



Evaluating the Retirement Living Code of Conduct

RRVV evaluation criteria - problem elimination in resident funded villages

(as at 20 August 2018)

| # | Owner and operator problem conduct | Suggested commitment | Comply Yes, Part, No | Reason |
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| | Finances | | | |
| 1 | Vague application of 'resident funded village' concept | <ul style="list-style-type: none"> Define concept Spell out implications (including that villages operations are 'not for profit' and that this reduces normal commercial customer service incentives) Commit to measures that protect residents interests and counter owner and operator tendency to customer service complacency | No | |
| 2 | Insufficient useable detail presented in financial reports to residents | <ul style="list-style-type: none"> Use categories that have operational meaning (e.g. allow residents to see how much the village spends on gardening) Provide sufficient detail to allow ordinary residents to see where the | No | B2.6 only applies if some authority requires an operator to report to residents, does not set a standard (structure and detail) and does not guarantee free access to detailed accounts |

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| | | <p>money comes from and goes</p> <ul style="list-style-type: none"> • Give interested residents (such as finance committee members) access to detailed accounts | | |
| 3 | Sloppily prepared accounts (e.g. coding errors) | <ul style="list-style-type: none"> • Commit to a quality standard | No | B2.6 does not set a standard |
| 4 | Using village resources for company purposes. For example, including village staff in company work for charity programs or pulling staff from the village to work on a Head Office project) | Only proceed with the approval of the resident body | No | |
| 5 | Charging village for Head Office supplied services as a one line item in the annual accounts | <ul style="list-style-type: none"> • Justify to residents the legitimacy of each of the charges bundled into the line ('management services' or the like is not detailed enough). • Provide services at cost • Provide residents with a detailed justification for the quantum of each charge sufficient to allow residents to establish there is no hidden profit) • Don't charge villages for 'manage the manager services' and other charges for running the head office • Subject services to competitive tender at least every three years • Commit to matching competitive offers or engaging contractors who | No | |

| | | offer the best value for money | | |
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| 6 | Unclear commitment to support villages before they are entirely resident funded | Comprehensively define the extent, strength and duration of commitment | No | |
| 7 | Failure to compensate residents fully for losses arising from operator and owner failures | <ul style="list-style-type: none"> Define the failures and the process for determining compensation Commit to developing and implementing a compensation policy promptly | No | |
| 8 | Commissioning village audits that don't provide residents with the reasonable protections they need | Give residents a say in the scope and depth of the audit | No | |
| 9 | Denying residents a say in the appointment of the auditor and the scope of the audit | Provide audit proposals from competing firms so residents can, if they wish, determine the auditor and the thoroughness of the audit | No | |
| 10 | Presenting the annual budget as a fait accompli | <ul style="list-style-type: none"> Involve interested residents from day one Put the budget (operations and sinking fund) to a binding vote at a residents meeting and allow resident initiated amendments from the floor | No | |
| 11 | Not holding all resident contributed funds (operations and sinking fund) in trust for the | Hold residents' funds in trust in separate bank accounts (i.e. not in pooled accounts) | No | |

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| | benefit of the residents of the village | | | |
| 12 | Unilaterally deciding the fate of any annual operating surplus | <ul style="list-style-type: none"> Recognise that operating surplus is the property of the contributors of the funds (the resident body as a whole or a class of residents) Put the fate of any surplus to a binding vote at a residents meeting Recognise that residents may vote to return the surplus to the contributors, hold it in reserve, transfer it to the next financial year or transfer it to the sinking fund. | No | |
| 13 | Owners and operators receiving commissions, incentives discounts and rebates but not passing them to villages or residents as appropriate | Pass commissions, incentives discounts and rebates to villages or residents as appropriate | | |
| | Complaints | | | |
| 14 | Not all operators advertise all available dispute resolution processes and options | Advertise all available internal and dispute resolution processes and options widely and frequently | Partial | A4.4 does not address the widely and frequently requirement |
| 15 | Require residents to lodge all complaints including complaints about the village manager or operator with the village | <ul style="list-style-type: none"> Guarantee the right to lodge an oral complaint and to lodge a complaint through a representative Provide alternative complaint | No | Appendix H requires residents to who escalate a dispute to the CAC to do so in writing. Contrast this with the Dispute Settlement Centre of Victoria which offers a “no forms, no fees, no fuss” |

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| | manager and in writing. | pathways for complaints about the village manager or the operator | | service. There is no requirement to provide an alternative contact where the resident is complaining about the village manager. |
| 16 | Corporate processes that inhibit independence in dispute resolution | <ul style="list-style-type: none"> • Implement corporate processes that support and protect village managers independence in dispute resolution • For example, adopt resident centred KPIs and involve residents in assessing compliance | No | |
| 17 | Suppression of disputes | Commit to a definition of dispute that includes recognising that a dispute exists whenever a resident communicates dissatisfaction with an operator's response or lack of response to a request for action or the like | No | |
| 18 | Inadequate recording of, requests for action, issues and disputes | Adopt a standard that allows operator, state and national statistics consolidation | No | |
| 19 | Publishing misleading dispute statistics | <ul style="list-style-type: none"> • Cease • Commit to a process of standardised reporting of disputes and consolidated reporting at operator, state and national levels | No | Many operators under report disputes because the threshold they use to recognise a dispute is too high. Similarly many report resident-resident-village manager disputes as resident-resident disputes |
| 20 | Discouraging residents from using external dispute resolution | Resident free to choose which complaint process to utilise and to retain control | Partial | The emphasis on going through village, operators and CAC processes before |

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| | services | | | |
| 21 | Not mediating in good faith | <ul style="list-style-type: none"> • Turn up to all mediation conferences as requested by residents and participating in good faith • Fully implement all agreements reached promptly | No | |
| 22 | Making a confidentiality agreement a term of a dispute settlement | Only residents may impose confidentiality | No | |
| 23 | Inadequate training of village managers and their immediate superiors in dispute management and procedural fairness, and the taking and weighing of evidence | Include upgraded training in all available forms of dispute resolution in a comprehensive management training program (see 72 below) | No | |
| 24 | Operators directing residents to participate in a specific form of complaint processing | Comply with the Retirement Villages Act 1986 (Vic) which provides that complaint processing cannot proceed without the agreement of the resident | Partial | |
| | Resident Participation | | | |

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| 25 | Making unilateral decisions that affect residents' lives (we own the village, so we make the rules) | Commit to a policy that maximises residents' opportunity to collectively make decisions that affect their lives residents and otherwise to enter into genuine consultations with residents | No | |
| 26 | Sham consultation | <ul style="list-style-type: none"> Define genuine consultation and matters requiring consultation Commit to acting on the formal resolutions of residents subject only to an independent review mechanism | No | |
| 27 | Dominating and capturing residents' committees | <ul style="list-style-type: none"> Support residents' committees but remain strictly neutral Acts as guests | No | |
| 28 | Dominating residents' committee meetings and residents meetings | <ul style="list-style-type: none"> Cease Act as guests | No | |
| 29 | Unreasonably restricting village information available to residents | <ul style="list-style-type: none"> Define what is not available to residents (a very short list). Make everything else available on reasonable request | No | |
| 30 | Heavy-handed conduct of Annual Meetings and other company called meetings | <ul style="list-style-type: none"> Play fair and neutral Give opponents to an owner or operator proposal equal time etc. | No | |
| 31 | Combining Section 33 Annual | Keep separate | No | |

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| | Meeting with other meetings | | | |
| 32 | Sorting lot entitlements and lot liabilities in new strata titled villages | Commit to excluding property that would otherwise be common property from lot entitlement and lot liability | No | |
| 33 | Failure to put owners corporation management contracts up for renewal at least every five years | Put owners corporation management contracts up for review at least every five years | No | |
| 34 | Failure to allow residents to change delegations to owners corporation managers at least every two years | Allow residents to change delegations to owners corporation managers at least every two years by giving one year notice | No | |
| 35 | Operator staff insisting on attending resident committee meetings | Attend only when invited and only for as long as invited | No | |
| 36 | Owners and operators voting lot entitlements at owners corporations meetings | <ul style="list-style-type: none"> • Transfer voting entitlements to resident lot owners on a pro rata basis, and • Make lot liabilities equal lot entitlements | No | |
| 37 | Not providing leaseholders in villages with an owners corporation with the same participation rights as title holders | Transfer voting entitlements to leaseholders | No | |

| | Maintenance | | | |
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| 38 | A reactive approach to maintenance | <ul style="list-style-type: none"> Recognise maintenance is contractual right, not favour dispensed by village staff Commit to a proactive approach to maintenance | No | |
| 39 | None or inadequate long-term maintenance plans | Commit to: <ul style="list-style-type: none"> developing a ten-year maintenance plan in conjunction with residents accurate dilapidation reports, transparent prioritisation and sequencing | No | |
| 40 | Not reporting regularly and in detail on long-term maintenance fund expenditure | Monthly including year to date plus a full year report at the Annual Meeting including measures taken to ensure residents receive the quality of maintenance they want at the lowest cost | No | |
| 41 | Ad hoc decision making (especially when dealing with 'squeaky wheels') | Consistent policy-driven decision making | No | |
| 42 | Doing only a partial job or doing a substandard job | Require the operator to work with residents to set maintenance standards for the village | | |
| 43 | Disorganised maintenance | <ul style="list-style-type: none"> A planned approach to long-term | no | |

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| | management | <p>maintenances and routine maintenance.</p> <ul style="list-style-type: none"> • Policy-driven emergency maintenance | | |
| 44 | Disorganised project management | Adopt a professional approach to project management (RRVV can supply more detail) | No | |
| | Contracts | | | |
| 45 | Unnecessarily complex village structures (e.g. unnecessary incorporated associations or incorporated associations purporting to represent residents but which are controlled by the owner or operator) | Cease | No | |
| 46 | Restricting entry to older retirees than specified in the Act (the Victorian RV Act says 55 and over, but some owners and operators only accept people 65 and over) | Cease | No | |
| 47 | Refusing to enforce contract provisions of benefit to individual residents and residents in general | Enforce all such provisions with an even hand (i.e. include a provision in contracts requiring the operator to enforce the contract) | No | |

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| 48 | Contract provisions do not provide fee certainty at the time of signing the contract | <ul style="list-style-type: none"> Express deferred fees as a percentage of the ingoing amount More generally refrain from fee provisions that do not provide fee certainty | No | |
| 49 | Deferred fees that increase in annual steps starting on the first day of occupancy | Prorate deferred fees and calculate to the day | No | |
| 50 | Aggressive deferred fees (RRVV asserts that a DMF of 35 per cent payable at the end of year three gouges residents who must leave the village at that point) | Commit to fees that bear a reasonable commercial relationship to the services provided. | No | |
| 51 | Periodic fees charged in whole months or quarters | Prorate deferred fees and calculate to the day | No | |
| 52 | Contracts that do not adequately define owners and operators obligations (rarely in as much detail as resident's obligations) | <ul style="list-style-type: none"> Define owners obligations fully Interpret vague contract provisions for the benefit of the resident or residents | Partial | |
| 53 | Unnecessarily complicated contract terms and terms likely to confuse prospective residents about the true nature of the legal relationship | <ul style="list-style-type: none"> Simplify contract terms Present each prospective resident with a Macquarie Retirement Village Calculator estimate of the equivalent monthly rental for each unit under consideration | No | The code puts focus on disclosure and description rather than fundamental reform |
| 54 | Contract provisions that conflict | Commit to: | Partial | Theode requires compliance with the law but does not |

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| | with the Retirement Villages Act and other laws | <ul style="list-style-type: none"> not utilising these provisions in negotiations with residents and actively ensure this commitment widely communicated not including these provisions in new contracts | | require operators to disclose to residents and authorities any breaches |
| 55 | Contracts, policies and practices that purport to limit the building defects liability period | <ul style="list-style-type: none"> Commit to having the rectification work done in a timely fashion irrespective of any dispute or potential with the builder Commit to not charging the sinking fund for building rectification work | No | |
| 56 | <p>Reinstatement provisions that exploit residents. E.g.</p> <ul style="list-style-type: none"> require residents to give an 'open cheque.' disadvantage the outgoing resident financially because of the effect of deferred payments expressed as a percentage of the resale amount and the operators share of capital gains by permitting upgrades by stealth by giving favourite contractors work at above market prices through poor project management | <p>Commit to;</p> <ul style="list-style-type: none"> acting in good faith genuine consultation with outgoing residents, their representatives and executors disclosing the likely effect of proposed work on the termination payment (i.e. disclosing that [in many cases] excess reinstatement lowers the termination payout) operator funding of upgrades, sharing of any profit and wearing any losses and ensuring the price increase does not increase deferred fees achieving the best possible value for money and providing supporting evidence | No | |

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| | <ul style="list-style-type: none"> inadequate accounting and disclosure of costs inadequate fraud countermeasures | <ul style="list-style-type: none"> good project management provide full details of likely costs (i.e. the reinstatement budget) and actual costs and an explanation of the variance implement robust fraud counter measures | | |
| 57 | Charging the outgoing resident sales commission on unit by-backs | Cease immediately and refund all commissions received | No | |
| 58 | Not contributing maintenance fees for units vacant for more than six months | <p>Pay the maintenance fees for units vacant for more than six months</p> <p>(In RRVV's opinion, slow sales are a more often a management than a market issue)</p> | No | |
| 59 | Allowing the executor insufficient time to clear out a unit | Commit to at least 90 days | No | |
| | Accommodation and common areas | | | |
| 60 | Units not designed to support graceful ageing | All new units and upgraded units ergonomically designed (particularly bathrooms and kitchens) and designed to allow easy and economical installation of safety rails grab rails, lifting aides | No | |
| 61 | Wrapping residents in cotton | <ul style="list-style-type: none"> Recognise that risk is inherent in life, | No | |

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| | <p>wool just to reduce corporate risk</p> | <p>and older residents are entitled to decide what level of risk they are willing to take to achieve the life they want (i.e. recognise that a life constricted or dulled by excessive safety is not a life lived to the full).</p> <ul style="list-style-type: none"> • Act on that recognition | | |
| 62 | <p>Excessive expenditure of village funds on safety</p> <ul style="list-style-type: none"> • Above Australian standards • Without consultation with residents • For corporate benefit rather than resident | <p>Commit to complying with Australian standards but otherwise only provide the safety residents want and are willing to fund</p> | No | |
| | <p>Management and management training</p> | | | |
| 63 | <p>Management style</p> <ul style="list-style-type: none"> • controlling • driven by company rather than residents interests • dismissive and complacent • inconsistent • of questionable ethics • patronising and condescending • disrespectful | <p>Commit to village management which is</p> <ul style="list-style-type: none"> • resident centred • service oriented • tuned to the needs of the target age group but recognising it is not a homogeneous group • supportive • consistent • empathic • respectful | No | |

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| | <ul style="list-style-type: none"> • undercurrent of threat | | | |
| 64 | <p>Failure to recognise that residents are triple stakeholders</p> <ul style="list-style-type: none"> • Provide owners with the capital needed to fund the village • Long-term customers • Our home – your work site | Treat us as important stakeholders rather than punters to be exploited (as is the case with some operators) | No | The code development approach is evidence of operators' failure to recognise residents as equal (if not higher) stakeholders and evidence that operators do not understand what stakeholder engagement means |
| 65 | Giving biased advice on the conduct of meetings | Develop voluntary model rules in conjunction with residents' representatives | No | |
| 66 | Not reporting on long-term maintenance plans, progress and finances | Reporting in detail on long-term maintenance – monthly including year to date and at the annual meeting | No | |
| 67 | A band-aid approach (covering up or patching up problems rather than eliminating them) | <ul style="list-style-type: none"> • Commit to a systems approach to management • Deal with problems at their root cause | No | |
| 68 | Tick a box management | Provide management systems and corporate culture that encourage a more thoughtful and thorough approach to management | No | |
| 69 | Inconsistency in the treatment of residents (resident to resident and over time) as a fairness issue | Require consistent treatment. For example, don't focus just on the needs of residents who are the excellent advocates in their cause while ignoring | No | |

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| | | the like needs of those who are poor advocates | | |
| 70 | Selectively applying or ignoring inconvenient contract provisions and village rules | Implement disciplinary measures | No | |
| 71 | <p>Capturing residents committees and hiding behind them. E.g.:</p> <ul style="list-style-type: none"> manipulating residents committees to back measures known to be unpopular with residents standing by while residents' committees trample on residents inconvenient contractual rights | Cease | No | |
| 72 | <ul style="list-style-type: none"> Management competence of wide variation but generally low Internal training tends to recycle bad attitudes and g habits | <ul style="list-style-type: none"> Commit to management training of at least Certificate 4 or undergraduate diploma standard Commit to the independent development of training (in consultation with operators and residents) and independent delivery Commit to independent continuous professional development | No | |
| | Sales | | | |
| 73 | Irresponsible selling (E.g. selling | Cease | No | |

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| | to people who do not have the capacity for the version of independent living available in the village such as single people suffering dementia) | | | |
| 74 | Misrepresenting the deferred management fee as the second instalment of the purchase price | Represent it as one of the owners/operators revenue streams | No | See Code pages 6 and 7 <i>“Deferred Payment</i> Also known as a departure fee, exit fee, deferred management fee, deferred fee, retention amount or outgoing payment. The deferred payment, if applicable, represents the second amount paid for the home which may be deferred until after the resident leaves and, in most cases, upon repayment of any resident exit entitlement under the resident contract. The amount paid is not a capital payment. |
| 75 | Sales promises not reduced to writing | Commit to reducing sales promises to writing | No | |
| 76 | Failing to disclose that the village might not or will not be able to be able to meet all of a prospective resident’s disclosed and tacitly disclosed expectations | Commit to disclosure | No | |
| 77 | Reluctance to honour sales promises – sometimes by reference to an invalid ‘whole of agreement’ contract clause | Commit to honouring sales promises | No | |

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| 78 | Not acting in the best interests of residents and not acting in good faith | Commit to acting: <ul style="list-style-type: none"> • in good faith • transparently • honestly • in the best interests of residents • professionally • with respect | No | |
| 79 | Quoting fake law | Give honest interpretations of the law and pay for residents to obtain independent advice when there is a significant dispute about the law | No | |
| | Village redevelopment | | | |
| 80 | Not involving residents from the beginning of planning for village redevelopment | Involve residents from the beginning of planning for village redevelopment | No | |
| 81 | <ul style="list-style-type: none"> • Vague provisions for relocation within or outside the village • Not recognising and guaranteeing residents rights when redeveloping villages | <ul style="list-style-type: none"> • Guarantee a comprehensive list of residents' rights based on a series of no disadvantage (financial or amenity) tests • See the RRVV submission to Consumer Affairs Victoria review of the Owners Corporations Act. | | B2.8 merely commits to including clear provisions in the contract but does not define minimum rights for residents |