



Department of
Building and Housing
Te Tari Kaupapa Whare

Summary of submissions to the consultation on 'What do you think should be included in a Retirement Village Disclosure Statement?'



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Introduction

This report contains the Department of Building and Housing's summary of submissions analysis and recommendations following the public consultation on what information should be in retirement village disclosure statements.

The report has two sections:

Section one Analysis of submissions received

Section two Recommendations and next steps

Background

The purpose of a disclosure statement is to redress the information imbalance between the provider and consumer.

A retirement village disclosure statement provides intending residents with the information they need to make an informed choice about which retirement village, if any, to move into. A well-designed disclosure statement boosts consumer understanding and enables them to make a decision with confidence.

The Retirement Villages Act 2003 (the Act) and the Retirement Villages (General) Regulations 2006 (regulations) require operators to produce a disclosure statement.

The Minister for Building and Construction, Hon Maurice Williamson, directed the Department to review the disclosure statement requirements for retirement villages as part of Government's commitment to reducing compliance costs.

The Department undertook public consultation from September to December 2009 to test if the disclosure statement could:

- be reduced in length (to reduce production costs for operators)
- better meet consumer needs.

Most resident respondents to the discussion paper intended to move once after selling the family home. It is critical that intending residents receive clear, complete and balanced information before committing to a retirement village. Even though retirement village living is growing in popularity as a housing choice for older New Zealanders, there is a low level of knowledge about how retirement villages operate.

Consultation

The Department's discussion paper entitled "What do you think should be included in a retirement village disclosure statement?" sought responses from:

- retirement village operators
- retirement village residents and intending residents
- lawyers specialising in retirement villages work (either for operators or advising intending residents)
- retirement village statutory supervisors.

We wanted to test whether they:

- have different expectations of the disclosure statement
- place greater emphasis and weighting on what information should be provided in a disclosure statement.

Distribution of the disclosure statement discussion paper

All known retirement village residents' committees, key stakeholder groups, key organisations that have an interest in older people's issues and respondents to the Retirement Villages Code of Practice 2008 received hard copies of the discussion paper. In total 1,757 were sent out initially, from a print run of 1,900. The break down is below:

- 349 to key stakeholder groups
- 58 to every Community Law Centre
- 110 to the Citizens' Advice Bureau
- 45 to Age Concern New Zealand
- 16 to Grey Power
- 995 to the 321 registered retirement villages
- 134 to known residents' committees (including the four regional associations).

The remaining copies were sent out on request.

The discussion paper was also available for download from the Department's website.

Submissions received

Outline

The Department received 128 submissions from residents, residents' committees and associations, retirement village operators, statutory supervisors, lawyers and groups representing older peoples' interests.

In almost all of the submissions received, both Part A and Part B of the discussion paper were completed.

Some residents expressed concern the discussion paper was too long (especially Part B) and they lacked the necessary specialist knowledge to complete the questionnaire.

Common themes emerged from across the stakeholder groups:

- disclosure statements are not having the intended effect
- there is too much information in the disclosure statement (especially duplication of information available from other sources)
- there is little appetite from either residents or operators for change because of concerns that changes will increase compliance costs
- disclosure statements should be understandable without intending residents needing legal advice
- intending residents need information in a form which helps them make an informed choice about which retirement village, if any, they will move to.

The Department has a separate document presenting the responses to the questions asked in 'What do you think should be included in a retirement village disclosure statement?' This document is available on the Department's website and on request.

Section one: Analysis of submissions received

Issues

“The whole disclosure statement was relevant, but not all the information in the disclosure statement is necessary for intending residents to reach a decision.” – Resident

The purpose of the consultation was to find out if the current retirement village disclosure statement is:

- effective (providing necessary information in a format intending residents understand)
- helpful (for intending residents decide which, if any, village to move to)
- inexpensive to produce (for operators).

Effectiveness of the disclosure statement

Operators reported the disclosure statement requirements overload intending residents with information and:

- does not help them present their village in the best light
- disadvantages unit title retirement village operators because they have to include information that is irrelevant to their business.
- increases compliance costs for religious, welfare and charitable operators with few benefits for intending residents.

On top of these requirements, the production cost of the disclosure statement is high as they need continual updating before intending residents can receive a copy.

The current disclosure statement, in general, could be better for intending residents if the disclosure statement:

- is meaningful for intending residents
- does not duplicate information requirements in the occupation right agreement (contract)
- contains less detailed information.

Resident submissions suggest they need further guidance about the purpose of the disclosure statement before they make an informed decision. Most respondents agreed intending residents should not need legal advice to understand the disclosure statement.

All lawyers advising intending residents have a duty to ensure intending residents understand all of the documentation from the village. It is in the best interests of intending residents that the disclosure statement and occupation right agreement is reviewed before the intending resident signs the occupation right agreement.

Based on the submissions received, the conclusion is disclosure statements are not effective and do not give intending residents the information they need.

Effectiveness of a disclosure statement template

In 2007, the Department developed a disclosure statement template to help operators present the required information in a simple way that intending residents would find helpful and be able to use.

The Department’s suggested disclosure statement template, which follows the order of the required information, may have led the industry to assume the Act prescribes the order of information. This is not the case, and operators can order the information in any way they choose, so long as all the information requirements are met.

The continued use of a template (voluntary or compulsory) was a key question in the discussion paper.

The discussion paper asked if the Government should provide a standard disclosure statement that all operators must use. The responses received were:

	Yes	No	Unsure	No answer
Operators	14	9	-	-
Residents and intending residents	69	9	2	2
Lawyers	7	2	-	-
Statutory supervisors	3	-	-	-

When asked for the advantages of using a standard template, the responses ranged from:

- comfort from knowing that all operators have to include the same information
- legal costs are reduced for operators, as a template can be used over again
- legal costs are reduced for intending residents, as their lawyers are confident all the necessary information is included
- intending residents can more easily compare retirement villages, make informed choices, and assess value for money
- the disclosure statement can be used as a guide and reference document
- easier for the Registrar of Retirement Villages and statutory supervisors to monitor compliance and for lawyers reviewing the document to ensure all necessary information has been included.

When asked for the disadvantages of using a standard template, the responses ranged from:

- a set template is inflexible and disadvantages some villages (anticompetitive)
- might make units harder to sell
- may lead to confusion as intending residents cannot easily distinguish the different retirement village operating models
- production costs are likely to be higher than necessary for retirement villages with limited services and facilities
- continual revisions are burdensome, expensive and limit the relevance and usefulness of the disclosure statement.

Information requirements

The Act requires that all disclosure statements tell intending residents:

- the services and facilities that are provided at the relevant retirement villages
- services and facilities that might be provided in the future
- which of the services and facilities listed in the regulations are **not** provided at the relevant retirement village.

The discussion paper asked if the disclosure statement should contain information about services and facilities the village **does not** offer. The responses received were:

	Yes	No	Unsure or do not know	No answer
Operators	4	18	1	-
Residents and intending residents	53	20	3	5

Some operators are concerned this requirement makes it difficult to attract potential residents adding production costs and devaluing their retirement village.

Intending residents and residents prefer to receive the complete list as the list helps them decide what services and facilities are important to meet their needs now and in the future.

Reasons given for including information about services and facilities the village **does not** offer were:

- it clarifies what is and is not provided
- helpful for decision-making, especially if you have disabilities
- good customer service is about providing information.

Reasons given against including information about services and facilities the village **does not** offer were:

- intending residents can work out that if it is not listed, then it is not provided.
- good business is about concentrating on what you do and doing it well.
- this information is in other documents given to the resident
- the disclosure statement should be factual, short and simple
- providing information about what is not provided does not increase knowledge
- intending residents can ask.

The Department has grouped responses to the discussion paper into five themes for the Government to consider addressing. Each theme is discussed below. These are:

- theme one: purpose of the disclosure statement
- theme two: keeping it short and simple (KISS)
- theme three: most important information
- theme four: restructuring the disclosure statement
- theme five: compliance costs.

Theme one: purpose of the disclosure statement

Provide more information on the need for disclosure and how it can help operators and intending residents.

“In 2002 I asked many, many questions of the two sales ladies within the village. I trusted their answers. This turned out to be a mistake”. – Resident

One of the stated purposes of the Act is to promote the ‘understanding of the financial and occupancy interests of residents and intending residents of retirement villages’ (section 3(c)(i) Retirement Villages Act 2003).

This consultation found the disclosure statement is not meeting this purpose because:

- specific information about the retirement village is interspersed with general information
- common terms used by operators such as ‘as necessary’ and ‘good’ are inadequate descriptors and do not tell intending residents what they need to know
- some of the information changes too often to give the disclosure statement long term value (even though this information may be important and influence intending residents’ choices)
- changes are not always made when information appears in more than one of the required documents
- the information required in disclosure statements best fits the retirement villages business model where residents do not own the unit-title
- some intending residents do not receive the disclosure statement early enough to support their decision-making.

For intending residents to get the most benefit from a disclosure statement, they need it as early as possible. The disclosure statement should prompt intending residents to ask questions about their needs.

The disclosure statement should also prompt the intending resident to ask questions of the village manager (if there is one), residents' committee (if there is one), and perhaps even seek the opinion of their doctors or other people they trust in the community. Questions, answers and objective feedback could lower the risk of choosing a village that is unsuitable for the intending residents' needs.

Operators should provide intending residents with a disclosure statement early on in the process, if they want to turn an enquiry into a sale.

The Department has looked at disclosure statement requirements in other New Zealand laws as well as overseas and found:

- some overseas laws require disclosure statements within the contract (one document, two purposes)
- most more recent New Zealand law splits information cleanly between disclosure statements and education or explanatory leaflets
- some governments produce general education material, which must be presented when the provider gives potential customers their disclosure statement.

The Department used this information to inform its thinking on the future of the retirement villages' disclosure statement.

Two areas from overseas struck the Department as relevant when considering the future of retirement village disclosure statements:

- 1 disclosure should provide intending residents with the key information they need to decide whether to move on to the contract negotiation stage.
- 2 in the UK, some disclosure statements are referred to as 'pre-contract information', which we consider to be a better descriptor than 'disclosure'.

Theme two: keeping it short and simple (KISS)

Producing shorter and simpler disclosure statements will support intending residents in choosing which, if any, retirement village to move to. A shorter disclosure statement may encourage operators to provide copies to intending residents in the early stages of their decision-making.

"Most people considering a retirement village need simple documents without too much verbiage." – Resident

It is important that intending residents have a well-written, simple, easy-to-understand disclosure statement which assists them to assess their wants and needs for housing and care options as they age.

Short documents are easier to understand than longer documents, and in the Department's view it would be more appropriate if disclosure statements were shorter. A densely written document that includes legal terminology or jargon is off-putting. Shorter documents in plain English are more likely to engage intending residents and enable them to understand the information provided.

Both residents and operators are concerned the format of the disclosure statement and prescriptive information has added unnecessary length to the document (for example listing services and facilities not provided). The style of disclosure statement and language used

by some operators reflect the house style of their legal advisors. This has resulted in a legally compliant disclosure statement that does not meet intending residents' needs.

Theme three: most important information

The most important information should be presented first. The Department will support operators to work with their residents and residents' associations to decide on what is the most important information.

"The disclosure statement should concentrate on the important financial information." – Resident

In keeping with themes one and two, the format of a disclosure statement should be generic to enable intending residents to compare villages more easily.

There is an overlap between the information that operators want to provide and the information intending residents need. Respondents listed the most important information as being:

- financial costs to residents before they move in, while they live there and when they move out including services and facilities
- legal interest in the residential unit
- village rules.

Some statutory supervisors highlighted the limited amount of financial information requirements in the disclosure statement in their response to the discussion paper. These statutory supervisors recommended increasing the financial information intending residents must be given. The current format of the disclosure statement makes it difficult for intending residents to align village charges with the occupancy rights, services and facilities provided.

The lack of financial information provided by some operators was a policy problem that led to the Act's introduction. Residents who responded wanted to see the financial implications up-front.

Residents need to understand the occupancy arrangement they are signing up to. Eighty-five per cent of retirement village units are 'sold' as a licence to occupy. It is common under this arrangement for the operator to keep all the capital gain¹ on the residential unit when it is 'sold' to the next resident. This type of sale is referred to as a disposal, as the transaction does not involve the sale and purchase of land. When residents move out of the unit, they receive a proportion of their capital payment back.

Twelve per cent of retirement village units are unit-title developments where residents purchase their unit. Usually, residents can keep most of capital gain when they sell the property. Some unit-title villages are run by resident bodies corporate and other unit-title villages are run by the operator. Intending residents considering unit-title villages need to understand their rights, obligations and involvement in the body corporate before considering moving in.

The weekly fees charged by operators reflect the services and facilities offered by each village. A higher weekly fee is likely to mean more on-site services, facilities and organised activities.

¹ Some operators do share capital gain with residents. In some unit title villages, residents retain as much as 90 percent of any capital gain on the sale of the residential unit.

The final part of financial information needed by residents is what happens when they move out, including their capital repayment terms and any other charges.

Statutory supervisors also suggested that intending residents should be told of the financial stability of the operator (not just about the mortgages they are repaying), but also the proportion of an operators' borrowing against an operators' income.

Some residents are not aware that retirement villages can be bought and sold as business entities. Such information could discourage intending residents from moving into a retirement village – even though their occupancy rights are protected by law.

Legal details and village rules are important as they underpin what residents can and cannot do in their residential unit, including hiring full-time carers if their health fails. This information should be summarised in the disclosure statement so intending residents are aware of the obligations and limitations operators can place on them, and make their decisions accordingly.

The Department considers that a disclosure statement template should not be mandatory. The absence of a template gives operators the flexibility to reorder the disclosure statement to place the important information up front:

- financial costs to residents before they move in, whilst they live there and when they move out including services and facilities
- legal interest in the residential unit
- village rules.

Theme four: restructuring the disclosure statement

Restructure the disclosure statement to ensure important information about the retirement village is read and understood by intending residents.

The Department wants to ensure intending residents receive the right information they need to make informed choices. The Department does not recommend increasing regulation for disclosure, including mandating a standard disclosure statement template that all operators must use.

We accept the comments from industry that retirement villages are too diverse. Assisting operators to present information that is important to intending residents is likely to lead to a better disclosure statement.

In analysing submissions, the Department identified several opportunities to improve education including:

- better explanation of what a disclosure statement is and why it is necessary
- when to use a disclosure statement
- how to use a disclosure statement
- presentation of information (to increase its effectiveness for the operator and intending resident)
- taking out some of the 'education' information from the disclosure statement and making this available through other means.

To assess a retirement village intending residents need three sets of information:

- general information about the New Zealand retirement village industry (education)
- key information about retirement villages they are considering moving to (disclosure statement)
- specific information relating to the unit they purchase, their rights and obligations (occupation right agreements).

Our assessment of the current disclosure statement is that general information is included in the disclosure statement. Operators' disclosure statements are required to fulfil two separate and quite different purposes:

- general information about New Zealand retirement villages
- information about a specific retirement village.

It is understandable that intending residents are keen to see services and facilities that are not offered by retirement villages included in the disclosure statement.

However, the Department acknowledges the operators' frustration and agrees the full list of services and facilities should be in general information about retirement villages.

In the short-term, the Department recommends operators to put in an annex the services and facilities they do not offer. This will ensure intending residents have the 'what is offered' (the important information) in the main document.

In the longer-term, the choices for change may include:

- incorporating the list of services and facilities from the regulations into an information booklet for intending residents
- amending the regulations to:
 - remove the list of services and facilities
 - require operators to align the list of services and facilities more closely with the weekly fees in the disclosure statement
- removing this requirement altogether.

Theme five: compliance costs

Reduce compliance costs by supporting operators to reorder the required information so that the most important information is the read first by intending residents.

"The whole retirement village's legislation was based on consumer protection. The outcome is overkill with a net effect of costing the elderly. The regulatory framework is a bureaucratic nightmare and the cost indicates the nanny state is alive and well." – Lawyer

Operators reported that the production costs of their disclosure statements are high. Concerns were raised from all the stakeholders that changing the current disclosure statement would increase compliance costs rather than reducing them.

Some residents questioned why cost reduction was a higher priority than providing residents with clear, unambiguous information. Other residents understood that operators recover their compliance costs from the residents in their weekly fees so they too would benefit from an improved disclosure statement.

Most operators who provided their disclosure statement production costs were unable to separate the disclosure statement production costs from the other documentation needed to comply with the Act.

Apart from the expense to operators, specific information about actual and average residential units' sales time being updated every time a unit is vacated was a common operator example of adding cost by including excessive detail. Unit vacancy is often the trigger for updating the disclosure statement.

Most operators fund the production of disclosure statements from residents' weekly fees, so although they incur time costs, residents carry the financial costs. Operators are reluctant to spend money in the short-term to save long-term costs, which may benefit residents. Operators' sales times have increased as a result of the housing downturn, which is

affecting business and expenditure plans. Operators and residents need to consider the common benefits that an amended disclosure statement would offer.

The Department believes that simplifying the disclosure statement requirements will reduce production costs, enabling operators to pass their savings on to residents. As many as 50 per cent of retirement villages residents only have their superannuation as income, so it is important that the Government provides an environment where operator costs are minimised. Operators who do not charge residents for the disclosure statement through weekly fees add the cost to the entry price to the retirement village, so intending residents pay.

Residents who moved into retirement villages before the Act changed were surprised at the amount of information and paperwork newer residents received. Many of these residents stated if they had received this level of paperwork they would not have moved into a retirement village.

It is possible that operators are losing sales, or the sales process is taking a longer time, because of the amount of paperwork intending residents and their lawyers have to read. This too has a financial impact on exiting residents as well as operators.

Section two: Recommendations

Outline

Section one includes five themes discussing the:

- 1 Purpose of the disclosure statement
- 2 Keeping it short and simple
- 3 Most important information
- 4 Restructuring the disclosure statement
- 5 Compliance costs.

The Department has considered the five themes against three options set out as part of Government's regulatory reform programme²:

Option one: consider alternatives to changing the law

Option two: no change

Option three: changing the law.

Our recommendation to the Minister for Building and Construction is that more work needs to be undertaken on educating operators and intending residents about the purpose of disclosure statements, and how to make disclosure statements more effective. Increasing education and promotion does not require a law change.

The Retirement Villages Association suggested that any information in the disclosure statement that is required in the occupation right agreement (contract) as well should be excluded from the disclosure statement. The nature of disclosure is to provide intending residents with enough 'pre-contract information' necessary for intending residents to make a decision. There needs to be some overlap between information provided in the disclosure statement and in the occupation right agreement for intending residents to reach informed decisions.

The Department will work to support operators to restructure their disclosure statements so that intending residents can make informed decisions.

Option one: consider alternatives to changing the law

The alternatives to changing the Act are:

- more and better education for operators and residents
- training sessions for operators showing how to change documents
- best practice guides

The Department has to consider the most cost-effective way to achieve change which benefits operators and intending residents.

The outcome of the consultation suggested that document length was not considered an issue by residents, intending residents and resident advocates. Length only became a factor if information was difficult to understand or hard to find. Length of disclosure statement was a concern to operators because of production costs. Although the type of

² All government departments must consider these three options when proposing solutions to identified problems.

information (and therefore the quantity of information) is prescribed by law, the order of the information is not.

Operators have the opportunity to restructure the disclosure statement to produce a disclosure statement that provides clear consumer information and promotes their village.

Operators could improve the disclosure statement by:

- amending the order of information
- separating information that seldom changes from information that regularly changes
- putting into annexes any information that is not relevant to a particular retirement village
- making the disclosure statement simple or simpler to read.

Under this recommendation, operators can continue to provide disclosure statements in their preferred formats, such as executive summaries, to support intending residents in reaching a decision.

Operators will have the choice of retaining their current disclosure statement format, or amending their disclosure statements as their finances allow.

We would advise operators who are considering amending the disclosure statement to ask their residents for feedback and perhaps involve them in the redesign of the document. This is because residents may have a better idea of what information is most important to intending residents. Residents could review the disclosure statement to ensure it is readily understandable.

The Department will look at ways to support operators who chose to amend their disclosure statement. This will become part of the planned education work in 2010/11.

Recommendation

Encouraging operators to amend their current disclosure statement without regulatory reform is the preferred option.

Information provided to intending residents will be what they need to make an informed decision about moving into a retirement village.

In making this recommendation the Department is mindful of:

- costs to operators in amending their disclosure statement
- operators' desire to tell intending residents about their village
- providing operators with a range of options from producing executive summaries to complete revisions
- intending residents needs
- minimising costs for existing residents who often pay for the disclosure statement through their weekly fees
- getting operators and residents to work together to produce a better disclosure statement.

Option two: no change

No change is the option preferred by operators for financial reasons. A handful of residents also suggested that the current system be maintained.

However, our analysis and consideration of the main themes and issues discussed in Section one does not support this option.

Operators are clearly dissatisfied with having to provide intending residents with information that is not about their village or villages. Intending residents want information to help them make informed decisions, and the current structure developed by most operators and their legal advisors is not meeting consumer needs.

Recommendation

The Department does not recommend 'no change' because it is not delivering:

- value for money and consumer protection
- information intending residents need to choose a retirement village
- disclosure statements that have long-term value.

We are aware that operators do not want to incur more costs, but clear disclosure statements are an essential part of the consumer protection set up under the Act. It is possible that better information for residents at the outset of their life in a retirement village will decrease the number of complaints and disputes once a resident has moved in.

Option three: amend law

Most respondents described the existing disclosure statement as too prescriptive or inflexible. The only way to reduce the prescription of the disclosure statement is through a law change.

Key areas for reform are reducing or removing the duplication between different documents required by law, stripping out excessive detail, and not having to provide information on services and facilities not offered.

Recommendation

We are not recommending a law change without first testing whether increased education and support to operators will lead to better disclosure statements.

Intending residents who are interested in particular villages should be encouraged to request a disclosure statement early on. We note the earlier an intending resident receives the information the greater the chance they will use the document to reach a decision.

In the short-term a law change has the same impact as no change. Operators are unlikely to invest in changing their existing disclosure statement if a law change is imminent. Amending laws takes between six and 12 months or more depending on whether amendments are to regulations or an Act of Parliament.

We recommend that this option is reconsidered as part of a wider review of the Act or in 2012, whichever comes earlier, to give all stakeholders time to test the preferred option.