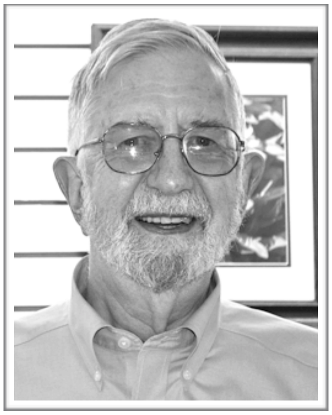
Massachusetts PATRIOT

Massachusetts Life Care Residents' Association (MLCRA) FALL 2017

The Residents' Advocate–Management's Friend *www.mlcra.org*

President's Message

Thinking About the CCRC Model as an Insurance Plan and How Residents Should be Protected



Will Holton

I have been active with MLCRA for almost six years and it was about two years before I realized that Continuing Care Retirement Communities (CCRCs) are essentially buying long-term insurance policies. My wife and I did understand that the large entry fee did not give us any ownership stake in our apartment. This arrangement is confusing and some of our Springhouse neighbors think that they own a condominium unit until they are corrected.

In recent years I have relied on the National Continuing Care Residents' Association (NaCCRA) newsletter and website for gaining a better understanding of the CCRC model and its implications for residents. Jack Cumming, an actuary and NaCCRA board member, is my most trusted source. He writes, "If you think about an entry fee, it is analogous to a life annuity (insurance policy) in that it promises a lifelong stream of benefits in return for a current (upfront large deposit) fee." He goes on to note that entry fees are not protected by law even when a facility declares bankruptcy.

Jack Cumming sees the value of regulating CCRC contracts as life annuities under state insurance commissions. "With annuities, the way to establish financial integrity is well established and time tested. NaCCRA advocates protections for the entrance fee investments and principled accounting for those entrusted (with) entry fee funds."

Now CCRCs are regulated by State Insurance Commissions in only a few states. Those states include Florida and California and the degree of regulation varies widely among such states. In Florida, the Insurance Commission can step in and require remedial measures if a CCRC is in financial trouble.

The situation in Pennsylvania that had 189 CCRCs, the largest number in any state in the country in 2010, was described by Professor Katherine Pearson, a faculty member at the Dickinson University of Pennsylvania Law School. According to Pearson, "There is not a lot of oversight in Pennsylvania (under the ***(cont'd on p. 2)***

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Insurance Department) to ensure that CCRCs are doing right by their residents." CCRCs are licensed and Pearson said in 2016 "…the state does have regularity authority to financially examine CCRCs, and is one of the few states that completes those exams." Pearson concluded: "In Pennsylvania, CCRCs is a lightly regulated industry. It's all about disclosures. The state rarely steps in with CCRCs when there's an argument with residents."

An example will help show the importance of regulating CCRCs. This year a controversy came to a head in Florida after two CCRCs failed financially, Glenmoor in Jacksonville and University Village in Tampa. The Florida Office of Insurance Regulation (OIR) was directed by Governor Scott to prevent future failures. In 2016 the OIR proposed legislative changes that were opposed by the large CCRC industry in Florida because they were not consulted and they claimed that "irreparable damage" would be done to the industry.

Jack Cumming notes: "At the heart of the controversy lie questions of capital adequacy. Many CCRCs do not hold contract reserves for the contractual liabilities funded by residents' entrance fees." Instead of holding much of the money as insurance companies are required to do, entrance fees are often used for ongoing expenses or emergency needs. Many of my neighbors wrongly assume that their entrance fees are held in escrow.

Although most CCRCs are in stable financial condition now when the national economy is good, things could change quickly with an economic downturn. If people have difficulty selling their houses to pay the large entrance fees, occupancy rates can drop low enough to prevent managements from covering necessary expenses. One of our MLCRA member communities in western Massachusetts, where the housing market is down, has operated for several years with a low occupancy rate. Also, even in good financial times, keeping occupancy levels high is not enough. If residents live longer than anticipated, there many not be enough new entrance fees coming in to meet expenses when those fees are counted on to pay for the costs of operation.

Jack Cumming recognizes that the managements of many CCRCs and LeadingAge (the professional organization for nonprofit elder services) tend to resist additional regulation. He reports that in 2016 LeadingAge adopted a new mission statement: "To be the trusted voice for aging in America." Cumming concludes: "The adoption of safeguards for resident entry fee investments could go far (toward) meeting that commitment to elevate the trust on which the industry relies." Ironically there is still general opposition to regulation of CCRCs. He adds that extending the principles of lifetime annuities to CCRCs "need not handicap responsible (management); it will merely provide assurance to customers."

Please discuss these issues with your neighbors and bring them up in Residents Association committees.

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