



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*



Retirement Commission  
*Whiriwhiria!*

# Proposed variations to the Retirement Villages Code of Practice 2008: Consultation Document

10 October 2011



# Contents

<b>INTRODUCTION</b>	<b>1</b>
<b>BACKGROUND</b>	<b>2</b>
<b>HOW TO MAKE A SUBMISSION</b>	<b>4</b>
<b>PART ONE: CONSULTATION BY THE RETIREMENT COMMISSIONER</b>	<b>6</b>
<b>VARIATION 1: CONSULTATION ON THE VARIATION PROPOSED     BY THE ASSOCIATION OF RESIDENTS OF RETIREMENT     VILLAGES (AUCKLAND REGION)</b>	<b>7</b>
<b>VARIATION 2: CONSULTATION ON THE VARIATIONS     PROPOSED BY THE RETIREMENT VILLAGES ASSOCIATION</b>	<b>9</b>
<b>VARIATION 3: CONSULTATION ON THE VARIATIONS     PROPOSED BY THE DEPARTMENT OF BUILDING AND HOUSING</b>	<b>15</b>
<b>SUBMISSIONS ON PART ONE: CONSULTATION BY THE     RETIREMENT COMMISSIONER</b>	<b>26</b>
<b>PART TWO: CONSULTATION BY THE DEPARTMENT OF BUILDING AND HOUSING</b>	<b>32</b>
<b>SUBMISSIONS ON PART TWO: CONSULTATION BY THE     DEPARTMENT OF BUILDING AND HOUSING</b>	<b>48</b>
<b>APPENDIX 1</b>	<b>53</b>

## **PART ONE:**

Consultation by the Retirement Commissioner on proposed variations to the Retirement Villages Code of Practice 2008 received from the Association of Residents of Retirement Villages (Auckland region), the Retirement Villages Association and the Department of Building and Housing

## **PART TWO:**

Consultation by the Department of Building and Housing on their proposed variations

**Submissions close 5pm on Monday 21 November 2011.**

# Introduction

The Retirement Commissioner is responsible under the Retirement Villages Act 2003 for holding a consultation process on any proposed variations to the Code of Practice 2008. The Commissioner can then make recommendations to the Minister for Building and Construction on those variations.

The Retirement Commissioner is currently seeking feedback on these proposed variations.

Officials from the Department of Building and Housing have prepared a discussion document with their set of proposed variations to the Code of Practice on which they are also seeking feedback.

This joint consultation asks for your comments on the proposed variations to the Code of Practice. These concern no-fault exit situations in Retirement Villages such as that which occurred as a result of the Canterbury Earthquakes.

**PART ONE**, from the Retirement Commissioner, asks your views on the three sets of proposed wording from the:

- Association of Residents of Retirement Villages (Auckland Region)
- Retirement Villages Association
- Department of Building and Housing.

**PART TWO**, from the Department of Building and Housing, asks your views on the issues discussed and the wording proposed by the Department.

All responses will be independently considered by both the Retirement Commissioner and the Department of Building and Housing.

Instructions on how to make a submission are found on page 4.

Thank you for taking the time to make a submission.

# Background

Five retirement villages sustained damage in the Canterbury earthquakes. Three of these villages were subsequently confirmed as being in the red zone and have closed. This required the termination of the occupation right agreements for 194 affected units under the no-fault exit provisions. Affected residents had to find alternative permanent accommodation.

The Canterbury earthquake experience has caused some retirement village stakeholders to question the adequacy of aspects of the Code of Practice. These relate primarily to uncertainties in the no-fault termination process for occupation right agreements, and the adequacy of the payout received by residents in a no-fault exit situation when their unit will not be rebuilt.

These issues have been highlighted in submissions to the Government from the Retirement Villages Association and in a 3,625 signature petition from village residents.

This consultation document seeks your feedback on whether changes to the Code of Practice can provide greater clarity and certainty in the case of any similar no-fault exit situation when a resident's unit will not be rebuilt.

## **WHAT IS THE RETIREMENT VILLAGES CODE OF PRACTICE 2008?**

Retirement villages in New Zealand operate under the Retirement Villages Act 2003 (the Act). The Act is intended to strengthen consumer protection for residents and intending residents by providing a regime to control and monitor retirement village operators. The Act also provides rights for people who live in, or are considering entering, registered villages.

### **Standard vs no-fault exit situations**

The **no-fault** termination provisions in the Code of Practice apply where the unit is destroyed or damaged beyond repair in circumstances set out in the occupation right agreement, through no fault of the resident or operator. These provisions require the operator to consult with the resident on whether it is practicable to repair or replace the unit, and if not, both parties can work out an agreement to end the occupation right agreement. The calculation of a resident's exit payment in a no-fault termination may or may not be set out in the occupation right agreement.

The **standard** termination provisions in the Code of Practice apply to other situations where the occupation right agreement may be terminated. A resident is entitled to terminate the occupation right agreement for any reason at any time. An operator can only terminate in certain circumstances, for example where the resident has caused serious damage, or has abandoned their unit. The resident's exit payment for a standard termination will in most cases be calculated through a formula in the occupation right agreement. This formula is often the resident's capital sum, less fixed deductions of around 5-30% of the capital sum.

The Code of Practice is issued by the Minister for Building and Construction. It sets out the minimum requirements that operators of retirement villages must meet, or ensure are met, to fulfil their legal obligations under the Retirement Villages Act 2003. These include the minimum requirements for the occupation right agreement (contract) signed between the operator and the intending resident. The Code of Practice took effect on 2 October 2009.

The Code of Practice is enforceable as a contract and prevails over any less favourable provision in the resident's occupation right agreement. The Code of Practice also contains information to improve consumer protection and awareness.

The Code of Practice is administered by the Department of Building and Housing. Copies of the Code of Practice can be obtained from the Department of Building and Housing website [www.dbh.govt.nz/retirement-villages](http://www.dbh.govt.nz/retirement-villages) or purchased from Vic Books by calling 0800 370 370.

## **WHAT THIS CONSULTATION DOES NOT COVER**

This is not a general review of the Code of Practice.

Similarly, it does not invite submissions on issues that have not arisen as a result of the Canterbury earthquakes or cannot reasonably be expected to arise from any future natural disaster or like event.

In addition, it does not invite submissions on the Retirement Villages Act 2003 or associated regulations.

# How to make a submission

## **PART ONE**

You can make a written submission by completing the submission form provided. Submissions in the form of a letter will also be accepted.

Please send your submission to:

**Post:**

Retirement Commissioner  
PO Box 12-148  
Wellington 6144  
Attn: Retirement Villages Code of Practice Consultation

**Courier:**

Retirement Commissioner  
Level 3, 69-71 The Terrace  
Wellington 6011  
Attn: Retirement Villages Code of Practice Consultation

**Email:**

office@retirement.org.nz  
(please put 'Retirement Villages Code of Practice Consultation' in the subject line).

**Fax:**

(04) 499 7397  
(please put 'Retirement Villages Code of Practice Consultation' in the subject line).

You can download this document and the submission form as a PDF from the Retirement Commission's website [www.retirement.org.nz/retirement-villages/](http://www.retirement.org.nz/retirement-villages/) or phone 0800 83 62 62.

## PART TWO

You can make a written submission on the issues and questions posed by the Department of Building and Housing by completing the submission form provided. Submissions in the form of a letter will also be accepted.

Please send your submission to:

**Post:**

Department of Building and Housing  
PO Box 10-729  
Wellington 6143  
Attn: Retirement Villages Code of Practice Review Team

**Courier:**

Department of Building and Housing  
Level 6, 86 Customhouse Quay  
Wellington 6143  
Attn: Retirement Villages Code of Practice Review Team

**Email:**

retirementvillages@dbh.govt.nz  
(please put 'Retirement Villages Code of Practice Review' in the subject line).

**Fax:**

(04) 494 0290  
(please put 'Retirement Villages Code of Practice Review' in the subject line).

You can download this document and the submission form as a PDF from the Department's website [www.dbh.govt.nz](http://www.dbh.govt.nz)

**Please return your submission by 5pm, Monday 21 November 2011.**

Please note that the submissions received by the Retirement Commissioner will be shared with the Department of Building and Housing and vice versa.

### OFFICIAL INFORMATION ACT 1982

Please note that all written responses will be public information. Responses may be the subject of requests for information under the Official Information Act 1982 (the OIA). The OIA specifies information is available on request unless there are grounds for withholding specific information, such as the information is commercially sensitive or personal. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.

# Part One: Consultation by the Retirement Commissioner

The Commissioner has received three sets of variations to the Code of Practice 2008 she wishes to consult on. These are:

- 1. A variation proposed by the Association of Residents of Retirement Villages (Auckland region)**
- 2. Variations proposed by the Retirement Villages Association**
- 3. Variations proposed by the Department of Building and Housing.**

The proposed wording for each option is provided in the chapters that follow, and can be viewed in full, side by side, in Appendix 1.

# Variation 1: Consultation on the variation proposed by the Association of Residents of Retirement Villages (Auckland region)

This variation was received by the Retirement Commissioner from the Association of Residents of Retirement Villages (Auckland Region) and originated from the wording of a variation proposed in a petition from over 3,600 residents presented to the Minister for Building and Construction.

The proposed new wording is shown in *bold italics* in the right hand column.

**Issue – Repayment of the capital sum should a village be destroyed and not rebuilt**

This variation seeks to ensure certainty over the minimum amount that would be paid to residents when their occupation right agreement is terminated in a no-fault exit situation and where their unit will not be rebuilt, such as that which occurred in the Canterbury earthquake.

It replaces the existing clause 22(7)(c) in the Code of Practice 2008 with the proposed wording in italics in the right hand column:

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 22(7)(C)
<p>Clause 22 Fire and accidental damage</p> <p><b>Repair or reinstatement of property</b></p> <p>22(7) The occupation right agreement for a residential unit that is owned by an operator must:</p> <p>(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</p> <p>(b) state the circumstances (if any) when a unit that is damaged or destroyed may not be fully repaired or replaced</p> <p>(c) state the procedure to be followed if the unit is not to be fully repaired or replaced if it is damaged or destroyed.</p>	<p>Clause 22 Fire and accidental damage</p> <p><b>Repair or reinstatement of property</b></p> <p><i>22(7)(a) No change</i></p> <p><i>22(7)(b) No change</i></p> <p><b>22(7)(c) to read:</b></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> <p><i>i) the full insurance proceeds paid to the operator for that residential unit</i></p> <p><b>OR</b></p>

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 22(7)(C)
Clause 22 Fire and accidental damage	Clause 22 Fire and accidental damage
	<p><i>ii) the original capital sum paid by the resident for the right to occupy whichever is the greater, without any capital or other deductions normally made on the termination of the occupation right agreement.</i></p>

# Variation 2: Consultation on the variations proposed by the Retirement Villages Association

The following four proposed variations to the Code of Practice 2008 were received from the Retirement Villages Association and were developed by the Association after a consultation process with their members. The Association represents the operators of retirement villages. Their full submission on their proposed variations is available online at [www.retirement.org.nz](http://www.retirement.org.nz)

The proposed new wording is shown in italics in the right hand column.

## 1. ISSUE – REPAYMENT OF THE CAPITAL SUM SHOULD A VILLAGE BE DESTROYED AND NOT REBUILT

This variation concerns the issue of repayment, which is partly addressed in the existing clause 22(7)(c) (dealing with insurance and repair or reinstatement of property), by proposing a new clause 47(3). This places the repayment issue in the section of the Code of Practice that deals with grounds for termination if the unit is damaged or destroyed through no-fault.

The RVA proposes the following wording for a new clause 47(3):

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 47(3)
<p>Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault</p>	<p>Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault</p>
<p>(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, or</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><i>(1) No change</i></p>

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 47(3)
<p>Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault</p>	<p>Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault</p>
<p>(2) The operator must consult the resident to decide whether it is practicable to repair or replace the unit. Then, the operator must follow up in writing, setting out their decision. Through this process, both parties can work out an agreement to end the contract.</p>	<p>(2) <i>No change</i></p> <p><i>Additional clause 47(3)</i></p> <p>(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 of Practice) 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>

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 47(3)
Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault	Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault
	<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>

## 2. ISSUE – INSURANCE COVER DISCLOSURE

This variation proposes the Code of Practice 2008 should more accurately reflect the requirement under the Retirement Villages

(General) Regulations 2006 and disclose whether or not the operator has insurances such as business interruption insurance, temporary accommodation insurance and adequate liability insurance.

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 22(3)(A)
<p>Clause 22 Fire and accidental damage</p>	<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>Insurance cover</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 insurance, 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>22(1) No change</p> <p>22(2) No change</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 insurance, temporary accommodation insurance, and adequate liability insurances <b><i>and the operator must disclose to the resident whether or not it has any such insurances</i></b></li> <li>(b) no change</li> </ul>

### 3. ISSUE – CONTINUED PAYMENTS OF VILLAGE OUTGOINGS

This variation proposes that overheads, such as rates, be covered by the operator’s business interruption insurance when a village is uninhabitable after an insured event. The RVA proposes a new subclause.

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 54
<p><b>Clause 54 Payments due to the resident on termination or end of occupation</b></p>	<p><b>Clause 54 Payments due to the resident on termination or end of occupation</b></p>
<p>Continuing charges for outgoings</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> <p>a) six months after the termination date, or  b) the date the former resident stops living in the residential unit and removes all their possessions.</p>	<p>Continuing charges for outgoings</p> <p>54(2) (no change)</p> <p><i>Additional clause 54(3)</i></p> <p><i>Continuing charges if a unit or village is damaged or destroyed following an insured event</i></p> <p><i>54(3) 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><i>Existing clauses 3 to 6 be re-numbered</i></p>

#### 4. ISSUE – THE AMORTISATION<sup>1</sup> OF THE DEFERRED MANAGEMENT FEE (DMF)

(The DMF is also known as the fixed deduction or facilities fee or village contribution.)

The RVA proposes in this variation to clarify the situation of the deferred management fee or fixed deduction during the period after an insured event in which the village is being rebuilt. A new clause 54(7) is proposed.

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 54
<p>Clause 54 Payments due to the resident on termination or end of occupation</p>	<p>Clause 54 Payments due to the resident on termination or end of occupation</p> <p><i>New clause 54(7)</i></p> <p><i>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>

<sup>1</sup> Amortisation means the continued calculation of the termination payout formula.

## Variation 3: Consultation on the variations proposed by the Department of Building and Housing

The following variations have been proposed by the Department of Building and Housing. The Retirement Commissioner is seeking your views on the proposed changes which concern three areas:

- **insurance arrangements**
- **termination of occupation right agreements, including transferring to a new unit**
- **payments and charges.**

Part Two of this consultation document contains a discussion paper prepared by the Department of Building and Housing and provides further detail. There is also a section on additional definitions of key terms relating to insurance.

The Department of Building and Housing has developed potential wording changes to three clauses of the Code of Practice. These are:

- **clause 22: Fire and accidental damage**
- **clause 47: Grounds for termination if the unit is damaged or destroyed through no-fault**
- **clause 54: Payments due to the resident on termination or end of occupation.**

The clauses that the Department of Building and Housing propose varying are tabled overleaf. The proposed new wording is shown in **italics** in the right hand column.

## 1. ISSUE – INSURANCE ARRANGEMENTS

This variation proposes changes to clarify the insurance requirements of retirement villages by specifying in the Code of Practice what insurance products operators and residents should hold. This variation also proposes who is responsible for temporary accommodation insurance.

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 22
<p><b>Fire and accidental damage</b></p>	<p><b>Fire and accidental damage</b></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> 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>Clause 22(1) deleted, Clause 22(2) and 22(3) renumbered.</p> <p><b>Insurance cover</b> 22(1) The operator must take out and keep in force <i>insurance policies which provide adequate coverage for the retirement village, or must ensure that the insurance policies are taken out and kept in force</i>, to the satisfaction of the statutory supervisor (if there is one). <i>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.</i></p>

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 22
<p><b>Fire and accidental damage</b></p>	<p><b>Fire and accidental damage</b></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><i>22(2) The insurance policies must:</i></p> <ul style="list-style-type: none"> <li><i>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</i></li> <li><i>b) provide business interruption insurance to the operator to cover loss of income from the retirement village for a minimum of 18 months</i></li> <li><i>c) provide adequate liability insurances</i></li> <li><i>d) meet any other insurance required by law.</i></li> </ul> <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) Insurance policies must state:</p> <ul style="list-style-type: none"> <li>a) any responsibilities and liabilities each of the operator, residents, and statutory supervisor (if there is one), as the insured parties</li> <li>b) any 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(4) The insurance policies must state:</p> <ul style="list-style-type: none"> <li>a) the responsibilities and liabilities each of the operator, residents, and statutory supervisor (if there is one), as the insured parties</li> <li>b) the 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>

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 22
<p><b>Fire and accidental damage</b></p> <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><b>Repair or reinstatement of property</b></p> <p>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>Fire and accidental damage</b></p> <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 any <i>insurance policy excess amount</i> to the resident.</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><b>Repair or reinstatement of property</b> [deleted]</p>

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 22
Fire and accidental damage	Fire and accidental damage
<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>	<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><i>b) how the cost of the temporary accommodation or facilities will be met</i></li> <li><i>c) how soon after the insured event the temporary accommodation or facilities will become available.</i></li> </ul> <p><i>22(9) 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>

## 2. TERMINATION OF OCCUPATION RIGHT AGREEMENTS, INCLUDING TRANSFERRING TO A NEW UNIT

This variation aims to provide clarity around the process for termination of an occupation right agreement when a unit cannot be rebuilt after an extreme event. It specifies the minimum requirements for what must

be in the contents of the occupation right agreement, specifically how the sums, if any, due to the resident will be calculated on termination. The variation also proposes a safeguard for residents where the operator decides to rebuild but at a location distant to the original site of the village.

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 47
<p>Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault</p>	<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><i>47(1) The occupation right agreement must:</i></p> <ul style="list-style-type: none"> <li><i>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</i></li> <li><i>b) state the circumstances (if any) when a unit that is damaged or destroyed may not be fully repaired or replaced</i></li> <li><i>c) 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><i>d) 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>

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 47
<p>Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault</p>	<p>Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault</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>	<p><i>47(2) 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><i>a) the operator must consult the resident to decide whether it is practicable to repair or replace the unit</i></li> <li><i>b) 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><i>c) 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><i>d) 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><i>47(3) 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><i>a) if the occupation right agreement is terminated, how the sums due to the resident on termination (if any) will be calculated</i></li> <li><i>b) the timeframes for:</i> <ul style="list-style-type: none"> <li><i>i. consultation</i></li> <li><i>ii. notifying the resident of the operator's decision</i></li> <li><i>iii. payment of any sums due to the resident on termination</i></li> </ul> </li> <li><i>c) whether any replacement unit may be constructed on a different site</i></li> </ul>

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 47
<p>Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault</p>	<p>Clause 47 Grounds for termination if the unit is damaged or destroyed through no-fault</p>
	<p><i>d) whether in these circumstances the resident has the option to:</i></p> <ul style="list-style-type: none"> <li><i>i. transfer to another unit in the same retirement village</i></li> <li><i>ii. transfer to another unit in a different retirement village</i></li> </ul> <p><i>e) whether there are any costs to the resident for transferring to another unit.</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.</i></p> <p><i>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>

### 3. ISSUE – PAYMENTS AND CHARGES

This variation aims to ensure that operators and residents understand the charges that arise in any exit situation. It clarifies the amortisation of fixed deductions during the rebuilding period when a village is being rebuilt.

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 54
<p><b>Clause 54 Payments due to the resident on termination or end of occupation</b></p>	<p><i>Clause 54 Payments and charges on termination, end of occupation or where a unit has been damaged or destroyed</i></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><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> <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 unit and removes all their possessions.</li> </ul>	<p><b>Charges for personal services</b> 54(1) The operator must stop charging a resident for personal services:</p> <ul style="list-style-type: none"> <li>a) <i>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>b) on the date the resident stops living permanently in the residential unit.</li> </ul> <p><b>Continuing charges for outgoings</b> 54(2) The operator must reduce by at least 50 percent the outgoings charged to:</p> <ul style="list-style-type: none"> <li>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></li> <li>b) the former resident if no new occupation right agreement has been entered into for a former resident’s unit by the later of:               <ul style="list-style-type: none"> <li>i. six months after the termination date, or</li> <li>ii. the date the former resident stops living in the residential unit and removes all their possessions.</li> </ul> </li> </ul>

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 54
<p>Clause 54 Payments due to the resident on termination or end of occupation</p>	<p>Clause 54 <i>Payments and charges on termination, end of occupation or where a unit has been damaged or destroyed</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(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> <p>54(5) Details of fixed deductions must be set out in the disclosure statement.</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> <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>

CURRENT WORDING	PROPOSED WORDING CHANGE TO CLAUSE 54
<p>Clause 54 Payments due to the resident on termination or end of occupation</p>	<p>Clause 54 <i>Payments and charges on termination, end of occupation or where a unit has been damaged or destroyed</i></p>
<p><b>Payment after sale or disposal of the residential unit by the operator</b>            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>	<p><b>Payment after sale or disposal of the residential unit by the operator</b>            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>

# Submissions on Part One: Consultation by the Retirement Commissioner

## RETIREMENT VILLAGES CODE OF PRACTICE 2008 SUBMISSION FORM

Name:

Organisation:

Address:

Are you an:

- operator
- resident
- insurer
- statutory supervisor
- other

Please tick if you are happy for us to contact you about your submission.

This submission form is to help you make a submission on the **proposed variations to the Retirement Villages Code of Practice 2008**. Please answer the questions and you can also send additional feedback if you choose.

Please return this form by **5pm Monday 21 November 2011**.

### Post:

Retirement Commissioner  
PO Box 12-148  
Wellington 6144  
Attn: Retirement Villages  
Code of Practice Consultation

### Courier:

Retirement Commissioner  
Level 3, 69-71 The Terrace  
Wellington 6011  
Attn: Retirement Villages  
Code of Practice Consultation

### Email

office@retirement.org.nz  
(please put 'Retirement Villages Code of Practice Consultation' in the subject line).

### Fax

(04) 499 7397  
(please put 'Retirement Villages Code of Practice Consultation' in the subject line).

### Official Information Act 1982

Please note that all written responses will be public information. Responses may be the subject of requests for information under the Official Information Act 1982 (the OIA). The OIA specifies information is available on request unless there are grounds for withholding specific information, such as the information is commercially sensitive or personal. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.

Thank you for your contribution. Note your responses will be shared with the Department of Building and Housing.

## QUESTIONS

### Variation 1

Proposed by the Association of Residents of Retirement Villages (Auckland Region)

Issue – Repayment of the capital sum should a village be destroyed and not rebuilt

1. Do you support this variation? What are your main reasons for supporting/not supporting this variation?

2. Do you have any suggestions to improve the wording of this variation?

3. Please comment here on any other matters concerning this clause.

### Variation 2

Proposed by the Retirement Villages Association

Issue 1 – Repayment of the capital sum should a village be destroyed and not rebuilt

1. Do you support this variation? What are your main reasons for supporting/not supporting this variation?

2. Do you have any suggestions to improve the wording of this variation?

## QUESTIONS (CONTINUED)

3. Please comment here on any other matters concerning this clause.

### **Variation 2**

Proposed by the Retirement Villages Association

Issue 2 – Insurance cover disclosure

1. Do you support this variation? What are your main reasons for supporting/not supporting this variation?

2. Do you have any suggestions to improve the wording of this variation?

3. Please comment here on any other matters concerning this clause.

### **Variation 2**

Proposed by the Retirement Villages Association

Issue 3 – Continued payments of village outgoings

1. Do you support this variation? What are your main reasons for supporting/not supporting this variation?

**QUESTIONS (CONTINUED)**

2. Do you have any suggestions to improve the wording of this variation?

3. Please comment here on any other matters concerning this clause.

**Variation 2**

Proposed by the Retirement Villages Association

Issue 4 – The amortisation of the deferred management fee (DMF)

1. Do you support this variation? What are your main reasons for supporting/not supporting this variation?

2. Do you have any suggestions to improve the wording of this variation?

3. Please comment here on any other matters concerning this clause.

**QUESTIONS (CONTINUED)**

**Variation 3**

Proposed by the Department of Building and Housing

Issue 1 – Insurance arrangements

1. Do you support this variation? What are your main reasons for supporting/not supporting this variation?

2. Do you have any suggestions to improve the wording of this variation?

3. Please comment here on any other matters concerning this clause.

**Variation 3**

Proposed by the Department of Building and Housing

Issue 2 – Termination of occupation right agreements, including transferring to a new unit

1. Do you support this variation? What are your main reasons for supporting/not supporting this variation?

2. Do you have any suggestions to improve the wording of this variation?

**QUESTIONS (CONTINUED)**

3. Please comment here on any other matters concerning this clause.

**Variation 3**

Proposed by the Department of Building and Housing

Issue 3 – Payments and charges

1. Do you support this variation? What are your main reasons for supporting/not supporting this variation?

2. Do you have any suggestions to improve the wording of this variation?

3. Please comment here on any other matters concerning this clause.

# Part Two: Consultation by the Department of Building and Housing

PART TWO of this consultation document has been prepared by the Department of Building and Housing. It asks for your views on issues with the Retirement Villages Code of Practice 2008 (the Code) arising from the effects of the Canterbury earthquakes and what you think the solutions to those issues might be.

This document also sets out potential wording changes to four clauses of the Code and seeks your feedback on this.

Specifically, the Department of Building and Housing is seeking your views on the following matters:

- insurance arrangements
- termination of occupation right agreements, including transferring to a new unit
- payments and charges.

We are also providing definitions of additional key terms for your information. These will be added to Clause 2 of the Code.

To assist with discussion, the Department of Building and Housing has developed potential wording changes for the following clauses of the Code:

- clause 22: Fire and accidental damage
- clause 47: Grounds for termination if the unit is damaged or destroyed through no-fault
- clause 54: Payments due to the resident on termination or end of occupation.

These potential changes have been developed on the basis of the Department's analysis of the Code and after considering input from a focus group of interested representatives of retirement village residents and from the Retirement Villages Association.

The potential changes are based on the following principles:

- The Code is a minimum standard; the proposals do not specify best practice as this is not the intent of the Code. Occupation right agreements can prescribe more favourable conditions than those proposed by the Code.
- The avoidance of over prescribing solutions: the proposals favour clarifying processes and placing decision making in the hands of operators and residents (or statutory supervisors), rather than making the Code highly prescriptive.

The proposed wording is provided in each section (as follows) and in full in Appendix 1.

## 1: INSURANCE ARRANGEMENTS

### Background

Disasters and extreme events are unpredictable. Insurance exists to mitigate the impact of disasters. The existence of adequate insurance policies can significantly improve the financial certainty to both residents and operators of retirement villages after a destructive event, especially if the unit or village will not, or cannot, be rebuilt.

Advice from the Insurance Council of New Zealand is that many businesses in New Zealand undervalue and therefore underinsure their assets.

This may occur deliberately to reduce their premiums or accidentally by not purchasing sufficient insurance to fully replace all assets. Businesses can also become underinsured as a result of not increasing insurance cover to match

increasing property values or by not taking out a sufficient range of insurance to cover costs such as business disruption.

The Canterbury earthquakes have highlighted this issue across the commercial sector, including retirement villages.

In the retirement villages sector:

- if a unit or village is to be rebuilt, replacement insurance enables the village to be rebuilt to the same standard as before if not better
- if a unit or village is not to be rebuilt, indemnity insurance can assist operators to pay out residents if/when the occupation right agreement is terminated.

## Issues

One issue is whether or not the Code should prescribe what insurance products operators (and residents) may or must hold, and how specific the Code should be in stating the requirements or parameters of those insurance products.

Another issue is the requirement to take out temporary accommodation insurance. The Code makes this an optional requirement for operators. However, many contents insurance policies cover temporary accommodation costs. If a resident holds a contents insurance policy with this provision, they are in effect paying twice if the operator also holds temporary accommodation insurance and passes this premium on to the residents.

## Outcomes sought

1. To ensure adequate insurance is taken out by all parties, covering all appropriate risks, so that operators are able to rebuild a damaged or destroyed unit or village, or are able to pay out their residents if or when an occupation right agreement is terminated.
2. To clarify who is responsible for purchasing temporary accommodation insurance.

## Proposal

The Department of Building and Housing proposes to vary clause 22(1-8) of the Code as follows. Note: clause 22(7)(a-c) has been varied and moved to Clause 47. Proposals are shown in ***bold italics***.

CURRENT WORDING	POTENTIAL WORDING
<p data-bbox="188 743 609 779"><b>Fire and accidental damage</b></p> <p data-bbox="188 801 817 913">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 data-bbox="188 945 434 981"><b>Insurance cover</b></p> <p data-bbox="188 990 801 1370">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 data-bbox="188 1406 737 1473">22(3) Where operators are responsible for the insurance, they:</p> <ul data-bbox="188 1505 769 1774" 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 data-bbox="842 743 1264 779"><b>Fire and accidental damage</b></p> <p data-bbox="842 945 1088 981"><b>Insurance cover</b></p> <p data-bbox="842 990 1465 1370"><b><i>22(1)</i></b> The operator must take out and keep in force <b><i>insurance policies which provide adequate coverage for the retirement village</i></b>, 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). <b><i>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.</i></b></p> <p data-bbox="842 1406 1369 1438"><b><i>22(2) The insurance policies must:</i></b></p> <ul data-bbox="842 1451 1471 2033" style="list-style-type: none"> <li><b><i>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</i></b></li> <li><b><i>b) provide business interruption insurance to the operator to cover loss of income from the retirement village for a minimum of 18 months</i></b></li> <li><b><i>c) provide adequate liability insurances</i></b></li> <li><b><i>d) meet any other insurance required by law.</i></b></li> </ul>

CURRENT WORDING	POTENTIAL WORDING
Fire and accidental damage	Fire and accidental damage
<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 <b>fixtures</b> and fittings provided by the resident</li> <li>b) be available for residents to view at <b><i>the annual general meeting of residents</i></b>, and on request.</li> </ul> <p>22(6) Operators must inform the residents whether <b><i>or not</i></b> they pass on any <b><i>insurance policy excess amount</i></b> to the resident.</p> <p><b><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></b></p>

CURRENT WORDING	POTENTIAL WORDING
<p><b>Fire and accidental damage</b></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>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>	<p><b>Fire and accidental damage</b></p> <p><b>Repair or reinstatement of property</b>            [deleted]</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><i>b) how the cost of the temporary accommodation or facilities will be met</i></li> <li><i>c) how soon after the insured event the temporary accommodation or facilities will become available.</i></li> </ul> <p><i>22(9) 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>

## Effect of proposals

These variations will:

- reduce confusion about insurance requirements for the retirement villages sector
- ensure the rights and obligations of operators and residents are made clearer in relation to the holding and paying of insurance products
- provide for clearer decision-making when a significant natural disaster or other insured event occurs
- remove the optional requirement for operators to take out temporary accommodation insurance, and replace this with an optional requirement for residents to take out contents insurance (which may or may not include temporary accommodation insurance)
- make wider insurance products, such as business interruption and liability insurance, mandatory to enable operators to rebuild after an insured event.

## Questions

1. Should the Code ensure operators have sufficient funds available to terminate occupation right agreements in no-fault exit situations? If yes, how could this be achieved?
2. Should statutory supervisors ensure that a village is insured 'satisfactorily'? If no, who should? How should 'satisfaction' be determined?
3. How often should valuations be updated? We have suggested every two years. What do you think?
4. Do you agree that the insurance policies should include all amenities and utilities within the retirement village boundary, units subject to occupation right agreements and any residential units that are owned by residents? If no, please state why not.
5. What other types of insurance beyond replacement or indemnity insurance policy do you consider operators should be required to take out, if any? We have suggested business interruption insurance for a minimum of 18 months and adequate liability insurances – do you agree?
6. Who should be responsible for holding temporary accommodation insurance?
7. Do you think the proposed wording will achieve the outcomes we are seeking?
8. Do you have any wording suggestions?

## **2: TERMINATION OF AN OCCUPATION RIGHT AGREEMENT, INCLUDING TRANSFERRING TO A NEW UNIT**

### **Background**

As a result of serious damage to retirement villages and the land caused by the Canterbury earthquakes, some retirement villages cannot or will not be rebuilt. This means that the occupation right agreements of the affected residents must be terminated. This is a no-fault exit situation.

Clause 22(7)(c) and Clause 47(2) of the current Code cover the process to be followed in no-fault exit situations.

Clause 22(7)(c), in part, states that:

- (7) The occupation right agreement for a residential unit that is owned by an operator must:
  - (c) state the procedure to be followed if the unit is not to be fully repaired or replaced if it is damaged or destroyed.

Clause 47(2) states that:

The operator must consult the resident to decide whether it is practicable to repair or replace the unit. Then, 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.

If a unit or village is to be rebuilt, there could be circumstances where an operator, on receipt of the replacement insurance monies, decides to rebuild the unit or village at an alternate location at some distance from the original site. Or, the operator may offer to transfer a resident to another village (owned by the operator) in a different location. This may be disadvantageous to the resident, as social, community and/or family ties may be disrupted.

### **Issues**

One issue is that some residents consider these clauses do not ensure adequacy of termination payout in a no-fault exit situation, meaning they are unable to buy into a new village or other accommodation.

The current clauses do not specify the payout amount or any formula to calculate the payout amount. Some residents believe that they must accept standard exit terms. However, the current clauses do not preclude alternative / higher payout amounts being negotiated in a no-fault exit situation. It is not clear in the current wording that this can occur. As a result, some residents are seeking specificity of payout amounts, eg, the capital sum with no fixed deductions, or similar.

Some retirement villages have already changed their contracts to offer this.

Another issue is where an operator may rebuild the unit or village, but not in the close vicinity – thereby ‘forcing’ a standard exit termination if the resident does not want to transfer to the new site. In this circumstance it may be reasonable to treat the termination as a no-fault exit situation.

## Outcomes sought

1. To provide greater clarity of process for the termination of occupation right agreements when a unit will not be rebuilt following an extreme event.
2. To allow for no-fault exit situations in circumstances where a resident is forced to terminate their occupation right agreement because they do not want to move away from their community.

## Proposal

The Department of Building and Housing proposes to delete Clause 22(7)(c) and amend Clause 47 of the Code as follows. Proposals are in ***bold italics***.

CURRENT WORDING	POTENTIAL WORDING
<p>Grounds for termination if the unit is damaged or destroyed through no-fault</p>	<p>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> <ol 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> </ol>	<p><b><i>47(1) The occupation right agreement must:</i></b></p> <ol style="list-style-type: none"> <li><b><i>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</i></b></li> <li><b><i>b) state the circumstances (if any) when a unit that is damaged or destroyed may not be fully repaired or replaced</i></b></li> <li><b><i>c) 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></b></li> <li><b><i>d) 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></b></li> </ol>

CURRENT WORDING	POTENTIAL WORDING
<p>Grounds for termination if the unit is damaged or destroyed through no-fault</p>	<p>Grounds for termination if the unit is damaged or destroyed through no-fault</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>	<p><i>47(2) 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><i>a) the operator must consult the resident to decide whether it is practicable to repair or replace the unit</i></li> <li><i>b) 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><i>c) if the operate 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><i>d) 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><i>47(3) 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><i>a) if the occupation right agreement is terminated, how the sums due to the resident on termination (if any) will be calculated</i></li> <li><i>b) the timeframes for:</i> <ul style="list-style-type: none"> <li><i>i. consultation</i></li> <li><i>ii. notifying the resident of the operator’s decision</i></li> <li><i>iii. payment of any sums due to the resident on termination</i></li> </ul> </li> <li><i>c) whether any replacement unit may be constructed on a different site</i></li> </ul>

CURRENT WORDING	POTENTIAL WORDING
Grounds for termination if the unit is damaged or destroyed through no-fault	Grounds for termination if the unit is damaged or destroyed through no-fault
	<p><i>d) whether in these circumstances the resident has the option to:</i></p> <ul style="list-style-type: none"> <li><i>i. transfer to another unit in the same retirement village</i></li> <li><i>ii. transfer to another unit in a different retirement village</i></li> </ul> <p><i>e) whether there are any costs to the resident for transferring to another unit.</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>

## Effect of proposals

These variations will:

- more explicitly state the process to be followed where a unit or village is destroyed and cannot or will not be rebuilt
- create awareness that there is a separate process for negotiating a payout in a no-fault exit situation
- clarify the minimum requirements for the contents of occupation right agreements, specifically for termination arrangements and payouts
- provide greater certainty to operators and residents about what can be expected when terminating occupation right agreements and payouts following extreme events
- provide a safeguard for residents if an operator decides to rebuild at a location distant to the original site.

## Questions

9. Should clause 47 apply only to operator owned units, or should it also apply to units that are owned by residents? Why?
10. The proposals do not prescribe a payout amount for terminating an occupation right agreement in a no-fault exit situation. Do you agree with this approach? If not, why not?
11. Is there an issue with the timing of occupation right agreement termination payouts? How long should a resident reasonably wait to be paid out in a no-fault exit situation?
12. Do you agree with the proposal to limit operators from rebuilding a village or transferring a resident more than 50km from the original location?
13. Do you agree that residents have the right to terminate their occupation right agreement under the no-fault exit provisions if transferred?
14. Overall, do you think the proposed wording will achieve the outcomes we are seeking?
15. Do you have any wording suggestions?

### 3: PAYMENTS AND CHARGES

#### Background

The Code of Practice prescribes the charges that continue to accrue to residents when an occupation right agreement is terminated. However, if a resident cannot live in their unit, has been temporarily accommodated outside the village, and has not terminated their occupation right agreement, then it appears that charges can continue to accrue until such time as they return, which could be several years away.

Charges include fees such as weekly fees, fees for additional services, and any other outgoings passed onto the residents.

The Code also prescribes that any 'fixed deduction' must not amortise<sup>2</sup> past the date on which the resident is paid out on termination of their occupation right agreement. The formula varies from village to village, but the 'fixed deduction' is often calculated as around 5-10 percent of the initial capital payment for the first five years, increasing to a maximum of 20-30 percent over subsequent years.

#### Issues

The issue is that the Code currently allows charges to continue to accrue when the residents cannot live in their unit through no fault of their own. This raises the following questions:

- What happens if an operator provides and pays for the temporary accommodation? Should the operator continue to charge as he/she is continuing to accrue costs, whether or not the resident is currently residing within their unit?
- What happens if all temporary accommodation costs are borne by the resident? Should the resident pay for an operator's outgoings in this circumstance?
- If the village is to be rebuilt, and the resident is absent from the village in the rebuilding period, should the fixed deduction continue to amortise?

The Code does not provide explicit guidance to assist in answering these questions.

#### Outcome sought

To ensure operators and residents have a common understanding of the charges that accrue in standard exit and no-fault exit situations.

#### Proposal

The Department of Building and Housing proposes to vary clause 54 of the Code as follows. Proposals are in ***bold italics***.

<sup>2</sup> Amortisation means the continued calculation of the termination payout formula.

CURRENT WORDING	PROPOSED WORDING
<p><b>Clause 54 Payments due to the resident on termination or end of occupation</b></p>	<p><b>Clause 54 <i>Payments and charges on termination, end of occupation or where a unit has been damaged or destroyed</i></b></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><b>Charges for personal services</b>            54(1) The operator must stop charging a resident for personal services:</p> <ul style="list-style-type: none"> <li>a) <i>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>b) on the date the resident stops living permanently in the residential unit.</li> </ul>
<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> <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>Continuing charges for outgoings</b>            54(2) The operator must reduce by at least 50 percent the outgoings charged to:</p> <ul style="list-style-type: none"> <li>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></li> <li>b) the former resident if no new occupation right agreement has been entered into for a former resident’s unit by the later of:               <ul style="list-style-type: none"> <li>i. six months after the termination date, or</li> <li>ii. the date the former resident stops living in the residential unit and removes all their possessions.</li> </ul> </li> </ul>
<p><b>Fixed deductions</b>            (Fixed deduction is also known as a facilities fee, village contribution, or deferred management fee.)</p>	<p><b>Fixed deductions</b>            (Fixed deduction is also known as a facilities fee, village contribution, or deferred management fee.)</p>

CURRENT WORDING	PROPOSED WORDING
<p>Clause 54 Payments due to the resident on termination or end of occupation</p>	<p>Clause 54 <i>Payments and charges on termination, end of occupation or where a unit has been damaged or destroyed</i></p>
<p>54(3) These fixed deduction clauses only apply to contracts entered into after 25 September 2006.</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>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>	<p>54(4) Clauses 54(5) and 54(6) of this Code of Practice only apply to contracts entered into after 25 September 2006.</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(5) Details of fixed deductions must be set out in the disclosure statement.</p>	<p>54(6) Details of fixed deductions must be set out in the disclosure statement.</p>

CURRENT WORDING	PROPOSED WORDING
<p>Clause 54 Payments due to the resident on termination or end of occupation</p>	<p>Clause 54 <i>Payments and charges on termination, end of occupation or where a unit has been damaged or destroyed</i></p>
<p><b>Payment after sale or disposal of the residential unit by the operator</b>            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>	<p><b>Payment after sale or disposal of the residential unit by the operator</b>            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>

### Effect of proposals

These variations will:

- clarify what charges continue to accrue in any exit situation
- clarify when the fixed deduction continues to amortise
- provide greater certainty to operators and residents about what can be expected following extreme events.

### Questions

16. What charges should continue to accrue to residents and in what circumstances?
17. When should the amortisation of the fixed deduction cease?
18. Do you think the proposed wording will achieve the outcome we are seeking?
19. Do you have any wording suggestions?
20. When should any new Code come into force?
21. Should there be a transitional period?

### Final comments

22. Overall, is there anything else you would like to comment on?

## 4: ADDITIONAL DEFINITIONS

### This section is provided for information only

The Code currently defines 27 key terms. In the process of reviewing the Code in light of the Canterbury earthquakes, terms relating to insurance arrangements were identified that could be usefully added to the Definitions section.

Existing definitions have not been changed.

The Department of Building and Housing plans to include the following additional terms into the Definitions section of the Code.

TERM	WORDING
Replacement insurance	<b>Replacement insurance</b> means an insurance policy covering the cost of replacing and repairing property that is destroyed or damaged.
Indemnity insurance	<b>Indemnity insurance</b> means an insurance policy covering property for its current value, having regard to its age and condition before an event where it is destroyed or damaged.
Business interruption insurance	<b>Business interruption insurance</b> means an insurance policy covering the loss of business income from destruction of, or damage to, a business.
Liability insurance	<b>Liability insurance</b> means an insurance policy covering third-party claims against the policy holder. Common liability insurances for operators are: Directors and Officers Liability, Trustees Liability, Employment Disputes, Professional Negligence (malpractice), General (public) Liability, Statutory Liability, Employers Liability, and Internet Liability.
Contents insurance	<b>Contents insurance</b> means an insurance policy covering loss of, or damage to, household goods and personal effects.
Insurance excess	<b>Insurance excess</b> means the amount under an insurance policy that the policy holder must contribute towards a claim.

# Submissions on Part Two: Consultation by the Department of Building and Housing

RETIREMENT VILLAGES CODE OF PRACTICE 2008 SUBMISSION FORM					
Name:					
Organisation:					
Address:					
Are you an: <input type="radio"/> operator <input type="radio"/> resident <input type="radio"/> insurer <input type="radio"/> statutory supervisor <input type="radio"/> other					
<input type="radio"/> Please tick if you are happy for us to contact you about your submission.					
<p>This submission form is to help you make a submission on the <b>proposed variations to the Retirement Villages Code of Practice 2008</b>. Please answer the questions and you can also send additional feedback if you choose.</p> <p>Please return this form by <b>5pm Monday 21 November 2011</b>.</p> <table><tbody><tr><td><b>Post:</b> Department of Building and Housing Level 6, 86 Customhouse Quay PO Box 10-729 Wellington 6143 Attn: Retirement Villages Code of Practice Review Team</td><td><b>Courier:</b> Department of Building and Housing Level 6, 86 Customhouse Quay Wellington 6143 Attn: Retirement Villages Code of Practice Review Team</td></tr><tr><td><b>Email</b> retirementvillages@dbh.govt.nz (please put 'Retirement Villages Code of Practice Review' in the subject line).</td><td><b>Fax</b> (04) 494 0290 (please put 'Retirement Villages Code of Practice Review' in the subject line).</td></tr></tbody></table> <p><b>Official Information Act 1982</b> Please note that all written responses will be public information. Responses may be the subject of requests for information under the Official Information Act 1982 (the OIA). The OIA specifies information is available on request unless there are grounds for withholding specific information, such as the information is commercially sensitive or personal. Any decision to withhold information requested under the OIA is reviewable by the Ombudsman.</p>		<b>Post:</b> Department of Building and Housing Level 6, 86 Customhouse Quay PO Box 10-729 Wellington 6143 Attn: Retirement Villages Code of Practice Review Team	<b>Courier:</b> Department of Building and Housing Level 6, 86 Customhouse Quay Wellington 6143 Attn: Retirement Villages Code of Practice Review Team	<b>Email</b> retirementvillages@dbh.govt.nz (please put 'Retirement Villages Code of Practice Review' in the subject line).	<b>Fax</b> (04) 494 0290 (please put 'Retirement Villages Code of Practice Review' in the subject line).
<b>Post:</b> Department of Building and Housing Level 6, 86 Customhouse Quay PO Box 10-729 Wellington 6143 Attn: Retirement Villages Code of Practice Review Team	<b>Courier:</b> Department of Building and Housing Level 6, 86 Customhouse Quay Wellington 6143 Attn: Retirement Villages Code of Practice Review Team				
<b>Email</b> retirementvillages@dbh.govt.nz (please put 'Retirement Villages Code of Practice Review' in the subject line).	<b>Fax</b> (04) 494 0290 (please put 'Retirement Villages Code of Practice Review' in the subject line).				

Thank you for your contribution. Note your responses will be shared with the Retirement Commissioner.

## QUESTIONS

### 1: Insurance arrangements

- 1) Should the Code ensure operators have sufficient funds available to terminate occupation right agreements in no-fault exit situations? If yes, how could this be achieved?
- 2) Should statutory supervisors ensure that a village is insured 'satisfactorily'? If no, who should? How should 'satisfaction' be determined?
- 3) How often should valuations be updated? We have suggested every two years. What do you think?
- 4) Do you agree that the insurance policies should include all amenities and utilities within the retirement village boundary, units subject to occupation right agreements and any residential units that are owned by residents? If no, please state why not.
- 5) What other types of insurance beyond replacement or indemnity insurance policy do you consider operators should be required to take out, if any? We have suggested business interruption insurance for a minimum of 18 months and adequate liability insurances – do you agree?

## QUESTIONS (CONTINUED)

### 1: Insurance arrangements (continued)

6) Who should be responsible for holding temporary accommodation insurance?

7) Do you think the proposed wording will achieve the outcomes we are seeking?

8) Do you have any wording suggestions?

### 2: Termination of occupation right agreements, including transferring to a new unit

9) Should clause 47 apply only to operator owned units, or should it also apply to units that are owned by residents? Why?

10) The proposals do not prescribe a payout amount for terminating an occupation right agreement in a no-fault exit situation. Do you agree with this approach? If not, why not?

11) Is there an issue with the timing of occupation right agreement termination payouts? How long should a resident reasonably wait to be paid out in a no-fault exit situation?

## QUESTIONS (CONTINUED)

### 2: Termination of occupation right agreements, including transferring to a new unit (continued)

12) Do you agree with the proposal to limit operators from rebuilding a village or transferring a resident more than 50km from the original location?

13) Do you agree that residents have the right to terminate their occupation right agreement under the no-fault exit provisions if transferred?

14) Overall, do you think the proposed wording will achieve the outcomes we are seeking?

15) Do you have any wording suggestions?

### Section 3: Payments and charges

16) What charges should continue to accrue to residents and in what circumstances?

17) When should the amortisation of the fixed deduction cease?

**QUESTIONS (CONTINUED)**

**Section 3: Payments and charges (continued)**

18) Do you think the proposed wording will achieve the outcome we are seeking?

19) Do you have any wording suggestions?

20) When should any new Code come into force?

21) Should there be a transitional period?

**Final comments**

# 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> <p>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</p> <p>b) state the circumstances (if any) when a unit that is damaged or destroyed may not be full repaired or replaced</p> <p>c) state the procedure to be followed if the unit is not to be fully repaired or replaced if it is damaged or destroyed</p>	<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> <p><i>i) the full insurance proceeds paid to the operator for that residential unit</i></p> <p><i>OR</i></p> <p><i>ii) the original capital sum paid by the resident for the right to occupy</i></p> <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>a) <i>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>b) on the date the resident stops living permanently in the residential unit.</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>



Published in October 2011 jointly by  
the Department of Building and Housing  
and the Retirement Commission.

This document is also available  
online at [www.dbh.govt.nz](http://www.dbh.govt.nz) and  
[www.retirement.org.nz](http://www.retirement.org.nz)

You can copy all or some of this document  
only if you are using it for education or  
public information, and you say it came  
from us. You cannot copy any of this  
document in any way for commercial  
use, and you cannot keep it in a retrieval  
system unless you ask us first.

ISBN: 978-0-478-38123-8 (document)  
ISBN: 978-0-478-38124-5 (website)