

Questions and Answers for the Retirement Villages Code of Practice 2008 (the Code)

What is the Code of Practice 2008? (the Code)

The Code sets out the minimum standards and requirements for information that must be included in an occupation right agreement between a retirement village operator and a resident.

The Retirement Villages Act 2003 requires that a Code be developed. The Act protects residents and intending residents of retirement villages. The Act requires operators to provide full disclosure of their village operations to intending residents. The protections offered to intending residents also apply to existing residents, irrespective of their length of tenure.

What is included in the Code?

The Code covers 10 key areas:

- staffing of retirement villages
- safety and personal security of residents
- fire protection and emergency management
- transfer of residents within a retirement village
- meetings of residents with operator and residents' involvement
- complaints facility
- accounts
- maintenance and upgrading
- termination of an occupation right agreement
- communication with residents.

What does the Code mean for operators?

Operators must use the Code as a basis for their occupation right agreement, as the Code sets the national minimum standards that all retirement village operator must meet.

How will the Code affect residents?

The Code is enforceable as a contract by the resident where the Code over-rides less favourable provisions in residents' existing contracts.

The introduction of the Code may not affect residents with contracts that have more favourable existing contractual terms than the Code. Residents with less favourable existing contractual terms may benefit from the Code.

Operators must provide their residents with a copy of the Code on request.

Intending residents must be provided with a copy of the Code before they can enter into an occupation right agreement.

When does the Code come into effect?

The Code comes into effect one year after its approval. The Code will be effective from 1 October 2009.

What does a resident do if they believe the Code is breached?

A resident can make a complaint to an operator using the village's complaints process, which must meet the complaints process set out in the Code. There are 20 working days to resolve the complaint and if it is not resolved the resident can initiate the disputes process. The dispute is heard by an independent adjudicator. The operator must pay the cost of any dispute.

What is an exemption to the Code?

Some operators may need additional time to adjust their business models to meet the Code. Operators may seek permission from the Registrar of Retirement Villages to not meet a clause or clauses in the Code. All exemptions are time-limited.

What are the main changes in the approved Code that resulted from the consultation of the proposed Code?

Six substantial changes have been made as a result of the consultation. These are:

- 1 The requirement in the insurance clause to waive the right to sue a third party (in this case residents) has been removed.
- 2 A timeframe of 30 working days has been specified for the circulation of meeting minutes of annual general meetings and special meetings.
- 3 All parties involved in a complaint will receive notification of the outcome of the complaint.
- 4 Invoices will not need to be issued on a monthly basis but the times that an invoice must be issued are stipulated.
- 5 The definition of termination date has been clarified.
- 6 The fixed deductions clause [clause 50(3)] will apply only to contracts entered into after 25 September 2006 except where residents whose contracts pre-date 25 September 2006 have experienced a rise in the rate of fixed deduction or a decrease in capital gains.

Changes have also been made to improve clarity and correct any omissions, oversights or errors.

What has changed in the insurance clause?

The requirement for operators to take out insurance only with companies willing to waive the right to sue another party (in this case the resident) to recover costs has been removed. The original clause required insurers to waive the right to recover costs from a resident who causes damage to any retirement village property, when the operator is the insured party.

This is a change for legal reasons. The Code cannot impose an obligation on insurance companies that is not contained in the Act.

Why has a timeframe been included for distributing meeting minutes?

Many residents reported difficulties with accessing the minutes of meetings. The Code now sets a time limit on operators to provide the minutes to ensure greater transparency of information.

Why was the change made to the complaint notification provision?

The change was made to ensure transparency for all involved in the complaint. The original clause only specified that the person who had made a complaint should be informed of the outcome. Any of the people involved in a complaint, (such as a person who is the subject of a complaint), has the right to challenge the complaint outcome by taking a dispute. However, all the people involved need to have access to the information concerning the complaint in order to make an informed decision.

What has happened to the proposed requirement for monthly invoices?

The clause as originally proposed was to protect holders of a property enduring power of attorney under the Protection of Personal Property Rights Amendment Act 2007 that requires the holder to fully account for all expenditure made on behalf of the donor.

Both existing residents and operators rejected the need for such protection. Many operators require residents to use an automatic bank payment system to pay monthly fees. The residents' own bank statements provide an adequate audit trail. Operators also reported that the issuing of monthly invoices has occasionally led to residents paying monthly fees twice, leading to refunds and an increase in administration. Operators were prepared to offer residents and their support people the opportunity to receive monthly invoices where the invoice is being issued for the first time, charges have changed or the resident or their support person requests it.

Why has the definition of termination date changed?

The setting of a firm termination date has implications for the rights and obligations of both residents and operators at three, six, and nine months after a residential unit is put on the market.

Without knowing the termination date, residents are unable to challenge operators, where they feel that the operator is slow to market the residential unit.

The new definition makes understanding the timelines easier and is more transparent.

Why has a time limit been included in the fixed deduction (sometimes called deferred management fees, facilities fee, or village contribution) clause?

Analysis of the submissions received suggested that some operators had amended contracts at the time a Code was originally proposed in 2006 to take account of the new costs they faced.

There is evidence to suggest that following the publication of a proposed Code in 2006, operators adjusted their business practices to accommodate a perceived loss of income from the new refurbishment clause (see next question) by raising the fixed deduction fee.

Many residents with contracts entered into before 25 September 2006 do not face any fixed deductions as their length of tenure is greater than the time period for the accumulation of fixed deductions.

From 1 May 2007 operators were required to disclose the effects of fixed deductions on capital repayment at the end of the contract.

The fixed deduction clause does not apply to all residents whose contracts were signed before the date of 25 September 2006, as a high proportion of these residents have reached the end of the fixed deduction period set out in their original contract.

Residents whose contracts pre-date 25 September 2006 but are still accumulating the fixed deduction fees are also unlikely to be affected by this change as there is evidence to suggest that their fixed deduction is at a lower rate than that fixed deduction rate charged to residents whose contracts were entered into after 25 September 2006. Where they have increased since 25 September 2006 the new provisions apply.

What has happened to refurbishment obligations?

The approved Code clarifies when refurbishment less fair wear and tear can be applied. That, is not all costs of refurbishment can be charged to the exiting resident.

Evidence suggests that operators who faced increased costs following the requirement that they took account of fair wear and tear when setting the refurbishment fee, increased the fixed deduction rate to take account of this. (See previous question)

Residents who entered into contracts after 25 September 2006 are more likely to be paying a higher fixed deduction fee than those who entered agreements before 25 September 2006. However, post-25 September 2006 residents may not have a refurbishment clause in their contract, or will only be required to pay for refurbishment less fair wear and tear.

Residents whose contracts pre-date 25 September 2006 are more likely to accumulate a lower fixed deduction fee, but have to pay for full refurbishment. However, to ensure these people do not face any extra costs government agreed the refurbishment clause including fair wear and tear will apply.

Residents with contracts that pre-date 25 September 2006 but have experienced a change to raise the rate of fixed deduction or decrease a share in capital gains can enforce the refurbishment less fair wear and tear clause.

The approved Code recognises that all existing contracts, especially those that pre-date 25 September 2006, were entered into in good faith, and should be honoured by both the resident and the operator.

Table showing differences between the proposed Code of Practice 2008 and final version

Proposed Code of Practice 2008	Approved Code of Practice 2008
1 Staffing of retirement village	
	Only editorial amendments have been made.
2 Safety and personal security of residents	

Only editorial amendments have been made.	
3 Fire protection and emergency management	
<ul style="list-style-type: none"> Required operators to take out comprehensive insurance with only insurance companies willing to remove their right to sue a resident to recover their costs 	<ul style="list-style-type: none"> This requirement has been removed
4 Transfer of residents within retirement village	
Only editorial amendments have been made.	
5 Meetings of residents with operator and resident involvement	
<ul style="list-style-type: none"> There was no timeframe for the distribution of minutes following meetings 	<ul style="list-style-type: none"> A timeframe requirement for the distribution of minutes has been included.
6 Complaints facility	
<ul style="list-style-type: none"> Only the complainant needed to be informed of the outcome of a complaint. 	<ul style="list-style-type: none"> All parties involved in the complaint must be informed of the outcome of a complaint.
7 Accounts	
<ul style="list-style-type: none"> There was a requirement for the provision of monthly invoices to all residents. 	<ul style="list-style-type: none"> The requirement for mandatory monthly invoices has been removed. As a consequence of the above change, there is no need for an exemption provision to this clause.
8 Maintenance and upgrading	
Only editorial amendments have been made.	
9 Termination of an occupation right agreement	
<ul style="list-style-type: none"> Termination date was unclear. Refurbishment less fair wear and tear can only be applied to contracts entered into after 25 September 2006 	<ul style="list-style-type: none"> Termination date has now been better defined. Refurbishment less fair wear and tear may be applied to contracts entered into before 25 September 2006 if operators have varied the relevant contracts to either increase the fixed deduction rate or decrease the resident's share of capital gains
10 Communication with residents	
Only editorial amendments have been made.	