

Retirement Villages Act 2003 – Compliance News

August 2006

Disputes Resolution Under The Retirement Villages Act 2003

1 October 2006 is the date that Part 4 of the Retirement Villages Act 2003 ("RV Act"), "**Dispute resolution, enforcement and penalties**" comes into force.

There are two forms of disputes procedures under the RV Act, a complaints facility and disputes resolution through a disputes panel.

Disputes Panel

The disputes provisions in Part 4 of the RV Act (apart from the reference to a complaints facility) relate to dispute resolution through a disputes panel. The RV Act sets out a formal process to be followed by a resident or a village operator when requiring a dispute to be resolved by the disputes panel. These disputes may be resident/operator disputes or may be resident/resident disputes.

The process to be followed is set out in the RV Act and the Retirement Villages (Disputes Panel) Regulations 2006 dated 24 July 2006.

Types of Disputes able to be heard by the disputes panel

A resident may give you a dispute notice for the resolution of a dispute concerning any of your decisions:

- Affecting the resident's occupation right or right to access services or facilities; or
- Relating to charges for outgoings or access to services or facilities imposed or payable under the resident's occupation right agreement; or
- Relating to the charges or deductions imposed as a result of the resident's occupation right

- *Disputes Resolution provisions in force from 1 October 2004*
- *Complaints Facilities in villages a priority*
- *Good communication and record keeping essential*

coming to an end for any reason or relating to money due to the resident following termination or avoidance; or

- Relating to an alleged breach of a right referred to in the Code of Resident's Rights or the Code of Practice.

No dispute notice may be given by a resident concerning any health services or disability services or facilities to which the Code of Health and Disability Services Consumers' Rights under the Health and Disability Commissioner Act 1994 applies.

A resident also has the right to give a dispute notice in respect of an operator's breach of the resident's Occupation Right Agreement or Code of Practice in disposing of a residential unit formerly occupied by the resident.

Residents may also give a dispute notice in respect of issues with another resident of the Village. This right appears to be unlimited.

Operators may give a dispute notice to residents about any matters referred to in the first three bullet points above.

An operator may also give a dispute notice to a resident in certain circumstances if a resident alleges that an Occupation Right Agreement is voidable.

Complaints Facility

The RV Act is quite clear in requiring a village operator to have a complaints facility. Section 51 states:

"The operator must operate and make known to the residents of a retirement village a facility for dealing with complaints by the residents."

The details of the complaints process required under the RV Act will be set out in the legislative Code of Practice which will come in force a year after it is approved. The Department of Building and Housing have indicated that the Code of Practice will be promulgated at the same time as the general regulations. It is worth noting however, that you may comply with the Code of Practice at your option immediately the remainder of the RV Act becomes operational.

If you are a member of the Retirement Villages Association, then you will be able to use their guidelines to establish an "in village" complaints process. As a member, you are also required to have a disputes committee within your Village.

You should note that it is an offence under the Act not to provide a complaints facility or not to make details for the complaints facility known to residents, without reasonable excuse. You will be liable on summary conviction to a fine not exceeding \$5,000 in this case.

This requirement is also important because a resident is not able to give a dispute notice unless they have first referred the complaint to the complaints facility within the Village and twenty working days have elapsed. It is therefore in the interests of the operator not to obstruct rights that residents would otherwise have under the legislation.

Disputes Panel Process

The disputes panel process is likely to be expensive and time consuming for an operator, especially if the issue concerns the interpretation of the Occupation Right Agreement and application of its provisions or is to do with the Occupation Right Agreement's financial structure.

An operator must fund all costs incurred by the disputes panel in conducting a dispute resolution, whether or not the operator is a party to the dispute. The operator may receive an award of costs if the decision is fully or substantially in their favour and, in a dispute where an operator is not a party to the dispute, may receive an award of costs by way of refund.

The disputes panel may comprise one or more members selected by an operator after consultation with the other parties involved.

However, there will be a clear advantage for an operator in using the Dispute Panel process for matters of contract interpretation. The Dispute Panel must, when hearing the matter, hear it in accordance with

"the general principles of the law relating to the matter and the substantial merits and justice of the case."

There is a right of appeal to the relevant court which will be by way of re-hearing.

This is in contrast to the Disputes Tribunal (formerly the Small Claims Court) where the Tribunal is required to determine a dispute:

"..... according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities."

There is a very limited right of appeal or right of re-hearing from a decision of a Disputes Tribunal.

The disputes panel process is also in contrast to the Retirement Villages Association's Review Authority. This informal body, although generally comprising lawyers, is not bound to apply strict principles of law, nor is there any right of appeal from a decision.

Establishing a precedent

Whilst decisions of the disputes panel will not be binding in the sense of the formal common law principles of precedent, decisions of the disputes panel with identifying details removed, may be published, so these are bound to influence later decisions. Any matter concerning the interpretation of a contract that is of a recurring nature, will need careful attention at the first hearing to avoid an undesired result.

Re-sales

The RV Act provides that a resident may give a dispute notice to the disputes panel in relation to the re-sale of their dwelling if it has not been disposed of within nine months of the dwelling becoming available to the operator for sale. A dispute of this type is required to be heard by a panel comprising at least three members with one of the members being a retired judge or a person who has held a practising certificate as a barrister or solicitor for at least seven years. This panel has the power to make a wide range of orders including an order that the operator must buy back the dwelling at a fixed sum.

Remember, that this will all be at your cost unless the panel decides otherwise.

In addition to these special provisions, the Code of Practice under the RV Act is expected to provide that,

- after three months an operator must provide a written report on progress of re-sales to a resident, and

- after six months, at the request of the resident and at the operator's cost, an operator must provide a valuation of the dwelling.

Communication

Underpinning all of this, is the need for good communication. As long as you are listening to and responding to your residents and ensuring that your residents are fully aware of their rights, you are likely to be able to minimise the number of matters that reach the stage of a disputes panel hearing. Good record keeping practices will stand you in good stead if, despite your best endeavours, a complaint proceeds to a disputes panel hearing.

More Information

For more information regarding dispute resolution handy reference sites are:

- the Retirement Villages Association's web site (www.retirementvillages.org.nz) and
- the Retirement Commission's website (www.retirement.org.nz)

Contact Us

The information in this newsletter is necessarily general.

Please feel free to contact us for more information about any of the matters raised in this newsletter or about any other matter relating to your retirement village or the Retirement Villages Act.

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