

Negotiating with Your Retirement Village Operator

GET ADVICE

The information contained in this factsheet is for general information only and should not be relied upon as advice. It is important to get legal advice that is specific to your circumstances, particularly before you commence any kind of legal action. The Queensland Retirement Village and Park Advice Service (QRVPAS) at Caxton Legal Centre provides free information, advice and assistance to residents and resident committees about the law relating to retirement villages.

Call (07) 3214 6333 to request an appointment with this service.

DISPUTE RESOLUTION

As a resident of a retirement village, your rights and obligations are governed by the terms of your residence contract (including any disclosure documents) in conjunction with the *Retirement Villages Act 1999* (Qld) (Act).

For more information on the dispute resolution process under the Act see our *Disputes and Complaints* factsheet.

NEGOTIATING WITH THE VILLAGE OPERATOR

Whilst living at your retirement village you may experience disputes with the village operator about rights and obligations under the Act and/or your residence contract.

Under the Act, a resident or the village operator may make an application to the Queensland Civil and Administrative Tribunal (QCAT) to resolve a retirement village dispute.

Before commencing proceedings in QCAT there are informal dispute resolution steps you should consider:

1. Attempt informal negotiation by informing the village operator of the issue by writing to them and asking for a response within 21 days.
2. Alternatively, if you are uncomfortable directly approaching the village operator, or you are part of a group of residents with the same dispute, you may wish to ask the residents committee to raise the issue.

If you are not able to resolve the dispute through informal dispute resolution, you can take the following formal dispute resolution steps under the Act:

3. Issue a formal request to the village operator to hold a preliminary negotiation meeting about the dispute.
4. Apply for mediation in QCAT.
5. If you are still unable to resolve the dispute, apply for a QCAT Hearing.

These steps are set out in more detail in our *Disputes and Complaints* factsheet.

The purpose of this factsheet is to provide tips on how to negotiate with the village operator when you are in dispute, including at the preliminary negotiation meeting (step 3 above).

PREPARING FOR A PRELIMINARY NEGOTIATION MEETING

Preparation is critically important.

Gather materials and documents

Your first step should be to gather materials and documents relevant to your matter.

The following documents may be relevant to the dispute:

- your residence contract
- the disclosure documents, either the Prospective Costs Document and Village Comparison Document (for residence contracts entered into after 1 February 2019) or the Public Information Document (for residence contracts entered into before 1 February 2019)
- other relevant materials, for example communications between you and the village operator.

Prepare a written notice to the village operator

You should then draft a formal dispute resolution letter to give written notice to the village operator of the matter/s in dispute. For detailed information on how to prepare this letter, see our *Disputes and Complaints* factsheet.

You should consider getting legal advice before providing this to the village operator.

Get legal advice, know your legal position

Your next step should be to obtain legal advice so that you can understand your legal position. You can seek free advice from QRVPAS or contact a private lawyer.

Understanding your rights and obligations under the Act will give you an idea of the strength of your legal argument, how much bargaining power you will have in negotiations, and assist you to put forward a reasonable resolution to your dispute. It will also assist you to make offers, and consider any offers made by the village operator, during negotiations.

Be clear on what outcome you want to achieve through the negotiation

Once you understand your legal position, it is important to think about what outcome you want from the negotiation.

Generally, it is advisable to have a range of outcomes in mind before commencing a negotiation. You should identify any areas in which you are able to be flexible and any alternatives or options that may be available.

You should decide on the range that is acceptable to you, based on the legal advice you have received, and be prepared to negotiate within that range. Put some time into thinking about what the village operator's

capacity to negotiate might be, the constraints on the village operator and consider whether you can work collaboratively to find a solution that is mutually agreeable.

HOW TO CONDUCT YOURSELF AT THE NEGOTIATION MEETING

Normally, it is highly beneficial to prepare a brief opening statement for the preliminary negotiation. This can simply state the matter/s in dispute and your understanding of the relevant rights and obligations under your residence contract and/or the Act. There is no need to present detailed legal arguments, rather it would be better to focus on your interests and what you want to achieve.

It is important to be courteous and polite during the course of the negotiations. Avoid aggression or disrespectful comments. Listen to what the village operator has to say, and try not to interrupt them while they are speaking.

After you and the village operator have spoken about the matter/s in dispute, you should explain the outcome you are seeking.

Offers, counter offers and agreement

When you make your opening offer, the village operator may choose to accept it, reject it or make an offer of their own, called a counter offer.

If the village operator **accepts your offer**, you will have reached agreement. In order for there to be a binding agreement between you and the village operator to resolve the dispute, there must be both an offer (by you or the village operator) and acceptance by the other party. Additionally, as discussed under Resolution and Settlement below, if your agreement varies your residence contract, the agreement should be in writing and signed by you and the village operator.

If the village operator **rejects the offer**, and does not make a counter offer, the dispute negotiation will be finished and you will need to consider other dispute resolution steps, for example mediation or a hearing in QCAT. You should seek legal advice before taking these steps.

The village operator may **make a counter offer** to resolve the dispute, for example an alternative outcome

to resolve the dispute. You should not feel pressured to accept a counter offer straight away. You can request some time to think about it. If you accept the counter offer, you will have reached agreement and you should formalise it in writing.

You can also choose to make a further counter offer to any offer put to you by the village operator, and this negotiation may continue back and forth in this way until the parties are in agreement or an offer has been rejected.

You should be aware that if you make a counter offer to the village operator, you are effectively rejecting their offer. This means that if they do not accept your counter offer, you cannot then go back to your original offer or an earlier offer made by the village operator. This is why it is important to have a clear understanding of the possible outcomes you are prepared to accept before commencing negotiations, and take time to consider a counter offer that is made.

If you or the village operator have asked for more time to think about an offer, you should agree on a timeframe for a response. After this date the offer will lapse and it can no longer be accepted unless the party making the offer agrees to extend it. If the offer is accepted within the appropriate timeframe it becomes a binding agreement.

Negotiating on a without prejudice basis

Sometimes in a negotiation a party will make an offer on a 'without prejudice' basis. This means that the terms of the offer are private and cannot be used as evidence in any future court or tribunal proceedings. This is usually done where the parties want to reach a quick resolution but don't want to go on record that they are willing to accept less than they might ask for before a court or tribunal.

You should think carefully about whether or not you want to make your offer on a without prejudice basis. Sometimes, where the dispute progresses, it will be in your best interests to freely refer back to genuine efforts to resolve the dispute through reasonable offers you made during negotiations. However, there may be some instances where it would be advisable to make an offer on a without prejudice basis.

We recommend seeking legal advice about whether or not you should make your offer on a without prejudice basis.

If you want to make a without prejudice offer verbally, you should say 'this offer is made without prejudice'. If the without prejudice offer is made in writing, it should be clearly marked with the words 'without prejudice' above the offer.

RESOLUTION AND SETTLEMENT

Once a resolution has been reached, the agreement should ideally be recorded in writing. It is possible to enforce a verbal agreement as a contract, but it will be much more straightforward if you and the village operator put the agreement in writing and sign it.

If the agreement reached with the village operator changes your residence contract, the Act says it should be a written contract signed by you and the village operator. Without written agreement, your existing residence contract will not be changed.

The residence contract variation may be a simple document that states the parties names and the agreed residence contract variation.

The village operator may also wish to provide a more formal document called a Settlement Agreement or a Deed of Settlement. A formal agreement is likely to contain a number of standard terms such as:

- full and final settlement—by signing the agreement you are agreeing that the matter is at a close and that you will not take any further legal action in relation to the dispute
- confidentiality—the village operator will usually require that you keep the terms of the agreement confidential. This means that you will not be able to talk about the dispute or how it was resolved other than to say that it has been resolved on confidential terms
- non-disparagement—often there is a requirement that neither you or the village operator do or say anything to disparage or bring the other into disrepute.

You may wish to obtain legal advice before signing any written agreement so that you understand your rights and obligations under it.

If you reach a settlement that includes a sum of compensation, you may wish to discuss any tax implications with your accountant. If you receive any money from Centrelink, you should contact Centrelink and discuss the resolution with them. You should ensure that the written agreement allows you to take these steps. Again, seek legal advice if you are unsure.

It is important to respect and keep the terms of any agreement you have signed, as it will be a legally enforceable contract between you and the village operator.

OTHER THINGS TO CONSIDER

Generally speaking, it is advisable to try and reach an informal, amicable resolution with the village operator before considering more formal or public methods of resolving the dispute.

Proceedings in QCAT are likely to be lengthy, stressful, time consuming and require the payment of filing fees (unless you are able to apply for a fee waiver).

You may wish to consider a complaint to Regulatory Services if the dispute negotiation is unsuccessful. See our *Making a Complaint to Regulatory Services* factsheet for more information.

If other residents are also in dispute with the village operator over the same issue, you may wish to engage in any dispute resolution as a group. This may be an informal and less public way of improving your bargaining position. See our *Dispute Resolution as a Member of a Group* publication for more information.

Caxton Legal Centre Inc.

© Copyright Caxton Legal Centre Inc.

1 Manning Street

South Brisbane Qld 4101

Telephone: (07) 3214 6333

Facsimile: (07) 3846 7483

Internet: www.caxton.org.au

Know Your Rights! www.queenslandlawhandbook.org.au

This information is current at September 2020.

Disclaimer

This information is intended only as a guide. It is not a substitute for legal advice.

No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.