

Thinking About Retirement Village Living?

A practical guide to Occupation Right Agreements in New Zealand



Before you choose a retirement village

Understand the agreement, compare the costs and know the questions to ask before you sign.

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Moving into a retirement village is a big decision

Choosing a retirement village isn't just about finding a home you like. You're also entering into a legal and financial arrangement that can be quite different from owning a residential property. In most New Zealand retirement villages, you'll be asked to enter into an Occupation Right Agreement (ORA). This generally gives you the right to live in a particular unit, villa or apartment, but does not give you ownership of the property itself.

The terms of your ORA can affect:

- What you pay when you move in
- What you pay while you live there
- Whether you benefit from increases in the value of your unit
- What happens if your circumstances change
- What you're responsible for when you leave
- How much money you receive back
- When that money is repaid
- What happens to the agreement if you die

Every village and agreement can be different, so understanding the detail before you commit is important.

Five things to know before you start

1. You're usually buying a right to occupy, not the property itself.
2. A Deferred Management Fee can significantly affect how much you eventually receive back.
3. You may not receive the capital gain if your unit increases in value.
4. The timing of your repayment when you leave can vary between villages.
5. Independent legal advice is required before entering into an Occupation Right Agreement.

A useful mindset

Don't just compare the units and facilities when considering villages. Compare the ORAs too.



Acronyms & terms at a glance

Retirement village documents can contain unfamiliar terms.

Keep this page handy while reading your agreement or comparing villages.

Term	Means	In plain English
ORA	Occupation Right Agreement	The legal agreement that gives you the contractual right to occupy a retirement village unit, villa or apartment. It usually does not give you ownership of the property.
DMF	Deferred Management Fee	A fee commonly charged when an ORA ends. It may also be called a Membership Fee or Amenities Fee and is usually calculated as a percentage of the original entry payment.
EPA	Enduring Power of Attorney	A legal document appointing someone to make decisions in the circumstances covered by the EPA. There are separate EPAs for Property and for Personal Care and Welfare.
Statutory Supervisor		The independent supervisor that typically protects residents' occupation rights and oversees aspects of the retirement village's legal obligations.
Relicensing		The process of the retirement village granting the right to occupy your former unit to a new resident. Some ORAs link repayment to relicensing.
Refurbishment		Work undertaken to refresh or update a unit after an ORA ends. Your agreement should explain whether any refurbishment costs can be deducted from your repayment.
Reinstatement		Work needed to return the unit to the condition required under the ORA, including where alterations have been made.
Capital gain		An increase in the value of the unit. Many ORAs do not give the resident the same entitlement to capital gains as traditional home ownership.
Capital loss		A decrease in value. Some agreements may provide that the resident bears part or all of a capital loss.
Probate		The formal process usually required to confirm authority to administer a deceased person's Will before estate matters, including some ORA repayments, can be completed.

What exactly is an Occupation Right Agreement?

An Occupation Right Agreement, sometimes called an occupation licence or licence to occupy, is the most common legal arrangement used by New Zealand retirement villages. It gives you a contractual right to live in a particular unit, villa or apartment within the village, subject to the terms of the agreement. In most cases, the village operator retains ownership of the property. That means you generally won't be named on the certificate of title and cannot usually register a mortgage or caveat against the property. Your occupation rights are typically protected by the village's Statutory Supervisor.

Can my family trust hold the ORA?

Possibly. Some retirement villages allow an Occupation Right Agreement to be held by a family trust, while others require the agreement to be held personally by the resident. If you have a trust or wider asset-planning arrangements, raise this before you commit to a village.

Feature	ORA	Traditional home ownership
Own the property	Usually no	Yes
Name recorded on title	Usually no	Yes
Can register a mortgage	Usually no	Yes
Capital gain entitlement	Depends on agreement	Usually retained by owner
Deferred Management Fee	Common	No
Protected by Statutory Supervisor	Yes	No

The important question

Don't simply ask: 'How much does the unit cost?' Also ask: 'What am I actually receiving in return for my entry payment?'

Understand the full cost

When comparing retirement villages, it's easy to focus on the amount required to move in. But your ORA may also contain a range of ongoing and exit costs.

While you're living in the village

Village outgoings: Most villages charge regular fees to help meet the costs of operating and maintaining the village and its facilities.

User-pays services: Cleaning, meals, home support, medical care, hairdressing and other services may be charged separately.

Utilities: Depending on the village, you may be responsible for electricity, gas, telephone, internet and other utilities.

Administration fees: Some villages charge administration fees when particular goods or services are provided through the village.

When your ORA ends

- Deferred Management Fees
- Exit fees
- Refurbishment costs
- Reinstatement costs
- Other deductions specifically permitted under your agreement.

Questions to ask

- ☐ What regular fees will I pay?
- ☐ What's included in those fees?
- ☐ Which services cost extra?
- ☐ Which utilities am I responsible for?
- ☐ Are there administration charges?
- ☐ What can be deducted when I leave?

The Deferred Management Fee

Many retirement villages charge a Deferred Management Fee (DMF), sometimes called a Membership Fee or Amenities Fee.

A DMF commonly represents between 20% and 30% of the original entry payment and usually accrues over a period of several years.

If your ORA ends before the accrual period is complete, part of the fee may not yet have accrued. Once the accrual period has been reached, the full fee will often become payable. Because this fee is generally taken into account when your ORA ends, it can have a significant impact on the amount you receive back.

Don't just ask what the percentage is

- ☐ What amount is the percentage calculated on?
- ☐ How does the DMF accrue?
- ☐ Over how many years?
- ☐ When does it reach its maximum?
- ☐ What happens if I leave before then?
- ☐ Does transferring to another unit trigger another DMF?

A useful comparison

If you're considering more than one retirement village, write down the DMF arrangements for each. A different entry price doesn't necessarily mean a better long-term financial outcome.

Can your fees increase?

Village fees often increase over time. Whether a particular fee can increase, how the increase is calculated and whether there are any limits will depend on your ORA and the village's operating structure.

Before signing, find out:

- ☐ Which fees can increase?
- ☐ How are increases calculated?
- ☐ How often can they be reviewed?
- ☐ Are any increases capped or limited?
- ☐ What consultation rights do residents have?

This is particularly worth considering if you're budgeting for retirement village living over many years.



What happens to capital gains?

One of the biggest differences between an ORA and traditional home ownership can be what happens if the value of your unit increases.

Many Occupation Right Agreements do not entitle residents to receive the increase in value when the unit is eventually relicensed to a new resident.

Some villages offer capital gain sharing arrangements, but these are not universal.

There is another side to consider too. Some agreements may provide that residents bear part or all of any capital loss.

Before signing, get clear answers to both questions

If the value goes up, who receives the gain? If the value goes down, who carries the loss?

Don't assume the arrangement works like selling a home you own.

Think about leaving before you move in

It may feel strange to think about leaving a retirement village before you've even moved in, but this is one of the most important parts of your agreement. When your ORA ends, the amount repaid to you will generally be determined according to the agreement.

Your repayment may be reduced by:

- Deferred Management Fees
- exit fees
- refurbishment costs
- reinstatement costs
- other deductions specifically permitted under your ORA.

The repayment formula can differ significantly between villages.

The questions worth asking now

- ☐ How is my repayment calculated?
- ☐ Exactly what can be deducted?
- ☐ Who pays to refurbish the unit?
- ☐ Who pays for damage or reinstatement?
- ☐ What happens if I transfer rather than leave the village completely?



When do you actually get your money back?

How much you receive is only half the question. Another important consideration is when you'll receive your repayment.

Some ORAs provide for repayment within a specified timeframe and/or that interest is payable if not repaid by a certain date.

Others link repayment to the unit being relicensed or occupied by a new resident.

This can become particularly important if you need the money to pay for:

- Another home
- A different retirement village
- Higher-level care
- Other significant costs.

Ask:

- ☐ Is there a guaranteed repayment timeframe?
- ☐ Does the unit need to be relicensed first?
- ☐ What happens if relicensing takes longer than expected?
- ☐ Will I receive any interest?
- ☐ When do my ongoing village fees stop?

Don't leave this question until you're ready to leave.

Understand the repayment provisions before you move in.



It's your home: check the rules that matter to you

The legal and financial provisions aren't the only things worth checking. The ORA and village rules may also affect how you live in your new home.

Family and friends

- ☐ Can family stay overnight?
- ☐ Are extended visits permitted?
- ☐ Could a caregiver live with you if needed?

Pets

- ☐ Can your pet come with you?
- ☐ Are there restrictions on size, type or number?

Your unit

- ☐ What alterations require approval?
- ☐ Can approval be refused?
- ☐ Do alterations become the property of the village?
- ☐ Could you be required to restore the unit when you leave?

These may seem like small details compared with the financial provisions, but they can make a big difference to your experience of living in the village.

What if your needs change?

Your circumstances may change over time. You might want a different unit or eventually need a higher level of care.

In many villages, transferring means ending your existing ORA and entering into a new agreement for the replacement accommodation. A further DMF may be payable.

The amount repaid under your existing agreement is often applied towards the cost of the new unit. Whether that amount is enough will depend on the village's pricing structure and the terms of the relevant agreements.

Ask before you move in:

- ☐ Can I transfer within the village?
- ☐ What happens to my existing ORA?
- ☐ Would I have to pay another DMF?
- ☐ How is my existing ORA repayment applied?
- ☐ What happens if the new accommodation costs more?

Even if you don't expect to need different accommodation now, understanding your options can help you plan ahead.



What happens if something goes wrong?

Fire, earthquake or flood

New Zealand's natural disaster risk makes this another important part of an ORA to understand. Many agreements provide that the village operator's obligation to repair or rebuild is linked to available insurance proceeds. If the insurance recovery is insufficient, or the operator decides not to rebuild, the agreement may be terminated in accordance with its terms.

Ask:

- ☐ What insurance arrangements apply?
- ☐ Is the operator required to rebuild?
- ☐ What happens if the village isn't rebuilt?
- ☐ How would my repayment be calculated following a major event?

What happens when a resident dies?

Your ORA should also be considered alongside your wider estate planning. In many cases, the agreement will terminate following the resident's death and repayment will become payable in accordance with the ORA. Probate of the resident's Will is usually required. Some agreements contain specific provisions for a surviving spouse, partner or other occupancy arrangements, so the actual terms of the ORA need to be considered.

Questions to consider

- ☐ What happens to the ORA when I die?
- ☐ Can my spouse or partner continue living there?
- ☐ When will my estate receive the repayment?
- ☐ Does repayment depend on the unit being relicensed?
- ☐ Are my Will and other estate arrangements consistent with what will happen under the ORA?



Don't forget your Will and Enduring Powers of Attorney

Moving into a retirement village is a good time to make sure your wider legal arrangements are up to date.

Most retirement villages require residents to have current Enduring Powers of Attorney and may require confirmation that appropriate estate planning arrangements are in place.

A current Will

Your Will sets out how your estate should be dealt with after your death.

Enduring Power of Attorney for Property

This appoints someone to deal with property and financial matters in the circumstances covered by the EPA.

Enduring Power of Attorney for Personal Care and Welfare

This appoints someone to make personal care and welfare decisions in the circumstances covered by the EPA.

These documents can become particularly important if you lose capacity or when your affairs need to be dealt with following your death.

THE ORA

- ☐ Am I purchasing the property or a right to occupy it?
- ☐ Who owns the land and buildings?
- ☐ Will my name be recorded on the title?
- ☐ Can my ORA be held by a family trust?

BEFORE I MOVE IN

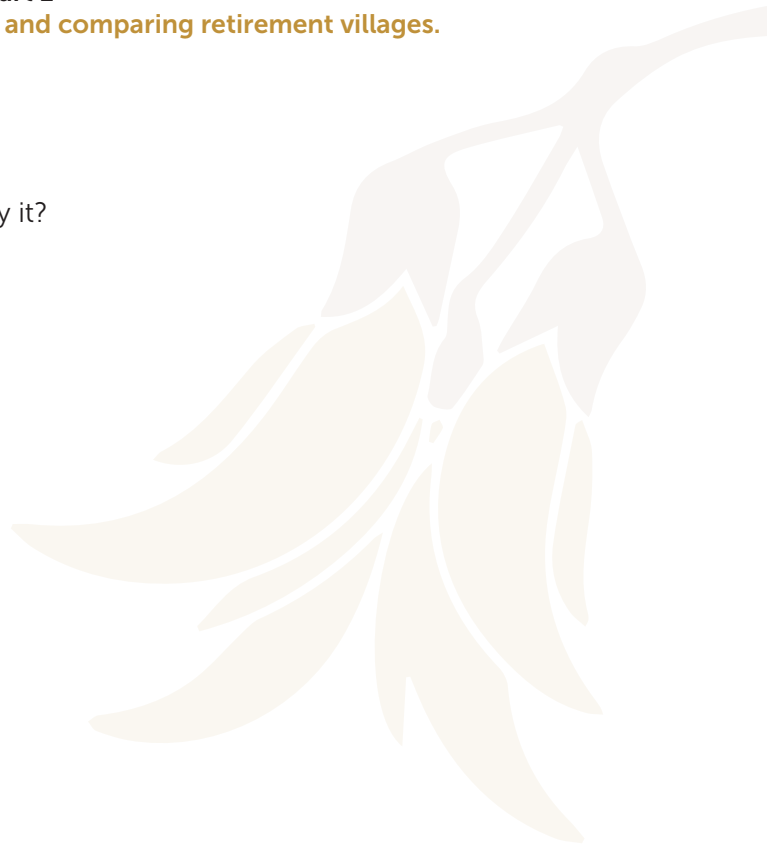
- ☐ What is the total entry payment?
- ☐ What other upfront costs apply?
- ☐ What exactly does my entry payment give me?

WHILE I LIVE THERE

- ☐ What regular village fees will I pay?
- ☐ What's included?
- ☐ What services are user-pays?
- ☐ What utilities am I responsible for?
- ☐ Are there administration fees?
- ☐ Which fees can increase?
- ☐ How are increases calculated?
- ☐ Are there any limits on increases?

THE DEFERRED MANAGEMENT FEE

- ☐ What is the DMF percentage?
- ☐ What amount is it calculated on?
- ☐ How does it accrue?
- ☐ When does it reach its maximum?
- ☐ What happens if I leave early?
- ☐ Could I pay another DMF if I transfer units?



CAPITAL GAIN AND LOSS

- ☐ Do I receive any increase in the value of my unit?
- ☐ If so, how is the gain calculated?
- ☐ Am I responsible for any capital loss?

WHEN I LEAVE

- ☐ How will my repayment be calculated?
- ☐ What will be deducted?
- ☐ Are there exit fees?
- ☐ Who pays for refurbishment?
- ☐ Could reinstatement costs be deducted?
- ☐ When will my repayment be made?
- ☐ Does repayment depend on relicensing?
- ☐ Will I receive any interest?

LIVING IN THE VILLAGE

- ☐ Can family and friends stay overnight?
- ☐ Are extended visits permitted?
- ☐ Could a caregiver live with me?
- ☐ Can I bring my pet?
- ☐ Are there restrictions on pets?
- ☐ Can I alter my unit?
- ☐ What approvals would I need?

IF MY NEEDS CHANGE

- ☐ Can I transfer to another unit?
- ☐ Can I move to a higher level of care within the village?
- ☐ Would my current ORA end?
- ☐ Would I enter into a new ORA?
- ☐ Would another DMF apply?

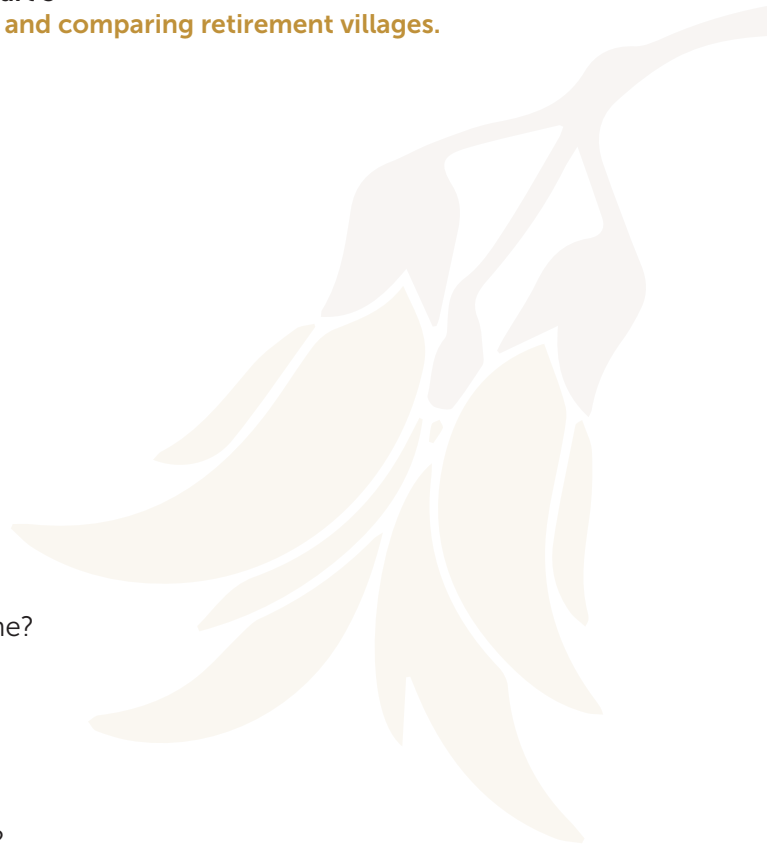


IF SOMETHING HAPPENS TO THE VILLAGE

- ☐ What happens after fire, earthquake or flood?
- ☐ What insurance arrangements apply?
- ☐ Is the village required to rebuild?
- ☐ What happens if it doesn't?
- ☐ How would my repayment be calculated?

MY ESTATE PLANNING

- ☐ What happens to the ORA when I die?
- ☐ What happens if my spouse or partner survives me?
- ☐ When would my estate receive the repayment?
- ☐ Is my Will current?
- ☐ Do I have an EPA for Property?
- ☐ Will I have an EPA for Personal Care and Welfare?
- ☐ Have I obtained independent legal advice before signing?



Comparing retirement villages?

Use this page to record the key differences between the villages you're considering.

What to compare	Village 1	Village 2	Village 3
Entry payment			
DMF			
Years until maximum DMF			
Ongoing village fee			
Fee increases			
Capital gain entitlement			
Capital loss responsibility			
Exit/refurbishment costs			
Repayment timeframe			
Relicensing required?			
Pet policy			
Transfer arrangements			
Further DMF on transfer?			
Other notes			

Remember

The unit, facilities and location matter.
So do the terms of the agreement.

Independent legal advice isn't just a formality

Prospective residents are required to obtain independent legal advice before entering into an Occupation Right Agreement and provide the required solicitor's certification.

That process is an opportunity to make sure you understand what you're agreeing to. Bring your questions with you.

Your occupation rights: What you're actually acquiring and the restrictions that apply.

Your financial obligations: DMFs, ongoing fees, increases and other costs.

Your exit arrangements: What you receive back, what may be deducted and when repayment occurs.

Changes in your circumstances: Transfers, care needs, capacity and death.

Your wider planning: Including your Will and Enduring Powers of Attorney.



Meet our Elder Law team

Practical legal advice for retirement village living and planning ahead

Our Elder Law team helps clients navigate the legal decisions that can come with later life, from reviewing Occupation Right Agreements and retirement village arrangements to Wills, Enduring Powers of Attorney, trusts and estate planning.

If you're considering moving into a retirement village, we can review your agreement, explain what it means in plain English and help you understand the legal and financial implications before you sign.

With more than 25 years' legal experience, Carolyn has particular expertise in Elder Law, estate planning and disputes involving Wills, trusts and retirement villages.

She regularly advises clients considering retirement village living, including reviewing Occupation Right Agreements and helping clients understand the legal and financial implications before they sign. Carolyn's expertise in this area has also seen her provide expert input to Te Ara Ahunga Ora Retirement Commission on retirement village arrangements and proposed reforms.

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