

## Why Develop a Model Bill of Rights for CCRC Residents?

At least five states have enacted legislation designed to make explicit, and to protect, the rights of residents in Continuing Care Retirement Communities (CCRCs) – Massachusetts, Oregon, California, Florida and New Jersey.



To suggest that CCRC residents need a Bill of Rights is to suggest that in some way they must be being exploited or oppressed. How could this be possible? To some people, the idea seems almost perverse.

After all, even a superficial look at the CCRCs which dot our nation's landscape reveals that they are invariably both attractive and impressive. They are attractive because of the care given to architecture, landscaping and interior amenities. They are impressive because of the range of services they provide – flexible and comfortable housing options, a coordinated system of services, a vital social and cultural life for residents, and a program which addresses the full spectrum of health and wellness needs of people as they age.

How then could it be suggested that the residents of these communities might in some possible way be being exploited?



To understand this we need to reflect briefly on the history of CCRCs in the United States. CCRCs made their first significant appearance in the 1970s and 1980s. Nevertheless, a few of them have histories which stretch back 100 years or more. But

before the 1970s, these earlier versions of our communities were often established to care for the widowed spouses of clergymen. They were funded by contributions from the larger denomination *outside* of the life care communities. It was in the 1970s and 1980s that the concept took hold of life care communities fully funded by the entrance fees and monthly fees of the residents themselves. But one of the legacies of the early history is a pattern of governance throughout the industry which assumes that residents are the passive recipients of charity, rather than that they are financial investors in their community, investors to whom the management owes some accountability, investors who have both a right and a responsibility to ensure the good order of the community's operation and of its financial affairs.

It is this governance anomaly which is at the heart of the issue. 85% of the CCRCs in the United States are not-for-profit entities in which the residents have banded together to provide each other with mutual support in a program fully funded by their own entry fees and monthly fees, and by the charitable contributions of the residents and their families. Yet they are asked to sign contracts upon entering the community which deny them any right to have a voice in the management or governance of the community, or to have any control over how the management uses their funds. Some managements have used the entry fees and monthly fees of CCRC residents to invest in programs in which the residents themselves will never have an opportunity to participate. In other words, managements, who themselves have no personal finances at risk, act as entrepreneurs using the residents' money as venture capital.

Another issue is the unilateral right given to managements in many states to alter the scope of services offered to residents, and also to alter the associated fees, regardless of the contracts which have been signed or the promises made during the marketing process.

Let us take Pennsylvania as an example. Pennsylvania has more CCRCs than any other state in the union.

Back in 1984, the Pennsylvania State Legislature passed a statute governing CCRCs. Included in the statute was a passage mandating that CCRCs shall provide advance notice to residents of not less than thirty days before any change in fees or charges, or any changes in the scope of care or services, may become effective. (Pennsylvania Law 1984, Act 82, Section 14 (a) (10).

As written the law sounds as if it boldly affirms the right of residents to be given adequate notice of something of concern to them. But it actually also gives CCRCs the unilateral right to nullify any and all agreements they have made with residents with the sole stipulation that they give a mere 30 days notice first.

And so, throughout Pennsylvania, CCRC contracts are sprinkled with such clauses as: "Prior to reducing, changing or altering the scope of services and care provided to you pursuant to this agreement, we shall give you written notice of such reduction, change

or alteration at least thirty (30) days prior to its effective date.” Or “(The management) shall have full authority to increase or decrease daily fees, and make changes in the scope of services, upon a 30 day written notice to the resident.”

This happened in Pennsylvania before there was a National Continuing Care Residents Association (NaCCRA) or a Pennsylvania Alliance of Retirement Community Residents (PARCR).

One of NaCCRA’s jobs is to be sure that residents in other states who are dealing with legislators on issues pertaining to CCRCs are alerted to the double-edged sword which can easily be contained in some legal language.

A CCRC is, after all, a sophisticated and complicated business. It is first and foremost a mini-insurance company which must accumulate capital to meet residents’ needs, the costs of which typically escalate many years after their arrival. But it is unlike a typical insurance company in several key respects – the pool of policy holders is relatively small, leading to statistical uncertainties, and in addition to managing an insurance scheme, large investments need to be made in real estate, and in buildings and equipment dedicated to a variety of uses, and supervision needs to be provided for everything from landscaping to dining services to skilled nursing care.

We residents, then, are engaged in and are supporting with our dollars a new industry which is highly complex in nature, which as long as it works fills a vital need, but which in many respects is still being invented, with new contracts, arrangements, acquisitions and consolidations occurring every day, all the while the industry faces a variety of challenges. So we residents living in CCRCs in 2017 are pioneers and trailblazers in every sense of these words.



Things ran relatively smoothly in this pioneering field until the late 1990s and early 2000s, when in some areas of the country waiting lists were replaced by vacancy rates, indicating an oversupply. The financial downturn of 2008 exacerbated the problems, putting the industry as a whole under some stress. As managements undertook various strategies – some wise, some not so wise – to address the situation, the need for residents themselves to adapt to change, and to adopt some creative role in planning for the own future, was highlighted.

**T**he fundamental premise upon which NaCCRA is based is simply this – it behooves CCRC residents to engage in a process of collective learning. Pioneers will never thrive if they remain isolated from each other and reinvent the wheel again and again. And, in addition to collective learning, it behooves us to engage in

collective action when proper defense of our interests calls for it. The purpose of NaCCRA is to serve as a vehicle working to preserve and strengthen the CCRC way of life by empowering those who have invested heavily in it, and by facilitating their actions of mutual support.

Given the vastness of these United States, a key locus of this sharing and teamwork takes place at the state level through such organizations as the Connecticut Continuing Care Residents Association (ConnCRA), ORANJ in New Jersey, and CalCCRA in California. But only nine of our fifty states have similar state associations of CCRC residents. So, an organization like the Pennsylvania Alliance of Retirement Community Residents (PARCR), which is hosting us here today, is a precious entity deserving of your vigorous support.

I said that one of the roles of the national organization, NaCCRA, is to avoid having each of the states re-invent the wheel. At the same time, it is important to acknowledge that local conditions require specially tailored approaches.

As I have indicated, some states have enacted Bills of Rights governing CCRC life. These statutes address the problems which exist with somewhat mixed success. I have cited one aspect of Pennsylvania law – a law which does not presume to be a “Bill of Rights” – the implications of which are poorly understood by most CCRC residents. Yet this very language has been picked up and incorporated into laws in other states which do purport to outline and defend residents’ rights.

This experience with laws reminds us of some fundamental realities.





We human beings are social creatures, as had often been observed. For practical day-to-day life we are dependent upon each other in numerous ways. Even in the formation of our spiritual natures we nurture each other through culture, religious institutions, and family life.

During humankind's long pilgrimage on this earth we have evolved the concept of constitutions and law to govern these complex social interactions, and to define the principles of fairness and justice to which they should give expression.

When joining a Continuing Care Retirement Community we have entered into a new kind of social compact. Its "constitution" is comprised of the contract we signed, of the By-Laws of the CCRC corporation, and of the oversight protocols which may exist in the particular state in which we happen to live.



The United States Constitution was considered incomplete until its first ten amendments, our nation's Bill of Rights, were enacted. Many feel that there is a similar incompleteness to the prevailing "constitution" of the CCRC social compact – the compact which defines the rights and responsibilities of providers and residents.



For these prevailing arrangements rarely explicitly provide for such things as the right to establish a residents association, the right to be provided with a plain English contract, the right for an opportunity to comment upon proposed changes in services in advance of their implementation, the

right for residents to meet periodically with members of the CCRC corporation's governing board for an exchange of ideas and concerns, and the right of residents freely to elect from among their own numbers some portion of the corporation's governing board. While many of these practices are in place in some communities, they are far from universal, and where they are carried out they can be withdrawn if seen as inconvenient because there is no official mandate for their continuance.

Although NaCCRA's Bill of Rights project has elicited much enthusiasm among residents, this enthusiasm is by no means universal. After all, it is estimated that there are 1,900 CCRCs in the United States, and that nearly 600,000 residents live in

them. It could hardly be expected that there would be unanimity among all these various communities and residents. NaCCRA believes it is very important to listen carefully to the words of caution about this Bill of Rights project which have reached us from some quarters.

Obviously, it can be expected that people's perspective on this project will be a function of what their experience of CCRC living has been. If it has been entirely satisfactory, one might view a Bill of Rights project as, at best, an unnecessary rocking of a very beautiful boat. Even if one's experience has been less than entirely satisfactory, it might be deemed unwise to roil the relationships between residents and managements by advancing a project which managements might deem provocative and unnecessary. We all understand, I think, that CCRC life could be severely compromised if there grew up a spirit of alienation or contention between residents in general and managements in general. Prospective residents, sensing an atmosphere of mistrust within the industry, might turn in other directions as they plan for their senior years, and a fall-off in enrollments would hardly be a good thing for those of us already in CCRCs.

On the other hand, if, as a resident, you have experienced dictatorial and arbitrary management, or have found that you have not been given the services promised, or have experienced one or more arbitrary withdrawals or changes in services, or have seen the management invest the funds accumulated from your entry fees and monthly fees in programs from which you will never benefit, or have found that the management's practices have impaired the fiscal strength and health of your CCRC, you are apt to see the development of a Bill of Rights from a different perspective.

It is important to realize that in the states where Bills of Rights for CCRC residents have been specifically enacted, this did not occur because state legislators, having idle time on their hands and nothing to do with it, decided that they might usefully turn their attention to this matter of CCRC residents' rights. In each of these cases, the legislation has occurred as the result of very hard work by CCRC residents and their state associations, who worked tirelessly to cultivate the support of their representative for the ideas and principles enacted.

Nor does it mean that a majority of CCRC residents in those states are dissatisfied with their community's life as they have experienced it. Their commitment to the Bill of Rights idea reflects their understanding that the less-than-optimal practices in one or two CCRCs can compromise the reputation of all, and they also recognize that as residents and managements work together to establish a common understanding of their mutual relationship and responsibilities some uniformity, some leveling of the playing field, is desirable. This is desirable so that each institution need not reinvent the wheel, and also so that residents and prospective residents do not have to deal with a dizzying array of alternative practices, all of which may have merit, when addressing issues of CCRC life.

So NaCCRA recognizes that advancing the idea of a Bill of Rights for CCRC residents

will be a careful balancing act. It involves all the advantages of shared insight, but also carries a risk of needless provocation. If you read through the draft Bill of Rights I believe you will find that a good balance has been struck. You will probably recognize that most of the rights and practices outlined are already in place in your community. You may notice some minor variations which your community might consider as improvements and which would not disturb any other resident's or management's equilibrium. You may see one or two practices which have not yet been introduced in to your community, but which are logical extrapolations from routines you already carry out.

I believe there is only one idea in the present draft which might be considered a "hot button" issue. This is the proposal that, in the case of not-for-profit CCRCs, residents be given the right to elect two or three of their own number to participate as full voting members of the CCRC governing Board. Such an arrangement is in place in some CCRCs, but is still far from being a widespread practice. Admittedly, some residents do not like this provision at all, perhaps trusting their management more than they trust their fellow residents to elect the most sensible among them. Yet other residents are vociferous in asserting that the current situation wherein residents relinquish all say over the use to which their invested funds are put is unsupportable in the long run, and is as apt to scare away prospective residents, once they get wind of it. In this view, the baby boomer generation which is coming along cannot be expected to abdicate their prerogatives in this regard as readily as did earlier generations of residents. The provision is also seen as a safeguard against the sort of mis-allocations of residents' funds that I mentioned earlier.

It is too soon to tell whether this provision regarding resident members of the governing Boards of not-for-profit CCRCs will remain in the draft, and what form, exactly, it will take.

In any event, when such a Bill of Rights document is eventually finalized, it could be used as a statement of best practice which providers and resident associations could employ voluntarily; in some states residents might see fit to encourage their legislators to enact some selected provisions of the Bill of Rights into law. NaCCRA exists so that CCRC residents in different states do not need to reinvent the wheel again and again; but it is also committed to the concept that local conditions require specially tailored approaches best designed by local people.

NaCCRA is also seeking to address two dilemmas – dilemmas which remain unsolved.

The first of these is this: How can a person shopping for a CCRC, and how can residents already in a CCRC, assess the relative financial strength of one CCRC as compared to another? How can a resident who is about to sign a CCRC contract know whether the institution s/he is entering is financially impaired or not? Or whether its reserves are really sufficient to meet the residents' need for high-end services as they age? Or whether the management is keeping up-to-date with facility renewal and

replacement, or whether these costs are being deferred and will snowball in the future?

Many states have transparency laws, and in response to these laws residents and prospective residents who inquire are apt to be given sheaves of numbers and tables which even financial professionals have difficulty interpreting as to their long-range import.

So we are seeking some rule-of-thumb, or some easily researched set of facts, which residents and prospective residents could use to assess the relative fiscal strength of different CCRCs.

A second difficult dilemma we are seeking to address is one I have already mentioned. It has to do with the use by managements of the funds derived from residents' entry fees and monthly fees as venture capital to start new lines of business in which the residents who provided the funds will never participate. Most residents, when investing in an entry fee and in high monthly fees, assume that the resulting fund pool will be used to support the needs of themselves and their fellow residents in accordance with a carefully developed plan based on actuarial calculations of the likely costs of the promised services. They did not assume they were investing in the entrepreneurial skills of the CCRC management to run multi-faceted companies.

Sometimes residents' funds are invested in such things as golf courses, which residents might be expected to use themselves while the fees collected from the general public outside of the residents provide a margin of profit which helps lower the CCRC fees. But in other instances subsidies from residents' funds have been provided for enterprises to which the residents are expected to have no access – like another CCRC in a distant city, or a Continuing Care at Home program in the community immediately surrounding the CCRC. The golf course, or the life care at home program, or the distant CCRC may succeed or fail; why should the residents' fees be put at this risk?

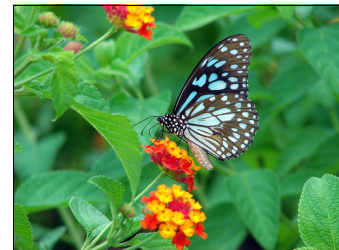
It is true that the assets collected from residents have to be invested somehow pending their use for our care. Most of us expect that there will be a diverse portfolio of reasonably liquid investments which can be drawn upon as needed. Investing residents' fees in a large lump in an illiquid project, even if it is the apple of the management's eye, does not insure the security of the residents' future. This matter of reasonable limits on the use which managements can make of residents' money remains a vexing and unsolved problem in the industry.

Marketing materials for CCRCs often promise a carefree retirement, and many people, reasonably enough, enter a CCRC assuming that, as long as they can pay the conventionally expected bills, their troubles are over. Many providers, I am sure, earnestly and sincerely wish for this to be the case. Unfortunately, economic meltdowns, vacancy rates, and human error indicate that there really is no escape from reality, and that we have to remain alert even in our senior years.



I have provided you with a membership form. I hope you will join NaCCRA as an individual. If you are already a member, I hope you will give the form to one of your neighbors back home. NaCCRA seeks to defend the quality of life and peace of mind that you sought when entering a CCRC. It seeks to serve as your eyes and ears; please help us to do so by becoming an individual member.

The 1,900 CCRCs in the USA are like an archipelago scattered across our land. Admittedly, these scattered communities represent a very small element in the vast and populous globalized society which surrounds them. But the mystical poet William Blake asserted that he could see the universe in a grain of sand.



And indeed, as we contemplate this archipelago of CCRCs we see a panorama which is awesome, so long as each element does not remain an island unto itself.

We need collective learning and mutual support. We are interdependent, and our interdependence is an image or sign of the mutuality inherent in the Creation itself. As pioneer investors in the CCRC idea, we are custodians of something very precious which must be strengthened and preserved for future generations.

Let us have great respect for the responsibility we have taken on, and great compassion for ourselves and others as we seek to fulfill this responsibility. Things which are noble and beautiful inevitably begin on the scale of a mustard seed. Such a seed, if carefully nurtured, will show us once again that raw human nature, which sometimes can seem so noisy, self-centered and dangerous, can age into maturity and wisdom, the maturity and wisdom which makes community possible, indeed, a maturity and wisdom so excellent that it makes visible the fundamental truth of things.

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