



**GUIDE TO  
THE RETIREMENT VILLAGES ACT 2003**

**May 2007**

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## **About this guide**

This guide provides an overview of the Retirement Villages Act 2003 and the regulations and Code of Practice that have been made under the Act. These new laws give protections for residents and intending residents of retirement villages, and place corresponding obligations on retirement village operators..

The new laws set out specific minimum requirements that all retirement villages must comply with, in addition to the general law and other legal requirements that apply specifically to retirement villages.

### **The new legislation**

As well as the Retirement Villages Act, the new laws include:

- the Retirement Villages (General) Regulations 2006 (in force from 1 May 2007)
- the Retirement Villages (Disputes Panel) Regulations 2006 (in force from 1 October 2006)
- the Retirement Villages (Fees) Regulations 2006 (in force from 1 May 2007), and
- the Retirement Villages Code of Practice 2006 (in force from 25 September 2007, unless an operator elects to be bound by this Code earlier).

A few provisions of the Act came into force on 1 February 2004. The dispute resolution, enforcement, and penalties provisions in Part 4 of the Act and the Disputes Panel regulations came into force on 1 October 2006. The remaining provisions of the Act and the rest of the regulations are in force from 1 May 2007.

### **A general guide only**

This guide gives only a general overview of the new laws. For more detailed information, you should read the Act, the regulations and the Code of Practice themselves.

For legal advice for your specific situation, please contact a lawyer. The Act requires that intending residents take independent legal advice before entering a retirement village.

This guide includes links to websites that are not under the control of the Retirement Commission. These links are included as a convenience only: the fact that they've been included does not imply that the Retirement Commission endorses those websites.

### **How to get copies of this guide**

You can get printed copies of this guide by:

- emailing [office@retirement.org.nz](mailto:office@retirement.org.nz), or
- phoning 0800 438 767 or (04) 499 7396, or
- writing to: Retirement Villages, Retirement Commission, PO Box 12-148, Wellington.

## **How to get more information**

You can read the Retirement Villages Act 2003 and the accompanying regulations at [www.retirement.org.nz](http://www.retirement.org.nz). You can also read them, along with other relevant legislation, at [www.legislation.govt.nz](http://www.legislation.govt.nz).

Printed copies of the Act and the regulations are available at your local public library. You can buy copies of the Act for \$9.00 from Bennetts Government Bookshops, or by ordering them from your local Whitcoulls store or Legislation Direct.

You can read the Code of Practice at [www.retirement.org.nz](http://www.retirement.org.nz) or at [www.dbh.govt.nz](http://www.dbh.govt.nz). You can also obtain a printed copy of the Code by phoning 0800 836 262. Residents and intending residents can also obtain a copy of the Code from the village operator or manager.

At the end of this guide you'll find contact details for further sources of information and advice, or for making complaints.

## **We'd like your feedback**

We will continue to develop specific information for residents, intending residents, and operators. We are interested to know how useful you find this guide and what other issues you'd like covered. We'd also like to hear about your experiences with retirement villages.

## **Introducing the Retirement Villages Act 2003**

The Retirement Villages Act 2003 introduces new rights and protections for people who live in retirement villages or who are deciding whether to enter one. The Act introduces new responsibilities for retirement village operators and replaces the existing obligations under the Securities Act 1978 that covered many villages.

The new Act, and the regulations and Code of Practice that accompany it, are intended to provide a clear and easily understandable legal framework to protect the interests of residents and intending residents. It specifically aims to promote understanding of the financial and occupancy interests of residents and intending residents, and to provide an environment in which residents have security and their rights are protected.

The Act has specific requirements so that intending residents have a clear understanding of what they're buying into and residents get what they were promised or are entitled to. To help ensure this happens and to help resolve any problems, the Act includes a range of mechanisms for oversight of villages, as well as complaints and disputes procedures and sanctions.

### **When does the new Act come into force?**

Part 4 of the Act, covering dispute resolution, enforcement and penalties, came into force on 1 October 2006. The remaining provisions came into force on 1 May 2007. The Code of Practice will come into force on 25 September 2007, unless an operator elects to be bound by it earlier.

Operators will be given time to register their retirement villages and comply with the Code of Practice. All the other provisions of the Act will apply as soon as they are in force.

### **Who does the Act cover?**

The Act protects or places obligations on the following groups of people:

- it protects intending, existing and former residents (or their estates).
- it places obligations on retirement village operators, directors, trustees, managers and staff, and also on people who provide services to retirement villages.
- it places obligations on promoters and others who market retirement villages.
- it requires a "statutory supervisor" to be appointed for each retirement village (unless a village is exempt), giving them a significant role in monitoring the village.
- it gives specific responsibilities to lawyers who are advising residents or intending residents.
- it includes provisions applying to auditors, banks and others who lend to or invest in retirement villages.

The Act also introduces important roles for:

- the Registrar of Retirement Villages (currently the Registrar of Companies in the Ministry of Economic Development)
- the Retirement Commissioner

- the Registrar-General of Lands
- the Minister responsible for the Act, and
- the Department of Building and Housing, which administers the Act.

### What is a “retirement village”?

There is a wide range of retirement villages in New Zealand. Some provide only a few basic services, with no shared facilities. Others provide a full range of residential units, services and facilities, from self-care villas to rest-home and hospital facilities.

Retirement village operators also vary – for example, they may be companies, local bodies, non-profit organisations, trusts or individuals.

The Retirement Villages Act defines a “retirement village” very broadly. All residents are protected regardless of the particular legal form of their right to live in their unit is (such as a licence to occupy, unit title, lease or freehold).

A “retirement village” is any place that has **all** of the following features:

- **Multiple units** – The place has two or more residential units. A residential unit might be a villa, an apartment, a studio unit, a kaumatua flat, a room in a rest home, or any other place that was built as, or is now used mainly as, a unit of accommodation.
- **Accommodation and services or facilities** – The place provides residential accommodation, together with services or shared facilities, or both.
- **For retirement** – The place is mainly for people in their retirement (including their spouses or partners).
- **Capital sum** – The residents pay a capital sum in return for their right to live in the place. As well as a lump sum, a “capital sum” can also mean periodical payments, if the payments are substantially more than would be paid to cover rent and services or facilities for the relevant period.

If the place has all four of those features, it is covered by the Retirement Villages Act – it makes no difference what the village calls itself.

A “retirement village” does **not** include:

- owner-occupied unit-title units or owner-occupied cross-lease units, if the services or facilities they provide are no more than those commonly provided by similar units that are not intended for retired people or than those commonly provided by rental residential units
- a rest home or hospital care facility (unless it comes within the definition of a retirement village above)
- boarding houses, guest houses, hostels or halls of residence associated with educational institutions.

Regulations may declare that a particular property or building is, or is not, a retirement village for the purposes of the Act. This can only happen if there is a scheme to avoid the Act, or in cases of doubt.

## **Key changes made by the Retirement Villages Act**

### *A new retirement villages register*

- All retirement villages must be registered with the Registrar of Retirement Villages.
- To become registered, the village operator must prepare and register key documents, including the standard document they use to give information to intending residents (the “disclosure statement”) and the contract they enter into with each resident (the “occupation right agreement”).
- Each year the operator must provide an annual return and audited financial statements for the Register.
- All these documents will be publicly available.

### *Statutory supervisors*

- Each village must have a “statutory supervisor” (unless the village is exempt). This is an independent organisation or person that monitors the village’s financial position and operation. Each operator is required to enter into a “deed of supervision” with its statutory supervisor.
- Statutory supervisors are also one of the people residents can go to about breaches of the Code of Residents’ Rights.

### *Protections for intending residents*

- Villages that are not registered will not be allowed to advertise or take in new residents.
- All advertising must be accurate.
- Before an intending resident enters into an occupation right agreement, the village operator must give them a copy of:
  - the agreement
  - the disclosure statement
  - the Code of Practice
  - the Code of Residents’ Rights.
- Before the intending resident signs the agreement they must get independent legal advice.
- Once they sign, they have a “cooling-off” period of 15 working days in which they can change their mind.
- When the village or unit isn’t yet completed, a buyer can cancel the agreement for delay if the unit isn’t completed within six months after the proposed completion date.

### *Protections for residents*

- The Act specifies minimum protections that must be included in all occupation right agreements.
- Residents can avoid (cancel) their agreement if certain requirements were breached before they signed it.
- The Act also requires operators and managers to keep residents informed and to consult with them about proposed changes and other matters that affect them.

- The Act sets up complaints and disputes procedures.
- The Act also protects residents if the village is sold or gets into financial difficulty.

### *Protections for departing residents*

- The Act also covers when a resident leaves.
- The Code of Practice sets out: when an operator may require a resident to leave the village; the re-sale process; what payments or deductions can be charged; and when the resident gets paid what they're due.

### *Code of Residents' Rights and Code of Practice*

- The Code of Residents' Rights summarises the basic rights of residents under the Act.
- The Code of Practice sets out minimum requirements relating to the village's operation that must be in each occupation right agreement (although a village may be exempt from a provision). This covers topics ranging from staffing, safety and security, and maintenance, to residents' involvement in decision-making, communication with residents, and complaints.
- The Code of Practice prevails if there is a less favourable term in an occupation right agreement.

### *Oversight and sanctions*

A range of oversight mechanisms and sanctions helps make sure intending residents and residents are protected:

- The Retirement Commissioner monitors the effects of the Act, the regulations and the Code of Practice.
- The Registrar of Retirement Villages and the village statutory supervisor have significant responsibilities and powers. Residents can also complain to either of them about breaches of the Code of Residents' Rights.
- Residents, statutory supervisors and the Registrar of Retirement Villages can take court action for breaches of the Act. The court can make orders such as fines, injunctions, corrective advertising, changes to agreements, refunds and payments to residents, and awards of costs and interest.

## **How will the Act affect people already living in retirement villages?**

Most of the Act's provisions will apply to residents living in retirement villages.

All residents who are living in retirement villages on that date must be given a disclosure statement by 1 May 2008.

No matter when they signed their agreement, all residents are:

- able to access the Act's complaints and disputes provisions from 1 October 2006
- protected by the Code of Residents' Rights from 1 May 2007
- protected by the Code of Practice from 25 September 2007 (which must be incorporated in their occupation right agreement).

Until residents have those protections, both residents and operators will be bound by the terms of the agreements they signed when the residents entered the village.

Some of the Act's key protections apply only to residents who sign an agreement after 1 May 2007 – for example, the right to a “cooling-off” period and to end an agreement for certain breaches. However, existing residents may be able to rely on other laws, such as those relating to contracts, promises and representations (for example the Fair Trading Act 1986), and the quality of goods and services (for example the Consumer Guarantees Act 1993).

### **How will the Act affect former residents?**

From 1 October 2006, former residents (or their estates) can use the complaints and disputes procedures in Part 4 of the Act if they were residents of a retirement village on or after **1 February 2004**.

## **Roles in the Act**

The Retirement Villages Act 2003 includes several important statutory roles:

- the Registrar of Retirement Villages
- the Retirement Commissioner
- the Registrar-General of Lands
- the Department of Building and Housing
- the Minister for Building and Construction.

### **Registrar of Retirement Villages**

The role of the Registrar of Retirement Villages is performed by the Registrar of Companies in the Companies Office, which is part of the Ministry of Economic Development. The Registrar of Retirement Villages is responsible for:

- registering retirement villages and receiving annual returns
- maintaining the Register of Retirement Villages in electronic or manual form, or both
- approving people who can be appointed as statutory supervisors by retirement village operators
- notifying the Registrar-General of Lands when a retirement village is registered, so that a “memorial” can be placed on the certificates of title for the village
- determining whether villages are complying with the Retirement Villages Act and the Financial Reporting Act 1993
- receiving complaints about breaches of the Code of Residents’ Rights.

The Registrar can:

- suspend a retirement village’s registration
- exempt a village from the requirement to appoint a statutory supervisor
- exempt a village from any provision in the Code of Practice
- inspect, take copies of, and retain documents relating to a retirement village.

### **Retirement Commissioner**

The Retirement Commissioner is responsible for:

- monitoring the effects of the Retirement Villages Act, the regulations and the Code of Practice
- advising the responsible Minister on retirement village issues
- promoting education and publishing information on retirement village issues
- collecting and publishing information on the Commissioner’s functions that relate to retirement villages
- receiving alleged breaches of the Code of Residents’ Rights

- approving people who can be appointed by operators as members of disputes panels, and holding the full records of disputes
- seeking submissions and making recommendations to the responsible Minister on a draft Code of Practice and on any changes to an approved Code of Practice (the Minister approved a Code of Practice on 25 September 2006 and this will come into force one year later).

The Retirement Commissioner can also obtain information from operators and auditors of retirement villages.

### **Registrar-General of Lands**

The Registrar-General of Lands is responsible for noting a “memorial” on the certificates of title for retirement villages. The memorial records that the title is subject to the rights of the residents. In certain cases the Registrar-General can also remove memorials.

### **Department of Building and Housing**

The Retirement Villages Act is administered by the Department of Building and Housing.

### **The Minister for Building and Construction**

The Minister for Building and Construction, Hon Clayton Cosgrove, approved the Code of Practice to cover all retirement villages, and is responsible for making any changes to it.

## Obligations of retirement village operators

Operators have obligations to residents, intending residents, and former residents, and to the Registrar of Retirement Villages and the village statutory supervisor on behalf of residents.

Operators must comply with the Retirement Villages Act and with the regulations and Code of Practice made under the Act, along with all other applicable statutory and legal obligations. They must run the village properly and use reasonable care and skill in everything they do.

The deed of supervision between the village operator and statutory supervisor also sets out many general and specific obligations of operators. The occupation right agreement with each resident also sets out many of the operator's obligations.

### What is an “operator”?

The operator of a retirement village is typically the developer or owner of the village, who often also manages the village. Operators have obligations under occupation right agreements, and also the other obligations set out below.

In some cases, an operator appoints a manager, who then takes on the operator's responsibilities and obligations on behalf of, and with the authority of, the operator.

### What are an operator's obligations?

The obligations of operators focus on the following areas:

#### *The village*

- registering their retirement villages (existing villages must apply for registration by 1 November 2007)
- making annual returns to the Registrar of Retirement Villages, including audited financial statements
- appointing an approved statutory supervisor for each village (unless it's exempted) and complying with the deed of supervision and the statutory supervisor's directions
- providing information on certain changes and other matters to the Registrar, to the statutory supervisor, and to residents and intending residents
- running the village properly, including keeping it in good condition, fully insuring it and following a long-term maintenance plan
- accounting for all money received, and keeping this in accounts in financial institutions

### *Intending residents*

- ensuring that advertising is accurate
- providing each intending resident, before they sign an occupation right agreement, with a disclosure statement that complies with the Act, regulations and Code of Practice, together with copies of the agreement, the Code of Residents' Rights and the Code of Practice The Department of Building and Housing has developed a disclosure statement template.
- ensuring that intending residents receive independent legal advice before they sign the occupation right agreement, as certified by their lawyer
- providing a minimum cooling-off period of 15 working days
- providing for residents to cancel their agreements for delay if the village or unit is not yet completed six months after the proposed completion date

### *Residents*

- having a clear and unambiguous occupation right agreement with each resident that complies with the Act, the regulations and the Code of Practice
- providing residents with what they promised them
- communicating with residents, consulting residents on changes, and involving them in decision-making in the village
- calling an annual general meeting within six months after the end of the village's financial year, and calling other meetings when they're asked for by the residents' committee, 10% of the residents or the statutory supervisor, and providing all relevant and requested information for those meetings
- providing all residents with a copy of the statement forecasting income and expenditure, including what residents pay, within three months of the start of the village's accounting year, and providing a copy of the financial statements to residents if they ask for them
- providing a copy of, and complying with, the Code of Residents' Rights
- providing a copy of, and complying with, the Code of Practice (although a village may be exempted from particular provisions in the Code). This includes having written policies and procedures for each of the 10 topics covered by the Code, telling residents and intending residents about these, and providing copies of the Code on request. Operators must also have an induction process for residents and staff on the Code's requirements. In addition they must monitor and review these policies and procedures and consult residents on any changes
- providing a complaints facility. This must comply with the Code of Practice from 25 September 2007, and must include procedures for complaints to be resolved simply, fairly and quickly
- appointing and paying for a disputes panel after a dispute notice has been given under the Act's dispute resolution provisions and the Retirement Villages (Disputes Panel) Regulations.

## **Responsibilities of directors, trustees, managers and promoters**

Directors, trustees and managers of retirement villages must also take all reasonable steps to make sure that the operator's obligations are carried out.

Promoters of retirement villages also have some obligations relating to advertising.

## **What are the consequences for not complying with the Act?**

A village can have its registration suspended if it fails to comply with the Act or if its financial statements or other registered documents are likely to be misleading or deceptive. If its registration is suspended, the village cannot advertise or take in new residents.

Residents can also avoid (cancel) an occupation right agreement if certain important requirements were not complied with before they signed it. This means the agreement is at an end and the operator must refund all capital sums paid and other payments and costs.

Residents can also make a complaint or take a dispute to a disputes panel if their rights have been breached.

Further, operators that don't comply with the Act face fines of up to \$30,000 for individuals and \$100,000 for companies and other bodies. A court can also order an operator or other person:

- to stop committing a breach or to take certain action
- to publish corrective statements or other information
- to pay money to a resident.

A court can also amend or cancel an occupation right agreement.

## Registration of all retirement villages

This section outlines the requirements for registering retirement villages. For more detailed information, including the forms to be used, contact the Registrar of Retirement Villages.

### A register for all retirement villages

The Retirement Villages Act requires every retirement village operator to:

- register each village with the Registrar of Retirement Villages in the Companies Office
- lodge certain key documents with the Registrar, including the disclosure statement and the occupation right agreement that the village uses
- provide the statutory supervisor's name and address and provide a copy of the deed of supervision (or a copy of the exemption notice if the village is exempted from having a supervisor)
- provide the Registrar with annual returns, including audited financial statements
- pay the required fee.

All the registered information and documents will be publicly available.

The fact that the village is registered does not mean that the village has been approved in any way by the Registrar.

### When do villages have to register?

Retirement villages that begin to operate on or after 1 May 2007 must register before they can advertise or make an offer of occupation. Promoters of a village may, if they intend to apply for registration, still promote their proposed village on the basis of a specified statement permitted under the Act.

Operators of villages that are operating on 1 May 2007 have **six months** after that date to apply for registration, during which they can continue to advertise and take in new residents despite not being registered.

### Registration fees

The initial registration fees are based on the number of units in each village:

Up to 34 units	\$540
35-84 units	\$1,700
85 or over	\$4,410

The annual return fees for each village are:

Up to 34 units	\$450
35-84 units	\$1,510
85 or over	\$3,850

For other fees, see the Retirement Villages (Fees) Regulations, or contact the Registrar.

## **Memorial on title**

After a village is registered, the Registrar-General of Lands places a formal notice called a “memorial” on the village’s certificates of title. The memorial gives the rights of residents priority over the rights of security interests and provides that occupation right agreements will continue. This helps ensure that residents continue to be protected by the Act and can continue to live in the village if it’s sold or goes into liquidation.

However, liquidators or receivers could still terminate these rights in occupation right agreements. For example, many agreements are simply monthly licences to occupy, and can be terminated with one month’s notice unless the village is sold as a going concern.

## **Restrictions on unregistered villages**

Operators of unregistered villages cannot:

- advertise the village
- advertise the place as a retirement village
- offer prospective residents a place in the village
- enter into an occupation right agreement.

That rule applies from 1 May 2007 for new villages, or after the allowed period for registration has ended for existing villages.

## **Suspension of a village’s registration**

The Registrar can suspend a village’s registration if:

- the operator isn’t complying with the Act or regulations
- any of the village’s registered documents are likely to be misleading or deceptive
- the operator hasn’t paid any required fee to the Registrar.

If a village’s registration is suspended, the operator can’t advertise or take in new residents.

## **Changes to the village**

The operator must also notify the Registrar and the village’s statutory supervisor, using a set form, whenever there is:

- any material change in the registered documents, or any change of circumstances that may make them misleading or deceptive
- any change in the operator or the controlling interests in the operator
- any change to the name and address of any operator of the village.

## **The statutory supervisor: An independent watchdog**

Residents of retirement villages are given significant protection by the requirement in the Retirement Villages Act that the operator of each village must appoint a “statutory supervisor” for the village (unless the village is exempted).

The statutory supervisor is an independent professional organisation or person that has been approved by the Registrar of Retirement Villages (or existing ones approved by the Securities Commission). They are appointed under a “deed of supervision” that sets out the terms and conditions of their role. The deed of supervision must be registered, and a copy must be made available to residents or intending residents.

### **What is the statutory supervisor’s role?**

The statutory supervisor is responsible for monitoring the village’s financial position, the security interests of the residents, and the management of the village. The supervisor intervenes on the residents’ behalf where necessary.

Specifically, the statutory supervisor:

- monitors the village’s financial position
- reports to the Registrar and to the residents each year at the annual general meeting
- attends other meetings when requested by residents
- acts as an independent stakeholder for all deposits and progress payments paid by residents to operators (with specific roles when a resident enters or leaves a village, or avoids (cancels) their agreement)
- receives complaints about breaches of the Code of Residents’ Rights
- represents the residents’ interests if the village gets into serious financial difficulty.

### **What the operator must tell the statutory supervisor**

The operator must tell the statutory supervisor about certain things, and the supervisor can then direct the operator to inform residents and intending residents about these things.

These include:

- any proposal to develop or redevelop a part of the village
- any suspension of the village’s registration or any request by the operator to the Registrar to cancel the village’s registration
- any appointment of a new statutory supervisor, or a decision by the Registrar to exempt the operator from having a supervisor for the village
- any proposed increase in secured liabilities or in the maximum amount available to the operator under a credit facility
- any actual or threatened action by a creditor, mortgagee or charge-holder for money over \$1,000, and any action to put the operator or village in receivership or liquidation
- any actual or threatened legal proceedings against the village or operator that affect the interests of any resident

- any decision by an insurer to refuse to insure the village or part of it.

The operator must also inform the statutory supervisor about disputes that might affect a significant number of residents, the general operation of the village, or the operator's rights and obligations under the deed of supervision.

### **What powers does the statutory supervisor have?**

As the watchdog for the village, the statutory supervisor can require the operator to provide information about the village's finances, the security of the residents' interests, or how the village is being managed.

A statutory supervisor who is concerned about any of these areas can:

- direct the operator to give particular information to all the residents
- direct the village to be operated in a particular way
- apply to the court for it to make certain orders under the Securities Act 1978
- prevent an advertisement from being published or distributed to the public if it's inconsistent with the Act, regulations, disclosure statement, occupation right agreement or Code of Practice
- issue public statements about the village (with the authorisation of the Registrar of Retirement Villages).

Statutory supervisors can also be given additional powers and duties by the operator (these will be in the deed of supervision).

### **Applications for exemptions**

Operators can apply to the Registrar of Retirement Villages for a village to be exempted from the requirement to appoint a statutory supervisor.

These are the criteria on which an exemption can be made (they are set out in the Retirement Villages (General) Regulations):

#### *Criteria that apply to existing villages*

- that there are no current or foreseeable risks to the residents' interests
- that the operator has notified the residents of the application for an exemption and whether any residents have informed the Registrar of any such risks
- the nature and extent of the residents' control of the management of the village

#### *Criteria that apply to villages not yet operating*

- that the intended manner of establishing and operating the village will not create any reasonably foreseeable risk to the residents' interests.

#### *Criteria that apply to all villages*

- that the residents' interests are not at risk from any debt or other financial liability incurred by the village or operator in favour of another person

- that for any other reason it's undesirable to appoint a statutory supervisor because the residents' interests would or might be negatively affected without an equivalent or greater benefit.

## Protections for intending residents

The Retirement Villages Act gives important protections to intending residents of retirement villages by requiring village operators to provide them with comprehensive information. This enables the intending resident to compare retirement villages and make an informed choice about entering a village.

### Who is an “intending resident”?

An **intending resident** is a person who:

- in the last three months has talked with a retirement village operator or their agent about entering into an occupation right agreement, or indicated to them that they're interested in becoming a resident, and
- has given their contact details to the operator or their agent.

### Advertising must be accurate

Retirement village operators and promoters must make sure their advertising isn't misleading or deceptive. This includes signs and promotional material, as well as advertisements in newspapers and magazines, on radio, TV and websites and in other places.

It's an offence to breach this requirement. The Registrar of Retirement Villages can also suspend a village's registration for this reason.

The Fair Trading Act 1986 also applies to misleading or deceptive advertising (as well as to statements made by operators or their agents). That Act is enforced by the Commerce Commission.

### No advertising or offers by unregistered villages

Operators of villages that are not registered cannot advertise the village, nor claim the place is a retirement village, nor make an offer to anyone to become a resident. That rule applies from 1 May 2007 for new villages, or after the allowed period of registration has ended for existing villages. The same rule applies to villages whose registration has been suspended.

If the operator breached this rule in some **substantial** way before a resident signed an occupation right agreement, the resident can end the agreement by notifying the operator and the village's statutory supervisor in writing.

### Information that must be given to intending residents

Before an intending resident signs an occupation right agreement with a retirement village, the operator must give them copies of:

- a disclosure statement that contains all the required information about the village (see below)
- the occupation right agreement

- the Code of Residents' Rights
- the Code of Practice (and tell them it comes into force on 25 September 2007).

They are also entitled to get copies of:

- the most recent audited financial statements
- the village rules
- the management agreement
- the deed of supervision.

## **Disclosure statement**

The disclosure statement is an important document that intending residents should read carefully.

Written in clear language and in large type, it starts with a statement warning intending residents and their families about common misunderstandings about:

- the kind of interest they have in their unit
- fees and charges, and
- what happens when they leave.

The operator must register their standard form of disclosure statement with the Registrar of Retirement Villages.

The requirements for what must be in disclosure statements are set out in Schedule 2 of the Retirement Villages Act and the Retirement Villages (General) Regulations. This includes the following:

### *The village*

- the ownership, management and supervision of the village
- the village's ownership structure and management arrangements
- the manager and staff (if any), including contact details and when they are there
- the village's statutory supervisor, including their role and contact details, or any exemption from having a supervisor
- the state of the village, including its condition, stage of completion, numbers of occupied and unoccupied units, any new units planned and how these will affect residents, and how long it has taken to sell vacant units
- the services that the village offers or plans to offer (for example, security, housecleaning, meals, nursing care) and the shared facilities the village offers or plans to offer
- arrangements for maintenance and refurbishment
- the preparation, auditing and disclosure of financial accounts
- insurance cover and responsibilities

### *Occupancy rights*

Information about the type of occupancy rights offered, including the type of legal interest a resident would have in their residential unit (for example, a licence to occupy or a unit title) and whether this can be sold and any applicable restrictions or conditions. This information focuses on:

- the village rules and any other restrictions on the resident living in or using their unit
- whether the operator controls the sale of the unit, and if so, the procedures and costs, what the resident gets back, and what happens if there is a delay
- the resident's right to sell or market their unit, and to mortgage or borrow against it
- the resident's right to let the unit, have someone else stay there (such as a partner, family member or carer), and to keep a pet
- whether the agreement can be changed by the operator or resident and, if so, in what situations

### *Costs and returns*

- charges for entering, moving within and leaving the village
- periodical charges (monthly, for example)
- charges for maintenance, rates and insurance
- whether the resident receives a share of any capital gain or is liable for any capital loss when they leave the village
- the estimated financial return a resident could expect from the sale of their unit two, five and 10 years after entering into the agreement

### *Cooling-off period*

- the 15-working day cooling-off period after signing an agreement and any additional period given
- the right to cancel the agreement for delay if the unit is not completed within six months after the proposed completion date; and any extensions of that right that are given

### *Termination*

- the arrangements for terminating an agreement, including the effect on anyone else living in the unit, continuing charges, the process for finding a new resident, the process for determining the sale price, and what the resident receives

### *Other matters*

- whether any lender who holds a security interest in the village (such as a mortgage) on 31 December 2002 has refused to consent to the village being registered, and the effect of this
- any exemptions from complying with the Code of Practice (after it's in force from 25 September 2007)
- any other information required by the Code of Practice or by the regulations

- any other information that the deed of supervision requires the operator to disclose

### **What if an intending resident isn't given this information?**

If a person signs an occupation right agreement but then learns the operator left out something **substantial** from the disclosure statement, they can avoid (cancel) the agreement by notifying the operator and the statutory supervisor in writing.

If there's a dispute about whether or not the information was given, the burden is on the operator to prove they gave the information to the intending resident. When there's no evidence to the contrary, this will be proved if the intending resident signed that they received the information.

It's an offence for the operator not to give an intending resident the required information.

## Entering into an occupation right agreement

### What is an “occupation right agreement”?

An occupation right agreement is any written agreement that gives a person the right to occupy a unit in a retirement village and that sets out the relevant terms and conditions.

The occupation right agreement must be clear and unambiguous. It may consist of more than one document.

The occupation right agreement must comply and be consistent with the provisions of the Act, the regulations and the Code of Practice (although the village may be exempted from any provision of the Code of Practice). The agreement must also provide information on the Code of Residents’ Rights and the Code of Practice.

Operators must register their standard form of occupation right agreement with the Registrar of Retirement Villages. The terms of a resident’s particular agreement must be either the same as those in the registered form or more favourable – they can’t be **less** favourable.

Schedule 3 of the Act and the Retirement Villages (General) Regulations set out what must be covered in the occupation right agreement, and Part 2 of the Act covers the process for entering into an agreement. The Code of Practice (in force on 25 September 2007) specifies minimum requirements for most of these areas, which must be included in occupation agreements – if not, they’ll apply anyway.

### What issues does the agreement have to deal with?

#### *The village and its operations*

The occupation right agreement must cover:

- the management of the village
- the village’s services and facilities
- the nature of the resident’s right to occupy the unit, and the resident’s and operator’s respective rights to deal with the unit
- the charges relating to the village and to the use of its services and facilities
- the operator’s obligation to run the village properly
- the resident’s rights to be given key financial documents and other relevant information that they ask for
- staffing
- residents’ safety and personal security
- fire protection and emergency management
- the transfer of residents within the village
- meetings of residents with the operator
- accounts
- maintenance and upgrading

- termination of the agreement by a resident or the operator
- communication to those for whom English is a second language or whose ability to communicate is limited
- a complaints facility and a disputes procedure.

### *Consultation with residents*

The agreement must also require the operator to consult with residents:

- before a village is sold or disposed of
- before a new manager is appointed
- about any proposed changes to the services or benefits provided or to charges that could affect residents' ability to pay for them.

### *Treatment of residents*

In addition, the agreement must require the operator and the people who work at the village and provide services to:

- treat the residents with courtesy
- respect their rights, and
- not exploit them.

### *Where the village or unit hasn't been built*

If the village or unit is not yet completed when the agreement is signed, the agreement must state the unit's proposed completion date. The disclosure statement given to the intending resident before they signed the agreement must also give information about the state of the village, including its stage of completion.

## **Getting independent legal advice before the agreement is signed**

Intending residents must get **independent** legal advice before they sign an occupation right agreement. This means advice from a lawyer who is completely independent of the retirement village operator.

The lawyer must explain to the intending resident the general effect of the agreement and its implications, before the person signs it. This lawyer must do this in a way that's appropriate to the person's age and understanding. The lawyer must then witness the person's signature and certify that they explained these things.

It's not enough that a person such as a staff member from the village explains the agreement to the intending resident – it must be an independent lawyer (and not a legal executive).

If in some **substantial** way any of these requirements is not met, a resident can avoid (cancel) the agreement.

## **Cancelling an agreement while “cooling off” or for delay**

### *A “cooling-off” period after the agreement is signed*

After new residents have signed an occupation right agreement, they have **15 working days** in which they can change their mind and **cancel** the agreement. This applies to everyone who signs an occupation right agreement with a retirement village. It's not necessary for the operator to have done anything wrong.

The cancellation must be notified in writing to the operator or their agent. No particular words need be used, so long as the intention to cancel is clear. No reason has to be given.

Once the agreement is cancelled, the person will get back everything they paid, plus interest, within **10 working days**. However, they must pay for any services they used if they lived in the unit during this period, and for any damage they may have caused.

### *Cancellation for delay*

The buyer can cancel the agreement if the unit is not, for practical purposes, completed within **six months** of the proposed completion date. They can do this any time after the six-month period. They must then be refunded all payments they've made.

The buyer must notify the operator or their agent in writing that they are cancelling the agreement. They don't have to use any particular words so long as their intention to cancel is clear.

## **Deposits and progress payments to be independently held**

Every deposit, progress payment or other payment that a person makes for a right to live in a unit must be held by the village's statutory supervisor. The supervisor holds the payment until the transaction's settlement date (or until the agreement is cancelled during the cooling-off period).

If the retirement village is exempt from appointing a statutory supervisor, a lawyer nominated by both the resident and operator must hold the money. The nomination must be in writing, in a separate document from the occupation right agreement.

## **Avoiding (cancelling) for a breach of the agreement**

The Retirement Villages Act gives residents the ability to “avoid” (cancel) their occupation right agreement if it was entered into in breach of important provisions of the Act in a **substantial** way. This means that the agreement is cancelled and the operator must refund the purchase price and other costs to the resident.

### *When can a resident avoid an agreement?*

This can be done where any of the following things has happened, if the breach was in a “substantial respect”:

- the village wasn't registered when it's required to be or its registration was suspended when the operator advertised, made an offer of occupation, or entered into the occupation right agreement with the resident.

- something was left out of the information that's required to be in or to accompany the disclosure statement.
- the occupation right agreement did not include the required information.
- an independent lawyer did not explain the general effect of the agreement and its implications before the resident signed it, and witness and certify that they did this.

#### *When a breach is in a "substantial respect"*

An agreement can only be avoided where the breach was in any "substantial respect". This is where the breach:

- involves a "significant detriment" to the resident, or
- is material and not simply technical or minor, or
- involves deliberate misconduct by the operator.

#### *How does a resident avoid an agreement?*

The resident must notify both the operator and the village's statutory supervisor in writing, within the set time limits (see below). This can be done only if the agreement hasn't already been terminated.

The procedures for ending an agreement because of a breach are quite different from where the agreement is ended on other grounds, and it's important that the correct procedures are followed.

#### *What are the time limits?*

If the village wasn't registered or if its registration was suspended, the operator and statutory supervisor must be notified:

- within **three years** after the agreement was entered into, or
  - within **six months** after the resident knew (or ought to have known) of the breach,
- whichever period is shorter.

For other breaches, the time limit is –

- within **one year** after the agreement was entered into, or
  - within **six months** after the resident knew (or ought to have known) of the breach,
- whichever period is shorter.

#### *What happens when an agreement is avoided?*

The agreement is at an end and the operator must pay the resident:

- a refund of all capital sums paid before or while the resident occupied their unit
- a refund of all other payments made for which services or facilities were not provided
- interest (at the rate set down in regulations)
- actual and reasonable costs associated with ending the agreement (such as legal expenses and removal costs).

*What if there's a dispute about this?*

If the operator believes there hasn't been a breach, they can take the matter to a disputes panel by giving a "dispute notice". While the dispute is unresolved they must take all reasonable steps to put right any breach. They do not have to pay any refund.

If the operator and resident don't agree when the refund is to be made, either of them can give a dispute notice to resolve this.

Part 4 of the Act has more information about giving a dispute notice in these situations (particularly sections 53 and 54).

## Protections for residents

### Who is a “resident”?

A resident is:

- anyone who enters into an occupation right agreement with a retirement village operator
- anyone who’s entitled under an agreement to live in a unit in the village (even if the agreement wasn’t made with that person)
- a spouse or partner who is living in a unit with someone who’s entitled under an agreement to live there, or who is living in it after that person has died or left the village (as long as the agreement or the operator allows it).

All these people have the rights given to residents by the Retirement Villages Act and the Code of Practice. For example, they have all the rights set out in the Code of Residents’ Rights, and they can use the village’s complaints procedure and take an unresolved complaint to a disputes panel.

For the purposes of making a complaint or taking a dispute to a disputes panel, a “resident” includes a “former resident” (or their estate). A “former resident” is a person who was a resident of a retirement village on or after 1 February 2004 and whose occupation right has since terminated.

### The key protections

Broadly, residents have a right to what they were promised, whether verbally, or in advertisements, the disclosure statement, their occupation right agreement or other documents.

They are protected by several important legal documents:

- the **disclosure statement** is given to them by the operator before they sign the occupation right agreement. All residents living in a village must also be given a copy of the disclosure statement by 1 May 2008.
- their **occupation right agreement** is the contract they have signed with the retirement village operator that governs their right to live in the village, what they have to pay, and other obligations. Residents can avoid (cancel) their agreement if it was entered into in breach of certain provisions of the Act.
- the **Retirement Villages Act** and **regulations** set out the operator’s obligations to run the village properly and other residents’ rights, such as the right to get what they were promised, to receive information, to be consulted about changes and to make complaints and take disputes.
- the **Code of Residents’ Rights** is a summary of the basic rights the Act gives to residents. A breach of the Code of Rights can form the basis of a complaint or dispute notice.
- the **Code of Practice** sets out minimum requirements for the operation of retirement villages and the protection of residents. These must be included in occupation right agreements from 25 September 2007, or earlier if an operator chooses this. Operators must tell residents about their policies and procedures on the 10 topics covered by the

Code of Practice and give them copies of these and the Code if they ask. They must also have an induction process for residents on the Code of Practice.

- the **memorial** on the village's certificates of title helps ensure that residents can continue to live in the village if it's sold or goes into liquidation. The extent of this protection depends on the operator's termination rights in the resident's occupation right agreement.

## **What if things change?**

Residents have a right to what they are promised in their occupation right agreement. The agreement must state whether it can be changed and, if so, in what situations.

The agreement may specify that decisions of a majority of residents will bind all residents (except where the Retirement Villages Act or other legislation requires the consent of a specified proportion of residents on a particular matter).

The Act also requires that residents be told about matters that affect them and be consulted about proposed changes. The Code of Practice (in force from 25 September 2007) will set out minimum requirements for how often meetings between the operator and residents must be held and for residents having access to the operator. It will also cover the opportunities for residents to participate in decision-making.

## **Right to be kept informed**

The operator must inform residents (and intending residents) promptly about anything that might materially affect their right to live in their village unit and the charges for this.

The operator must report to residents at an annual general meeting, held within six months after the end of the village's financial year, and give them all relevant papers beforehand. At the meeting the operator must give the residents all information that they ask for, and must provide them with the minutes afterwards.

The operator must give residents a copy of the village's forecast statements within three months after the beginning of the new financial year.

Residents can also ask for copies of:

- the audited financial statements
- the Code of Practice and the policies and procedures the village has developed to meet the Code's requirements.

The operator must also inform residents if they are going to apply to the Registrar of Retirement Villages for an exemption from the requirement to have a statutory supervisor. Residents can then write to the Registrar with their views.

The operator must also tell the statutory supervisor a number of things, or, if there isn't a statutory supervisor, tell the residents directly. These include:

- any suspension of the village's registration, or any request from the operator to cancel it
- any proposals to develop or redevelop the village

- any proposed increase in secured liabilities or the maximum credit available to the operator
- any actual or threatened action by a creditor, or any action to put the operator or village in receivership or liquidation
- any actual or threatened action to take legal proceedings that affects residents
- any refusal to insure the village.

The statutory supervisor can also direct the operator to inform residents and intending residents about these things.

### **Right to be involved in decision-making**

Residents have a right to form a residents' committee and to meet with the operator or manager and the statutory supervisor. Ten percent of residents may also call a meeting with the village manager, operator or statutory supervisor to give their opinions or directions.

### **Right to be consulted about changes**

Operators must consult residents about any changes they propose to make to services and benefits or to the charges residents pay, if these changes might affect the residents or their ability to pay for them.

The operator must specifically consult residents before:

- appointing a new manager
- establishing or changing the village rules
- selling or otherwise disposing of the village
- other common changes that affect residents, include developing or redeveloping the village.

The requirement to consult involves:

- giving residents enough information
- giving them time to respond
- fully considering their comments or advice with an open mind before making a decision
- conveying the decision to residents, with reasons.

### **Right to have requests responded to**

Residents have the right to receive a response to their requests – for example, for information and for maintenance.

### **Right to have issues sorted out**

Residents have the right to take any concerns or issues to the village operator or statutory supervisor and to receive a response. If the problem isn't sorted out, residents may make a complaint and if necessary take a dispute to a disputes panel.

## The Code of Residents' Rights

The Code of Residents' Rights summarises the basic rights that the Retirement Villages Act gives to all residents.

A copy of it must be given to intending residents with their disclosure statement. The village operator must also give a copy to a resident or intending resident if they ask for one.

The full text of the Code of Residents' Rights, in Schedule 4 of the Act, is set out below:

### Code of Residents' Rights

#### Basic rights of residents

This is a summary of the basic rights given to you by the Retirement Villages Act 2003.

#### *Services and other benefits*

1. You have the right to services and other benefits promised to you in your occupation right agreement.

#### *Information*

2. You have the right to information relating to any matters affecting or likely to affect the terms or conditions of your residency.

#### *Consultation*

3. You have the right to be consulted by the operator about any proposed changes in the services and benefits provided or the charges that you pay that will or might have a material impact on your-
  - (a) occupancy; or
  - (b) ability to pay for the services and benefits provided.

#### *Right to complain*

4. You have the right to complain to the operator and to receive a response within a reasonable time.

#### *Disputes*

5. You have the right to a speedy and efficient process for resolving disputes between you and the operator or between you and other residents of the village.

#### *Use of support person or representative*

6. You have the right, in your dealings with the operator or other residents of the village, to involve a support person or a person to represent you. The cost of involving a support person or person to represent you must be met by you.

#### *Right to be treated with courtesy and have rights respected*

7. You have the right to be treated with courtesy and have your rights respected by the operator, the people who work at the village, and the people who provide services at the village.

#### *Right not to be exploited*

8. You have the right not to be exploited by the operator, the people who work at the village, and the people who provide services at the village.

#### **Your obligations to others**

Your rights exist alongside the rights of other residents and the rights of the operator, the people who work at the village, and the people who provide services at the village. In the same way that these people are expected to respect your rights, it is expected that you in return will respect their rights and treat them with courtesy.

#### **Operator's contact person**

If you want more information about your rights or wish to make a complaint against the operator or another resident, the operator's contact person is [name] [telephone number].

#### **Other contact persons**

Other contact persons, if you wish to make a complaint about a breach of your rights, are:

The statutory supervisor (if there is one):

The Registrar of Retirement Villages.

#### **Information**

The Retirement Commissioner publishes information on the code of residents' rights and disputes procedures available under the Retirement Villages Act 2003 that may assist to resolve your complaint.

Contact details for the Registrar of Retirement Villages and the Retirement Commissioner are at the end of this guide.

#### **Code doesn't apply to health and disability services**

The Code of Residents' Rights does not cover any health or disability services or facilities. Consumers of health and disability services have rights under the Code of Health and Disability Services Consumers' Rights (which has the status of a regulation under the Health and Disability Commissioner Act 1994). To contact the Health and Disability Commissioner see **Contacts** at the end of this guide.

## The Code of Practice

The Retirement Villages Code of Practice is a set of rules that will apply to every retirement village (unless exempted by the Registrar of Retirement Villages from any provision).

The Retirement Villages Code of Practice 2006 was approved by the responsible Minister on 25 September 2006, and will come into force one year later on 25 September 2007 (unless an operator chooses to be bound by it earlier).

Intending residents must be given a copy of the Code of Practice before they sign an occupation right agreement. The village operator must also give a copy to any resident who asks for one.

For enquiries about the Code of Practice, contact the Department of Building and Housing (see **Contacts** at the end of this guide).

### The contents of the Code of Practice

The Code of Practice sets out minimum protections for residents on the following:

1. **Staffing** – the qualifications and experience of staff and arrangements for their training and ongoing supervision.
2. **Residents' safety and personal security** – how the physical environment and management practices must maintain and enhance the physical safety and security of residents (including those with disabilities), and requirements relating to promotional material.
3. **Fire protection and emergency management** – requirements for fire protection; plans, instructions and equipment for fire and other emergencies; insurance cover; and access for residents with disabilities.
4. **Transfer of residents within village** – transfers from independent self-care units to parts of the village providing greater care, including financial and other arrangements.
5. **Meetings of residents with operators and resident involvement** – how often meetings take place, opportunities for residents to participate in decision-making, and access to the operator.
6. **Complaints facility** – procedures for making, acknowledging, resolving and deciding complaints, including time limits, requirements for keeping the relevant people informed about progress, and notification of decisions.
7. **Accounts** – how often accounts for outgoings and service charges are to be prepared, the breakdown of items charged, and the need for a readily understandable format.
8. **Maintenance and upgrading** – the contact person for minor repairs and maintenance; periodical review of maintenance agreements; funding for maintenance and periodic upgrading; and construction standards for new villages or units.
9. **Termination of occupation right agreement by operator or resident** – the grounds for termination, processes and payments (including continuing charges, and refurbishment costs and processes), operators' responsibilities, and the rights of former residents or their estates in relation to the sale or other disposal of the unit.

**10. Communication** – communication with residents or intending residents for whom English is a second language or whose ability to communicate is limited.

### **The effect of the Code**

These protections must be included in **all** occupation right agreements – if they are not, residents are still protected by them. A right in the Code of Practice also overrides a less favourable provision in an existing occupation right agreement. However, residents will have the benefit of any right in an agreement that is better than the Code of Practice.

## Complaints and disputes

The Retirement Villages Act requires each retirement village to have a means of dealing with complaints. The Act is designed to encourage resolution of complaints at an early stage.

The Act and the Retirement Villages (Disputes Panel) Regulations 2006 set out a detailed procedure for formally resolving disputes if a complaint is not resolved by taking a dispute to a disputes panel. Operators can also take disputes about residents.

The complaints and disputes provisions in the Act may be used not only by residents but also by:

- a former resident, if he or she was a resident of the village on or after 1 February 2004, and
- the "personal representative" of a resident – this could be a family member, a friend or a lawyer.

A resident may also have a support person through the complaints and disputes processes.

### How do residents complain?

Residents have the right to complain to the operator of their village and to receive a response within a reasonable time.

The village must have a procedure for complaints by residents, whether against the operator or other residents, and the operator must make this procedure known to residents. Details of the operator's contact person will be in the Code of Residents' Rights. Residents can contact this person for more information about their rights or to make a complaint.

The Code of Practice, when it comes into force on 25 September 2007, will set out requirements for making, acknowledging, resolving and deciding complaints. In the meantime it's up to each operator to decide how to run their complaints process.

Residents can also complain to the village statutory supervisor (if there is one) or to the Registrar of Retirement Villages about breaches of the Code of Residents' Rights.

### What if the complaint doesn't get resolved?

If the complaint doesn't get resolved, the resident may have the issue dealt with by a disputes panel. This right is reinforced by the Code of Residents' Rights, which says that the resident has the right to a speedy and efficient process for resolving disputes between the resident and the operator, or between the resident and other residents.

A resident starts the disputes process by giving a **dispute notice** to the other party, whether this is the operator or another resident. An operator may also give a dispute notice to a resident. There are no application fees for giving a dispute notice.

If the dispute is between residents and doesn't involve the operator, the person giving the dispute notice must also give a copy to the operator.

The person who takes the dispute is called "the applicant". The person who the dispute is taken against is called the "respondent". They are called "parties".

A resident who is involved in a dispute can also tell the statutory supervisor about the dispute or otherwise involve them in it.

### **At what stage can a dispute notice be given?**

Usually residents must wait **20 working days** after making a complaint before giving a dispute notice. They cannot give the notice more than **six months** after they first made the complaint (unless both sides agree to a longer time).

If the dispute involves the sale or other disposal of their unit, the former resident (or their estate) must wait **nine months** after the unit has become available to the operator to be disposed of before they can give a dispute notice. They do not, however, have to make a complaint first.

An operator can give a dispute notice **20 working days** after notifying a resident of a dispute and making reasonable attempts to resolve it.

### **What information must the dispute notice include?**

The dispute notice must be in writing, and must:

- identify the particular decision or action the applicant is concerned with
- identify the person or people the dispute is with
- state the grounds on which the applicant is disputing the particular decision or action
- state what has been done so far to try to resolve the dispute.

It doesn't matter if this notice fails in some trivial or technical way to meet these requirements - if it substantially meets them, the notice is valid.

### **Who else gets a copy of the dispute notice?**

The operator must provide a copy of the dispute notice to the village's statutory supervisor (when there is one) if the operator thinks the outcome may affect:

- a significant number of the village's residents, or
- the general operation of the village, or
- the operator's rights and obligations under the deed of supervision.

The operator must also give a copy of the notice to the supervisor if a former resident has alleged that the operator has breached the occupation right agreement or the Code of Practice in disposing of the former resident's unit (called a "disposal dispute").

The operator must also give a copy of the dispute notice to the disputes panel and to the Retirement Commissioner.

### **The disputes panel**

Usually within **20 working days** of receiving or giving the dispute notice, the operator must appoint one or more independent people to sit on the panel. They are appointed from a list

approved by the Retirement Commissioner. The operator must consult with the other parties about who to choose before appointing the panel.

If it is a “disposal dispute” (see above), the operator must appoint at least three members to the disputes panel, one of whom chairs the panel. Once appointed, the disputes panel conducts the whole dispute resolution process. The panel is responsible for:

- deciding what information they need
- holding the pre-hearing consultation with the parties
- making the arrangements for the hearing, including giving the notice of hearing to the parties
- conducting the hearing
- making and notifying the decision in writing, with findings of fact and reasons
- providing all the relevant papers, documents and other material to the Retirement Commissioner.

### **Before the hearing**

The disputes panel can require the applicant to provide more information, in writing, about the dispute and can require the respondent to reply to the dispute notice.

The disputes panel must also consult the parties before the hearing. This may be by way of a pre-hearing meeting or any other method that allows everybody to communicate with each other (such as a teleconference call). The panel must consult the parties about:

- whether to hold a hearing
- where and when to hold the hearing (it’s usually expected to be at the retirement village)
- how long the hearing is likely to take
- whether any part of the hearing should be held in private or not be published (hearings are otherwise in public)
- identifying the issues in dispute
- the evidence to be presented and how it is to be given
- arranging for the parties to exchange evidence
- allowing any party to be represented, including by a lawyer.

Any party may also ask witnesses to give evidence at the hearing (such as a statutory supervisor, lawyer, family member or other resident). Unless the disputes panel decides otherwise, the person calling the witness must pay them fees, allowances and travel expenses in accordance with the scale set out in the Schedule of the Witnesses and Interpreters Fees Regulations 1974 (see [www.legislation.govt.nz](http://www.legislation.govt.nz) – click “Statutory Regulations”).

The disputes panel will then give a notice of hearing to each party at least a week beforehand. This includes:

- information about the issues to be addressed
- reference to relevant provisions of the Retirement Villages Act or the regulations

- the procedure to be followed
- a warning about what could happen if a party doesn't attend the hearing.

### **Will there be a hearing?**

Yes, unless the parties agree not to have a hearing or the disputes panel decides not to hear the dispute after consulting the parties. The panel can refuse to hear the dispute if it believes that:

- the dispute is vexatious, frivolous or an abuse of process (in which case the dispute resolution process ends at that point), or
- the dispute should be heard in a court (in which case the disputes panel must refer it to the nearest District Court), or
- the panel should not hear the dispute for any other reason (in which case the operator must appoint another disputes panel to hear the dispute).

### **What happens at the hearing?**

The panel must conduct the hearing in a way that is most likely to resolve the dispute fairly and speedily.

All parties are entitled to be at the hearing and to speak.

First the person who gave the dispute notice (the applicant) states their case and brings forward evidence to support it. Next the person receiving the dispute notice (the respondent) states their case and brings forward their evidence. The respondent may then address the disputes panel generally on the case and the applicant may reply to this.

The parties can agree, or the disputes panel can decide, to change this procedure.

### **What can the disputes panel decide?**

The disputes panel must decide the dispute according to "the general principles of the law" relating to the matter and "the substantial merits and justice" of the case.

The panel can:

- amend the occupation right agreement
- order either side to comply with their obligations under the agreement and under the Code of Residents' Rights (and under the Code of Practice from 25 September 2007)
- if the dispute is with the operator and is about money, order the resident or the operator to pay or refund the other an amount of money
- if the dispute is with another resident, order either side to return property valued up to \$1,000 or pay up to \$1,000 in compensation to the other
- order either side to pay costs to the other.

For disputes involving the disposal of a unit the panel has other powers, such as ordering an operator to pay compensation, to market the unit in a particular way, or even to buy the unit.

The disputes panel will give a written decision that sets out its findings on the facts and the reasons for its decision.

The panel's decisions are enforceable in the courts. A decision can also be appealed to the courts; this is done through a rehearing.

## **Awarding costs**

The disputes panel may award costs and expenses to the side that won or to the applicant if it was reasonable to bring the dispute before a panel. If the dispute is between residents, the disputes panel can award costs to the operator.

In deciding on costs, the disputes panel takes into account how reasonable it is to award these costs, the amount or value of the matters in dispute, the importance of the dispute to the parties, and the conduct of the parties.

## **Is there a monetary limit on disputes that can be taken to a disputes panel?**

No, there are no monetary limits.

## **What kinds of disputes can be taken to a disputes panel?**

### *Disputes taken by residents*

Residents can give a dispute notice to an operator about a decision the operator has made relating to:

- the resident's right to live in their unit or to use services or facilities
- changes to the charges for outgoings or for services or facilities
- charges or deductions imposed on the resident because their right to live in the unit has ended.

They can also give a dispute notice to another resident about a dispute affecting their occupation right (including about someone in the other resident's unit with the other resident's permission).

Residents can also give a dispute notice about:

- any decision the operator has made relating to money owed to the resident when they avoided (cancelled) the occupation right agreement for a breach by the operator
- a breach of the Code of Residents' Rights.

From 25 September 2007, a resident can give a dispute notice about a breach of the Code of Practice.

A resident **cannot** give a dispute notice about **health or disability services**. If a resident thinks a health or disability service provider has not complied with their rights under the Code of Health and Disability Services Consumers' Rights, the resident should first raise their concerns with the relevant provider. A health and disability consumer advocate can help resolve complaints. An advocate may report an unresolved complaint to the Health and Disability Commissioner or a resident can take their complaint directly to the Health and Disability Commissioner's Office.

### *Dispute taken by operators*

Operators can take a dispute on any decision relating to:

- residents' rights to live in their unit or to use services or facilities
- changes to the charges for outgoings or for services or facilities
- charges or deductions imposed on residents because their right to live in the unit has ended.

Operators can also take a dispute about a resident ending their agreement and seeking a refund.

### *Dispute taken by former residents*

Former residents who were residents in the village as at 1 February 2004 can give a dispute notice if the operator has breached their occupation right agreement (or the Code of Practice when it is in force) in selling or otherwise disposing of a unit they used to occupy. There are special rules in these cases: see the section leaving a retirement village. They do not need to have made a complaint.

### **How much does it cost to take a dispute to a disputes panel?**

There are no application fees for giving a dispute notice. The operator is responsible for paying all the costs incurred by the disputes panel, including their fees and expenses such as travel costs.

Each party is responsible for paying the costs and expenses of any witnesses they call to give evidence, and also for any support person or representative they engage, such as a lawyer or advocate.

However, the disputes panel may award some or all costs and expenses incurred to any party or to the operator where there is a dispute between residents.

### **Where can I get more information?**

More information about complaints and disputes processes can be found on our complaints and disputes pages, including flowcharts, forms and a list of the approved adjudicators.

Further details about the hearing process are in the Retirement Villages (Disputes Panel) Regulations 2006.

## **Leaving a retirement village**

This section outlines the rights and processes when a resident leaves a retirement village after living there - this is called “termination” in the Retirement Villages Act. Earlier sections of this guide cover situations where a resident leaves a village because they have avoided (cancelled) the agreement after learning of a breach.

### **Information in the disclosure statement about termination**

The arrangements for terminating the occupation right agreement will be included in the disclosure statement that an intending resident is given before signing the agreement (or that is given to existing residents by 1 May 2008). This includes:

- the position of any other people who are living in the unit after the agreement is terminated
- any charges that will continue after the agreement is terminated
- the process for finding a new resident for the unit
- the process for deciding on the sale price and how much the former resident (or their estate) will be entitled to be paid from the sale proceeds.

### **Estimated financial returns**

The disclosure statement must also state:

- the estimated financial return the resident could expect from selling the unit two, five and 10 years after they first signed the occupation right agreement
- how that estimated return is affected by the length of time they’ve been living in the unit
- whether that estimated return will be affected by the fact that the resident has terminated the agreement voluntarily or by the fact that the agreement was terminated because they breached it.

### **Minimum requirements in the Code of Practice**

The Code of Practice for retirement villages, which is in force from 25 September 2007, sets out minimum requirements that both the operator and the resident must follow when the resident leaves the village. These have effect as part of each resident’s occupation right agreement, as well as being set out in the disclosure statement.

### **How can an agreement be terminated?**

From 25 September 2007 a resident may terminate their occupancy right agreement by giving at least one month’s notice, unless the agreement specifies a different notice period. The resident can do this at any time, and does not have to give any reason.

A resident and operator may agree to terminate the occupation right agreement if the unit is destroyed or damaged beyond repair, in which case the resident will receive the full insurance proceeds without the usual deductions set out in their occupation right agreement.

The operator can terminate a resident's occupation right agreement only if the resident:

- cannot live safely in the village, as certified by a doctor on medical grounds
- has significantly breached their occupation right agreement and hasn't remedied this
- has abandoned their unit, or
- has intentionally or recklessly caused or allowed serious damage to the unit or facilities, or serious injury or harm to the operator, another resident, or an employee or guest, or it's highly likely that the resident will cause or allow this to happen, and the resident hasn't remedied the damage, injury or harm.

The village's statutory supervisor must supervise the termination process, which first involves the operator issuing a notice to terminate to the resident. This includes the grounds, process and timeframes involved, as well as the resident's right to information, to involve a support person or representative, to be consulted, and to make a complaint and take a dispute. When the operator terminates a resident's occupation right agreement, they must pay all amounts due to the resident within seven days of termination.

## **Sales process**

When the operator is responsible for selling the unit, they must:

- promptly start the process of finding a new resident in a timely manner and for the best price obtainable, including marketing the unit and responding helpfully to enquiries
- consult with the former resident about marketing the unit and keep them informed of progress at least monthly, with a written report after three months, and then monthly reports if the unit is still unsold
- obtain and pay for an independent valuation if the unit isn't sold after six months and market the unit at that price, considering any second valuation obtained by the former resident
- not favour selling new units.

If the unit remains unsold nine months after becoming available, the former resident may give a dispute notice.

A resident may introduce a new resident at any time. If they buy the unit the sales costs charged to the resident must be only the actual costs incurred.

At any time the operator may agree in writing to buy the former resident's unit at the price offered by a prospective buyer or the fair market price determined by an independent valuation, whichever is higher.

## **Refurbishment**

If the resident is free to sell their unit, they may choose whether and how to refurbish their unit.

If the resident is responsible for refurbishing their unit after termination, with the work to be carried out by the operator, their agreement must clearly set out the process. This includes the cost and who decides what work is to be done. The work done must be no more than is

necessary to return the unit to the condition it was in when the resident entered it, less fair wear and tear.

If the operator is responsible for refurbishing the unit, the operator must carry out the refurbishment.

## Payments due

The operator must:

- stop charging the resident for personal services when they stop living in the unit
- reduce by at least 50% the outgoings charged to the former resident if there is no new resident at six months after the termination date, or at any later date on which the former resident stops living in the unit
- where capital deductions are amortised, calculate this at least every six months. This deduction must not accrue past the date on which the resident is paid for their share of the proceeds of the unit
- pay all money owing to the former resident on the settlement date or no later than five working days after a new occupation right agreement has been entered into for which the operator has received payment.

## Resolving problems

Former residents can make a complaint or take a dispute to a disputes panel if there are problems about any of these matters, including problems relating to charges or deductions. There are special procedures for disputes about selling or otherwise disposing of their former unit.

## Disputes about selling a unit

If, in disposing of the unit, the operator breaches a former resident's right in their occupation right agreement or the Code of Practice, the former resident (or their estate) can give a dispute notice. They must wait **nine months** after the unit becomes available to be disposed of by the operator before they can start the dispute procedure – but they don't have to first make a complaint.

The operator must tell the village's statutory supervisor if there's a dispute about this.

There are special rules for who sits on the disputes panel for this kind of dispute – the panel must have at least three members and be chaired by a retired judge or experienced lawyer. See the provisions relating to taking a dispute in the section on "Complaints and disputes".

## What can the disputes panel do?

In addition to its usual powers, the panel can order the operator to:

- market the unit in a particular way or at a particular price
- pay compensation to the former resident
- pay interest to the former resident

- if none of those options is appropriate, buy the former resident's interest in the unit at a certain price and within a certain time, or, if they don't have an interest in it, pay them a certain amount within a certain time.

In deciding this, the disputes panel must take into account:

- the relevant real estate market
- the age and condition of the village
- the effect on other residents and on the financial stability of the village.

## Key terms

### ***Avoiding an agreement***

This occurs when a breach of pre-contractual obligations under the Retirement Villages Act enables a resident to cancel an agreement.

### ***Complaints facility***

Every village operator must set up a complaints facility for the village – that is, a process for dealing with complaints from residents, whether about the operator or about other residents.

### ***Cooling-off period***

The Retirement Villages Act gives a person who has signed an occupation right agreement 15 working days in which they can change their minds and cancel the agreement, without having to give any reason.

People also have the right to cancel the agreement for delay if the unit is not completed six months after the proposed completion date. They can cancel at any time after this period.

Any extensions an operator offers to either of these periods must be in the disclosure statement.

### ***Deed of supervision***

Statutory supervisors must enter into a deed of supervision with the operator. This covers the supervisor's duties and responsibilities and the operator's obligations. The Retirement Villages (General) Regulations set out the details required in the deed. In many villages a memorandum of encumbrance will be registered over the village's certificates of title to give a more formal impact to deeds of supervision. Some deeds of supervision will also specify requirements to be included in village disclosure statements.

### ***Disclosure statement***

Before an intending resident signs an occupation right agreement with a retirement village, the operator must give them a "disclosure statement" that contains all the information required by the Act about the nature of the village and the rights and obligations of the resident and the operator.

Schedule 2 of the Act and the Retirement Villages (General) Regulations set out the details required in the statement. The disclosure statement must be given with copies of the occupation right agreement, the Code of Residents' Rights and the Code of Practice.

### ***Dispute notice***

A resident or operator wanting to use the disputes process in the Act starts the process by giving the other party a written "dispute notice". This gives details of the dispute and what's been done so far to try to resolve it. A form that can be used for this is [here](#).

### ***Disputes panel***

Within 20 working days after a dispute notice is given, the village operator appoints one or more members of a disputes panel. They are chosen from a pool of independent people



approved by the Retirement Commissioner. For disputes about sales after leaving a village, the panel must have at least three members, and be chaired by a retired judge or an experienced lawyer (these are indicated on the Retirement Commissioner's approved list).

### ***Facilities***

This means shared or communal facilities or amenities provided in the village for residents, including recreational facilities. These might be lounges, libraries, swimming pools, and crafts and activities areas.

### ***Intending resident***

The Act gives important protections to "intending residents". This is someone who:

- in the last three months has talked with a retirement village operator or their agent about entering into an occupation right agreement, or indicated to them that they're interested in becoming a resident, and
- has given their contact details to the operator or agent.

### ***Memorial***

This is placed on a village's certificates of title by the Registrar-General of Lands to confirm that the village is registered under the Act. A memorial protects residents from any mortgagee sale, liquidation or receivership, in that their occupation right agreement will continue and the resident will continue to receive the protections of the Act.

### ***Occupation right agreement***

This is the written agreement between a resident and the village operator that gives the resident the right to live in the village. It may consist of more than one document. Schedule 3 of the Act sets out what must be covered. An independent lawyer must explain the general effect and implications of the agreement before an intending resident signs it.

### ***Register of Retirement Villages***

All retirement villages must be registered with the Registrar of Retirement Villages in the Companies Office, which is part of the Ministry of Economic Development. The requirements for registration are set out in Part 2 and Schedule 1 of the Act and the Retirement Villages (General) Regulations, which include the required forms. The Retirement Villages (Fees) Regulations set out the required fees for initial registration, annual returns and other matters.

### ***Resident***

The protections for "residents" in the Retirement Villages Act apply to:

- anyone who enters into an occupation right agreement with a retirement village operator
- anyone who's entitled under an agreement to live in a unit in the village (even if the agreement wasn't made with that person)
- a spouse or partner who is living in a unit with someone who's entitled under an agreement to live there, or who is living in it after that person has died or left the village (as long as the agreement or the operator allows it).

For complaints and disputes, a “resident” includes a former resident (or their estate) who was living in a retirement village on or after 1 February 2004 and whose occupation right agreement has since terminated.

### ***Retirement village***

A “retirement village” covered by the Act consists of two or more residential units (including in rest homes or hospital care facilities) that are intended to provide accommodation together with services or facilities predominantly to retired people and their spouses or partners, in return for capital sums.

### ***Services***

This means one or more of the following kinds of services provided at a retirement village:

- gardening, repair or maintenance services
- nursing or medical services
- meals
- shops and services for providing goods
- laundry services
- hairdressing and other personal care services
- transport
- recreation and entertainment
- security services
- other services for the care or benefit of residents.

### ***Statutory supervisor***

Every retirement village must have a statutory supervisor (unless the village is exempted) to oversee whether the village is operating according to the law. The supervisor monitors the village’s financial position and reports annually to the Registrar of Retirement Villages and to the residents.

The statutory supervisor is appointed by the operator of the village from a pool of people approved by the Registrar (or, for existing villages, by the Securities Commission). They are appointed under a deed of supervision that sets out the terms and conditions of their role.

If the supervisor is concerned about the village’s financial position, the security of the residents’ interests or the management of the village, it can require the operator to operate the village in a particular way and to give the residents particular information.

## Contacts

**Department of Building and Housing** Freephone: 0800 836 262; Website: [www.dbh.govt.nz/retirement-villages](http://www.dbh.govt.nz/retirement-villages); PO Box 10-729, Wellington

**Registrar of Retirement Villages** (Registrar of Companies) Freephone: 0800 268 269; Email: [info@companies.govt.nz](mailto:info@companies.govt.nz); Website: [www.retirementvillages.govt.nz](http://www.retirementvillages.govt.nz); Private Bag 92061, Auckland Mail Centre, Auckland.

**Retirement Commissioner** Freephone: 0800 438 767; Phone: 04-499 7396; Fax: 04-499 7397; Email: [office@retirement.org.nz](mailto:office@retirement.org.nz); Websites: [www.retirement.org.nz](http://www.retirement.org.nz) and [www.sorted.org.nz](http://www.sorted.org.nz); PO Box 12-148, Wellington.

**Commerce Commission** Freephone: 0800 94 3600; Email: [contact@comcom.govt.nz](mailto:contact@comcom.govt.nz); Website: [www.comcom.govt.nz](http://www.comcom.govt.nz); PO Box 2351, Wellington.

**Health and Disability Commissioner** Freephone: 0800 11 22 33; Fax: 09-373 1061; Email: [hdc@hdc.org.nz](mailto:hdc@hdc.org.nz); Website: [www.hdc.org.nz](http://www.hdc.org.nz); PO Box 1791, Auckland.

**Age Concern** Phone: 04-801 9338; Fax: 04-801 9336; Email: [national.office@ageconcern.org.nz](mailto:national.office@ageconcern.org.nz); Website: [www.ageconcern.org.nz/?/local](http://www.ageconcern.org.nz/?/local); PO Box 10-688, Wellington - for contact details of the 32 offices, or look in your local telephone book.

**Citizens Advice Bureaux** Freephone: 0800 FOR CAB (0800 367 222); Website: [www.cab.org.nz/contact/index.html](http://www.cab.org.nz/contact/index.html) - for contact details of the 87 offices, or look in your local telephone book.

**Community Law Centres** Website: [www.lsa.govt.nz/general/community.htm](http://www.lsa.govt.nz/general/community.htm) - for contact details of the 25 centres, or look in your local telephone book.

**Legislation Direct** Phone: 04-568 0005; Fax: 04 568 0003; Email: [Idenquiries@legislationdirect.co.nz](mailto:Idenquiries@legislationdirect.co.nz); Website: [www.legislationdirect.co.nz](http://www.legislationdirect.co.nz); PO Box 12-418, Wellington.

**New Zealand Law Society – Property Law Section** Website: [www.propertylawyers.org.nz](http://www.propertylawyers.org.nz)

**Retirement Villages Association** Phone: 04-499 7090; Fax: 499 0449; Email: [info@retirementvillages.org.nz](mailto:info@retirementvillages.org.nz); Website: [www.retirementvillages.org.nz](http://www.retirementvillages.org.nz).