

## Entry Fee Guaranties

Insured life annuities are guaranteed against loss due to enterprise failure or otherwise by state laws. Protection from enterprise bankruptcy is provided by life and health guaranty associations in every state and territory of the United States. Other protections are provided by pervasive inter-state cooperation to ensure a sound industry able to fulfill its promises.

These safeguards do not exist for entry fee investments in Continuing Care Retirement Communities (CCRCs), recently renamed Life Plan Communities in an industry-sponsored effort to make residential living more palatable to a younger, more questioning generation of prospective customers. There is no uniform state regulation for CCRCs and residents' entry fee investments are fully at risk in the event of provider insolvency.

And such insolvencies are not uncommon because of the prevalence of nonprofit, bootstrap financing. Since nonprofits cannot access ownership equity capital, they rely on entry fees as protection for debt investors but entry fee investors receive no ownership benefits. In bankruptcy, residents are lumped together with purveyors of food and hardware, while debt investors have a senior claim on enterprise assets.

It's no wonder that the Federal Government Accountability Office in its July 2010 report to the U. S. Senate Committee on Aging titled its findings, "Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk." The emphasis here should be on **"Not Without Some Risk"** since government-speak is careful not to challenge too forcefully an established industry. Still, the

evidence of consumer risk was so strong that the apolitical GAO was obligated to include the risky nature of entry fee CCRCs in the title of its report.

If we unravel the cautious double negative of the GAO report, it can be paraphrased to read **“Continuing Care Retirement Communities Provide Risky Benefits.”** That need not be so. It’s in the industry’s interest to make its offerings safe for consumers. Otherwise, the industry risks the scandal of consumer betrayal and the loss of its market strength. It’s surprising, therefore, that the CCRC industry has not itself sought to give CCRC entry fees protections like those of insured annuities or bank deposits. Even the securities industry has formed the Securities Investor Protection Corporation as a shield for investors. We might speculate on why the CCRC industry has not pursued such protections through its representative association LeadingAge. The record shows that not only has the industry not taken the initiative to protect its customers but that it has also been nonresponsive to resident efforts to secure such protections in cooperation with LeadingAge and its provider members.

Such protection is of critical importance for residents and prospective residents especially in light of the industry’s tolerance for impaired balance sheets. In the regulated world of publicly traded securities, such tolerance would not be permitted. That is different, though, for tax exempt organizations which are presumed to have an eleemosynary purpose. Thus, it is not uncommon for tax exempt CCRCs to continue to solicit entry fee investments in CCRC contracts while the CCRCs liabilities for prior commitments is in excess of the assets accumulated to meet those commitments.

Although such an entry fee investment is unwise, today's lax regulation allows such impaired CCRCs to continue to market their contracts unfettered. Moreover, many such impaired CCRCs are able to claim "accreditation" by the industry-sponsored CARF-CCAC (Continuing Care Accreditation Commission) accrediting enterprise. CARF-CCAC is funded by fees collected from sponsoring accredited CCRC enterprises.

The path to assure CCRC contract performance and financial soundness is clear. Both the banking and insurance industries provide ample precedents for achieving such soundness. Many states already regulate CCRCs within state insurance departments, and the state insurance commissioners, in the absence of CCRC industry opposition, could readily ask the National Association of Insurance Commissioners (NAIC) to develop uniform financial and contract regulation, including both entry fee guaranties as described above and sound statutory financial accounting, both of which are fully developed in the case of the analogous insured annuity contracts.

Toward that end, the National Continuing Care Residents Association (NaCCRA) exposed for comment more than three years ago Model Laws for sound CCRC regulation, most of which were derived from comparable laws applicable to the insurance industry. Despite repeated entreaties, LeadingAge has remained silent in response to that request for comment. It will take an outpouring of public demand for effective eldercare regulation to motivate the NAIC or other authorities to take the steps needed to place the CCRC industry on a sound basis so that it will no longer be necessary to admonish the public that CCRC benefits are **"Not Without Some Risk."**

Active Aging Advocates  
July 2, 2016