

# Appendix 1

## **OVERVIEW OF ALL PROPOSED VARIATIONS TO THE CODE OF PRACTICE 2008**

ALL CHANGES FROM THE CURRENT  
WORDING ARE SHOWN IN ITALICS

CODE OF PRACTICE 2008 (CLAUSE)	CURRENT WORDING	WORDING PROPOSED BY RESIDENTS
<b>Fire protection and emergency management</b>		
<p>Clause 22: Fire and accidental damage</p>	<p>22(1) In this clause a reference to an operator includes a body corporate where the retirement village is a unit title development.</p> <p><b>Insurance cover</b></p> <p>22(2) The operator must take out and keep in force a comprehensive insurance policy, or must ensure that a policy is taken out and kept in force. The policy must cover accidental physical loss or damage to retirement village property, including residential units that are owned by residents. The policy must be for full replacement to the satisfaction of the statutory supervisor (if there is one).</p> <p>22(3) Where operators are responsible for the insurance, they</p> <ul style="list-style-type: none"> <li>a) may include business interruption, temporary accommodation insurance, and adequate liability insurances</li> <li>b) must inform the resident what cover is provided in circumstances where the operator is unable to obtain full reinstatement insurance.</li> </ul>	<p>No change to current wording with the exception of clause 22(7)(c), as follows (over page).</p>

**WORDING PROPOSED BY THE  
RETIREMENT VILLAGES ASSOCIATION**

**WORDING PROPOSED BY THE  
DEPARTMENT OF BUILDING AND HOUSING**

22(1) In this clause a reference to an operator includes a body corporate where the retirement village is a unit title development.

**Insurance cover**

22(2) The operator must take out and keep in force a comprehensive insurance policy, or must ensure that a policy is taken out and kept in force. The policy must cover accidental physical loss or damage to retirement village property, including residential units that are owned by residents. The policy must be for full replacement to the satisfaction of the statutory supervisor (if there is one).

22(3) Where operators are responsible for the insurance, they

- a) may include business interruption, temporary accommodation insurance, and adequate liability insurances *and the operator must disclose to the resident whether or not it has any such insurances*
- b) must inform the resident what cover is provided in circumstances where the operator is unable to obtain full reinstatement insurance.

Clause 22(1) deleted, clause 22(2) and 22(3) renumbered.

**Insurance cover**

22(1) The operator must take out and keep in force *insurance policies which provide adequate coverage for the retirement village*, or must ensure that the insurance policies are taken out and kept in force, to the *satisfaction of the statutory supervisor (if there is one)*. *Where the retirement village is a unit title development, one or more of the policies may be taken out and kept in force by the body corporate.*

22(2) *The insurance policies must:*

- a) *cover fire and accidental physical loss or damage to retirement village property (including all amenities and utilities within the retirement village boundary and units subject to occupation right agreements) and any residential units that are owned by residents, for full replacement*
- b) *provide business interruption insurance to the operator to cover loss of income from the retirement village for a minimum of 18 months*
- c) *provide adequate liability insurances*
- d) *meet any other insurance required by law.*

CODE OF PRACTICE 2008 (CLAUSE)	CURRENT WORDING	WORDING PROPOSED BY RESIDENTS
<p>Clause 22: Fire and accidental damage (continued)</p>	<p>22(4) Insurance policies must state the:</p> <ul style="list-style-type: none"> <li>a) responsibilities and liabilities each of the operator, residents, and statutory supervisor (if there is one), as the insured parties</li> <li>b) dollar amount of the excess an operator has to pay if a claim is made</li> <li>c) any exclusions of insurance cover for the insurance policy.</li> </ul> <p>22(5) The operator’s insurance policies must:</p> <ul style="list-style-type: none"> <li>a) be clear about the operator’s and the resident’s responsibilities for insuring the contents of the residential unit. The policy must reflect what is written in the occupation right agreement and include any capital improvements or additional fittings provided by the resident</li> <li>b) be available for residents to view on request.</li> </ul> <p>22(6) Operators must inform the residents whether they pass on the excess payments to the resident.</p>	

WORDING PROPOSED BY THE RETIREMENT VILLAGES ASSOCIATION	WORDING PROPOSED BY THE DEPARTMENT OF BUILDING AND HOUSING
<p>22(4) Insurance policies must state the:</p> <ul style="list-style-type: none"> <li>a) responsibilities and liabilities each of the operator, residents, and statutory supervisor (if there is one), as the insured parties</li> <li>b) dollar amount of the excess an operator has to pay if a claim is made</li> <li>c) any exclusions of insurance cover for the insurance policy.</li> </ul> <p>22(5) The operator’s insurance policies must:</p> <ul style="list-style-type: none"> <li>a) be clear about the operator’s and the resident’s responsibilities for insuring the contents of the residential unit. The policy must reflect what is written in the occupation right agreement and include any capital improvements or additional fittings provided by the resident</li> <li>b) be available for residents to view on request.</li> </ul> <p>22(6) Operators must inform the residents whether they pass on the excess payments to the resident.</p>	<p><i>22(3) The operator must ensure that the insurance valuation of the retirement village property is updated at least every two years. Indemnity insurance is permitted if full replacement insurance is not available. The operator must inform the residents what cover is provided in circumstances where the operator is unable to obtain full replacement insurance.</i></p> <p>22(4) The insurance policies must state the:</p> <ul style="list-style-type: none"> <li>a) responsibilities and liabilities each of the operator, residents, and statutory supervisor (if there is one), as the insured parties</li> <li>b) dollar amount of the excess an operator has to pay if a claim is made</li> <li>c) any exclusions of insurance cover for the insurance policy.</li> </ul> <p>22(5) The operator’s insurance policies must:</p> <ul style="list-style-type: none"> <li>a) reflect what is written in the occupation right agreement and include any capital improvements or additional <i>fixtures</i> and fittings provided by the resident.</li> <li>b) be available for residents to view at <i>the annual general meeting of residents</i>, and on request</li> </ul> <p>22(6) Operators must inform the residents whether <i>or not</i> they pass on <i>any insurance policy excess amount</i> to the resident.</p>

CODE OF PRACTICE 2008 (CLAUSE)	CURRENT WORDING	WORDING PROPOSED BY RESIDENTS
<p>Clause 22: Fire and accidental damage (continued)</p>	<p><b>Repair or reinstatement of property</b>            22(7) The occupation right agreement for a residential unit that is owned by an operator must:</p> <ul style="list-style-type: none"> <li>a) provide that, except in certain specified circumstances (if any), if the unit is damaged or destroyed the operator must fully repair or replace it as soon as practicable</li> <li>b) state the circumstances (if any) when a unit that is damaged or destroyed may not be full repaired or replaced</li> <li>c) state the procedure to be followed if the unit is not to be fully repaired or replaced if it is damaged or destroyed</li> </ul>	<p><b>Repair or reinstatement of property</b>            No change</p> <p>No change</p> <p>No change</p> <p><i>(c) state that if the residential unit cannot be replaced following an insurable event, that upon termination of the occupation right agreement, the resident will receive:</i></p> <ul style="list-style-type: none"> <li><i>i) the full insurance proceeds paid to the operator for that residential unit</i></li> </ul> <p><i>OR</i></p> <ul style="list-style-type: none"> <li><i>ii) the original capital sum paid by the resident for the right to occupy</i></li> </ul> <p><i>whichever is the greater, without any capital or other deductions normally made on the termination of the occupation right agreement.</i></p>

WORDING PROPOSED BY THE RETIREMENT VILLAGES ASSOCIATION	WORDING PROPOSED BY THE DEPARTMENT OF BUILDING AND HOUSING
<p>Repair or reinstatement of property  <del>[DELETED]</del> – see clause 47</p>	<p><i>22(7) The resident is responsible for insuring the contents of the residential unit, and may (but is not required to) take out any contents insurance policy they consider appropriate.</i></p> <p>Repair or reinstatement of property  <del>[DELETED]</del> – see clause 47</p>



CODE OF PRACTICE 2008 (CLAUSE)	CURRENT WORDING	WORDING PROPOSED BY RESIDENTS
<p>Clause 22: Fire and accidental damage (continued)</p>	<p><b>Temporary accommodation</b>            22(8) The operator must inform residents in the occupation right agreement whether they will provide temporary accommodation or facilities while a residential unit or facility is being repaired or replaced after an insured event.</p>	
<b>Termination of an occupation right agreement</b>		
<p>Clause 47: Grounds for termination if the unit is damaged or destroyed through no fault</p>	<p>47(1) The operator and resident may agree to terminate the occupation right agreement if the resident’s unit or the retirement village is destroyed or damaged beyond repair in specified circumstances set out in the occupation right agreement. For example, it may be that repair or reinstatement of the unit is not practicable because of the extent of the damage or destruction and because:</p> <ul style="list-style-type: none"> <li>a) the necessary building consents cannot be obtained</li> <li>b) the insurance money needed to repair or replace the unit cannot be obtained or is not enough to replace the property damaged or destroyed.</li> </ul>	<p>No change to current wording</p>

WORDING PROPOSED BY THE RETIREMENT VILLAGES ASSOCIATION	WORDING PROPOSED BY THE DEPARTMENT OF BUILDING AND HOUSING
<p><b>Temporary accommodation</b>            22(7) The operator must inform residents in the occupation right agreement whether they will provide temporary accommodation or facilities while a residential unit or facility is being repaired or replaced after an insured event.</p>	<p><b>Temporary accommodation</b>            22(8) The operator must inform residents in the occupation right agreement:</p> <ul style="list-style-type: none"> <li>a) whether the operator will provide temporary accommodation or facilities while a residential unit or facility is being repaired or replaced after an insured event</li> <li>b) <i>how the cost of the temporary accommodation or facilities will be met</i></li> <li>c) <i>how soon after the insured event the temporary accommodation or facilities will become available.</i></li> </ul> <p>22(9) <i>Regardless of whether or not the operator will provide temporary accommodation or facilities, the resident may (but is not required to) take out their own insurance policy providing for temporary accommodation or facilities.</i></p>
<p>47(1) The operator and resident may agree to terminate the occupation right agreement if the resident’s unit or the retirement village is destroyed or damaged beyond repair in specified circumstances set out in the occupation right agreement. For example, it may be that repair or reinstatement of the unit is not practicable because of the extent of the damage or destruction and because:</p> <ul style="list-style-type: none"> <li>a) the necessary building consents cannot be obtained</li> <li>b) the insurance money needed to repair or replace the unit cannot be obtained or is not enough to replace the property damaged or destroyed.</li> </ul>	<p>47(1) <i>The occupation right agreement must:</i></p> <ul style="list-style-type: none"> <li>a) <i>provide that, except in certain specified circumstances (if any), if the unit is damaged or destroyed the operator must fully repair or replace it as soon as practicable</i></li> <li>b) <i>state the circumstances (if any) when a unit that is damaged or destroyed may not be fully repaired or replaced</i></li> <li>c) <i>state the procedure to be followed if the unit is damaged or destroyed and one or more of the circumstances referred to in clause 47(1)(b) of this Code of Practice apply</i></li> <li>d) <i>state other matters which are relevant if the unit is damaged or destroyed and one or more of the circumstances referred to in clause 47(1)(b) of this Code of Practice apply.</i></li> </ul>

CODE OF PRACTICE 2008 (CLAUSE)	CURRENT WORDING	WORDING PROPOSED BY RESIDENTS
<p>Clause 47: Grounds for termination if the unit is damaged or destroyed through no fault (continued)</p>	<p>47(2) The operator must consult the resident to decide whether it is practicable to repair or replace the unit. The operator must follow up in writing, setting out their decisions. Through this process, both parties can work out an agreement to end the contract.</p>	



WORDING PROPOSED BY THE RETIREMENT VILLAGES ASSOCIATION	WORDING PROPOSED BY THE DEPARTMENT OF BUILDING AND HOUSING
<p>47(2) The operator must consult the resident to decide whether it is practicable to repair or replace the unit. The operator must follow up in writing, setting out their decisions. Through this process, both parties can work out an agreement to end the contract.</p> <p>47(3) <i>If the residential unit is not to be replaced following an insured event within a time that is reasonable in the circumstances, upon termination of the occupation right agreement, the resident will receive back the full capital sum that they paid to the operator for their occupation rights to that residential unit, without any deduction for deferred management or exit fees (the 'fixed deduction' as defined in this Code) normally made under the occupation right agreement upon termination and repayment. The payment to the resident by the operator in this event shall be made no later than five working days after all insurance monies for land (if applicable) and buildings in respect of the insured event have been paid to the operator and/or the statutory supervisor, or within five working days from the date on which sufficient insurance monies have been received by the operator, if sooner.</i></p>	<p>47(2) <i>The procedure referred to in clause 47(1)(c) of this Code of Practice must provide as a minimum that:</i></p> <ul style="list-style-type: none"> <li>a) <i>the operator must consult the resident to decide whether it is practicable to repair or replace the unit</i></li> <li>b) <i>after consultation, the operator must follow up in writing, setting out the decision on whether the unit will be repaired or replaced</i></li> <li>c) <i>if the operator decides that it is practicable to repair or replace the unit, then the operator will fully repair or replace the unit as soon as practicable</i></li> <li>d) <i>if the operator decides that it is not practicable to fully repair or replace the unit, that the occupation right agreement is terminated.</i></li> </ul> <p>47(3) <i>The other relevant matters referred to in clause 47(1)(d) of this Code of Practice must include as a minimum:</i></p> <ul style="list-style-type: none"> <li>a) <i>if the occupation right agreement is terminated, how the sums due to the resident on termination (if any) will be calculated</i></li> <li>b) <i>the timeframes for:</i> <ul style="list-style-type: none"> <li>i. <i>consultation</i></li> <li>ii. <i>notifying the resident of the operator's decision</i></li> <li>iii. <i>payment of any sums due to the resident on termination</i></li> </ul> </li> <li>c) <i>whether any replacement unit may be constructed on a different site</i></li> <li>d) <i>whether in these circumstances the resident has the option to:</i> <ul style="list-style-type: none"> <li>i. <i>transfer to another unit in the same retirement village</i></li> <li>ii. <i>transfer to another unit in a different retirement village</i></li> </ul> </li> <li>e) <i>whether there are any costs to the resident for transferring to another unit.</i></li> </ul>

CODE OF PRACTICE 2008 (CLAUSE)	CURRENT WORDING	WORDING PROPOSED BY RESIDENTS
<p>Clause 47: Grounds for termination if the unit is damaged or destroyed through no fault (continued)</p>		
<p>Clause 54: Payments due to the resident on termination or end of occupation</p>	<p><b>Charges for personal services</b> 54(1) The operator must stop charging a resident for personal services on the date the resident stops living permanently in the residential unit.</p>	<p>No change to current wording</p>

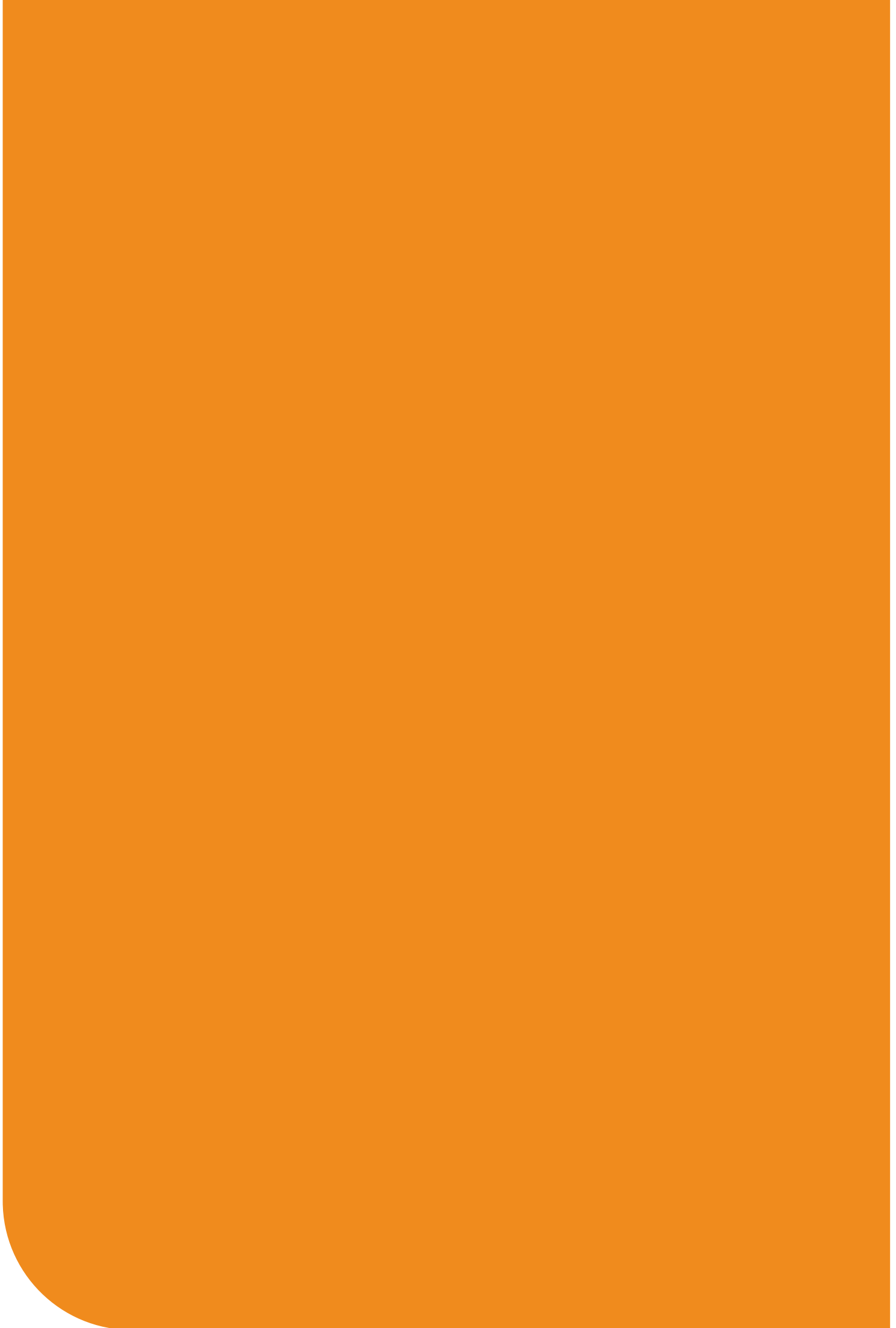
WORDING PROPOSED BY THE RETIREMENT VILLAGES ASSOCIATION	WORDING PROPOSED BY THE DEPARTMENT OF BUILDING AND HOUSING
<p>47(3) continued</p> <p><i>For the avoidance of doubt, any due but unpaid service or weekly fees in respect of the residential unit up to the date of the insured event or any other monies owing to the operator are entitled to be collected by the operator at the time of repaying the resident their full capital sum.</i></p>	<p><i>47(4) Where a replacement unit may be constructed on a different site, or the resident has the option to transfer to another unit in a different retirement village, then in each case the substituted unit must be within 50 kilometres of the current unit (measured as a straight line distance between the two locations).</i></p> <p><i>47(5) If the resident does not accept an option to transfer to another unit in a different retirement village, or a proposal to construct the replacement unit on a different site, then the occupation right agreement is terminated. An occupation right agreement terminated in this way must be treated the same as a termination under clause 47(2)(d) of this Code of Practice.</i></p>
<p><b>Charges for personal services</b></p> <p>54(1) The operator must stop charging a resident for personal services on the date the resident stops living permanently in the residential unit.</p>	<p><b>Charges for personal services</b></p> <p>54(1) The operator must stop charging a resident for personal services:</p> <ul style="list-style-type: none"> <li><i>a) while the resident is not living in the residential unit, because it has been damaged or destroyed through no fault of the resident</i></li> <li><i>b) on the date the resident stops living permanently in the residential unit.</i></li> </ul>

CODE OF PRACTICE 2008 (CLAUSE)	CURRENT WORDING	WORDING PROPOSED BY RESIDENTS
<p>Clause 54: Payments due to the resident on termination or end of occupation (continued)</p>	<p><b>Continuing charges for outgoings</b></p> <p>54(2) The operator must reduce by at least 50 percent the outgoings charged to the former resident if no new occupation right agreement has been entered into for a former resident’s unit by the later of:</p> <ul style="list-style-type: none"> <li>a) six months after the termination date, or</li> <li>b) the date the former resident stops living in the residential unity and removes all their possessions</li> </ul> <p><b>Fixed deductions</b> (Fixed deduction is also known as a facilities fee, village contribution, or deferred management fee.)</p> <p>54(3) These fixed deduction clauses only apply to contracts entered into after 25 September 2006.</p> <p>54(4) The fixed deduction must not accrue past the date on which the resident is paid the amount payable to them on termination of the agreement.</p>	

WORDING PROPOSED BY THE RETIREMENT VILLAGES ASSOCIATION	WORDING PROPOSED BY THE DEPARTMENT OF BUILDING AND HOUSING
<p><b>Continuing charges for outgoings</b>            54(2) The operator must reduce by at least 50 percent the outgoings charged to the former resident if no new occupation right agreement has been entered into for a former resident’s unit by the later of:</p> <p>a) six months after the termination date, or            b) the date the former resident stops living in the residential unity and removes all their possessions</p> <p><b><i>Continuing charges if a unit or village is damaged or destroyed following an insured event</i></b>            54(3) <i>If a unit or village is damaged or destroyed following an insured event so as to make the residential unit uninhabitable, the weekly fees should cease from the date of the insured event, unless the operator provides temporary accommodation.</i></p> <p><b>Fixed deductions</b>            (Fixed deduction is also known as a facilities fee, village contribution, or deferred management fee.)</p> <p>54(4) These fixed deduction clauses only apply to contracts entered into after 25 September 2006.</p> <p>54(5) The fixed deduction must not accrue past the date on which the resident is paid the amount payable to them on termination of the agreement.</p>	<p><b>Continuing charges for outgoings</b>            54(2) The operator must reduce by at least 50 percent the outgoings charged to:</p> <p>a) <i>a resident who is not living in the residential unit, because it has been damaged or destroyed through no fault of the resident</i>            b) the former resident if no new occupation right agreement has been entered into for a former resident’s unit by the later of:</p> <p>i. six months after the termination date, or            ii. the date the former resident stops living in the residential unit and removes all their possessions.</p> <p><b>Fixed deductions</b>            (Fixed deduction is also known as a facilities fee, village contribution, or deferred management fee.)</p> <p><i>54(3) The fixed deduction must not accrue past the date on which the resident moves out of a residential unit that has been damaged or destroyed through no fault of the resident, if the operator has decided, or subsequently decides, that it is not practicable to repair or replace the unit. [Clause 47(2)(b) of this Code of Practice]</i></p> <p><i>54(4) Clauses 54(5) and 54(6) of this Code of Practice only apply to contracts entered into after 25 September 2006.</i></p>

CODE OF PRACTICE 2008 (CLAUSE)	CURRENT WORDING	WORDING PROPOSED BY RESIDENTS
<p>Clause 54: Payments due to the resident on termination or end of occupation (continued)</p>	<p>54(5) Details of fixed deductions must be set out in the disclosure statement.</p> <p><b>Payment after sale or disposal of the residential unit by the operator</b></p> <p>54(6) If an occupation right agreement allows the operator to sell or dispose of the former resident’s unit, the operator must pay all money owing to the former resident no later than five working days after the date the operator receives payment in full from the new resident.</p>	

WORDING PROPOSED BY THE RETIREMENT VILLAGES ASSOCIATION	WORDING PROPOSED BY THE DEPARTMENT OF BUILDING AND HOUSING
<p>54(6) Details of fixed deductions must be set out in the disclosure statement.</p> <p><b>Payment after sale or disposal of the residential unit by the operator</b></p> <p>54(7) If an occupation right agreement allows the operator to sell or dispose of the former resident’s unit, the operator must pay all money owing to the former resident no later than five working days after the date the operator receives payment in full from the new resident.</p> <p><i>54(8) Following an insured event and the unit or village is uninhabitable requiring the resident to move to other accommodation not provided by the operator, the accrual or amortisation of the fixed deduction must be suspended until the resident can be accommodated again in the unit or in a replacement unit. Both the operator and the resident must agree to the reinstatement of the fixed deduction.</i></p>	<p><i>54(5) The fixed deduction must not accrue past the earlier of:</i></p> <ul style="list-style-type: none"> <li><i>a) the date on which the resident moves out of the unit that has been damaged or destroyed through no fault of the resident, if the operator has decided, or subsequently decides, that it is not practicable to repair or replace the unit</i></li> <li><i>b) the date on which the resident is paid the amount payable to them on termination of the occupation right agreement.</i></li> </ul> <p>54(6) Details of fixed deductions must be set out in the disclosure statement.</p> <p><b>Payment after sale or disposal of the residential unit by the operator</b></p> <p>54(7) If an occupation right agreement allows the operator to sell or dispose of the former resident’s unit, the operator must pay all money owing to the former resident no later than five working days after the date the operator receives payment in full from the new resident.</p>



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