

SA retirement village information for residents and prospective residents

Living in a retirement village – dealing with disputes

From time to time complaints and problems may arise between operators and residents in retirement villages. As in other situations, the best way to avoid a dispute is to deal with the problem at an early stage before it escalates into a major issue. You may choose to discuss the problem informally with another resident or your residents' committee before deciding to take the matter further.

The *Retirement Villages Regulations 2017* (the Regulations) require that each village has in place a policy which is applied in the event of a dispute. An operator must ensure there is reasonable consultation with residents of the retirement village in relation to any changes to a village's dispute resolution policy.

A village's dispute resolution policy must include or address at least the following:

- who a resident may contact in the event of a dispute
- how a resident can make a complaint
- how an operator will handle a dispute once a resident makes a complaint, including the timeframe in which an operator will respond
- how a resident may resolve a dispute with another resident
- where a resident may seek advice in the event of a dispute
- that a resident may apply to the South Australian Civil and Administrative Tribunal (the Tribunal) if a resident is not satisfied with a response to the complaint
- a requirement that an operator keeps a written record relating to the dispute
- how an operator will communicate with a resident in response to a complaint
- that the resident has the right to be accompanied by a person chosen by the resident at any meeting held to resolve the dispute
- procedures for varying the dispute resolution policy which provide that variation will only occur with the agreement of a majority of the residents in the retirement village.

The *Retirement Villages Act 2016* (the Act) does not cover disputes between residents. If you have an issue with another resident, you should deal with it in accordance with the relevant provisions of your village's dispute resolution policy.



SA retirement village information for residents and prospective residents

Office for the Ageing mediation

The Office for the Ageing can provide a mediation service, where assistance from an independent third party may help in resolving a dispute. The mediator can provide advice to the parties concerning their rights and obligations under the Act/Regulations, or assistance in preparing an application, should the matter proceed to the Tribunal.

The mediation process can assist the disputing parties to reach agreement by mutual consent. Resolution is preferable because it is not a forced compromise, therefore parties are more likely to be satisfied with the outcome and to fulfil their agreement obligations.

The Tribunal

If a dispute arises between you and the operator of a retirement village, either party is entitled to apply to the Tribunal for resolution of the matter. This legal avenue is more formal than the voluntary dispute resolution processes described above. You must have sufficient evidence to support your allegation and you must also have attempted to resolve the dispute in accordance with the operator's dispute resolution policy. An application must not be made to the Tribunal in relation to an act or omission which occurred more than four years before the day on which the application is made.

The Act, Schedule 1, describes 'Proceedings before the Tribunal'.

Role of the Tribunal

The Tribunal is a separate and independent body providing a prompt and low cost way of resolving disputes.

The Tribunal has the authority to make orders that are legally binding and enforceable. The Tribunal can hear disputes concerning (but not limited to):

- breaches of the residence contract
- breaches of the Act
- harsh or unconscionable conduct by the operator
- full or part payment of an exit entitlement.

The Tribunal cannot hear disputes between residents, or any dispute which is not related to the Act/Regulations or the residence contract.

The Tribunal may refuse to determine an application if it considers that it is appropriate to do so for any reason. The Tribunal is likely to suggest mediation before it will hear a matter.



SA retirement village information for residents and prospective residents

Preparing for a hearing as an applicant

If you believe that you have adequate evidence to support your dispute, you will need to apply to the Tribunal in accordance with the Tribunal's requirements.

Useful information about applying to the Tribunal, hearings and preparation is available on the Tribunal's website at <http://www.sacat.sa.gov.au>. A non-refundable payment is required when you lodge your application. A copy of your residence contract (including the supporting documentation) and residence rules must be attached to your application. Once you have lodged your application, the Tribunal will send you a notice advising of the preliminary hearing date.

Preparing for a hearing as respondent

If you receive a notice that an application has been made to the Tribunal by the operator, you will also receive a copy of that application. You will need to prepare a response to answer the allegation(s) made and you may call witnesses if necessary.

Legal representation

If you want a lawyer to represent you, you must seek leave from the Tribunal. Lawyer involvement is only allowed under certain circumstances. If one party to the dispute is granted approval for legal representation, the other is automatically granted the same opportunity.

Tribunal hearings

Hearings are usually held at The South Australian Civil and Administrative Tribunal located at Level 4, 100 Pirie Street, Adelaide.

One of the Tribunal members will conduct the hearing in a reasonably informal atmosphere. Hearings are open to the public and are electronically recorded. You will be required to make an oath or affirmation at the commencement of the proceedings.

At the preliminary hearing the Tribunal member will:

- decide whether there is a case to answer
- determine whether 'leave' for legal representation is applicable
- ascertain if further information is required from either party.

If the matter is to proceed, a full hearing date will be set. Witnesses will be required to attend the full hearing and the Tribunal will send out further notices advising all parties involved of the date and time. If a witness is reluctant to attend, the Tribunal may issue a summons if necessary.



SA retirement village information for residents and prospective residents

The Tribunal is not bound by the rules of evidence, but still needs to assess the reliability of the evidence. The Tribunal will consider relevant written statements from witnesses. However, it is useful to be aware that evidence may be more persuasive if given in person on oath or affirmation and subjected to questioning by the other party and the Tribunal. In most hearings, the Tribunal Member questions both parties to clarify the issue and what each party has to say about the matter. Any supporting evidence will be considered on merit.

Once all evidence has been presented, the Tribunal makes a determination and may issue an order which is binding and enforceable. In most retirement village matters, this determination is reserved to a later date. This allows the Tribunal Member time to consider all the evidence in detail. A written copy of the order(s) is forwarded to the parties.

If a party to the proceedings fails to attend the hearing and the Tribunal is confident that notice of the hearing has been sent to the correct address, then the matter may proceed in the absence of the person. If for some good reason (e.g. medical illness) a party is unable to attend at the appointed time, the Tribunal Registry should be notified immediately.

Withdrawal of application

If the hearing listed is no longer needed, the Tribunal Registry must be notified as soon as possible, so that all parties can be notified and the scheduled time can be reallocated to another case.

Group applications

Each application to the Tribunal deals with an individual residence contract. If more than one resident has a dispute with an operator it may be possible for the Tribunal to hear these disputes together. Each resident must make his or her own application to the Tribunal and pay the prescribed fee. Within the application residents should request the matters are heard at the same time.

Disclaimer: In developing this information sheet, every effort has been made to ensure that the information reflects the intent of the legislation and/or represents examples of best known practice. The information contained in these resources does not constitute legal advice. The Office for the Ageing recommends that you seek your own legal advice should you require interpretation of the legislation.

For more information

Office for the Ageing
Department for Health and Ageing
PO Box 196, Rundle Mall Adelaide 5000
Telephone: (08) 8204 2420
Email: retirementvillages@sa.gov.au
www.sa.gov.au/seniors/retirementvillages

Public-I2-A1, Jan 2018

© Department for Health and Ageing, Government of South Australia. All rights reserved.



Government
of South Australia

SA Health



www.ausgoal.gov.au/creative-commons



Government
of South Australia

SA Health