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Continuing Care And Other Retirement Communities

§24.01 INTRODUCTION

A continuing care (or life care) contract promises a simple solution to the complex questions posed by evolving long-term care needs. It is a contract between provider and resident, assuring that specified long-term care services will be provided when needed for a particular period, usually for the rest of the resident's life. For this promise the prospective resident generally pays a substantial initial payment, called an entrance fee or founder's fee, as well as monthly rent and management fees.

Continuing care remains defined by statute as a contractual agreement in which some initial payment is exchanged for a promise of services in the event of future need. Continuing care has not been as popular as assisted living, in part because of high up front fees for continuing care and no up-front fee for assisted living arrangements. Continuing care contracts, however, provide one thing assisted living can never promise, namely that the resident will receive stepped-up care in one facility. In other words, the resident can live in an apartment as long as possible and is then guaranteed a bed in an adjoining nursing home if and when she can no longer take care of herself. Medicare and, where applicable, Medicaid, cover the actual health care costs, and thus, the resident has effectively pre-paid for her long-term care and eliminated the risk of running out of long-term care funds.

§24.02 SERVICES

Many continuing care retirement communities (CCRCs) have well-planned campus settings. Typically, CCRCs provide independent living units with common dining facilities; smaller units with additional home health or personal care services and oversight for those who are very frail or recuperating from acute illness; and nursing home care. Most have planned recreational activities and transportation to shopping and medical appointments.

§24.03 COSTS

As of 2002, entrance fees range from $20,000 to more than $400,000, depending on the type of unit and the amenities of the community.[1] Additional monthly fees can range from $200 to over $2500. By law, virtually all CCRC providers accept Medicare payments for health care costs, as well as Medicaid payments where applicable. Again, the idea behind such a facility is to contain long-term care costs, and avoid moving as one ages. In some states, the CCRC may only assure that a nursing home bed will be available; the financial risk of paying for the bed remains with the resident.

§24.04 WHO SHOULD CONSIDER A CCRC?

Whether a continuing care facility is suitable for an elderly client is a matter of both personality and purse. The most successful communities house persons of similar backgrounds or interests, and some are affiliated with a religious group or particular pre-retirement industry or career. Given the permanence of the arrangement, as well as the up-front costs, common values and a comfortable atmosphere are critical considerations. Many campuses are far from urban centers, which may be unsuitable for some clients.

Beyond personal preferences the attorney should consider whether the entrance fee is a reasonable investment in security and peace of mind, considering the client's health and likelihood of needing extensive nursing home or supportive care. People with ongoing health problems are often deeply relieved to be accepted into a CCRC at a rate that they can afford. Keep in mind that continuing care communities do not provide

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[1] AARP, *Continuing Care Retirement Communities (CCRCs)*, (2002), *available at* http://www.aarp.org.

acute care services for the advance payments,[2] so the client who needs extended hospital care receives no benefit from the continuing care agreement—and may be unable to pay insurance co-payments if all the assets have gone to the CCRC. Needless to say, these arrangements work best for people who do not need to spend their entire nest egg on the facility's up-front fee.

Regardless of the client's current plans, the attorney also should carefully consider the conditions on which a future spouse will be admitted to the community, in the event the client marries a nonresident.

§24.05 STATUTORY REQUIREMENTS FOR FINANCIAL STABILITY

Most states have some legislation on continuing care communities and contracts.[3] Most of the provisions are intended to assure that the services promised will be available when they are needed. If the community goes bankrupt, residents are left without care and often without the life savings that would have enabled them to purchase assistance.

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[2] Clients who live briefly in a CCRC and die suddenly have generally forfeited all rights to refunds from the entrance fees. Contracts that allow refunds charge higher fees. Attacks on contract provisions based on inequitable exchange, lack of consideration, lack of mutuality, and unconscionability have generally failed. *See, e.g.,* Dalton v. Florence Home for the Aged, 154 Neb. 735, 49 N.W.2d 595 (1951); Gold v. Salem Lutheran Home Assn. of the Bay Cities, 53 Cal. 2d 289, 347 P.2d 687, 1 Cal. Rptr. 343 (1959). Moreover, the parties are assuming certain risks when they enter into a continuing care contract, just as with reverse mortgages and long-term care insurance policies. In this case, the CCRC is assuming the risk that the resident will die before the costs of housing her exceed her up-front fee, and the resident is assuming the risk of just the opposite, that she will get more housing and care value than the amount of the fee.

[3] One of the most evolved statutes is Fla. Stat. Ann. ch. 651. One included statutory provision allows residents to have a representative speak for them at mandatory quarterly meetings with management. *Id. at* §651.085. Resident associations are discussed in §24.07. For a detailed discussion of the financial requirements of such facilities, as well as the economic considerations to consider when picking a facility and the particular state statutes across the country, see Nathalie Martin, *The Insolvent Life Care Provider: Who Leads the Dance Between the Federal Bankruptcy Code and State Continuing-Care Statutes?*, 61 Ohio St. L. J. 267 (2000); Michael D. Floyd, *Should Government Regulate the Financial Management of Continuing Care Retirement Communities?,* 1 Elder L. J. 29 (1993).