



## Retirement village life

### The upside (and downside) of downsizing

New Zealand's ageing population has created a boom for retirement villages, with record numbers being developed. For many looking to retire or slow down, retirement village living is attractive – and it's not hard to see why. A new apartment or cottage in a secure, well-maintained environment, offering a lock-up-and-leave lifestyle, and providing resort-like facilities such as cafes, gyms, pools, bowling greens, libraries and men's sheds can be very appealing.

Many clients tell us how happy they are to have made the move, some even say they wish they had done it sooner, but retirement village living is not for everyone. It's important to think carefully about what this move means for you – both financially, and in terms of your current and future needs.

### Consider carefully

Do your homework and consider your options. Why do you want to live in a retirement village? Will this move meet your needs in the future? What happens if your health or financial circumstances change? Have you considered the alternatives? Do your family and friends support a move?

We recommend you visit as many villages as you can, including those close to where you live now (you may want to keep up connections to clubs and your social circles), and talk with family and friends about their villages and about your intentions. You'll want their support to make sure the move is right for you.

You should also look at other options such as staying in your current home (or downsizing to a smaller one) and bringing in help for gardening and maintenance, having home carers visit, using driving services and so on. If you are 'house rich but cash poor', you could consider taking out a reverse mortgage although this should be investigated fully beforehand.

### Retirement village essentials

A 'licence to occupy' is the most common structure used for retirement villages. This licence gives you the right to live in a unit for your lifetime. If a couple owns a licence it continues until the survivor has died. It is usually called an Occupation Rights Agreement (ORA).

## IN THIS ISSUE >>

- 1 Retirement village life
- 3 Guest Editorial: New Zealand has the perfect business environment to develop blockchain technology
- 4 Make sure you have a will
- 5 Enforceable undertakings
- 6 Postscript



**CRUICKSHANK PRYDE**  
BARRISTERS & SOLICITORS

As residents, you won't actually own the unit and are unable to sell or lease it (including renting it out as an Airbnb property). When you purchase a license to occupy you will sign an application and pay a deposit. You must be provided with a package of the documents (including the ORA and a disclosure statement) setting out your rights and obligations. It explains the financial implications of the purchase, provides details of development plans, village rules, policies, shared facilities and much more.

You should read all this material, and then bring it in to us. The legislation requires us to complete a formal certificate to confirm that we have explained the nature and effect of these documents to you and that you understand them before you sign.

It's worthwhile remembering that you do not own any part of the village land or the buildings so you don't usually benefit from any capital gain or carry any capital loss (although some ORA documents do have different provisions).

## The cost of retirement

It is standard practice for the village to deduct a 'deferred management fee' which covers the cost of operating and maintaining the village. It usually ranges from 20%–30% of the ORA purchase price. It is accumulated over the first two to five years that you occupy your unit, but will not be deducted until your unit has been sold to a new resident. At that time the village will pay you a repayment sum, less any fees you owe to the village, any costs of repair or reinstatement and the deferred maintenance fee. This means that when you leave the retirement village, you will receive a sum significantly less than the price you paid for the right to occupy your unit.

Residents collectively contribute to the village outgoings (such as insurance and rates) through a regular outgoings fee. This fee is usually fixed for the duration of the ORA. However, increases may be linked to annual CPI increases or New Zealand Superannuation, or may be increased on notice from the village.

You will also pay for telephone, power, internet or SKY tv. You will need to consider whether you will be in a position to pay any increasing utilities costs. It may be fine when there are two of you, but may be harder if one of you dies. If you are unable to pay your fees, some villages will let the fees accumulate in their books until you sell – meaning there will be less cash on terminating the ORA, but you can continue living in your unit.

However, there is now some relief in relation to the costs of living in a village. Recent law changes mean that a resident who meets the financial eligibility criteria can request a partial refund of their contribution to their village's rates payment. It's a similar situation as if you owned your home.

## What happens when I move out?

On termination, the deferred management fee and any other outgoings you owe the village will be deducted from your repayment sum. Your monthly or weekly fees are likely to continue until a new resident is found.

Some ORA documents allow the village to charge a percentage of your original purchase price as an 'administration fee' when you terminate. You may also be charged for the village's legal fees for arranging the end of your ORA.

If you move from one unit to another in the same village (or to a new unit in a village owned by the same operator) your ORA may allow the village to charge you a transfer fee.

If your unit is modified to meet your needs, you will usually pay the extra costs. On termination, the alterations may need to be removed, also at your cost.

When you vacate your unit it will be inspected to assess what work needs to be done before it can be offered to a new resident. Although you are not liable for fair wear and tear, you are liable for repairs.

When you terminate, most ORAs record that you cannot receive the repayment sum until an incoming resident pays for the new ORA. This means you or your family may wait months for the cash. Some villages, however, now offer an advance part-repayment so that you can pay a deposit on a new home or to assist your family with costs if you have died.

## Lifestyle village or full-care village?

Is a lifestyle village or a full-care village right for you? The former offers independence but within a secure community – sometimes with access to shared recreational facilities. The latter offers independent living units as well as a rest home and private hospital facilities.

If you are in a lifestyle village and your or your partner's health fails, you may need to move to another village offering more care or to a rest home. It may be that if one partner is moved to a rest home, the other must remain in the unit until it is sold, which will make life more difficult and costly.

Moving from one village to another can be expensive – the deferred management fee is deducted for your unit on termination, so you will have less to spend on a new unit. In addition, a new ORA will start the clock again on another deferred management fee. However, if you move between villages owned by the same operator you can often arrange for a credit of the deferred management fee from your old unit to the new one (so you only pay this once).

Retirement villages are here to stay and are increasingly popular. They can be a great option for many people. However, our advice is to look around and do your homework, make sure your family is aware of your choice and speak to us for advice. We are always happy to help. ✨

# New Zealand has the perfect business environment to develop blockchain technology

By Reuben Tucker, ANZ Head of Transaction Banking for New Zealand and the Pacific

While there's been a lot of hype around cryptocurrencies, it's the underlying blockchain technology that has the potential to solve real business problems, particularly here in New Zealand.

Blockchain is a secure and decentralised way of sharing data and transactions. This means that every event and every transaction is time-stamped and stored in digital 'blocks', which become part of a growing chain and a permanent record that cannot be altered or tampered with because it is accessible to all those who can access the ledger.

It's a revolutionary way to do business. With our innovative culture, good skills and businesses that know each other, New Zealand is an ideal petri-dish to develop blockchain technology. A recent panel of blockchain experts also agree.

"New Zealand has all the ingredients a country needs to develop blockchain technology inside its own borders," says Rupert Colchester, IBM New Zealand and Australia's Head of Blockchain.

The comments were made at a panel discussion into how blockchain technology can be applied to solve problems at the local-businesses level.

"The business ecosystems in both Australia and New Zealand are nicely 'packaged', making testing of new technologies like blockchain easier," says Mr Colchester. "A tight business community gives you a real advantage."

"The important step is now developing a strategic approach, which starts with looking at business problems and building an ecosystem of participants and beneficiaries around the solution to these problems."

The panel – part of an event hosted by ANZ and run for businesses in Auckland, Wellington and Christchurch – heard that in New Zealand, and indeed globally, there has

been growing interest in cryptocurrency and its underlying technology, blockchain.

It's estimated that by the end of 2020 more than US\$2.1 billion will be spent developing blockchain solutions and blockchain's market value will be US\$3 trillion by 2024.

IDG Connect research shows approximately 13% of senior IT managers have plans to implement blockchain, illustrating the importance of ensuring management and boards understand the implications of this technology.

Two companies leading the innovation in New Zealand are New Zealand Post and Air New Zealand.

Earlier this year New Zealand Post announced it was working with Chinese e-commerce giant Alibaba to use blockchain to improve supply chain transparency and food safety assurances with partners Fonterra and Blackmores.

New Zealand Post Manager Strategy and Strategic Partnerships Dene Green says blockchain is an important tool in supply chain management. "Blockchain is a game changer as it provides trust and security across the supply chain."

"New Zealand's brand is so closely aligned to premium food products, so it makes sense to have greater visibility across the whole supply chain."

For instance, Hui Māori Collective, a group of 11 New Zealand companies, will soon launch on one of China's e-commerce platforms, Tmall Global, due to a partnership with New Zealand Post and AsureQuality. ANZ and Centrality are also involved in providing a blockchain solution for the quality assurance framework. Providing this trust to Chinese consumers will be a compelling point of difference for the Collective.

This type of technology could also become the catalyst for a profound change in the financing model for the production of food and its supply chain. \*



# Make sure you have a will

## Gives comfort to your family

New Zealanders need to find time to sit down and make sure they have a will. We all know this is important but how many of us don't get around to it? Recent research by the Commission for Financial Capability has shown that only 47% of Kiwi adults have a will and the figures are worse for women, Māori and Pasifika. This survey of 2,000 New Zealanders found that only 44% of women have wills compared with 51% of men. These statistics are concerning when you consider the devastating effects that not having a will can have on your family.

## Why should you have a will?

A will is often described as your final letter to your family. We agree with this but would add that your will is a legal document that gives instructions on what you want to happen to your personal assets after your death. Your will can also include matters such as the appointment of guardians for your children, what happens to any family heirlooms, whether you would like to be buried or cremated, or even who you would like to look after your beloved pet. Your will can relieve financial and emotional strain on your family, and help minimise the likelihood of disputes about your estate.

## What do you need to think about before making your will?

Making a will is a relatively straightforward process, if done correctly. Before coming in to see us you will need to think primarily about who you would like to leave your assets to (any property, cash and personal effects) and who you would like to appoint as the executor/s of your will. Your executors administer your estate and are responsible for carrying out your wishes.

When we meet with you we will talk about your assets, any debts and also names of people, and any charities, to whom you want to leave things, as well as any trusts or relationship property agreements you may have.

We will draft your will and get you to check it. After you have confirmed you are happy with it we will arrange for you to sign your will and for it to be witnessed.

It is also important to keep in mind that when you have a change of circumstance such as a relationship breakdown or the death of a close family member, you should review your will as it may need updating. You should always regularly review your will, say, every five years.

## What happens if you die without a will?

If you die without a will, it's called dying 'intestate'. Having no will can create great uncertainty and stress for your family during an already difficult time. It also means that your family has to make a number of difficult decisions, including who will administer your estate.

What is particularly difficult is that your assets will be distributed in accordance with the Administration Act 1969. This may mean that, in some instances, your assets may not go to the person you would have intended them to go. In a standard situation your assets will be split between your spouse/partner and your children; this has the potential to cause a great deal of difficulty, particularly if there is a blended family situation. To compound matters, dying intestate almost always means that your estate may be subject to costly legal bills simply because there is more legal work involved in an intestacy situation.

---

*You should always regularly review your will, say, every five years.*

---

Many Kiwis think that making a will is something that they will deal with later but, in many cases, 'later' never seems to come. The Retirement Commissioner, Diane Maxwell, has commented that ultimately a will is "an act of love, made in advance" and that "in our last moments, we want our thoughts to be peaceful, happy and reflective, and to feel secure that our will has everything sorted for the people we're leaving behind". As far as your family is concerned, it could be the most important paper you ever sign. ✨

# Enforceable undertakings

## An alternative to prosecution under health and safety legislation

Enforceable undertakings were introduced in the Health and Safety at Work Act 2015 (HSWA) as an alternative to prosecution. An organisation that has breached its health and safety obligations, and is under investigation by WorkSafe, can enter into a binding agreement with WorkSafe to remedy their breaches, rather than going through prosecution and sentencing. In this article we discuss the features of this alternative and the potential benefits of taking this path.

Enforceable undertakings are not an easier or lower cost alternative to prosecution, but there are other benefits to a business.

Firstly, by entering into an enforceable undertaking your organisation can avoid the cost, time and negative publicity associated with prosecution and sentencing, and avoid a significant fine.

Secondly, enforceable undertakings are required to address the breach, provide compensation for the victim and their family, and to also have a wider industry or community benefit. Organisations can ensure that even where a tragic accident has taken place, there can be positive outcomes.

### Common features

Since the HSWA came into force in April 2016, WorkSafe has entered into 21 enforceable undertakings. Common features are for an organisation to:

- Commit to address health and safety issues identified as a result of the breach or subsequent investigation, and to provide health and safety training to its workers to ensure the breach does not recur
- Provide compensation to the victim or their family (usually topping up the victim's ACC to 100% of their lost earnings and paying additional reparations) and, where possible, it commits to future assistance for the victim
- Agree to develop, fund and implement industry-wide initiatives to improve health and safety more generally across their industry. For example, Fletcher Construction was required to establish a health and safety forum with local hire companies, and
- Commit to a community-focused contribution or initiative. Examples include establishing tertiary health and safety scholarships, significant donations to charitable organisations, and public advertising campaigns on health and safety.

WorkSafe will not accept an enforceable undertaking where it does not provide benefits for the organisation, the victim, and the wider industry and community.

### Significant cost to undertake

Given the high costs of enforceable undertakings, an average of \$178,402, enforceable undertakings have proved popular with larger organisations that have the resources to negotiate and implement them (for example, Zespri, Downer and Fletcher Construction). It remains to be seen whether smaller organisations will also embrace enforceable undertakings, and how WorkSafe will take into account the financial and resourcing constraints those smaller organisations will face.

Prosecutions under the HSWA can have very serious consequences for your business, both financially and reputationally. If you are being investigated by WorkSafe, we highly recommend that you talk with us and consider whether an enforceable undertaking is the right path for you. \*

**NZ LAW Limited** is an association of independent legal practices with member firms located throughout New Zealand. There are 55 member firms practising in over 70 locations.

NZ LAW member firms have agreed to co-operate together to develop a national working relationship. Membership enables firms to access one another's skills, information and ideas whilst maintaining client confidentiality.

### Members of NZ LAW Limited

Allen Needham & Co Ltd – Morrinsville  
 Argyle Welsh Finnigan – Ashburton  
 Aspiring Law – Wanaka  
 Attewell Clews & Cooper – Whakatane & Rotorua  
 Berry & Co – Oamaru, Queenstown & Invercargill  
 Boyle Mathieson – Henderson  
 Breaden McCordle – Paraparaumu  
 Corcoran French – Christchurch & Kaiapoi  
 Cruickshank Pryde – Invercargill, Queenstown & Gore  
 Cullinane Steele – Levin  
 Daniel Overton & Goulding – Onehunga & Pukekohe  
 DG Law Limited – Panmure  
 Dorrington Poole – Dannevirke  
 Downie Stewart – Dunedin & Balclutha  
 Duncan King Law – Epsom, Auckland  
 Edmonds Judd – Te Awamutu & Otorohanga  
 Edmonds Marshall – Matamata  
 Gawith Burrige – Masterton & Martinborough  
 Gifford Devine – Hastings, Havelock North & Waipawa  
 Gillespie Young Watson – Lower Hutt, Upper Hutt & Wellington  
 Greg Kelly Law Ltd – Wellington  
 Hannan & Seddon – Greymouth  
 Horsley Christie – Wanganui  
 Innes Dean-Tararua Law – Palmerston North & Pahiatua  
 Jackson Reeves – Tauranga  
 James & Wells Intellectual Property – Hamilton, Auckland, Tauranga & Christchurch  
 Johnston Lawrence Limited – Wellington  
 Kaimai Law – Bethlehem  
 Knapps Lawyers – Nelson, Richmond & Motueka  
 Koning Webster – Mt Maunganui  
 Lamb Bain Laubscher – Te Kuiti  
 Law North Limited – Kerikeri  
 Le Pine & Co – Taupo, Turangi & Putaruru  
 Lowndes Jordan – Auckland  
 Mactodd – Queenstown, Wanaka & Cromwell  
 Malley & Co – Christchurch & Hornby  
 Mike Lucas Law Firm – Manurewa  
 Norris Ward McKinnon – Hamilton  
 David O'Neill, Barrister – Hamilton  
 Parry Field Lawyers – Riccarton, Christchurch; Rolleston & Hokitika  
 Price Baker Berridge – Henderson  
 Purnell Lawyers – Thames, Whitianga & Coromandel  
 Rennie Cox – Auckland & Whitianga  
 Rejthar Stuart Law – Tauranga  
 RMY Legal – New Plymouth  
 RSM Law Limited – Timaru & Waimate  
 Sandford & Partners – Rotorua  
 Sheddan Pritchard Law Ltd – Gore  
 Simpson Western – Takapuna & Silverdale  
 Sumpter Moore – Balclutha & Milton  
 Thomson Wilson – Whangarei  
 Wain & Naysmith Limited – Blenheim  
 Welsh McCarthy – Hawera  
 Wilkinson Rodgers – Dunedin  
 Woodward Chriss – Gisborne

# Postscript

## Inform your customers properly about extended warranties

In October, local computer retailer, PB Technologies, was fined \$77,000 in the District Court for not informing its customers of their rights under its extended warranties scheme. PB Technologies (PB Tech) had pleaded guilty to 14 charges brought by the Commerce Commission.

Over eight months in 2017, PB Tech sold more than 4,000 extended warranties but did not provide enough information for purchasers to properly understand the worth of these warranties. The extended warranties were sold in PB Tech's retail stores and online.

If you are a retailer offering extended warranties on your goods, we remind you that under the Fair Trading Act 1986, you should provide a comparison of the cover provided relative to that available under the Consumer Guarantees Act 1993.

You should also ensure your customers are provided with written and verbal information about their right to cancel the warranty and receive a refund if they change their minds within five working days. Customers should also receive a written copy of the warranty at the time of purchase.

Please contact us if you have any queries about this as the penalties for getting it wrong could be severe. \*

## Does ACC owe you money?

More than 300,000 business customers are in for a refund (including interest) from ACC due to two historical overpayment issues. ACC has apologised and said it will:

- Refund all first-year levies collected since 2002 from self-employed customers, who worked fulltime, ie: averaged over 30 hours per week across the financial year, and
- Make refunds to around 200,000 businesses that paid provisional invoices over the same period, in situations where they were not required to do so.

To check if you may be eligible for a refund, go here:  
<https://business.acc.co.nz/refunds/> \*

## Enjoy your summer break

Please stay safe this summer.

We wish you the all the best for a very Merry Christmas and a happy and prosperous 2019.

*Meri Kirihimete me te Hape Nū la \**

[www.cplaw.co.nz](http://www.cplaw.co.nz)

### **PARTNERS**

Tom Pryde  
Lester Smith  
Rex Chapman  
Murray Little  
John Pringle  
Keith Brown  
Phil McDonald  
Sarah Maguire  
John Bannerman

### **CONSULTANT**

Alan Burton

### **ASSOCIATES**

Anna Stevens  
Hilary Copland

### **PRACTICE MANAGER**

Lynley Price

Level 1, 20 Don Street  
PO Box 857  
Invercargill 9840  
Phone: 03-214 4069

Level 1  
311 Hawthorne Drive  
PO Box 91168  
Wakatipu 9349  
Phone: 03-441 2424

### **BANNERMAN CRUICKSHANK PRYDE**

5 Fairfield Street  
PO Box 185  
Gore 9740  
Phone: 03-209 0183

**Web:** [www.cplaw.co.nz](http://www.cplaw.co.nz)  
**Email:** [office@cplaw.co.nz](mailto:office@cplaw.co.nz)