



Department of
Building and Housing
Te Tari Kaupapa Whare

Statutory supervisors and retirement villages – a guide for operators



If you intend to run or already run a retirement village, this guide has some important information for you.

Statutory supervisors help to maintain good service and healthy relationships in retirement villages.

Good service and healthy relationships can prevent costly disputes.

STATUTORY SUPERVISORS

What is a statutory supervisor?

A statutory supervisor is a professional who oversees the management of a retirement village. Every retirement village must have a statutory supervisor, unless the Registrar of Retirement Villages grants an exemption.

The legislation that sets out the duties and responsibilities of statutory supervisors in relation to retirement villages is the:

- Retirement Villages Act 2003 ('the Act')
- Retirement Villages (General) Regulations 2006 ('General Regulations').

Glossary

The **contract** setting out what the statutory supervisor does is called a Deed of Supervision. The Deed of Supervision is between the village operator and statutory supervisor.

The **Registrar of Retirement Villages** is responsible for the register listing all retirement villages. The Registrar approves retirement villages' statutory supervisors. The Registrar can grant operators an exemption from appointing a statutory supervisor.

What does a statutory supervisor do?

Amongst providing other services, a statutory supervisor:

- acts independently to protect investments in retirement village units
- monitors the financial position of a retirement village
- reports annually to the residents and to the Registrar of Retirement Villages.

Who can be a statutory supervisor?

An individual or a company can be a statutory supervisor. Statutory supervisors must be approved by the Registrar of Retirement Villages and must be able to show they have the skill, experience and independence to carry out their duties. As experienced professionals, statutory supervisors can:

- act as a mentor for your business
- help you to give good service to your residents
- maintain a healthy relationship with residents.

Good service and healthy relationships can prevent costly disputes.

How can a statutory supervisor help you?

If you operate a retirement village, or intend to, your statutory supervisor will help you to run your village properly and maintain healthy relationships with your residents. Your statutory supervisor does this by:

- making sure you comply with relevant laws and are financially prudent
- helping you settle complaints efficiently.

Is the statutory supervisor a Government inspector?

No. Although the statutory supervisor must be approved by the Registrar of Retirement Villages, the statutory supervisor is independent of the Government. Remember, you choose your statutory supervisor from the Registrar's list.

Has the Government endorsed a particular Deed of Supervision?

No. There are a number of Deeds of Supervision that are compliant with the Act and General Regulations. Some firms of statutory supervisors have worked together to produce a single Deed of Supervision template, whilst other firms have produced their own Deeds of Supervision.

How do I appoint a statutory supervisor?

You need to think about your village needs and compliance with the Act and General Regulations.

You can find a list of approved retirement villages statutory supervisors on the register of retirement villages by following the link to 'Information about Statutory Supervisors' on the website www.retirementvillages.govt.nz

You could work with other village operators in your locality to appoint a single statutory supervisor for a group of villages. These villages do not have to be owned by the same operator. This is allowed by the Act. This would enable the group of villages to share costs and only have one Deed of Supervision.

Negotiating the Deed of Supervision (contract)

It is up to you as an operator to ensure the Deed of Supervision reflects the needs of your village. It may be in your residents' and your interests to ensure you are fully aware of the statutory supervisor requirements set out in legislation before engaging a statutory supervisor. There are a number of companies for you to choose from. It may be financially beneficial to shop around.

Must all retirement villages appoint a statutory supervisor?

From 1 May 2007, all retirement villages must have a statutory supervisor, unless the Registrar of Retirement Villages agrees otherwise.

- Are you a debt-free or financially sound charitable trust with a history of successful village management?
- Do you operate a small village with manageable debt?
- Do the residents of your village own their units under a cross-lease or unit title development?

Any operator, or intending operator, can apply to the Registrar of Retirement Villages for an exemption if they think a statutory supervisor is undesirable or unnecessary for the protection of residents' interests in their retirement village. If you answered '**yes**' to any of the questions above, then as an operator you should consider an application for an exemption to appointing a statutory supervisor.

How do I apply for an exemption from appointing a statutory supervisor?

You need to apply in writing to the Registrar of Retirement Villages for an exemption from the need to appoint a statutory supervisor. The Registrar must be satisfied that the appointment of a statutory supervisor is unnecessary for the protection of residents' interests or undesirable.

It is up to **you** to convince the Registrar of Retirement Villages that an exemption should be made from appointing a statutory supervisor. The statutory supervisor is a fundamental protection introduced by the Retirement Villages Act 2003.

Although we recommend operators obtain legal advice throughout the registration process, if you have a good understanding of the legal structure and operation of your village, you can easily submit an application for exemption without professional legal assistance. The Registrar of Retirement Villages will ask you for additional information or clarity if any aspect of your application is unclear.

To apply for an exemption, you must:

1. Complete and sign the exemption application form – Form 5 (Application for Exemption from Requirement for Statutory Supervisor) that can be downloaded from the register of retirement villages website, www.retirementvillages.govt.nz (under the link to 'Forms').

The application should be sent to:
 The Registrar of Retirement Villages
 Business Services Branch
 Ministry of Economic Development
 PO Box 1473
 Wellington 6140

2. Consider the following matters in demonstrating why you should be exempt from appointing a statutory supervisor. You must put your reasons in writing and attach the reasons to your application form.

WHAT YOU MUST DEMONSTRATE IN YOUR APPLICATION	EXISTING VILLAGE	NEW VILLAGE
There are no current or reasonably foreseeable risks to the interests of residents.	✓	
All residents have been notified of the application for exemption and whether any resident has advised the Registrar of any real, current, or reasonably foreseeable risk to their interests (at the Registrar's address above). Please attach a copy of the letter informing residents.	✓	
The interests of residents are not, and will not be, subject to risk from any debt or other financial liability of the village or operator or any other person.	✓	✓

WHAT YOU MUST DEMONSTRATE IN YOUR APPLICATION (CONTINUED)	EXISTING VILLAGE	NEW VILLAGE
It is undesirable to appoint a statutory supervisor because the interests of the residents would or might be detrimentally affected by the appointment of a statutory supervisor without an equivalent or greater benefit from such appointment.	✓	✓
The intended manner of creation and operation of the village will not create any reasonably foreseeable risk to the interests of future residents.		✓

3. To assist the Registrar of Retirement Villages to make a decision, you should provide as much of the following information as possible.

WHAT YOU MUST PROVIDE WITH YOUR APPLICATION	EXISTING VILLAGE	NEW VILLAGE
<p>A full legal description of the part of the property, building or premises comprising the village, together with copies of any certificates of title, plans, deeds, licences or other documents evidencing that description.</p> <p><i>(You need this for registration – section 10, Retirement Villages Act.)</i></p>	✓	✓

WHAT YOU MUST PROVIDE WITH YOUR APPLICATION (CONTINUED)	EXISTING VILLAGE	NEW VILLAGE
<p>Details of the ownership structure of the village (or the intended ownership structure) including:</p> <ul style="list-style-type: none"> • the legal nature of the operator (eg, individual, company, charitable trust) • any underlying freehold or other tenure interest (if any) in the village that is retained by the operator • the nature and extent of any registered or unregistered encumbrances, mortgages or security interests affecting the interests retained by the operator, and the amount of money secured. <p><i>(This information should be set out in your Disclosure Statement – Regulation 14, General Regulations.)</i></p>	✓	✓
<p>Details of the type of occupancy rights offered to residents of the village, or to be offered to intending residents of a new village (for example, freehold or leasehold titles, cross-lease titles, unit titles, leases, licences to occupy, residential tenancy agreements or other form of occupation agreement).</p> <p><i>(This information should be set out in your Disclosure Statement and the Occupation Right Agreement – Regulations 7 and 14, General Regulations.)</i></p>	✓	✓

WHAT YOU MUST PROVIDE WITH YOUR APPLICATION (CONTINUED)	EXISTING VILLAGE	NEW VILLAGE
<p>Details of any consideration paid (or to be paid) by residents for their occupation right, whether it be a lump sum payment or deduction, a contribution or a payment in kind in any form, a periodic payment or deduction, or a combination of payments and deductions.</p> <p><i>(This information should be set out in your Disclosure Statement – Schedule 2, Retirement Villages Act and Regulation 20, General Regulations.)</i></p>	✓	✓
<p>Full financial statements of the village and the operator and, if the village is part of a wider legal ownership structure, of all related entities (financial forecasts for new villages).</p>	✓	✓
<p>Details of the nature, resources and business history of the operator and manager (if different) – including details as to the skills, experience, resources and qualifications of the operator/manager; evidence of the character of the operator/manager; and details of the professional indemnity insurance cover held by the operator.</p>	✓	✓
<p>Details of the extent to which the residents of the village have control of the management of the village.</p>	✓	

WHAT YOU MUST PROVIDE WITH YOUR APPLICATION (CONTINUED)	EXISTING VILLAGE	NEW VILLAGE
Details of the operational record of the village – including details such as the complaints facility it has operated, the minutes of its residents’ meetings over the past 2 years, details of the village’s banking arrangements, and details of the village’s insurance cover.	✓	
Details of any plans to develop or redevelop any part of the land on which the retirement village is situated, or to acquire any contiguous land for development (if any).	✓	

What happens after the Registrar receives my application?

If all of the information is supplied with the application, the Registrar expects to consider and determine the application within 20 working days. If additional information is required, or there are disputed issues or technical issues requiring external investigation or advice, it may not be possible for the Registrar to consider and determine the application before these additional steps are completed. A decision in writing, containing reasons, will then be sent to you.

What terms and conditions may the Registrar place on operators?

The Registrar may make an exemption with terms and conditions, and for the period, that the Registrar thinks appropriate. It is likely that any exemptions granted will be conditional on requirements to conduct meetings, report to the Registrar, and comply with financial reporting requirements, as well as any other conditions considered appropriate by the Registrar in the circumstances of any particular case.

No exemption can be granted for an unlimited period. It is unlikely that the duration of any exemption will be greater than a period of 5 years, but a further exemption may be sought at that time if the village still qualifies.

I want to find out more – where do I go?

The Registrar of Retirement Villages is based in the Companies Office, part of the Ministry of Economic Development

The Registrar of Retirement Villages can provide more information on the registration process and exemption from appointing a statutory supervisor. Call 0800 268 269 or visit: www.retirementvillages.govt.nz for more information.

The Department of Building and Housing

The Department of Building and Housing administers the Retirement Villages Act 2003 and can answer your general queries about the Act. Call 0800 83 62 62 or visit www.dbh.govt.nz/retirement-villages

The Law

Copies of the Retirement Villages Act 2003 and its Regulations can be purchased from Bennetts (Government Book Shop) or can be viewed free of charge by visiting: www.legislation.govt.nz

The Retirement Villages Code of Practice 2006 is deemed a Regulation. The Code of Practice can be downloaded from the Department of Building and Housing's website www.dbh.govt.nz/retirement-villages or bought from VicBooks (phone 0800 370 370).

Operators must:

- include a copy of the Code of Residents' Rights as part of the disclosure information for intending residents
- give a copy of the Disclosure Statement to each existing resident by 1 May 2008
- make a copy of the Code of Practice and Deed of Supervision available to residents (eg, operators could place copies of each in the village library or manager's office).



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