

2018

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Justice, Consumer Affairs and Road Safety)

# Retirement Villages Legislation Amendment Bill 2018

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J2017-489

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

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(As presented)

(Minister for Justice, Consumer Affairs and Road Safety)

# **Retirement Villages Legislation Amendment Bill 2018**

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## **A Bill for**

An Act to amend legislation about retirement villages, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Retirement Villages Legislation Amendment Act 2018*.

4 **2 Commencement**

5 (1) This Act commences on a day fixed by the Minister by written notice.

6 *Note 1* The naming and commencement provisions automatically commence on  
7 the notification day (see [Legislation Act](#), s 75 (1)).

8 *Note 2* A single day or time may be fixed, or different days or times may be  
9 fixed, for the commencement of different provisions (see [Legislation Act](#),  
10 s 77 (1)).

11 (2) If this Act has not commenced within 12 months beginning on its  
12 notification day, it automatically commences on the first day after that  
13 period.

14 (3) The [Legislation Act](#), section 79 (Automatic commencement of  
15 postponed law) does not apply to this Act.

16 **3 Legislation amended**

17 This Act amends the following legislation:

- 18 • [Civil Law \(Sale of Residential Property\) Act 2003](#)
- 19 • [Human Rights Commission Act 2005](#)
- 20 • [Retirement Villages Act 2012](#)
- 21 • [Retirement Villages Regulation 2013](#)
- 22 • [Unit Titles \(Management\) Act 2011](#).

1 **Part 2** **Civil Law (Sale of Residential**  
2 **Property) Act 2003**

3 **4** **Definitions for pt 2**  
4 **Section 7, new definition of *units plan***

5 *insert*

6 *units plan*—see the *Unit Titles Act 2001*, section 7.

7 **5** **Proposed contract etc to be available for inspection**  
8 **Section 10 (1)**

9 *after*

10 residential property

11 *insert*

12 (other than a unit in a retirement village)

13 **6** **New section 10A**

14 *insert*

15 **10A** **Certain documents etc to be available—sale of unit in**  
16 **retirement village**

- 17 (1) A seller of a unit in a retirement village commits an offence if all the  
18 initial required documents for the unit are not available for inspection  
19 by a prospective buyer (or an agent for a prospective buyer) at all  
20 reasonable times when an offer to buy the property may be made to  
21 the seller.

22 Maximum penalty: 10 penalty units.

- 23 (2) A seller of a unit in a retirement village must make the later required  
24 documents available for inspection by a prospective buyer not later  
25 than 14 days before the day the contract is made, unless the  
26 prospective buyer agrees otherwise.

- 1 (3) However, if a prospective buyer asks, in writing, to inspect a later  
2 required document earlier than required under subsection (2), the  
3 seller must make the document available for inspection by the later  
4 of—
- 5 (a) the day requested; and  
6 (b) 14 days after the request is made.
- 7 (4) The seller of a unit in a retirement village commits an offence if the  
8 seller does not make a later required document available for  
9 inspection by a prospective buyer (or an agent of the prospective  
10 buyer) in accordance with subsection (2) or (3).
- 11 Maximum penalty: 10 penalty units.
- 12 (5) Subsections (1) and (4) do not apply in relation to a failure by a seller  
13 to make the initial required documents and later required documents  
14 (the *relevant required documents*) available for inspection by a  
15 prospective buyer if—
- 16 (a) the seller engaged a lawyer to prepare the proposed contract for  
17 the sale of the property; and
- 18 (b) the lawyer did not give the seller all the relevant required  
19 documents to which the failure relates; and
- 20 (c) the seller believed on reasonable grounds that the seller had  
21 received all the relevant required documents; and
- 22 (d) the seller made all the relevant required documents given to the  
23 seller by the lawyer available for inspection under  
24 subsection (1), (2) or (3).
- 25 (6) An offence against this section is a strict liability offence.
- 26 (7) In this section:
- 27 *initial required documents*, for a unit in a retirement village, means  
28 a copy of the following documents mentioned in section 9 (1):
- 29 (a) paragraphs (a) to (c);



- 1 (b) paragraph (e);  
2 (c) paragraph (g) (i) (A) and (ii);  
3 (d) paragraphs (i) and (j);  
4 (e) any other document prescribed by regulation.
- 5 ***later required documents***, for a unit in a retirement village, means a  
6 copy of—
- 7 (a) the following documents mentioned in section 9 (1):
- 8 (i) paragraph (d);  
9 (ii) paragraph (f);  
10 (iii) paragraph (g) (iii);  
11 (iv) paragraph (h) (i), (ii) and (v); and
- 12 (b) the unit title certificate for the unit dated not earlier than  
13 3 months before the day the contract for the sale of the unit is  
14 made; and
- 15 (c) for the sale of a class B unit in a retirement village—
- 16 (i) a building and compliance inspection report from an  
17 inspection carried out not earlier than 3 months before the  
18 day the contract for the sale of the unit is made; and
- 19 (ii) if the unit has been occupied—a pest inspection report  
20 from an inspection carried out not earlier than 3 months  
21 before the day the contract for the sale of the unit is made;  
22 and
- 23 (d) any other document prescribed by regulation.

1 **7** **Certain conditions to be included in contract**  
2 **Section 11 (1) (i)**

3 *substitute*

- 4 (i) the following required documents for the sale form part of the  
5 contract:
- 6 (i) for the sale of a unit in a retirement village—the initial  
7 required documents and the later required documents  
8 mentioned in section 10A (7);
- 9 (ii) in any other case—the required documents mentioned in  
10 section 9 (1) (a) to (k).

11 **8** **Buyer to reimburse seller for cost of certain reports**  
12 **Section 18 (1)**

13 *substitute*

- 14 (1) On completion of a contract for the sale of residential property, the  
15 seller is entitled to reimbursement from the buyer for the cost of  
16 obtaining the following reports for the contract:
- 17 (a) a building and compliance inspection report required under  
18 section 9 (1) (h) (iii) or section 10A (or, if the seller obtained  
19 more than 1 report, the first report);
- 20 (b) a pest inspection report required under section 9 (1) (h) (iv) or  
21 section 10A (or, if the seller obtained more than 1 report, the  
22 first report).

1 **9 Compensation to buyer for false report etc**  
2 **Section 19 (1) (b)**

3 *substitute*

4 (b) a statement or report mentioned in section 9 (1) (h) (ii), (iii)  
5 or (iv) or in section 10A (7), definition of *later required*  
6 *documents*, paragraph (a) (iv), (c) (i) or (ii), is made available  
7 to the buyer; and  
8

1 **Part 3** **Human Rights Commission**  
2 **Act 2005**

3 **10** **When may someone complain about a service for older**  
4 **people?**  
5 **Section 41 (b) (iii)**

6 *substitute*

7 (iii) the *Retirement Villages Act 2012*;

8 (iv) any other standard prescribed by regulation; or

9 **11** **Commission's obligation to be prompt and efficient**  
10 **New section 45 (2) (da)**

11 *insert*

12 (da) if the complaint relates to a service provided by the operator of  
13 a retirement village under the *Retirement Villages Act 2012* and  
14 the commission decides not to refer the complaint for  
15 conciliation—tell the complainant, in writing, that the complaint  
16 will not be referred for conciliation and include a retirement  
17 village referral statement with the notice; and

18 **12** **New division 4.2B**

19 *insert*

20 **Division 4.2B** **Certain older people service**  
21 **complaints to ACAT**

22 **53F** **Definitions—div 4.2B**

23 In this division:

24 *person complained about* means the operator of a retirement village  
25 under the *Retirement Villages Act 2012*, section 7.

1            *retirement village complaint*—see section 53G.

2        **53G        Application—div 4.2B**

3            This division applies to an older person service complaint that relates  
4            to a service provided by the operator of a retirement village under the  
5            *Retirement Villages Act 2012* (a *retirement village complaint*).

6        **53H        Retirement village complaints—referral**

7            (1) This section applies if—

8            (a) either—

9                    (i) a complainant is given a retirement village referral  
10                    statement under section 45 (2) (da) (Commission’s  
11                    obligation to be prompt and efficient); or

12                    (ii) a statement under section 82A (1) (Closing retirement  
13                    village complaints) is included in a final report in relation  
14                    to a complaint; and

15            (b) within 60 days after the day the statement is given, the  
16            complainant requires the commission to refer the complaint to  
17            the ACAT.

18            (2) The commission must—

19            (a) refer the complaint to the ACAT; and

20            (b) tell the complainant and the person complained about, in  
21            writing, about the referral.

22            *Note*        The commission must also close the complaint (see s 78 (2) (d)).

- 1 **53I Retirement village complaints—late application in**  
2 **exceptional circumstances**
- 3 (1) This section applies if—
- 4 (a) a complainant has been given a statement under  
5 section 45 (2) (da) (Commission’s obligation to be prompt and  
6 efficient) or section 82A (1) (Closing retirement village  
7 complaints); and
- 8 (b) the complainant has not required the commission to refer the  
9 complaint to the ACAT within 60 days after the day the  
10 statement is given to the complainant.
- 11 (2) The complainant may apply to the ACAT for the complaint to be  
12 heard by the ACAT.
- 13 (3) The ACAT may grant the application only if satisfied on reasonable  
14 grounds that exceptional circumstances prevented the complainant  
15 from requiring the complaint to be referred to the ACAT within the  
16 60-day period.
- 17 (4) If the ACAT grants the application, the complaint is, for this Act,  
18 taken to have been referred to the ACAT.
- 19 **53J Retirement village complaints—parties to ACAT**  
20 **proceeding**
- 21 The following are parties to a complaint referred to the ACAT under  
22 this division:
- 23 (a) the complainant;
- 24 (b) the person complained about;
- 25 (c) if, on application by the commission, the ACAT joins the  
26 commission as a party to the complaint—the commission.

1   **53K       Retirement village complaints—ACAT jurisdiction**

2           The ACAT has the same jurisdiction in relation to a retirement village  
3           complaint referred to the ACAT under this division as that provided  
4           for in the *Retirement Villages Act 2012*, section 177 (ACAT  
5           jurisdiction).

6   **53L       Retirement village complaints—commission to give  
7           information etc to ACAT**

8           The commission must give the ACAT (if asked by it) any information  
9           or copies of documents in relation to a complaint referred to the  
10          ACAT under this division, other than—

- 11          (a) a communication or document to which section 66  
12             (Admissibility of evidence) applies; or
- 13          (b) information, a document or something else relevant to a  
14             consideration in relation to a complaint given to the commission  
15             under section 73 (Power to ask for information, documents and  
16             other things); or
- 17          (c) information given to the commission under section 74  
18             (Requiring attendance etc).

19   **53M       Retirement village complaints—ACAT orders**

- 20          (1) This section applies if—
- 21             (a) the commission refers a complaint to the ACAT under this  
22             division; and
- 23             (b) the ACAT is satisfied that the person complained about engaged  
24             in an unlawful act.
- 25          (2) The ACAT may make 1 or more of the orders mentioned in the  
26             *Retirement Villages Act 2012*, section 181 (ACAT orders).

1 **53N Retirement village complaints—no monetary limit on**  
2 **jurisdiction of ACAT**

3 The ACAT is not, in exercising the jurisdiction conferred on it by this  
4 division, limited in the amount of money that it may order to be paid.

5 **53O Retirement village complaints—other options for dispute**  
6 **resolution**

7 Nothing in this division requires a complainant to attempt to resolve  
8 a complaint under the *Retirement Villages Act 2012* before making a  
9 complaint under this Act.

10 **13 Conciliated agreements**  
11 **Section 62 (3) (b) and (4)**

12 *after*

13 discrimination complaint

14 *insert*

15 or retirement village complaint

16 **14 When complaints can be closed**  
17 **Section 78 (2) (d)**

18 *after*

19 discrimination complaint

20 *insert*

21 or retirement village complaint



**15 New section 82A**

*insert*

**82A Closing retirement village complaints**

- (1) The final report in relation to a retirement village complaint must include a retirement village referral statement.

*Note* **Retirement village referral statement**—see s 88A.

- (2) However, subsection (1) does not apply if—

- (a) the parties to the complaint have made a conciliation agreement in relation to the complaint; or  
(b) the complainant has withdrawn the complaint.

- (3) This section is additional to the other requirements of this Act for a final report.

**16 New section 88A**

*in part 4, insert*

**88A Retirement village referral statements**

A **retirement village referral statement** is a statement in a notice in relation to a retirement village complaint to the effect that—

- (a) the commission has closed the complaint; and  
(b) the complainant may ask the commission to refer the complaint to the ACAT within 60 days after the day the notice is given to the complainant; and  
(c) after the 60-day period, the complainant may apply to the ACAT under section 53I (Retirement village complaints—late application in exceptional circumstances) for the complaint to be heard.

*Note* The commission must refer the complaint to the ACAT if the complainant asks it to refer the complaint within the 60-day period (see s 53H).

1 **17 Dictionary, new definitions**

2 *insert*

3 *operator*, of a retirement village—see the *Retirement Villages*  
4 *Act 2012*, section 7.

5 *person complained about*, for division 4.2B (Certain older people  
6 service complaints to ACAT)—see section 53F.

7 *retirement village complaint*, for division 4.2B (Certain older people  
8 service complaints to ACAT)—see section 53G.

9 *retirement village referral statement*—see section 88A.

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## Part 4 Retirement Villages Act 2012

### 18 Residents committees and organisations Section 103 (1) and (2)

*substitute*

- (1) The residents of a retirement village may consent to the establishment of a residents committee for the village.
- (2) The residents committee for a retirement village—
- (a) if the retirement village is subject to a units plan—is the executive committee of the owners corporation for the units plan; or
  - (b) in any other case—must be elected by the residents.

### 19 New section 103 (11)

*insert*

- (11) In this section:

*executive committee*, of an owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

### 20 Membership of residents committee New section 104 (5)

*insert*

- (5) This section does not apply to a residents committee for a retirement village that is subject to a units plan.

- 1 **21 Meetings of residents**  
2 **Section 112 (3)**
- 3 *substitute*
- 4 (3) If 2 or more residents occupy the same residential premises in the  
5 village—
- 6 (a) each of them may attend a meeting mentioned in subsection (1);  
7 but
- 8 (b) only 1 of them may vote on a matter mentioned in  
9 subsection (1).
- 10 (3A) Despite subsection (3), the residents of a retirement village may, by  
11 special resolution at a meeting, consent to each resident occupying  
12 the same residential premises having a separate vote at the meeting,  
13 on a matter mentioned in subsection (1).
- 14 (3B) Subsections (3) and (3A) do not apply to the residents of a retirement  
15 village that is subject to a units plan.
- 16 *Note* For voting procedures for residents of a retirement village that is subject  
17 to a units plan, see the *Unit Titles (Management) Act 2011*, sch 3, s 3.22.
- 18 **22 Section 112 (4)**
- 19 *omit*
- 20 must not
- 21 *substitute*
- 22 may

- 1 **23 Proxies**  
2 **Section 116 (3), note**
- 3 *omit*
- 4 **24 New section 116 (7)**
- 5 *insert*
- 6 (7) This section does not apply to residents of a retirement village that is  
7 subject to a units plan.
- 8 *Note* For proxy votes for residents of a retirement village that is subject to a  
9 units plan, see the *Unit Titles (Management) Act 2011*, sch 3, s 3.26.
- 10 **25 Certain limitations on proxies**  
11 **New section 117 (4)**
- 12 *insert*
- 13 (4) This section does not apply to residents of a retirement village that is  
14 subject to a units plan.
- 15 *Note* For proxy votes for residents of a retirement village that is subject to a  
16 units plan, see the *Unit Titles (Management) Act 2011*, sch 3, s 3.26.
- 17 **26 Definitions—div 7.2**  
18 **Section 135 (1), definition of *capital item*,**  
19 **paragraph (a) (iii)**
- 20 *substitute*
- 21 (iii) any part of a building or structure in the village, including  
22 any part of a building or structure in a community area,  
23 amenity area, service area or access area; and

- 1 **27 Section 135 (1), definition of *capital replacement*,**  
2 **paragraph (b)**
- 3 *substitute*
- 4 (b) does not include—
- 5 (i) capital maintenance; or
- 6 (ii) replacing a part of a capital item (unless replacing the part  
7 substantially improves, adds to or alters the capital item).

8 **28 New section 136A**

9 *insert*

- 10 **136A Capital maintenance and replacement guidelines**
- 11 (1) The Minister may make guidelines in relation to this division.
- 12 (2) Without limiting subsection (1), a guideline may make provision in  
13 relation to the following:
- 14 (a) the operation of this division;
- 15 (b) the classification of, including the distinction between, capital  
16 maintenance and capital replacement.
- 17 (3) A guideline is a notifiable instrument.
- 18 *Note* A notifiable instrument must be notified under the [Legislation Act](#).

- 19 **29 Amendment of recurrent charges**  
20 **Section 148 (2) (a)**
- 21 *omit*
- 22 12-month period
- 23 *substitute*
- 24 financial year

1 **30 Recurrent charges amended otherwise than by fixed**  
2 **formula**  
3 **Section 150 (2)**

4 *substitute*

- 5 (2) The operator of a retirement village must give a resident of the village  
6 written notice of a proposed amendment of recurrent charges under  
7 this section—
- 8 (a) on a day, at least 30 days before the day the proposed  
9 amendment takes effect, agreed to by the operator and the  
10 residents; or
- 11 (b) if no day is agreed—at least 60 days before the day the proposed  
12 amendment takes effect; or
- 13 (c) if a regulation prescribes another time—at the prescribed time.

14 **31 Proposed annual budget**  
15 **New section 159 (3A)**

16 *insert*

- 17 (3A) If the retirement village is subject to a units plan, the operator must  
18 ensure that a copy of the general fund budget for a financial year,  
19 required for the annual general meeting of the owners corporation  
20 under the *Unit Titles (Management) Act 2011*, section 75, is given to  
21 the residents of the village at the same time as the copy of the  
22 proposed annual budget for the year.

- 1 **32 Residents' consent to spending**  
2 **New section 162 (8A)**
- 3 *insert*
- 4 (8A) The requirements in this section are in addition to the requirements  
5 that the operator of a retirement village that is subject to a units plan  
6 must comply with under the *Unit Titles (Management) Act 2011*,  
7 section 17 (Owners corporation—general meetings) in relation to a  
8 general meeting of the owners corporation for the village.
- 9 **33 Section 175**
- 10 *substitute*
- 11 **175 Other options for dispute resolution**
- 12 Nothing in this part requires a resident to attempt to resolve a dispute  
13 under this Act before making a complaint under the *Human Rights*  
14 *Commission Act 2005*.
- 15 **34 Dispute between operator and resident—notice to dispute**  
16 **committee**  
17 **Section 175B, note**
- 18 *substitute*
- 19 *Note* The disability and community services commissioner can deal with  
20 complaints about services for older people (including a complaint about  
21 a service provided by the operator of a retirement village) under the  
22 *Human Rights Commission Act 2005*, s 42. A retirement village  
23 complaint that leads to a conciliation agreement is enforceable as if it  
24 were an order of the ACAT (see *Human Rights Commission Act 2005*,  
25 s 62)



1 **35 Informal resolution of dispute**  
2 **Section 178 (2), new note**

3 *insert*

4 *Note* A resident need not use the dispute resolution procedures in this division  
5 before pursuing a retirement village complaint under the *Human Rights*  
6 *Commission Act 2005* (see s 175).

1 **Part 5 Retirement Villages**  
2 **Regulation 2013**

3 **36 Special resolution—notice**  
4 **Schedule 4, new section 4.8 (2A)**

5 *insert*

6 (2A) However, for a vote under the [Act](#), section 112 (3A), at least 14 days  
7 written notice of the meeting must be given to each resident of the  
8 village.

9 *Note* Under the [Act](#), s 112 (3A), residents of a village may vote at a meeting to  
10 allow each resident occupying the same residential premises to have a  
11 separate vote at the meeting.

12 **37 Special resolution—quorum**  
13 **Schedule 4, section 4.10 (2)**

14 *substitute*

15 (2) A quorum is made up by 1 of the following:

- 16 (a) for a village that is subject to a units plan—a minimum of 1/3 of  
17 the qualified voters in the units plan;
- 18 (b) for a village that has fewer than 10 occupied residential  
19 premises—the qualified voters from a majority of the occupied  
20 premises;
- 21 (c) in any other case—a minimum of 5 qualified voters, or 1/2 of  
22 qualified voters (whichever is the greater).

1 **Part 6** **Unit Titles (Management)**  
2 **Act 2011**

3 **38 General fund—budget**  
4 **New section 75 (5)**

5 *insert*

- 6 (5) An owners corporation is not required to obtain approval for the  
7 general fund budget in the time mentioned in this section if—
- 8 (a) the annual general meeting is for an owners corporation of a  
9 retirement village; and
- 10 (b) a copy of the general fund budget for a financial year is given to  
11 the residents of the village at the same time as the proposed  
12 annual budget under the *Retirement Villages Act 2012*,  
13 section 159 (Proposed annual budget) is given to the residents  
14 of the village; and
- 15 (c) the owners corporation by ordinary resolution, approves the  
16 general fund budget in the time mentioned in the *Retirement*  
17 *Villages Act 2012*, section 162 (6).

18 **39 Owners corporation may amend rules**  
19 **New section 108 (2A)**

20 *insert*

- 21 (2A) In particular, the owners corporation of a retirement village may  
22 amend its rules to make provision in relation to any of the following:
- 23 (a) people other than residents or employees of the retirement  
24 village living in the village;
- 25 (b) visitors, including overnight or short-stay guests;
- 26 (c) the making of noise;
- 27 (d) the parking of motor vehicles;

- 1 (e) the disposal of garbage;
- 2 (f) the keeping of pets;
- 3 (g) gardening and landscaping;
- 4 (h) the use and operation of services or facilities (including
- 5 restrictions on their use);
- 6 (i) security in the retirement village;
- 7 (j) the external appearance of residents' premises.

8 **40 Notice of general meetings**

9 **Schedule 3, new section 3.6 (3)**

10 *insert*

- 11 (3) However, if the notice of the annual general meeting is for a units
- 12 plan that is a retirement village—
- 13 (a) subsection (2) does not apply; and
- 14 (b) the executive committee of the owners corporation must give the
- 15 notice in the time mentioned in the *Retirement Villages*
- 16 *Act 2012*, section 159 (1) (Proposed annual budget).

17 **41 Requirements for notice of general meetings**

18 **Schedule 3, new section 3.7 (3) (c)**

19 *insert*

- 20 (c) if the notice is for the annual general meeting of a units plan that
- 21 is a retirement village—the proposed annual budget and the
- 22 statements required under the *Retirement Villages Act 2012*,
- 23 section 159.

1 **42 Quorum at a general meeting—owners corporation with**  
2 **3 or more members**  
3 **Schedule 3, section 3.9 (1) (a)**

4 *substitute*

5 (a) a quorum (a *standard quorum*) made up by 1 of the following:

6 (i) for a units plan that is a retirement village—people entitled  
7 to vote (on the motion) in relation to not less than  $\frac{1}{3}$  the  
8 total number of units;

9 (ii) in any other case—people entitled to vote (on the motion)  
10 in relation to not less than  $\frac{1}{2}$  the total number of units; or

11 **43 Dictionary, new definition of *retirement village***

12 *insert*

13 *retirement village*—see the [Retirement Villages Act 2012](#), section 10.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 29 November 2018.

**2 Notification**

Notified under the [Legislation Act](#) on 2018.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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