

## **PRESENTERS**

### ***John Greenwood, Chapman Tripp, Wellington***

A partner at Chapman Tripp, John is the former deputy chair of the Property Law Section. He currently co-convenes the section's Land Titles Committee, edits the New Zealand Property Lawyer and moderates the Land Law and Equity university papers for the New Zealand Council of Legal Education. John was principal external adviser to the Ministry of Social Development on the draft of the Retirement Villages Act.

### ***Simon Marks, Anthony Harper, Christchurch***

Simon has been a partner of Anthony Harper in Christchurch since 1980 and specialises in retirement village developments and securities law. He assisted the Retirement Villages Association of New Zealand Inc. to develop an industry standard Code of Practice for adoption under the new Retirement Villages Act, and a "one size fits all" plain English occupation right agreement for adoption by RVA members/industry participants under the new legislation.

# CONTENTS

<b>1. INTRODUCTION.....</b>	<b>1</b>
Concept of retirement villages .....	1
Reform process.....	4
Policy behind the introduction of the Act .....	5
What examples of abuse?.....	6
<b>2. RETIREMENT VILLAGES ACT 2003 .....</b>	<b>9</b>
Purpose statement in the Act.....	9
The structure of the Act.....	9
Regulations.....	10
Omissions from existing legislation.....	11
<b>3. REGISTRATION OF ALL RETIREMENT VILLAGES.....</b>	<b>13</b>
Section 6 - Meaning of retirement village.....	13
The registration process.....	13
Section 10 - retirement villages to be registered .....	13
Section 12 – Registration of existing retirement villages.....	14
Schedule 1 .....	15
Section 25 – No offer of occupation or advertising, unless Retirement village registered .....	15
Section 13 – Annual return.....	16
Section 15 – Registration to be continuous.....	16
Section 17 – Operator to notify change of circumstances in documentation .....	16
Section 18 – Suspension of registration .....	17
Section 19 – Cancellation of registration .....	17
Section 21 – Memorial on certificates of title of retirement villages .....	17
Section 22 – Effect of memorial.....	17
Section 23 – Memorial and loss of registration.....	18
Section 24 – Receiver, liquidator or statutory manager must ask statutory supervisor to represent residents .....	18
<b>4. DISCLOSURE STATEMENTS .....</b>	<b>19</b>
<b>5. OCCUPATION RIGHT AGREEMENTS.....</b>	<b>23</b>
Section 27(1) – Occupation right agreement.....	23
Section 28 – Cooling off period/cancellation for delay.....	24
Section 29 – Deposits and other monies must be independently held .....	25
Section 30 – Information to be provided (prior to contract) .....	25
Section 31 – Occupation Right Agreement voidable .....	25
Section 32 – Retirement villages to have Code of Residents' Rights.....	27
Section 33 – Distribution of Code of Residents' Rights.....	28
Section 89 – Code of Practice must be prepared and published .....	28
<i>Staffing .....</i>	<i>29</i>
<i>Safety and personal security of residents.....</i>	<i>29</i>
<i>Fire protection and management of emergencies .....</i>	<i>29</i>
<i>Transfers of residents within village.....</i>	<i>29</i>
<i>Meetings of residents and resident involvement.....</i>	<i>29</i>

<i>Complaints facility</i> .....	29
<i>Accounts</i> .....	29
<i>Maintenance/upgrading</i> .....	30
<i>Termination of occupation right agreement</i> .....	30
<i>Communication</i> .....	30
Section 90 – Duration and variation of Code of Practice.....	30
Section 92 – Status of Code of Practice .....	31
<b>6. WATCHDOG .....</b>	<b>33</b>
Dispute resolution .....	33
Role of the Retirement Commissioner .....	35
Role of statutory supervisors.....	36
Policing regime .....	39
<b>7. THE ROLE OF THE LAWYER.....</b>	<b>41</b>
Explanation and Certification.....	41
Role in disputes .....	41
Advising the client resident.....	42
Advising the client owner .....	44
Statutory supervisors .....	44
Holders of security interests .....	44
<i>Ownership, Wills, Trusts and Property Sharing Agreements</i> .....	45
<i>Taxation</i> .....	46
<b>8. DRAFT CHECKLIST FOR RESIDENTS .....</b>	<b>47</b>
Why the move?.....	47
Status of village.....	47
Ownership and management structure .....	47
Village security and amenities.....	47
Financial issues at entry, ongoing and point of sale .....	48
Health care facilities .....	49
Use and enjoyment threats .....	49
Statutory supervisor.....	49
Complaints facility and dispute resolution.....	49
Security of tenure .....	50
Personal client affairs .....	50
<b>APPENDIX 1 – RYMAN HEALTHCARE LTD STRUCTURE.....</b>	<b>51</b>
<b>APPENDIX 2 - DRAFT DISCLOSURE STATEMENT .....</b>	<b>71</b>
<b>APPENDIX 3 – HISTORICAL INVESTMENT DISCLOSURE STATEMENTS ...</b>	<b>79</b>
<b>APPENDIX 4 – SCHEDULE FORM OF WARNING .....</b>	<b>109</b>
<b>APPENDIX 5 – ACT PARTY MINORITY VIEW.....</b>	<b>111</b>
<b>APPENDIX 6 – RETIREMENT VILLAGES ASSOCIATION OF NZ CODE OF PRACTICE .....</b>	<b>113</b>
<b>APPENDIX 7 – DEED OF PARTICIPATION .....</b>	<b>119</b>