

**INFORMATION PAPER No. 5****DISPUTES AND COMPLAINTS**

There are many issues that arise in a Retirement Village that might lead to a dispute or complaint. These issues typically include:

- The management and maintenance of the village;
- Fees and charges associated with running the village;
- Refurbishment of units and communal areas;
- Provision or removal of promised facilities or services; and
- The activities of other residents.

Before attempting to take any action on a matter of dispute, it is necessary to:

- Do your homework to make sure of your grounds.
- Check if your residence contract or the Village Scheme has anything to say on the matter? There is little possibility of success if the action complained about is provided for in the agreement you signed with the village administering body.
- Check the village rules to see if they have been breached.
- Check the Retirement Villages Act and Regulations or the Retirement Villages Code to see if any of their provisions have been breached.

Step 1

After you have done these checks, the first step should be to approach the person with whom you have a dispute and try to resolve the issue.

It is obvious that people can get very upset when they are in dispute with another party and it is important to keep your cool, whether with management or with another resident, because you will need to be able to continue living in the village after the dispute has been resolved.

Residents don't always feel comfortable in raising issues directly with the administering body for fear of intimidation, confrontation or retaliation. In such cases, it could be advisable to contact your Residents Committee to see if they would take the matter up on your behalf.

You can also contact WARVRA to discuss your situation. And the Seniors Housing Centre is another option.

Step 2

If none of these attempts are successful, then the next step is to invoke an in-village dispute resolution process.

The Fair Trading (Retirement Villages Code) Regulations outline this process in Division 6 of the Code. You should all have a copy of the Code, the administering body of your village should have provided it with your contract (reference *Retirement Villages Act (WA) 1992* section 13 (2) (d)). There may also be a Dispute Resolution Process set out in your contract but it should be consistent with the one in the Code.

The administering body of the village must nominate a suitable person or body to deal with the dispute (in the new legislation, this person or body must be acceptable to both parties). Villages may handle this process differently and it is important to check your residence contract to see if a process is set out.

The process outlined in the Code is as follows:

- If you are instigating the dispute, you must give notice in writing to the other party stating the matters you are disputing/complaining about and calling on them to rectify or otherwise attempt to settle your concerns about these matters. A sample letter is attached.
- The other party must respond within 10 working days after you have served the notice and give reasons in writing if they reject any of the dispute/complaint matters.
- The parties and the person appointed to deal with the dispute will then meet in the retirement village or in a mutually agreed venue within 20 working days of receipt of the notice or at such later agreed date.
- Prior to this meeting the parties must exchange all documents and information that might reasonably be expected to be material to the resolution of the matters in dispute.
- If the matter is resolved, you are at liberty to tell others about it but what you cannot do is repeat anything that was said by the other party, what they may or may not have done, or disclose what was contained in any of the material the other party produced without that party's agreement.
- If the matter is not resolved by this process, the administering body must advise the parties of available avenues for further review of the matters that are still in dispute.

Step 3

Depending on the nature of the dispute, two available avenues are the Department of Commerce (Consumer Protection Division) and the State Administrative Tribunal (SAT)

It is important to note that both the Department of Commerce and the State Administrative Tribunal will want to know if attempts have been made within the village, such as under steps 1 and 2 above, to resolve the dispute or, if not, why not, before accepting an application.

The Code provides that any party to a dispute may apply to the Commissioner for Consumer Protection (Department of Commerce) to have a matter referred to mediation. There is a prescribed form for this application but it can only be obtained by personal application to the Consumer Protection Division of the Department of Commerce. The Commissioner, under certain circumstances, may decline to accept the application. (The process for this is also set out in Division 6 of the Code.) It is as well to be aware that a party to a dispute cannot be compelled to attend mediation.

If your matter of concern relates to the developer or administering body of your village breaching the Retirement Villages Act or the Code, at this point you should lodge a formal complaint with Consumer Protection Division of the Department of Commerce. The complaint must be made on a prescribed form – it can be done online or the form can be

downloaded from the Consumer Protection website:

(http://www.commerce.wa.gov.au/ConsumerProtection/Content/Consumers/Complaints/Making_a_formal_complaint.html)

This should result in either the Investigations Branch or the Compliance and Conciliation Branch of the Property Services Directorate in the Consumer Protection Division beginning an investigation which could lead to prosecution if your complaint is upheld. We strongly advise you to consult with WARVRA before taking this action so that we are aware (and can use your experience to help other residents) and can put you in touch with a legal adviser if appropriate.

If the dispute still remains unresolved, either party may apply to the State Administrative Tribunal for a hearing, if the dispute is one in which the SAT has jurisdiction. (See Division 5 of the Retirement Villages Act).

If it has the jurisdiction the SAT may determine the matter and issue orders.

Currently, there is no provision in the retirement villages legislation for an application to be made to the SAT by a resident (or the Commissioner on a resident's behalf) where an administrative body is in breach of contract. That means that residents are compelled to sue privately for breach of contract, which is a costly, time consuming and can be a very stressful process for residents. This issue was addressed in the Review of the Legislation and it has been recommended that the SAT be given the jurisdiction.

Disclaimer: WARVRA has made every reasonable effort to ensure the information given on this sheet is accurate, but it is not to be construed as legal or financial advice. Each person should seek advice and verify information themselves.

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SAMPLE DISPUTE LETTER

Your name
Your address
Your phone number
Your email address *(if you have one)*

Date

Name of party with whom you have a dispute *(if it is the village management, put the name of the person you have been dealing with if you know it or address it to the Manager if you don't have a name)*

Company Name

Street

Suburb/Town State Postcode

Dear Sir/Madam *(or put the name of the contact person if you know it)*

NOTICE OF DISPUTE

Re: *(insert the subject of your dispute, such as, failure to do ...)*

I wish to have the following matter of dispute dealt with in accordance with clause 6.2 of the Retirement Villages Code.

(state what the issue is, for example, the management did not do something in your contract/the management has unreasonably rejected your application to ... /the village should pay for something you have been billed for etc).

I have tried to seek a resolution to this matter by personal approach to you but unfortunately no outcome satisfactory to me has been achieved.

To resolve this issue, I want *(say what you want, for example, review the dispute procedures/review the contract/provide the service requested)*. Enclosed are copies of relevant records *(include copies of any relevant records, for example copy of the contract, letters and any other documents)*.

I advise you that I will be supported in all stages of this dispute process by *(insert name, address, email address and phone number – you can ask one of the WARVRA officers to be your support person if you wish)*.

Yours sincerely

(Your signature)

(Print your name)

Enclosure(s) *(list the documents you are sending with your letter. Send COPIES of your documents, not originals and keep a copy of this letter for your records)*

cc: *(put the name of anyone else you are sending the letter to, for example, to the Department of Commerce)*