

Complaint Management 101: Legal Requirements and Strategies for Retirement Home Owners and Managers

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If you are an owner or manager of a retirement home it is likely you have received or will receive a complaint. It may be a complaint from a resident about missing personal items, a complaint from a resident's family member about how a resident is being treated by an employee, or a complaint by an employee about harassment by another employee. It might even be a complaint against the retirement home by an employee or a resident alleging discrimination. Regardless of the type of complaint, having a transparent, written complaint procedure will assist in dealing with the complaint quickly and effectively while minimizing exposure to legal risks and liability.



Must Every Retirement Home Have A Complaints Procedure?

In some jurisdictions having a written complaint procedure is a legal obligation. For example, in Ontario a long term care home is required by the *Long-Term Care Homes Act, 2007* (the "Act") to have a written procedure for receiving and addressing complaints relating to residents. The Act also sets out when an investigation is required, the time period for responding to a complaint, and what information must be communicated to the complainant in response to the complaint. Similar regulations are being developed under the newly enacted *Ontario Retirement Homes Act, 2010*, which will also require a retirement home operator in Ontario to establish and implement a complaint process to deal with complaints relating to resident care

and accommodation issues.

The requirement to establish a complaint procedure to respond to workplace-related issues, such as a workplace safety-related complaint initiated by a worker, is typically set out in health and safety legislation. For example, in Ontario, an employer is required by law to develop a policy and program for reporting complaints relating to violence and harassment in the workplace. The employer's program must include procedures for investigating and responding to complaints and all workers must receive instruction about how the complaint program operates.

How Does A Complaints Procedure Help Minimize A Home Care Operator's Risk?

Regardless whether there is a *legal* requirement to establish a complaint procedure in a particular jurisdiction, taking the time to develop a complaint procedure that includes a framework to promptly investigate and respond to a complaint can help minimize legal risks.

- Failure to promptly address an isolated complaint may result in a series of similar complaints, as well as a civil claim against the retirement home or an investigation by a government labour or health regulator, or both. In either case, the potential for harm to the retirement home is high, not only in terms of financial penalty, but also in terms of harm to reputation and loss of good will.
- Defending a legal action or responding to a government investigation interrupts day- to-day operations and requires staff resources to be diverted from caring for residents and operating the business to responding to requests from lawyers and government investigators.
- Establishing a complaint policy helps improve the quality of care and services provided to residents by enabling the operator to learn about problems that might otherwise remain unreported and undiscovered. The investigation process provides an opportunity to gather valuable information which can be used to prevent future complaints and make operational changes directed at improving facilities and services.
- A complaint process that facilitates early and effective investigation and resolution of workplace-related complaints by employees can help reduce the risk of constructive dismissal and human rights complaints. These types of complaints often involve allegations of a pattern of conduct over a prolonged period of time.

What to Consider When Developing A Complaints Procedure

When developing a complaint protocol, be sure to consider the following issues:

- How will a complaint be received
- What steps will be taken to acknowledge receipt of the complaint
- The time period, if required, for responding to a complaint (the time period for responding to certain types of complaints may be mandated by legislation in some jurisdictions)
- The procedures for conducting an investigation
- What information will be communicated to the complainant and the alleged offender in response to the complaint
- Whether privilege will be claimed with respect to any reports generated in the course of investigating the complaint

It is also important to set out in the complaint protocol that a person making a complaint will not be subject to retaliation or negative consequences for making a complaint in good faith, and that a reprisal by an employee against a person making a complaint will not be tolerated and may result in disciplinary action up to and including termination of employment for cause.

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