textphone or modem users only, ring the National Relay Service (NRS) on **133 677**, then quote **1300 55 81 81**.

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