NaCCRA Paper 5.

CCRC Resident Risk and The Changing CCRC Industry

By Gerard Hyland, Mary's Woods, Lake Oswego, Oregon

Following the bankruptcy of Sunwest of Oregon, manager and developer of 196 nationwide senior living facilities; the bankruptcy of Ericson Retirement Communities, LLC of Maryland, manager and developer of 20 CCRCs with 23,000 residents in 11 states; and the bankruptcy of Covenant of South Hills in Pennsylvania, which resulted in the residents losing their entry fees, the U.S. Senate Special Committee on Aging on July 21, 2010 held the hearing, Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment?

The Committee's Majority Staff, Summary of Committee Investigation, Continuing Care Retirement Communities: Risks to Seniors, July 21, 2010 concluded in part:

"Conclusion

The CCRC industry promotes the ability for seniors to "age in place" with flexible accommoda¬tions that are designed to meet their health and housing needs as these needs change over time. However, unstable market conditions and poor financial planning have led to financial difficulties or even insolvency among some CCRCs. In addition, choosing a CCRC can be extremely complex due to disparate state regulations, and variations in the type of contract that an individual can sign. Residents need to be aware of the risks that CCRCs pose and consider retaining independent counsel to review these complex agreements. Some of the key areas that a consumer may want to explore include: the CCRC's ownership and fee structures; financial performance and security measures; entrance fee refund policies; protections against involuntary transfers to different levels of care or to off-campus facilities; the extent to which residents are able to participate in management decisions; the methods available to residents to address their disputes and concerns with the CCRC; under what circumstances a resident can rescind or cancel his/her contract; and whether the CCRC is accredited."

Shortly after the Senate Hearing, NaCCRA established a Financial Soundness Committee. CCRC defaults and bankruptcies continued to occur at a rate of two or three per year. Just in the past year, at least two CCRCs filed for bankruptcy protection—University Village in Florida and Greenfields of Geneva in Illinois. Filing for federal bankruptcy protection is very expensive and disruptive, most financially stressed CCRCs seek acquisition by, or affiliation with, a stronger CCRC. Many more CCRCs have inadequate capital to protect and meet their commitments to residents, but they are considered financially sound because they have the cash to pay their bills and secured creditors, thanks to the plentiful supply of cash from entry fees.

The federal government does not regulate CCRCs or residents' investments in CCRCs. The Securities Exchange Commission (SEC) regulates investors who invest in a CCRC's bonds. Not-for-profit CCRCs are financed through municipal bonds. These are offered for sale to the public accompanied by an Official Statement. The documents can be almost 400 pages. These statements will include lengthy, 24 pages, more or less, discussions of risks.

Recently, for bonds rated less than investment grade, even if not required by the SEC, these Official Statements, have begun to appear with the warning,

"Except as otherwise described herein, the holders of the Bonds must be "accredited investors," as defined in Rule 501of Regulation D under the Securities Exchange Act of 1933, as amended (the "Securities Act") and hold not less than a minimum of $25,000 principal amount of Bonds or must be "qualified institutional buyers," as defined in Rule 144A under the Securities Act."

“Investment grade” are bonds with a Fitch rating of BBB or better. Over 75 percent of CCRC bonds are not rated investment grade.

In other words, buyers of the bonds are protected by requiring that buyers are wealthy, sophisticated investors and that they be fully informed of the risks. All others are protected by not being allowed to buy the bonds.

Prospective CCRC residents typically sell their homes and use the proceeds for unsecured entry fees. These fees provide the “risk capital” to provide security for the bondholders. These aging, vulnerable, prospective residents, who are seeking housing and care through end of life, are not offered the protections of a wealthy, sophisticated, secured bondholder. They are not informed of the risks; they will not receive the continuing disclosure of information as the bondholders.

THE COMING OF THE BABY BOOMERS AND LEADINGAGE

At the 2010 American Association of Homes and Services for the Aging (AAHSA) Annual Meeting and Expo in Los Angeles, AAHSA changed its name to LeadingAge to position itself for the arrival of the Baby Boomers. A relevant document was Who Decides? The author, the AAHSA Cabinet on Future Needs of Consumers, recognized that the Baby Boomers were coming, and they would be different than those of us who are members of the Silent Generation. Some of the summarized findings read,

“A different kind of consumer. Fortunately, there are many reasons to believe that Baby Boomers will help us creatively manage the challenges ahead. These older people will be well educated, technologically savvy and eager to work hard for social change. Most important, they will want to take charge of their own aging experience. Future consumers will not trust providers to make decisions for them. Already accustomed to having abundant choices in many aspects of their lives, they will demand the same range of choices from us.”

“Because future consumers will be different, providers of long-term services and supports must also be different. Instead of “serving” and “caring for” residents and clients, we must enable and empower them. This dramatic shift will surely disrupt our current ways of doing business. How¬ever, inaction is not an option. If we don’t offer abundant and meaningful choices to consumers – and work hard to foster consumer independence and autonomy – older people will find other providers who will.”

“Need for inclusive planning. How can we prepare for this inevitable shift? First, we must ask consumers to tell us how they want to age – and we must listen carefully to their answers. Then we must work, as equal partners with consumers and local stakeholders, to create community-wide service and support systems that meet consumers’ stated expectations. Such systems would offer consumers full and open access to information, services and supports; varied transportation, home care and universal design options; and strategies for disease prevention and management. They would also:

- *Recognize the abilities and interests of older consumers.*
- *Offer full information and transparency, with appropriate privacy safeguards.*
- *Emphasize flexibility, choice, freedom and accessibility.*
- *Integrate and coordinate services and supports across settings.*
- *Provide customized and personalized services that respect consumer diver¬sity.*
- *Empower consumers to make decisions and take informed risks.*
- *Ensure provider accountability through consumer protections and quality review.*
- *Offer a quality consumer experience, designed by and with consumers.*
- *Provide ample opportunities for social interaction and meaningful activity.”*

A CHANGING INDUSTRY

Instead of adjusting to the needs of Baby Boomers, LeadingAge CCRC provider

Instead of adjusting to the needs of Baby Boomers, LeadingAge CCRC provider members appear to be allowing the dire predictions to come true.

In response, new perspective residents are choosing to live elsewhere then in a not-for-profit CCRC. Residents are remaining in their homes or moving to homes, such as townhouses or condos, which will better accommodate them as they age. They will stay in their homes even as they might need in-home care, causing a boom in the in-home care industry. Those that move are increasingly finding the for-profit industry, where the risk capital is provided by investors, more attractive than not-for-profit facilities.

Another change, not-for-profit CCRCs appear to be increasingly finding their new residents for independent living units are residents soon in need of assistance. They moved to a CCRC because they could not continue to live independently, that is, they moved to a CCRC to live independently "with accommodation," as defined under federal and state fair housing laws. CCRC independent living is becoming an extension of assisted living.

WHAT IS NACCRA TO DO?

By their Annual Meeting & Expo in 2010, AASHA foresaw the need for the not-for-profit industry to change. With much fanfare they changed their name to LeadingAge.

NaCCRA engaged LeadingAge on working toward a response to meet the needs of a new age of an aging population. The years are passing, and NaCCRA and LeadingAge are having trouble even on agreeing to meet. LeadingAge is proving correct those NaCCRA members who were against affiliating with LeadingAge. LeadingAge will not work with residents.

It is time for a NaCCRA Congress of residents to decide on a plan for the future of aging on issues including financial security, governance, and continuing care through end of life.