CONTINUING CARE RETIREMENT COMMUNITY

RESIDENT CONTRACT CHECKLIST

Developed by
The Commission on Legal Problems of the Elderly
American Bar Association
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A. Background.

1. Continuing Care Retirement Communities (CCRCs) are conventionally defined as retirement facilities that provide shelter, care and services, including nursing home services, for as long as you live in the facility, in return for a one-time entrance fee and monthly fees. Also commonly referred to as Life-Care Communities, these kinds of facilities were originally sponsored by religious or fraternal organizations and originally promised total life-care. These are normally not ownership arrangements, but rather contractual arrangements for occupancy and services.

2. Over the last several years, the market has dramatically changed and grown with private, for-profit corporations such as Marriott entering the CCRC market. The definition of CCRCs is also becoming increasingly fluid as developers manipulate the conventional earmarks of CCRCs, for example by doing away with the entrance fee or relying more on a fee for service approach. Even traditional rental facilities and condominiums have begun to "look" more like CCRCs by adding on long-term health care packages purchased through service agreements or "memberships." But, the basic selling concept remains the same: a promise of security and certainty through the end of the resident's life. Today there about 700 CCRSs nationwide.

3. The growth of the industry has not been without serious problems. About 40 facilities in some ten states have gone bankrupt since the mid-1970s. In a few cases, fraud and mismanagement have been exposed. One response has been the emergence of public regulation of CCRCs. See William B. Fisher, "Continuing Care Retirement Communities: A Promise Falling Short," 8 Geo. Mason L. Rev. 47 (1985).
4. CCRCs are now regulated to some extent in about 30 states, including the following:

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5. The number is increasing as additional states consider CCRC legislation. Typically, the state's insurance commission or department is the regulating agency. The purpose of regulation is threefold: (a) to insure financial stability of the communities; (b) to protect consumers from unsound investments; and (c) to provide guidance in financial disclosure and contract development. In reality, most of these statutes emphasize extensive disclosure rather than setting standards for facility operation. See, F. Ellen Netting and Cindy C. Wilson, "Current Legislation Concerning Life Care and Continuing Care Contracts," 27 The Gerontologist, No. 5, 645-651 (1987); Joan E. Fairbanks, "Lifetime Care Contracts: Are Senior Citizens Putting All Their Eggs in One Basket?" 4 Probate & Property, No.2, 4-9 (March/April 1990).

6. Industry self-regulation also began to emerge under the leadership of the American Association of Homes for the Aging ("AAHA"). In 1985, AAHA established the Continuing Care Retirement Commission to operate a national accreditation program for CCRCs. Presently, the number of accredited CCRCs is relatively small. AAHA has also published a Model CCRC Act.

7. Not all of the checklist items below are covered by state regulation, but the issues raised are all important for prospective CCRC residents to consider. CCRCs are not for everyone and they are not without some risk. It is the counselor's role to help make sure the client knows what he or she may be buying into, and in some cases, suggest contract changes or other options entirely.
B. **CCRC CONTRACT CHECKLIST**

**SOLVENCY/EXPERTISE OF THE PROVIDER**

1. What is the financial condition of the facility? If the facility is not yet built, this is particularly troublesome to assess. (States that regulate CCRCs typically require disclosure statements be provided prior to execution of a contract, including information such as financial statements for the most recent fiscal years and owner/operator background information.)

2. Who is the sponsor and what is the extent, if any, of the sponsor's fiduciary responsibility? (Many facilities are sponsored by non-profit groups and churches who may have no legal fiduciary responsibility.)

3. Who are the officers, directors, and managers of the organization? What is their past experience? Has the organization or its officers been the subject of any judicial proceeding or administrative sanction?

4. Are any of the agents, managers, or employees of the facility bonded? (Only a few states require this.)

5. Does the facility maintain a minimum cash reserve to provide a protection against unexpectedly high operating costs? (California, for example, requires that the total interest, principal, and rental payments due during the next year must be held on reserve.)

6. Has the facility been accredited by the Continuing Care Accreditation Commission? (Of the 700 known facilities, only 93 have been accredited by this group as of August 1990).

7. Is the facility covered by the states' licensure statutes for nursing home, assisted living, or other levels of health care it provides?
ENTRANCE FEES AND MONTHLY FEES

8. What is the entrance fee? (Nationally, these vary dramatically, from $15,000 to more than $200,000, depending on the geographic location, type and size of unit, and service package.) Note that residents may be entitled to a tax deduction for the portion of the entrance and monthly fees that are prepayments for medical care.

9. Escrow. What happens to the entrance fee? (For example, Virginia requires entrance fees, or any advance payments totalling $5000 or more even if not technically an entrance fee, to be placed in escrow until the time the resident's unit is available for occupancy. Interest payments on the escrowed monies are not required. Va. Code §38.2-4904.1.)

10. Cancellation. Under what circumstances does a resident have the right to cancel or rescind the contract? (Some states have a minimum "cooling off" or "free look" period, such as 7 days in Virginia, 30 days in Connecticut, 90 days in California.)

11. Does the contract show the fair market value of all properties transferred by the resident? (This is important if noncash assets are transferred.)

12. Refunds. Under what circumstances will the entrance fee be refunded to the resident or the resident's estate? e.g., voluntary termination during first year of residence, death of the resident, termination by the facility? Is payment of a refund conditioned upon reoccupancy of the unit? (Some facilities have a declining refund schedule according amortized at 1% to 2% per month. Some newer facilities are offering fully refundable entrance fees.) Note that refundable entrance fees may be viewed as a loan to the facility and result in imputed interest to the resident under IRS rules.
13. **Resident financial claims.** What financial protection exists for residents if the facility fails to meet its obligations under the contract? (In most states, residents have no priority over other creditors. In some states, such as Arizona, California, Colorado, Minnesota, and New Jersey, residents are entitled to a lien against the facility's properties under certain circumstances. See e.g., Ariz. Rev. Stat. Ann. §20-1805; Cal. [Health & Safety] Code §1172; Colo. Rev. Stat §12-13-106; Minn. Stat. §80D.08; N.J. Rev. Stat. §52:27D-341.)

14. What is the monthly fee?

15. **Fee increases.** Under what circumstances can the monthly fee be increased, by what amount, and with what kind of advance notice? (The Virginia act requires at least 30 days advance notice for any change in fees, but does not limit the amount or frequency of fee increases. It is preferable to have a cap on fee increases or at least tied to some objective cost-of-living standard.)

16. **Inability to Afford Fee Increases.** What happens if fee increases exceed the resident's ability to pay?

17. **Intra-facility Moves.** What right does the resident have to move to another unit once living in the community?

18. **Living Unit.** Is a specific description of the living unit included in the contract? To what extent can the resident modify or redecorate the unit?

19. **Level of Care Fee Adjustments.** What financial adjustment, if any, is made for changes in level-of-care living arrangements, e.g., transfers from independent living, to assisted living, to nursing care?

20. **Marriage/Divorce.** What is the effect on a resident who marries or divorces while at the facility? How are fees and living arrangements affected, and what if a new spouse does not meet the facility's entry requirements? (Virginia law requires disclosure of this.)

21. **Services.** What are the specific services that are included under the contract without additional charge? What are the additional available services at the facility for which additional charges will be made? For example:
o Meal service/special diets?
 o Utilities? Cable television?
 o Unit maintenance?
 o Furnishings?
 o Linens/personal laundry?
 o Housekeeping?
 o Recreational/cultural activities?
 o Transportation? To where? How often?
 o Health & personal care? See below.

Services, especially health and support services, are not an easy matter to evaluate because these services often lack precisely definable terms that one can easily quantify.

22. **Additional Costs.** What are the specific costs of the services not covered by the basic fee? Under what circumstances can the fee for these services be increased, and by how much?

23. **Service Limits.** How often or for how long can each service be used by the resident under the given fee?

24. Can services be eliminated or cut-back?

25. **Start-up Delays.** If the life care facility is not yet full, will all the services in the contract still be offered? (Some facilities cannot or will not offer a full service package until the facility has full occupancy; for example, the nursing care unit may not be built or in operation.)

26. Is there a "Resident Handbook" or other rules and policies not spelled out in the contract? If so, are those policies incorporated by reference into the contract? (In an effort to keep the contracts short, some facilities may relegate policies to a supplemental document which the resident may never see until after the contract is signed).

**HEALTH CARE QUESTIONS**

27. **Health Screening.** What age and health requirements must be met for entry into the CCRC?

28. Does the facility limit its responsibility for pre-existing health conditions?
29. Definitions. What are the specific types of health care and assisted care that will be provided? Specifically:

a. Are doctors provided by the facility? Nurses? Are they available at all times or only during limited periods? What are the qualifications of the health care providers?

b. Is there a nursing home on the premises? If not, does the facility have a referral and admission relationship with a nursing home off the premises?

c. How much in-home care is provided? What types of in-home care can be provided? If the resident is sick, can meals be brought to the living unit? Is the home care provider Medicare-certified or licensed by the state?

d. What drugs, medication, and medical equipment or supplies are covered in independent living?...in assisted living?...in the nursing facility?

30. Care Limits. What limits on access, frequency, and duration of care are imposed?

31. How much health care is prepaid? The resident may be entitled to a medical deduction on his/her income taxes for the portion of entrance and monthly fees that pay for medical care.

32. What does Medicare pay for the in the community?

33. Are other government subsidies potentially available? (e.g., Medicaid? Rent assistance?)

34. Insurance. What types of insurance must residents carry (e.g. health, accident, property, etc.) Is the resident required to purchase Medigap or long term care insurance? (Some CCRCs include the premium in the monthly fee.)

35. What is the responsibility of the facility to pay for health care outside the facility if it is care that cannot be provided in the facility?
36. **Level of Care Transfers.** What are the criteria and procedures for determining when a resident needs to be transferred from independent living to assisted living or a nursing home? Who will be involved in that determination? Can the resident appeal that determination if he or she disagrees? (Contract provisions often leave this monumental decision exceedingly vague or entirely within the discretion of the facility administrator.)

37. What assurances of quality of care are contained in the contract? (Few contracts address this.)

**RESIDENTS' RIGHTS QUESTIONS**

38. **Resident Control.** What is the extent of resident participation in management of the facility? If there is a resident's council, does it have decision-making power? (The Florida and Virginia statutes, for example, do not give residents any authority in the management of the facility. Rather, they grant residents a right to self-organize, to be given a copy of all submissions made by the facility to the state's insurance department, and to meet with facility board representatives or management at least quarterly to discuss issues relating to the facility. *Fla. Stat.* §4651.081, .085; *Va. Code* §38.2-4910.)

39. **Grounds for Termination.** Under what circumstances can the facility involuntarily terminate the resident's contract and residency? In particular, what if monthly fee increases in the future exceed the resident's ability to pay, or the resident cannot pay for needed "extra" services? Several states have good or just cause limitations on involuntary termination. For example, Virginia permits termination for good cause, which is limited to:

- (1) proof that the resident is a danger to himself or others;
- (2) nonpayment by the resident of a monthly or periodic fee;
- (3) repeated conduct by the resident that interferes with other residents' quiet enjoyment of the facility;
- (4) persistent refusal to comply with reasonable written rules and regulations of the facility;
(5) a material misrepresentation made intentionally or recklessly by the resident in his application for residency, or related information, regarding information which, if accurately provided, would have resulted in either a failure of the resident to qualify for residency or a material increase in the cost of providing to the resident the care and services provided under the contract; or (5) material breach by the resident of the terms and condition of the continuing care contract." Va. Code §38.2-4905(A)(8).

40. **Due Process.** What due process rights does the resident have in the event of possible termination against his or her wishes? (Typically, requirements will emphasise written notice an opportunity to cure the alleged problem. Michigan allows life-care contracts to contain an arbitration clause. Mich. Stat. Ann §14.1301(11).

41. **Guests.** What restrictions exist on visitors, such as family or friends staying for a short or extended period of time?

42. **Injury to Person or Property.** What is the liability of the resident to the facility for loss or damage caused by carelessness or negligence on the part of the resident? What is the liability of the facility to a resident for injuries to a resident resulting from negligence by the facility or third parties? (Watch out for waivers.)

43. **Complaint Mechanisms.** Are there grievance procedures in place? Is there a statement that harassment or retaliation is prohibited due to filing of grievances and complaints?

44. What **security** and **safety** measures will the facility provide? e.g., entrance security, emergency call systems, accommodations for any handicaps?

45. **Decision-Making in the Event of Incompetency.** Does the contract assign financial or decision-making authority to the facility in the event the resident becomes incapable of handling his or her affairs or making health care decisions? Is there a requirement that, upon entry, the resident must have a will or a durable power of attorney? (Such provisions would probably be unenforceable. However, executing a will and durable power of attorney, including a health care power of attorney is good advice.)
CONTINUING CARE RETIREMENT COMMUNITIES
ADMISSION CONTRACT CHECKLIST

Commission on Legal Problems of the Elderly
American Bar Association

Continuing Care Retirement Communities are conventionally defined as retirement facilities that provide shelter, care and services, including nursing home services, for as long as the resident lives in the facility, in return for a one-time entrance fee and monthly fees. Also commonly referred to as Life Care Communities, these kinds of facilities were originally sponsored by religious or fraternal organizations and originally promised total life-care. These are normally not ownership arrangements, but rather contractual arrangements for occupancy and services.

Over the last several years, the market has dramatically changed and grown with private, for-profit corporations entering the CCRC market. The definition of CCRCs is also becoming increasingly fluid as developers manipulate the conventional earmarks of CCRCs, for example, by doing away with the entrance fee or relying more on a fee-for-service approach. But the basic selling concept remains the same: a promise of security and certainty through the end of the resident's life. Today there are about 700 facilities nationally and their resident contracts vary tremendously in language, content and scope.

The growth of the industry has not been without serious problems. About 40 facilities in some ten states have gone bankrupt since the mid-1970s. In a few cases, fraud and mismanagement have been exposed. One response has been the emergence of public regulation of CCRCs. See, William B. Fisher, "Continuing Care Retirement Communities: A Promise Falling Short," 8 Geo. Mason L. Rev. 47 (1985). CCRCs are now regulated in over 20 states and the number is increasing as additional states consider CCRC legislation.

Industry self-regulation has also begun to emerge under the leadership of the American Association of Homes for the Aging ("AAHA"). In 1985, AAHA established the Continuing Care Retirement Commission to operate a national accreditation program for CCRCs. Presently, the number of accredited CCRCs is relatively small.

Not all of the checklist items below are covered by state regulation, but the issues raised are all important for prospective CCRC residents to consider. CCRCs are not for everyone and they are not without some risk. It is the counselor's role to help make sure the client knows what he or she may be buying into, and in some cases, suggest contract changes or other options entirely.

The checklist that follows is based in part on an unpublished survey conducted in 1988 by the American Association of Retired Persons, Consumer Affairs Section, of 38 CCRC contracts from around the country.
CHECKLIST

A. SOLVENCY/EXPERTISE OF THE PROVIDER

1. What is the financial condition of the facility? (Some states require that prospective residents be given a disclosure statement, including financial statements and owner/operator background information.)

2. Who is the sponsor and what is the extent, if any, of the sponsor's fiduciary responsibility? (Many facilities are sponsored by non-profit groups and churches who have no legal fiduciary responsibility.)

3. Who are the officers, directors, and managers of the organization? What is their past experience? Has the organization or its officers been the subject of any judicial proceedings or administrative sanctions?

4. Are any of the agents, managers or employees of the facility bonded? (A few states require this.)

5. Cash reserve. Does the facility maintain a minimum cash reserve to provide protection against unexpectedly high operating costs? (A few states have cash reserve requirements; some may be earmarked for specific costs. California, for example, requires that the total interest, principal, and rental payments due during the next year must be held in reserve.)

6. Accreditation. Has the facility been accredited by the Continuing Care Accreditation Commission? (Of the 700 known facilities, about 50 have been accredited by this group.)

7. Licensure for CCRC, nursing home, board and care? Is the facility covered by the state's licensure statutes for the levels of health care it provides?

B. ENTRANCE FEES

8. What is the entrance fee? (Nationally these vary dramatically from $15,000 to more than $200,000, depending on the geographic location, type, and size of unit and service package.)

9. What happens to the entrance fee?

10. Does the contract show the value and description of all properties transferred by the resident? (This is especially important if property other than cash is transferred.)
C. CANCELLATION/REFUND

11. Under what circumstances does a resident have the right to cancel the contract?

12. Under what circumstances will the entrance fee be refunded to the resident or the resident's estate, e.g., voluntary termination during first year of residence, death of the resident, termination by the facility?

13. Is payment of a refund conditioned upon reoccupancy of the unit?

D. MONTHLY FEE

14. What is the monthly fee? Any options?

15. Under what circumstances can the monthly fee be increased, by what amount, and with what kind of advance notice? (It is preferable to have a cap on fee increases or at least tied to some objective cost-of-living standard.)

16. What financial adjustment, if any, is made for changes in level-of-care living arrangements, e.g., transfers from independent living, to assisted living, to nursing care?

17. What is the effect on a resident who marries or divorces while at the facility? How are fees and living arrangements affected, and what if a new spouse does not meet the facility's entry requirements?

E. LIVING UNITS

18. Is a specific description of the living unit included in the contract?

19. What right does the resident have to change units once living in the community?

20. To what extent can the resident decorate or redecorate the unit?

F. NON-HEALTH SERVICES

21. What are the specific services that are included under the contract without additional charge? What are the additional available services at the facility for which additional charges will be made? For example:

- Meal service/special diets?
- Utilities? Cable television?
- Unit maintenance?
22. What are the specific costs of the services not covered by the basic fee? Under what circumstances can the fee for these services be increased, and by how much?

23. How often or for how long can each service be used by the resident under the given fee?

24. Can services be eliminated or cut back?

25. If the life care facility is not yet full, will all the services in the contract still be offered? (Some facilities cannot or will not offer a full service package until the facility has full occupancy; for example, the nursing care unit may not be built or in operation.)

G. HEALTH CARE SERVICES & COVERAGE

26. What age and health requirements must be met for entry into the CCRC?

27. Does the facility limit its responsibility for pre-existing health conditions?

28. What are the specific types of health care and assisted care that will be provided?

29. What limits on access, frequency, and duration of care are imposed?

30. How much health care is prepaid?

31. What does Medicare pay for in the community?

32. Are other government subsidies potentially available, (e.g., Medicaid, rent assistance)?

33. What types of insurance must residents carry (e.g. health, accident, property, etc.)? Is the resident required to purchase Medigap or long term care insurance? (Some CCRCs include the premium in the monthly fee.)

34. Are doctors provided by the facility? Nurses? Are they available at all times or only during limited periods? What are the qualifications of the health care providers?

35. Is there a nursing home on the premises? If not, does the facility have a referral and admission relationship with a nursing home off the premises? What if there is no bed available when a resident needs one?
36. How much in-home care is provided? What types of in-home care can be provided? If the resident is sick, can meals be brought to the living unit? Is the home care provider Medicare-certified or licensed by the state?

37. What drugs, medication, and medical equipment or supplies are covered in independent living? in assisted living? in the nursing facility?

38. What is the responsibility of the facility to pay for health care outside the facility if it is care that cannot be provided in the facility?

39. What assurances of quality of care are contained in the contract? (E.g., What licensure, certification, level of training, and institutional affiliation do care providers have?)

H. LEVEL OF CARE CHANGES

40. What are the criteria and procedures for determining when a resident needs to be transferred from independent living to assisted living or a nursing home? Who will be involved in that determination? Can the resident appeal that determination if he or she disagrees? (Contract provisions often leave this monumental decision exceedingly vague or entirely within the discretion of the facility administrator.)

I. RESIDENT CONTROL

41. What is the extent of resident participation in management of the facility? If there is a resident's council, does it have decision-making power?

J. INVOLUNTARY TERMINATION

42. Under what circumstances can the facility involuntarily terminate the resident's contract and residency? In particular, what if monthly fee increases in the future exceed the resident's ability to pay, or the resident cannot pay for needed "extra" services?

43. What due process rights does the resident have in the event of possible termination against his or her wishes?

K. OTHER RIGHTS AND OBLIGATIONS

44. Is there a "resident handbook" or other rules and policies not spelled out in the contract? If so, are those policies incorporated by reference into the contract? (In an effort to keep the contracts short, some facilities may relegate policies to a supplemental document which the resident may never see until after the contract is signed.)
45. What restrictions exist on visitors, such as family or friends staying for a short or extended period of time?

46. What is the liability of the resident to the facility for loss or damage caused by carelessness or negligence on the part of the resident?

47. What is the liability of the facility to a resident for injuries to a resident resulting from negligence by the facility or third parties? (Watch out for waivers.)

48. Are there grievance procedures in place? Is there a statement that harassment or retaliation is prohibited due to filing of grievances and complaints?

49. What security and safety measures will the facility provide, e.g., entrance security, emergency call systems, accommodations for any handicaps?

L. PROXY DECISION-MAKING

50. Does the contract assign financial or personal decision-making authority to the facility in the event the resident becomes incapable of handling his or her affairs or making health care decisions? Is there a requirement that, upon entry, the resident must have a will or a durable power of attorney? (Such provisions would probably be unenforceable. However, executing a will and durable power of attorney, including a health care power of attorney, is good advice.)