



METHOD OF APPLICATION

1. An Application for an Occupation Right Agreement in Settler's Albany Limited must be made on the appropriate Application Form.
2. Completed applications on the forms attached should be forwarded to: Settlers Albany Limited, 550 Albany Highway, Albany 0632, Auckland.
3. Each application form must be accompanied by the initial deposit for the amount stipulated in the application form. The cheque should be made payable to: **Covenant Trustee Services Limited**.
4. Joint applications must be signed by both applicants.
5. Where applications are signed by an Attorney, a Certificate of Non-Revocation of Power of Attorney must be completed and a copy of the Power of Attorney must accompany the application for noting.

SETTLERS ALBANY

STANDARD TERMS OF APPLICATION FOR OCCUPATION RIGHT AGREEMENT

Standard Terms

1. These standard terms apply to and form part of the application form for an Occupation Right Agreement.

Application for Occupation Right Agreement

2. By signing and delivering the application form to Settler's Albany Limited, the applicant:
 - a) applies and subscribes for a licence under an Occupation Right Agreement in respect of the dwelling described in the relevant application form, on the terms and conditions set out in the Disclosure Statement incorporating the application form, including these standard terms of application;
 - b) authorizes the subscription for the licence in accordance with the Retirement Villages Act 2003; and
 - c) confirms that the applicant has received, read and understood the Disclosure Statement incorporating the application form, including the advice to the applicant to take professional advice from a solicitor or financial advisor before completing the application form.

Application subject to acceptance by Settler's Albany Limited

3. The application is subject to acceptance in writing by Settler's Albany Limited on or before the Acceptance Date. Settler's Albany Limited reserves the right to reject the application for any reason prior to acceptance of the application form by giving notice in writing to the applicant.
4. Acceptance of the application by Settler's Albany Limited will constitute a binding agreement between Settler's Albany Limited and the applicant for the Occupation Right Agreement giving the applicant a licence by Settler's Albany Limited to the applicant in respect of the dwelling.

Applicant's right to cancel application

5. Section 31 of the *Retirement Villages Act 2003* gives you the right to void an agreement that you enter into for the right to occupy a residential unit in a retirement village, but only if you enter into the agreement in the circumstances described in a row of the table below and the circumstances involve:
 - a) a significant detriment to you; or
 - b) a material (not merely technical or minor) breach of the Act; or
 - c) deliberate misconduct by the operator of the Village.

You can use the right only by giving written notice to the operator of the village, and the statutory supervisor (if there is one) of the village, within the period described in the relevant row of the table.

Circumstances

Period

The village was not registered, but was required to be.

3 years after you entered into the agreement or 6 months after you knew, or ought to have known, the circumstances existed when you entered into the agreement, whichever ends first.

Circumstances

Period

The registration of the village was suspended and the operator had been notified of the suspension.

3 years after you entered into the agreement or 6 months after you knew, or ought to have known, the circumstances existed when you entered into the agreement, whichever ends first.

The agreement did not contain, in clear and unambiguous form, the material it was required by the Act to contain.

1 year after you entered into the agreement or 6 months after you knew, or ought to have known, the circumstances existed when you entered into the agreement, whichever ends first.

You did not receive independent legal advice before entering into the agreement.

1 year after you entered into the agreement or 6 months after you knew, or ought to have known, the circumstances existed when you entered into the agreement, whichever ends first.

Before entering into the agreement, you did not receive a disclosure statement that complied with the Act, the resident's code of rights, the code of practice or a statement, when the code will come into force, and a copy of the agreement.

1 year after you entered into the agreement or 6 months after you knew, or ought to have known, the circumstances existed when you entered into the agreement, whichever ends first.

You should seek legal advice before seeking the right.

If you use the right, you are entitled to a refund of some amounts you paid for the right to occupy the unit and for services or facilities that were not provided, interest on those amounts, and your actual and reasonable costs associated with using the right (such as legal expenses and removal costs).

Settler's Albany Limited may dispute your use of the right, refer the dispute to the disputes panel under the *Retirement Act 2003*, and refuse to pay the refund while the dispute is unresolved.

COOLING-OFF PERIOD

A resident also has certain rights during their cooling-off period. Following is a copy of Section 28 of the Retirement Villages Act 2003:

- 1) An occupation right agreement must contain a provision allowing a resident (other than a person who is a resident solely because paragraph (c) of the definition of resident applies to that person) to cancel the agreement,
 - a) without having to give any reason, by notice given not later than 15 working days after the agreement is signed by the resident; and
 - b) if the resident relates to a residential unit to be built or completed at a later date and the residential unit is not finished to a point of practical completion within 6 months after the proposed date of completion of the unit, by notice given at any time after the proposed date for completion of the unit, by notice given at any time after the expiry of that 6-month period.

- 2) Notice of Cancellation
 - a) Must be in writing and in a form that indicates (irrespective of the exact words used) the intention of the resident to cancel the agreement; and
 - b) May be given by the resident or any person authorized in writing by the resident to act on his or her behalf
- 3) The Notice may be given to:
 - a) the operator; or
 - b) the real estate agent or other person who dealt with the resident on behalf of the operator when the resident acquired an occupation right, unless the operator has notified the resident that the person has ceased to act on behalf of the operator; or
 - c) any person who the operator has notified the Resident is a person authorized to receive communications on behalf of the operator.
 - d) the operator is entitled to reasonable compensation for services provided to the resident under the occupation right agreement and for damage to a residential unit or any facilities in the retirement village for which the resident is responsible before the cancellation takes effect.
 - e) Despite sub-section (1), an occupation right agreement may contain a cancellation provision of the kind preferred to in subsection (1) that is more favourable to the resident than the provision referred to in subsection (1), but, if the agreement fails to contain any provision of the kind referred to in subsection (1) or contains a provision that is less favourable to the resident than that provision referred to in subsection (1).
- 4) If prior to settlement, the medical condition of the applicant deteriorates and the applicant requires a level of care that is not at Settlers Albany, then following the provision of a doctor's certificate to Settlers Albany Limited confirming the applicants medical condition, the application may cancel an application for an Occupation Licence, provided that the applicant has not already occupied the dwelling.

Conditional Applications

- 5) If an application is conditional and Settlers Albany subsequently receives an unconditional application for an Occupation Right Agreement for the dwelling then Settlers Albany Limited may give the applicant five business days notice in writing requiring their application to be made unconditional. If confirmation that the application is unconditional is not provided to Settlers Albany Limited or its solicitor by 5.00pm on the 5th business day then this application shall forthwith terminate without further notice.

Initial deposit

- 6) a) An application for an Occupation Right Agreement must be accompanied by a cheque for the Initial Deposit made payable to the Statutory Supervisor's Trust Account.
b) Upon acceptance of the application, the Initial Deposit will form part of the moneys payable by the applicant for the issue of the Occupation Right Agreement.
- 7) If the application is not accepted by Settlers Albany Limited on or before the Acceptance Date or the application is Otherwise cancelled in accordance with these standard terms, the Initial Deposit will be refunded to the applicant, together with any interest that has accrued on the Initial Deposit, within 28 days of notice of the cancellation to

Covenant Trustee Services Limited. Settlers Albany Limited is entitled to deduct any costs referred to in clauses 13 and 14 below from the Initial Deposit.

Allotment and Settlement

- 8) Allotment and issue of a licence to occupy in an Occupation Right Agreement shall occur on Settlement Date, subject to payment of the amount payable or the balance of the amount payable for the licence by the applicant on the Settlement Date.
- 9) In the event that there is a change to the Disclosure Statement current at the date of the application, the applicant will sign a replacement application relating to the new Disclosure Statement promptly upon request from Settler's Albany Limited.
- 10) If the applicant fails to pay the balance of the amount payable on the Settlement Date, Settler's Albany Limited may give five (5) business days notice in writing to the applicant that it proposes to cancel the agreement for the Occupation Right Agreement. If, on the expiry of that notice period, the applicant has failed to pay such balance, then Settler's Albany Limited may cancel the agreement by notice to the applicant and any deposit paid may be forfeited.

Occupation prior to settlement

- 11) Should the applicant be permitted by Settler's Albany Limited to occupy the dwelling prior to payment of the full amount payable for the Occupation Right Agreement, such occupation shall be on the basis of a bare licence only which may be terminated at any time by Settler's Albany Limited.

Medical Report

- 12) The applicant must provide Settler's Albany Limited with a medical report prior to the Acceptance Date or such later time as Settler's Albany Limited may agree.

Modifications and Extras

- 13) Should any modifications to the dwelling be requested by the applicant and agreed by Settler's Albany Limited, the cost of such modifications shall be to the account of the applicant, and shall be payable regardless of whether the application proceeds or not.
- 14) Should the installation of any extra items be requested by the applicant and agreed by Settler's Albany Limited, the cost of such extra items shall be to the account of the applicant, and shall be payable regardless of whether the application proceeds or not.

CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY

If signing for an applicant as attorney, this certificate of non-revocation of power of attorney must be completed.

I, _____

hereby certify that by Deed dated _____

of _____

(the "Appointer") appointed me attorney on the terms and subject to the conditions set out in the said Deed, and at the date hereof I have not received any notice or information of the revocation of that appointment by death or winding up of the Appointer or otherwise.

Signed at: _____

This _____ *day of* _____ *20*

(Attorney to sign here)

Note: A copy of the Power of Attorney must accompany the Application for noting.

- (a) The Applicant has entered into an unconditional sale and purchase agreement in respect of the Applicant's property at [insert address] ("Applicant's Property") on or before [insert date];
- (b) The Applicant completing settlement of the Applicant's Property within a further 30 days of satisfaction of the immediately preceding condition.

The Applicant may confirm fulfilment of, or waive, the above conditions at any time prior to or on the above dates by notice in writing to Settlers. Either party may terminate this application if either of the above conditions are not fulfilled in the required time and, subject to the right of the Applicant to have the deposit refunded upon termination, neither party shall have any further rights or obligations to the other following such termination.

(Cash out clause – Delete if not applicable)

- 2. If Settlers obtains an unconditional application or offer in respect of the dwelling to which this application relates, Settlers may provide written notice that it has such an offer to the Applicant. If the Applicant does not sign an unconditional Occupation Right Agreement within 5 working days of such notice, then this application shall terminate without further notice. In the event that no further applications or offers are received ahead of the Applicant signing a conditional Occupation Right Agreement, the Occupation Right Agreement will contain a condition to similar effect as the condition contained in this application.

(Pet clause – Delete if not applicable)

3. Your Pet

Your pet [breed] ("[]") is subject to a 3 calendar month trial period beginning with the Commencement Date, during which your pet's behaviour, health and conduct will be monitored by Settlers ("Trial Period").

If at any time during the Trial Period your pet's behaviour, health or conduct is considered unsuitable for the Village, then Settlers' consent to your pet may be withdrawn (at Settlers' sole discretion) in accordance with clause 2.10 of the Occupation Right Agreement. In such a case, you will need to make arrangements (at your cost) for alternative accommodation for your pet.

Date of Application:

Signature of Applicant/s:
