



Best practice guide

Determining refurbishment and fair wear and tear in retirement villages

This guide provides information to residents* and operators about contractual requirements for refurbishment and fair wear and tear. The requirements are set out in residents' occupation right agreements (agreement) and in the Retirement Villages Code of Practice 2008 (the Code of Practice).

Purpose of this guide

The purpose of this guide is to

- provide guidance on the refurbishment clause of the Code of Practice (clause 50)
- provide guidance on what may constitute fair wear and tear
- reduce the risk of complaints and disputes made about refurbishment and fair wear and tear.

Communication is critical to ensure that residents and operators understand what refurbishment work is to be undertaken, when it is to be carried out and who will pay.

This guide **is not intended** to apply to occupation right agreements where the operator or resident is solely responsible for meeting the costs of refurbishment after termination.

- * Throughout this guide 'resident' includes resident representatives

Legal status of this guide

This is a guidance document produced by the Department of Building and Housing to help operators and residents meet their obligations set out in occupation right agreements and the Code of Practice (especially clauses 46 to 54).

The guide has no legal status and does not apply to occupation right agreements entered into before 25 September 2006 or the process set out in the Code of Practice for agreements entered into after 25 September 2006.

Who this guide is for

This guide is for operators and residents.

What this guide is about

This guide explains 'refurbishment' and 'fair wear and tear'. It also suggests a process in checklist and flow chart formats for residents and operators to follow during the refurbishment process. Both the checklist and flow chart follow the complaints and disputes process set out in the Retirement Villages Act 2003, showing how the process may be applied to refurbishment.

The checklist and flow chart outline the main steps involved in the process. Using these tools combined with good communication should reduce the risk of complaints and disputes.

What is refurbishment?

Refurbishment is defined by the Code of Practice as to 'restore and redecorate a residential unit to no more than the condition it was in when the resident entered it, less fair wear and tear'.

The general nature of the refurbishment obligation will still be set out in the occupation right agreement, but the Code of Practice provides that residents cannot be required to pay for fair wear and tear, if their agreement was signed after 25 September 2006.

Irrespective of the date that occupation right agreements were signed, residents should ensure that they understand the specific contractual requirements relating to refurbishment. If, as a resident, you do not understand the specific requirements you should seek more information from your operator or lawyer.

Why is refurbishment necessary?

Refurbishment is necessary to make a residential unit attractive to a prospective buyer, and therefore benefits both the operator and resident and the reputation of the village.

Occupation right agreements before 25 September 2006

For those residents who:

- entered their occupation right agreement before 25 September 2006, and
- whose rate of fixed deduction or share of capital gain remains as the original occupation right agreement.

The nature and extent of the refurbishment required will be determined by what is in their occupation right agreement. This might require a resident to refurbish their unit to a condition described as:

- new
- a standard suitable for resale
- returning to the condition it was in when the resident took occupation
- a standard satisfactory to the operator
- pristine (meaning particularly clean and tidy).

Occupation right agreements after 25 September 2006

For those residents who:

- entered their occupation right agreement after 25 September 2006, or
- who entered their occupation right agreement before 25 September 2006, but after that date the agreement was varied to increase the resident's rate of fixed deduction or decrease the resident's share of capital gain.

They are able to apply the refurbishment clause set out in the Code of Practice.

What is fair wear and tear?

Fair wear and tear is defined by the Code of Practice as damage or deterioration that occurs through normal use or is the normal change that takes place with the ageing of the property. If the only damage or deterioration is through normal everyday use, the operator should not charge residents for the cost of refurbishing the unit if the occupation right agreement was signed after 25 September 2006.

Examples of fair wear and tear include:

- cracked window panes due to old warped frames
- paint scratched or chipped
- paint fading and discolouring over time
- plaster or brickwork cracks as building settles
- cracked floor or wall tiles resulting from structural movement
- wall linings punctured by fixing devices for pictures, shelving, curtains and door stops etc
- worn carpets from day-to-day use
- kitchen counters marked or scratched by kitchen implements
- walls accidentally marked by random contact or sunlight.

Application of the fair wear and tear part of the refurbishment clause requires operators and residents to assess whether any damage or deterioration to the residential unit has been caused by normal everyday use. If it is, the operator cannot charge the resident for this if the occupation right agreement was signed after 25 September 2006.

The meaning of normal everyday use should be determined in connection with the age, health and circumstances of the resident when they signed their occupation right agreement, and the type of accommodation they are moving out of (eg, independent living or serviced apartment).

If you use a mobility aid such as a cane or walker, you may wish to ask your lawyer about the implications of use before you sign your occupation right agreement. If you are already a resident and use a mobility aid, you can either ask your operator for more information or you can seek independent legal advice.

Fair wear and tear excludes intentional or careless damage caused by the exiting resident or their guests at any time during the resident's occupancy.

Examples of damage that may not be covered by fair wear and tear include:

- door or window glass or frame cracked from being carelessly slammed
- paint discolouring through regular candle smoke
- linings or trim damaged by hammer, screwdriver or rough use
- minor damage that worsened over time because it was not reported for repair.

What is the refurbishment process?

When residents first move into their unit, they should make note of what the operator has provided. Information about agreed minor changes to the unit (eg, hanging pictures) should be in writing.

Residents also have the right to make alterations to their unit to improve disability access. Again, the occupation right agreement should set out what happens when the resident moves out, including restoration of the unit and who pays for the restoration. If the occupation right agreement does not contain information about restoration, the restoration process is set out in the Code of Practice (clause 45(1)).

If your residential unit has been modified for disability access, you can ask your operator whether they are willing to market the residential unit with the modifications in place. Both operators and residents need to consider how the modifications could affect the market value and time to sell the residential unit. This matter may be covered in your occupation right agreement.

Can I ask for financial information about the process?

If you are an executor of an estate or a holder of an Enduring Power of Attorney you may need to request financial information to demonstrate you are acting in the estate's or the resident's best interests.

What happens if the resident and operator cannot agree on the process for refurbishment?

If at anytime during the refurbishment process, the operator and resident cannot agree, the Retirement Villages Act 2003 provides a two-stage disputes process.

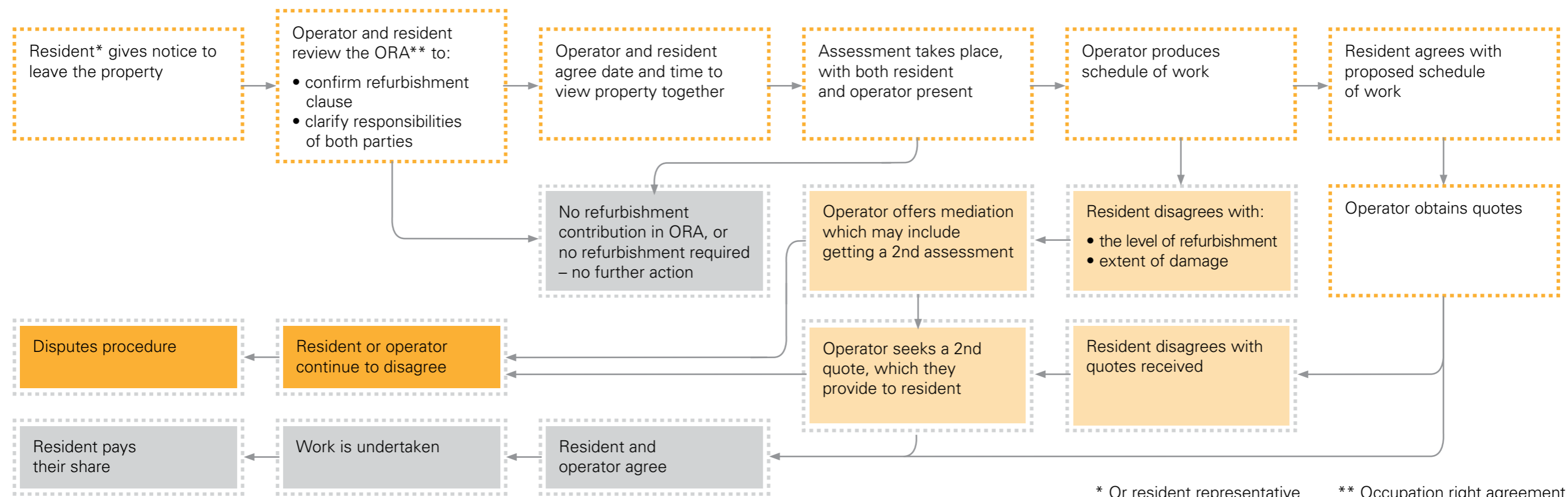
The first stage is to use your retirement village complaints process. Your operator has 20 working days to respond to your complaint. If your complaint is not resolved within the village, either party can use the disputes process. You do not have to wait nine months to bring a dispute about refurbishment.

Residents and operators can also ask the village's statutory supervisor (if there is one) to intervene.

Further information on the complaints and disputes process is available from the Department of Building and Housing and the Retirement Commission.

OTHER SOURCES OF GUIDANCE	
What	Where to access it
Occupation right agreements	Residents should retain a copy or talk to their lawyer
Retirement village policies and procedures	Available from the operator or manager of a retirement village
Retirement Villages Code of Practice 2008	<ul style="list-style-type: none">• Available from the retirement village operator or manager• To view or print for free, go to www.dbh.govt.nz/retirement-villages• Buy from Vic Books, telephone 0800 370 370
Retirement Commissioner (who monitors the Act and administers and approves people for the disputes panel)	www.retirement.org.nz
Citizens Advice Bureaux	0800 367 222
Department of Building and Housing (has administrative responsibility for the Act)	0800 83 62 62 or www.dbh.govt.nz/retirement-villages

Refurbishment process for exiting residents



It may be easier for an operator to correspond in writing with the resident, estate or support person. This should be agreed by both parties at the beginning of the process.

Checklist for residents

- Review your occupation right agreement to check the date it was signed
- Agree on a date and time to view your residential unit with your operator to assess the level of work needed
- Assessment viewing takes place (remember you can have a support person present)
- Get the contact details of the person who will receive your enquiries. This may be your operator or their representative
- Receive a schedule of refurbishment work from your operator
- Agree to the level of refurbishment work, so the operator can get quotes
- Review the quotes and agree
- Get a timetable for the work to be carried out
- Confirm that the work has been completed and the residential unit is ready to be marketed

Checklist for operators

- Review the resident's occupation right agreement to check the date it was signed
- Agree on a date and time to view the residential unit with the resident to assess the level of work needed
- Assessment viewing takes place (remember the resident can have a support person present)
- Inform the resident who will be your contact person for the refurbishment process
- Prepare and send a schedule of refurbishment work to the resident
- Request the resident's agreement on the level of refurbishment work needed
- Obtain quotes and send to the resident
- Request the resident's agreement on the cost of refurbishment

- Send a timetable for the work to be carried out to the resident
- Confirm that the work has been completed and the residential unit is ready to be marketed

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This document is also available
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