Continuing Care Retirement Communities (CCRCs)

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Continuing Care Retirement Communities (CCRC) are residences for seniors that provide several "levels of care" for residents in a single campus or project. This may include each or all of the following:

- Independent Living
- Assisted Living
- Nursing Home
- Hospice Care

The predecessors of today's CCRCs were church affiliated groups that provided lifetime care of aging adults with no close family in exchange for a pledge of some or all of the senior's assets. For example, in 1914 members of Religious Society of Friends (the Quakers) founded 'the Estaugh' as a not-for-profit boarding home in Haddonfield, New Jersey (suburban Camden/Philadelphia area). This facility was dedicated to providing for the concerns and care needs of older adults. The Estaugh expanded rapidly in the 1970s and has been relocated and renamed "Medford Leas." Medford Leas is comprised of 450 residential dwellings of varying design and houses over 700 residents on two campuses. This CCRC employs approximately 400 staffpersons, provides extensive recreational and social facilities, health and wellness care services and programs, and nursing and assisted living care facilities. Medford Leas continues to operate as a non-profit by the Quakers in the Suburban Philadelphia region.

In contrast, a more contemporary developer, Erickson Retirement Communities, identified a market opportunity and, over a 25 year period, developed 19 geographically diverse CCRCs. All of these projects now operate independently of the original developer. Erickson "communities" provide living accommodations for more than 23,000 individuals in 10 different states. Each Erickson campus is operated as a separate non-profit entity whose finances and business model are, in brief, complex. see e.g. http://www.bondbuyer.com/issues/118_203/Erickson-Retirement-Bankruptcy-1002845-1.html.

Building styles of CCRCs run the gamut from urban high-rises to mid-rise suburban campuses to garden apartments, cottages cluster homes, or single-family homes. Some CCRCs provide units that are designed for people with special medical conditions, such as Alzheimer's disease. Because of the substantial up front Entry Fee, CCRCs are targeted toward a middle and upper middle class demographic. All CCRCs have large staffs, necessary to provide the diverse and elaborate services and amenities which are provided as part of the CCRC model and are demanded by those seniors interested in this type of housing and lifestyle.

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Continuum of Care

CCRC residents typically pay an entry fee and a monthly fee in return for the "promise" of care for the rest of the residents' lives. Of course, this "promise" sets CCRCs apart from over-55 and assisted living facilities and nursing homes. And CCRCs are very distinct from the 'aging in place' model which may require extensive adaptation of a residence for the physical needs of an aging senior and the delivery of services through various community and other means. CCRCs are designed from the ground up to provide increasingly intensive services under the 'continuum of care' model to accommodate the needs of their residents.

The continuum of facilities and services available to CCRC residents *may* include:

- An *independent* residential unit with one or more meals, housekeeping, social and recreational activities, and some transportation.
- A separate *assisted living* area on the same campus, where additional support services are provided. Some of these are secure for people with memory loss.
- A separate *health care and skilled nursing* facility on the premises, with nursing and/or physical rehabilitation, either short-term or long-term.

The on-site community, services, healthcare and activities are factors that attract many people to CCRCs. In addition entry into a CCRC requires only one major transition to a new "home" for those resident for whom stability is appealing or necessary. The facilities and options will vary widely so residents and their families considering this housing option are cautioned to thoroughly review each project on an individual and intensive basis.

It is also important to recognize that entry into the skilled nursing facility that is a part of the CCRC cannot in all cases by *guaranteed*. In the event that the nursing units are filled or otherwise unavailable, typical CCRC agreements permit placement of an ailing resident in an alternate nursing facility. This reality should be carefully reviewed with the CCRC and with a potential resident and information gathered with regard to the likelihood of such an event.

CCRCs generally maintain a diverse suite of on-site medical and social services and facilities. Residents may enter a CCRC while still relatively healthy and then move on to more intensive care as it becomes necessary. CCRCs offer various options for lively communal living not available in many age-limited (over-55) properties and available only with more effort for seniors who may choose to remain in their own homes.

CCRC Contracts are Lengthy, Confusing and Costly

The downside of CCRCs is the substantial cost of the *Entry Fee* and the confusing structure of the contracts and agreements between the CCRC and the resident. Prices depend on the amount of care provided, the type of contract, and the unit's size and geographic location. Entry fees may range from $100,000.00 to more than $500,000.00

depending on the CCRC project, real estate market and factors such as whether or not the Entry Fee will be refunded in full or in part at such time as the resident leaves the CCRC or passes away. *Monthly Service Charges and Fees* range widely based, not only on the real estate market and prevailing regional costs but also the type of contract between the CCRC and the resident. Unlike other types of senior housing, the costs of CCRCs is highly variable and has been difficult to quantify in national surveys. (see e.g. recent cost surveys by Metlife Mature Market Institute: http://www.metlife.com/assets/cao/mmi/publications/studies/mmi-market-survey-nursing-home-assisted-living.pdf and Genworth Financial: http://www.genworth.com/content/genworth/us/en/products/long_term_care/long_term_care/cost_of_care.html) The variability of costs was described in a recent NY Times article as "bewildering." http://newoldage.blogs.nytimes.com/2009/12/03/ccrc-fees-prepare-to-be-bewildered/

CCRC Contacts and Fee Arrangements

Seniors often use the proceeds from the sale of their home to pay the Entry Fee of the CCRC. However, the resident should be cautioned than in most CCRCs, the payment of the Entry Fee is not the same as the purchase of an apartment or real estate of any kind. The agreements in many cases are akin to a leasehold. Moreover, to the extent that the current federal and state tax law (also highly changeable) results in a taxable gain upon the sale of the residence – no "roll over" to defer a gain of potentially highly appreciated real estate will be available upon entry into a CCRC.

In some CCRC agreements refunds are available on a declining basis after a specified period of residency. The refundability of the Entry Fee may also be controlled to some degree by state statues and regulations. see e.g. Massachusetts General Laws ch. 93, §76 (c)(4). However, some CCRCs give residents the option of paying a higher entry fee, which then remains completely refundable. Part of the entry fee will be refunded either to the resident should the resident depart the CCRC or to the resident's estate once the resident dies. Of course, the option or requirement of a refund raises numerous questions including:

- the tax treatment of the refund
- whether the availability of the refund triggers imputed interest treatment for federal tax purposes (in fact, some CCRCs provide their residents with 1099s to address this issue)
- how the 'refund' monies are held and managed
- when a refund must be delivered to a departing resident or the deceased residents successors (time frame and whether deliver of funds is contingent on an event such as a new occupant entering into an Agreement)
- whether the pool of assets that represent refund monies are subject to the claims of creditors and the treatment of such assets in the event of a bankruptcy of the CCRC. On this last point, a review by legal counsel of the issues raised by the bankruptcy of a prominent national CCRC developer is appropriate. see: http://online.wsj.com/article/SB125470198323063141.html

Nationally, CCRCs typically provide for three basic fee schedules:

1. Extensive contracts, which include unlimited long-term nursing care at little or no increase in the monthly fee. This arrangement requires residents to pay a higher fee initially.
2. Modified contracts, which include a specified duration of long-term nursing care, beyond which fees rise as care increases.
3. Fee-for-service contracts, in which residents pay a reduced monthly fee but pay full daily rates for long-term nursing care.

CCRC contracts have evolved over time with new and confused variations within each fee schedule. For example, a CCRC might offer two different extensive contracts and one modified contract, with different levels of refundability for each. www.ccrcdata.org provides a national directory of CCRCs and general information regarding the amenities provided by a CCRC and the contract terms. Many facilities now provide samples of the their contract and related documents on-line in PDF format. Care should be taken, however, to review not only the CCRC contracts but also the financial information and individual project data to determine whether or not the particular CCRC being reviewed is financially stable and likely to remain so over time.

As with assisted living facilities, the state regulation of CCRCs is highly variable. There is no federal agency that overseers CCRCs in particular. A private non-profit organization, the Continuing Care Accreditation Commission (CCAC), provides accreditation to CCRCs. The CCAC accreditation process is voluntary and its high cost and in depth review appears to be highly correlated with a CCRCs' quality. see www.carf.org

Nevertheless, a CCRC's lack of accreditation is not necessarily a bad sign. Among the most important considerations is the financial condition of the CCRC. Choosing a "mature" CCRC, one that has been in business a number of years or has been developed by a sponsor with a strong track record may provide additional comfort that the CCRC will remain successful over time. For example, the Society of Friends (Quakers) has operated its CCRCs (as an outgrowth of its more than 100 year old rest homes) for almost 40 years. The American Association of Homes and Services for the Aging ("AAHSA") is the national association for non-profit CCRCs. The AAHSA Web site includes information on selecting a CCRC and provides links to this organizations various partner organizations, businesses and professional. see www.aahsa.org

Recent Financial Challenges:

According to a recent survey prepared by B.C. Ziegler, an underwriter of financing for non-profit senior living providers, there were approximately 1850 CCRCs in the United States as of the end of 2009. Approximately 30% of CCRCs currently under development are for-profit status according to the survey. This represents a shift from the current norm of non-profit ownership of CCRCs. Profit and non profit projects alike, are developed utilizing complex financial instruments including municipal bonds, tiered financings, and oftimes complex management contracts between ongoing non-profit management companies controlled by the project developer. Moreover the CCRC "model" relies on the up front provision of large sums of money from each resident raising issues of financial management, disclosure and security of such deposits.

Due, in part, to the recent financial crises, the Erickson Retirement Communities, Inc. (the developer of the various 'Erickson' communities) was forced to reorganize in Chapter 11 Bankruptcy and its real estate and financial assets under management were acquired by in an auction. see: http://www.washingtonpost.com/wp-dyn/content/article/2010/04/16/AR2010041603036.html
New capital was injected into the operations of all of the individual CCRCs by the successful bidder. see:
http://online.wsj.com/article/SB10001424052748704254604574614221568155980.html
Notwithstanding the financial concerns, occupancy rates and confidence in the individual Erickson communities (as well as other CCRCs nationally) has remained high.

Ongoing turmoil in the CCRC industry has led the U.S. Senate Special Committee on Aging so seek a Government Accountability Office investigation into CCRC operations and finances. http://www.ziegler.com/uploadedFiles/CFO10%20-%20Govt%20Accounting.pdf. Although the prospects for the industry remain positive, given importance to seniors of maintaining stability in their housing accommodations, a thorough review of a particular CCRCs financial position is an important component of counsel's overall review of a CCRC project.

CCRC entry requirements

Most CCRCs require that a resident be in good health, be able to live independently when entering the facility, and be within minimum and maximum age limits. As a prerequisite to admission, facilities may also require both Medicare Part A and Part B, and perhaps Medigap coverage as well. A few are now even requiring long-term care coverage as a way of keeping fees down. Some CCRCs are affiliated with a specific religious, ethnic or fraternal order and membership in these groups may be a requirement. Of course, applicants will have to demonstrate that they have the means to meet the required fees. The applicant may be placed on a waiting list, since CCRCs have, until relatively recently been highly sought after.

CCRC residents usually self-fund their residency and care out of their own pockets. As noted above, CCRCs are generally targeted toward seniors with middle to upper class means. However, Medicare, and at times Medicaid, can be used to pay for certain services, and most CCRCs accept either Medicare or Medicaid. Although Medicare does not generally cover long-term nursing care, it often covers specific services that a CCRC resident might receive, such as physician services and hospitalization. Because the financial requirements for residence are fairly strict and the costs are relatively high, very few CCRC residents are eligible for Medicaid.

How to evaluate a facility and contract

Deciding on a CCRC may be an once-in-a-lifetime choice, and it is a decision that should be made carefully. Many communities allow prospective residents to experience life at the facility. Each community has an agreement or contract that lays out the services provided. The senior and her family should make sure they clearly understand the contract before signing making the attorneys role important in the CCRC selection process.

Two separate checklists are attached to this article to assist with the selection process. In light of the large number of choices and variables to be addressed in a review, legal counsel should consult closely with the potential residents about the costs and time an appropriate review may take.