

## PRESENTER



### **Katherine Wilmott, Katherine Wilmott Legal Ltd, Rangiora**

Katherine is a sole practitioner with her own law practice Katherine Wilmott Legal Ltd in Rangiora. Katherine deals mainly with property law including assisting our precious older folk. She is involved in her local community and has given many talks and written articles for Grey Power and similar groups in the Rangiora area. Katherine is currently serving on the Executive of the Property Law Section of the Law Society.

*The statements and conclusions contained in this paper are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.*

# CONTENTS

|  |          |
|--|----------|
| <b>OCCUPATION RIGHT AGREEMENTS: A FRESH LOOK .....</b>           | <b>1</b> |
| INTRODUCTION .....   | 1        |
| BACKGROUND .....   | 1        |
| BACK TO THE LEGAL BASICS .....                                   | 2        |
| <i>Governing Law</i> .....                                       | 2        |
| <i>The ORA Itself - generally</i> .....                          | 3        |
| <i>Security</i> .....  | 3        |
| RESIDENTS .....  | 4        |
| <i>Residents' Benefits</i> .....                                 | 4        |
| <i>Resident's Obligations/Responsibilities</i> .....             | 4        |
| RETIREMENT VILLAGE.....  | 5        |
| <i>Retirement Village's Responsibilities</i> .....               | 5        |
| ENDING THE ORA.....  | 6        |
| <i>Right to Cancel – 15 working day cooling off period</i> ..... | 6        |
| <i>Money Back Guarantee – 90 Days</i> .....                      | 6        |
| <i>Death</i> .....   | 6        |
| <i>Resident Leaves</i> .....                                     | 6        |
| <i>Medical Grounds</i> .....                                     | 6        |
| <i>Abandonment</i> .....   | 7        |
| <i>Material Breach</i> .....                                     | 7        |
| <i>Serious Damage/Harm</i> .....                                 | 7        |
| <i>Destructive Event</i> .....                                   | 7        |
| <i>Right to Sell</i> .....                                       | 7        |
| THE DEFERRED MANAGEMENT FEE – THOSE SCARY FIGURES .....          | 8        |
| <i>An example:</i> .....   | 8        |
| ACCOMPANYING DOCUMENTS.....                                      | 10       |
| <i>Disclosure Statement</i> .....                                | 10       |
| <i>Code of Practice</i> .....                                    | 10       |
| <i>Code of Resident's Rights</i> .....                           | 10       |
| <i>Application</i> .....   | 10       |
| LAWYER'S RESPONSIBILITY.....                                     | 11       |
| FAMILY TRUSTS AND OCCUPATION RIGHT AGREEMENTS .....              | 11       |
| <i>Prudent Trustee Rule</i> .....                                | 12       |
| <i>Options for Trustees:</i> .....                               | 14       |
| <i>Indemnity clauses for Trustees</i> .....                      | 14       |
| <i>Trustees Making Information Available</i> .....               | 14       |
| <i>Estates and Occupation Right Agreements</i> .....             | 15       |
| <i>Family Involvement</i> .....                                  | 15       |
| <i>Good co-operation from Retirement Villages</i> .....          | 15       |
| CONCLUSION .....   | 16       |