

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 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.