

# New Mexico



## Consumer's Guide to Continuing Care Retirement Communities

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# INTRODUCTION

*New Mexico, with its sunbelt climate, natural beauty and cultural diversity, can provide a wonderful environment for retired persons. In fact, seniors make up the fastest growing segment of our population. In response to this growth, we expect to see an increase in demand for services designed to meet the needs of senior citizens, including continuing care communities.*

*The New Mexico Consumer's Guide to Continuing Care Communities has been prepared by the New Mexico Aging and Long-Term Services Department and the Office of the Attorney General to provide you with information about continuing care and to help you assess the communities in which you are interested. After all, this may be the most important financial and lifestyle decision you will make as a senior citizen.*

*We want to protect our senior citizens and prevent any problems before they arise. In that spirit, please read this brochure carefully. We believe informed residents of continuing care communities will ultimately be satisfied residents.*

**Katrina Hotrum-Lopez**, Secretary Designate  
Aging and Long-Term Services Department



**Hector H. Balderas**  
New Mexico Attorney General



# IMPORTANT POINTS to REMEMBER as YOU ASSESS CONTINUING CARE COMMUNITIES

**This may be the most significant decision you will make as a senior citizen.** Do not be rushed into signing a contract. Make an informed choice.

Continuing care, or life care, retirement communities offer an attractive lifestyle option for seniors who want to live independently in a community while having the security of knowing that health-related care and other services are available when needed.

Typically, a continuing care community offers a variety of housing choices, from independent living to a higher level of supervision and care. Continuing care communities also offer a variety of other services such as meals, housekeeping, transportation, and recreation.

The distinction between continuing care communities and other retirement homes is the guarantee of, at a minimum, priority access to a nursing facility or hospital either on site or at a site designated by the continuing care contract. Communities differ greatly as to what services are provided, what level of long-term care is offered and what the cost will be.

Do a thorough investigation of each community in which you are interested to see which will best meet your needs now and, as importantly, into the future. Determine whether a continuing care community will fit with your personal lifestyle. Talk to residents, staff, and volunteers. Spend time in the town in which the community is located. Read the New Mexico Continuing Care Act in order to know your rights concerning disclosure and protection

**Caveat: You are *not buying real estate*. You are *investing in a contract*.** The continued solvency of the facility is important to the viability of your investment.



Examine all financial data and ask for a copy of its prospectus, actuarial analysis, the community's rules, regulations and procedures and a sample contract. Make sure you get copies of all of these important documents.

Never consider investing in a community unless you have personally visited the facility.

Medical facilities in the State must be licensed. Ask to see the latest inspection report of the community's health care facilities (e.g. assisted living facility, nursing facility, skilled nursing facility).

Except for their health care facilities, continuing care communities in New Mexico are **not licensed by the State**; therefore it is important that you "do your homework" before you decide to invest in a community.

Be quite clear about who is legally responsible for the financial and contractual obligations and decisions of the community itself (where does "the buck stop"?)

Understand fully the respective rights of the resident and the provider concerning fees, accommodations, changes in resident status, services, discharges and transfers, termination of contract and refunds.

*Do not sign a contract before consulting with professionals with knowledge of continuing care communities, such as certain attorneys and financial advisors.*

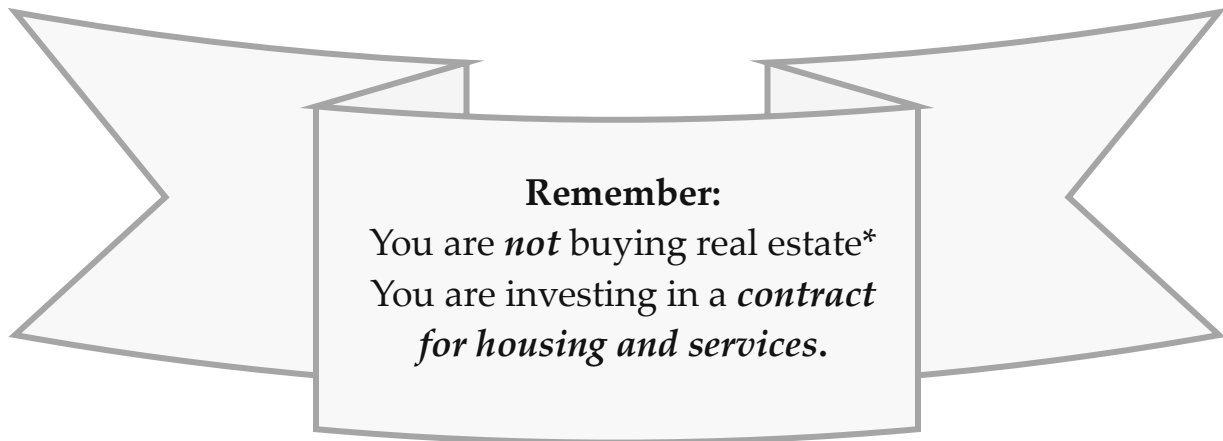
Continuing care communities represent an important and growing alternative to traditional choices for the retired person. Keep in mind that many continuing care communities have minimum age and health standards that apply to their care continuum. These requirements should be clearly identified in the contract.

*Read the contract for the exact services offered.*

## WHAT IS CONTINUING CARE?

You should look carefully at your personal lifestyle as well as your financial situation before you decide to investigate a particular community.

This brochure can only give you general information. Therefore, you should consult with appropriate professionals to help you evaluate the specifics of a particular community. As with any contract, it is important to have your own legal counsel review it before you sign.



Most continuing care contracts are for life, so it is important to determine if the agreement, and the community, will financially and otherwise be able to meet your individual needs in the years to come.

*\*There may be communities in which you do buy real estate, but they are the exceptions. The contract is the most important part of the community's offering. If you do buy real estate in a community, you need to be aware of restrictions. It is likely that you or your heirs will be limited to selling your residence to someone who meets the entrance requirements.*

# THE COMMUNITY: OWNERSHIP, FINANCIAL CONDITION, and ADMINISTRATION

One of the most important aspects of your investigation concerns ownership, financial condition and administration of the community. The community's annual *disclosure statement, which must be provided to each actual resident and to a prospective resident at least 7 days before entering a contract with the Continuing Care Retirement Community or prior to the first payment, whichever occurs first,* will provide you with information on ownership and the financial condition of the community. It is essential to review the disclosure statement prior to signing any contract.

## **Ownership – be wary of liens**

You should know not only who owns the community, but who, if anyone, has a legal obligation in the case of failure in the community. You should be wary of a community that tells you that you are protected by a resident's lien if the community goes bankrupt. A lien is a legal right or interest that a creditor has in another's property until a debt or duty that it secures is satisfied.

## **Financial Condition – “rainy day” savings account**

In investigating the community's ability to meet its financial and contractual obligations, you should look carefully at the *reserves*, in other words, the funds set aside for future use. *Reserves* are important in the case of an emergency or economic hardship, as well as when a community has incurred long-term liabilities, for example, through bonds, bank loans or pre-paid services in the form of the residents' entrance fees. In order to better assure payment when due, a bank may require the community to maintain reserves as part of a loan agreement.

Look at the Community's statement as to its “liquid reserves.” In other words, its ability to assure payment of debt obligation and an ongoing ability to provide services to residents through the availability of cash or other assets that are available within 60 days. In addition, most communities will include a summary of an actuarial analysis within the last 5 years and an annual future-service obligation calculation by an actuary in their annual disclosure statement.

Other reserves for such things as equipment replacement, the future health care promised to its residents, financial aid and contingencies, if held at all, are maintained through management or board policy. If the disclosure statement does

not give you enough information concerning this important indicator of financial condition, be sure to ask for additional information.

You may need assistance in interpreting this material. Talk to your lawyer, financial advisor, or other people knowledgeable in this area.

Only an actuarial analysis can tell you if a community is likely to have enough cash to cover future health care costs. It is important that a community make sound actuarial assumptions, including mortality and morbidity (death and illness) rates of residents, new entrants into the community and economic forecasts, in order to evaluate its long-term financial status and its ability to provide care as promised.

### **Administration**

**The disclosure statement can only hint at the adequacy of the administration of the community.**

How well a community is managed is indicative of both its quality of care and its financial stability. Some owners manage their communities directly; others contract for management; in either case, it is important to know about the administration.



If the owner or manager provides continuing care at other communities, you will have a ready source of information to aid your investigation. If the provider does not have experience at other communities, look at the history of the community you are investigating. If the community is new, ask

about the provider's general business experience.

**The best source of information concerning management is *current residents*.**

When you visit the community, after you have talked to the admissions staff, talk to the residents. Members of the *resident association* should be able to answer most of your questions concerning the effectiveness of community management. A telling point may be the degree to which management solicits and listens to the



opinions of the residents in the formulation and carrying out of policies.

As you begin investigating a community in which you are interested, be sure to ask for a copy of its policies and procedures. The community's handbook should give you information concerning a number of important issues.

### **Understand the Community's policy and practice regarding:**

#### **Contract Cancellation**

- Under what circumstances may a continuing care contract be canceled by the resident or the community and what is the basis for establishing the amount of refund, if any, of the entrance fees?
- Are any refunds due your estate in the event of your death?

#### **Changes in Level of Care and Transfers**

- How are decisions made for an involuntary transfer or discharge to nursing care?
- What are your rights in the event the community wishes to temporarily transfer or permanently discharge you to an outside facility? For example, if you need psychiatric services that cannot be provided by the community, what rights do you have and what obligations does the community have?
- What happens in the event a nursing care bed is not available when you need it?
- Who makes decisions about residents' level of care needs and placement? If there is a disagreement about care needs and placement, who has authority to make the final decision?

#### **Fees**

- What are the entrance and monthly fees and what is the policy covering periodic increases of fees?
- How are fees adjusted if you marry, your spouse dies or you wish to change your accommodations?

#### **Use of the Community**

- What are your and the community's rights and obligations concerning the use and maintenance of the common areas and your private residence?
- What are your rights concerning the formation of a resident association? Is resident participation invited in the community's decision-making process?
- What is the policy concerning visitors and overnight guests?

- What is the policy concerning pets?
- What is the policy concerning children?
- If you take an extended vacation, can you sublet your residence or will fee adjustments be made?
- If you marry someone who is not a resident of the community, what is the basis for establishing that person's entrance fee?
- What happens if you marry someone who does not meet the community's entrance requirements?

## TYPES of CONTINUING CARE COMMUNITIES

There are numerous approaches to the delivery of continuing care, including two prominent ones: Type A and Type B. Type A, sometimes referred to as “true life care,” is characterized by the payment of a substantial entrance fee and monthly fees based on the type of housing unit the resident occupies and the type of services that are offered. This model guarantees nursing care when needed. Although monthly fees may increase periodically for all residents of a true life care community, a resident’s fees will not be increased due to his or her transfer to the nursing facility.

A Type B community’s entrance fee is less substantial than that of a Type A community. The Type B agreement includes a specified amount of health care; after that amount is used, other health care must be paid out-of-pocket at a discounted or per diem rate.

There are other types of continuing care communities and varying financial agreements and services provided. The primary difference amongst the types of communities centers around the cost of upfront entrance fees, monthly fees, the degree of nursing care provided and the cost of such care if or when it is necessary.



## PAYING FOR CONTINUING CARE

As a rule, a Type A community is more expensive at the beginning because of the higher entrance fee. Type B communities become more expensive if you get sick or need extensive services. After deciding that you are interested in continuing care and that it fits your lifestyle, you need to consider what type of community is best for you. Will you be able to comfortably afford the monthly fees after paying the entrance fee? Do you have enough savings to pay for nursing care or other services when you need them if they will be charged separately at the time they are incurred? Your financial advisor should be able to help you make that determination.

Whether it is called an entrance fee, accommodation fee, endowment fee or some other term, the *entrance fee* is a one-time fee which you pay to become a resident of a continuing care community. The amount you pay is usually determined, at least in part, by the type of housing you have selected and the kinds of services the community provides. Entrance fees are used to pay long-term debt obligations, capital expenditures and, in communities that offer extensive health care guarantees, to defray the future increasing costs of operating the nursing facilities. You should look carefully at the financial information provided by the community to determine if entrance fees are adequate to meet these obligations.

Most communities require that a potential resident make a *reservation deposit*. Some communities require *payment prior to occupancy*, which is substantially more than a deposit. The Continuing Care Act requires that all money paid in advance of occupancy be *held in trust* for the benefit of the resident in a federally insured New Mexico bank until the later of the resident moving in or the expiration of the contract cancellation period. Be aware of the contract provisions regarding whether you or the CCRC gets the interest from your money held in trust. Therefore, if you are on a waiting list or wish to delay occupancy, you may want to negotiate the amount of the advance payment in order not to possibly lose the income from a substantial payment before you have moved into the community.

Paying for continuing care includes the payment of a *monthly fee*. The monthly fees cover the operational expenses of providing services and maintaining the facilities. Fees are based in part on the type of residence you have as well as services provided by the community. Again, look carefully at the community's financial information to assess the adequacy of fees to cover offered services.

Under New Mexico law, the contract must state when fees will be subject to periodic increases and what the policy for increases will be. Further, the provider must give advance notice of at least 30 days before fees may be increased. Any increase of fees shall be based upon economic necessity, the reasonable cost of operating the community, the cost of care and a reasonable return on investment.

Continuing care communities are expensive to operate, and it is reasonable to assume that fees will fluctuate with the general economy. You should **BEWARE** of a community that promises monthly fees will not be increased or will be increased only a certain percentage over your lifetime.

In addition, the law prohibits a *transfer of all your assets or real property* to pay entrance and monthly fees. This means that a provider cannot ask that you turn over all your assets to the community in return for taking care of you.

*Increases in fees and rates must be based upon economic necessity, the reasonable cost of operating the community, the cost of care and a reasonable return on investment as defined by rules promulgated by the Aging and Long-Term Services Department.*

# HOUSING and OTHER SERVICES

Continuing care communities vary in the types of housing and the range of services provided. Although the contract will specify in detail what is provided, the following will give you some ideas of what to look for:

## HOUSING

*Your personal taste will govern what kind of housing you choose, but these are examples of the kind of information you will want:*

- Who is responsible for maintenance and repairs, and what does that cover?
- Are appliances and other furnishings, such as carpets and drapes provided? If so, what is included?
- Are there options for furnished or unfurnished units?
- Are housekeeping services available, and must you pay extra for such services?
- What safety features, such as grab bars and emergency call buttons, are included in the design of the unit?
- What security measures are taken for your safety in your unit and in the community?
- Is the unit, and the community as a whole, accessible to the handicapped?
- Are utilities covered in the monthly fees?
- Are gardening and lawn services included in the fees?
- Does the provider have the right to enter your unit without prior notice to you?



## OTHER SERVICES

*While services vary and it would be impossible to give an exhaustive list of what may be available, some services tend to be standard in almost all communities and often include:*

### **Medical Care**

The medical care component of continuing care is a significant aspect of any contract you may sign; therefore, it is important to know what services are covered and what services you must pay for. Generally, a type A model community offers an *extensive health care guarantee*. Usually monthly fees are not increased as a result of a resident's move to the nursing facility. This does not mean that all medical care is included. In most communities, the extensive health care guarantee covers the per diem rate of the facility; the resident must pay his/her physician and the cost of medicines and special procedures ordered by the physician. In addition, if a resident needs care that cannot be provided by the nursing facility, e.g., specialized hospitalization and certain rehabilitation services, the resident may be financially responsible for the cost of such care.

Most Type B communities offer their residents a *limited health care guarantee*, such as a discount on the cost of nursing care. This often is provided as a certain number of free days before the resident must pay the per diem rate charged by the facility. Typically, the number of free days is granted annually and is noncumulative.

NOTE: With any type of CCRC, be sure you fully understand who will make healthcare setting decisions for you. In other words, who decides when you need nursing home level of care? Who decides when your level of care exceeds the capabilities of the Community's health units?

### **Meals and Special Diets**

Most communities provide centralized dining facilities and may require that you eat at least one meal a day there. In addition, many communities will provide special diets ordered by your physician, either as part of the overall service or for an additional fee.

### **Personal Assistance**

Personal assistance is the term used to describe those services that are needed so that you can continue to live independently in your residence. Depending on your physical condition, you may need short or long-term assistance with bathing and eating. You may need housekeeping services more often than usual, or need to

have a nurse check on you and give you your medication. You should know what services are part of your contract or available for a fee in the community and what services you must purchase on your own from outside the community.

### **Social Services**

Social services are specific types of support services. Examples of social services include counseling and rehabilitative therapies. Like personal assistance, you should know what services are part of your contract or available for a fee in the community and what services you must purchase on your own from outside the community.

### **Recreational and Educational Activities**

This is probably the most subjective component of a community in that your interest in what is provided depends on your personal lifestyle. It is definitely worth your careful consideration. If you are not a swimmer, you may not care if the community has a pool; if you like to play tennis, it may be very important that tennis courts are available. In this category, it is also important where the community is located. If you like the symphony or museums, you may want to live in or near a city that offers these amenities.

### **Transportation**

Most communities provide transportation, though it may be limited to certain uses such as transportation to the doctor's office. Ask about the community's policies on and fees, if any, for transportation.



## THE CONTINUING CARE ACT (CCA)

The Continuing Care Act, NMSA 1978, Sections 24-17-1 to -18 (1985, amended 2010), requires that continuing care communities in New Mexico provide to actual and potential residents information concerning ownership, operation and finances. In addition, the Act specifies certain information that must be included in the contract you sign.

It is important that you do a thorough investigation of any community in which you are interested, including talking to your lawyer, financial advisor and investigating the solvency of the community before signing a contract.

Copies of the Act and the Consumer's Guide are available from continuing care communities, the Aging and Long-Term Services Department or the Office of the New Mexico Attorney General. You can read the Continuing Care Act or get additional copies of this Consumer's Guide on the Aging and Long-Term Services Department website:

<http://www.nmaging.state.nm.us>

## REMEDIES – HELP in the EVENT of PROBLEMS

### **The Continuing Care Act**

Under NMSA 1978, Section 24-17-15, residents as a class or otherwise may file a civil suit for actual damages, punitive damages and attorneys' fees for a violation of the Continuing Care Act.

In addition, under NMSA 1978, Section 24-17-16(A), the Aging and Long-Term Services Department (ALTSD) must issue notices of violation to persons or organizations it determines have violated or are about to violate the Act. ALTSD will require a signed report of compliance from the violator. Under NMSA 1978, Section 24-17-18 ALTSD may also send the Attorney General a written report alleging a possible violation of the Act. Upon receipt of the report, the Attorney General will conduct an investigation to determine whether grounds exist for formally finding a violation. If a violation is found, then the Attorney General will file an appropriate action against the alleged violator in court.

### **Other Remedies**

Depending on the facts of your situation, there are also other bases of action including:

- Breach of contract
- Fraud/misrepresentation
- Unfair Trade Practices Act
- Negligence
- Unjust enrichment

Before pursuing any possible course of action, you should always contact an attorney. If a resident feels he or she has been the victim of an unfair or deceptive trade practice, he or she may contact the Consumer Protection Division at the Attorney General's Office at 1-800-678-1508.

# CONSUMER QUESTIONS CHECKLIST

*Here is a convenient compilation of all the recommended questions from this Guide.*

- Who is legally responsible for the financial and contractual obligations and decisions of the community itself?
  
  
  
  
  
  
  
  
  
  
- Under what circumstances may a continuing care contract be canceled by the resident or the community, and what is the basis for establishing the amount of refund, if any, of the entrance fees?
  
  
  
  
  
  
  
  
  
  
- Are any refunds due my estate in the event of my death?
  
  
  
  
  
  
  
  
  
  
- How are decisions made for an involuntary transfer to the nursing facility?
  
  
  
  
  
  
  
  
  
  
- Must I formally specify a family member, attorney or some other responsible person to serve as my advocate to participate in decision-making regarding moving to a different level of care?
  
  
  
  
  
  
  
  
  
  
- What are my rights in the event the community wishes to temporarily or permanently transfer me to an outside facility? For example, if I need services that cannot be provided by the community, what rights do I have and what obligations does the community have?

- What happens if a nursing facility bed is not available when I need it?
  
- How are entrance and monthly fees set, and what is the policy regarding periodic increases of fees?
  
- How are fees adjusted if I marry, my spouse dies, or I wish to change my accommodations?
  
- What are my and the community's rights and obligations concerning the use and maintenance of the common areas and my private residence?
  
- What are my rights concerning the formation of a resident association? Is resident participation invited in the community's decision-making process?
  
- What is the policy concerning visitors and overnight guests?
  
- What is the policy concerning pets?

- What is the policy concerning children?
  
  
  
  
  
  
  
  
  
  
- If I take an extended vacation, can I sublet my residence or will fee adjustments be made?
  
  
  
  
  
  
  
  
  
  
- If I marry someone who is not a resident of the community, what is the basis for establishing that person's entrance fee?
  
  
  
  
  
  
  
  
  
  
- What happens if I marry someone who does not meet the community's entrance requirements?
  
  
  
  
  
  
  
  
  
  
- Who is responsible for maintenance and repairs, and what does that cover?
  
  
  
  
  
  
  
  
  
  
- Are appliances and other furnishings, such as carpets and drapes provided? If so, what is included?
  
  
  
  
  
  
  
  
  
  
- Are there options for furnished or unfurnished units?

- Are housekeeping services available, and is there an extra fee for such services?
  
- What safety features, such as grab bars and emergency call buttons, are included in the design of the unit?
  
- What security measures are taken for my safety in my unit, and in the community?
  
- Is the unit, and the community as a whole, accessible to the handicapped?
  
- Are utilities covered in the monthly fees?
  
- Are gardening and lawn services included in the fees?
  
- Does the provider have the right to enter my unit without prior notice to me?
  
- Who makes decisions about my level of care needs, transfers, and placement?



# MY NOTES and QUESTIONS

A series of horizontal dashed lines for writing notes and questions.



# NEW MEXICO RESOURCES

## **New Mexico Attorney General's Office**

Main number: 505-827-6000

### **Consumer Protection Division**

1-800-678-1508

## **Aging and Long-Term Services Department**

Main number: 505-476-4799

### **Aging and Disability Resource Center**

800-432-2080

### **Long-Term Care Ombudsman Program**

866-451-2901

### **Adult Protective Services**

866-654-3219



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