



## Dispute Resolution under the Retirement Villages Act 2003

If you are a retirement village operator or resident you need to be aware of the major changes created by the Retirement Villages Act 2003, particularly in the area of dispute resolution. Here is a summary of the changes and what you need to be aware of.

A common complaint from residents in retirement villages has been the absence of a formal facility for dealing with complaints by residents. Historically dispute resolution has been achieved only by reference to court proceedings or private arrangements. An example of a private arrangement is the provision for dispute resolution in the Code of Practice adopted by members of the Retirement Villages Association, where a review authority is appointed with a retired district court judge as its head. Statutory managers of retirement villages have also provided assistance in mediating disputes between residents and the village manager.

However, these private methods of resolving disputes have not applied to all villages and this has prompted the Government to act. When the new Retirement Villages Act 2003 comes into force it will be compulsory for retirement villages to establish a disputes panel. The actual regulations for addressing the complaints facility have not yet been formulated and approved by the minister for retirement villages, but it can be expected that these rules will be finalised early next year when the regulations to the Act are passed.

This new compulsory complaints facility must include procedures regarding the lodging and acknowledgement of complaints, keeping residents up to date with the progress of their complaints, procedures for resolving the complaint and limits on time for reporting the outcome to the resident.

There are two levels of dispute resolution established under the Act - first, an informal approach directly between the parties and secondly, a disputes panel.

In the past one of the most troublesome areas of the industry has related to the disposal of residential units. Probably one of the most common reasons for complaints and disputes relates to the issue of repaying a resident's entitlement on termination of their licence.

Key features of the Act include:

- Dispute notices given by a resident to a retirement village operator must refer to a breach of a resident's occupation right agreement or code of practice in connection with disposal of residential unit;
- No resident is able to give a dispute notice in such situations until 9 months have lapsed from when the residential unit became available to the retirement village operator for disposal.
- For all disposal disputes there must be at least 3 members appointed to a panel and one of those members must be a retired judge or have held a practising certificate as a barrister or solicitor for at least 7 years.
- The panel must take into account 3 particular matters being:
  - The relevant real estate market;
  - The age and the condition of the retirement village;

- The effect of the panels decision on other residents of the retirement village and on the financial stability of the village.
- In making an order the following remedies are available to the disputes panel:
  - A retirement village operator may be required to market the unit in a particular way or at a particular price;
  - The retirement village operator may be required to pay the resident a sum in compensation;
  - The retirement village operator may be required to pay the resident interest;
  - The retirement village operator may buy the resident's unit at a price and within a time frame fixed by the panel;
  - The operator may be required to pay a resident a sum fixed by the panel within a time fixed by the panel as if the operator had disposed of the unit.

An order for the panel to exercise a buy-out order could generally be expected to occur only in exceptional cases. However the panel will take a wide look at the financial stability of the village and the impact such an order might have on the other residents in the village. The reason for this is that a financial order made to a retirement village operator may cause it to become unstable and have a detrimental impact on other residents.

As well as the previous two approaches to dispute resolution, under the new Act the retirement commissioner will also have a role in monitoring the Act, advising villages on associated issues and generally educating the industry. In addition, statutory supervisors will continue to have statutory and contractual obligations to monitor the financial position of the village and report annually on a village's performance of its duties.

Hesketh Henry is able to provide all of the advice you need regarding these issues, and the operation of the Retirement Villages Act 2003 generally. For further information please contact Brian Coburn via email: [brian.coburn@heskethenry.co.nz](mailto:brian.coburn@heskethenry.co.nz) or phone: +64 9 375 8704.