



COMPLIANCE ALERT

TO: All Registered Indiana Continuing Care Retirement Communities

FROM: Alex Glass, Indiana Securities Commissioner

DATE: June 8, 2018

RE: Escrow Account and/or Letter of Credit Requirement

In Indiana, Continuing Care Retirement Communities (“CCRC”) are registered and regulated by the Indiana Secretary of State, Securities Division (“Division”). CCRCs have a number of requirements to maintain registration as outlined at Ind. Code 23-2-4 et seq. Under Ind. Code § 23-2-4-10, one requirement is for the CCRC to maintain an interest-bearing escrow account to be utilized for any entrance fees received prior to a new resident occupying the living unit at the CCRC. Per Ind. Code § 23-2-4-11, if certain requirements are met, a provider may establish a letter of credit in lieu of an escrow account.

The escrow account and/or letter of credit is required regardless of whether the CCRC currently collects upfront entrance fees or is only honoring existing CCRC contracts. A recent Division audit uncovered that a number of CCRCs are not presently meeting the escrow account and/or letter of credit requirement. As required by statute, the Division is ensuring that all registered CCRCs are in compliance with this requirement. A copy of the pertinent statutory and administrative rule language is included with this alert.

Every registered CCRC must submit to the Division proof of an established escrow account and/or letter of credit by August 10, 2018. Proof documents should be submitted to Doreen Fuery, Senior Accountant at dfuery@sos.in.gov. Documents will be kept with the CCRC’s registration and only need to be resubmitted if there is a change with the escrow account or letter of credit.

Failure to comply with the requirement outlined in this Alert could lead to further enforcement action by the Division. Questions regarding this Alert should be directed to Noelle Sykes, Chief Deputy Securities Commissioner, at nsykes@sos.in.gov.

IC 23-2-4-10

**Conditions of registration; deposit of entrance and
refurbishment fees into escrow account; limitations**

Sec. 10. (a) Except as provided by section 11 of this chapter, the commissioner shall require, as a condition of registration, that:

- (1) the provider establish an interest-bearing escrow account with a bank, trust company, or other escrow agent approved by the commissioner; and
- (2) any entrance fees received by the provider prior to the date the resident is permitted to occupy the living unit in the continuing care retirement community be placed in the escrow account, subject to release as provided by subsection (b).

(b) If the entrance fee gives the resident the right to occupy a living unit that has been previously occupied, the entrance fee and any income earned thereon shall be released to the provider when the living unit is first occupied by the new resident. If the entrance fee applies to a living unit that has not been previously occupied by any resident, the entrance fee and any income earned thereon shall be released to the provider when the commissioner is satisfied that:

- (1) aggregate entrance fees received or receivable by the provider pursuant to executed continuing care agreements, plus:

(A) anticipated proceeds of any first mortgage loan or other long term financing commitment; and

(B) funds from other sources in the actual possession of the provider;

are equal to at least fifty percent (50%) of the aggregate cost of constructing, purchasing, equipping, and furnishing the continuing care retirement community and equal to at least fifty percent (50%) of the estimate of funds necessary to fund startup losses of the continuing care retirement community, as reported under section 4(12) of this chapter; and

- (2) a commitment has been received by the provider for any permanent mortgage loan or other long term financing described in the statement of anticipated source and application of funds to be used in the purchase or construction of the continuing care retirement community under section 4(12) of this chapter, and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the continuing care retirement community, have been substantially satisfied.

(c) If the funds in an escrow account under this section and any interest earned thereon are not released within the time provided by this section or by rules adopted by the commissioner, then the funds shall be returned by the escrow agent to the persons who made the payment to the provider.

(d) An entrance fee held in escrow shall be returned by the escrow agent to the person who paid the fee in the following instances:

(1) At the election of the person who paid the fee, at any time before the fee is released to the provider under subsection (b).

(2) Upon receipt by the escrow agent of notice from the provider that the person is entitled to a refund of the entrance fee.

(e) This section does not require a provider to place a nonrefundable application fee charged to prospective residents in escrow.

(f) A provider is not required to place a refurbishment fee of a prospective resident in escrow if a continuing care agreement provides that the prospective resident:

(1) will occupy the living unit within sixty (60) days after the refurbishment fee is paid; and

(2) will receive a refund of any portion of the refurbishment fee not expended for refurbishment if the continuing care agreement is cancelled before occupancy.

As added by Acts 1982, P.L.145, SEC.1. Amended by P.L.234-1985, SEC.3; P.L.153-2009, SEC.10.