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HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70] (*Division 2 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 10. Continuing Care Contracts [1770 - 1793.91] (*Chapter 10 repealed and added by Stats. 1990, Ch. 875, Sec. 2.*)

ARTICLE 3. Deposit Subscription Period [1780 - 1785] (*Article 3 added by Stats. 1990, Ch. 875, Sec. 2.*)

1780. The department shall issue a permit to accept deposits when it has done all of the following:

- (a) Determined that the application is adequate.
- (b) Determined that the proposed continuing care retirement community financial and marketing studies are acceptable.
- (c) Reviewed and approved the deposit agreements.
- (d) Reviewed and approved the deposit escrow account agreement.

(Amended by Stats. 2000, Ch. 820, Sec. 31. Effective January 1, 2001.)

1780.2. (a) A deposit may be paid in one or several payments, at or after the time the parties enter into the deposit agreement.

A deposit shall be paid by cash or cash equivalent, jointly payable to the applicant and the escrow agent or depository. Possession and control of any deposit agreement shall be transferred to the escrow agent at the time the deposit is paid.

(b) A processing fee may be added to the deposit.

(1) The processing fee shall not exceed 1 percent of the amount of the average entrance fee or five hundred dollars (\$500), whichever is greater.

(2) A nonrefundable processing fee may be paid directly to the applicant without being placed in the deposit escrow account.

(c) Payments made by a depositor for upgrades or modifications to the living unit shall not be placed in escrow with deposits. The applicant shall provide written refund policies to the depositor before accepting any payments for modifications or upgrades.

(d) The applicant shall furnish to the department within the first 10 days of each calendar month a list of all residents who have made payments for modifications or upgrades, the amounts each resident has paid, the date of each payment, and the unit to be modified or upgraded for each resident.

(e) All payments for modifications or upgrades shall be refunded to the depositor with interest if the applicant does not receive a certificate of authority for the proposed continuing care retirement community or expansion.

(f) The department may record a lien against the continuing care retirement community property, or any portion of the continuing care retirement community property, to secure the applicant's obligations to refund the depositor's payments made for modifications or upgrades. Any lien created under this section shall be to protect depositors and shall be governed by Section 1793.15.

(Amended by Stats. 2000, Ch. 820, Sec. 32. Effective January 1, 2001.)

1780.4. (a) All deposit agreements between the applicant and the depositor shall be in writing and shall contain all information required by this section.

(b) All deposit agreement forms shall be approved by the department prior to their use.

(c) The requirements of this chapter and Chapter 3.2 (commencing with Section 1569) shall be the bases for approval of the forms by the department.

(d) All text in deposit agreement forms shall be printed in at least 10-point typeface.

(e) The deposit agreement form shall provide all of the following:

(1) An estimated date for commencement of construction of the proposed continuing care retirement community or, if applicable, each phase not to exceed 36 months from the date the permit to accept deposits is issued.

(2) A statement to the effect that the applicant will notify depositors of any material change in the application.

(3) The identity of the specific unit reserved and the total deposit for that unit.

(4) Processing fee terms and conditions, including:

(A) The amount.

(B) A statement explaining the applicant's policy regarding refund or retention of the processing fee in the event of death of the depositor or voluntary cancellation by the depositor.

(C) Notice that the processing fee shall be refunded within 30 days if the applicant does not accept the depositor for residency, or the applicant fails to construct the continuing care retirement community before the estimated date of completion and the department determines that there is no satisfactory cause for the delay.

(5) Requirements for payment of the deposit by the depositor.

(6) A statement informing the depositor that their deposit payments will be converted to an entrance fee payment at the time the continuing care contract is executed.

(7) A statement informing the depositor that deposits shall be refunded within 30 calendar days of the depositor's nonacceptance for residency or notice to the applicant of the death of the depositor.

(8) A statement informing the depositor that all deposits shall be refunded to the depositors if the continuing care retirement community is not constructed by the estimated date of completion and the department determines that there is no satisfactory cause for the delay.

(9) A statement informing the depositor that a refund of the deposit within 10 calendar days of notice of cancellation by the depositor. The deposit agreement shall state that depositors who have deposited more than one thousand dollars (\$1,000) or 5 percent of the entrance fee, whichever is greater, and who have been notified that construction of the proposed continuing care retirement community has commenced, will not be entitled to a refund of their deposit until the provisional certificate of authority is issued or after one of the following occurs:

(A) Another depositor has reserved the canceling depositor's specific residential unit and paid the necessary deposit.

(B) The depositor no longer meets financial or health requirements for admission.

(C) The applicant fails to meet the requirements of Section 1786 or 1786.2.

(10) A statement to depositors that specifies when funds may be released from escrow to the applicant and explains that thereafter the depositor's funds will not have escrow protection.

(11) A statement advising the depositor whether interest will be paid to the depositor on deposits placed in the deposit escrow account.

(f) If cash equivalents are to be accepted in lieu of cash, all of the following shall also be included in the deposit agreement:

(1) A statement that cash equivalents that may be accepted as deposits shall be either certificates of deposit or United States securities with maturities of five years or less.

(2) A statement that the instruments will be held by the escrow agent in the form in which they were delivered and assigned by the depositor until they are replaced by cash or converted to cash.

(3) A statement that the depositor will be required to assign the instruments to a neutral third-party escrow agent. If the bank or entity that issued the instruments refuses to allow this assignment, the escrow agent shall not accept the instruments. These instruments shall be reassigned to the depositor if the depositor terminates the deposit agreement before the instruments mature. If the depositor terminates the deposit agreement after the instruments mature, the depositor shall receive a cash refund of the portion of the deposit represented by the matured instruments.

(4) A statement that any amount by which the face value of the deposited instruments exceeds the required deposit shall be deemed part of the deposit and shall be applied against the depositor's obligations under the deposit agreement.

(5) A statement that the instruments shall be converted to, or replaced with, cash prior to the department's authorization for the release of deposits to the applicant. The depositor shall be advised that if the depositor does not substitute cash in the amount

equal to the deposit, the applicant may do either of the following:

(A) Direct the escrow agent to sell, redeem, or otherwise convert the instruments to cash and to treat the proceeds in the same manner as it treats cash deposits under the deposit agreement. The costs of any such sale, redemption, or conversion, including, without limitation, transaction fees and any early withdrawal penalties, may be charged to the depositor and paid out of the cash or other instruments received from the depositor in escrow. If there is a shortfall, the depositor may be immediately obligated to pay the shortfall by check jointly payable to the applicant and the escrow agent.

(B) Terminate the deposit agreement. In this event, the escrow agent shall reassign the property to the depositor and refund all cash in escrow within the time periods specified in the deposit agreement.

(g) A statement that deposits will be invested in instruments guaranteed by the federal government or an agency of the federal government, or in investment funds secured by federally guaranteed instruments.

(h) A statement that no funds deposited in a deposit escrow account shall be subject to any liens, judgments, garnishments, or creditor's claims against the applicant, the proposed continuing care retirement community property, or the continuing care retirement community. The deposit agreement shall also provide that deposits may not be subject to any liens or charges by the escrow agent, except that cash equivalent deposits may be subject to transactions fees, commissions, prepayment penalties, and other fees incurred in connection with these deposits.

(i) A schedule of projected monthly care fees estimated to be charged to residents for each of the first five years of the continuing care retirement community's existence shall be attached to each deposit agreement. This schedule shall contain a conspicuous statement in at least 10-point boldface type that the projected fees are an estimate only and may be changed without notice.

(Amended by Stats. 2000, Ch. 820, Sec. 33. Effective January 1, 2001.)

1781. (a) All deposits, excluding processing fees, shall be placed in an escrow account. All terms governing the deposit escrow account shall be approved in advance by the department.

(b) The deposit escrow account shall be established by an escrow agent and all deposits shall be deposited in a depository located in California and approved by the department. The department's approval of the depository shall be based, in part, upon its ability to ensure the safety of funds and properties entrusted to it and its qualifications to perform the obligations of the depository pursuant to the deposit escrow account agreement and this chapter. The depository may be the same entity as the escrow agent. All deposits shall be kept and maintained in a segregated account without any commingling with other funds, including any funds or accounts owned by the applicant.

(c) If the escrow agent is a title company, it shall meet the following requirements:

- (1) A Standard and Poors rating of "A" or better or a comparable rating from a comparable rating service.
- (2) Licensure in good standing with the Department of Insurance.
- (3) Tangible net equity as required by the Department of Insurance.
- (4) Reserves as required by the Department of Insurance.

(d) All deposits shall remain in escrow until the department has authorized release of the deposits, as provided in Section 1783.3.

(e) Deposits shall be invested in instruments guaranteed by the federal government or an agency of the federal government, or in investment funds secured by federally guaranteed instruments.

(f) No funds deposited in a deposit escrow account shall be subject to any liens, judgments, garnishments, or creditor's claims against the applicant or the continuing care retirement community. The deposit agreement shall also provide that deposits may not be subject to any liens or charges by the escrow agent except that cash equivalent deposits may be subject to transaction fees, commissions, prepayment penalties, and other fees incurred in connection with those deposits.

(Amended by Stats. 2000, Ch. 820, Sec. 34. Effective January 1, 2001.)

1781.2. (a) All deposits shall be delivered to the escrow agent and deposited into the deposit escrow account within five business days after receipt by the applicant. The deposit escrow account shall be accounted for in a separate escrow account.

(b) The applicant shall provide, with all deposits delivered to the escrow holder, a copy of the executed deposit agreement, a copy of the receipt given to the depositor, a summary of all deposits made on that date, and any other materials required by the escrow holder.

(Amended by Stats. 2000, Ch. 820, Sec. 35. Effective January 1, 2001.)

1781.4. The deposit escrow account agreement between the applicant and the escrow agent shall include all of the following:

- (a) The amount of the processing fee.
- (b) A provision requiring that all deposits shall be placed into the deposit escrow account upon delivery.
- (c) A provision requiring that monthly progress reports be sent by the escrow agent directly to the department, beginning the month after the deposit escrow account is opened and continuing through the month funds are released from escrow. These reports shall be prepared every month that there are any funds in the account and shall show each of the following in separate columns:
 - (1) The name and address of each depositor or resident.
 - (2) The designation of the living unit being provided.
 - (3) Any processing fee which is deposited into escrow.
 - (4) The total deposit required for the unit.
 - (5) The total entrance fee for the unit.
 - (6) Twenty percent of the total entrance fee.
 - (7) Each deposit payment made by or on behalf of the depositor and any refunds paid to the depositor.
 - (8) The unpaid balance for each depositor's deposit.
 - (9) The unpaid balance for each depositor's entrance fee.
 - (10) The current balance in the deposit escrow account for each depositor and the collective balance.
 - (11) The dollar amount, type, and maturity date of any cash equivalent paid by each depositor.
- (d) A provision for investment of escrow account funds in a manner consistent with Section 1781.
- (e) A provision for refunds to depositors in the manner specified by Section 1783.2.
- (f) A provision regarding the payment of interest earned on the funds held in escrow in the manner specified in the applicant's deposit agreement.
- (g) Release of deposit escrow account funds in the manner specified in Section 1783.3, including to whom payment of interest earned on the funds will be made.
- (h) Representations by the escrow agent that it is not, and shall not be during the term of the deposit escrow account, a lender to the applicant or for the proposed continuing care retirement community, or a fiduciary for any lender or bondholder for that continuing care retirement community, unless approved by the department.
- (i) If cash equivalents may be accepted as a deposit in lieu of cash, the deposit escrow account agreement shall also include all of the following:
 - (1) Authorization for the escrow agent to convert instruments to cash when they mature. The escrow agent may notify all financial institutions whose securities are held by the escrow agent that all interest and other payments due upon these instruments shall be paid to the escrow agent. The escrow agent shall collect, hold, invest, and disburse these funds as provided under the escrow agreement.
 - (2) Authorization for the escrow agent to deliver the instruments in its possession and release funds from escrow according to written directions from the applicant, consistent with the terms provided in the applicant's deposit escrow account agreement. The escrow agent shall distribute cash and other property to an individual depositor only upon either of the following occurrences:
 - (A) The depositor's written request to receive monthly payments of interest accrued on his or her deposits.
 - (B) Receipt of notice from the applicant to pay a refund to the depositor.
 - (3) A provision that the escrow agent shall maintain, at all times, adequate records showing the beneficial ownership of the instruments.

(4) A provision that the escrow agent shall have no responsibility or authority to initiate any transfer of the instruments or conduct any other transaction without specific written instructions from the applicant.

(5) A provision authorizing, instructing, and directing the escrow agent to do all of the following:

(A) Redeem and roll over matured investments into money market accounts or other department approved instruments with the escrow agent or an outside financial institution.

(B) Collect and receive interest, principal, and other things of value in connection with the instruments.

(C) Sign for the depositors any declarations, affidavits, certificates, and other documents that may be required to collect or receive payments or distributions with respect to the instruments.

(Amended by Stats. 2000, Ch. 820, Sec. 36. Effective January 1, 2001.)

1781.6. All changes to a deposit agreement or deposit escrow account agreement form shall be submitted to, and approved by, the department before use by the applicant.

(Amended by Stats. 2000, Ch. 820, Sec. 37. Effective January 1, 2001.)

1781.8. (a) Deposits held in escrow shall be placed in an interest bearing account or invested as provided under subdivision (e) of Section 1781.

(b) Interest, income, and other gains derived from deposits held in a deposit escrow account may not be released or distributed from the deposit escrow account except upon written approval of the department.

(c) Approval by the department for the release of earnings generated from funds held in escrow shall be based upon an assessment that funds remaining in the deposit escrow account will be sufficient to pay refunds and any interest promised to all depositors, as well as administrative costs owed to the escrow agent.

(d) When released by the department, interest earned by the funds in the deposit escrow account shall be distributed in accordance with the terms of the deposit agreement.

(Amended by Stats. 2000, Ch. 820, Sec. 38. Effective January 1, 2001.)

1781.10. No deposit or any other asset held in a deposit escrow account, shall be encumbered or used as collateral for any obligation of the applicant or any other person, unless the applicant obtains prior written approval from the department for the encumbrance or use as collateral. The department shall not approve any encumbrance or use as collateral under this section unless the encumbrance or use as collateral is expressly subordinated to the rights of depositors under this chapter to refunds of their deposits.

(Amended by Stats. 2000, Ch. 820, Sec. 39. Effective January 1, 2001.)

1782. (a) An applicant shall not begin construction on any phase of a continuing care retirement community without first obtaining a written acknowledgment from the department that all of the following prerequisites have been met:

(1) A completed application has been submitted to the department.

(2) A permit to accept deposits has been issued to the applicant or, in the case of continuing care retirement community renovation projects, the department has issued a written approval of the applicant's application.

(3) For new continuing care retirement communities, or construction projects adding new units to an existing continuing care retirement community, deposits equal to at least 10 percent of each depositor's applicable entrance fee have been placed into escrow for each phase for at least 50 percent of the number of residential living units to be constructed.

(b) Applicants shall notify depositors in writing when construction is commenced.

(c) For purposes of this chapter only, construction shall not include site preparation, demolition, or the construction of model units.

(Amended by Stats. 2006, Ch. 529, Sec. 2. Effective January 1, 2007.)

1783. (a) (1) An applicant proposing to convert an existing building to continuing care use shall comply with all the application requirements in Section 1779.4 identified by the department as necessary for the department to assess the feasibility of the proposed continuing care retirement community or conversion.

(2) If the proposed continuing care retirement community is already occupied and only a portion of the existing residential units will be converted into continuing care units, the department may modify the presale requirements of paragraph (3) of subdivision

(a) of Section 1782 and paragraph (2) of subdivision (a) of Section 1783.3.

(b) Any applicant proposing to convert an existing building into continuing care units shall indicate the portion of the facility to be used for continuing care contract services. The continuing care allocation specified by the applicant shall be reflected in all financial and marketing studies and shall be used to determine the applicant's compliance with the percentage requirements stated in paragraph (3) of subdivision (a) of Section 1782 and paragraph (2) of subdivision (a) of Section 1783.3.

(Amended by Stats. 2000, Ch. 820, Sec. 41. Effective January 1, 2001.)

1783.2. (a) An escrow agent shall refund to the depositor all amounts required by the depositor's deposit agreement upon receiving written notice from the applicant that a depositor has canceled the deposit agreement. Refunds required by this subdivision shall be paid to the depositor within 10 days after the depositor gives notice of cancellation to the applicant.

(b) Depositors who have deposited more than one thousand dollars (\$1,000) or 5 percent of the entrance fee, whichever is greater, and who have been notified that construction of the proposed continuing care retirement community has commenced, shall not be entitled to a refund of their deposit until any of the following occurs:

- (1) The continuing care retirement community is opened for operation.
- (2) Another depositor has reserved the canceling depositor's specific residential unit and paid the necessary deposit.
- (3) The depositor no longer meets financial or health requirements for admission.

(Amended by Stats. 2000, Ch. 820, Sec. 42. Effective January 1, 2001.)

1783.3. (a) In order to seek a release of escrowed funds, the applicant shall petition in writing to the department and certify to each of the following:

- (1) The construction of the proposed continuing care retirement community or phase is at least 50 percent completed.
- (2) At least 10 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 60 percent of the total number of residential living units. Any unit for which a refund is pending may not be counted toward that 60-percent requirement.
- (3) Deposits made with cash equivalents have been either converted into, or substituted with, cash or held for transfer to the provider. A cash equivalent deposit may be held for transfer to the provider, if all of the following conditions exist:
 - (A) Conversion of the cash equivalent instrument would result in a penalty or other substantial detriment to the depositor.
 - (B) The provider and the depositor have a written agreement stating that the cash equivalent will be transferred to the provider, without conversion into cash, when the deposit escrow is released to the provider under this section.
 - (C) The depositor is credited the amount equal to the value of the cash equivalent.
- (4) The applicant's average performance over any six-month period substantially equals or exceeds its financial and marketing projections approved by the department, for that period.
- (5) The applicant has received a commitment for any permanent mortgage loan or other long-term financing.

(b) The department shall instruct the escrow agent to release to the applicant all deposits in the deposit escrow account when all of the following requirements have been met:

- (1) The department has confirmed the information provided by the applicant pursuant to subdivision (a).
- (2) The department has determined that there has been substantial compliance with projected annual financial statements that served as a basis for issuance of the permit to accept deposits.
- (3) The applicant has complied with all applicable licensing requirements in a timely manner.
- (4) The applicant has obtained a commitment for any permanent mortgage loan or other long-term financing that is satisfactory to the department.

(5) The applicant has complied with any additional reasonable requirements for release of funds placed in the deposit escrow accounts, established by the department under Section 1785.

(c) The escrow agent shall release the funds held in escrow to the applicant only when the department has instructed it to do so in writing.

(d) When an application describes different phases of construction that will be completed and commence operating at different times, the department may apply the 50-percent construction completion requirement to any one or group of phases requested by the applicant, provided the phase or group of phases is shown in the applicant's projections to be economically viable.

(Amended by Stats. 2011, Ch. 32, Sec. 11. (AB 106) Effective June 29, 2011. Operative January 1, 2012, by Sec. 73 of Stats. 2011, Ch. 32.)

1784. (a) If construction of the proposed continuing care retirement community, or applicable phase, has not commenced within 36 months from the date the permit to accept deposits is issued, an applicant may request an extension of the permit to accept deposits. The request for extension shall be made to the department in writing and shall include the reasons why construction of the proposed continuing care retirement community was not commenced within the required 36-month period. The request for extension shall also state the new estimated date for commencement of construction.

(b) In response to a request for an extension, the department may do one of the following:

(1) If the department determines there is satisfactory cause for the delay in commencement of construction of the proposed continuing care retirement community or applicable phase, the department may extend the permit to accept deposits for up to one year.

(2) If the department determines that there is no satisfactory cause for the delay, the department may instruct the escrow agent to refund to depositors all deposits held in escrow, plus any interest due under the terms of the deposit subscription agreements, and require the applicant to file a new application and application fee. The applicant shall also refund all processing fees paid by the depositors.

(c) Within 10 calendar days the applicant shall notify each depositor of the department's approval or denial of the extension, of any expiration of the permit to accept deposits and of any right to a refund of their deposits.

(Amended by Stats. 2000, Ch. 820, Sec. 44. Effective January 1, 2001.)

1785. (a) If, at any time prior to issuance of a certificate of authority, the applicant's average performance over any six-month period does not substantially equal or exceed the applicant's projections for that period, the department may take any of the following actions:

(1) Cancel the permit to accept deposits and require that all funds in escrow be returned to depositors immediately.

(2) Increase the required percentages of construction completed, units reserved, or entrance fees to be deposited as required under Sections 1782, 1783.3, 1786, and 1786.2.

(3) Increase the reserve requirements under this chapter.

(b) Prior to taking any actions specified in subdivision (a), the department shall give the applicant an opportunity to submit a feasibility study from a consultant in the area of continuing care, approved by the department, to determine whether in his or her opinion the proposed continuing care retirement community is still viable, and if so, to submit a plan of correction. The department shall determine if the plan is acceptable.

(c) In making its determination, the department shall take into consideration the overall performance of the proposed continuing care retirement community to date.

(d) If deposits have been released from escrow, the department may further require the applicant to reopen the escrow as a condition of receiving any further entrance fee payments from depositors or residents.

(e) The department may require the applicant to notify all depositors and, if applicable, all residents, of any actions required by the department under this section.

(Amended by Stats. 2011, Ch. 32, Sec. 12. (AB 106) Effective June 29, 2011. Operative January 1, 2012, by Sec. 73 of Stats. 2011, Ch. 32.)