RVA NEW ZEALAND
Retirement Villages Association

BLUEPRINT FOR NEW ZEALAND'S RETIREMENT VILLAGES SECTOR

New Zealand's retirement villages sector has launched a comprehensive blueprint to introduce a range of improvements in the industry.

The growing popularity of retirement village living and the overwhelming satisfaction levels among residents clearly demonstrates that our sector has struck the right balance between robust regulatory oversight and effective self-governance.

However, we accept there is always room for improvement and refinement around certain practices as our sector and our offering evolves.

That's why the RVA signed a Memorandum of Understanding with the Retirement Village Residents Association of New Zealand to work together on issues to ensure the interests of our residents continue to remain paramount in everything we do.

This blueprint sets out the tangible and definitive steps we will be taking to achieve that goal.

John Collyns
Executive Director

OUR PROMISE

- Provide residents with a stronger voice
- Strengthen the complaints process by exploring establishing an Ombudsman to hear and resolve complaints and invite an independent member of the public to sit on the RVA Executive to represent residents' interests
- Survey all members annually to examine emerging trends
- Work with members, residents and the Retirement Commissioner to design a best practice approach to re-licensing that reflects the reality of the local real estate market, yet ensures residents' estates do not wait an unreasonable period of time for a refund
- Review Occupation Rights Agreements (ORAs) to address any perceived unfair terms or confusing clauses and ensure clarity around what the resident and operator are responsible for, in particular, repairs, maintenance and replacement of operator-owned chattels
- Continue to work with the Commission for Financial Capability (CFFC) to develop best practice standards around disclosure of information about residents' transfer to care and incorporate these into the Retirement Villages Code of Practice.

96%
of residents were either very satisfied, satisfied or neutral

83%
of residents satisfied with the quality of the legal advice they received before moving into their retirement village

70%
of residents satisfied with their overall consumer protection

*UMR Insight, 2021. See page 8 for further information

BACKGROUND

The Commission for Financial Capability's (CFFC) White Paper advocating a review of the retirement village legislation framework was published in June 2021. The CFFC raised a number of issues that it believes are a concern for some residents and others.

These include:

1. **Relicensing issues**
   - Treatment of any gains on re-licensing
   - Unit re-licensing times
2. **Operational issues**
   - Transfers, within a village [mostly to care]
   - Treatment of fees for units post vacation
   - Code compliance
   - Giving residents an effective voice
3. **Broader issues**
   - Whether the regime allows for affordable future supply, social housing, potential lack of capital for new residents, and the role of rentals.

The RVA understands the importance of these matters raised and we're committed to exploring options to address any relevant issues in a way which meets the needs of our residents and village operators.

INSIGHTS

The regulatory framework is broadly working as intended and is sufficiently flexible to allow operators to develop new innovative models to meet residents' concerns.

More than 100 New Zealanders are moving into a village every week and they are required to receive legal advice, with their solicitor certifying that their client fully understand the terms and conditions involved.

All valid research, including research by UMR Insight in January 2021, demonstrates residents are very satisfied with the current framework.

The industry has grown strongly over the past 20 years as residents seek safety and security, peace of mind and a hassle-free lifestyle.

However, as would be expected with legislation that is almost 20 years old, some fine-tuning, particularly around operational issues, is necessary to enhance a model that has served older New Zealanders well for almost 40 years.

Summary responses to the CFFC

RELICENSING ISSUES

1. There would be a catastrophic effect if government interfered with the commercial model. The village model is not comparable to purchasing a property. The facilities and care involved in villages represent a significant investment, which operators recover over the long term, not on an initial licensing. Residents tell us they enjoy certainty of cost with a majority on fixed ongoing fees and the avoidance of major capital expense, leaving operators to cover these
2. The entry cost to move into a retirement village is attractive and the ongoing cost of living in the village is subsidised. When a tenure ends, the operator pays back the entry sum and takes an agreed fee for doing so
3. Residents balance financial security and know to the last dollar how much they will get back when they leave against the ownership risks. Any gain on re-licensing a village unit is used by the operator to refurbish the unit to which the resident does not contribute a cent and to off-set these risks
4. Any requirement to mandate some form of payment to a resident's estate on exit, based on what a new resident will pay for a licence of the same unit, fails to recognise that the resident does not contribute to refurbishment of the unit or the cost of other capital expenditure in a village. Furthermore, it could immediately render many operators insolvent
5. In the future, if such a change was mandated, operators would need to increase the deferred management fee charged to residents, defeating the intended purpose of the change
6. Regulation 25(2)(d) of Retirement Villages (General) Regulations 2006 requires that the disclosure statement addresses the extent to which the former resident is exposed to a capital gain or capital loss arising as a result of the termination. This incorrect characterisation has confused residents and any regulatory reform should address this wording
7. We appreciate that re-licensing a unit is a stressful time for residents and their families, especially if a resident is moving to care and needs the capital for that. An increasing number of operators offer short-term loans to cover these costs, and others offer to refund the capital sum (less the Deferred Management Fee (DMF) after a period of time if the unit remains unlicensed. The Ministry of Social Development (MSD) also can provide loans to village residents moving out of the village to care elsewhere, if need be
8. It is unreasonable and impractical to mandate a maximum relicensing period as villages face the same ebbs and flows of the real estate market. To cherry pick issues and rigidly prescribe some commercial terms fails to appreciate the interdependent nature of the terms of a village offering.

The RVA agrees that there is a role for continuously educating operators and residents about these options and to encourage best practice around some (e.g. drawn-out relicensing times).

OPERATIONAL ISSUES

1. In conjunction with the CFFC, the RVA has developed best practice standards around the disclosure of information about the transfer to care, and we believe that these standards should be incorporated into the Code of Practice. We are happy to work with the CFFC and Retirement Villages Residents' Association (RVRA) to achieve this

2. We also agree that the sector can encourage best practice standards around issues such as stopping all fees when a resident moves out. This is an example of education and market pressure. The practice was extremely rare 20 years ago, but today the majority of retirement villages in New Zealand have adopted this and more continue to do so to ensure they remain competitive

3. The RVA has secured a comprehensive training programme for staff and others involved in running retirement villages based on a highly successful Australian programme

4. Our Memorandum of Understanding, signed in December 2020, created a Residents' Advisory Group of residents and operators who review issues and recommend ways to mitigate them.

RVA'S COMMITMENT

While the RVA believes no major changes to the Act itself are required, we agree some changes to the regulatory framework could be beneficial for all parties and have developed the following seven-point action plan.

1. ENSURING THE RESIDENT'S VOICE IS HEARD

The RVA understands that without happy residents we don't have a viable sector. Therefore, it's essential that the residents have an effective voice in the sector's governance.

We propose to co-opt an independent person, who may be a village resident, onto the RVA's Executive Committee who can ensure that the residents' voice is heard and their perspective on relevant issues is taken into account. The exact method of selecting this person will be determined by the Residents' Advisory Group.

This initiative would follow the precedent set during the first level 4 and 3 lock-down when the Retirement Commissioner was a member of the RVA's Pandemic Task Force.

2. MONITORING RE-LICENSING TIMES

The RVA surveyed its major operators in early 2020 to ascertain times taken to re-licence units that became vacant in 2019. The survey covered 23,039 units from 195 individual villages. 13%, or 2,992 units, qualified as being empty during 2019.

Overall, 71% of the units were re-licensed within six months, although this varied by region. 26% took more than six months and 3% were still vacant at the end of the period. The reasons given were the impact of the COVID-19 lockdown, a less buoyant real estate market pre-lockdown (i.e. new residents took longer to sell their own homes), buyers selected other units in the village that were more attractive, more units than usual became available, and more competition from other villages. Since lockdown, we believe resale times have accelerated significantly.

The RVA has agreed with the CFFC to survey all members on an annual basis to see what trends emerge and work with members, residents and the Retirement Commissioner to design a best practice approach that reflects the reality of the real estate market in the region yet ensures that residents' estates do not wait an unreasonable period of time for a refund.

We believe that a "one-size-fits-all" approach through a mandatory buy-back rule has the potential to create solvency issues and seriously disadvantage many villages, and even make them unsustainable.

Once we understand whether a long-term issue around re-licensing delays actually exists, we will be in a better position to develop best practice standards for the sector, in conjunction with the CFFC and RVRA.

3. ADDRESSING ANY UNFAIR CLAUSES IN ORAs

Residents can express confusion regarding the boundary between what they are responsible for and what the operator is responsible for, in repairs, maintenance and replacement of operator-owned chattels.

The RVA will work with members, residents and the Retirement Commission to identify best practice for future ORAs that define each party's responsibilities so that residents are not responsible for maintaining operator-owned chattels but also protect the operator from abuse of the same chattels. Already some operators have moved towards this position and we believe market forces will ensure a majority of operators adopt this position quickly.

The RVA will also review ORAs in general and continue to work with the RVRA and the CFFC in identifying clauses that are unfair and engage with members to ensure that any unfair terms are removed.

4. IMPROVE THE COMPLAINTS PROCESS

Generally, the cost of maintaining the complaints and disputes regime falls on the operator, and we are comfortable with this approach. It provides an incentive to resolve complaints promptly.

The CFFC's analysis of complaints shows that in fact there are very few serious complaints and relate to individual problems rather than systemic failure.

However, we also acknowledge that some residents are unwilling to complain due to fear of retribution or discrimination, even if that fear is unreasonable, and accept that the regime could be improved.

The RVA also runs an internal complaints management regime with a Complaints Committee that investigates complaints lodged with the RVA's office and where necessary, will intervene with the operator to get a better outcome for the residents.

In the last two years, the Committee has intervened successfully five times to persuade the operator to take a different approach to a problem. This includes issues around slow re-licensing times, the treatment of village maintenance and unclear transfers to care.

We appreciate that this approach is still operator-centric. **We propose to include an independent member (as is common in other organisations) on the Complaints Committee to be part of the review process and to guide both operators and residents on the justice or otherwise of the complaint or dispute.**

This process would continue to run in parallel to the legislated Disputes resolution process in the Code of Practice.

The RVA has a Disciplinary Authority to deal with complaints about egregious operator behaviour. The current independent Chair of the Authority is the Hon Dr John Priestly QC, a retired High Court Judge.

Finally, if it was felt on a cost benefit basis, that an "Ombudsman" was necessary, we will work with the relevant parties to ensure the terms of engagement will address the perceived issues.

5. DISCLOSURES AROUND THE COMMERCIAL TERMS

The current Act, regulations and Code provide a comprehensive list of disclosures for intending residents that must be included in the village's disclosure statement or ORA. However, it is possible that the commercial terms can become lost in the body of the paperwork, which is not helpful for residents wishing to compare one village's offering with the next.

The RVA recently required all members to give intending residents a **Key Terms Summary** (KTS) in a standard template format so that matters such as capital payment, weekly fees, the Deferred Management Fee (DMF), availability of care and the transfer process, and other important conditions about living in the village are made clear to intending residents. The summary was produced in conjunction with the CFFC and has been endorsed by them.

The **KTS could be expanded to further inform prospective residents and encourage best practice** approaches in other appropriate areas, as agreed between the RVA, CFFC and RVRANZ.

6. COMPLIANCE WITH THE CODE OF PRACTICE

Since its inception in 1989, the RVA has always taken a lead on setting industry standards and best practice. The Industry Code of Practice that evolved in 1990 was adopted by the Government as the basis for the legislated Code of Practice in 2007.

As there is no Government agency that audits retirement village compliance with the Code, the RVA has taken this on itself. **It is a condition of membership that every village must undergo and pass a robust compliance audit every three years, and a certificate of accreditation is displayed in the village foyer.** The audit is undertaken by the same organisations that audit Aged Residential Care Facilities, so it is credible and independent of the RVA.

As the audit is managed by the RVA, we have added additional standards to the check, such as ensuring operators provide the Key Terms Summary and observe transparent disclosures about the transfer to care. We can add other best practice requirements, as necessary.

7. AWARENESS OF OTHER BUSINESS MODELS

The RVA does not believe it is the sector's role to provide social housing options but appreciate that with declining home ownership in the 65+ demographic, refusing to adapt the business model could be a disadvantage in the longer term.

We are committed to supporting our members **to explore new business models and encourage them to adapt their models to cater for a greater number of older peoples' circumstances**. This could include offering more rentals beyond those already in the market and looking for solutions for people who have some but not enough capital to move to a village, etc. We do not accept that we can or should impose any particular business model on members. We are committed to working with the Retirement Commissioner on any suggestions they may have in this area.

For more information, please contact

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Independent research by UMR Insight in January 2021 showed:

Overall strong satisfaction with retirement villages

- Most residents (**86%**) are satisfied with the village they reside in, **10%** were neutral and only **4%** said they were not satisfied. This meant of those that had an opinion, **96%** were either very satisfied, satisfied or neutral

Most residents were satisfied with their village's response to COVID-19

- The vast majority of residents (**87%**) were satisfied with how the management and staff of their village managed their safety during COVID-19

Most residents were satisfied with quality of legal advice they received and with the consumer protection they have

- Around four out of five residents **(83%)** were satisfied with the quality of the legal advice they received before moving into their retirement village
- Seven out of ten residents (**70%**) indicated they were satisfied with, 'The overall consumer protection for residents, this includes the Retirement Villages Code of Practice, Code of Resident Rights and Retirement Villages Act'.