MAINTENANCE CODE

SOUTH COAST RETIREMENT HOMES

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1. Purpose

All life right holders occupying a unit in a retirement home have the right to self-determination and governance. Life right holders have a vested interest in the Retirement Home in which they have decided to stay and are they, therefore, in terms of the Act, afforded with the control of the administration and management of the Retirement Home in order for their rights to be protected. This right brings with it specific duties and responsibilities that must be fulfilled by the Occupants to properly and more thoroughly enjoy the mentioned right. Among others, the duty and responsibility to Maintain the village and keep it in a state of good repair forms part of the occupants' duties and responsibilities. This is so even though the property continues to be owned by the Owner thereof. If the Occupants should fail to comply with their duty to maintain, the Owner can enforce compliance. In this way, the Act provides for the adequate protection of the Owner's property against deterioration.

The purpose of this Code is to explain and clarify the maintenance rights and obligations of the various parties involved with the Retirement Homes of the Owner. This Code is not meant to replace or supersede the provisions of the relevant Act. In the case of a conflict between the provisions of this Code and the Act, the provisions of the Act shall prevail.

2. Definitions

In this Code the following words and/or expressions will, unless the context indicates otherwise, have the meanings ascribed to it below:

2.1 "**the Owner**" shall mean Sedcom (NPC) or the Seventh-Day Adventist Welfare Services (NPC), being the registered Owner of the property;

2.2 "**the Act**" shall mean the Housing Development Schemes for Retired Persons Act, 65 of 1988, as amended;

2.3 "**the Regulations**" shall mean the Regulations promulgated under the Act;

2.4 "**Housing Development Scheme**" shall mean any scheme, arrangement or undertaking in terms of which a housing interests are alienated to retired persons, or mainly retired persons, for occupation in terms of the Act;

2.5 "**the Occupant**" shall mean the natural person to whom a life right was alienated to in terms of the Act and shall include his/her spouse to whom he or she is married to on date of signature of the life right agreement or his/her joint occupant;

2.6 "**the Management Association**" shall mean the association of the retirement home as defined in Regulation 7 of the Act;

2.7 "**Unit**" shall mean the Unit allocated to an Occupant in terms of the life right agreement;

2.8 "**Interior" or "Interior of the Unit/s**" shall mean the space to the inside of the Unit from the median of the exterior walls, including the ceilings, floors and electrical distribution box;

2.9 "**Exterior" or "Exterior of the Unit/s**" shall mean the space to the outside of the Unit from the median of the exterior walls of the Unit;

2.10 "a **Structural defect/s**" shall mean actual physical damage to the designated load-bearing elements or structures of the Unit caused by the failure of such load-bearing elements or structures which affects the load-bearing functions thereof to the extent that the Unit becomes unsafe, unsanitary or otherwise unlivable.[1]

2.11 "**Structural repair/s**" shall mean repairs of damage caused by a Structural Defect;

2.12 "**Latent defect/s**" shall mean a defect in an object which is not visible or discoverable upon an inspection by the Occupant and which destroys or impairs the utility or effectiveness for which the object is commonly used;

2.13 "**Maintain**" or "**Maintenance**" shall mean the taking of steps to avoid deterioration through preventative and corrective measures of upkeep, repair and care on a continual basis;

[1] *Property Law Digest*, December 2010, Vol 14, Part 4.

2.14 "**Retirement Home**" shall mean any of the retirement homes owned by the Owner in the South Coast, Kwa-Zulu Natal and shall also refer to the Units, common property and buildings related to it, land, communal areas, gardens, and so forth, of those retirement homes.

3. Parties

The parties involved with the Retirement Home are the Occupants, the Management Association of the Retirement Home and the Owner. Each of these parties has certain duties and responsibilities in terms of the Act, the Regulations and the life right agreements entered into between the Occupants and the Owner. Some of these duties and responsibilities relate to the maintenance, repair and upkeep of the Retirement Home. It is vital for the parties to understand and appreciate their respective duties and responsibilities and fulfil the same without delay. Doing this will contribute to the sustainability of the Retirement Homes and the Occupants' peace and happiness. This is because each party has a vested interest in the Retirement Home's successful operation and its sustainability. Each one is dependent upon the other for the safeguarding of these interests, not only for their own benefit, but also for the benefit of the others. Lack of care, indifference or irresponsible behaviour pertaining to these duties and responsibilities shall cause conflict, disputes, animosity and unhappiness between the parties. Therefore, it is of utmost importance that each party regards its duties and responsibilities with the seriousness that it deserves.

4. Maintenance Responsibility and Duties

4.1 Occupant

Each Occupant is, amongst others, responsible for:

4.1.1 the Maintenance, upkeep and repair of the Interior of the Unit that he/she is occupying;

4.1.2 keeping the Interior of the Unit free from infestation or reinfestation by rodents and/or insects

4.1.3 keeping the Interior of Unit free from any accumulation of rubbish or garbage.

4.1.4 maintaining his/her private garden in compliance with SANS 10400-H-Annex D;

4.1.5 implementing proper damp control measures;

4.1.6 reporting any instance of risk to the property, Unit or buildings to the Owner and Management Association.

In case of neglect by the Occupant of his/her duties and responsibilities, he/she will personally be held accountable for the cost of labour and material required to Maintain the Interior of the Unit in a state of good repair.

4.2 Management Association

The Regulations sets out the maintenance duties and responsibilities of the Management Association. Regulation 8 states that "*it shall be the duty of the management association to*" insure the Retirement Home against risk and to Maintain the same and keep it in a state of good and serviceable repair. Regulation 9 determines that the Management Association shall have the power to establish a levy fund to accomplish this responsibility. This means that the Management Association is, amongst others, responsible for:

4.2.1 the Maintenance of the Exterior of all the residential Units and the Maintenance of the communal buildings under its responsibility;

4.2.2 providing and Maintaining the water reticulation and the supply of water to the communal buildings, communal gardens and the individual Units for private consumption up to and including the water meter of each Unit. In the absence of a water meter the main stopcock to the Unit will be the point of reference;

4.2.3 the electrical reticulation and the supply of electricity to the communal property, communal buildings and individual units for private

consumption up to distribution board of each Unit, but excluding the distribution board;

4.2.4 the sewerage reticulation and periodic emptying of sewerage tanks;

4.2.5 adequately insuring the housing scheme against risk;

4.2.6 maintenance and administration of the common property and the buildings related to it, including the land, perimeter fences and/or walls, swimming pool and swimming pool area, roads and pathways and the communal gardens, but excluding the Maintenance of private gardens where these have been permitted.

4.3 The Owner

4.3.1 Structural defects

4.3.1.1 The Act determines that during the development of a Retirement Home the Owner/Developer is under duty to ensure that the Retirement Home is erected substantially in accordance with the approved building plans and local authority by-laws and have it sufficiently completed for the purpose of utilisation. Consequently, the Owner is under a duty to as far as possible deliver a product which is free of Structural defects.

4.3.1.2 It is accepted that at times it will be challenging to determine what repairs are deemed to be structural repairs compared to normal or routine maintenance repairs. Therefore, it is essential to establish the actual cause of the damage and if it becomes necessary the services of civil or structural engineers should be obtained to assist the parties in determining the cause of the damage.

4.3.1.3 If it is determined that the cause of the damage is due to a Structural defect, the Owner shall be responsible for repairing all affected elements, and it shall bear the costs related thereto.

4.3.1.4 However, where it is determined that the Structural defect was caused due to the acts or omissions of either the Occupant or the Management

Association, the Occupant and/or the Management Association, as the case may be, shall be responsible for the repair of the damage and the costs related thereto. Some reasons that might cause Structural defects due to the acts or omissions of the Occupant or Management Association may be the planting, or allowing thereof, of trees or shrubs, as described in SANS 10400-H-Annex D, too close to the Unit; the lack of control of termite infestations which may cause damage to the load-bearing components of a unit; allowing water to be trapped or pond near the housing unit load-bearing components; the non-repair of leaking roofs and poor damp control in general.

4.3.1.5 Load-bearing components, for the purpose of Structural defects, are, footing and foundation systems; beams; girders; lintels; columns; load-bearing wall and partitions; roof framing systems and floor systems.

4.3.1.6 The following is not considered as load-bearing components, namely, roofing; drywall and plaster; exterior siding (brick, stone or stucco veneer); floor covering material; wall tile and other wall coverings; non-load-bearing walls and partitions; concrete floors in attached garages; electrical, plumbing, heating, cooling and ventilation systems; appliances; fixtures and items of equipment; paint; doors and windows; trim; cabinets; hardware and insulation.

4.3.1.7 The repair of a Structural defect is limited to the repair of:

i. the damage to the actual load-bearing component in order to restore it to its full load-bearing capacity; and

ii. non-load-bearing components which were damaged, directly or indirectly, by the Structural defect; and

iii. damage to the Interior of a Unit, be it of a cosmetic nature or otherwise, caused by the Structural defect, in order to restore the condition of the Interior of the Unit to its original condition or state prior to the damage.

4.3.2 Latent defects

4.3.2.1 The Act determines that during the development of a Retirement Home the Owner/Developer is under a duty to ensure that the Retirement Home is erected substantially in accordance with the approved building plans and local authority by-laws and have it sufficiently completed for the purpose of utilisation. Consequently, the Owner is under a duty to, as far as possible, upon the sale of a Unit deliver the Unit free of Latent defects.

4.3.2.2 If a Latent defect is discovered within a Unit it will be the Owner's responsibility to repair the defect at its own cost.

4.3.2.3 The Owner's duty to repair Latent defects shall cease 12 (TWELVE) months after the date of occupation of the Unit by the Occupant.

4.3.2.4 The repair of a Latent defect is limited to the repair of:

i. the damage to the actual object in order to restore it to its full effectiveness or utility; and

ii. other components which were damaged, directly or indirectly, by the Latent defect; and

iii. damage to the Interior of a Unit, be it of a cosmetic nature or otherwise, caused by the Latent defect, in order to restore the condition of the Interior of the Unit to its original condition or state prior to the damage.

5. Owner/Developer Maintenance Support

The Owner is willing to assist with some of the Maintenance duties and responsibilities of the Management Association. The assistance shall be subject to the terms and conditions outlined below and shall at all times be considered upon receipt of a written request by the Management Association or its designee. The support of the Owner/Developer shall at all

times be subject to the availability of the means and the time to do so. The Owner/Developer is:-

5.1 willing to, at its costs:

5.1.1 maintain retainer walls, but excluding weed control;

5.1.2 provide and Maintain handrails;

5.1.3 inspect perimeter fence and/or walls;

5.1.4 once a year see to cleaning of the gutters and outside waste pipes of all Units and buildings;

5.1.5 paint the exterior of all Units and buildings once every 10 (TEN) years;

5.1.6 repair small damage to paved or tarmac roads (less than R1000.00 labour & material);

5.1.7 repair small roof leakages to any Unit or building, but excluding tile replacement (less than R1000,00 labour & material).

5.2 willing to, and on a 50/50 cost-sharing basis (material and labour), repair:

5.2.1 major roof leakages to any Unit or building, but excluding tile replacement;

5.2.2 barge and facia boards;

5.2.3 major damage to paved or tarmac roads;

5.2.4 perimeter fence and/or wall, but excluding gate motors.

5.3 willing, upon such terms and conditions as it may deem fit, to assist with any other service to the Management Association.