The Legal Framework Affecting Resident Rights & Responsibilities in Continuing Care Communities in Connecticut

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I. Connecticut-Specific Laws and Regulation of CCRCs and LCCs

   a. 521: Registration – Annual Fee ($24 per residential unit)
   b. 522: Disclosure Statement
   c. 523: Continuing-Care Contraction Requirements
   d. 524: Entrance Fee Escrow Account*
   e. 525: Reserve Fund Escrow Account
   f. 526: Preconstruction Requirements
   g. 527: Information to be filed with Department & Available to Residents
   h. 528: Documents Required to be filed within first year of operation
   i. 529: Liability for violation, Misstatement or Omission related (only) to “disclosure statements”*
   j. 531: Investigations, Hearings, Injunctions, Action by Attorney General
   k. 532: Receiver & Liquidation
   l. 534: Exemption from Reserve Escrow Provisions for Certain Providers
   m. 535: Advisory Committee

Connecticut law mandates certain disclosures to prospective and current residents. Unlike some states, Connecticut appears not to have an express provision for “resident rights” in CCRCs. Compare Oregon’s Continuing Care Retirement Community Provider Registration Act, O.R.S., Sections 101.010 through 101.160, including Section 101.112(6) that requires CCRCs to include

* This outline is for general educational purposes and is not intended to serve as legal or financial advice. Individuals should consult their own legal or financial advisors for advice regarding specific concerns.
residents on governing boards, including at least one non-voting member, with the option to include more resident-members and to permit voting membership.

B. Regulations: Management of Continuing Care Facilities, Conn. ADC §§ 17b-531-1 through 17b-533-11, with the Department of Social Services (since 1996) the designated supervisory agency. Key sections include:
   a. 533-2: Registration
   b. 533-3: Disclosures: form and content
   c. 533-4: Escrow Accounts
   d. 533-5: Reserve Fund Escrow
   e. 533-6: Annual Filings
   f. 533-7: Disclosure statements & revisions
   g. 533-8: Investigations
   h. 533-9: Receivership, Rehabilitation & Liquidation
   i. 533-10: Miscellaneous
   j. 533-11: Advisory committee

C. Statute: Managed Residential Communities, Conn. Gen. Stat. §§ 19a-693 through 19a-708, applies to all “managed residential communities” and not just CCRCs. The law mandates certain “resident rights,” and the list must be provided in writing to each resident. Most of the rights are those which are basic to any congregate living situation, such as the right to “live in a clean, safe and habitable private residential unit.” Items potentially useful to CCRC residents include:
   a. Section 19a-697(a)(10) regarding the right to “present grievances and recommend changes . . . to the manager or staff . . . government officials . . . without restraint, interference, coercion, discrimination, or reprisal. . . .”
   b. Section 19a-697(a)(13) regarding the “right to have all reasonable requests responded to promptly and adequately. . . .”

II. Contracts & Common Law

In the absence of statutory mandates for protection regarding CCRC residents’ core concerns, the key source (or limitation) of rights and responsibilities for residents is the contract signed by the resident. Thus,
residents are left to parse the CCRCs carefully drafted contracts to ascertain rights within a particular facility.

In addition to any rights or obligations under contracts, some states may recognize additional common law rights arising out of the unique relationship between the parties, which may be deemed to impose a “fiduciary duty” on the trusted party to account for management of funds entrusted to them by the dependent party.

Many states (either by statute or common law) recognize that boards of directors and officers of corporations owe fiduciary duties to shareholders in the for-profit setting. In the nonprofit setting, it is sometimes said that the officers and directors owe their fiduciary duty to the “entity,” because there is no “owner.”

Connecticut does not appear to have any reported cases that analyze contractual terms in CCRCs. In one unreported opinion (which has no precedential value) by a trial level court in 1991, heirs of a deceased resident were disputing whether the CCRC owed any money to heirs based on a claim that the resident’s pledge of assets at admission exceeded the services rendered to her before she died. The court observed that plaintiffs were alleging breach of fiduciary duty, noting that “a fiduciary or confidential relationship is characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other.” See Andrus v. Andrus, 1991 WL 27884 (Conn. Superior Ct., 1991) (quoting Dunham v. Dunham, 204 Conn. 303, 322(1987) and further holding that the existence of a fiduciary relationship is a question of fact.)

III. Other State Laws Affecting Consumer Rights
A. Connecticut Unfair Trade Practices Act, C.G.S.A. Sections 42-110a through 42-110q
   a. Section 42-110b prohibits “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or business.”
B. Connecticut Consumer Protection on Creditor’s Collection Practices, C.G.S.A. Sections 36a-645 through 36a-648a
a. Section 36a-646 “No creditor shall use any abusive, harassing, fraudulent, deceptive or misleading representation, device or practice to collect or attempt to collect any debt.”

C. Connecticut Consumer Protection on Solicitation of Charitable Funds, C.G.S.A. Sections 21a-190a through 21a-190l
a. Section 21a-190h specifying prohibited acts, such as misrepresentation of the purpose or nature of a charitable organization, or engaging in any financial transaction which is not related to the accomplishment of [the organization’s] charitable purposes.

IV. Other State Laws Protecting Older Adults
Connecticut’s laws mandates that certain persons report abuse, neglect or exploitation of the elderly (age 60 or over) to the Department of Social Services, and permits the state to investigate and provide services to the older adult victim. Unlike some states, it appears Connecticut does not have a law expressly providing criminal or civil penalties for neglect, abuse or financial exploitation of an older person.

V. Federal Laws Specifically Affecting CCRCs
A. Federal law does not currently specify or govern “resident” rights in CCRCs.
B. In 2005, federal Medicaid law was amended at 42 USCA Section 1396p(g), to provide that CCRCs may treat a couple’s refundable entrance fee as an “available resource,” subject to mandatory spend down, before either resident will be permitted to apply for Medicaid for nursing care. This change of federal law was lobbied for by the CCRC industry in response to a state case, Oak Crest Village, Inc. Murphy, 841 A.2d 816 (Md. 2004), holding that the then-existing Medicaid law’s anti-alienation provision prevented the CCRC from denying the husband’s admission to nursing home without spend down of assets held in name of wife.

VI. Federal Laws Affecting Nonprofit CCRCs
A. Revenue Ruling 72-124 (published in 1972) sets forth the requirements for CCRCs to qualify for exemption for federal income taxes under Section 501(c)(3). The requirements include:
   a. Operation in a manner designed to satisfy “three primary needs of aged persons,” which “are the need for housing, health care, and... financial security.”
   b. The need for financial security will generally be satisfied if two conditions exist:
      i. The organization must be committed to an established policy of maintaining persons who become unable to pay their regular charges.
      ii. The organization must operate so as to provide its services to the aged at the “lowest feasible cost,” taking into consideration expenses for payment of indebtedness, maintenance of adequate reserves to insure life care, reserves for physical expansion, and existing resources of the organization.

B. But see Miriam Osborn Memorial Home Ass’n v. Assessor of City of Rye, 909 N.Y.S.2d 493 (New York Supreme Court, Appellate Division, 2010), denying exclusion from property taxes on “charitable use” grounds, citing above Revenue Ruling and noting that CCRC in question met neither criterion as it was “largely limited to wealthy seniors.”

VII. Voluntary Accreditation Using Industry-Based Guidelines

CARF International, Inc. was founded in 1966 as the Commission on Accreditation of Rehabilitation Facilities and later merged with the Continuing Care Accreditation Commission, or CCAC. CCAC had been a component of AAHSA, now Leading Age, the primary trade group representing the CCRC industry. The resulting organization is a nonprofit organization, independent of the industry trade group. Through the CARF-CCAC division, headquartered in Washington, D.C., it offers “accreditation” for CCRCs. According to CARF’s spokesperson, as of 2012 there are 9 CCRCs in Connecticut and a total of 281 CCRCs in the United States that are accredited by CARF. About half of the nation’s accredited facilities are operated by large, multi-facility organizations, such as Evangelical Lutheran Good Samaritan Society, National Senior Campuses
(Erickson), ACTS Retirement Life Communities, Presbyterian Homes & Services, Covenant Retirement Communities, Lifespace Communities, Inc., Westminster Communities of Florida, Lutheran Senior Services and Kendal Corporation.

As part of the accreditation process, CARF-CCAC does not mandate specific treatment of entrance fees; rather it mandates “disclosure” of treatment. As part of the accreditation process, it also evaluates whether the CCRC makes a written commitment to certain “rights of the persons served” including “freedom from . . . financial or other exploitation,” “access to information pertinent to the person served in sufficient time to facilitate his or her decision making,” and a formal “complaint” process.

CARF-CCAC offers an on-line, free “Consumer Guide to Understanding Financial Performance and Reporting in CCRCs.” The guide stresses the importance of consumer awareness, and suggests financial factors to evaluate (such as financial ratios, audited financial statements, cash on hand, endowment size, investment policy), but it does not give guidance to consumers on what numbers support a conclusion any particular CCRC is financially stable.

Further, for a fee (currently $140), CARF-CCAC offers an annual report on “Financial Ratios and Trend Analysis of CCAC-Accredited Communities,” which could be useful to sophisticated parties seeking comparative financial data.

VIII. Financial Accounting Standards Board (FASB) Rules and Guidance for CCRCs

In July, 2012, the Financial Accounting Standards Board issued a new guidance addressing how CCRCs should account for refundable entrance fees. The new guideline provides that repayment obligations must be treated as a “liability” rather than as “deferred income,” unless the resident contract expressly limits repayment in certain specified ways. The change is intended to better reflect an accurate financial statement for entrance-fee types of CCRCs, and to reduce the variability and confusion created by accounting practices used in some CCRCs. The effective date for the new accounting rules for public entities is for fiscal periods beginning after December 15, 2012, and nonpublic entities have a one year deferral option.
IX. Recent Connecticut Court Cases Potentially Affecting Resident Rights in CCRCs

- *Redding Life Care LLC v. Town of Redding*, Cause Number. CV 1060063385, trial court litigation pending in 2011, regarding real property tax appeal for Meadow Ridge CCRC, with issues related to how to treat fees paid by residents including refundable entrance fees.

- *Falls Church Group, Ltd v. Tyler, Cooper & Alcorn, LLP*, 921 A.2d 1019 (Conn. Supreme Court, 2007), arising out of prior litigation about residents’ rights to refunds of entrance fees at East Hills Woods CCRC, with successor-in-interest suing law firm that unsuccessfully represented residents, claiming their suit was “vexatious” litigation. Held: law firm had probable cause to assert claim of fraudulent concealment as basis for tolling of statute of limitations and therefore successor’s suit failed.

- *Staub v. Lutheran Home Retirement Corporation Inc.*, 1998 WL 88300 (Conn. Superior Court, 1998) (“unreported” memorandum decision), in which the estate of a deceased resident sued the operator of East Hills Woods CCRC alleging failure to pay refundable entrance fee. Opinion dismisses one of four counts of complaint, holding that plaintiff failed to plead sufficient facts to support a legal claim for “unjust enrichment.”