

Build-to-Rent Exclusion from Interest Limitation Rules:

Guideline for Applicants

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1. **Who this document is for**

This document is for people applying to register land as build-to-rent land, so they can deduct interest relating to build-to-rent development on the land.

This includes investors, companies, trusts or other entities owning build-to-rent property, as well as property managers or others providing advice to those seeking registration.

1. **About the build-to-rent exclusion**

Build-to-rent is a type of housing, specifically built to provide long-term rental housing.

The build-to-rent sector has the potential to increase the supply of secure, affordable and quality rental housing in Aotearoa New Zealand. To ensure build-to-rent contributes to the delivery of this supply, legislation has been enacted to exclude registered build-to-rent land from recent changes to interest limitation rules in perpetuity.

In providing this exclusion, strict criteria have been included to ensure it applies as intended and brings with it accompanying benefits for tenants, including increased security of tenure.

The exclusion has been made available to existing developments on land registered as build-to-rent land, which have a short window of opportunity to apply for registration and demonstrate they meet the criteria.

1. **Applying for registration**

**Existing developments**

Existing developments have until 1 July 2023 to meet the exclusion requirements and for owners to apply to HUD for registration as build-to-rent land.

Applications must use the [online application form](https://btr.hud.govt.nz/) provided by HUD, and include sufficient evidence as required for the application to be processed. The checklist and information in this guide provides information to assist with applying.

Where an owner owns multiple build-to-rent developments, a separate application must be made for each one that qualifies.

Once registered, HUD will share the application details with Inland Revenue – Te Tari Taake.

If this deadline is met and the asset is approved for registration, the exclusion can apply retrospectively for existing build-to-rent developments meaning the interest incurred on or after 1 October 2021 can be claimed. The exclusion will apply to new build-to-rent developments from date of application for registration.

If the development does not meet this deadline for registration, it can never be registered and will never qualify for the exclusion.

**New developments**

New developments completed on or after 1 July 2023 must meet the requirements by the time the application is submitted to HUD.

**Tips for applying:**

* Print off this guide and the application form.
* Use the checklist to make sure you meet all criteria before applying.
* Save all the files you will need to upload in the same folder before starting your application – this will make it quicker and easier to complete the application.

1. **Qualifying criteria and checklist**

To qualify for the exclusion and for the land to be registered as build-to-rent land, a development must meet **all** the following requirements:

* At least 20 dwellings in one or more buildings that comprise a single development, on a single project-based parcel or parcels of land (as described in section CB 12(1)(a) to (e) or CB 13(1)(a) and (b) of the Income Tax Act 2007)
* The dwellings are used or being made available for rent under the Residential Tenancies Act 1986
* Tenants must be offered a fixed-term tenancy of at least 10 years (which will enable them to terminate the tenancy with 56 days’ notice under section 58A of the Residential Tenancies Act 1986), but they may agree to or request other tenancy offers. That is, a tenant does not have to accept a 10-year tenancy offer
* Explicit personalisation policies must be provided to tenants, with reference to sections 42, 42A and 42B of the Residential Tenancies Act 1986, and including examples of possible personalisations and the landlord’s position on the keeping of pets
* Land verified build-to-rent land must continuously meet the above requirements.

A checklist is below for applicants with each of these criterion and the supporting evidence you will need to provide to demonstrate your development meets them. Further guidance in relation to each criterion is set out in the notes which follow.

**Checklist for applicants**

|  |  |  |
| --- | --- | --- |
| **Criteria** | **Guidance** | **Complete** |
| Are there 20 units or more in the development available for rent under the Residential Tenancies Act 1986 | Read note 5 in the Guide to determine if your development meets the 20-unit threshold.  You will need to provide evidence that the development meets this criterion. |  |
| Single ownership | Read note 6 on ownership.  You will need to provide evidence of ownership. |  |
| All tenants are offered a 10-year tenancy which they can terminate with 56 days’ notice, and are always offered this tenancy option | Read note 7 and ensure all tenants have been or will be offered a 10-year tenancy option.  You will need to provide evidence that tenants have been or will be offered a 10-year tenancy. |  |
| All tenants are provided personalisation policies | Read note 8 and ensure all tenants have been or will be provided personalisation policies.  You will need to provide evidence or examples of the personalisation policies which have or will be offered to tenants. |  |
| Statutory declaration | Read note 9 and complete and sign the statutory declaration. |  |
| Further information | Read note 10 to see if you need to provide any further information with your application.  You may need to attach further information as part of your application. |  |

1. **Are there 20 units or more in the development, available for rent under the Residential Tenancies Act 1986?**

To qualify as a build-to-rent development, there must be at least 20 dwellings in one or more buildings that comprise a single development, on a single project-based parcel or parcels of land. These must be available for rent under the Residential Tenancies Act 1986 (RTA).

The land on which the dwellings are situated may be in separate titles, for instance:

* rental dwellings constructed across three separate and adjoining parcels of land;
* a development comprising two adjacent buildings on opposite sides of a street or lane;
* an apartment building constructed on a single land title.

The development that a build-to-rent dwelling is in can include other dwellings or commercial premises that do not form part of the build-to-rent development (for example, an apartment block that has shops on the ground floor or a development that contains both owner-occupied and build-to-rent units).

**Some examples**

| **Example** | **Meets criteria** | **Comment** |
| --- | --- | --- |
| Marino owns an apartment building comprising 26 apartments as well as shops on the ground floor. 22 of the apartments are rented out in accordance with the RTA with tenancy agreements in place. The remaining 4 units are bookable online at a nightly rate as short-stay accommodation. |  | * Because 22 of the dwelling units are available for rent under the RTA, it meets this part of the test. * As there is multiple use, an apportioned valuation may be required – see note 10 of this guide. |
| The Watson Family Trust owns several blocks of flats in a Wellington suburb. They are on five separate titles across the suburb, the largest of which has 8 flats on it. In total, there are 24 flats rented under the RTA. | X | * Although there are 24 units in total, they are scattered throughout the suburb and not on a project-based parcel of land. * The largest development, at just 8 units, falls short of the 20-unit minimum requirement. |
| Michelle, an investor owns 32 rental units evenly split between two buildings constructed in the early 2000s. Although constructed as part of the same development, they are sited on opposite sides of a lane. |  | While a lane separates the two buildings, they were part of the same development. As a single BTR development they meet this criterion. |

**Evidence you will need to supply**

You will need to provide evidence of the number of units in the development and that they are being rented, or available to rent, with tenancies under the Residential Tenancies Act 1986.

You could provide a copy of your rental property management agreement which specifically lists the units in the development. If you do not have a property manager, you will need to provide sufficient documentation to demonstrate there are 20 or more rental dwellings.

You will also be required to provide the following details:

* date of construction (or issue of certificate of code compliance);
* title information, including certificate of title or legal description of land (e.g., from Rates notice) for each separate title included in the development; and
* rateable value for each dwelling

If the development includes qualifying and non-qualifying components on a single title, such as in the first example above, you will likely need to provide an apportionment of value. **See note 10 of this guide.**

1. **Single ownership**

The single ownership requirement is intended to ensure a build-to-rent development is in fact a single development owned and managed cohesively.

This can include a joint venture or other corporate structure, such as property syndicate, trust, or portfolio investment entity (PIE).

Joint ownership – for example by spouses or partners – will still qualify if the development is held in common rather than in separate parts. (Note – where there is joint ownership, the application form only requires you to enter an IRD number for one person, ie: one of the joint owners).

**Some examples**

|  |  |  |
| --- | --- | --- |
| **Example** | **Meets criteria** | **Comment** |
| Married investors own a block of 24 rental units. It is jointly held in both of their names and managed by a rental property manager. |  | * There is a common ownership of the 24 units, so it meets this criterion. |
| Three family members own a total of 30 rental units across three adjacent sites. Each family member separately owns 10 units on one of the sites. | X | * While totaling 30 units, they are not held in common. Instead, there are three individually held developments comprising 10 units. |
| A property investment company is registered as a portfolio investment entity (PIE). It has over 1000 investors, owns multiple property assets and is developing a new apartment complex containing 70 units – all of which will be managed as rental accommodation. |  | * There is a common ownership of the development, through a PIE structure, with single management of the complex. * This is the closest example to true overseas build-to-rent models. |

1. **All tenants are offered a 10-year fixed-term tenancy**

All tenants must be offered a fixed-term tenancy of at least 10 years (which will enable them to terminate the tenancy with 56 days’ notice under section 58A of the Residential Tenancies Act 1986).

There is no obligation on tenants to accept a 10-year tenancy, and tenants may choose a term shorter than 10 years, as provided for by the Residential Tenancies Act 1986. Not taking a 10-year tenancy does not affect whether a development meets the criteria. The important factor is that all tenants – both existing and new – must be **offered** the option.

The offer of a 10-year tenancy should be genuine in that it is clearly explained to tenants that they are not committed to residing there for 10 years and tenants may end the tenancy with 56 days’ notice.

For existing developments, this offer must be made to tenants prior to 1 July 2023. Landlords should make the offer of a 10-year tenancy conditional on the land the development is on becoming registered as build-to-rent land. If a development does not meet the build-to-rent land definition requirements and the land is not registered by HUD, tenants’ existing tenancy terms should remain.

Tenants seeking to renew their tenancy agreement in a build-to-rent dwelling must always be offered the option of a 10-year fixed-term tenancy. This applies specifically in instances of renewal or at any time if agreed to by both the tenant and provider.

**Evidence required**

For existing developments, you will need to provide evidence that all existing tenants have been offered 10-year fixed-term tenancies (noting this offer should be conditional on land being registered as build-to-rent land). For new developments, you will need to provide evidence that all tenants will be offered 10-year fixed-term tenancies.

You will also need to provide evidence that prospective tenants and tenants seeking to renew their tenancy agreement will always be offered the option of a 10-year fixed-term tenancy.

We will require a statement to this effect to be included in the statutory declaration from the applicant or property manager for the development.

You will also need to provide us with a copy of any letter that has been or will be provided to all tenants that sets out the offer of a 10-year tenancy and process for them to pursue this option.

An example letter to tenants is included following the next section, which refers to the option of a 10-year fixed-term tenancy.

1. **All tenants are provided personalisation policies**

This requirement provides that a build-to-rent provider must explicitly offer tenants, with reference to sections [42](https://www.legislation.govt.nz/act/public/1986/0120/latest/DLM95092.html), [42A](https://www.legislation.govt.nz/act/public/1986/0120/latest/LMS451308.html) and [42B](https://www.legislation.govt.nz/act/public/1986/0120/latest/LMS451310.html) of the Residential Tenancies Act 1986 (RTA), the ability to personalise their dwellings.

The intention of this requirement is to make lifestyle issues, like pets and home-making, more transparent to prospective tenants, while acknowledging that not all types of tenant personalisation will be appropriate to every build-to-rent development.

This requirement may take the form of a build-to-rent provider including a clause or clauses in associated tenancy agreements or producing a document – offered to all tenants within the build-to-rent development – that explicitly outlines how tenants can personalise their dwellings, and the sort of changes or modifications the landlord is happy for them to make.

**Note:**

* The personalisation policies are not intended to pre-authorise tenants making changes or modifications, rather they are intended to make clear to tenants upfront what changes or modifications the landlord is happy for the tenant to make.
* Unless pre-authorisation is contained in the tenancy agreement, as provided for under section [42(1)(a)](https://www.legislation.govt.nz/act/public/1986/0120/latest/DLM95092.html) of the RTA, the tenant is still required to seek permission from the landlord to make changes or modifications.
* The personalisation policies do not preclude a tenant from seeking permission from the landlord to make other changes or modifications which go beyond these, which would then be considered in accordance with the provisions of the RTA.
* Where changes are made to a dwelling, tenants may be required to re-instate the dwelling to its original condition at the end of the tenancy.

**Evidence you will need to supply**

You will need to provide evidence that all tenants have been offered personalisation policies, and this policy must state the landlord’s position on keeping pets as well as other examples of personalisations you would be happy for the tenant to make (noting the tenant is still required to seek permission to make these changes or modifications unless per-authorisation is contained in the tenancy agreement).

You could provide a copy of a rental tenancy agreement, highlighting the specific clause on the keeping of pets, together with any other permissive clauses which allow tenant personalisation. This should be representative of all other tenancy agreements in the development.

Alternatively, you could provide a document you have provided to all tenants that sets out the policy on pets, as well as the type of personalisations, changes or modifications you are happy for tenants to make, and a process if they wish to do so.

An example letter to tenants is set out on the next page. This letter is for illustrative purposes only. It does not set out the personalisations that must be included to meet the personalisation policy requirement, rather it outlines examples of the types of personalisations you may wish to make explicit to tenants. Tenants can seek permission for any minor alteration to a property, as per sections [42](https://www.legislation.govt.nz/act/public/1986/0120/latest/DLM95092.html), [42A](https://www.legislation.govt.nz/act/public/1986/0120/latest/LMS451308.html) and [42B](https://www.legislation.govt.nz/act/public/1986/0120/latest/LMS451310.html) of the RTA. We encourage you to discuss personalisations generally with your tenants.

**Sample letter offering 10-year tenancies and personalisation policies**

Letter to all tenants

Kia ora

As a tenant here we want you to feel at home – to have long-term security and the ability to establish your life here in the local neighbourhood. We also want you to have the option of making some personal touches and changes to your apartment if you choose to.

**Long-term tenancy option**

We can offer you the option of a long-term 10-year fixed-term tenancy to give you peace of mind that you will not need to move any time soon, although you still have the right to terminate the agreement with 56 days’ notice if you want to.

You will be offered the option of a 10-year fixed term tenancy whenever you renew your tenancy. If you’d like to move to a 10-year fixed term tenancy, or find out more about how it works, please talk with your property manager.

**Personalising your home**

While we are proud of the quality of our apartments and their décor, we appreciate you might want to add your own personal touches to feel more at home, so we’d like to make that easier for you.

* Pictures/decorations/wall clocks – feel free to hang these as you please, although please use proper picture hooks rather than nails or screws.
* Feature walls/floating shelves or ladder shelving – if you’d like to install fixed wall shelving, or like a splash of colour with a feature wall or wallpaper art, please talk with your property manager about how we can best accommodate this. We have dedicated suppliers who can help. (Note that, depending on what you would like done, there may be a cost involved with reinstatement at the end of your tenancy).
* Pots and planter beds – tenants with balconies are free to incorporate small planters or pots into this space. Those on the ground floor with courtyard area wanting larger planting structures for vegetables should talk to their property manager; we have a good deal on a range of these and our grounds contractor will help you get started.
* Pets – we are happy to consider requests for (small) pets on a case-by-case basis, please talk to your property manager.

If you have any other specific requests, talk with your property manager and we’ll see what we can do.

Yours sincerely

Property Management

1. **Statutory declaration**

A signed statutory declaration is required from the applicant and/or property manager which attests to various criterion being met in relation to all existing and future tenants.

Sample statutory declarations are included on the following pages which can be completed and signed by either the owner or the property manager (authorised to act on behalf of owners) of the build-to-rent development as appropriate.

It must be witnessed by a person authorised to take a statutory declaration, such as a Justice of the Peace, or a solicitor. The last section of the declaration should only be completed when you are with the person witnessing your declaration.

Note you may be prosecuted for making a false declaration, with penalties including a fine or imprisonment.

1. **Further information**

You will need to provide further information in some circumstances:

* An apportionment of value will be required if part of the development qualifies as build-to-rent and part of it doesn’t, and these are on a common title. This should be a valuation from a registered valuer which clearly apportions the value of the qualifying and non-qualifying components. This is important to ensure the exclusion from interest limitation rules can be applied to the appropriate portion of the development.
* Further information may be requested from applicants as part of the processing of applications to enable verification that a development meets particular criteria for registration.

If you have any questions regarding the application process or the build-to-rent exclusion, please contact us on [BTR@hud.govt.nz](mailto:BTR@hud.govt.nz)

Registered land will no longer qualify for the build-to-rent exclusion if at any point in time the build-to-rent developments on the land do not meet the build-to-rent land definition requirements. Even if the requirements are met in the future, the land will be unable to qualify for the build-to-rent exclusion again.

You will need to inform us as soon as possible if anything changes, or is likely to change, which means the development will no longer meet one or more criterion, even for a short period of time. We will work with you to try and ensure continuity of registration where possible. You must also inform us of any changes to ownership of the build-to-rent land once it is registered.

**Sample statutory declaration – Existing developments**

**Statutory Declaration** (Do not complete the following declaration until with the person witnessing your declaration. (For example, a Justice of the Peace, solicitor or another person authorised to take a statutory declaration)

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Enter your full name)

of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Enter the address where you live)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Enter your occupation)

solemnly and sincerely declare that:

1. I am/We are the owner(s) / authorised officer/agent of the owner(s) / property manager (delete as appropriate) for the development described in paragraphs (2) and (3) seeking a decision that the development is build-to-rent land.
2. The address of this development is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
3. The legal description of the land which comprises the development is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
4. There are at least 20 residential dwelling units in this development which are all available or will be available for rent under the Residential Tenancies Act 1986;
5. Subject to the development being registered as build-to-rent land;-
6. All current tenants have been conditionally offered the option of a 10-year fixed-term tenancy, that is terminable by tenants with 56 days' notice under section 58A of the Residential Tenancies Act 1986, including at times of tenancy renewal and renegotiation;
7. All prospective tenants will be offered the option of a 10-year fixed-term tenancy, that is terminable by tenants with 56 days' notice under section 58A of the Residential Tenancies Act 1986, including at times of tenancy renewal and renegotiation;
8. All current tenants have been or will be offered personalisation policies that expressly refer, with examples, to sections 42, 42A and 42B of the Residential Tenancies Act 1986 and the policy on pets is clearly stated.
9. All prospective tenants will be offered personalisation policies that expressly refer, with examples, to sections 42, 42A and 42B of the Residential Tenancies Act 1986 and the landlord’s policy on pets is clearly stated.
10. If I become aware of any changes to these circumstances which mean this development may no longer meet the build-to-rent land criteria, I undertake to notify Te Tūāpapa Kura Kāinga ‒ Ministry of Housing and Urban Development as soon as practicable.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Your signature)

Declared at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Place, e.g.,: town or city)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Day/month/year)

Before me \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Name of official witness)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature of official witness)

**Sample statutory declaration – New developments**

**Statutory Declaration** (Do not complete the following declaration until with the person witnessing your declaration. (For example, a Justice of the Peace, solicitor or another person authorised to take a statutory declaration)

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Enter your full name)

of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Enter the address where you live)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Enter your occupation)

solemnly and sincerely declare that:

1. I am/We are the owner(s) / authorised officer/agent of the owner(s) / property manager (delete as appropriate) for the development described in paragraphs (2) and (3) seeking a decision that the development is build-to-rent land.
2. The address of this development is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
3. The legal description of the land which comprises the development is: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_;
4. There are at least 20 residential dwelling units in this development which are all available or will be available for rent under the Residential Tenancies Act 1986;
5. Subject to the development being registered as build-to-rent land;-
6. All prospective tenants will be offered the option of a 10-year fixed-term tenancy, that is terminable by tenants with 56 days' notice under section 58A of the Residential Tenancies Act 1986, including at times of tenancy renewal and renegotiation;
7. All prospective tenants have been or will be offered personalisation policies that expressly refer, with examples, to sections 42, 42A and 42B of the Residential Tenancies Act 1986 and the landlord’s policy on pets is clearly stated.
8. If I become aware of any changes to these circumstances which mean this development may no longer meet the build-to-rent criteria, I undertake to notify Te Tūāpapa Kura Kāinga ‒ Ministry of Housing and Urban Development as soon as practical.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Your signature)

Declared at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Place, e.g.,: town or city)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Day/month/year)

Before me \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Name of official witness)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Signature of official witness)