

**Consumer Affairs Victoria - Consumer Property Acts Review**

**Owners corporations**

**A submission by:  
Residents of Retirement Villages Inc.  
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## Contents

1.	Introduction .....	3
2.	Executive Summary .....	3
3.	About RRVV .....	4
4.	Scope of this submission.....	4
5.	Functions and powers of owners corporations.....	5
6.	Maintenance .....	7
7.	Meetings and decisions of owners corporations.....	10
8.	Rights and duties of lot owners and occupiers.....	13
9.	Rules of the owners corporation.....	13
10.	Owners corporation records .....	14
11.	Dispute resolution .....	15
12.	Applications to VCAT .....	15
13.	Owners corporations in retirement villages .....	16
14.	Part 5 of the Subdivision Act.....	19
15.	Conclusion.....	20

## 1. Introduction

Residents of Retirement Villages Victoria (RRVV) is pleased to have this opportunity to make a formal submission to the Consumer Property Acts Review regarding the impact that the Owners Corporation Act and related legislation have on the lives of residents of strata titled retirement villages.

Retirement villages are on average larger than other residential property developments, contain more lots, house more residents and have more extensive and diverse common property than other housing developments.

Owners corporations play a more significant role in retirement villages than in other residential property developments, because they are responsible for extensive infrastructure. Moreover, the Retirement Villages Act gives an owners corporation committee the powers of a residents committee.

Owners corporation fees form a significant part of the cost of living in a strata titled retirement village.

This submission responds to Consumer Property Acts Review Issues Paper No 2.

## 2. Executive Summary

Ten themes run through Residents of Retirement Villages Victoria responses to Issues Paper No 2.

- a. Recognising retirement villages are fundamentally different from other strata-titled developments
- b. Providing for a broad range of resident desire for participation in the management of common property – from villages with residents who from time to time have little interest through to those villages with residents who want an active stewardship role
- c. Simplification, including enshrining residents rights explicitly in readily understandable legislation
- d. Preventing retirement village operators setting up structures and financial arrangements that undermine the spirit and intent of the Owners Corporation Act (and the Retirement Villages Act).
- e. Providing residents with as close to unfettered access to information about their village and its finances as possible
- f. Ensuring all persons and entities handling residents money act in the best interests of residents and lot owners
- g. Ensuring each resident is treated fairly and equitably – the rights of individuals matter
- h. Ensuring residents acting collectively are free to delegate management functions, to withdraw or modify their delegation as and when they see fit, and to supervise the actions taken on their behalf
- i. Explicitly limiting developers and operators control over strata titled retirement villages, including eliminating operators lot entitlements
- j. Ensuring residents have access to binding dispute resolution at no cost to themselves

RRVV's responses following indicate:

- a. The legal and structural arrangements governing retirement villages are unnecessarily complicated

- b. Protection of residents interests and rights is inadequate
- c. Developers and operators have scope to exercise excessive control over retirement villages
- d. Retirees need a single Act that covers all forms of retirement housing
- e. Residents need an ombudsman service

### **3. About RRVV**

Residents of Retirement Villages Victoria Inc. (RRVV) is a volunteer organisation representing residents of retirement villages and like housing communities with around 5,900 paid up members. A committee of nine members supported by 83 resident liaison officers (village level coordinators) administers its affairs.

RRVV has four primary activity streams:

- 1. Government relations
- 2. Industry relations
- 3. Member support
- 4. Research.

RRVV devotes the greater part of its resources to member support. This includes:

- 1. Publishing four newsletters a year
- 2. Holding two primary member events a year
- 3. Visiting villages
- 4. Advocating on behalf of residents making complaints
- 5. Responding to telephone and e-mail queries (around 1,000 a year)
- 6. Provision and maintenance of the website [www.rrvv.org.au](http://www.rrvv.org.au) as a service to members and a source of information for people interested in retirement villages.

RRVV has members in a little over 42% of the registered retirement villages in Victoria.

RRVV research explores the demographics, health, life satisfaction, retirement village satisfaction, interactions with management, problems encountered, disputes, access to information and participation in decision-making of residents living in retirement villages.

### **4. Scope of this submission**

This submission focusses solely on the implications for retirement villages of the issues raised in the Consumer Property Acts Review Issues Paper No 2.

RRVV prefers that, as much as possible, a revised Retirement Villages Act or a new act covering retirement housing be the primary instrument governing the regulation of all retirement villages – strata titled and leased. This preference shapes our responses to questions asked in Issues Paper No 2.

## 5. Functions and powers of owners corporations

*Q1 Are the current constraints on owners corporations' power to commence legal proceedings appropriate?*

RRVV submits that access to a Magistrates Court for fee recovery should be the same as currently applicable to VCAT.

RRVV recognises that gaining 75% support for legal action can be difficult in a retirement village but, nevertheless, supports retention of this threshold with the proviso that the Act prevents a retirement village operator with a conflict of interest from voting and excludes its lot entitlements from the threshold calculation. Also, see our answer to Question 59.

*Q2 Are there any other issues relating to the power to commence legal proceedings?*

NA

*Q3 Should owners corporations be able to deal with water rights, including water that falls on common property?*

RRVV recommends yes, with exceptions, in the case of retirement villages:

- a. Rainwater that falls on the roof of a stand-alone residence belongs to the lot owner
- b. Rainwater that falls on the roof of a single story residence that forms part of a row of residences belongs to the lot owner to the extent that it is distinguished from water that falls on adjacent roofs
- c. Rainwater that falls on the roof of a multi-story apartment block belongs collectively to the lot owners except where the building contains common property for the use of all residents as distinct from the residents of the building.

*Q4 Are there any other issues relating to the power of owners corporations to acquire and dispose of personal property?*

NA

*Q5 Do owners corporations need powers to deal with goods on the common property in breach of the owners corporation rules that a person who owns the goods has refused to move or has abandoned? If so, what safeguards should there be, and should there be different safeguards for emergency situations or for goods that are a serious obstruction?*

Yes. RRVV believes retirement village owners corporations need powers to store or dispose of goods left on common property with provision for the serving of notices on the owner or other relevant person and recovery of the costs incurred.

RRVV supports the inclusion of safeguards required to protect residents and visitors in cases of emergency, serious obstruction or safety concerns.

*Q6 Do the requirements for a common seal still serve a useful and legitimate purpose? If not, who should be able to sign contracts on behalf of the owners corporation, after the necessary resolutions and procedural steps have occurred?*

RRVV submits that common seals no longer serve a useful and legitimate purpose. RRVV recommends the owners corporation determine from time to time (but at intervals of no more than one year) by ordinary resolution who may sign contracts.

*Q7 What are your views about the operation of the benefit principle? What is the experience of your owners corporation in applying the benefit principle?*

Residents of strata titled retirement villages report great difficulty in applying the benefit principle and suggest principles-based guidelines would reduce conflict.

For example, the discussion prompts in Issues Paper 2 preceding Question 7 are troubling. Surely, the question facing Owners Corporation A is who caused the damage to the common property rather than who benefits from the repairs. Similarly, surely the question facing Owners Corporation B is not who benefits from removing the hazard but whose responsibility it is to remove the hazard. RRVV's answer is Owners Corporation B, so all lot owners share the costs.

*Q8 Should an owners corporation be able to recover debt collection costs from defaulting lot owners where a matter does not proceed to a VCAT or court application, or for any costs incurred before an application is made?*

Yes

*Q9 If your owners corporation has won a debt recovery action at VCAT or a court, what was your experience in getting a costs order against the lot owner?*

NA

*Q10 Should owners corporations be able to apply a discount for the timely payment of fees or charges?*

Yes

*Q11 Should the internal dispute resolution process be completed before an owners corporation can send a final fee notice, or proceed to VCAT or a court?*

Yes

*Q12 Are there any other issues relating to payment of fees or charges?*

NA

*Q13 What is your experience with the fees or charges for goods or services provided by owners corporations to lot owners? For utility charges passed by the owners corporation, should recovery be linked to the actual amount charged?*

RRVV supports including provisions covering retirement villages in the relevant Act similar to those in the Residential Tenancies Act.

## 6. Maintenance

*Q14 Is there a continuing need to differentiate between smaller and larger owners corporations? If yes, what characteristics should an owners corporation possess in order to trigger additional financial and maintenance planning obligations as a prescribed owners corporation?*

RRVV suggests all retirement villages are of such a size that there is no need to distinguish between smaller and larger owners corporations. Accordingly, RRVV recommends prescribing all retirement village owners corporations.

*Q15 What are your views on the adequacy of planning for maintenance that is currently undertaken by owners corporations? In your experience, are owners corporations turning their minds to the future maintenance needs and setting aside adequate funds?*

RRVV's experience suggests that the adequacy of planning for retirement village maintenance varies widely, and even the largest operators (almost always also the owners corporation manager and mostly the owners corporations delegate for maintenance management) sometimes fail to present lot owners and residents with a comprehensive plan.

RRVV suggests that a spreadsheet showing forecast income and expenditure over a ten year period does not constitute adequate planning for maintenance and can lead to such stupidities as painting the pergola of a unit one year and then replacing the same pergola a year or two later. A spreadsheet is not a plan, but may form part of a plan.

RRVV suggests that 'like for like' maintenance not always in the best interests of lot owners and residents because it can lead to a competitive disadvantage against newer villages. Accordingly, RRVV recommends that long-term maintenance plans should clearly communicate to residents likely outcomes such as the state of the village (utility and appearance) year by year. RRVV also recommends that maintenance plans identify likely disruption caused by major maintenance works.

Long-term maintenance expenditure for a large retirement village can be in the range \$500,000 to \$1.5 million a year. Therefore, inefficiency in managing such expenditure can cost the resident body a large sum of money. It is RRVV's experience that retirement village operators rarely take responsibility for any economic loss to lot owners or residents caused by their inefficiency or negligence, and dismiss claims for make-good because the village is resident funded. RRVV recommends the relevant Act should explicitly provide a clear and simple remedy.

*Q16 Should maintenance plans be mandatory for all owners corporations, or should there be a distinction between smaller and larger owners corporations in relation to maintenance planning and funds? If yes, where do you see the distinction being drawn?*

RRVV recommends, in the case of all retirement villages, making comprehensive maintenance plans mandatory.

*Q17 What procedures should be in place to ensure owners corporations implement maintenance plans and the associated funding requirements?*

RRVV recommends that the relevant Act require the owners corporation to fund and implement maintenance plans effectively.

*Q18 Should there be capacity for money to be paid out of maintenance funds for unplanned works and, if yes, in what circumstances should this be allowed?*

Yes, there will always be legitimate unplanned works of a maintenance nature. RRVV believes it would be economically inefficient to strive to have preventive maintenance eliminate all unplanned maintenance? For example, villages do have water pipes burst, but this does not necessarily indicate a need to pull all pipes up and replace them.

*Q19 Should funds for implementing the maintenance plan come only from the maintenance fund?*

No. There are legitimate circumstances when a village will find it necessary to propose a special levy, especially where residents seek to achieve some measure of village upgrade from the maintenance plan.

*Q20 What are your views about contingency funds, including:*

- *whether contingency funds are necessary*
- *what type of owners corporations should have them, and*
- *how they should be funded, the purposes the funds can be used for, and how such purposes should be determined?*

RRVV believes contingency funds are necessary because expenditure rarely matches income in the short run and accordingly, all strata titled retirement villages need contingency funds.

The relevant legislation should reserve contingency funds for emergency expenditures (as defined in the relevant legislation or supported by model rules), and separate such funds from funds for planned maintenance, and expenditures that occur regularly such as every month, quarter half year or year.

While RRVV recommends separating (or separately accounting for) the various funds, it nevertheless, recognises the need for some flexibility and recommends the owners corporations have the power to revise their maintenance plans and reallocate funds accordingly.

*Q21 How should urgent and non-urgent repairs to common property be dealt with where the owners corporation has failed or refused to do them?*

RRVV recommends the relevant Act require the owners corporation to establish rules (perhaps with the assistance of model rules) for urgent repairs including conditions under which residents can organise repairs themselves.

RRVV also recommends such rules include a specific financial delegation to the owners corporation manager for emergency repairs to common property covering. For example, a manager might spend up to \$3,000 (say) on any one emergency repair without reference to the owners corporation and up to \$6,000 (say) with the authorisation of any three members of the owners corporation committee.

Additionally, RRVV recommends provisions that parallel those of the Residential Tenancies Act 1997 for urgent and non-urgent repairs to the common property.

*Q22 What are your views about how to deal with lot owners or occupiers who cause damage to common property, or who want to alter the common property?*

RRVV recommends specifically empowering VCAT to order the owner or occupier who has damaged common property to:

- a. undertake specified works to repair the damage, or
- b. compensate the owners corporation for the damage or cost of repairs, and any associated costs (such as insurance and legal costs).

RRVV also recommends the relevant Act empower owners corporations to impose extraordinary fees on lot owners to cover any damage to the common property by a lot owner or occupier, subject to due process.

RRVV believes current arrangements for lot owners or occupiers who cause damage to common property are satisfactory.

*Q23 Are there any other issues relating to repairs to common property or services?*

NA

*Q24 What are your views about the type and level of insurance cover that should be required?*

RRVV recommends insuring retirement villages to full site complete replacement value based on full valuations every five years with desk valuations before every renewal.

RRVV also recommends that the relevant Act requires (or continues to require) owners corporations to take out contents insurance for the common property. This cover should include insurance for the performance of its functions, and insurance on behalf of its officers and committee members against liability for a breach of their duty to exercise due care and diligence, where the officers or members are personally liable.

*Q25 Should lot owners be able to 'opt out' of the insurance policy taken out by the owners corporation when they take out their own insurance (and not therefore pay their portion of the owners corporation policy)?*

RRVV recommends against allowing retirement village residents to opt out of the insurance policy taken out by the owners corporation.

*Q26 What are your views about lot owners' responsibilities where their actions (or inactions) result in increased insurance premium or excesses payable by the owners corporation?*

For retirement villages, RRVV recommends adopting legislation similar to the NSW owners corporation legislation. RRVV sees the legislation also covering situations where a claim on an insurance policy by an owners corporation concerns work done to only one or some lots, or relates to the common property but is attributable to an individual lot owner or occupier. This legislation would allow owners corporations to require the relevant owner or occupier to pay for the excess or increased premium.

## 7. Meetings and decisions of owners corporations

*Q27 What are your views about the appropriate obligations for developers who control owners corporations, including the:*

- *obligations concerning any contracts they cause the owners corporation to enter into*
- *interests they must consider, and whether there are any matters they should be prohibited from voting upon, and*
- *duration of their obligations?*

RRVV recommends:

- a. Barring at all times owners corporations managers associated with developers or operators of a retirement village who have the potential to control the owners corporation from accepting appointment as the owners corporation manager
- b. Requiring at all times developers or operators of retirement villages with the potential to control the owners corporation to act in the best interests of current and future lot holders and residents
- c. Requiring developers and operators of retirement villages with the potential to control the owners corporation to abstain from voting on specific matters of conflict of interest such as a developer voting on a resolution relating to building defects
- d. Requiring developers to provide a copy of the occupancy certificate together with the other documents they are required to present at the first meeting of an owners corporation and subsequently as new occupancy certificates are issued

RRVV points out that an operator does not need a majority of the votes to gain effective control. This is similar to the case of a company where the law recognises that an entity that owns a third or more of the issued shares can have effective control.

The New South Wales legislation would provide a more suitable environment for the management of strata titled retirement villages than the current Victorian arrangements, whereby developers are free to set up a wholly owned company to be the Owners Corporation Manager. RRVV is aware of retirement villages, for example, where the developer has set up an owners corporation management company with a management contract lasting 99 years starting soon after the registration of the plan of division.

RRVV suggests a maximum owners corporation management contract term of five years. Such a term would provide a reasonable balance between the need for continuity and the need to conserve owners corporation resources through the efficiency of long-term contracts. The Act should allow longer terms only in special circumstances and then only with court approval, and no term should exceed ten years.

RRVV has some concern about the term “owners corporation manager”. A significant number of residents (possibly a majority of those living in strata titled villages) see the way the manager operates and interpret the term to mean ‘manage the owners corporation’ rather than ‘manage the property for the owners corporation.’

*Q28 What other changes should be made to developers’ obligations?*

NA

*Q29 What is your experience of voting and the use of proxies within an owners corporation?*

RRVV members report that voting arrangements at retirement village meetings are not always beyond reproach.

For example, management company employees do not always follow the requirements of the Owners Corporation Act regarding the conduct of lot owners meetings. In one case, the operator used the internal telephone directory to hand out voting papers resulting in a significant number of cases of more than one vote per lot.

Operators sometimes draw attention to their lot entitlements as a means of avoiding having a resolution voted on at meetings.

Nevertheless, there appear to be few problems with lot owners in retirement villages giving their proxies to friends and relatives.

*Q30 Should there be restrictions placed on the appointment of proxies, and if yes, in what circumstances?*

RRVV recommends putting a limit on the number of proxies and the percentage of the vote attributable to an individual proxy holder.

In a retirement village, it is not appropriate for a manager to act as a proxy for a lot owner or resident. The current Owners Corporation Act allows this practice. RRVV recommends prohibiting it. Other aspects of the current arrangements appear to be satisfactory. RRVV believes that the ability for a resident lot owner to give their proxy to a (non-resident) relative, who can then attend the meeting in their stead, is essential in retirement villages.

*Q31 What are your views about the adequacy of the provisions that set out the Chairperson's voting rights?*

In RRVV's experience, the current provisions are satisfactory.

*Q32 Should a contract of sale be able to limit the voting rights of lot owners?*

No, certainly not in a retirement village.

*Q33 What has been your experience of voting within an owners corporation?*

Few retirement village residents understand owners corporation voting rules and therefore rely on interpretations and advice given by operators and managers.

As indicated in our response to Q29, problems arise when the manager fails to make the necessary arrangements for the conduct of meetings in accordance with the Owners Corporations Act, either through ignorance or through a desire to manipulate outcomes.

*Q34 What are your views about the appropriateness of the voting thresholds for ordinary, special and unanimous resolutions, and arrangements for interim resolutions?*

It is very difficult to for a retirement village to pass a special resolution let alone a unanimous resolution. RRVV recommends using the Retirement Villages Act threshold for special resolutions

*Q35 What are your views about the adequacy of the provisions for convening meetings?*

It is difficult for residents of a retirement village to secure the support of lot owners of 25% of the total lot entitlements if the village operator or manager opposes the proposal or if the operator holds a substantial proportion of lot entitlements. RRVV recommends excluding the operator's lot entitlements from the threshold calculation. Other than this, the provisions are satisfactory.

*Q36 What has been your experience of annual general meetings and other owners corporation meetings that you have attended?*

A significant number of RRVV members report undue influence exerted by the village manager or the operators senior managers. In some cases, this amounts to intimidation.

Please also see responses to Q29 and Q33 above.

*Q37 How can the views of tenants be most effectively shared with the owners corporation?*

RRVV members report there are tenants in some villages, and because they are 'irregular,' the operators are unwilling to allow them to share their views. RRVV recommends Consumer Affairs Victoria investigates this practice.

*Q38 What are your views about committees, including the threshold for and size of committees, who should be able to arrange a ballot, the chairperson's role, and minutes?*

A significant number of RRVV members express the opinion that a twelve person committee is too large for effective decision-making and that in any event, large committees sometimes have a majority of members who have never faced a contested election. RRVV recommends, reducing the size of committees to ten or even eight members.

Similarly, a significant number of RRVV members report examples of the chairperson exerting undue influence on the meeting and suggest introducing guidelines and checklists for the conduct of owners corporation and owners corporation committee meetings.

RRVV members also report examples of an operator or on-site manager undermining the role of the chairperson. Finding a lot owner with the appropriate skills and experience to perform the role of chairperson presents a challenge in many villages, particularly those where the average age is above of 80 years.

RRVV members report villages have considerable difficulty finding residents who are willing and competent to prepare minutes and report significant dissatisfaction with the accuracy, completeness and timeliness of the minutes they receive. Some members also report that the village manager exerts undue influence over the minutes. In some cases, the operator's employees prepare the minutes.

RRVV recommends explicitly authorising retirement village owners corporations to engage independent (i.e. not associated with the operator and not contracted by the operator) non-residents to prepare meeting minutes. RRVV also recommends including a provision in the Act for the recording of meetings as a backup rather than a replacement, for the written minutes.

The owners corporation committee is a critical component of a strata titled retirement village community. In many cases, the committee meets monthly, not only to manage the common

property but also to attend to the welfare of residents more generally. In too many villages, however, the operator - through an on-site manager – tries to dominate meetings and influence the decisions made. RRVV is aware that some operators have told owners corporation committees that the committee’s role is entirely advisory and that decisions regarding the common property are in the hands of the owners corporation management company – typically a company associated with the operator. This advice, of course, is contrary to the Owners Corporation Act.

## **8. Rights and duties of lot owners and occupiers**

*Q39 In what circumstances should a lot owner be able to change the external appearance of their lot? Is there a need for agreement to be reached with other lot owners, and if yes, who should have a say?*

RRVV recommends enacting specific provisions to enable residents with disabilities to change the external appearance of their lots where this is necessary to improve their access or amenity. Otherwise, RRVV recommends that significant changes to the external appearance of lots require the approval of the owners corporation by special resolution.

Accordingly, RRVV recommends amending the Act to provide a process for dealing with proposals by lot owners to alter the appearance of their lot significantly and for the enacting of related model rules.

*Q40 Are there any other issues about the external appearance of lots? What has been your experience?*

Operators, and particularly Village Managers, can be erratic about such matters, sometimes approving changes and later declining to approve similar changes. RRVV recommends removing any right (for example, through a residence contract) to approve changes to the external appearance of lots without specific (and rescindable) delegation from the Owners Corporation.

*Q41 What are your views about access by lot owners and occupiers to the common property or services? Should the rights and responsibilities of lot owners and occupiers be specifically provided for in the Owners Corporation Act or model rules?*

As the relevant acts stand, RRVV recommends publishing model rules for retirement villages giving at least three rights and responsibilities options with a default option, and a process for adoption of one of them or the drafting of tailored rights and responsibilities

## **9. Rules of the owners corporation**

*Q42 Who should comply with, and be bound by, the rules? Should ignorance of the rules be a consideration?*

RRVV recommends compliance with the rules should be a condition of entry to a retirement village, and advertising this condition at entrances to the village.

*Q43 Should a person bound by the rules (for example, an invitee) be the only person responsible for their own breaches, or should someone else (for example, the lot owner or lessee) also have responsibility? If someone else is also responsible, should that responsibility depend on whether the person ‘permitted’ the breach, and should there be any other limitations?*

RRVV recommends that, notwithstanding any condition of entry provision, the lot owner or lessee remains responsible for the compliance of his or her invitees.

*Q44 Should there be Model Rules regarding pets and smoking? If so, should there be a choice of rules such as is allowed in New South Wales (with or without a default option)?*

Yes and yes with a default option.

*Q45 Are there any other issues relating to the coverage of the Model Rules?*

NA

*Q46 What are your views about owners corporation rules that prevent lot owners installing 'sustainability' items in or on their units?*

RRVV recommends restricting the ability of retirement village owners corporations to make rules merely to enhance or preserve the external appearance of a building if they have the purpose, or effect of, prohibiting the installation of such things as:

- roofs with colours that have particular solar absorption values
- energy efficient windows
- solar hot water systems, or
- photovoltaic cells.

*Q47 What are your views about civil penalties for breaches of owners corporation rules?*

RRVV believes the current civil penalty for rule breaches of \$250 is inadequate, and any penalties should be payable to the owners corporation.

*Q48 Are there any other issues relating to the rules of owners corporations?*

NA

## **10. Owners corporation records**

*Q49 What are your views about owners corporations' and managers obligations regarding availability of records and about limitations on lot owners inspection rights.*

RRVV recommends requiring retirement village owners corporations to provide access to or if requested, copies of any document in which the lot owner has a legitimate interest except documents covered by legal professional privilege, an exclusion mandated by the current Retirement Villages Act or by a privacy act. RRVV also recommends permitting the owners corporation to impose a fee reflecting the actual costs.

RRVV members report examples of what they perceive as operators and village managers using privacy policies to hide embarrassing information. RRVV recommends implementing measures to maximise retirement village residents access to information.

RRVV recommends enacting provisions requiring owners corporations to distribute a copy of the current residents lists (e.g. list giving resident names, unit numbers, telephone numbers and e-mail addresses) free of charge at least semi-annually. Nevertheless, individuals should have the right to opt out of the list.

*Q50 Are there any other issues relating to owners corporation records you wish to raise?*

NA

*Q51 What are your views about the inclusion of information on short-stay accommodation in owners corporation certificates?*

NA

*Q52 Are there any other issues relating to owners corporation certificates?*

NA

## **11. Dispute resolution**

*Q53 What are your views about recourse to the dispute resolution process when an owners corporation is acting on its own initiative in pursuing a breach?*

RRVV recommends a retirement village owners corporation first follows its internal dispute resolution procedures before acting on its own initiative in pursuing a breach. RRVV believes the parties should make a genuine attempt to resolve disputes within the village before taking action that might require the individual to seek legal advice. Nevertheless, more generally, RRVV recommends giving residents a legislated right to take their matter directly to a higher authority if it is a complaint about the operator, the village manager or a decision of the owners corporation.

*Q54 Are there any other issues relating to dispute resolution?*

RRVV strongly recommends the appointment of an industry ombudsman to deal with retirement housing disputes and that residents have an unfettered right to access such an ombudsman.

## **12. Applications to VCAT**

*Q55 What factors should VCAT consider in determining disputes about the validity of an owners corporation rule?*

NA

*Q56 Are there any other issues relating to applications to VCAT?*

Very few residents of retirement villages take their disputes to VCAT because they find the prospect daunting and fear that operators will string out the process and thus expose them to high legal bills. Accordingly, RRVV recommends providing retirees with access to a free, binding and user-friendly dispute resolution service such as that of an industry ombudsman. Please also see RRVV's submission to the Department of Justice's Access to Justice review.

### 13. Owners corporations in retirement villages

Owners corporations play a more important role in a strata titled retirement village than in a typical block of apartments and other residential property developments.

Specifically:

- a. Retirement communities are on average much larger than other residential property developments regarding the numbers of lot owners and residents and the services provided, as well as in the size and complexity of the common properties.
- b. Owners corporation fees form a significant part of the cost of living in a strata titled retirement village; the fees in some villages are more than \$500 per month per unit.
- c. Under the RV Act, the owners corporation committee has the powers of a residents committee, and hence its decisions involve a wider range of matters, most of which directly affect the living standards of residents.
- d. The common property in a retirement village – gardens, roads, car parks and surrounding land - is typically more extensive and of more significance to residents than in most residential developments. Depending on the village, the common property may include swimming pools, bowling greens, gymnasiums, libraries, and theatres.

RRVV believe that the existence of an owners corporation in a retirement village presents opportunities for operators to dominate decisions that directly affect residents' enjoyment of other facilities besides the common property.

*Q57 What are your views about how annual meetings under the Owners Corporations Act and under the Retirement Villages Act should be conducted in retirement villages with an owners corporation?*

Most residents, including owners corporation committee members and many managers, find the different requirements of the two acts confusing. In RRVV's experience confusion leads to the use of the wrong procedures, arguments between lot owners and managers and frequently to injustice to residents.

These differences include key aspects such as the appointment of the chairperson, the need for a quorum, the use of proxies and the registration of attendees. The differences between special meetings of the owners corporation and meetings of retirement village residents to consider a special resolution (under the Retirement Villages Act) are even greater.

Accordingly, the current practice in many villages is to hold two separate meetings, one after the other

Nevertheless, the inconsistencies between the two acts regarding the conduct of meetings of lot owner residents are best addressed by combining the two acts into a single act that deals with strata titled retirement villages. Such an act would enable a single annual meeting of lot owner residents to be held in each retirement village instead of two separate meetings as at present (in some cases).

As the Acts stand, RRVV recommends two separate meetings to minimise confusion.

RRVV is aware of owners corporation retirement villages that have an incorporated association with the stated purpose of providing services to the village by service or management agreements entered into with residents.

A similar situation exists for special meetings of the owners corporation (under the Owners Corporation Act) and meetings of retirement village residents to consider a special resolution (under the Retirement Villages Act).

RRVV is aware of two cases where the association has a committee of management that residents believe acts as their residents' committee. In both cases, the operator has the right to place three of its representatives on the committee of management. In one case, the committee of management serves as the owners corporation manager. In both cases, the committee of management appears to perform some functions as if it were the owners corporation committee. Again, in both cases, the villages hold a single annual meeting to conduct owners corporation business, services association business and fulfil Section 33 obligations of the Retirement Villages Act. The effective manager in both cases is a major operator.

RRVV has formed the impression that:

- a. Few if any residents understand the full ramifications of the structure of their village
- b. Accordingly, they are inhibited in the exercise of their participation rights
- c. The villages make multiple errors in the conduct of annual meetings. This evidence is in their published minutes. They also make errors in the exercise of their participation rights throughout the year.
- d. That the presence of operator representatives and the complexity of the arrangements disempower residents while empowering the operator.

RRVV recommends enacting specific provisions to clarify roles and responsibilities in this situation and so prevent unscrupulous operators setting up arrangements to circumvent the Owners Corporations Act and the Retirement Villages Act.

*Q58 What are your views about the role of the retirement village operator in owners corporation meetings and in retirement village meetings?*

In most strata titled retirement villages, the operator holds the owners corporation management contract, often via a subsidiary company. Again, in most cases the village manager employed by the operator and the personal representative of the owners corporation manager (typically the operator or a subsidiary) is the same person.

The owners corporation management contract typically includes a clause that stipulates that the manager is required to provide advice on the application of the Owners Corporation Act and to supply administrative and clerical services to enable the owners corporation and its committee to conduct meetings according to the legislation.

Many if not most retirement village operators (outside of their legal departments) and their managers are not familiar with the Owners Corporation Act or the Retirement Villages Act, and so meetings of lot owners and residents often do not comply with either of the two acts. There is also evidence that operators have on occasions willfully ignored the legislation in order, for example, to ensure that a meeting agrees to appoint a manager to the owners corporation committee.

In RRVV's experience, retirement village operators have a conflict of interest and are not appropriate providers of legal advice in this context.

The composition of retirement village owners corporation committees is an issue, with some operators who insist on appointing the manager as the secretary or at least a member. There is also evidence of managers in this position dominating committee meetings and ignoring or downplaying the wishes of committee members. RRVV recommends restricting the role of the manager in committee meetings to giving reports and providing information in response to members' requests.

Take the Issues Paper Model 2 as an example. Operators who own a significant number of lot entitlements because they own the community centre, dining room, swimming pool, bowling green and other facilities have the opportunity to exert excessive influence over the owners corporation or control it outright. In other cases, the developer has established the subdivision plan so that the operator has the majority of entitlements with only token liabilities.

RRVV submits there is no legitimate reason for this arrangement. It is not a mechanism designed to enhance the lifestyle of residents. Rather it is about control of the village. RRVV strongly prefers Model 1 and recommends prohibiting Model 2. See also our response to questions 59 and 61.

*Q59 How can the views of retirement village residents who do not own their units be taken into account in managing common property within the owners corporation?*

A straightforward solution to this problem is to require the operator to assign the entitlements and liabilities associated with each leased unit to the lessee. Such an arrangement would remain in place until all lots are leasehold at which point the operator can extinguish the owners corporation, and assume its full powers and responsibilities under the Retirement Villages Act.

RRVV expects this issue to affect more retirement village residents in future, as operators change their villages from strata titled to loan-lease establishments in line with their preferred business model.

RRVV believes operators preference for the loan-lease model rests heavily on the greater control it gives them over their villages. For example, operators of loan lease villages do attempt to justify actions that residents oppose by reminding the residents 'we own the village and therefore we can ....'.

Notwithstanding the existing operators' preference for the loan-lease model, RRVV believes there is a future for strata titled retirement villages governed by a revised Retirement Villages Act or a replacement retirement housing act. Take the example of strata titled gated communities. RRVV is aware of gated communities that look like retirement villages and have residents mostly aged over 55. There is market demand because, amongst other things, the model is easier to understand than current retirement village models with complex fee structures (including deferred fees) and governed by complex legislation.

We submit that there is a strong case for providing developers with the legislative backing of a single Act to offer the units to the public as retirement village units, and to provide buyers with the protections retirees need. We further submit that well-designed legislation would facilitate the emergence of specialised retirement village managers to take the place of the owners corporation managers that now service strata titled gated communities. We see this arrangement requiring the management company to manage in the best interests of the resident body rather than the interests of the operator, as is now the case.

#### 14. Part 5 of the Subdivision Act

Q60 *What are your views about the process for the sale/development of apartment buildings?*

NA

Q61 *What are your views about:*

- *who should set the initial lot liability and entitlement, and any criteria that should be followed*
- *how lot liability and entitlement should be changed, and*
- *any limits for registering changes to the plans of subdivision with Land Victoria?*

a. Who should set the initial lot liability and entitlement, and any criteria that should be followed?

The current arrangements for setting the initial lot liabilities and entitlements are open to abuse by unscrupulous developers and operators. In particular, a developer building a new retirement village can allocate themselves a lot with more than 75% of the entitlements but with minimum liabilities. The developer is thus in a position to sell the village management rights and owners corporation management contract to an operator so that the operator can claim to have complete control over all aspects of the retirement village operations. Also, the other lot owners through their fees have to pay an increased proportion of the costs of the owners corporation's expenses, fees that otherwise would have been paid by the operator. RRVV recommends prohibiting this type of arrangement.

RRVV supports a process that takes the allocation of lot entitlements and lot liabilities out of the hands of retirement village developers. In staged developments, RRVV supports reallocating lot entitlements after the completion of each stage.

b. How lot liability and entitlement should be changed

It is relatively easy to determine the market value of retirement village lots, so RRVV recommends using market value as the primary criterion for allocating lot entitlements and lot liabilities.

c. Any time limits for registering changes to the plans of subdivision with Land Victoria.

NA

Q62 *In the absence of a unanimous resolution, what requirements should be met before VCAT can be empowered to change the lot liability and lot entitlement on a plan of subdivision?*

RRVV is aware of cases where the entire village lot and liability allocation is unfair through to cases where one resident is the victim of an unfair allocation. Accordingly, RRVV recommends allowing owners corporations, groups of residents from a village and individuals to seek redress through VCAT. RRVV also recommends groups of residents and individuals should first endeavour to have their owners corporation mount the case, and proceed in their own right only if the owners corporation declines or fails to respond. RRVV further recommends that groups and individuals that succeed should have the right to recover any costs not recoverable from another party from their owners corporation.

*Q63 Are there any other issues relating to Part 5 of the Subdivision Act?*

NA

## **15. Conclusion**

The Owners Corporation Act and the Retirement Villages Act together do not adequately protect the rights or living conditions of residents and lot owners in strata titled retirement villages. Developers and operators use the current acts to control residents in retirement communities in ways that are inconsistent with the intentions of these acts.

Furthermore, the current legislation is cumbersome, inconsistent and complicated. Consequently, some operators interpret the acts to their advantage while telling lot owners and residents that they are acting within the law. The vast majority of lot owners and residents in retirement villages do not understand this legislation and so are at a disadvantage. Residents' representatives are at a similar disadvantage when trying to control their meetings, making spending decisions and dealing with operators that spend owners corporation funds without authorisation.

Retirees need readily understandable legislation in a single retirement housing act, which builds on the rights and responsibilities currently contained in the existing Owners Corporations and Retirement Village Acts, together with the appointment of a Retirement Housing Ombudsman Service.