

Back in 1999, Congressman Rick Lazio addressed Congress stating that “More than 33 million people in the United States are now over 65 years of age and older, and by the year 2020 that number will grow to almost 53 million, or one in every six Americans.” Recent studies have borne out Congressman Lazio’s predictions.

More recently, a report of the National Endowment for the Arts noted that we are on the brink of an unprecedented time in America’s history. By the year 2030, 28 percent of the population will be over 60, and the number of those over 85 will triple. This “age wave” of older adults is influenced by three demographic trends: 1) The baby boomers are aging—those over 65 will increase to 20 percent by the year 2030, hastening the Aging of America; 2) Americans are living longer lives than ever before—life expectancy has risen from 47 to 75 years; and 3) We have shifted from a birthing to an aging culture. In numbers, there will be nearly twice as many older adults in 2030 (70 million) as there are today (32 million).

Today, the population revolution identified by Lazio and the NEA is very much upon us. And with the so-called “greying of America” comes new challenges for lawyers. Of particular note are the challenges related to housing.

Perhaps no decision is as difficult, or important, as determining how to care for our loved ones as they grow older. Similarly, as we grow older ourselves, many of us face complicated decisions regarding how and where we wish to live. This article considers several of the different housing options available to senior citizens with particular reference to California, but it is intended to alert practitioners to some of the critical issues surrounding senior housing anywhere and to provide a basis to spot issues when counseling mature clients considering housing changes. For clarity, this article is organized into four sections that address facilities, care, licensing, and financial issues, respectively.

As noted at the outset, this article is not intended to provide a comprehensive guide to all issues relating to the

selection of senior housing facilities everywhere. Rather, it is intended to familiarize general practitioners with basic information regarding the issues likely to arise when their clients consider housing alternatives for the elderly. By discussing facilities, care, licensing, and financial issues with their clients, practitioners can create a helpful framework within which their clients can evaluate the many senior housing options available to them.

Facility Issues

One of senior citizens’ primary concerns when considering housing alternatives is, not surprisingly, the physical nature of the places in which they might live. As is the case with more traditional housing, senior living facilities run the gamut in terms of facilities and services offered. The key to properly counseling seniors considering facilities issues is determining the types of activities they enjoy, the types of interests they intend to pursue in the future, and the types of physical attributes they deem to be desirable. In making those determinations, be sure to consider the following items.

Catering/Meal Provision

In addition to in-room kitchen facilities for residents to prepare meals themselves, most senior living facilities offer some type of catering service through which meals can be provided to residents. Yet even this matter is the subject of great variance. Some locations require residents to purchase a complete meal plan, while others provide a more restaurant-like “dine here when you wish” service (please see the related discussion in Financial Issues section, below).

Also, as many seniors have definite food requirements, some facilities cater to specific segments of the population, offering kosher, vegetarian, and other menus. Many senior living facilities also offer extensive catering services that allow their residents to “host” larger family dinners in appropriate locations (private dining rooms, within their residences, and so forth). For some seniors, these types of services are critically important.

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Editor’s Note: Although the following article is specific to the State of California, it is the hope of the Editorial Board of Experience that it will be used as a template for a number of continuing articles that may be published or put on the Division’s website on senior housing in those states in which the majority of seniors live: Florida, Illinois, Michigan, New York, New Jersey, Ohio, Pennsylvania, and Texas.

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Physical Plant

The types of physical attributes senior housing facilities offer also vary tremendously. From golf courses to tennis courts, to gardening plots to metal shops, swimming pools to wood shops, computer laboratories to libraries, meeting facilities to theaters, different types of senior living facilities can provide a host of different attributes for more or less active inhabitants. Yet oftentimes the more basic physical attributes are much more important to seniors. Whether a housing facility provides covered off-street parking, its proximity to medical offices, the provision of laundry facilities, or even the presence of security doors can be among the issues seniors deem to be the most important. Other considerations include religious affiliation or ethnic mix, location in certain neighborhoods, and the proximity to relatives for visiting purposes.

Social Services

It is hard to downplay the importance of social interaction to seniors' happiness. And again, senior housing facilities provide widely varied types of social services that depend on the nature of their residents and the resources that are available. Some of the most common social services available are clubs and other internal organizations for seniors with similar interests. Oftentimes, however, social services can include transportation to local shopping centers and points of interest, theater troupes and musical groups, and even travel organizations. Depending upon the activity level of your clients, these types of services can be very important.

Medical Services

This can, understandably, be one of the more challenging issues to raise with aged clients, but it is also among the most important. One of the major psychological hurdles we must overcome when making a decision about senior housing facilities is drawing a distinction between the much-maligned "old age home" where everyone is sickly, and the so-called "retirement community," where spirited seniors lead active and fulfilling lives. The provision of medical services is, at least for some, the dividing line between these two types of residences.

As explained in the Care Issues section below, very different types of services are provided by hospitals, skilled nursing facilities, and assisted living facilities. The fact that a location is marketed to seniors does not necessarily mean that any medical services are available. Practitioners are well advised to thoroughly investigate the extent and nature of medical services available at any location a senior client is considering and to discuss with the client the possibility of his or her being forced to move if he or she becomes too ill.

Care Issues

Many seniors find themselves considering senior housing alternatives primarily because of medical concerns. Whether seniors are essentially well (that is, people who may need only to occasionally take medicine or monitor cholesterol levels but are planning for the future) or very ill (that is, people with mental illness or serious physical limitation), health concerns play a large role in bringing many people to consider senior living alternatives. For these people, the availability and extent of medical/life assistance care provided within a facility are absolutely critical. Lawyers should keep in mind that certain facilities will accept new residents only if they execute dementia waivers (for mental illness) or hospice waivers (for residents likely to die within six months of admission). Obviously, these types of documents are likely to give rise to awkward and difficult questions for many seniors.

What follows describes, essentially, the five types of long-term senior living facilities in California.

Residential Facilities

At one end of the spectrum are so-called retirement hotels, senior residences, and senior communities. These types of facilities tend to focus more on hospitality issues (the provision of maid and meal services) than health concerns. Many of these facilities do, however, provide certain health-related services. From physical training (yoga and exercise classes) to security services (24-hour monitoring) to access services (providing emergency "call panels" in rooms), these types of housing facilities can meet the needs of

Malo is an attorney with the Orange County, California, office of Sheppard, Mullin, Richter & Hampton. His practice focuses primarily on creditor's rights and bankruptcy issues, but he also assists on pro bono and elder law issues.

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many seniors. Many undertake the obligation to notify physicians and pharmacists when their residents confront health problems.

Assisted Living Facilities

A step up from residential facilities, assisted living facilities help seniors who have difficulty attending to the activities of daily life. For many of us, dressing, eating, remembering to take medication, and keeping track of appointments becomes difficult as we age. For such people—assuming that they do not have additional major health issues—assisted living facilities can provide an ideal housing situation.

Most assisted living facilities provide around-the-clock monitoring and assistance. Beyond the services typically provided by more residentially oriented facilities, assisted living facilities often monitor blood pressure and assist seniors with more complicated, but regular, medical procedures such as monitoring blood sugar levels. Industry experts estimate that there are thousands of these types of “board and care” facilities throughout California. Most of them are very small, catering to only two to five residents at any one time, though some of the larger assisted living facilities can accommodate several hundred residents.

Skilled Nursing Facilities

Skilled nursing facilities are the next step up for seniors who require a residence that can address their more serious medical services. Typically, skilled nursing facilities have two types of residents—people recovering from very serious medical issues (that is, people who are recovering from a stroke or major surgical procedure), or people who need very serious 24-hour care (that is, nonambulatory people, people who need help taking/administering medication, those who are incontinent, people whose movement is restricted to beds, wheelchairs, and walkers, and so forth). People familiar with the industry estimate that there are presently between 1,000 and 1,100 skilled nursing facilities in California.

Convalescent Hospitals

Obviously, hospitals are at the other end of the spectrum from retirement hotels.

With 24-hour doctor and nursing staffs, operating rooms, intensive care units, pharmacies, and the like, long-term hospital facilities can address seniors’ most serious medical issues. Not surprisingly, however, the suggestion that a convalescent hospital is an appropriate residence for someone may not be particularly well received. This is an issue any counselor should seriously consider when discussing senior living alternatives with clients.

Hybrid Facilities

Helpfully, many of the finest senior living facilities provide a spectrum of housing alternatives to their residents in a single “campus-like” location. These are continuing care retirement communities (CCRCs). The advantages of such facilities are obvious: seniors can—as the situation may require from time to time—move from a residential structure to an assisted living facility or to a skilled nursing facility without having to leave a familiar setting, and while still remaining close to friends and acquaintances who live in other parts of the “campus.” While there are hundreds of these types of facilities across the nation, there are only a few dozen in California. The availability of such a facility is something that should be discussed with clients who are considering any move into a senior living facility.

Licensing and Regulatory Issues

Regulation of senior housing varies from state to state. In California, there are basically two government entities that formally regulate senior living facilities. The Department of Social Services regulates assisted living facilities. The Department of Health Services regulates skilled nursing facilities and hospitals. There is no particular statewide agency charged with regulating senior residential facilities.

As the successor to the six-member Board of Charities and Corrections formed in 1903, the present day Department of Social Services has 4,200 employees in 51 offices. It maintains a Research and Development Division that generates regularly published reports on a host of topics, including the number and performance of assisted living facilities. Most of these reports are available online. The Department of Social

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Services also maintains detailed inspection records for all licensed assisted living facilities in California. Members of the public may contact the Department of Social Services (the main telephone number is 916/657-3667; the address is 744 P Street, Sacramento, California 95814) and make inquiries regarding the license and disciplinary status of any particular assisted living facility in the state. For general purposes, the Department of Social Services maintains a website at www.dss.cahwnet.gov.

The Department of Health Services is one of the largest state government agencies, having more than 60 field offices and more than 5,000 employees working in its Sacramento office alone. Though primarily charged with administering the Medi-Cal program, the Department of Health Services does commit significant resources to licensing and regulating skilled nursing facilities and hospitals throughout California. The Department of Health Services includes a Licensing and Certification Division charged with regulating more than 6,000 health care facilities operating in California and investigating the more than 11,000 consumer complaints it receives each year.

Members of the public may contact the Department of Health Services Licensing and Certification Division (telephone number 916/445-2070) and make inquiries regarding the license and disciplinary status of any particular skilled nursing facility or hospital in the state. For general purposes, the Department of Health Services maintains a website at www.dhs.cahwnet.gov.

Beyond these government agencies, there are several independent organizations that maintain comprehensive databases regarding senior living facilities. Perhaps the best known such organization is the California Association of Homes and Services for the Aging (CAHSA). CAHSA is a not-for-profit organization formed in 1961. It has over 400 member organizations across California and imposes strict standards of care on all of its members. The fact that a senior facility your client is considering is a CAHSA member is a good indication that it is a well-run and reputable facility. CAHSA's website at www.aging.org provides helpful informa-

tion about senior living facilities throughout the state.

The California Association of Health Facilities (CAHF) is another independent not-for-profit organization that provides information to consumers with questions about long-term care facilities throughout California. With more than 1,500 members, CAHF spans a wide range of senior living facilities. The CAHF website at www.cahf.org provides a wealth of information on topics ranging from how to select a nursing home, to a helpful publication entitled *A Consumer Guide to Assisted Living and Residential Care Facilities for the Elderly*. The CAHF website even provides a "facility search" option that allows individuals to locate different types of senior living options within any given area. As was the case with CAHSA, CAHF membership indicates that a senior living facility is well run and reputable.

Financial Issues

Among the most difficult issues confronting many seniors as they consider various housing options is a legitimate concern over how much any given housing option will cost. Predictably, prices vary tremendously among facilities and regions. Given this, the notion of an "average" cost for senior living facilities is not particularly helpful. The various housing options across the state, however, generally fall into one of three financial structures.

Pay as You Go

Pay as you go is an agreement similar to typical residential rental agreements, and it is very common among senior living facilities. Generally, "rents" at senior living facilities are somewhat higher than similarly equipped conventional residences as they need to provide some portion of the services described previously. Senior residences, assisted living facilities, and skilled nursing facilities are all available pursuant to this type of arrangement. Residents' selection of meal plans, maid service, and other services often result in additional charges. If your client is interested in a location because of these amenities, make sure that he or she is either included in the monthly charges, or priced in a manner that is reasonable for your client.

Pay Up Front

It is not at all unusual for senior living facilities to have a so-called "buy-in charge" borne by all residents. Generally, there is some additional monthly payment also owed by each resident, but this amount can vary significantly depending upon the size of the buy-in (which can exceed several hundred thousand dollars in some cases). In return for a significant buy-in, many facilities guarantee certain levels of care to their residents for the remainder of their lives. These types of arrangements can provide seniors with significant comfort, but lawyers should caution their clients that such guarantees are only as effective as the persons or entities making them. Before making any significant buy-in payment, seniors should carefully consider the financial condition and reputation of the facility at issue. Most facilities that require residents to make large buy-in payments allow for some refund of a portion of that sum if the resident chooses to relocate within a certain period or passes away.

Conventional Home Purchase

As noted above, many senior living facilities provide little more than additional services (security, meal plans, maid service, recreational facilities) to elderly homeowners in a given community. In these circumstances, seniors may simply

purchase the home, condominium, or apartment of their choice. Although some states, such as California, generally do not have lawyers involved in residential closings, this may be the type of transaction where a senior would be well served by having a lawyer. It is important for the purchaser to understand what is and is not provided for with these additional services and what contractual obligations, if any, the seller may have with regard to providing the amenities that made the purchase attractive in the beginning.

Hidden Costs and Fee Increases

Regardless of what type of payment system your client chooses, you should caution her to be mindful of the "hidden costs" that often provide the basis for television specials and newspaper articles. If your client is drawn to a given facility based upon particular services or amenities, it is important that you determine whether there are special charges for those features. Also, many reputable senior housing facilities will build a price ceiling into their "standard" residential charges. Pursuant to such a provision, the costs of baseline services cannot be increased beyond a certain rate. These types of financial issues can be critical to anyone planning to live on a fixed income. ■