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**THE FINANCIAL IMPLICATIONS OF LIVING IN A RETIREMENT VILLAGE  
A Comparative Review of the Financial Terms of the Occupation Right Agreement**

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## *I Introduction*

Retirement village living is a popular accommodation choice for retired elderly New Zealanders of financial means. Retirement villages have appeal because they offer a secure and safe community within which to live, freedom from house and garden maintenance, organised social activities and access to shared facilities. They allow the elderly to maintain as much independence as they wish while at the same time reducing some of the stresses associated with home ownership and living alone.

In New Zealand the retirement village industry is dominated by commercial operators. This represents a change from the past where retirement villages were typically run by religious and welfare groups.<sup>1</sup> The industry is growing rapidly with a current total industry investment approaching 106 billion dollars.<sup>2</sup> As of 2015 there were 351 registered retirement villages, accommodating approximately 4.5 per cent of New Zealand’s over-65 population.<sup>3</sup>

The industry is regulated by the Retirement Villages Act 2003 (the Act), the Retirement Villages (General) Regulations 2006 (the regulations), the Retirement Villages (Disputes Panel) Regulations 2006 and a Code of Practice 2008 (Variations 2013) (the Code). The primary focus of this legislation is on consumer protection for residents and intending residents. It also enables the development of retirement villages under a legal framework readily understandable by residents. In accordance with this legislation, the rights and obligations of operators and residents are also set out in a legal contract known as an “occupation right agreement” (ORA).

This paper undertakes a review and comparative analysis of the main financial terms of the current ORAs of five operators in the industry. In conducting this review the main issues which have been explored include the extent to which the financial terms favour one party over the other, whether the terms of the not-for-profit operators are more favourable to residents as compared to the terms of commercial operators and the extent to which the terms comply with the legislation. A further issue that is relevant but was not explored in any depth, is whether a

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<sup>1</sup> Law Commission *Retirement Villages* (NZLC R57, 1999) at 1.

<sup>2</sup> Refer comment made by Retirement Villages Association of New Zealand Inc. at <[www.retirementvillages.org.nz/Site/industry/](http://www.retirementvillages.org.nz/Site/industry/)>.

<sup>3</sup> Bev James *Retirement Villages Act 2003 Monitoring Project: Disputes Process, Report 1: International Comparison of Disputes Processes and Collation of Best Practice Resources* (Public Policy & Research with CRESA, 30 June 2015) at 5.

standard ORA that applies to all registered retirement villages should be introduced as part of the regulatory framework.

## *II The Occupation Right Agreement*

### *A The Legislative Background*

An ORA is defined in the Act to mean “any written agreement or document or combination of documents that confer on any person the right to occupy a residential unit with a retirement village and specifies any terms and conditions to which that right is subject”.<sup>4</sup> The Act, the regulations and the Code set out in various degrees of detail what terms and conditions must or may be included in an ORA.<sup>5</sup> Notably the Act provides that the Code is enforceable as a contract by a resident and prevails over any less favourable provisions of an ORA.<sup>6</sup> Further, the Code provides that it must be given effect to in any ORA offered to a resident.<sup>7</sup>

As to the financial terms of an ORA, the Act requires that each resident or intending resident is informed about the charges levied for their occupancy right within the village.<sup>8</sup> The Act and the Code prescribe further obligations on operators to provide information to intending residents and residents about the charges levied by the operator. They also prescribe whether this information is to be provided in the “disclosure statement” and/or the ORA.<sup>9</sup> The disclosure statement is another important document which an operator is required under the Act to provide to an intending resident before that resident enters into an ORA.<sup>10</sup>

### *B Selected Occupation Right Agreements for Comparison*

Currently each operator of a registered retirement village provides to an intending resident an ORA that has been drafted specifically for its village. The ORA of each registered retirement village is required by the Act to be publically available on the Register of Retirement Villages.<sup>11</sup>

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<sup>4</sup> Section 5.

<sup>5</sup> See section 27 and sch 3 of the Act, pt 4 of the regs and pt 3 of the Code.

<sup>6</sup> Section 92.

<sup>7</sup> Clauses 92 (2)(a) and (b).

<sup>8</sup> Section 34(1)(b), sch 2 cl 2(c) and cl 3(d), sch 3 cl 1 (b)(iv) and sch 5 cl 9(c).

<sup>9</sup> See regs pt 4 sub-pt 1 (ORAs) cl 7(f) and sub-pt 2 (Disclosure Statements) cls 15(2)(g), 20 and 27; Code cls 37-39 and cl 54.

<sup>10</sup> Section 30(1)(a).

<sup>11</sup> Sections 10 and 17.

In this paper the most recently registered ORA of five operators have been selected for review. Included are the ORAs of two large commercial operators, two of not-for-profit operators and one of a smaller company operator, as follows:

- a) Ryman – Malvina Major Retirement Village, Khandallah, Wellington, ORA dated 19 September 2014 (Ryman ORA);<sup>12</sup>
- b) Summerset – Summerset at Bishops court, Wakari, Dunedin, ORA dated 21 July 2014 (Summerset ORA);<sup>13</sup>
- c) Presbyterian Support Central – Woburn Retirement Apartments, Lower Hutt, ORA dated December 2015 (Enliven ORA);<sup>14</sup>
- d) Taita Home Trust Board – Aroha Retirement Village, Lower Hutt, ORA dated 3 March 2014 (Aroha ORA); and<sup>15</sup>
- e) Roundhay Retirement Village, Waiemea Road, Nelson, ORA dated March 2013 (Roundhay ORA).<sup>16</sup>

### *C Legal Nature of Right to Occupy a Residential Unit*

The regulations provide that an ORA must include a provision which sets out the nature of the right to occupy a residential unit in the village.<sup>17</sup> The most common legal structure used by operators for which a person is granted a right to live in a residential unit is the licence to occupy structure (LTO). The significant feature of the licence is that the resident has no proprietary interest in the village land or their unit. It is instead a personal right enforceable in

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<sup>12</sup> Village owned by Malvina Major Retirement Village Ltd which is a wholly owned subsidiary of Ryman Healthcare Ltd.

<sup>13</sup> Owned by Summerset Villages (Dunedin) Ltd, owned through Summerset Holdings Ltd by its ultimate parent company Summerset Group Holdings Ltd.

<sup>14</sup> Village owned by Presbyterian Support Central which is a charitable trust registered under the Charitable Trusts Act 1957 under number 264041. Enliven Central is a division of Presbyterian Support Central that provides services and support to the elderly including retirement villages.

<sup>15</sup> Village owned by Taita Home Trust Board which is a charitable trust registered under the Charitable Trusts Act 1957 under number 210594.

<sup>16</sup> Owned and operated by Roundhay Management Services.

<sup>17</sup> Part 4 sub-pt 1 cl 7(b).

contract.<sup>18</sup> Of the five ORAs that were reviewed, four grant a resident a LTO in their unit. These include the Ryman ORA, the Summerset ORA, the Enliven ORA and the Aroha ORA.

A second legal structure that is used by operators is the unit title or stratum estate structure. A unit title structure means that residents are the registered proprietors of their own units in the village. The common facilities may be common property or owned by the village's operator or developer.<sup>19</sup> The Roundhay ORA records that the resident's occupancy rights are a "stratum estate in freehold". At the Roundhay Retirement Village a unit is purchased under a separate "Entry Agreement" and the Roundhay ORA grants the resident a right to participate in the village and use the community facilities and receive general services.

Less commonly used structures include cross-leases,<sup>20</sup> lifetime leases, and composite structures involving residents being granted mortgages or other interests over the unit titles for their dwellings together with an ORA dealing with the occupancy terms.<sup>21</sup>

According to 2015 statistics provided by the Retirement Village Association, approximately 83.5 per cent of operators in the New Zealand industry follow the LTO model. The remaining 14.9 per cent of operators provide unit titles and 1.6 per cent of operators provide rentals.<sup>22</sup>

### *III The Financial Terms of Occupation Right Agreements*

#### *D Financial Terms relating to Entry to a Retirement Village*

##### *1 Consideration for occupation right*

In relation to the four ORAs that grant a LTO, the consideration for the LTO is a requirement on the resident to pay a capital sum that is termed in the various ORAs as an "entry payment", "licence payment" or "occupancy advance". This is effectively an interest free loan to the operator which the operator is free to use until the ORA is terminated and the unit is resold. This payment is set by the operator and reflects the market value of the unit at the time the ORA

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<sup>18</sup> Kate Diesfeld and Ian McIntosh (eds) *Elder Law in New Zealand* (Thomson Reuters, Wellington, 2014) at 346

<sup>19</sup> *Ibid* at 347.

<sup>20</sup> Remuera Retirement Village, Auckland operated by Bupa Care Services is an example of a cross-lease structure used in a retirement village.

<sup>21</sup> Diesfeld and McIntosh, above n 18, at 347.

<sup>22</sup> Retirement Villages Association of New Zealand Inc. *Annual Report* (2015) at 7.

is entered into. Under the Roundhay ORA the resident does not pay any capital sum as the unit is purchased under a separate Entry Agreement.

## 2 *Initial cooling-off period and cancellation*

The Act provides that an ORA must contain a cooling-off provision, which allows a resident to cancel the ORA, for any reason, by giving notice to cancel no later than 15 working days after the ORA is signed by the resident.<sup>23</sup> Further an ORA must contain a provision which gives a resident the right to cancel the ORA where the ORA relates to a unit yet to be built or under construction. If construction is not completed within six months after the date specified in the ORA for completion, then a resident can cancel the ORA by giving written notice at any time after the expiry of that six-month period.<sup>24</sup>

On cancellation, the resident is entitled to a refund of any payments made to the operator for an occupation right complete with interest and without deduction other than tax. The operator is entitled to compensation for any services provided to the resident under the ORA and for any damage to a unit or facilities in the retirement village for which the resident is responsible before the cancellation takes effect.<sup>25</sup>

All five of the ORAs contained the cooling-off provision prescribed by the Act. In addition, the Ryman ORA and the Summerset ORA also provided residents with a further and more favourable cooling-off provision. Both ORAs give a resident a right to cancel the ORA after 90 days where they are unhappy with their decision to move into a unit in the village. Notice to cancel must be given to the respective operator in writing within five working days of the expiry of 90 days after a resident's entry to the village. On cancellation both operators are obliged to refund in full, but without interest, the payment made by the resident for their occupation right. A resident is obliged to pay the operator for any services received during the 90 days and for any damage the resident may have caused to a unit or at the village. Ryman refer to this right as their "90 Day Money Back Guarantee"<sup>26</sup> and Summerset refer to this right as "Love it – or your money back – 90 days to be sure your new home is right – or your money back".<sup>27</sup>

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<sup>23</sup> Section 28(1)(a).

<sup>24</sup> Section 28(1)(b), (2) and (3).

<sup>25</sup> Section 28(4).

<sup>26</sup> Ryman Healthcare "Welcome to a Ryman village" promotional brochure provided December 2015 at 9.

<sup>27</sup> Summerset "Summerset Love the life" promotional brochure May 2016 at 14.

### 3 *Resident's right to avoid an ORA*

The Act also prescribes that an ORA may be voidable by the resident if it is entered into in contravention of certain provisions of the Act.<sup>28</sup> These provisions include where a retirement village's registration is suspended,<sup>29</sup> where a retirement village is not registered but was required to be,<sup>30</sup> where the ORA did not include material it was required by the Act to contain or a resident did not receive independent legal advice before entering into an ORA<sup>31</sup> or where certain prescribed information is not provided to a resident before entering into an ORA.<sup>32</sup> On successfully exercising this right a resident is entitled to receive a full refund of all capital sums paid together with interest and costs associated with the voiding of the ORA.<sup>33</sup>

Unlike the cancellation provisions, there is no requirement in the Act that an ORA must set out a resident's right to avoid an ORA. None of the ORAs that were reviewed set out this right. However, as prescribed by the regulations,<sup>34</sup> the disclosure statements of all the operators included a statement about this right as set out at Schedule 5 of the regulations. Given the importance of this right it is not clear why this right is not included in an ORA. If a standard ORA was prescribed by the legislation then this right should be included in that standard ORA.

### 4 *Legal protections for residents under LTO model*

Given that the LTO does not give a resident any proprietary interest in their unit or the land it is situated on, an important issue for consideration by residents and intending residents is what legal protections they are afforded for the capital sum they pay to an operator. The standard LTO has two main legal protections.

First, each village must have a statutory supervisor to act in respect of the village (unless exempt) appointed pursuant to a "Deed of Supervision" between the operator and statutory supervisor. One of the core duties of the supervisor is to monitor and report to the residents on the financial position of the village. As a way of protection for the residents most statutory

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<sup>28</sup> Section 31.

<sup>29</sup> Section 18(3).

<sup>30</sup> Section 25(1).

<sup>31</sup> Section 27.

<sup>32</sup> Section 30(1).

<sup>33</sup> Section 31(2).

<sup>34</sup> Regs pt 4 sub-pt 2 cl 29(1)(g).



supervisors require the registration of first-ranking security over the village land to secure the operator's obligations to the supervisor and residents under the Deed of Supervision and ORA respectively.<sup>35</sup>

Three of the four villages with the LTO model, namely those operated by Ryman, Summerset and Enliven, had a statutory supervisor appointed. It was recorded by the operator in either the ORA or disclosure statement that there was a registered mortgage over land comprising the village in favour of the statutory supervisor. The operator, Summerset, did not clarify in its documentation whether the mortgage was first-ranking.

In relation to the Aroha Retirement Village, it was noted in the disclosure statement that an exemption from the requirement for a statutory supervisor was granted on 15 November 2012 for a term of three years. The disclosure statement also records that the operator does not retain any registered or unregistered mortgages or security interest in the village or its units. Further the Aroha ORA sets out an obligation on the operator not to offer security over a resident's unit to any bank or other lender during the term of the ORA. While the village does not have a statutory supervisor, the provisions regarding security interests offer some assurance to a resident that their entry payment is protected.

A second protection is the requirement in the Act that (unless exempt) upon registration of a village a memorial is registered against the title(s) to the village land. The memorial is a note which prevents certain persons interested in the land from disposing of the village other than as a going concern. It also prevents any such person from evicting a resident. Of the four ORAs that were reviewed, Ryman was the only operator that actually noted a memorial as a protection in their ORA.

##### 5 *Ability to borrow money against interest in residential unit*

A further issue with the LTO model, is a resident's ability to borrow against their interest in their unit. All four ORAs contain a clause which expressly prohibit a resident from giving any mortgage or charge over their interest in the licence. However, all operators expressly allow residents, with the operator's consent, to grant a security interest in the termination proceeds of their unit.

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<sup>35</sup> Refer the Act pt 3 ss 37-46.

It is argued that this is an important right as a resident may need access to their money given to the operator at a later date and before they die. For example, a resident may need to access their money to pay for charges associated with deteriorating health. This right is even more important in a situation where a resident moves to a residential care facility not associated with the operator and requires funds to pay for their care before their unit is resold.

## *E Payment Obligations of Resident During Term of ORA*

### *6 Fixed periodic outgoings charge*

The periodic outgoings charge that residents are obliged to pay under the ORAs were similar across all five ORAs. The main charge is a fixed fee calculated either weekly or monthly. This charge is set by the operator and covers the costs and expenses of operating and managing each village.

All the operators, except Ryman, included in the ORA a right to review this fee and increase it either in alignment with increases in NZ Superannuation payments<sup>36</sup> or adjusted in accordance with the changes in the Consumer Price Index.<sup>37</sup> By contrast, the operator Ryman, fixed this fee for the term of the ORA. This is an important selling point that Ryman offers to prospective residents and is a term that is favourable to residents as it provides certainty as to future costs at the commencement of the ORA.

An important issue for consideration is when a resident's liability to pay this fee ends. The Ryman ORA, the Summerset ORA and the Aroha ORA all provide that payment of this fee ceases on termination of the ORA and the unit has been permanently vacated and cleared of all possessions. The operator, Enliven, requires this fee to be paid until the earlier of, either the date when the resident is repaid their "entry payment" (ie unit resold and new resident entered into an ORA) or three months following termination. The operator, Roundhay, requires payment of this fee to continue until the date the "exit payment" is made by the resident to the operator. This is subject to the limitation where part of the fee is abated by 50 per cent if the "exit payment" is not paid and the resident has left the village for six months.

It is argued that this financial term is weighted in favour of the operator, especially the provisions in the Enliven and Roundhay ORAs. A fairer approach to a resident would be for this fee to end on the date of the termination of the ORA. It seems unfair that a resident or their

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<sup>36</sup> Summerset and Enliven ORAs.

<sup>37</sup> Aroha and Roundhay ORAs.

estate is liable to pay for ongoing village costs when the resident is no longer receiving any benefits of living in the village, has no proprietary interest in the unit and is obliged to pay the operator a large fixed deduction on termination as discussed below.

The Code provides that where a unit is damaged or destroyed through no fault of the resident and is uninhabitable, the operator must stop charging this outgoing charge from the date of the damage. Where the operator is providing temporary accommodation to the resident, the operator may charge for the outgoing related to that temporary accommodation. Charges for outgoing can resume once the unit has been replaced and is ready for occupation, assuming the ORA has not been terminated already.<sup>38</sup>

### 7 *Other ongoing charges*

Other charges set out in the five ORAs include, service fees which cover the costs of any additional services an operator provides at a resident's specific request, utility charges associated with the resident's unit and insurance costs for a resident's personal belongings. These are all charges which a resident has some measure of control over in that they can decide whether they incur these charges and if so, the extent of the charges.

### 8 *Charges relating to maintenance of unit and chattels*

All five of the ORAs reviewed include a general obligation on a resident to maintain the interior of their unit, and any chattels in the unit, in a clean and tidy condition. Further all ORAs provide that a resident is not liable to the operator for any losses associated with fair wear and tear of the unit and chattels. As such a resident will be liable for any minor day-to-day costs associated with keeping their unit and chattels in a clean and tidy condition.

All the ORAs reviewed, except the Summerset ORA, also place additional obligations on residents to maintain their units. The Ryman ORA, the Enliven ORA and Aroha ORA, all place an obligation on a resident to carry out minor maintenance and repair work to their unit and chattels. For example residents are required to replace at their cost items including mirrors, light bulbs and electrical fittings as they wear out and break. By contrast, the Roundhay ORA places very wide and general obligations on a resident to carry out maintenance and repair work to the interior of the villa and to keep the villa's chattels in good operational condition and to pay for any replacement of chattels. This wider and more general obligation seems reasonable given that the resident owns the property right in the villa and chattels.

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<sup>38</sup> Clause 54(7) – (11).

Where a resident damages the unit or a chattel in the unit, either accidentally or intentionally, four of the five ORAs reviewed provide that the resident is liable to pay the operator's costs, or insurance excess as the case may be, that is associated with the damage. Only the Aroha ORA does not place a specific obligation on a resident to pay for damage to their unit or chattels. However, the ORA does require a resident to pay for the refurbishment of their unit on termination as discussed below. As such, the operator will presumably be able to remedy any damage and recoup the costs from the resident or their estate under the refurbishment clause.

#### *9 Other charges relating to a resident's breach of an ORA*

Some of the ORAs reviewed specify further charges a resident will be liable for if they breach their payment obligations or any other obligations under an ORA. Four out of the five operators expressly set out a right to charge a resident "default interest" on any late payments that are due under the ORA. Ryman was the only operator not to expressly set out this right under their ORA. The Summerset ORA and Roundhay ORA also set out an obligation on a resident to pay the operator's legal costs associated with any breach of the ORA by the resident. The Roundhay ORA also allows the operator to recover the costs of other professional advisors.

The Ryman, the Enliven and the Roundhay ORAs all give the operator the right to recover its costs associated with fixing the damage caused by any breach of a resident of their obligations under the ORA. In practise this could mean that if a resident failed to keep their unit in a tidy and clean condition, the operator could organise to do this work and recover its costs for doing so from the resident.

#### *F Payment Obligations of Resident on Termination of ORA*

##### *10 Fixed deduction on termination*

Following termination of an ORA, all five ORAs include a fixed deduction charge that is payable by the resident (or their estate). This charge is referred to in the ORAs as either the "Deferred Management Fee" or "Village Contribution" or "Exit Payment". In this paper the charge will be referred to as the fixed deduction. This charge has become associated with the LTO model. It is interesting to note that the operator under the Roundhay ORA, where the resident owns their unit, also charges a fixed deduction on termination.

The fixed deduction is a charge that is paid on termination of an ORA and is consideration for the operator providing the occupation right to the village together with the right to use the village facilities. It has been referred to as “the ultimate buy now, pay later” payment model.<sup>39</sup>

The calculation of this charge can be complex especially if an ORA is terminated before the end of the accrual period for this charge. In general, the fixed deduction is calculated as a percentage of the entry payment and accrues over the period of the first five years from the commencement date. Under some ORAs, a portion of the fixed deduction can accrue on the actual commencement date of the ORA.<sup>40</sup> The accrual period ends depending on the terms of each ORA as discussed below.

### *11 Calculation of fixed deductions under the ORAs*

Of the ORAs reviewed, three out of the five calculated the fixed deduction charge based on a percentage of the original price paid for the LTO<sup>41</sup> and the other two ORAs based the calculation on the market price of the unit on termination.<sup>42</sup> All the operators had slightly different terms in relation to the period over which this charge accrued. In general, for an independent unit at a village the charge accrued over the period of five years from the commencement date. This means that if the fixed deduction is capped at 20 per cent of the entry payment a resident would lose 4 per cent of their capital investment in the LTO for each of first five years that they live in a village. The accrual rate was shorter, generally two or three years, where a resident was granted a LTO a “care”<sup>43</sup> or “serviced”<sup>44</sup> apartment.

One issue that was considered was whether the fixed deduction charged by not-for-profit operators was more favourable to residents as compared to the fixed deduction charged by the larger commercial operators.

The commercial operators all charge a fixed deduction calculated at between 20 per cent to 30 per cent of the entry payment.<sup>45</sup> The not-for-profit operator, Taita Trust Board, caps the fixed deduction at 15 per cent of the market value of the unit on termination of the ORA. The other

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<sup>39</sup> “RVA Conference: A Growing Industry Learning to Defend Itself” (Newsfeed, 30 June 2014)

<[www.insitemagazine.co.nz](http://www.insitemagazine.co.nz)>.

<sup>40</sup> Refer Enliven ORA.

<sup>41</sup> Ryman, Summerset and Enliven ORAs.

<sup>42</sup> Aroha and Roundhay ORAs.

<sup>43</sup> Summerset ORA - 2 years accrual.

<sup>44</sup> Ryman ORA - 3 years accrual.

<sup>45</sup> Ryman capped DMF at 20 per cent; Summerset capped DMF at 25 per cent for independent villas and 30 per cent for care apartments.

larger not-for-profit operator, Enliven, charges a fixed deduction capped at 25 per cent of the entry payment. The fixed deduction charged by Enliven reflects the fixed deductions of the larger commercial operators so it is suggested that a prospective resident should not expect more favourable terms in regard to the fixed deduction by entering a village run by a larger not-for-profit operator as opposed to a commercial operator.

### *12 End date for the accrual of a fixed deduction*

Where the stated period for the calculation of the full fixed deduction has not been reached on termination, the end date for the accrual for the fixed deduction varied between the ORAs that were reviewed. The most unfavourable terms to residents were in the Enliven ORA and Roundhay ORA. The Enliven ORA provided that the accrual period ended on the date a new resident pays their entry payment in respect of the resident's unit and the Roundhay ORA provided the fixed deduction would not accrue beyond the due date for payment of the exit payment. The Ryman ORA contained the most favourable term to residents which provided that the accrual period ended when the ORA had terminated and the resident had vacated the unit and cleared it of all their possessions. It is suggested that the Code should specify an end date for the accrual of the fixed deduction. The fairest term to a resident for the end of the accrual period would be the termination date of the ORA.

### *13 Waiver of a fixed deduction*

A further issue in relation to the fixed deduction is whether there are any circumstances set out in an ORA where an operator will waive the charge altogether or can change the terms on which it accrues. One circumstance is where a resident exercises their right to cancel the ORA or avoid the ORA as discussed above.

A further circumstance of where an operator is not legally permitted to charge a fixed deduction is where a unit is damaged or destroyed through no fault of the resident such as by a natural disaster and the ORA is terminated as a result.<sup>46</sup> All five of the ORAs that were reviewed include a clause that provides that a fixed deduction will not be charged to a resident in circumstances where the ORA is terminated following an event that has destroyed the resident's unit and the operator has elected not to rebuild that unit. However all the ORAs, except the Summerset ORA and the Aroha ORA, provide an exception to this provision. A resident will be

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<sup>46</sup> The Code cl 47(2)(e).

required to pay the fixed deduction where the resident is offered another unit by the operator but the resident declines that offer and terminates the ORA.

Of the ORAs that were reviewed, the only other circumstance where a fixed deduction was not payable was in the Ryman ORA which provides that a resident is not liable to pay the “deferred management fee” where the resident terminates the ORA due to the operator’s breach of the ORA. A similar clause was not contained in any of the other ORAs that were reviewed. The effect of this clause is that a resident would not be discouraged from terminating the ORA for an operator’s breach for fear of having to pay the fixed deduction. This clause favours a resident and it is argued should be included in the Code as a right to be included in all ORAs.

#### *14 Costs of refurbishment*

Where the operator has the responsibility for the sale of the unit and an ORA entered into after 25 September 2006 states that the resident must pay or contribute to the costs of refurbishing their unit after termination, the Code provides that the refurbishment process must be clearly set out in the ORA. The ORA must include terms which identify how the costs will be divided between the operator and the resident and set out the rights and obligations of the resident or their estate in the refurbishment process.<sup>47</sup> Further a resident cannot be required to pay for fair wear and tear.<sup>48</sup>

Three out of the five ORAs that were reviewed, namely the Ryman ORA, the Aroha ORA and the Roundhay ORA, all include a refurbishment clause. In each ORA there is no express obligation on a resident to pay for the refurbishment of their unit beyond fair wear and tear; rather the operator has reserved a discretion to decide on termination whether a resident will be required to pay for refurbishment of their unit that goes beyond fair wear and tear. The refurbishment clauses in the Ryman ORA and the Aroha ORA were very similar. They provide that the manager of the operator will decide what is fair wear and tear and what is over and above that. Then, if the manager decides that the resident is responsible for the refurbishment of the unit then the resident, or their estate, has a right to be consulted about the work to be done and has an obligation to then pay for that work.

As the operator has the right to sell the unit, the refurbishment clause in the Ryman and Aroha ORAs must comply with the Code. It is argued that neither clause in either ORA meet the

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<sup>47</sup> Clause 50(1) and (2).

<sup>48</sup> Clause 50(3)(a).

requirements of the Code. The clauses do not clearly set out a refurbishment process, include terms which identify how costs will be divided between the resident and operator, or set out any detailed terms about the rights and obligations of the resident or their estate in the refurbishment process beyond the right to be consulted and the obligation to pay for the work. It is argued that because the ORAs do not comply with the Code there is a higher risk that disputes will arise between the operator and resident, or their estate, regarding the refurbishment process and associated liability for costs. It is interesting to note that the operators who did not include a refurbishment clause in their ORAs, namely Summerset and Enliven, charge their residents a higher fixed deduction charge which presumably is to cover refurbishment costs over and above fair wear and tear.

The Roundhay ORA does not give the operator a right to sell the unit and so the requirements in the Code regarding refurbishment do not apply. However the refurbishment clause in the Roundhay ORA does not set out a clear process for determining refurbishment requirements and costs. It is also an area for potential dispute between the operator and resident, or their estate, on termination of the ORA.

#### *G Payment Obligations of Operator on Termination of ORA*

##### *15 Repayment to resident and right to capital gain*

The ORAs of the operators Summerset, Ryman and Enliven all provide that on termination of the ORA the resident is entitled to a payment which equates to the payment made by the resident for the LTO minus the fixed deduction and other monies owed by the resident to the operator under the ORA. The effect of this wording means that a resident does not share in any capital gain made, or loss suffered, by the operator on the resale of the unit.

Under the Aroha ORA a resident is repaid the market value of their unit assessed at the time of termination minus a fixed deduction and any other outstanding charges as set out in the ORA. This means that the resident will receive an 85 per cent share in any capital gain but is also exposed to any capital loss. Under the Roundhay ORA the resident receives a 75 per cent share of any capital gain and is exposed to the full capital loss.



There is general agreement in the industry that the capital loss clause has probably had its day.<sup>49</sup> In relation to the capital gains clause, a 2010 Retirement Commission survey showed that 58 per cent of operators do not pay a capital gain, 24 per cent offer it sometimes and 18 per cent offer it all the time.<sup>50</sup> While the non-sharing of a capital gain may suit a resident when the property market is depressed it seems an unfair bargain to the resident when the market is booming and huge capital gains are being made by operators. For example, Ryman Healthcare have recently announced an underlying profit of \$118 million with valuation gains lifting their reported profit after tax to \$195 million.<sup>51</sup>

One issue for consideration is whether the sharing of capital gains and losses between the operator and resident should be regulated by the Act. Under New South Wales retirement village legislation while the sharing of a capital gain is not regulated, the calculation of a capital gain is. In New South Wales equal sharing of any capital gain is currently typical in the for-profit sector.<sup>52</sup>

It is suggested that the sharing of any capital gain or loss is, like the fixed deduction, a commercial decision and it should be left to the operator and resident to negotiate any sharing arrangement at the time of entering into the ORA. In order for there to be a change residents and their advisors will need to be more demanding of operators that they share in any capital gain made on a unit. Indeed a 2015 ANZ Annual Survey of Retirement Village Association members found that 25 per cent of members expected to see companies willing to start sharing capital gains in the future.<sup>53</sup>

## 16 *Timing of repayment to resident or their estate*

Another issue that arises relates to the timing of this repayment to the resident. This issue is of particular importance to a resident who leaves a village during their lifetime or transfers to a care facility outside the village and may need access to their capital to purchase another property or pay for their care.

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<sup>49</sup> "An End to the Capital Loss Clause" 23 June 2015, <[www.insitemagazine.co.nz/newsfeed/2015/an-end-to-the-capital-loss-clause](http://www.insitemagazine.co.nz/newsfeed/2015/an-end-to-the-capital-loss-clause)>.

<sup>50</sup> "The devil is in the fine print", 24 April 2010, <[www.stuff.co.nz/nelson-mail/news/3619757/the-devil-is-in-the-fine-print](http://www.stuff.co.nz/nelson-mail/news/3619757/the-devil-is-in-the-fine-print)>.

<sup>51</sup> Media release 15 May 2016 "Rymans Healthcare's underlying profit rise 18 per cent", <[www.rymanhealthcare.co.nz/the-ryman-difference/ryman-news/7101-ryman-annual-results-webcast-](http://www.rymanhealthcare.co.nz/the-ryman-difference/ryman-news/7101-ryman-annual-results-webcast-)>.

<sup>52</sup> Richard McCullagh *Retirement Village Law in NSW* (Thomson Reuters (Professional) Australia Ltd Sydney, 2013) at 210.

<sup>53</sup> Jude Barback "Not a cloud in the sky...or is there?" *Aged Care and Retirement INsite* (online ed, Wellington, March/April 2016) at 4.

Under the terms of the four ORAs which granted a LTO, all favour the operator on this issue. An operator is not obliged to make this payment to a resident until the unit is resold and a new resident has signed an ORA. The operator is only required to make the payment sooner in circumstances where the operator has terminated the ORA. This seems an unfair bargain to the resident given that the operator, not the resident, has the proprietary right in the unit and can rent the unit or deal with it in any other way prior to a sale and keep all the financial proceeds.

One question raised is what happens in a situation where an operator cannot resell a unit? Under the Ryman ORA and the Summerset ORA, the resident is entitled to interest on the repayment monies subject to certain strict conditions set out in the respective ORAs. Ryman will also allow a resident to participate in the sale process of the unit after a period of 12 months following termination of the ORA. Further Ryman will make this payment to the resident if the unit remains unsold after three years following termination. The operator Summerset does not provide any similar right to its residents.

As to the not-for-profit operators, the Enliven ORA and Aroha ORA do not give a resident the right to interest on a repayment sum. However, under the Aroha ORA the operator is required to make the payment to the resident if the unit remains unsold and nine months have passed since termination. No similar right was included in the Enliven ORA although the operator does have a discretion to make this payment before a unit is resold.

On this issue, the most favourable terms to a resident were those set out in the Aroha ORA. The terms in the Ryman ORA were the next most favourable with the least favourable being those of the operators Summerset and Enliven. It is observed that the terms of the larger not-for-profit operator, Enliven, are not any more favourable to residents than those offered by the larger commercial operators.

#### *H Financial implications on transfer to higher level of care within village*

##### *17 "Continuum of care" - the concept*

While the main focus of retirement villages is to provide accommodation for independent elderly people, this is changing with many villages now offering care services normally associated with rest homes. There is also a growing trend for retirement villages to offer what is termed "continuum of care" where residents have preferential access to a care facility within their village that offers rest home and hospital level care if, and when, they need it. Current

statistics show that 67 per cent of retirement villages that are affiliated with the Retirement Village Association have a care service on the same site.<sup>54</sup>

### 18 *The legislation relating to transfers*

Where an ORA allows a resident to transfer within a village to a place where a higher level of care is provided, the Code sets out a non exhaustive list of what requirements must be included in the ORA.<sup>55</sup> In relation to financial matters, the Code provides that where there is such a transfer the ORA must include details as to any changes in charges to the resident as a result of the transfer and any other costs incurred by the transfer and who is responsible for those costs.<sup>56</sup> The Code does not define what is meant by “a place where a higher level of care is provided”. It is assumed that this means a transfer from an independent unit to either a serviced unit or to an actual care facility that offers rest home, hospital level care and dementia care.

### 19 *Transfer provisions in the ORAs*

Of the five ORAs that were reviewed, only the Ryman and Summerset villages have separate “serviced units” or “care apartments” to which a resident could transfer to from an independent unit. In relation to this transfer, the Ryman ORA provides that the ORA for the independent unit is terminated and the resident enters into a new ORA with the operator for the serviced unit. The resident is required to pay a new “occupancy advance” and the operator will fix a new “fixed base weekly fee”. Importantly for the resident they only pay one fixed deduction capped at 20 per cent for both the original unit and the new unit. These terms are clear and comply with the requirements set out in the Code. They also favour the operator in that the resident must pay a new capital sum and the operator can fix a new weekly fee.

The Summerset ORA also allows residents to transfer from an independent unit to a care apartment. The financial terms relating to the transfer state that the terms will be those that apply as set out in the “current transfer policy available at the village library”. It is argued that these terms do not meet the requirements of the Code and are unfair to a resident as they do not give the resident information in the ORA about any changes in charges and the costs incurred by the transfer.

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<sup>54</sup> Retirement Villages Association of New Zealand Inc., above n 23 at 2.

<sup>55</sup> Clauses 24 and 25. See also sch 3 cl 1(a)(iv) and sch 5 cl 4 of the Act.

<sup>56</sup> Clause 25 (a) and (c).

The second type of transfer is where a resident transfers from a unit (independent or serviced) to a care facility either in the village itself or in one operated nearby by the operator. The requirements of the Code however only apply to a transfer within a village. The Ryman and Summerset villages both operate a care facility on site and the Enliven village operates a care facility on a separate site that a resident has the option of transferring to. The Ryman ORA provides that the terms of transfer will be provided at the time of transfer. Further the “weekly fee” will cease once the resident has permanently vacated his or her unit and removed all possessions and the resident will be charged an additional service fee for care services received. The Summerset ORA did not include any detailed terms about a transfer and again referred the resident to a “a transfer policy”. The Enliven ORA provides that the resident will be responsible for the costs and expenses incurred in connection with the transfer and for the care services provided.

It is suggested that in relation to the transfer from a unit to a care facility, the financial terms in the Ryman and Summerset ORAs do not meet the requirements of the Code. Further it is suggested that it would be useful for an ORA to clearly set out whether the ORA automatically terminates on a transfer and whether a resident can have access to their repayment sum under the ORA prior to a sale of their unit to allow a resident access to their capital to pay for increased care services. Given that the operators, Ryman and Summerset, market their villages as places which offer a “continuum of care”, it is argued that the ORAs ought to comply more fully with the Code and provide detailed terms in the ORA about the financial terms of such a transfer.

#### *IV Conclusion*

This review of the main financial terms of the five sample ORAs illustrates the complexity of the financial arrangements. This complexity is heightened by the overly legalistic drafting style of three of the ORAs that were reviewed.<sup>57</sup> While the ORA is a legal contract, it is suggested that a more plain English drafting style, as used in the Ryman ORA, would make the ORA easier for residents and their advisers to read and understand. The introduction of a standard ORA that is used by the operators of all registered retirement villages would go a long way to addressing this issue.

The review of the five ORAs shows that the financial terms are in general more favourable to an operator. This conclusion supports the view that the commercial imperatives of operators

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<sup>57</sup> Refer Roundhay, Enliven and Summerset ORAs.

underpin the ORAs.<sup>58</sup> A key financial term which supports this conclusion is the non-sharing of a capital gain. This is a provision in the ORAs of the operators Ryman, Summerset and Enliven. A further term that favours the operator relates to the timing of the repayment sum to a resident or their estate on termination of the ORA. The operator has no obligation to pay this sum until the unit is resold and a new resident has signed an ORA. While there are exceptions to this obligation, it does not detract from the conclusion that the term favours the financial objectives of the operator. Other financial terms in the ORAs which tend to favour the operator include the end date for paying the fixed outgoings charge to the operator on termination of an ORA, the end date for the accrual of a fixed deduction on termination where the stated period for accrual has not been reached prior to termination and the terms relating to refurbishment and transfer.

A second issue that was explored in this paper was whether the financial terms of the not-for-profit operators were more favourable to residents as compared to the terms of the commercial operators. The terms of the smaller not-for-profit operator, Taita Trust Board, were significantly more favourable to a resident in that the fixed deduction is capped at 15 per cent, a resident receives an 85 per cent share in any capital gain made on the resale of their unit and is entitled to the repayment monies nine months after termination even if the unit remains unsold.

However the financial terms of the larger not-for-profit operator, Enliven, effectively mirror the terms of the larger commercial operators. The fixed deduction is capped at 25 per cent, the resident does not share in any capital gain and does not have a right to the repayment monies at any time before the unit is resold. These terms were similar to those of the larger commercial operators, Ryman and Summerset, whose fixed deductions are capped at between 20 per cent to 30 per cent, do not share any capital gain with their residents and do not give the resident any entitlement to repayment monies until a unit is resold. Ryman however does agree to pay a resident the repayment monies in circumstances where the unit has remained unsold after three years from termination. The only point of difference between these operators is how the profits from the ORA are distributed. Enliven give their residents an assurance that any profits they receive go towards supporting social services for vulnerable children, families and older people.<sup>59</sup> The profits of the commercial operators go to their shareholders.

It is also interesting to note that a resident also enjoys more favourable financial terms under an ORA which does not follow the LTO model. While a resident at Roundhay is still obliged to pay a fixed deduction charge, the resident retains the right to market and sell their own unit and

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<sup>58</sup> "The devil is in the fine print", above n 50.

<sup>59</sup> "Supporting future generations" <[www.psc.org.nz/enliven/retirement-villages/](http://www.psc.org.nz/enliven/retirement-villages/)>.

receives a 75 per cent share in any capital gain made on resale and also enjoys the rights associated with property ownership during the term of the ORA.

The third issue that was explored in this paper was the extent to which the financial terms of the ORAs complied with the legislation. As a general observation, the ORAs comply with the legislation in that they all include provisions that deal with the charges relating to the village and the provision of services and facilities. However, the review also highlights terms in some of the ORAs that do not fully comply with the Code. These terms include those relating to refurbishment of a unit on termination and the transfer from a unit in a village to a unit or care facility in the village which gives a resident a higher level of care. Again, the introduction of a standard ORA that applies to all registered retirement villages could seek to address these issues.

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## VI Appendices<sup>60</sup>

### A Appendix 1: Legal structure for unit, capital sum payments and cooling-off period

Village	Legal Structure for Unit	Resident Entry Payment	S 28 Cooling-off period
<b>Summerset at Bishopscourt</b>	<p>Granted a personal, non-transferable licence to occupy a dwelling.</p> <p>Cannot assign, encumber, sub-licence or deal with the licence.</p> <p>At operator’s discretion, resident can create an interest in or charge over termination proceeds under ORA.</p> <p>Licence does not confer any proprietary right in land or buildings comprising the village.</p>	<p>Secure interest in residential unit by paying refundable \$3,000 deposit on “licence payment”.</p> <p>Pay balance of “licence payment” on completing the ORA and taking possession of unit.</p> <p>There are two registered mortgages over the land comprising the village, one in favour of the statutory supervisor that secures an amount equivalent to the operator’s obligations to the residents and the statutory supervisor. The other mortgage is in favour of ANZ Bank NZ Ltd.</p>	<p>s 28 right to cancel set out in the Act. (cl 1.9(a))</p> <p>Also contains additional right to cancel ORA by notice within 5 working days after the expiry of 90 days from the Commencement Date if resident is unhappy with unit and wish to make arrangements to leave the unit and village. (cl 1.9(b))</p> <p>When cancel under cl 1.9(b) operator will repay the licence payment in full without any deduction within 30 days of receipt of cancellation notice.</p>

<sup>60</sup> Information in these appendices are taken primarily from the occupation right agreements and also from the disclosure statement for each village.

Village	Legal Structure for Unit	Resident Entry Payment	S 28 Cooling-off period
<p><b>Malvina Major Ryman Village</b></p>	<p>Resident is granted a right to occupy a unit in the village. No lease or interest in land.</p> <p>No right to transfer unit or grant it as security to any potential lender of money to resident.</p>	<p>“Occupancy advance” payable on the date that resident occupies his or her unit. Is described as an interest free loan to the operator in consideration for grant of right to occupy.</p> <p>Occupancy advance is secured by a first ranked registered mortgage granted to the Statutory Supervisor over operator’s interest in the village.</p> <p>Memorial placed on title to the Village to protect the resident’s right to live in the unit irrespective of what happens to the operator.</p>	<p>s 28 right to cancel set out in the Act. (cl 8.1)</p> <p>Resident right to cancel ORA if unhappy with decision to move into village within 90 days following entry to the village. Notice to be given within 5 days after 90 day period ends. (cl 8.2)</p> <p>Operator will repay occupancy advance within 30 days of notice subject to some conditions. No deductions except for services received and any damage at village resident caused. No DMF deducted. (cl 8.2)</p>
<p><b>Woburn Retirement Apartments Presbyterian Support Central</b></p>	<p>Resident is granted a licence to occupy a unit in the village. Rights under licence are personal and contractual rights only. No interest in land of the village and licence gives no tenancy or leasehold rights.</p> <p>With operator’s consent, resident can grant a security interest over their right to receive an Exit Payment under the ORA.</p>	<p>“Entry Payment” set by operator for interest in residential unit in village. Operator option to offer resident a standard entry payment or a discounted entry payment.</p> <p>A percentage of the “Village Contribution” accrues on the commencement date of the ORA.</p> <p>First-ranking mortgage in favour of the statutory supervisor to secure the operator’s obligations to the residents.</p>	<p>Section 28 right of cancellation – cooling off and rights to repayment to entry payment as in s 29 of the Act. (cl 4)</p>

Village	Legal Structure for Unit	Resident Entry Payment	S 28 Cooling-off period
<p><b>Aroha Retirement Village Taita Home Trust Board</b></p>	<p>Resident has a contractual licence right to occupy a unit in the village. No interest in the land comprising village or unit.</p> <p>Right to grant a security interest in the termination proceeds.</p>	<p>“Entry Payment” is paid as a 10% deposit on the signing of the ORA with balance paid on the date that resident occupies his or her unit. Entry payment is set by the operator and depends on the market value of the unit that the resident is interested in. Obligation on operator not to offer security over the unit to any bank or other lender during the term of the ORA.</p>	<p>Section 28 right to cancel within cooling-off period and right to refund of any payments made by resident for the grant of the occupation right. Refund without deduction and will include interest. (cl 6.1)</p>
<p><b>Roundhay Retirement Village Roundhay Management Service Ltd</b></p>	<p>Resident’s occupancy rights are a stratum estate in freehold. The resident owns the villa and land on which the villa is built subject to a registrable memorandum of encumbrance in favour of the operator and is a member of two registered body corporates.</p> <p>Resident has a right to sell villa and right to mortgage the resident’s interest in the unit as security for a loan.</p> <p>ORA grants the resident a right to participate in Roundhay and use the community facilities and receive the general services.</p>	<p>No Entry Payment.</p> <p>Resident pays a purchase price for a stratum estate in freehold in respect of a specified villa in the village. This is paid in accordance with a separate agreement from the ORA referred to as the “Entry Agreement”.</p>	<p>Section 28 right to cancel within cooling-off period (cl 2.5). Agreement silent on refund of monies.</p>

*B Appendix 2: Obligations of residents during term of ORA and on termination*

Village	Ongoing	Exit	Other
<p><b>Summerset at Bishopscourt</b></p>	<p>Village Contribution” payable monthly set by the operator. Covers costs and expenses of operating and managing the village. Reviewed annually and increases aligned to the net average increase in NZ superannuation payments. Payment ceases on termination of ORA and unit permanently vacated and unit cleared of all possessions.</p> <p>“User-pays Services” for care and support services that are available at the village for residents to opt into.</p> <p>Utility services for resident’s unit e.g. electricity, telephone, Sky TV.</p> <p>Insurance costs for resident’s personal belongings.</p>	<p>“Deferred Management Fee” calculated as % of “licence payment” depending on dwelling and accrues as follows:</p> <p>For Care Apartment: 30%, accrues 10% on commencement date and 10% annually on years 1 and 2 from commencement date of ORA</p> <p>Villas and Apartments: 25%: accrues 5% each year for 5 years from commencement date.</p> <p>Stop accruing DMF earlier of: Due date for payment of repayment sum; Expiry of stated period 3 months after termination date or such later date that you have vacated unit and removed all possessions. (cl 2.2)</p> <p>Will not accrue for any period where a material event has rendered unit uninhabitable and no temporary accommodation. (cl 2.2)</p> <p>If ORA terminated as a result of a material event of damage will not charge DMF. (cl 8.5)</p>	<p>Legal costs of operator relating to any breach of ORA by resident. (cl 20.3)</p> <p>Resident liable to pay for any costs of repair or reinstatement, or the excess on any insurance policy, arising out of damage done or loss created to a unit or the village property caused by resident or guests. This does not include damage or loss arising from fair wear and tear. (cl 3.13). Unclear from ORA whether resident liable for costs associated with an accident e.g. wine spilt on carpet?</p> <p>General refurbishment covered by operator. (DS at 10)</p> <p>Default interest – operator can charge interest on any payment outstanding on the due date at rate set out in the ORA. Interest calculated on a daily basis until payment made in full. (cl 14.1)</p> <p>Operator and manager can pay any of the resident’s outstanding bills that relate to the ORA and will charge default interest on daily basis. (cl 14.2)</p>

Village	Ongoing	Exit	Other
<p><b>Malvina Major Ryman Village</b></p>	<p>“Weekly fee” made up of “Fixed Base Weekly Fee” and the “Additional Service Fee”</p> <p>“Fixed Base Weekly Fee” covers basic village outgoings and services and will not be increased during resident’s time in his or her unit. Payable until permanently vacate unit and remove all possessions.</p> <p>“Additional Service Fee” covers additional services the resident has requested of the operator to provide.</p> <p>Utility charges for the resident’s unit</p> <p>Insurance costs for personal belongings.</p>	<p>“Deferred Management Fee” calculated as equal to 20% of the “occupancy advance”. Paid in consideration for operator providing an occupation right “for life” together with the right to use the community facilities. DMF accrues as follows:</p> <p>For Independent unit: accrues over 5 years;</p> <p>For Serviced unit: accrues over 3 years.</p> <p>DMF reduced in accordance with formulas set out in ORA where occupancy of the unit has been less than the 5 or 3 year period respectively.</p> <p>End date for calculating DMF is date ORA has terminated and resident has permanently vacated unit and removed all possessions. (cl 7.4)</p> <p>No DMF if ORA terminates after a destructive event and operator elects not to rebuild (cl 7.2(a)) However, resident will be required to pay DMF if resident is offered to transfer resident to a unit in a nearby Ryman village and resident declines the offer. (cl 5.3(b)(vi))</p> <p>No DMF if resident ends agreement under cl 5.1(b) due to operator’s breach.</p>	<p>If resident doesn’t comply with their obligations under the ORA then operator has right to do anything reasonable to complete the obligation and be reimbursed by resident for all costs incurred. (cl 9)</p> <p>Resident responsible for interior maintenance of their unit and will replace any mirrors, light shades, light bulbs, power elements and electrical fittings when they wear out or break. (cl2.2(e))</p> <p>Resident not liable for fair wear and tear to their unit. (cl 2.2(c))</p> <p>Resident may be liable for refurbishment of unit which goes beyond fair wear and tear. Operator will decide what is fair wear and tear and what is over and above that. (cl 2.2(c))</p> <p>If resident causes any damage or loss to unit or village and have an insurance policy that covers this damage or loss then resident obliged to make a claim and pay proceeds to operator to reimburse operator for repairing the damage or loss. If resident deliberately caused the damage then operator may seek more money in excess of insurance pay out. (cl 2.2(c))</p>

Village	Ongoing	Exit	Other
		<p>(cl 7.2(b))</p> <p>Resident may be required to pay for refurbishment of the unit beyond fair wear and tear. Operator discretion to decide this issue and will consult. (cl 2.2(c)(ii))</p>	<p>If resident deliberately causes damage to village property, then operator can charge resident excess on their insurance policy to fix the damage. (cl 4.2(e)(iii))</p>
<p><b>Woburn Retirement Apartments Presbyterian Support Central</b></p>	<p>“Village Outgoings Payment” which is a contribution to the outgoings of the village. Operator can change this fee at any time but any increase will be no more than the % increase in the gross NZ superannuation rate. Ceases on the earlier of “Exit Payment Date” or the date that is 3 months after the termination date.</p> <p>“Additional Services costs” for services provided to a resident at the resident’s request, being services not included in the Village outgoings.</p> <p>Utility charges relating to the unit.</p> <p>Insurance costs for personal belongings</p> <p>Resident has obligations to pay for minor maintenance costs associated with his or her unit due to wear and tear e.g. lightbulbs, plumbing fittings.</p>	<p>“Village Contribution” which is calculated differently depending on the resident’s “Entry Payment”.</p> <p>If resident paid “standard entry payment” then the village contribution is an amount equal to 25% of the “Entry Payment” and accrues as follows:</p> <p>5% on commencement date of ORA then 20% calculated at a rate equal to 4% per year from the commencement date of ORA expiring at earlier of, end of 5 years from commencement date <b>or</b> date new resident pays “entry payment” for resident’s unit.</p> <p>If resident paid “discounted entry payment” then village contribution includes the 25% of the “Entry Payment” as above for standard entry payment plus an amount which is equal to the discounted sum from standard offer price for the unit.</p>	<p>Where resident is late in paying any money owing under the ORA operator entitled to default interest at rate set out in the ORA. (cl 19)</p> <p>Resident obliged to replace at their cost all mirrors, lightshades, light bulbs, power elements, plumbing fittings, window security stays and electrical fittings in the unit as they wear out and break. (cl 25.2)</p> <p>Resident liable for the costs of breaching obligation to keep unit in a tidy and clean condition and for breach of maintenance obligations at cl 25.2 above. Also liable for costs of repair for any damage caused to unit or operator’s chattels by resident or guests. (cl 25.4 and cl 50.4)</p> <p>No mention in the ORA of the application of insurance. In DS there is a statement that where costs are covered by operator’s insurance then resident will be responsible for payment of any excess</p>

Village	Ongoing	Exit	Other
		<p>VC accrues until the date a new resident pays their entry payment in respect of the resident's unit. (cl 3.5)</p> <p>Accrual of VC will be suspended from date of damage event until date unit is ready for occupations if resident is paying for temporary accommodation. (cl 67.4)</p> <p>If ORA terminates following a damage event then no VC will be deducted (cl 68.3). VC will be deducted in circumstances where an alternative unit is offered at a nearby village and resident declines offer of alternative unit. (cl 69.4)</p> <p>Responsible for repairing or reinstating any damage to the unit over and above fair wear and tear. Operator discretion to decide this issue. (cl 64.1(d)) No requirement to pay for refurbishment.</p>	<p>which is \$500. (see DS at cls 14.2 and 8.2)</p>
<p><b>Aroha Retirement Village Taita Home Trust Board</b></p>	<p>“Village Outgoing Payment”– paid monthly and adjusted annually in accordance with CPI. Paid until ORA terminated and resident has permanently vacated the unit and removed all possessions.</p> <p>Utility Fees – electricity, telephone and other utilities</p>	<p>Fixed deduction is capped at 15% of the market value of the unit. The calculation of the fixed deduction takes into consideration the current market value of the resident's unit at the date of termination of the ORA. Resident therefore shares in capital gain but is also exposed to a capital loss. (cl 7).</p>	<p>Default interest – if 7 days late in making payment operator can charge default interest of 10% calculated on a daily basis (cl 2.1(f)).</p> <p>Resident obliged to keep unit in a clean and tidy condition (cl 2.3).</p> <p>Resident obliged to replace at their cost</p>



Village	Ongoing	Exit	Other
	<p>Car Park licence fee</p> <p>Insurance for personal possessions.</p>	<p>If a resident leaves the village within 1 year of entering the village then the exit payment is calculated as 95% of the entry payment (only 5% fixed deduction).</p> <p>Resident also pays 50% of the actual costs of registered valuer who values the unit on termination of ORA.</p> <p>Costs to refurbish the unit and operator's chattels, fixtures and fittings to an as new conditions (beyond fair wear and tear that is determined by village manager). (cl 6.5)</p> <p>Fixed deduction is not payable if ORA is terminated because of a destructive event affecting the unit and operator elects not to rebuild. Operator repay the Entry Payment to the resident. May pay additional amount up to the market value of the unit depending on insurance payout. (cl 7.3)</p>	<p>all mirrors, lightshades, light bulbs, power elements and electrical fittings in the unit as they wear out or are broken (cl 2.3).</p>
<p><b>Roundhay Retirement Village</b> <b>Roundhay Management</b> <b>Service Ltd</b></p>	<p>Monthly fee as specified in schedule to ORA and made up of the "Village Outgoings Charge" and "Additional Services Charges".</p> <p>"Village Outgoings Charge" set by the operator. Reviewed annually to reflect the % change in the CPI over previous 12</p>	<p>Exit payment" is calculated as a % of either the price the resident originally paid for the villa or the price paid by the new resident purchasing the villa, whichever is greater. (ie receive capital gain but not exposed to any capital losses) % calculation depends on how long the resident has occupied the villa</p>	<p>Resident will pay: (cl 26.2) operator's legal costs and any expenses relating to any breach by resident of the ORA; fees of professional consultants incurred by operator in connection with breach by resident of ORA.</p>

Village	Ongoing	Exit	Other
	<p>months. Payable until the date the Exit Payment is payable (but will abate 50% if Exit Payment is not paid by 6 months from date villa vacated).</p> <p>“Additional Services Charge” fees for the cost of services provided to the resident at his or her request as set out in the ORA. Cost agreed between operator and resident prior to delivery of service.</p> <p>All utility costs associated with a villa.</p> <p>Costs of all repairs and maintenance to the interior of the villa and chattels within the villa.</p> <p>Insurance costs for personal possessions.</p>	<p>increasing 5% each year up to a maximum of 25% (occupation 5 years).</p> <p>Resident pays the exit payment contemporaneously with the settlement of the sale of the villa by the resident.</p> <p>Exit payment shall not accrue beyond the due for date for payment of the exit payment. It will be vacation date where ORA terminated because of a destructive event. (cl 14.8.2 and 14.8.3)</p> <p>Fixed deduction will not accrue where resident is paying for own temporary accommodation following a destructive event.(cl 7.7.5)</p> <p>Where the ORA is terminated following the damage or destruction of the villa and operator decides not to rebuild, then resident is not liable to pay to the operator the exit payment. (cl 14.5)</p> <p>If operator offers the resident an option to transfer to another unit at Roundhay and that offer is not accepted, then resident will pay the exit payment on termination. (cl 7.6.4)</p> <p>Operator may at its discretion refurbish the interior of the villa at resident’s costs. (cl 12.10)</p>	<p>Money expended by operator to make good any damage caused by breach of the ORA by resident.</p> <p>Resident is responsible for keeping interior of villa in a tidy and clean condition and to carry out any maintenance and repair work to the interior of the villa. Resident liable for all costs associated with this work. (cl 6.2)</p> <p>Resident also responsible for the costs of keeping the villa’s chattels in good operational condition and for costs of replacement. (cl 6.3)</p> <p>Where resident intentionally damages unit liable to operator for repair costs. (cl 6.4)</p> <p>Operator can charge default interest on any overdue payment owing to a resident under the ORA. (cl 5.11)</p>

*C Appendix 3: Payments made to resident (or their estate) on termination*

<b>Village</b>	<b>Termination payments to resident (or his or her estate)</b>
<b>Summerset at Bishops court</b>	<p>No interest is payable in respect of the licence payment (cl 2.1). Repayment sum means a sum equal to the licence payment minus the DMF and any other monies outstanding under the ORA or any Service Agreement between the resident and the operator.</p> <p>Repayment sum made no later than 5 working days after receipt of termination notice (and in the case of a deceased resident, operators receipt of probate or letters of administration) <b>AND</b> operator’s receipt of moneys from the new resident of the unit and the issue of a new occupation licence to that resident.</p> <p>Where operator does not wish immediately to issue a licence to occupy to a new resident, repayment made no later than 5 working days after receipt of termination notice (and in the case of a deceased resident, operators receipt of probate or letters of administration) <b>AND</b> notice given by operator.</p> <p>Where operator terminates the licence pursuant to its rights under the ORA, repayment sum made within 5 working days of the date upon which termination takes effect.</p> <p>Interest will be paid to resident on the repayment sum in respect of any care apartment where resident or his or her estate has not received the repayment sum within 6 months from the termination date.</p> <p>Operator responsible for finding a new resident to enter into an occupation licence for the unit.</p>
<b>Malvina Major Ryman Village</b>	<p>Operator responsible for marketing and reselling the occupation right to the unit. Resident can opt to control the sale where operator hasn’t repaid the occupancy advance within 12 months of resident permanently vacating the unit and removing all possessions. Where resident opts to sell the occupation right to the unit, resident will bear any capital loss and entitled to any capital gain arising from sale.</p> <p>Occupancy advance repaid to resident (or estate) when all paperwork completed relating to termination of the ORA and resident permanently vacated the unit and removed all possessions <b>AND</b> within 5 working days after a new occupation agreement for the unit has been entered into and new occupancy advance received.</p> <p>Occupancy advance repaid to resident (or estate) when all paperwork completed relating to termination of the ORA and resident permanently</p>

Village	Termination payments to resident (or his or her estate)
	<p>vacated the unit and removed all possessions <b>AND</b> within 5 working days, if operator terminates the agreement.</p> <p>However, occupancy advance will be paid no later than 3 years after resident permanently vacated the unit and removed all possessions. If operator has not repaid occupancy advance during 6 month period after unit permanently vacated, operator will pay interest on occupancy advance (less DMF and other monies owing by resident) from 6 month date to repayment of the occupancy advance.</p>
<p><b>Woburn Retirement Apartments Presbyterian Support Central</b></p>	<p>Operator responsible for finding a new resident for the unit. If operator has not entered into a new occupation licence for the unit within 6 months of the termination date then operator will obtain a valuation of the unit at its cost to establish a suitable price at which to market the unit.</p> <p>Operator will pay an “Exit Payment” to resident or his or her estate which comprises an amount equal to the “entry payment” minus the “village contribution” and the balance of the payments or other amounts resident owes to operator under the ORA.</p> <p>Exit payment is made on:</p> <ul style="list-style-type: none"> <li>(i) any date within 5 working days after operator receives full settlement of the entry payment payable by new resident for the unit <b>OR</b></li> <li>(ii) where operator elects to repay the exit payment prior to finding new resident or decides not to find a new resident, 20 working days after agreement is reached to make this decision <b>OR</b></li> <li>(iii) Where operator terminates ORA, 5 working days after the date of expiry of the termination notice.</li> </ul>
<p><b>Aroha Retirement Village Taita Home Trust Board</b></p>	<p>Operator responsible for marketing and selling the occupation rights after resident leaves the village.</p> <p>Exit payment is as follows:</p> <ul style="list-style-type: none"> <li>(i) if termination date within 1 year of occupation date, 95% of the Entry payment</li> <li>(ii) if termination more than 1 year after occupation date, 85% of the market value of unit at termination date. Independent registered valuer to assess the market value.</li> </ul> <p>Exit payment is made on the earlier of, the date the unit is sold and proceeds received by the operator or 9 months after the termination date.</p>

<b>Village</b>	<b>Termination payments to resident (or his or her estate)</b>
<b>Roundhay Retirement Village Roundhay Management Services Ltd</b>	<p>Resident is responsible for the sale and marketing of their villa. Operator has option to purchase the villa at an agreed market value (option must be exercised where operator terminate the ORA).</p> <p>On termination the operator may at its discretion refurbish the interior of the villa at the resident's cost.</p> <p>The resident will receive the price paid by the purchaser of the villa following the settlement of the sale of the villa.</p>

## D Appendix 4: Transfer provisions

Village	Disclosure Statement	ORA
<p><b>Malvina Major Ryman Village</b></p>	<p>Provides a “continuum of care” including assisted living and rest home care. (p 2)</p> <p>Village offers resthome and hospital level care in the care facility, to which RV residents enjoy priority access.</p> <p>Details financial terms of moving to another unit within the village. (p 17)</p> <p>Details that resident has priority access to rest home and hospital but does not set out any other terms which would apply for a permanent move from a unit to care facility within the village. (p 17-18)</p>	<p>Includes terms of transfer from independent unit to serviced unit. ORA to terminate and a new ORA is entered into between operator and resident. Resident to pay a new “occupancy advance” and new “fixed base weekly fee”. DMF under ORA and all other ORAs will not exceed 20% overall.</p> <p>At option of either Ryman or resident, resident can transfer to care facility within village or another Ryman Village to receive rest home, hospital or dementia care. Residents have priority over non-residents. Terms of transfer will be provided at the time of transfer. Fixed Weekly Fee will continue to apply until resident has permanently vacated his or her unit and removed all possessions. While in rest home will only be charged an Additional Service Fee for care services received.</p> <p>Nothing in agreement about whether ORA terminates on transfer. (Note cl 3.1 where operator has right to transfer resident to a healthcare facility and agreement will end at time of transfer – assume Operator terminate under cl 5.2.</p>
<p><b>Bishopscourt Summerset Village</b></p>	<p>Under ORA resident can request a transfer from a villa or apartment to a care apartment or Summerset aged care facility. Residents have priority access to such accommodation. This transfer will be at no extra capital cost to resident. (p 8)</p>	<p>Resident has priority over non-residents to transfer permanently to another villa, apartment, care apartment or care facility within village or another Summerset village subject to availability. Terms of transfer that will apply are those set out in current transfer policy available in Village library. (cl 5.7).</p>

Village	Disclosure Statement	ORA
<p><b>Woburn Apartments Presbyterian Support Central</b></p>	<p>If resident wishes to transfer to another unit within the village (not care facility) then financial terms are explained in DS. Resident required to enter into a new ORA and pay new “Entry Payment” at the then current market rate. Terms and conditions of transfer that apply are at the sole discretion of the operator. (cl 7.3)</p> <p>There is a Care Facility situated adjacent to village and offers rest home, hospital and dementia care. Operator may allow the resident (at their request) to transfer if operator has suitable facilities available. Will give priority access over non-residents. ORA will not terminate automatically on transfer but operator may terminate ORA at its discretion. (cl 15)</p>	<p>ORA sets out specific terms where a resident wishes to move to another unit within the village. Right to transfer is subject to certain conditions relating to the sale of existing unit and resident signing a new ORA for unit moving into. (cls 57-59)</p> <p>ORA set out terms of transfer to a rest home or hospital or dementia care (at resident’s request and at operator’s discretion). Operator will use best endeavours to give priority to resident to PSC care services. Resident responsible for costs and expenses incurred in connection with transfer and/or for care services provided. (cl 42) Operator discretion to provide services in resident’s unit.</p> <p>Operator can terminate ORA if resident can no longer live safely in his or her unit or abandoned unit (to live in residential care facility).</p>
<p><b>Aroha Retirement Village Taita Home Trust Board</b></p>	<p>Adjacent to Aroha Care Centre for Elderly, also operated by the Operator, which provides rest home and hospital level care. No ability for residents to transfer to it if required, but staff will assist resident to apply for a bed in the Centre as necessary. (cl 2.7)</p>	<p>No terms relating to transfer in the ORA.</p>
<p><b>Roundhay Retirement Village Roundhay Management Service Ltd</b></p>	<p>No right under ORA to transfer to care services.</p> <p>If resident chooses to transfer to another village and the operator agrees, the resident must sell their villa, pay any “Exit Payment” under the ORA and purchase the new villa. (cl 2.3.5)</p>	<p>Resident can transfer to another villa in the village subject to availability and at the discretion of the operator. Terms of transfer are set out in ORA and relate to sale of existing villa and settling of price of villa with outgoing resident and payment of operator pursuant to ORA.</p>