

# Retirement Villages

## Code of Practice 2008



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Department of Building and Housing  
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New Zealand

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# Approval and review

## The Retirement Villages Code of Practice 2008

Having given notice under section 89(6) of the Retirement Villages Act 2003 (the Act) of my approval of the Code of Practice, and having satisfied the other requirements of section 89 of the Act, the Retirement Villages Code of Practice 2008.

Issued by me on 2 October 2008.

Minister for Building and Construction

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

## Review

This Code of Practice is administered by the Department of Building and Housing. It will be revised as required. Suggestions for improvement of the Code of Practice are welcome and should be sent to:

Deputy Chief Executive, Sector Policy

Department of Building and Housing

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Wellington

[www.dbh.govt.nz](http://www.dbh.govt.nz)

# Part 1: The Retirement Villages Code of Practice

# Introduction

## 1 References and interpretations in the Code of Practice

- 1 This Code of Practice should be read in conjunction with the following Acts and regulations:
  - Retirement Villages Act 2003 and associated regulations
  - Interpretation Act 1999
  - Building Act 2004 and Building Code
  - Fire Safety and Evacuation of Buildings Regulations 2006
  - Code of Health and Disability Services Consumers' Rights 1996
  - Protection of Personal and Property Rights Amendment Act 2007
  - any other applicable Acts.

If any of these Acts or regulations is superseded the Code of Practice remains in force but operators may need to adapt their business models to meet any new requirements.

- 2 The references in *italics* at the end of some sentences are to the relevant section and subsection(s) of the Retirement Villages Act 2003. Any other Acts of Parliament referred to in this Code of Practice are given their full title.
- 3 In this Code of Practice all references to a resident include the representative of the resident. *Right 6, Code of Residents' Rights*
- 4 Any note following the heading of a section is for guidance and is not legally binding.

## 2 Definitions

Please refer to the Act for definitions of other terms if not included in the definitions. *Sections 5, 6 and 48*

**Act** means the Retirement Villages Act 2003.

**Code of Practice** means this Code of Practice under section 89 of the Act, including any variations made to the Code of Practice in accordance with the Act.

**Consult/consultation** means to invite parties to comment and provide advice on a given matter, so that the comment or advice can be taken into account when making a decision.

**Disability/disabilities**, as defined in section 21(1)(h) of the Human Rights Act 1993, means:

- i physical disability or impairment
- ii physical illness



- iii psychiatric illness
- iv intellectual or psychological disability or impairment
- v any other loss or abnormality of psychological, physiological or anatomical structure or function
- vi reliance on a guide dog, wheelchair or other remedial means
- vii the presence in the body of organisms capable of causing illness.

**Disputes panel** means a disputes panel appointed in accordance with section 59 of the Act.

**Enduring Powers of Attorney** means the mechanism under the protection of Personal and Property Rights Act 1988 by which an individual (known as the ‘donor’) appoints a person or persons (known as ‘the attorney’ or ‘attorneys’) to administer the donor’s financial affairs or act in relation to the donor’s personal care and welfare when the donor is mentally incapable of acting, and ceases on a resident’s death.

**Fair wear and tear** is something that occurs through normal use or is the normal change that takes place with the ageing of the property, and may include but is not limited to any chattels provided by the operator such as curtains and carpets, fixtures, and fittings.

**Fixed deduction** means any payment that may be payable by a resident to an operator in terms of that resident’s occupation right agreement if the:

- a amount or method of calculation of the payment is fixed and known at the start of the resident’s occupation right agreement
- b payment is made to or to be made by the resident to the operator at the start of or on termination of the occupation right agreement
- c payment amortises or accrues to the operator over a specified period of time against the resident’s capital sum or former resident’s capital repayment.

**Former resident** means a person:

- a who was a resident, or a representative of that former resident, of a retirement village
- b whose occupation right agreement has since terminated.

**Interconnected smoke detection system** means a system of smoke alarms connected in such a way that when one alarm sounds, they all sound.

**Intending resident** means a person

- a who has within the last 3 months,—
  - i indicated to an operator of a retirement village or the operator's agent that he or she is interested in becoming a resident of the retirement village; or
  - ii had discussions with the operator or the operator's agent about entering into an occupation right agreement; and
- b in respect of whom the operator or the operator's agent has a current address, or sufficient other contact details to enable the operator to send notices to that person.

**Interpreter** means a person who offers translation services, but does not constitute a support person or representative.

**Maintenance agreement** means a contract between the operator and a service provider for the delivery of specified maintenance services.

**Occupation right agreement** means any written agreement or other document or combination of documents that—

- a confers on any person the right to occupy a residential unit within a retirement village; and
- b specifies any terms or conditions to which that right is subject.

**Operator** means any person who is one or more of the following:

- a a person who is, or will be, liable to fulfil all or any of the obligations under occupation right agreements to residents of the village
- b a holder of a security interest who is exercising effective management or control of the retirement village
- c a receiver of the property comprising the retirement village, or the liquidator of the person to whom either paragraph a or b applies.

**Outgoings** include costs relating to the operation, management, supervision, and maintenance of the retirement village as a whole that will be recovered from residents as a group under the occupation right agreement, but do not include costs of providing personal services to a resident.

**Personal services** means services provided to a resident on an individual basis at that resident's request, for example, meals, laundry, nursing care, and cleaning. Personal services do not include services provided by the operator to residents as a group; those costs are charged by the operator as an outgoing.

**Refurbishment** means to restore a residential unit to no more than the condition it was in when the resident entered it, less fair wear and tear.

**Resident** means any of the following

- a a person who enters into an occupation right agreement with the operator of a retirement village
- b a person who under an occupation right agreement is, for the time being, entitled to occupy a residential unit within a retirement village, whether or not the agreement is made with that person or some other person
- c if the occupation right agreement so provides or with the consent of the operator of the retirement village, the spouse, civil union partner, or de facto partner of the person referred to in paragraph b who is occupying the residential unit with that person, or after that person's death or departure from the retirement village.

**Representative** means a person:

- a acting in the place of and for a resident under a power of attorney or an enduring power of attorney that has not been revoked or suspended under the Protection of Personal and Property Rights Amendment Act 2007, or
- b who is a welfare guardian or manager appointed for a resident under the Protection of Personal and Property Rights Act 1988, or
- c the resident has nominated, but who is not a member of staff or the operator of the retirement village.

**Retirement village property** is buildings, plant, and equipment that are owned by retirement village operators.

**Rules** mean the rules governing the day-to-day management and operation of the retirement village which the operator and residents must comply with. The rules include without limitation body corporate rules, rules in leases and licences to occupy, and organisational rules.

**Specified system**, as defined section 7 of the Building Act 2004:

- a means a system or feature that -
  - i is contained in a building; and
  - ii contributes to the proper functioning of the building (for example, an automatic sprinkler system); and
  - iii is declared by the Governor-General, by Order in Council, to be a specified system for the purposes of [the Building Act 2004]; and
- b includes a cable car.

**Staff** means all people paid or unpaid by an operator to perform routine or regular services at the retirement village including managers, employees, and contracted workers.

**Termination date** is the later of the end of the notice period specified in the occupation right agreement, or the date the resident stops living in the residential unit and removes all their possessions.

**Weekly service fee** is the weekly fee payable by the resident to the operator for services and facilities provided by the operator, and is an apportionment of the village operating costs as detailed in the occupation right agreement.

**Working day**, as defined in section 29 of the Interpretation Act 1999, means a day of the week other than -

- a a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and
- b a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- c if 1 January falls on a Friday, the following Monday; and
- d if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday:

### **3 Title and start of the Code of Practice**

- 1 This Code of Practice is called the Retirement Villages Code of Practice 2008 (the Code of Practice).
- 2 The Code of Practice is issued under the Retirement Villages Act 2003 (the Act). *Section 89(4)*
- 3 The Code of Practice comes into force on 2 October 2009. *Section 90(1)(a)(i)*

- 4 The Code of Practice may be changed from time to time. Any changes to the Code of Practice must be approved by the Minister for Building and Construction. *Section 90(4)*.

## 4 Purpose of the Code of Practice

- 1 This Code of Practice is written for people who own, manage, oversee, or live (or intend to live) in retirement villages, in particular:
  - a the operator
  - b residents and intending residents (and their representatives)
  - c statutory supervisors.
- 2 The purpose of this Code of Practice is to set out the minimum requirements that operators of retirement villages must carry out, or make sure are carried out, to meet their legal obligations under the Retirement Villages Act 2003.

## 5 Layout of the Code of Practice

- 1 The Code of Practice is laid out in four parts.
  - a **Part 1** covers general information about the Code of Practice, including its legal status.
  - b **Part 2** covers general requirements for policies, procedures, notices, and induction processes referred to in each of the topics in Part 3.
  - c **Part 3** covers the minimum requirements to be given effect to in any occupation right agreement in relation to the following topics, as set out in *Schedule 5 of the Act*.
    - Staffing of retirement village.
    - Safety and personal security of residents.
    - Fire protection and emergency management.
    - Transfer of residents within a village.
    - Meetings of residents with operator and resident involvement.
    - Complaints facility.
    - Accounts.
    - Maintenance and upgrading.
    - Termination of occupation right agreement by operator or resident.
    - Communication.
  - d **Part 4** sets out information that operators or residents and intending residents might find useful in relation to the Code of Practice. This information includes:
    - extracts from the Retirement Villages Act 2003

- contact details for the Retirement Commissioner and the Registrar of Retirement Villages
- a page where the operator or resident can write the contact details of the operator's contact person, and the statutory supervisor (if there is one).

## 6 Legal status of the Code of Practice

- 1 This Code of Practice is a legal document. Every operator of a retirement village must meet the requirements set out in the Code of Practice. *Section 92(2)(a)(i)*
- 2 The Code of Practice is enforceable as a contract by a resident and prevails over any less favourable provision in the resident's occupation right agreement. *Section 92(2)(b)*
- 3 The Code of Practice must be given effect to in any occupation right agreement offered to a resident. *Section 92(2)(c)*
- 4 The operator must make a copy of the Code of Practice available to every resident and intending resident on request. *Section 92(4)*
- 5 An operator may be exempted from meeting the requirements of any provision of this Code of Practice, if an exemption has been granted by the Registrar. *Sections 93(1)-(3)*
- 6 A resident can give a dispute notice for a breach of the Code of Practice. *Section 53(1)(d) and 53(3)*
- 7 The Retirement Commissioner monitors the effects of the Code of Practice. *Section 36(1)(a).*

## 7 Disclosure statement, the Code of Practice, and other documents

- 1 The operator must provide every intending resident with a copy of the Code of Practice along with the disclosure statement, occupation right agreement, and Code of Residents' Rights before the intending resident enters into an occupation right agreement. If the Code of Practice is not yet in force the operator must state in writing when it comes into force. *Section 30(1)(c).*
- 2 A disclosure statement must include the following:
  - a all prescribed details of any exemption from the requirement to comply with any provision of the Code of Practice. *Clause 4(b) in Schedule 2*
  - b matters required by the Code of Practice to be included. *Clause 4(c) in Schedule 2*
  - c the management arrangements for the retirement village. *Clause 1(c) in Schedule 2.*

- 3 Under the Retirement Villages (General) Regulations 2006, the operator must also inform residents and intending residents that copies of the following documents must be made available.
- a village rules (if such rules exist). *Retirement Villages (General) Regulations 2006 37(4)(a)*
  - b management agreement between the operator and manager of the village (if such an agreement exists). *Retirement Villages (General) Regulations 2006 37(4)(b)*
  - c deed of supervision (if the village has a statutory supervisor). *Retirement Villages (General) Regulations 2006 37(4)(c)*

# Part 2: General requirements

# Policies and procedures, notices, and induction requirements

## 8 Policies and procedures

### Written policies and procedures

- 1 The operator must have, maintain, and implement written policies and procedures for each of the 10 topics in Part 3 of this Code of Practice. The policies and procedures must:
  - a meet all relevant legal requirements and the requirements of this Code of Practice
  - b be written in a way that residents can understand
  - c be kept at the retirement village or in a location that is accessible to residents.

### Disclosure of policies and procedures to residents

- 2 The operator must:
  - a inform residents and intending residents about the policies and procedures
  - b inform residents and intending residents about how the operator meets the requirements of the Code of Practice
  - c give residents and intending residents a copy of the policies and procedures, on request.

### Review and alteration of policies and procedures

- 3 The operator must regularly monitor and review policies and procedures to make sure they are still effective and appropriate.
- 4 The operator must consult all residents in writing before changing any policies, procedures, and systems in a way that will, or may, have a material impact on residents' occupancy or their ability to pay for services and facilities in the retirement village. *Section 34(1); Right 3, Code of Residents' Rights*

## 9 Induction in this Code of Practice

- 1 The operator must have, maintain, and implement an induction process to inform residents about this Code of Practice. See clause 12.3 for staff induction requirements.



## 10 Notices to residents

- 1 The operator must meet the requirements of the Act if giving any notice to a resident. *Section 106*
- 2 If the operator has to give a notice to a resident in accordance with this Code of Practice, the notice must be in writing. If the resident has a representative then the notice must be sent to the representative.

## 11 Operator's access to a resident's residential unit

- 1 An operator must inform residents about the circumstances under which the operator has the right to enter a resident's residential unit and the amount of notice which the resident will receive in each case. Circumstances may include:
  - a emergencies
  - b installing, checking and maintaining smoke alarms or specified systems
  - c carrying out minor repairs and maintenance
  - d refurbishing or upgrading the residential unit.
- 2 Notice may be waived in cases of emergencies. However, in all other cases the notice period must be reasonable and take into account the:
  - a amount of time that the operator will require access to the unit, and
  - b level of disruption to the resident's use of the unit during that access.
- 3 During this process residents have the right to be treated with courtesy and have their rights respected. *Right 7, Code of Residents' Rights*

**Part 3: Minimum requirements to be included in any occupation right agreement**

# Staffing of retirement village

## 12 Staffing policies, processes, and procedures

- 1 If a retirement village has staff, whether paid or unpaid, the operator must have, maintain, and implement written policies, processes, and procedures for staff selection, training, and ongoing supervision.
- 2 The operator's staffing policy and procedures must set out the:
  - a appropriate qualifications needed for staff employed for specific positions
  - b appointment process for staff without appropriate qualifications, if the potential staff member can demonstrate appropriate work experience
  - c appointment process for staff without appropriate qualifications and experience, if the potential staff member demonstrates a willingness to undertake the appropriate training and is willing to be supervised as required
  - d requirement for a recognised first aid qualification for particular staffing positions.
- 3 The operator must have an induction process to familiarise staff with this Code of Practice, their own staff codes of conduct, and any management practices and what it covers. All staff must complete this process.

## 13 Information about staff

- 1 All staff will carry identification while on duty so residents can check their identity. The operator must inform residents and intending residents about staff employed at the retirement village, including:
  - a roles
  - b relevant qualifications (for example, first aid, nursing) and experience
  - c specific qualifications or training relating to residents with particular needs (for example, strokes, dementia-related conditions)
  - d skills in communicating with residents with limited ability to communicate (for example, sign language, speech therapy)
  - e skills in communicating with residents who speak languages other than English
  - f if staff are on site and, if so, when they are at the retirement village.

## **14 Staff qualifications and experience**

- 1 Staff should be appropriately qualified and experienced for their role and the responsibilities to be carried out. The operator must:
  - a use an appropriate process to select staff
  - b take reasonable steps to make sure that a new staff member is suitable for the position at the retirement village
  - c check a prospective staff member's references and past employment.

## **15 Staff supervision and ongoing training**

- 1 The operator must provide ongoing training and ongoing supervision to make sure staff competence is achieved and maintained.
- 2 If a staff member does not meet the requirements for the role they are employed in, they may still be employed by the operator. However, the staff member must:
  - a be supervised by a suitably qualified and experienced staff member
  - b take part in training to meet the requirements for the role.

# Safety and personal security of residents

## 16 Safety and personal security policy

- 1 The operator must have, maintain, and implement a written policy that:
  - a sets out how their own staff codes of conduct, and any management practices for the village and the physical environment (the grounds, facilities, common areas and residential units) help maintain and enhance all residents' safety and security. [See the examples below].
  - b requires lighting in the retirement village that is appropriate to the size, location, and layout of the retirement village including its grounds, facilities, common areas, and residential units
  - c requires heating capabilities in all habitable spaces as required by the Building Code at the time of construction or alteration of those spaces.
- 2 The operator must provide a written copy of the safety and personal security policy to residents and intending residents on request.

### **Examples of safety measures (not all of the examples listed below are provided in each retirement village)**

Examples of safety measures include: gradients and surfaces; door and access widths; stairs, lifts and railings; communication aids to make the everyday environment more manageable; heights and location of work surfaces, appliances, cupboards, light switches, power points, telephones and call points.

### **Examples of codes of behaviour**

Examples of codes of behaviour include: codes to protect against bullying, harassment, unfair discrimination, victimisation, exploitation and breaches of personal privacy; codes and guidance issued under the Human Rights Act 1993 and the Privacy Act 1993.

### **Examples of personal security measures**

Examples of security measures include: fencing, security patrols, lighting, alarms, locks, and door and window fittings.

### **Examples of management practices**

Examples of management practices include: plans, policies and procedures; staffing ratios, qualifications and training; systems for identifying and eliminating or minimising risks and hazards; checking equipment; regular contact and communication with residents and their right to be treated with courtesy; reporting to the residents and the statutory supervisor (if there is one); addressing issues raised by, or on behalf of, residents; reviews of management practices.

## **17 Safety and security processes, procedures, and systems**

- 1 The operator must have, maintain, and implement the following policies and procedures. These are aimed at maintaining and enhancing the safety and personal security of residents of the retirement village.
  - a a policy that provides for the safety and personal security of residents
  - b a procedure for reviewing the safety and personal security of residents
  - c a procedure for responding to all safety and personal security needs of residents and others
  - d a procedure for residents and others to report accidents, incidents, and hazards in retirement villages
  - e a procedure for security if no staff members are present (or a full number of staff is not present) at the retirement village.

## **18 Personal security as a promotional feature in advertising**

- 1 Promotional material relating to residents' safety and personal security must not include a description of any policy, procedure, or system that a retirement village does not actually have in place or that the operator does not intend to put in place.  
*Section 26*
- 2 Any safety or personal security policy, process, procedure, or system that is advertised in promotional material must be maintained to at least the level described for as long as any resident who purchased a residential unit at the time the material was available remains in the village. This applies unless those residents, after consultation, consent in writing to a significant variation or removal of that policy, procedure, or system. For example, an alarm system described in promotional material as being monitored must continue to be monitored unless the residents concerned agree in writing to that system no longer being monitored.

# Fire protection and emergency management

## 19 Fire protection and emergency management policy

- 1 The operator must have, maintain, and implement a written policy for fire protection and emergency management that sets out and meets the requirements of this Code of Practice and all applicable statutory requirements, including the following.
  - a Building Act 2004
  - b Building Code
  - c Fire Service Act 1975 and associated regulations including the Fire Safety and Evacuation of Building Regulations 2006.
- 2 The operator must give a copy of the fire protection and emergency management policy written in an easily readable format to residents and intending residents on request.
- 3 The operator must clearly instruct all residents and staff in the retirement village's fire protection and emergency management policy and associated systems and procedures. All staff must be familiar with and participate in this process.

## 20 Protection of residential units and retirement village facilities from fire

- 1 The operator must have measures and systems in place to protect the residential units, facilities, and indoor areas in the retirement village from fire.
- 2 Except where the residential units are unit-title or cross-lease or are owned by the residents and residents have responsibilities for these matters, the operator must ensure:
  - a that any building with a specified system must have a compliance schedule and an annual warrant of fitness that states the inspection, maintenance, and reporting procedures for that system under the Building Act 2004 and associated regulations
  - b that the operator must consult the New Zealand Fire Service or an appropriately qualified fire engineer:
    - i during the building design phase of all new retirement villages
    - ii when alterations to existing residential units, facilities, and common areas of the retirement village require building consent.

### Smoke alarms

- 3 The operator must make sure that every residential unit, facility and indoor area in the retirement village is fitted with smoke alarms in a manner that meets the requirements of the Building Code. Residents in unit-title or cross-lease retirement

villages or units are owned by the residents should be encouraged to fit smoke alarms in their residential unit.

- 4 The operator must supply, install, and maintain smoke alarms, and:
  - a check the working order of interconnected smoke detection systems agreed with the building consent authority as a requirement of the compliance schedule (operators can set out in the compliance schedule the testing period)
  - b check the working order of other smoke alarms in accordance with the manufacturer's guidelines or as recommended by the New Zealand Fire Service.

## **21 Plans, instructions, and equipment for dealing with fire and other emergencies**

### **Fire-fighting equipment**

- 1 The operator must make sure that:
  - a it has in place equipment for dealing with fire and other emergencies at the retirement village as required by the Fire Safety and Evacuation of Buildings Regulations 2006
  - b fire equipment is checked and maintained as required by the Fire Safety and Evacuation of Buildings Regulations 2006.

### **Evacuation scheme or procedure**

- 2 The operator must have an evacuation scheme or procedure in place for the safe, prompt and efficient evacuation of the occupants from the scene of a fire or other emergency, as required by the Fire Safety and Evacuation of Buildings Regulations 2006. The operator must make sure that:
  - a staff are trained and aware of their responsibilities for operating the evacuation scheme
  - b there are regular fire and evacuation drills
  - c a written record is made of each fire and evacuation drill and these records are kept at the retirement village.
- 3 The operator must:
  - a give a written copy of the evacuation scheme or procedure to residents and intending residents on request
  - b give a written copy of the fire and evacuation drill records to residents and intending residents on request
  - c regularly check and review the evacuation scheme or procedure.



## **Emergency response procedure**

- 4 The operator must have, maintain, and implement a written policy setting out how emergencies in the retirement village are dealt with. This policy should be provided to residents and intending residents on request. Emergencies covered should include: fire, earthquakes, floods, medical emergencies, damage to units or facilities, and security issues. The policy must include the following details:
  - a written instructions for residents on the emergency procedure
  - b the emergency procedure for the retirement village shall be practiced and recorded at least every six months, or more often if required
  - c who responds in an emergency, and how they are qualified to manage an emergency situation
  - d expected response time
  - e any charges to the residents, for example security firm callouts.

## **22 Fire and accidental damage**

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

### **Insurance cover**

- 2 The operator must take out and keep in force a comprehensive insurance policy, or must ensure that a policy is taken out and kept in force. The policy must cover accidental physical loss or damage to retirement village property, including residential units that are owned by residents. The policy must be for full replacement to the satisfaction of the statutory supervisor (if there is one).
- 3 Where operators are responsible for the insurance, they
  - a may include business interruption insurance, temporary accommodation insurance, and adequate liability insurances
  - b must inform the resident what cover is provided in circumstances where the operator is unable to obtain full reinstatement insurance.
- 4 Insurance policies must state the:
  - a responsibilities and liabilities each of the operator, residents, and statutory supervisor (if there is one), as the insured parties
  - b dollar amount of the excess an operator has to pay if a claim is made
  - c any exclusions of insurance cover for the insurance policy.
- 5 The operator's insurance policies must:
  - a be clear about the operator's and the resident's responsibilities for insuring the contents of the residential unit. The policy must reflect what is written in the

occupation right agreement and include any capital improvements or additional fittings provided by the resident.

- b be available for residents to view on request.
- 6 Operators must inform the residents whether they pass on the excess payments to the resident.

### **Repair or reinstatement of property**

- 7 The occupation right agreement for a residential unit that is owned by an operator must:
- a provide that, except in certain specified circumstances (if any), if the unit is damaged or destroyed the operator must fully repair or replace it as soon as practicable
  - b state the circumstances (if any) when a unit that is damaged or destroyed may not be fully repaired or replaced
  - c state the procedure to be followed if the unit is not to be fully repaired or replaced if it is damaged or destroyed.

### **Temporary accommodation**

- 8 The operator must inform residents in the occupation right agreement whether they will provide temporary accommodation or facilities while a residential unit or facility is being repaired or replaced after an insured event.

## **23 Access to residential units and retirement village facilities for people with disabilities**

- 1 The operator's fire protection and emergency management policy must set out how it provides access to, from, and within buildings for people with disabilities, as required under the Building Act 2004 and the Building Code.
- 2 The operator must provide these details in writing to residents and intending residents on request.

# Transferring residents within a retirement village

## 24 Transfer requirements in the occupation right agreement

- 1 If an occupation right agreement allows a resident to transfer from an independent self-care residential unit to a unit in the retirement village where a higher level of care will be provided, it must set out the terms of transfer. The terms of transfer must include, but need not be limited to, the following:
  - a the circumstances under which the transfer may be initiated and by whom
  - b whether residents have priority over outside applicants
  - c whether the transfer depends on:
    - i a suitable residential unit being available
    - ii suitable care being available
    - iii the resident being assessed as suitable for the available care
  - d that residents affected have the right to:
    - i be given information on all available options
    - ii have an independent assessment (including a needs assessment)
    - iii be consulted, along with their family or representative.
- 2 Residents who are considering a transfer should be made aware that a needs assessment may be required in order to access subsidies administered by other government agencies such as the Ministry of Health and Work and Income.

## 25 Financial and other arrangements in a transfer

- 1 The occupation right agreement must set out the financial and other arrangements that apply if a resident transfers from an independent self-care residential unit to a unit in the retirement village where a higher level of care will be provided. These include:
  - a any changes in charges to the resident as a result of the transfer
  - b other arrangements for the transfer, such as the physical transfer of the residents and their personal belongings
  - c any other costs incurred by the transfer, and who is responsible for those costs.

# Meetings of residents with operator and resident involvement

**Note: in clauses 26 – 31 if a retirement village has a certificate confirming that it is exempt from appointing a statutory supervisor then any reference to a statutory supervisor in these clauses will not apply.**

## 26 Frequency of meetings

### Annual general meeting

- 1 The operator must hold an annual general meeting of residents. This meeting is to receive the retirement village's financial statements, the statutory supervisor's report, the maintenance report, and discuss any other matters. The meeting must be held within six months of the retirement village's most recently completed financial year.

### Special general meeting

- 2 The operator must call a special general meeting with the residents if:
  - a the Act, regulations, or this Code of Practice require the operator to obtain the consent of the residents
  - b other enactments, the residents' occupation right agreement, or other such documents require the operator to get the residents' collective consent.
- 3 The operator must call a special general meeting for any reason, if asked to do so in writing by:
  - a not less than 10 percent of the residents of the retirement village
  - b the statutory supervisor.

### Informal meetings

- 4 The operator may from time to time call informal meetings of residents to discuss matters about the retirement village.

## 27 Procedures applying to annual and special general meetings

### Notice

- 1 The operator must inform every resident and the statutory supervisor in writing of an annual or special meeting, specifying the time, place, and agenda of the meeting. The notice must be given no less than 10 working days before the date of the meeting. The agenda and all papers to be considered at the meeting must be attached to the notice.

### **Notice of matters to be decided by vote**

- 2 If a matter is to be decided by a vote of residents at the annual or special meeting the notice of the meeting must:
  - a state the number of residents that need to attend before a vote can be taken
  - b confirm and set out the voting rights of residents, including each resident's right to:
    - i vote
    - ii use a representative
    - iii cast proxy votes
  - c confirm and set out the voting rights of representatives voting on behalf of a resident, including the representative's right to cast proxy votes.

### **Chair**

- 3 The annual or special meeting must be chaired by the statutory supervisor or a person appointed by the statutory supervisor, or by a person appointed by the majority of the residents who are at the meeting. *Retirement Villages (General) Regulations 2006 10(1)(b)*

### **Roll**

- 4 Before the start of the annual or special meeting the operator must give the chairperson a list of the names and addresses of all residents.

### **General business**

- 5 The general business part of special general meetings must allow the operator, statutory supervisor, and residents to raise and discuss any matters about the village.

### **Records**

- 6 The operator must make sure that:
  - a minutes of the annual or special meeting are taken and kept at the retirement village and made available on requestor
  - b all residents are given copies of the meeting minutes within 30 working days.

## **28 Residents' participation in decision-making**

### **Operator must consult residents**

- 1 Residents have the right to be consulted by the operator. Subgroups of residents, or individual residents, are also entitled to be consulted. *Right 3, Code of Residents' Rights*
- 2 The operator must consult residents:

- a as required in the Code of Residents' Rights and the occupation right agreement. *Right 3, Code of Residents' Rights*
- b about the content of any proposed rules if not already established by the operator, or any proposed amendment or addition to the existing rules by the operator.

### **Consultation process**

- 3 When consulting residents the operator must:
  - a give them all the relevant information so they are able to provide informed comment and advice about the matter
  - b allow enough time for residents being consulted to consider and draw up their comments or advice
  - c fully consider any comment or advice before reaching a decision.
- 4 Residents may, individually or as a group, appoint a person or people to represent their views in the consultation process.
- 5 The operator must not decide a matter before consultation has been completed, but is not obliged to agree with every comment or to act on the advice provided. The operator must consider all responses received with an open mind. The outcome cannot have already been decided.
- 6 Following consultation the operator must tell residents as soon as reasonably practicable the decision(s) made, with reasons.
- 7 The consultation process must take into account the operator's need to operate and manage the retirement village effectively and to provide the facilities and services for the benefit of all residents.

## **29 Notifying residents of information about the retirement village**

- 1 Every resident and intending resident has the right to be given information on any matters affecting, or likely to affect, the terms and conditions of their occupancy. The operator must notify residents of information about the retirement village as required under the Act. *Section 34; Right 2, Code of Residents' Rights*

## **30 Residents' committee**

- 1 Residents have the right to form a residents' committee and agree their own rules for running the committee.
- 2 The residents' committee may call a meeting with the operator or its representative. The operator or its representative is expected to attend residents' committee meetings when invited, unless the request is in some way unreasonable (eg, too short a period of notice).

- 3 In villages that have a statutory supervisor the residents' committee may call a meeting with the statutory supervisor. The statutory supervisor is expected to attend residents' committee meetings when invited, unless the request is in some way unreasonable (eg, too short a period of notice).
- 4 If there is no residents' committee the operator or its representative and the statutory supervisor are expected to meet with the residents at the residents' request, unless the request is in some way unreasonable (eg, too short a period of notice).

## **31 Resident access to operator and statutory supervisor**

### **Access to operator or operator's contact person**

- 1 The operator must have, maintain, and implement a process so that residents can contact the operator or their contact person about concerns and issues. The process must allow the operator or the contact person to acknowledge and respond in writing within a reasonable time, depending on the subject. The operator must tell residents in writing about any change to this process.
- 2 The operator must give residents written details of the name of a contact person, when they are available, and how to contact them. *Right 2, Code of Residents' Rights*

### **Access to statutory supervisor**

- 3 The operator must have a process for residents to contact the statutory supervisor about an alleged breach of a right or to make a complaint. The operator must tell residents about any change to the process, including providing a contact name and details.
- 4 The operator must tell residents in writing of the name of the statutory supervisor and how to contact them. *Right 2, Code of Residents' Rights*

# Complaints facility

**Note: in clauses 32 – 36 if a retirement village has a certificate confirming that it is exempt from appointing a statutory supervisor then any reference to a statutory supervisor in these clauses will not apply.**

## 32 Procedure for making and acknowledging complaints by residents

- 1 The operator must have a written procedure for dealing with complaints by residents about the retirement village, the operator, or other residents of the retirement village. The operator must give a written copy of the complaints procedure to residents and intending residents on request. *Section 51*
- 2 The procedure for making, receiving, and resolving complaints must enable complaints to be resolved simply, fairly, and quickly.
- 3 The complaints procedure must also:
  - a state that residents can ask the operator's contact person (and provide contact details) for information about their rights. *Code of Residents' Rights*
  - b refer to the resident's right to complain to the village's statutory supervisor (and provide contact details) or to the Registrar of Retirement Villages (and provide contact details). *Code of Residents' Rights*
  - c state that information about residents' rights and complaints and disputes procedures is published by the Retirement Commissioner
  - d refer to the resident's right to involve a support person or people to represent them (at the resident's cost). *Right 6, Code of Residents' Rights*
  - e state that complaints do not have to be made in writing. All complaints, however made, must be recorded and responded to as if they had been received in writing.
  - f state that complaints may be made to the operator's contact person
  - g state what the village's complaints procedures are, including any other help the operator will give to residents. Operators may offer residents a mediation service for informal discussions as an alternative to either the complaints or disputes process.
  - h provide for the complaint to be promptly acknowledged by the operator or contact person in writing, including complaints received other verbally
  - i state that the resident or operator may require that a dispute be resolved by a disputes panel *Section 52*



- j state the types of dispute, including breaches of the Act, for which a resident may give a dispute notice. *Section 53*
- k if a complaint is about the resident's occupation right agreement, state that the proposed action on the complaint will be suspended until the complaint is resolved. There may be occasions when the operator, after consulting the statutory supervisor, decides that it is in the best interests of the village as a community to continue with the proposed action.

### **33 Informing resident of the progress of the complaint**

- 1 The operator must ensure that the resident who has made a complaint is regularly kept informed about its progress.

### **34 Procedures for resolving and deciding complaints**

#### **Resolving complaints**

- 1 The operator must follow the retirement village's complaints procedure.
- 2 Operators may offer residents a mediation service for informal discussions as a first step to resolving the complaint.
- 3 If a complaint is about the resident's occupation right agreement, any proposed action on the subject of the complaint must be suspended until the complaint is resolved. This is unless the operator, after consulting the statutory supervisor, decides that it is in the best interests of the village as a community to continue with the proposed action.
- 4 If a complaint is resolved by mutual agreement, the resolution must be recorded and then signed by, and copied to, all parties.

#### **Deciding complaints where resolution is not possible**

- 5 The operator must have a procedure for deciding complaints where resolution through the retirement village's complaints system is not possible.
- 6 Complaints that are not resolved through the complaints system can be referred to a disputes panel. Resolution of a dispute by a dispute panel is provided for in Part 4 of the Act and associated regulations. The operator is obligated to meet the costs of dispute resolution. *Sections 48–75 and the Retirement Villages (Disputes Panel) Regulations 2006*

### **35 Time limits for making and notifying the decision about the complaint**

- 1 The operator or person dealing with a complaint on behalf of the operator must make and notify a decision on the complaint as soon as reasonably practicable. In any event it should be within 20 working days of the complaint being made.

### **36 Form of notification of the decision about the complaint**

- 1 The operator or person dealing with a complaint must inform the parties affected by the complaint of the decision in writing. The following details must be included:
  - a the reasons for the decision
  - b any action the operator intends to take as a result of the decision
  - c a statement that no party affected is bound by this decision
  - d a statement informing the resident of their right to give a dispute notice if:
    - i the resident is not satisfied with the decision
    - ii 20 working days have elapsed since the complaint was made. *Section 52*

# Accounts

- 1 In clauses 37 – 39 any reference to residents includes any people appointed by a resident to look after their affairs (eg an attorney appointed under a Power of Attorney or an enduring power of attorney).

## 37 Frequency of accounts

- 1 The operator must have, maintain, and implement a system for invoicing residents the agreed charges for outgoings and/or services.
- 2 The operator must invoice the resident when:
  - a it is the first payment made under an occupation right agreement
  - b the amount to be charged has been amended
  - c the resident requests an invoice.
- 3 When an invoice is issued the operator must tell the resident what to do if they wish to query a charge.

## 38 Breakdown of items

- 1 On invoices to residents, the operator must list charges for items as follows:
  - a whether the item charged is for services or outgoings
  - b a break down of what the charge covers
  - c the date the charge was incurred
  - d the dollar amount of the charge.

## 39 Format of invoices

- 1 The layout of invoices given to residents must be easy for them to read and understand.
- 2 Invoices must follow a consistent format and include the following details:
  - a breakdown of items as under clause 38
  - b total amount to pay
  - c when payment is due
  - d what the resident should do if they wish to query a charge

- e how the invoice may be paid
- f where the invoice is to be paid by direct debit or automatic payment, a statement that says that the invoice is for notification only and that the amount will be paid automatically unless queried before a specified date.

# Maintenance and upgrading

**Note: Sections 40 - 45 apply only to buildings, plant, and equipment that are owned by retirement village operators (referred to as 'retirement village property'). In villages where the residential units are owned by the residents, the responsibility for maintenance and upgrading must be set out in the occupation right agreement.**

## 40 General obligations

- 1 The operator must maintain all buildings, plant, and equipment in clean and safe working order, suitable for their intended use.
- 2 The operator must ensure compliance schedules and warrants of fitness for buildings are obtained in accordance with the Building Act 2004 and associated regulations.

## 41 Minor repairs, maintenance, and emergency repairs

- 1 The operator must have, maintain, and implement a procedure that ensures requests from residents for minor repairs, maintenance, and emergency repairs of retirement village property are actioned without unnecessary delay.
- 2 In particular, the operator must:
  - a reply to all non-urgent maintenance requests within five working days and give residents an expected timeframe for the maintenance to be done
  - b tell residents in writing the name and contact details of a person to contact about minor repairs and maintenance requests (this may be the village operator, manager, or other employee of the village)
  - c have, maintain, and implement a process for responding to urgent requests for emergency maintenance of retirement village property.
- 3 Where possible, operators or the person dealing with a maintenance request should tell the resident the name of the company that is doing the work. The contractor representing this company should be encouraged to carry official identification confirming their right to be in the retirement village.

## 42 Periodic review of maintenance agreements

- 1 The operator must periodically review maintenance agreements for retirement village property. Residents should be consulted in writing about any proposed changes in the services and benefits being provided. They should also be consulted about any changes to the charges that they pay that will or might have a material impact on their occupancy or ability to pay for the services and benefits provided. *Right 3, Code of Residents' Rights*

### **43 Funding for maintenance and periodic upgrading of retirement village property**

- 1 The operator must ensure that it can afford to maintain the retirement village property.
- 2 The operator must report to the annual general meeting about how it proposes to pay for the maintenance and periodic upgrading of retirement village property. This information must include the operator's responsibilities for the costs of maintaining the residential units.
- 3 The operator must consult all residents in writing if the proposal for funding the costs of maintenance and periodic upgrading will, or may, have a material impact on residents' occupancy or their ability to pay for services and facilities in the retirement village. *Right 3, Code of Residents' Rights*
- 4 If the operator requires residents to contribute to the funding of long-term maintenance and replacement of retirement village property, all money contributed by residents for that purpose must be kept in a separate bank account. This designated bank account should be named 'Residents' Contribution to Maintenance Account' (or similar). The account must only be used to hold residents' contributions to long-term maintenance.
- 5 All deposits, including interest, in the maintenance account must stay in this account until they are used to pay maintenance costs as outlined in the maintenance agreement and the long-term maintenance plan.

### **44 Construction standards for new retirement villages or units**

- 1 Building standards for new retirement villages or residential units within existing villages must meet the requirements of the Building Act 2004 and the Building Code.
- 2 The operator must, through the disclosure statement, inform residents and intending residents how the village can meet their current and changing needs so that residents can continue to live in their village of choice. Information provided must include the extent to which the residential units, facilities, grounds, and common areas of the retirement village meet the requirements of the national standards identified in NZS 4121: 2001 Design for Access and Mobility: Buildings and Associated Facilities.

### **45 Alteration of residential units for residents with disabilities**

- 1 The operator must make sure that the occupation right agreement includes statements addressing the following:
  - a the rights of residents with disabilities to alter their residential unit if the units do not meet their needs. *Human Rights Act 1993*
  - b who is responsible for making the alterations to units for residents with disabilities and for paying the costs

- c the effect any such alteration might have on the sale or disposal of the residential unit in the future, including any obligation for the resident to remove an alteration made to cater for a disability, or make any payment instead of removal.

# Termination of an occupation right agreement

## 46 Resident's right to terminate the occupation right agreement

- 1 A resident must be entitled to terminate their occupation right agreement for any reason and at any time. The resident must give the period of notice specified in the occupation right agreement. If no notice period is specified the resident must give the operator at least one month's notice in writing.

## 47 Grounds for termination if the unit is damaged or destroyed through no fault

- 1 The operator and resident may agree to terminate the occupation right agreement if the resident's unit or the retirement village is destroyed or damaged beyond repair in specified circumstances set out in the occupation right agreement. For example, it may be that repair or reinstatement of the unit is not practicable because of the extent of the damage or destruction and because:
  - a the necessary building consents cannot be obtained, or
  - b the insurance money needed to repair or replace the unit cannot be obtained or is not enough to replace the property damaged or destroyed.
- 2 The operator must consult the resident to decide whether it is practicable to repair or replace the unit. Then, the operator must follow up in writing, setting out their decision. Through this process, both parties can work out an agreement to end the contract.

## 48 Grounds for termination by the operator

- 1 An occupation right agreement may give the operator the right to terminate the agreement on the grounds set out in this clause.
- 2 Residents have the right to challenge the operator's decision through the complaints process. However, there may be occasions when the operator, after consulting the statutory supervisor, decides that it is in the best interests of the village as a community to continue with the proposed action while the complaint about termination is dealt with.

### Termination on death of a resident

- 3 An occupation right agreement is automatically terminated when the resident dies. If the occupation right agreement applies to more than one named resident, the agreement is terminated when the last surviving resident dies.



### **Termination on medical grounds**

- 4 A resident's occupation right agreement may permit the operator to terminate the agreement if a medical practitioner, after assessing the resident, certifies that the resident's physical or mental health is such that the resident or other residents cannot live safely in their units. The following conditions apply to this right of termination:
  - a the medical practitioner, who in the first instance should be the resident's regular medical practitioner or otherwise may be another medical practitioner appointed by the operator, must be independent of the operator
  - b the assessment by the medical practitioner must take into account:
    - i the care, support, and facilities offered in the village, including the opportunity to transfer to a higher level of care
    - ii support services that could be brought in from outside the retirement village to support the resident to remain in their unit
  - c the resident (or support person or holder of an Enduring Power of Attorney for Personal Care and Welfare) may, as part of being consulted on the proposed termination, obtain a second medical opinion and present it to the operator.

### **Termination for breach of the occupation right agreement**

- 5 The operator may have grounds for termination of a resident's occupation right agreement if the resident has materially breached the agreement. The following conditions apply to this right of termination:
  - a the operator must have notified the resident in writing of the operator's intention to terminate the occupation right agreement unless the breach is remedied
  - b the operator must have given the resident reasonable time, not less than one month, to remedy the breach
  - c the operator must have taken into account the nature and extent of the breach in determining the time given for the resident to provide a remedy
  - d the resident must have failed to remedy the breach in the time given.

### **Termination for abandoning the residential unit**

- 6 The operator may have grounds for termination of a resident's occupation right agreement on the grounds of abandonment. The following conditions apply to this right of termination:
  - a the operator must have made reasonable enquiries and determined that the resident has permanently abandoned the residential unit
  - b the operator must have notified the resident in writing of its intention to terminate the occupation right agreement unless the resident reoccupies the residential unit

- c the operator must have given the resident at least one month to reoccupy the unit
- d the resident must have failed to reoccupy the unit in the time given.

### **Termination for serious damage to residential unit or serious harm to people**

- 7 The operator may have grounds for termination of a resident's occupation right agreement if the resident, intentionally or recklessly, has caused or allowed or is highly likely to cause or allow:
  - a serious damage to the residential unit or facilities, or damage which has become serious because it continues
  - b serious injury, harm, or distress to the operator or another resident, or to an employee or guest of the operator or the resident *Code of Residents' Rights*
- 8 The following conditions apply to this right of termination:
  - a the operator must have notified the resident of its intention to terminate the occupation right agreement unless the damage, injury, harm, or distress is remedied in a specified time that is reasonable under the circumstances. The operator must have taken into account the nature and extent of the damage, injury, or harm in determining the time given for the resident to provide a remedy.
  - b the resident must have failed to remedy the damage, injury, harm, or distress in the time given.

## **49 Operator's process for exercising the right to terminate the occupation right agreement**

- 1 The operator must comply with the following process before exercising any right to terminate an occupation right agreement.

### **Notice of intention to terminate**

- 2 If the occupation right agreement gives the operator the right to terminate the agreement, the operator must issue a notice of intention to terminate that includes the following information:
  - a the date the notice was issued
  - b the specific terms and conditions in the occupation right agreement and this Code of Practice which must be complied with to terminate the resident's occupation right agreement
  - c the proposed grounds for termination, and how they apply to the resident's actions
  - d the process and the timeframes involved, such as periods to remedy or the dispute resolution process

- e that the resident has the right to information about any matters affecting, or likely to affect, the terms or conditions of their residency *Right 2, Code of Residents' Rights*
- f that the resident has the right to refer any dispute to a disputes panel *Section 53*
- g that the resident has the right to involve a support person or people to represent them *Right 6, Code of Residents' Rights*
- h that the resident, or their representative, has the right to be consulted. This includes the resident or their representative having the right to make representations and have those representations taken into account by the operator. *Right 3, Code of Residents' Rights*

### Notice of termination

- 3 If the operator has complied with clauses 48 and 49 and still wishes to terminate the occupation right agreement, the operator must issue the resident a written notice of termination. The termination notice must state the following:
  - a date issued
  - b grounds for termination
  - c specific terms and conditions in the occupation right agreement and this Code of Practice that entitle the operator to terminate the resident's occupation right agreement
  - d the right of the resident to give a dispute notice under the Act *Section 53*
  - e that the operator may suspend the action if the resident has a complaint about a decision in relation to the occupation right agreement. (The operator, after consulting the statutory supervisor, may decide that it is in the best interests of the village as a community to continue with the proposed action.) *Clause 34 of this Code of Practice*
  - f the period of notice. (See the table below for details).

<b>If the reasons for termination are...</b>	<b>then the operator must give the resident not less than...</b>
a death of a resident	as much notice of termination as is reasonable under the circumstances
b medical grounds	one month's written notice of termination
c breach of occupation right agreement	one month's written notice of termination
d because the resident has abandoned the residential unit	one month's written notice of termination
e serious damage to the residential unit or harm to people	as much notice of termination as is reasonable under the circumstances

### **Payment on termination by the operator**

- 4 If the operator terminates a resident's occupation right agreement the operator must, within five working days of the date on which the termination takes effect, pay all sums due to the resident. *Clause 53 of this Code of Practice*

## **50 Refurbishment costs and process**

- 1 This clause only applies to occupation right agreements where the operator has the responsibility for the sale of the residential unit.
- 2 If an occupation right agreement entered into after 25 September 2006 says that the resident must pay or contribute to the costs of refurbishing their residential unit after termination, the refurbishment process must be set out clearly in the agreement. The refurbishment process must:
  - a set out the terms of the operator's right to enter the residential unit to do the work
  - b identify how the cost will be divided between the operator and the resident
  - c set out the rights (including consultation) and obligations of the former resident (or the estate of the former resident, or the holder of an Enduring Power of Attorney for Property) in the refurbishment process.
- 3 Where an occupation right agreement provides that the resident must pay or contribute to the costs of refurbishing their residential unit after termination, the resident is not required to pay for fair wear and tear:
  - a if the occupation right agreement was entered into after 25 September 2006or
  - b the occupation right agreement was entered into before 25 September 2006 but after that date was varied to increase the resident's rate of fixed deduction or decrease the resident's share of capital gain upon sale of the unit.

## **51 Operator's responsibilities relating to the sale or disposal of a vacant residential unit following termination**

- 1 This clause only applies to occupation right agreements where the operator is responsible for selling the residential unit.
- 2 In this clause a reference to former resident also includes their estate or holder of an appropriate Enduring Power of Attorney.

### **Operator to seek new resident**

- 3 Where the former resident has not already been paid all sums due to them, the operator must promptly:

- a start the process of entering into a new occupation right agreement for the former resident's residential unit in accordance with the former resident's occupation right agreement and this Code of Practice
- b take proper steps to market the residential unit
- c respond to all enquiries about the residential unit in a timely and helpful way.
- d take all reasonable steps to enter into a new occupation right agreement for the residential unit in a timely manner and for the best price reasonably obtainable.

### **Consultation on marketing of the residential unit**

- 4 The operator must consult with the former resident about the marketing of their residential unit. As a minimum, the operator must consult the former resident about:
  - a when the residential unit goes on the market
  - b the general nature of the marketing plan for the residential unit
  - c the actual charges relating to marketing and sale of the residential unit that the former resident is liable to pay, if any.
- 5 The operator must keep the former resident informed on at least a monthly basis about progress with the marketing.
- 6 If the property is ready for sale immediately after the former resident has removed all of their personal belongings, the operator must immediately supply monthly reports to the former resident about the marketing process.

### **Report after three months**

- 7 If a new occupation right agreement for a unit has not been entered into within three months of the termination date, the operator must report in writing to the former resident. The operator must then provide monthly reports until a new occupation right agreement is entered into. The operator's report must state the steps taken to market the residential unit and the progress made towards finding a new resident.

### **Valuation after six months**

- 8 If a new occupation right agreement for a unit has not been entered into within six months of the termination date the operator must obtain, at its expense, a valuation of the unit to establish a suitable price for marketing it.
- 9 The valuation must be in writing and be done by an independent registered valuer who is experienced in valuing retirement village units.
- 10 If the former resident does not agree with the valuation s/he may obtain a second valuation, which must also be performed by an independent registered valuer. The former resident must pay the cost.
- 11 The operator must market the unit at the price established by the valuation unless the former resident obtains a second valuation that is different. If the former resident has

done this, then the operator must consider the second valuation in determining a suitable price.

## **52 Rights of the former resident relating to sale or disposal of the vacant residential unit following termination**

- 1 A complaint may be brought at any time. However, a resident may not take a dispute notice until nine months after the unit becomes available for re-occupation or disposal. *Sections 53(1)(3), 55(3) and 57(3)*
- 2 The occupation right agreement must allow former residents the right to introduce a new resident at any time and set out the terms for doing so. The operator is not obliged to accept any prospective resident who does not meet the normal entry criteria for the retirement village or whose offer to buy does not meet the fair market value (as set out in clause 51 of this Code) or conditions.
- 3 If a former resident or their estate introduces a prospective new resident who then buys the residential unit, the sales costs charged to the former resident or their estate must be the actual costs incurred, and the former resident or their estate must be informed.

## **53 Operator may buy residential unit**

- 1 At any time before entering into a new occupation right agreement with a new resident for the vacant residential unit, the operator may agree in writing to buy the former resident's interest in the vacant unit.
- 2 The price for the residential unit must reflect the former resident's occupation right agreement or other amount agreed between the operator and former resident. The 'other amount' must reflect the market value of similar retirement village properties locally.
- 3 The former resident may request that the operator appoint an independent registered valuer to determine the market value of the residential unit. The former resident or their estate and the operator must each pay half the cost of the valuation. The circumstances under which the former resident can make this request are when the:
  - a occupation right agreement provides for the sharing of any capital gain between the operator and former residentand/or
  - b amount due to the former resident is a capital loss and the resident may be liable for meeting that capital loss.
- 4 The operator must, within 20 working days of the date of the agreement to purchase, pay to the former resident the amount due to them as a consequence of termination of the occupation right agreement.

## **54 Payments due to the resident on termination or end of occupation**

### **Charges for personal services**

- 1 The operator must stop charging a resident for personal services on the date the resident stops living permanently in the residential unit.

### **Continuing charges for outgoings**

- 2 The operator must reduce by at least 50 percent the outgoings charged to the former resident if no new occupation right agreement has been entered into for a former resident's unit by the later of:
  - a six months after the termination date, or
  - b the date the former resident stops living in the residential unit and removes all their possessions.

### **Fixed deductions**

(Fixed deduction is also known as a facilities fee, village contribution, or deferred management fee).

- 3 These fixed deduction clauses only apply to contracts entered into after 25 September 2006.
- 4 The fixed deduction must not accrue past the date on which the resident is paid the amount payable to them on termination of the agreement.
- 5 Details of fixed deductions must be set out in the disclosure statement.

### **Payment after sale or disposal of the residential unit by the operator**

- 6 If an occupation right agreement allows the operator to sell or dispose of the former resident's unit, the operator must pay all money owing to the former resident no later than five working days after the date the operator receives payment in full from the new resident.

# Communication with residents

## 55 Communication policies, systems, and procedures

- 1 The operator must have, maintain, and implement written policies and procedures for communicating with residents or intending residents. The operator cannot pass on to a resident the cost of meeting this requirement.
- 2 The operator's policy must cover how the physical environment and management practices at the retirement village make it possible and easy to communicate with all residents. Examples include:
  - a large print in written materials
  - b signs and communication aids that residents can see, hear, or touch to make communication more manageable
  - c translations in languages other than English
  - d alternative ways of communicating (audio, video, electronic text, Braille)
  - e staff communication skills
  - f availability of an interpreter.
- 3 The operator must set up a system for informal, regular communication with the residents, for example newsletters and notice boards.
- 4 The operator or a staff member may provide support, if appropriate, but may not act as a representative of the resident.

## 56 Communicating with residents for whom English is a second language

- 1 If a resident is not able to easily communicate in English, the operator must – at all times when the rights and obligations of the resident may be affected – use an interpreter who is fluent in both English and the resident's preferred language. The operator must not charge the resident for the cost, if any, of the interpreter.

## 57 Communicating with residents with limited ability to communicate

- 1 If the operator is aware that a resident or intending resident has a limited ability to communicate the operator must – at any time when the rights and obligations of the resident may be affected – inform the resident of their right to use a support person or representation. *Right 6, Code of Resident's Rights*



# Part 4: Useful information

# Extracts from the Retirement Villages Act 2003

## Section 34 Right to be supplied with information relevant to occupancy

- (1) Each resident or intending resident of a retirement village has the right to be promptly informed by the operator of the retirement village about any matter that would or might have a material impact on –
  - (a) the occupancy right, or rights to quiet enjoyment, of the resident or intending resident; or
  - (b) the charges levied on the resident or intending resident for his or her occupancy right, or right to services and facilities, within the retirement village.
- (2) The operator of a retirement village must, -
  - (a) if the village has a statutory supervisor, promptly notify the statutory supervisor and, if the statutory supervisor so directs, each resident and intending resident of the retirement village of the matters referred to in subsection(3); or
  - (b) if the village does not have a statutory supervisor, promptly notify each resident and intending resident of the retirement village of the matters referred to in subsection (3).
- (3) The matters required to be notified under subsection (2) are -
  - (a) any proposal by the operator to develop or redevelop any part of the land on which the retirement village is situated or to acquire any contiguous land for development;
  - (b) the receipt by the operator of a notice from the Registrar of suspension of the registration of the retirement village;
  - (c) any request by the operator to the Registrar for cancellation of the registration of the retirement village;
  - (d) any decision by the Registrar, under section 41, to exempt the operator from the requirement to appoint a statutory supervisor;
  - (e) the appointment of a new statutory supervisor;
  - (f) any decision by the Registrar, under section 93, to exempt the operator from the requirement to comply with a provision in the code of practice;
  - (g) any proposed increase in secured liabilities held by any person over any part of the retirement village;
  - (h) any proposed increase in the maximum sum available to the operator of a retirement village under any credit facility;
  - (i) any actual or threatened action by a creditor, mortgagee, or charge holder in respect of the retirement village against the operator of the retirement village in respect of that person's security or any sum over \$1,000;
  - (j) any decision by an insurer to refuse to insure the retirement village or any part of it;
  - (k) any actual or threatened legal proceedings against the retirement village or an operator of the retirement village that affect the interests of any resident or intending resident;
  - (l) any action by a creditor to put the operator or the retirement village in receivership or liquidation.

- (4) This section does not limit section 32 or Schedule 4.

### **Section 52 Resident or operator may require dispute resolution**

- (1) A resident or the operator may require that a dispute be resolved by a disputes panel by giving the other party or parties a dispute notice.
- (2) A resident may not require resolution of a dispute (other than a dispute referred to in section 53 (3)) by a disputes panel unless -
  - (a) the dispute has earlier been referred to the complaints facility; and
  - (b) 20 working days have elapsed since referral to the complaints facility.
- (3) An operator may not require resolution of a dispute by a disputes panel unless -
  - (a) the operator has notified the resident concerned of the dispute; and
  - (b) the operator has made reasonable efforts to resolve the dispute with the resident; and
  - (c) 20 working days have elapsed since the resident was notified.

### **Section 53 Types of dispute for which resident may give dispute notice**

- (1) A resident may give a dispute notice for the resolution of a dispute concerning any of the operator's decisions -
  - (a) affecting the resident's occupation right or right to access services or facilities; or
  - (b) relating to changes to charges for outgoings or access to services or facilities imposed or payable under the resident's occupation right agreement; or
  - (c) relating to the charges or deductions imposed as a result of the resident's occupation right coming to an end for any reason or relating to money due to the resident under the resident's occupation right agreement following termination or avoidance under section 31 of the resident's occupation right agreement; or
  - (d) relating to an alleged breach of a right referred to in the code of residents' rights or of the code of practice.
- (2) Nothing in subsection (1) enables a resident to give a dispute notice concerning any health services or disability services, or any facilities to which the Code of Health and Disability Services Consumers' Rights under the Health and Disability Commissioner Act 1994 applies.
- (3) A resident may give a dispute notice for resolution of a dispute concerning the operator's breach of the resident's occupation right agreement or code of practice in disposing of a residential unit in a retirement village formerly occupied by the resident.
- (4) A resident may give a dispute notice for the resolution of a dispute affecting the resident's occupation right between the resident and any other person who is -
  - (a) another resident of the retirement village; or
  - (b) in another resident's residential unit with that other resident's permission.

### **Section 89 Code of practice must be prepared and published**

- (1) The Minister may approve 1 of the draft codes of practice submitted to the Minister by any retirement village, group of retirement villages, or association of operators of a retirement village as the code of practice applicable to all retirement villages, after

considering any recommendations of the Retirement Commissioner made in accordance with subsection (2).

- (2) Before making a recommendation to the Minister for the purposes of subsection (1), the Retirement Commissioner must consider any recommendations by any groups of persons or bodies that, in the opinion of the Retirement Commissioner, represent the interests of -
  - (a) operators of retirement villages; or
  - (b) residents or intending residents; or
  - (c) statutory supervisors; or
  - (d) other persons.
- (3) The Minister is not obliged to approve a draft code of practice submitted under subsection (1) that the Minister considers is incomplete or inappropriate or that fails to comply with the requirements of subsection (5) or Schedule 5.
- (4) If no draft code of practice acceptable to the Minister has been submitted under subsection (1) before 1 January 2005, the Minister must prepare, approve, and publish a code of practice after considering any recommendations of -
  - (a) the Retirement Commissioner; and
  - (b) any groups of persons or bodies that, in the opinion of the Minister, represent the interests of operators of retirement villages, residents or intending residents, statutory supervisors, or other persons.
- (5) A draft code of practice submitted under subsection (1) or a code of practice prepared under subsection (4) must -
  - (a) specify rules of practice in relation to every matter that the code is required by Schedule 5 to address;
  - (b) be consistent with the rights referred to in the code of residents' rights.
- (6) The Minister must publish in the *Gazette* notice of -
  - (a) the approval of any code of practice approved by the Minister under subsection (1) or subsection (4) and any variation under section 90(4); and
  - (b) the place or places at which copies of the code and any variation can be obtained.

## **Section 90 Duration and variation of code of practice**

- (1) The code of practice -
  - (a) comes into force, -
    - (i) in the case of the first code of practice, 1 year after it is approved under section 89(1) or (4);
    - (ii) in the case of any subsequent code of practice approved under section 89(1), on the date stated by the Minister in the document approving the code; and
  - (b) continues in force until a subsequent code of practice approved under section 89(1) comes into force.
- (2) An operator of a retirement village may elect to be bound by a code of practice that is not yet in force, by giving notice of that election to -
  - (a) the Registrar; and
  - (b) statutory supervisor of the village (if there is one the); and

- (c) every resident and intending resident of the retirement village.
- (3) If an operator elects, under subsection (2), to be bound by a code of practice that is not yet in force, -
  - (a) that code must for all purposes be treated as if it were in force in respect of that operator and the retirement village to which the election relates; and
  - (b) any earlier code of practice ceases to apply to that operator and the retirement village to which the election relates.
- (4) The code of practice approved under section 89(1) or (4) may be varied by the Minister after considering any recommendations of -
  - (a) the Retirement Commissioner; and
  - (b) any groups of persons or bodies that, in the opinion of the Minister, represent the interests of operators of retirement villages, residents or intending residents, statutory supervisors, or other persons.
- (5) Any variation by the Minister comes into force on the date stated by the Minister in the document making the variation.

### **Section 91 Retirement Commissioner to provide publication information**

- (1) Before making any recommendation under section 89 or section 90(4), the Retirement Commissioner must give public notice of -
  - (a) the places at which the public may inspect or obtain, without charge, -
  - (b) the draft code of practice under consideration; or
  - (c) the proposed variation under consideration:
- (2) the last date on which the Retirement Commissioner will receive written submissions on the draft code of practice or variation (which date must not be less than 1 month after the date of the publication of the notice).
- (3) The Retirement Commissioner must also ensure that the information required to be given by public notice under subsection (1) can be accessed by the public at a website maintained by the Commissioner.

### **Section 92 Status of code of practice**

- (1) A code of practice is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989.
- (2) While a code of practice is in force, it -
  - (a) must be complied with by -
    - (i) every operator of a retirement village;
    - (ii) every receiver or liquidator or statutory manager of an operator or the property of the operator; and
  - (b) is enforceable as a contract by a resident and prevails over any less favourable provision in his or her occupation right agreement; and
  - (c) must be given effect to in any occupation right agreement offered to a resident.
- (3) Nothing in a code of practice applies to any health services or disability services or facilities to which the Code of Health and Disability Services Consumers' Rights under the Health and Disability Commissioner Act 1994 applies.

- (4) The operator of a retirement village must make a copy of the code of practice available to every resident and intending resident on request.
- (5) Subsection (2) is subject to section 93.

### **Section 93 Exemption from requirement to comply with code of practice**

- (1) The Registrar may exempt an operator from complying with any provision of the code of practice if the Registrar is satisfied that the criteria for exemption prescribed under section 105 are met.
- (2) An operator applies to the Registrar for an exemption by –
  - (a) completing the prescribed form and delivering it to the Registrar; and
  - (b) paying the prescribed fee.
- (3) The Registrar may exempt the operator on the terms and conditions, and for any period (not exceeding 2 years), that the Registrar thinks appropriate in the particular circumstances.
- (4) The Registrar may revoke an exemption, or vary its terms or conditions, if the Registrar is satisfied that –
  - (a) the ground for the exemption no longer applies; or
  - (b) the operator has not complied with its terms and conditions.
- (5) The Registrar must give notice of the revocation or variation of an exemption as soon as possible to –
  - (a) the statutory supervisor (if there is one); and
  - (b) the operator.

## **Schedule 4 of the Act      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 want to make a complaint about a breach of your rights, are -

- a the statutory supervisor (if there is one)
- b 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

This page is for the operator to fill in the details of key contact people when giving the code to residents and intending residents. The resident can update the details as necessary when the operator tells them about any changes.

### Operator's contact person for maintenance requests

When available:

Name:

Phone:

Address:

Fax:

Email:

### Operator's contact person for complaints

When available:

Name:

Phone:

Address:

Fax:

Email:

### Operator's contact person (if different from above)

When available:

Name:

Phone:

Address:

Fax:

Email:

### **Statutory supervisor (if there is one) of the retirement village**

Name:

Company name (if applicable):

Phone:

Address:

Fax:

Email:

### **The Department of Building and Housing (for general information on the implementation of the Act)**

Toll free: 0800 83 62 62

Website: [www.dbh.govt.nz/retirement-villages](http://www.dbh.govt.nz/retirement-villages)

Email: [info@dbh.govt.nz](mailto:info@dbh.govt.nz)

### **Registrar of Retirement Villages (for information on registration and the register)**

Toll free within New Zealand: 0800 268 269

International callers: +64 3 962 2602

Website: [www.retirementvillages.govt.nz](http://www.retirementvillages.govt.nz)

Address: Registrar of Retirement Villages  
Northern Business Centre  
Private Bag 92061  
Auckland Mail Centre  
Auckland 1142

### **Retirement Commissioner (for information on complaints and disputes)**

Toll free: 0800 438 767

Address: Retirement Commissioner  
PO Box 12-148  
Wellington

Website: [www.retirement.org.nz](http://www.retirement.org.nz)

Email: [office@retirement.org.nz](mailto:office@retirement.org.nz)