

# 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 style="list-style-type: none"> <li data-bbox="188 1505 769 1617">a) may include business interruption, temporary accommodation insurance, and adequate liability insurances</li> <li data-bbox="188 1630 753 1774">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"><i>22(1) The operator must take out and keep in force <b>insurance policies which provide adequate coverage for the retirement village</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>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.</b></i></p> <p data-bbox="842 1406 1369 1438"><i>22(2) The insurance policies must:</i></p> <ul style="list-style-type: none"> <li data-bbox="842 1451 1465 1751"><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 data-bbox="842 1765 1471 1908"><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 data-bbox="842 1921 1449 1953"><i>c) provide adequate liability insurances</i></li> <li data-bbox="842 1966 1417 2033"><i>d) meet any other insurance required by law.</i></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>the annual general meeting of residents</b>, and on request.</li> </ul> <p>22(6) Operators must inform the residents whether <b>or not</b> they pass on any <b>insurance policy excess amount</b> 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>

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><i>47(1) The occupation right agreement must:</i></p> <ol 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> </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).
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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**