

**NORTHERN TERRITORY OF AUSTRALIA**

**RETIREMENT VILLAGES REGULATIONS**

As in force at 21 July 2010

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Regulations as in force at 21 July 2010. Any amendments that commence after that date are not included.

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## RETIREMENT VILLAGES REGULATIONS

### Regulations under the *Retirement Villages Act*

#### 1 Citation

These Regulations may be cited as the *Retirement Villages Regulations*.

#### 2 Commencement

These Regulations shall come into operation on the commencement of the *Retirement Villages Act 1995*.

#### 3 Notation of register

- (1) For the purposes of section 36(2) of the Act, the prescribed form is the form specified in Schedule 1.
- (2) An application under section 36 of the Act shall be accompanied by a fee of \$165.00.

#### 4 Prescription of code of practice

The code of practice in Schedule 2 is prescribed.

**Schedule 1**

regulation 3(1)

NORTHERN TERRITORY OF AUSTRALIA

APPLICATION TO RECORD  
RETIREMENT VILLAGE LAND USE  
IN THE REGISTER

The applicant, the registered proprietor within the meaning of the *Land Title Act* of the land described below, applies to the Registrar-General for the recording in the Register that the land is or is intended\* to be used as a retirement village.

(NOTE 1)

	Volume	Folio	Location	Parcel	Plan	Unit
Register:						
Applicant:						
Address for the service notices:						
* State whether land is being used as a retirement village or whether land is intended to be used for this use:						

(NOTES 2 & 7)

.....	Signature of Applicant
on (date) .....	
in the presence of .....	
Print Name .....	
Address .....	
.....	
Telephone .....	

(NOTES 3, 4 & 5)

.....  
Recorded in Register At

(NOTE 6)

..... Correct for the purposes of the <i>Land Title Act</i>
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## SCHEDULE OF NOTES

1. The application is lodged as an original only and shall be typed or completed in ink or biro.
2. This application can be made by a lawyer or agent.
3. After witnessing the signing of the application, the witness shall legibly write, type or stamp his or her name and contact address or telephone number below the signature.
4. Persons who may witness this application are Commissioners of Oaths, lawyers, members of the Legislative Assembly, persons holding office under the *Supreme Court Act*, *Justices Act*, *Local Court Act* or *Registration Act*, members of the Police Force, licensed real estate agents and licensed business agents.
5. Applications may be witnessed in a place outside the Northern Territory by any person qualified to do so in that place under the *Oaths Act*.
6. To be signed by a Practitioner of the Supreme Court of the Northern Territory, a Licensed Conveyancing Agent or by the applicant.
7. If the application is to be signed by a corporate body it is to be authenticated by or on behalf of that corporate body in any manner permitted by law.

## Schedule 2 Retirement Villages Code of Practice

Regulation 4

### PART 1: APPLICATION, OBJECTIVES AND PRINCIPLES

*What are the purposes of this Code?*

- (1) The purposes of this Code are to set out the minimum standards of practice concerning:
- entry arrangement for retirement villages
  - operation of retirement villages
  - management of villages
  - the resolution of disputes.

(2) The Code is complementary to the *Retirement Villages Act*.

2. *What is the relationship between this code and the Retirement Villages Act?*

(1) The *Retirement Villages Act* sets out:

*The rules regarding the administration of the Act.*

For example:

- it provides that the Commissioner of Consumer Affairs is responsible for the administration of the Act
- it provides the Minister with powers to grant exemptions from some of the obligations contained in the Act
- it provides that authorised officers under the *Consumer Affairs and Fair Trading Act* have various powers to examine compliance with the provisions of the Act and the Code
- it provides the Courts with powers to deal with disputes when dispute settling processes in this Code may have failed

*The core rights of residents and operators of retirement villages*

For example:

- it provides that the right of a resident to occupancy can only be ended by determination of a court

- it provides that the financial interests of residents have the highest priority possible in relation to other creditors
  - it provides residents with, in extreme cases, the right for their contracts to be reviewed by the court on the grounds of being unconscionable
- (2) This Code of Practice fills in the details left open by the Act.
  - (3) In particular the Code sets out the rules that must be followed for the purposes of maximising the possibility that residents and administering authorities are both aware of the rights and obligations relating to the village.
  - (4) Neither the Code or the Act make any attempt to prescribe the level of service provided by the administering authority.
  - (5) Issues concerning service levels, quality of the village amenities and all other lifestyle and medical matters are dealt with in the contract between the resident and the administering authority.
3. *What is the basic application of this code?*
- (1) Subject to subclause (2), this Code applies to all retirement villages (including any retirement villages operated by the Northern Territory Government).
  - (2) This Code applies subject to:
    - (a) any exemption that may be given under section 5(2) of the Act;
    - (b) any exemption that may be given under section 39(2) of the Act;  
or
    - (c) any exemption contained in any regulations made under section 52(3) of the Act.
4. *Does this Code apply to retirement villages in existence prior to the commencement of operation of the Code*
- (1) Subject to clause 5 and to any exemption referred to in clause 3, this Code applies to all retirement villages, regardless of the time when they commenced to be operated.
5. *Does this Code apply to nursing homes and hostels*
- (1) The Code applies to all accommodation that falls within the definition of retirement village (see section 3 of the Act and clause 41 of this Code) subject that for nursing homes and hostels that are not fully funded it is likely that there will be an exemption given as referred to in clause 3(2) of the Code.

6. *What are the objectives of this Code*

- (1) The objectives of the Code are:
- (a) to clarify the rights and obligations of residents and management of retirement villages and by doing so promote fair trading practices in the retirement village industry;
  - (b) to facilitate the disclosure of all important information relevant to a person who is considering entering a particular retirement village;
  - (c) to require contract documents for retirement village accommodation to contain full details of the obligations and entitlements of residents and management;
  - (d) to facilitate resident input, where desired by residents, into the management of retirement villages;
  - (e) to establish appropriate mechanisms for the resolution of any disputes between residents and management or between residents; and
  - (f) to encourage the promotion and development of resident-funded villages in accordance with the Code.

7. *What are the general principles underlying the operation and administration of the Code?*

- (1) The general principles guiding all those involved in the retirement village industry are:
- (a) that priority must be given to the well-being and interests of residents;
  - (b) that there must be due acceptance of the rights of management and owners of retirement villages to manage retirement villages on behalf of the majority of residents and to receive an adequate return on any financial investment in the retirement village;
  - (c) that the freedom of decision and action of residents should be restricted as little as possible and should be acknowledged in the relationship between residents and management of retirement villages;
  - (d) that the importance of maintaining and facilitating the relationships of residents with their families and past and present communities, including taking account of the cultural, religious and linguistic backgrounds of residents, should be recognised;

- (e) that residents should be encouraged to exercise, and in no way be inhibited from exercising, self-reliance in matters relating to their personal, domestic and financial affairs; and
- (f) that residents should be treated fairly and be protected from abuse and exploitation.

## PART 2: BASIC RIGHTS OF RESIDENTS AND MANAGEMENT

### 8. *Provision of consumer advice prepared by the Commissioner of Consumer Affairs*

- (1) A person who is involved in the promotion of a retirement village must make available to any person interested in becoming a resident a copy of any informational material that may be prepared and published by the Commissioner of Consumer Affairs.

### 9. *What are the residents' rights to privacy*

- (1) Residents have a basic right to privacy in personal accommodation which must be respected by management.
- (2) Management must facilitate the residents quiet enjoyment of both personal accommodation and communal amenities.

### 10. *What are residents' rights for autonomy over personal and financial Affairs*

- (1) Residents must have the right to complete autonomy over personal, financial and other matters and possessions.
- (2) Management must give residents reasonable access to any personal file created in respect of them by the management of a retirement village.

### 11. *Acceptance of the need for sound management practices*

- (1) Residents and management accept and agree that there is a requirement that management of the village is to be conducted in a sensible and financially prudent manner.
- (2) Management must ensure that the accounts for the village have been prepared in accordance with recognised Australian Accounting Standards.



### PART 3: DISCLOSURE OF INFORMATION

12. *What are the general obligations of management in respect of the provision and disclosure of information*
- (1) All information and contracts relating to a retirement village are:
    - (a) to be written in clear, concise and plain English, avoiding vague or ambiguous statements and harsh or unconscionable terms;
    - (b) not to be in breach of any provisions of the Code, the *Consumer Affairs and Fair Trading Act* or the *Retirement Villages Act*; and
    - (c) to fully disclose all of the terms, conditions and other arrangements which will apply in relation to a resident's occupation of the village.
  - (2) Management should encourage prospective residents to obtain independent legal advice prior to entering into any arrangement concerning the ownership or occupation of a retirement village.
13. *What are the basic obligations of residents*
- (1) Residents have an obligation to inform themselves about the residence contract and any other contracts relating to their residence in the retirement village.
  - (2) Residents should get independent legal advice before signing any documents and should not expect management to provide this advice.
14. *What are the obligations of management regarding disclosures in advertising and sales promotions*
- (1) All promotional or sales material provided by the management of a retirement village about the village, whether in written or oral form, is to be truthful, accurate, unambiguous and entirely consistent with the provisions of this Code, the *Consumer Affairs and Fair Trading Act* and the *Retirement Villages Act*.
15. *What are the obligations of management regarding compliance with planning laws*
- (1) Any necessary development consents under the planning laws of the Northern Territory (currently the *Planning Act*) must be obtained from all relevant authorities before any sales promotion of a retirement village is undertaken, but this does not preclude the carrying out of a market survey prior to any sales promotion.

(2) Where the development consent includes a requirement that the developer provide certain services for the life of the development, that requirement must be disclosed to the prospective resident under this Code.

16. *What are the rules regarding disclosure in advertising and sales promotion to issues relating to nursing homes? (\*)*

(1) Subject to subclause (2), where any reference is made to nursing homes in any promotional or sales material provided by the management of a retirement village, the following information on the terms of entry to such facilities must be included:

*'You should be aware that current Commonwealth policy guidelines on admission to subsidised hostels and nursing homes require places to be allocated on a "needs" basis. It is impossible for any organisation providing services for older people following individual assessment to guarantee admission to a subsidised hostel or nursing home.'*

(2) Subclause (1) is applicable:

- (a) unless the nursing home facility is fully resident-funded; and
- (b) subject to any variations in Commonwealth Government policy (in which case the management will obtain from the Commissioner of Consumer Affairs information of what should be an alternative form of wording).

(\*) See also clause 29 regarding subsidised hostel.

17. *What are the rules regarding disclosure of information concerning proposed facilities and services*

(1) The developers or proposed managers of a retirement village must not make reference to proposed facilities and services in promotional or sales material unless there is:

- (a) an unequivocal assurance of implementation; or
- (b) a clear statement of any conditions on which their realisation is dependant.

18. *What are the rules regarding statutory charges that may apply to land that comprises a retirement village?*

(1) For all retirement villages in respect of which residents pay a premium or any other money for an interest that is not freehold title in the home, unit or room that they are to occupy, the management of a retirement village must not permit a person to occupy the village or to pay any part

of the premium until the notice that the land is a retirement village is registered under the *Land Title Act* by the Registrar-General against the title for the land in accordance with the provisions of section 37 of the *Retirement Villages Act*.

- (2) If a retirement village was established before the commencement of the *Retirement Villages Act*, the Register must be noted within 3 months after the commencement of the Act.
- (3) The administering authority must make available to a prospective resident a copy of the advice from the Registrar-General that the Register has been noted. This notation ensures that a statutory charge applies to the land with respect to the right of a resident to repayment of a premium or part of a premium in accordance with a residence contract.

19. *What fees, premiums, charges and other matters must be disclosed?*

Financial and Other Information

- (1) The Management of a retirement village must make the following information available, in writing, to a prospective resident of the retirement village before the prospective resident enters into any contract relating to the village:
  - (a) a list of all costs payable by the prospective resident to enter the village;
  - (b) a list of all recurrent charges, fees or management fees payable by a resident and a clear statement of the method to be used to calculate any variation. In respect of fees Management must state exactly what services the fees cover including personal care or unit title management under delegation from a body corporate;
  - (c) a clear outline of the method used to calculate the aggregate levies and whether different formulae apply to different services, items or entitlements (e.g. statutory charges, insurances, personal care costs, on site management etc);
  - (d) a clear statement of the nature and fee structure of all personal care services. Any care agreements negotiated after occupancy of a retirement village should also specify what care services are covered and by what fees.
  - (e) a list of any additional or optional services provided and their cost;

- (f) where a village offers a range of accommodation (e.g. self-care and hostel units), details of the costs associated with moving to and living in the alternative accommodation;
- (g) a detailed budget, including any provision for future maintenance for the village, for the current financial year if the village is already operating or the projected budget if it is under construction and, if any such budget extends to things other than the village, then adequate details must be provided;
- (h) a copy of Schedule A to this code containing written answers to the questions set out in that Schedule;
- (i) a copy of the checklist set out in Schedule B to this code;
- (j) a copy of the village rules (including any by-laws of the body corporate under the *Unit Titles Act* or *Unit Title Schemes Act*); and
- (k) a clear explanation of the refund entitlement, if any, to a resident, if the resident or management terminates the resident's contract. It must include any fees or commissions charged by management on termination of a contract and detail the method used to make such determinations. This is also to enable a prospective resident to determine the final return due after say 1, 2, 5 and 10 years. This is to allow a meaningful comparison between the financial packages offered by different retirement villages.

20. *Provision of information concerning title and tenure*

- (1) Management must ensure that the residence contract contains a full disclosure of the legal basis of occupancy and the type and length of tenure secured in return for the payment for entry.

21. *Cooling-off period*

- (1) All residence contracts and any other associated contracts relating to a retirement village entered into after the commencement of the Code must provide for a **cooling off** period of a minimum of 10 working days.
- (2) During this period a prospective resident may withdraw from the contract by giving notice in writing to the management of the retirement village or its agent without loss or penalty.
- (3) The cooling off period is waived if the resident commences to live in the residential premises.

22. *Accommodation*

- (1) The residence contract documents must include or be accompanied by plans that show the location, floor plan and significant internal dimensions of the accommodation. They must also include plans showing the location, floor areas and other features or any separate carport, garage, storage areas or other area allocated to the resident.
- (2) The fixtures, fittings and furnishing which are to be provided must be listed. Any items for which maintenance will be the residents responsibility or which are not covered by maintenance fees payable by the resident, must be so identified.

23. *Services and facilities*

- (1) Contracts between management and a resident relating to a retirement village must detail all services and facilities that are to be provided by the management. This detail must include information as to who is providing the service and whether there is a separate charge for its use. Where a service is provided by an independent agency, any potential restrictions on access to the service must be clearly stated (e.g. some services may have eligibility criteria or waiting lists).

24. *Accommodation charges and refund provisions*

- (1) All accommodation charges, including the methods used for determining a charge (ie. any premium that is required to secure accommodation in the retirement village) must be fully specified in the residence contract together with the residents rights to a refund, if any, on termination of the contract. If there is to be a refund, the contract must set out in full the method of calculation and the time for payment and relevant conditions. If there is not to be a refund, the contract must specify that fact.

25. *Regular maintenance and service charges*

- (1) The residence contract and any other contract between the management and a resident of a retirement village must contain all details necessary to provide a resident with an understanding of what his or her recurrent charges will be, the method of determining a charge, when they must be paid and what will be provided in exchange, for these charges. Recurrent charges for the current financial year of any such contract and the basis for their future determination must be set out in the contract.

26. *Fees, deferred fees and deferred entrance payments*

- (1) Management must not charge residents regarding costs which are not actually incurred.

- (2) Where a deferred fee is payable by a resident on departure, or sale of, or transfer of, or other termination of a residence contract, the fee and the basis for its determination must be clearly set out in the residence contract.
- (3) A fee or payment required of residents shall only be described as a "fee", "deferred fee", "deferred management fee" (or words of similar import) if, in fact, the fee or payment relates to a service that is provided by management.
- (4) In particular any amount that is, in fact, part of a payment for the right of entry for a resident must be described as such in the disclosure statement and must not be described as a fee.

27. *Costs incurred by resident while absent from village*

- (1) Residents should not be charged for costs which are not incurred by the retirement village in their absence. There shall be a responsibility on the administering authority to minimise costs during the absence of a resident.

28. *Relocation*

- (1) The circumstances, if any, in which a resident may transfer from a fully independent self care unit to another type of accommodation in a retirement village, such as a hostel, must be disclosed in the residence contract (or in any other relevant contract entered into by a resident) together with the financial and other arrangements which would apply in the event of such a transfer.
- (2) Where there is a dispute about the transfer of a resident within a village it is to be treated in the manner provided by this Code and the *Retirement Villages Act*.

29. *Hostel entry*

- (1) Where any reference is made to hostels in any promotional or sales material provided by the management of a retirement village, the following information on the terms of entry to such facilities must be included:

You should be aware that current Commonwealth policy guidelines on admission to subsidised hostels requires that places are to be allocated on a "needs" basis. It is impossible for any organisation providing services for older people to guarantee admission to a "hostel".

- (2) The above is applicable unless the hostel facility is fully resident-funded.

30. *Code of practice and Retirement Villages Act*

- (1) The residence contract must draw the residents attention to the existence of this Code and the *Retirement Villages Act*. It must refer to the rights of residents to have disputes heard by the retirement village's Disputes Committee (refer to Part 6) and the limited rights to go to the relevant Court. The contract must also refer to the provisions of this Code relating to the involvement of residents in management.
- (2) In the situation where a resident will not own a retirement unit, contracts must state whether the Registrar-General has noted on the Register that the land comprising the retirement village is to be used for that purpose. Contracts should also explain that this notation will cause a statutory charge to apply to the land which is a right of the resident to the repayment of the whole or a part of the premium which may have been paid in consideration for admission to a retirement village.

PART 4: TERMINATION OF CONTRACT

31. *Retirement Villages Act controls termination process*

- (1) Retirement Villages are clearly marketed by the industry as permanent accommodation for residents of such villages. Therefore, a residence contract may only be terminated in a limited number of circumstances set out in the *Retirement Villages Act*.

32. *Termination by management*

- (1) In accordance with the *Retirement Villages Act*, the termination of a residence contract by the management of a retirement village will have no effect unless it is confirmed by the relevant Court. Under that Act the management may apply to the relevant Court to terminate a residence contract on the following grounds:
  - (a) that the residents physical or mental health is such as to make the residential premises unsuitable for occupation by the resident;
  - (b) that the resident has breached the residence contract or residence rules and has failed to rectify the breach;
  - (c) that the management would suffer undue hardship if the residence contract was not terminated; and
  - (d) that the resident has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit serious damage to the residential premises or injury to management, an employee of the management or another resident.

- (2) The residence contract must contain a statement of the management's rights to terminate the contract and a statement that the termination has no effect unless it is confirmed by the relevant Court.

33. *Notice of intention to terminate by management*

- (1) Where the management of a retirement village seeks to terminate a residence contract for any reason (other than because the resident has caused or permitted or is likely to cause or permit, serious damage or injury) it must give the resident 14 days written notice of its intention to apply to the relevant Court for an order terminating the contract.
- (2) Where termination is being sought because of a breach of the residence contract or residence rules, a notice of intention to terminate given by the management must specify the breach.
- (3) A notice of intention to terminate must clearly set out the grounds for the application and must clearly state that the contract cannot be terminated without an order from the relevant Court and refer to the relevant provision of the *Retirement Villages Act*.

34. *Payments on termination by management*

- (1) Where termination of a residence contract has been initiated by the management of a retirement village, it must pay the resident any money to which she or he is entitled under the contract within 1 month of the termination of the contract or within 14 days of the next resident taking occupation, whichever first occurs.

35. *Termination by residents*

- (1) The manner in which a resident may terminate a residence contract must be set out in the contract. The maximum notice that may be required of a resident is 1 month's written notice of intention to terminate a contract.
- (2) A residence contract is also terminated if the resident dies or abandons the residential premises occupied by the resident.

36. *Payments on termination by resident*

- (1) Subject to sub-clause (2), where termination of a residence contract has been effected by the resident, the management of the retirement village must pay the resident any money due under the contract on the earliest occurring of the following times:—
- (a) within 6 months of receiving written notice of the intention to terminate; or



- (b) within 14 days of the premises being occupied by a resident who has paid the monies referred to in clause 19(1)(a).
- (2) A payment made as referred to in clause 36(1)(a) is not required to be made sooner than one month after the vacation by the resident of the residential premises.
- (3) Residents must be made aware that recouping their refund may be delayed pending occupation of the residential premises by a succeeding resident and the payment of the entry fee (unless the village undertakes to refund monies regardless of any re-allocation of the premises).

#### PART 5: VILLAGE MANAGEMENT

37. *What must management do to ensure resident input into management issues*

- (1) It is the responsibility of management to create appropriate structures for resident input, where desired by residents, in consultation with current residents. This is in keeping with the objective of facilitating resident input, where desired by residents, into the management of retirement villages and the principle of restricting as little as possible the freedom of decision and action of residents.
- (2) Such structures must allow for residents;
  - (a) to be provided with the current year's detailed budget and the audited accounts of actual expenditure against budget within 4 months of the end of each financial year;
  - (b) to have input into and agree to the budget for each financial year. The budget should contain sufficient information to explain any increase in fees and would normally include the costs of services, a general maintenance work plan, and where appropriate, details of any upgrading or expansion of facilities and changes or additions to existing services. Management should supply to residents information on financial performance in the current financial year and a draft budget for the coming financial year within a reasonable time prior to the end of the current financial year. The final budget should be developed out of those consultations;
  - (c) to have input into and agree to any change to services or facilities which involves either increased costs to residents (beyond those agreed to in the retirement villages budget) or which may lead to loss of amenity by the residents;

- (d) to have input into and agree to proposals for the upgrading of buildings, fixtures or fittings where the residents are financing either the whole, or part of, the capital or recurrent costs of the work. Where possible, upgrading recommendations should form part of the annual budget;
  - (e) to contribute to the formation of a Disputes Committee; and
  - (f) to contribute to the establishment of any set of village rules and have input into and agree to any amendment or addition to existing village rules. Village rules must be consistent with the General Principles stated in Part 1 of this Code.
- (3) While management must provide appropriate structures every resident may choose the extent to which she or he wishes to participate in the affairs of the retirement village.

#### PART 6: DISPUTE RESOLUTION

##### 38. *How to deal with disputes*

- (1) It is recognised that in any communal living situation such as a retirement village where facilities are shared, disputes between residents and management and between residents will arise from time to time. This Code places particular emphasis on providing easy access to an informal and inexpensive process to resolve disputes. However, there always remains an obligation on the parties to a dispute to attempt to resolve the dispute themselves.

##### 39. *Disputes Committee*

- (1) The management of a retirement village is required to convene a Disputes Committee to hear and mediate disputes that arise within the village. The Disputes Committee will be a panel comprising three persons:
- (a) a person appointed by residents;
  - (b) a person representing the management; and
  - (c) a person agreed to by both the resident and management representatives.
- (2) It is the responsibility of residents to determine a method of appointing (and terminating the appointment) the person referred to in subclause 39(1)(b). Any such method shall however incorporate the concept that the person appointed shall be appointed for only such period of time that he or she is acceptable to the majority of the residents of the village.

- (3) Where there is a dispute concerning the appointment of members of the Disputes Committee the persons in dispute may refer the matter to the Commissioner of Consumer Affairs who may then, after considering the views of all parties, make the appointments for the positions that are disputed.
- (4) Management must produce a "Disputes Charter" which sets out the procedures to be followed in the settlement of disputes.

40. *Applications to Disputes Committee*

- (1) Where a dispute arises within the charter of the Disputes Committee (as decided by the residents and management of a retirement village), either a resident or management may apply to the village's Disputes Committee to have the matter heard.
- (2) The Committee should meet as soon as possible after being notified of a dispute and may hear or mediate the matter in accordance with its charter.
- (3) The Committee must advise the parties to the dispute, in writing, of its decision within 30 days of receiving notice of the dispute (see (4) and (5) below regarding what happens if a party is dissatisfied with a decision of a disputes committee).
- (4) Where a dispute relates to the transfer of a resident from one kind of accommodation in the village to another or to a claim that a residence rule is unconscionable, harsh or oppressive or contravenes any applicable code, and all procedures under this Code have been exhausted without resolving the dispute, the resident or management may apply to the relevant Court to resolve the dispute.
- (5) Applications may also be made to the relevant Court if a resident or management claims that a dispute of any other kind has not been resolved after hearing by the Disputes Committee, but only if the dispute materially affects a party to the dispute and it is in the public interest to do so.

41. *Model provisions may be developed by the Commissioner of Consumer Affairs*

- (1) For the purpose of assisting residents and management in the performance of their various obligations the Commissioner of Consumer Affairs may produce documents that contain model provisions relating to such matters as:
  - the establishment of disputes committees
  - the processes to be followed in the resolution of disputes

- the various types of residents' contracts
- explanations concerning levies and budgetary processes

#### 42. Definitions

In this Code:

ADMINISTERING AUTHORITY has the same meaning as MANAGEMENT;

MANAGEMENT, in relation to a retirement village, means the administering authority or the person by or on whose behalf the retirement village is administered, and includes a person (other than a resident) who owns land within the village;

RESIDENCE CONTRACT means a contract, agreement, scheme or arrangement by which a person obtains the right to occupy residential premises in a retirement village, and may take the form of a lease or licence;

RESIDENT means a person who occupies residential premises in a retirement village under a residence contract, and includes a person who occupies such premises and who is or was the spouse or de facto partner of such a person;

RETIREMENT VILLAGE means a complex containing residential premises, forming a community/village predominantly or exclusively occupied, or intended to be predominantly or exclusively occupied by retired persons;

VILLAGE RULES means the rules with which residents of a retirement village are expected by the management to comply, and includes any by-laws (to which the residents are subject) in force under the *Unit Titles Act* or *Unit Title Schemes Act*.

### SCHEDULE A

#### INFORMATION THAT MUST BE SUPPLIED BY THE MANAGEMENT OF RETIREMENT VILLAGES

1. Does a prospective resident have to supply a medical certificate or report to certify her/his ability to live independently?
2. Does a resident have to provide documentation of her/his medical condition and medications. If so, who will have access to it?
3. What restrictions are there on a resident in the use of her/his unit and the village facilities with regard to:
  - having someone else live with her/him;
  - having visitors, including overnight or short stay guests;

- car parking;
  - pets; and
  - other restrictions?
4. What type of public, private or village transport is available to residents?
  5. If the unit is still under construction, does a resident have a say in the design, construction or furnishing of her/his unit?
  6. Can a resident's contract be terminated? Under what conditions? (The conditions must include the procedures to be followed under the *Retirement Villages Act*.)
  7. Can a resident move or be moved from one part of the village to another part, and if so, under what circumstances?
  8. What arrangements exist for residents to participate in the management of the village? Specify the extent to which residents are involved in making village rules and setting fees and charges?
  9. Who bears the cost of capital replacement, major repairs and long term maintenance (a) in common areas; (b) in individual units? Specify items if necessary.
  10. Do the annual accounts include provisions for infrequent items of expenditure such as long term maintenance, major repairs to buildings and capital replacement items which may carry through to future years?
  11. What provisions and obligations exist to provide for future infrequent expenditure? Has management explained these provisions and obligations?
  12. What contribution is made to these funds by residents and by management?
  13. If a resident leaves the village for any reason, on a temporary or permanent basis, how long do charges continue to apply: (a) unit charges? (b) occupancy charges? (c) care charges? Are any of these charges decreased on departure or death of a spouse or co-habitant of a unit, or increased by any additional occupant?
  14. What is the formula used to calculate aggregate levies? Does a different formula apply to different services, items or entitlements (e.g. statutory charges, insurances, personal care costs, on-site management etc)?

15. What protection does a resident have against a loss of rights (including accommodation rights) if the village is sold to another organisation?
16. Can residents be made liable for any additional or extraordinary charges and, if so, for what purposes?
17. Are there any restrictions on the resident on the sale of her/his unit? What happens if there is a dispute over the sale price?
18. What is the background and experience of the retirement villages senior management?
19. What trustees are appointed by the management? What, if any, connection do they have with the management company? Do residents contribute to the costs of the trustees? If so, what is that contribution?
20. Have management and residents agreed on a disputes settlement process for the village? Is a copy of the Disputes Committee charter available on request?
21. What are the details of all management fees (as distinct from "deferred fees") and do they state exactly what services these fees cover, including personal care or unit title management under delegation from the body corporate.
22. What is the exact nature and fee structure for personal care services available to residents? If personal care agreements are negotiated after occupancy of a retirement village, will they specify exactly what care services are covered and by which fees?
23. How much of the money paid for entry to the village will a resident (or the resident's estate) get back when the resident leaves , if the next resident pays the same amount.
24. By how much will the amount of the refund be varied if the capital contribution of the next resident is more or less than that which the resident paid.
25. Any other additional information as to what happens to the residents interest when the resident dies or otherwise leaves the village?

## SCHEDULE B

### RESIDENT CHECKLIST

It is important for you to carefully read and consider the following questions before deciding to enter any retirement village.

If after reading through the list, you are uncertain as to any aspects of the village, or its suitability for you, seek further advice.

1. Have I fully discussed my decision to enter a retirement village with my family, friends or adviser?
2. If I am considering moving to a retirement village because the housework, gardening and general maintenance has become too much, have I fully considered other options?
3. Have I received adequate information about the retirement village? Have I shown the documents to my solicitor? Am I satisfied that I fully understand the contract that I am signing?
4. Do I know that the lifestyle of the Village (including social activities and religion) will suit me? Have I spoken to any residents of the village?
5. Will the village and my unit be readily accessible if I become disabled and need a wheelchair or walking aid? What alternatives do I have if I become too frail to live alone?
6. Does the village provide nursing care, an emergency call system and other facilities specially designed for the elderly? Do these meet my present and likely future needs?
7. Can I afford to live in the village and what are the financial consequences for me if I do not like living in the village and wish to move out?
8. How much of the entry contribution, whether capital, donation, loan or the like, that I put in at the beginning will I (or my estate) get back when I leave, if the next resident pays the same amount?
9. By how much will the amount of refund be varied if the next resident's entry contribution is more or less than that which I paid?
10. Do I realise that recouping my refund may be delayed pending resale (re-leasing or re-licensing) of the property? Does my contract outline when any refund is due to me upon vacation?
11. Have I received adequate assurance that the entry contribution is protected by a statutory charge that exists on the land comprising the retirement village?

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**ENDNOTES**
**1****KEY**

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

**2****LIST OF LEGISLATION*****Retirement Villages Regulations (SL No. 35, 1995)***

Notified	1 November 1995
Commenced	1 November 1995 (r 2, s 2 <i>Retirement Villages Act 1995</i> (Act No. 28, 1995) and <i>Gaz G44</i> , 1 November 1995, p 3)

***Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)***

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Land Title Act 2000</i> (Act No. 2, 2000) and <i>Gaz G38</i> , 27 September 2000, p 2)

***Justice Legislation Amendment Act 2010 (Act No. 24, 2010)***

Assent date	30 June 2010
Commenced	21 July 2010 ( <i>Gaz G29</i> , 21 July 2010, p 5)

**3****LIST OF AMENDMENTS**

sch 1	amd Act No. 45, 2000, s 12
sch 2	amd Act No. 45, 2000, s 12; Act No. 24, 2010, s 18