

Consumer's Guide to Senior Living Residence Agreements

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Introduction

Every consumer moving into a professionally managed senior living community will be asked to sign a residence agreement that outlines the rights and obligations of the resident and the community's operator for the entire duration of the resident's stay at the community. Understanding the residence agreement is as important as getting a referral or recommendation, taking a tour, talking with other residents, having a meal in the dining room, or participating in some other activity at the community.

Residence agreements for senior living communities are legal documents that can come in a variety of forms, depending on the type of community – independent living, assisted living, memory care, continuing care/life plan – and may be affected by state regulations and the policies and customs of the community's operator and local market area.

However, most residence agreements have provisions covering subjects that are necessary to establish the relationship between the resident and the provider of housing and services. A typical list of subjects covered includes:

1. Identification of the parties to the agreement
2. A description of the senior living community and the residence to be occupied
3. A description of the services available at the community
4. Fees payable to the owner/operator
5. Circumstances that can result in relocation of the resident or contract termination
6. Miscellaneous rights of the parties

This guide will identify the range and variety of provisions that are usually found in different senior living community types, along with commentary on their relative importance and usefulness. The guide is not exhaustive and certain locations or communities may have information that differs from the information provided here.

The Parties

The residence agreement will identify the owner or operator of the community who is undertaking the responsibility to provide the housing and services available at the senior living community. It should identify the type of entity acting as the "provider" of housing and services, whether a proprietary corporation, limited liability company (LLC) or partnership, or a nonprofit corporation. Sometimes, there may be more than one entity responsible to perform the obligations of the contract. The agreement should identify whether the operator holds a state-issued license and describe the type of license.

The resident or residents will also be identified. Typically, where there are multiple residents, each will be jointly and separately responsible to pay the fees and otherwise comply with the terms of the agreement. The truth of financial, and sometimes health care, information provided by prospective residents in their application forms is a condition of admission and continued

stay at the community. Not all senior living communities will require financial or health care information.

Description of the Community and Residence

The contract should describe the kind of senior living community – whether independent living, assisted living, memory care, or continuing care/life plan community – along with the location. The type of residence and specific apartment or unit number will be described (e.g., one-bedroom, two-bedroom, cottage).

Common areas and amenities are also usually spelled out (e.g., dining venues, recreational and assembly areas, parking, grounds, and any care facilities).

Description of Services

Hospitality Services

Hospitality services are similar to those offered by a hotel or resort, including dining, housekeeping, recreational activities or amenities, fitness and beauty services, transportation, parking, and the like. While it usually is not necessary to have a state-issued license to offer hospitality services, properties offering licensed care, such as assisted living or memory care, will also include such services customized to cater to the needs of their residents. Senior living communities may offer different levels of services and care in the same building or on the same campus. For example, some independent living communities will also offer assisted living, and some assisted living communities will offer memory care. Continuing care or life plan communities typically include independent living, assisted living and skilled nursing care.

The availability of one or more dining venues is typically described, along with the scope and extent of meal programs, which may or may not be included for the standard monthly fee, or available for an extra charge. Charges for special diets, room service, guest meals, private dining, and any other options should be described.

Recreational activities and amenities may also be described and should clearly identify what is included in the monthly fee and what requires payment of an extra charge. Similarly, limited transportation services to local appointments may be available as part of the monthly fee, with additional transportation services available for an extra charge. Housekeeping services are often included in the monthly fee and the contract or resident handbook should specify the scope and frequency of included services and the charges for extra service. Laundry services may also be available, included in the monthly fee or for an extra charge. In licensed care settings, many of these services are available as part of the monthly fee, and sometimes mandated by licensing regulations.

Care Services

Assisted living, memory care, and continuing care/life plan communities offer varying degrees of personal care to their residents based on residents' needs as determined through an initial assessment and ongoing periodic re-assessments throughout the resident's occupancy. Care can include assistance with a wide variety of "activities of daily living" (ADLs), depending on the resident's needs, such as medication management, assistance with bathing, grooming, dressing, eating, ambulation/transferring, toileting and other essential functions. Typically, ADL

services are delivered by trained facility staff, who may or may not be supervised by licensed nurses or physicians.

In continuing care/life plan communities, where residents initially live independently in residential apartments or homes, light assistance may be made available temporarily in the residential unit, with higher or more ongoing levels of care requiring a move to an on-campus assisted living, memory care or skilled nursing facility. They may also provide a daily wellness check, emergency pull cords, and wellness programs that do not involve hands-on care.

In assisted living communities, all ADL care needs typically can be accommodated, subject to limitations established by the operator or regulatory requirements. For example, assisted living properties usually cannot perform services that are reserved for licensed skilled nursing facilities.

In memory care communities, in addition to providing ADL care, there is often an emphasis on "protective supervision," which can include securing building perimeters to help deter cognitively impaired residents from unsafely wandering out of the community.

All residence agreements should specify in detail what types of care services are available, which are unavailable or excluded, what services are included in the monthly fee, which involve an extra charge, the price of extra services, and under what circumstances a transfer to another venue on-campus or off-campus is required due to a resident's changing care needs.

Residents should understand that community staff are serving multiple residents, and that one-on-one care is not available on an ongoing basis. Residents often hire private-duty aides or attendants to assist them with care needs that are beyond the routine levels of care provided by community staff, and the community's policies about hiring private aides is often found in the resident handbook.

Fees

Most senior living communities charge a monthly fee for all the routine services, including hospitality services, and where available, basic care services. There are usually exclusions that require payment of an extra charge for specific optional services. Nonpayment of fees in a timely manner can result in late fees, interest charges and contract termination.

In addition to monthly fees, many assisted living properties charge an upfront, lump-sum "community fee," which may or may not be refundable or partially refundable for a short period of time after the commencement of occupancy. Community fees can be a fixed amount or maybe the equivalent of one month, to a few months, of monthly fees. Continuing care/life plan communities often charge much more substantial "entrance fees," which can involve hundreds of thousands of dollars or more. Larger entrance fees often, but not always, include some provision for repayment when the resident no longer resides at the community. Both community fees and entrance fees may be subject to detailed state regulation governing their collection and refunds, depending on the timing and reasons for termination of the resident's occupancy. These fee collection and refund provisions should be spelled out in detail in the residence agreement.



Resident Relocation and Contract Termination

All senior living residence agreements will have termination provisions, and many will specify the circumstances under which a resident may be asked to relocate from their current residence to another destination within or outside of the senior living community.

In addition to the grounds for termination commonly seen in a lease, such as nonpayment or conduct that violates house rules or endangers others, senior living agreements often describe circumstances when a resident needs to move because of health issues that make continued stay at the community difficult or impossible to sustain. The grounds for relocation based on health condition can vary widely depending on whether it is an independent living, assisted living, memory care, or continuing care retirement community, and, depending upon state regulation, residents can supplement the care they receive by contracting separately with third party care providers.

For unlicensed independent living properties, which do not provide care, monitoring or supervision of residents, residents are responsible for obtaining whatever services they need to remain capable of living safely in a residential setting. Residence agreements at those properties will often state that if a resident's failure to provide for their own care needs results in a danger to others, or risks causing substantial property damage, it may be a ground for contract termination.

Assisted living properties are licensed in all 50 states, and regulations specify many of the grounds for requiring that a resident with increasing care needs be relocated to another type of senior living community. For example, assisted living providers usually are not allowed to retain in residence a person who needs 24 hour nursing care, and transfer to a licensed skilled nursing facility is necessary. Another example occurs when a resident's cognitive decline warrants transfer to a specialized memory care community (which is usually licensed as a specialized type of assisted living). Transfers or contract terminations on these and other grounds are often subject to appeal rights provided under state licensing regulations.

In continuing care/life plan communities, a resident's relocation through different levels of care is part of the service package provided under the contract. A resident who often begins in a residential living apartment, may need to relocate to an assisted living center, memory care wing or skilled nursing facility as the resident's care needs change. These facilities may be provided on the same campus, or sometimes involve moving to an off-site location. Entrance fees and monthly fees may include prepaid or discounted care, depending on the contract type.

Senior living operators will have differing policies and practices about extent to which private caregivers may be utilized by residents to help with care that is not available from, or not being provided by, the community's operator. Policies for private duty aides are often contained in the resident handbook and may include criminal record clearance, training and insurance requirements, especially in licensed communities.

Miscellaneous Issues

Senior living residence agreements, and sometimes the resident handbook, can cover a myriad of miscellaneous subjects beyond the basics described above. Some common examples are provided here.

Rules and Regulations

Most senior living communities have house rules and regulations designed to promote smooth operation of the community and enhance residents' quiet enjoyment of the premises. They may include limits on the use of common area spaces and amenities, rules of conduct for residents and their guests, grievance procedures, pet policies, smoking and the like.

Liability

Responsibility for damage to the community's property caused by a resident or resident's guest is described, along with possible limitations on the operator's responsibility for injury or damage to residents or their property. Insurance requirements for residents and the rights of the parties in the event of insured and uninsured damage to the community also may be covered.

Relationships with Staff

Limits on tipping or privately hiring staff are usually included in the contract or resident handbook. Interfering with staff in the performance of their duties is prohibited.

Arbitration

Arbitration clauses are customary in senior living agreements and may be required by state regulation. A separate arbitration agreement may also be offered. Arbitration provides a less formal, efficient and private means of resolving disputes without resorting to the courts. Agreeing to arbitration usually is not a condition of occupancy.

Resident Rights

Most communities have resident associations or family councils where residents and family members can share their views regarding services and policies and express them to management.

For licensed communities, long listings of resident rights also are commonly required by state regulations, and usually presented as an appendix to the main agreement. These typically reflect very basic rights that were sometimes a problem historically in institutional settings, but which normally do not arise in professionally developed and managed senior living communities.

Conclusion

This Consumer's Guide is intended to provide an overview of provisions typically included in senior living residence agreements. Provisions may vary depending upon the type of community, state or local rules, or the customs and practices of the owner/operator. Each agreement should be evaluated on its own merits with any questions directed to the owner/operator or a third-party advisor.