

THE RETIREMENT VILLAGES ASSOCIATION OF NEW ZEALAND INC.

PO Box 25 022, Panama Street, WELLINGTON 6146
Phone 04 499 7090 Fax 04 499 4240



SUBMISSION ON THE REVIEW OF THE UNIT TITLES ACT 2010 DISCUSSION DOCUMENT

**TO: Unit Titles Act Review, Construction and Housing Markets BRM,
Ministry of Business, Innovation & Employment**

About us

The Retirement Villages Association of New Zealand Incorporated (*RVA*) is a voluntary industry organisation that represents the retirement village sector throughout New Zealand. Our 340 member villages operate around 23,700 units that are home to approximately 31,000 older New Zealanders. This is approximately 96% of the industry by unit number.

Background

In 2009 the RVA and its members worked with officials and politicians on developing appropriate exclusions under the Unit Titles Act 2010 (*UTA*) for unit title developments in retirement villages that are registered under the Retirement Villages Act 2003 (*RV Act*).

These exclusions are set out in s 11 of the UTA, and reflect that:

- the specialist retirement villages statutory framework already protects residents living in unit title developments in registered retirement villages to a high level;
- there would otherwise be an undesirable degree of duplication or inconsistency between the retirement village and unit titles regimes.

In light of this previous involvement, the RVA wishes to submit on the discussion document. We would also like to work with officials following this review, to ensure the current exclusions are appropriately expanded where necessary.

Our submission – in summary

1. Section 11 of the UTA sets out the exclusions for unit title developments in registered retirement villages. These should be expanded to cover any changes to the UTA resulting from the review, for areas where exclusions are already in place. In some instances this will likely require only updates to the section references in s 11.
2. The concerns that give rise to this review of the UTA (e.g. poor disclosure and inadequate management) are not present in unit-titled retirement villages. The retirement villages regime ensures that residents' interests are well looked after. This includes through detailed pre-contract disclosure, independent legal advice, and obligations on operators to maintain the village to a high standard in accordance with a long term maintenance plan.
3. In terms of potential new areas of the UTA, a body corporate in a registered retirement village should not be required to appoint a body corporate manager (**Questions 13 to 18**). The RV Act already imposes comprehensive obligations on how an operator must manage a retirement village. In addition, the statutory supervisor of the village plays an important oversight role in relation to the management of the village.

The sections below elaborate on our submission in more technical detail.

1. Existing exclusions

Many of the proposed changes to the UTA raised in the discussion document cover aspects of the UTA from which registered retirement villages are excluded. This should continue.

Where any changes to the UTA in these areas are adopted as a result of the review process, corresponding changes to the section references in s 11 of the UTA should be made.

This applies in particular to the following proposed changes in the discussion document. A brief outline of why registered retirement villages are currently excluded from these areas is also included to provide context.

<i>Existing exclusion</i>	<i>Reason for exclusion</i>
Disclosure statements (<i>Questions 4 to 6</i>)	<p>A comprehensive disclosure statement under the RV Act must be provided to every prospective retirement village resident before they enter an occupation agreement for their unit.</p> <p>This pre-contract disclosure is a central tenet of the RV Act, along with the requirement for every resident to be advised and certified by an independent lawyer.</p>
Long-term maintenance funds and long-term maintenance plans (<i>Questions 19 to 25</i>)	<p>Retirement village operators are already required by the RV Act to make and adhere to a long-term plan for maintaining and refurbishing the village and its facilities. Minimum standards that the operator must comply with are specified in the Retirement Villages Code of Practice 2008 (<i>Code of Practice</i>).</p>
Dispute resolution process (<i>Questions 26 to 28</i>)	<p>The RV Act and Code of Practice set out a complete disputes resolution procedure, which must be followed for disputes about a resident's occupation. Further the Code of Practice has just been reviewed and amended to improve dispute resolution processes in retirement villages with particular regard to the needs of residents for accessible and effective dispute resolution.</p> <p>This comprises both informal processes (including the option of mediation for a resident) and formal processes (independent disputes panels).</p>

In general terms, residents in a unit-titled retirement village are well-protected by the specialist retirement villages regime in all key respects. This includes their ability to access information about the village, to live in a village that is well-managed and maintained, and to have any dispute

resolved efficiently through a specialised dispute resolution process. We can outline how this works in more detail if you have any questions. If it would be helpful we can provide you with a copy of our original 2009 submission on the UT Act which provides more detailed background on the reasoning for the current exclusions.

Historically, unit titles were commonly used in retirement villages because it allowed a resident's life interest in their unit to be recorded against the title to the unit. The popularity of unit titles in retirement villages has, however, diminished considerably over recent years because of the protections offered under the RV Act. For instance, New Zealand's largest retirement village operator has ceased offering unit titles in its villages. It would not be appropriate to introduce new legislative requirements to a form of ownership that is now outmoded.

2. Body corporate managers

One of the potential changes to the UTA proposed in the discussion paper is a new obligation for a body corporate to appoint a body corporate manager (*Questions 13 to 18*).

Bodies corporate in registered retirement villages should be excluded from this obligation (irrespective of the number of units in the unit title development) because the RV Act already establishes robust management responsibilities in retirement villages. These duties encompass the management of the body corporate in any unit title development which forms part of the village.

Every resident of a retirement village enters into an occupation agreement with the operator. Each occupation agreement includes contractual obligations on the operator to manage and operate the village properly.

The statutory supervisor of a retirement village also plays an important role in monitoring the management of the village (which includes any unit title development within the village). Every retirement village must appoint a statutory supervisor, who is independently approved by the Financial Markets Authority and is responsible for providing independent oversight of the village.

The retirement village operator and the statutory supervisor must enter into a deed of supervision, which provides further protection for residents. Among other things, a deed of supervision contains extensive provisions outlining how the village must be operated and managed by the operator.

Under s 43 of the RV Act, the statutory supervisor has the power to take a wide range of actions where it considers the management of the village is inadequate. These include directing the operator how to manage the village or applying for a court order relating to the operation of the village.

Requiring a body corporate manager to be appointed within a registered retirement village would in fact contravene the RV Act. A retirement village operator is not permitted to delegate any of its powers or duties except on terms satisfactory to the statutory supervisor of the village acting in the interests of the residents (Regulation 50, Retirement Villages (General) Regulations 2006).

For these reasons the RV Act and associated regulations displace any concerns in a retirement village setting around adequate protection or professionalism in the management of the village (including any unit title development within the village).

Continued involvement

Thank you for considering our submission. As mentioned above, we would like to continue dialogue with you as the review of the UTA continues. We're happy to provide input on the matters outlined above if that would assist.

s 9(2)(a)