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# THE B&B ALERT

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 Specializing in Elder & Disability Law

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## ***BEFORE WRITING THE CHECK TO THE CCRC, CHECK OUT THE LAW ON THE ENTRANCE FEE***

By Dana E. Bookbinder, Esquire

Continuing Care Retirement Communities (CCRC's) are becoming increasingly popular choices for aging couples and single individuals looking for leisurely social environments that provide flexibility in care options. Often, clients call upon the firm to review such contracts and point out potentially problematic provisions. Even outside the contracts, both tax and Medicaid law present issues for individuals to consider before writing their CCRC entrance checks.

### ***Entrance Fees and the IRS***

Moving into a qualified continuing care retirement community may have unforeseen tax consequences. Typically, the qualified continuing care facility will require that an individual pay an "entrance fee" along with monthly payments. The entrance fee is frequently refundable when the individual moves out or the contract is otherwise terminated. Since the entrance fee is refundable, the IRS treats the entrance fee as a loan made from the CCRC resident to the facility. Because the CCRC resident does not receive interest on the loan (or at least not a market rate of interest), the IRS views it as a below-market rate loan and, subject to certain exemptions, will impute interest income to the individual.

In a move that may help certain prospective and current CCRC residents, Congress recently passed the Tax Increase Prevention and Reconciliation Act of 2005 (TIRPA). The law, which was signed by the President on May 17, 2006, generally favors upper-income individuals but does mitigate tax consequences regarding CCRC entrance fees. The new law, however, only applies to calendar year 2006 through 2010. Old legislation will apply to calendar years after 2010 (unless Congress acts to extend the new law).

### ***Below-market loans after 2005 and before 2011***

A loan made by an individual (or his spouse) who is age 62 or older during the calendar year to a *qualified continuing care facility* pursuant to *continuing care contract* is **not** subject to the below-market interest rate rules which would otherwise impute interest income to the CCRC resident.

For this purpose, a *continuing care contract* is generally a written agreement between the individual and a qualified continuing care facility (discussed below) under which: (1) the individual or individual's spouse may use a qualified continuing care facility for their life or lives; (2) the individual (or spouse) will be provided housing, as appropriate for the health of such individual or individual's spouse, (i) in an independent living unit (which has additional available facilities outside such unit for the provision of meals and other personal care) and (ii) in an assisted living facility or a nursing facility, as is available in the continuing care facility; and (3) the individual (or spouse) will be provided assisted living or nursing care as the health of such individual (or spouse) requires, and as is available in the continuing care facility.

For this purpose, a *qualified continuing care facility* means: (1) one or more facilities that are designed to provide services under continuing care contracts; (2) that include an independent living unit, plus an assisted living or nursing facility, or both; and (3) substantially all of the independent living unit residents of which are covered by continuing care contracts. A nursing home is not a qualified continuing care facility.

### ***Below-market loans after 2010***

A loan made by an individual (or his spouse) who is age 65 or older during the calendar year to a *qualified continuing care facility* pursuant to *continuing care contract* is not subject to the below-market interest rate rules if the aggregate amount of loans between the lender (or the lender's spouse) and the qualified continuing care facility does not exceed a certain amount, indexed for inflation. For 2006, prior to the President enacting legislation that reduced the age of the lender from 65 to 62 and eliminating the ceiling on the amount of the loan, the maximum amount of the loan subject to exclusion was \$163,300. In addition, there are certain other requirements that must be met in order for a continuing care facility to be a "qualified continuing care facility."

### ***Entrance Fees and Medicaid Law***

February 8, 2006 President Bush signed radical changes to Medicaid eligibility rules into law, making it significantly more difficult for individuals to qualify for benefits to pay for their long term care. This legislation known as the Deficit Reduction Act of 2005 (DRA) renders CCRC entrance fees as countable assets for Medicaid eligibility purposes provided that 1) the individual may use the funds to pay for care if other assets are insufficient; 2) any or all of the fee is refundable when the individual dies or terminates the CCRC contract; and 3) the entrance fee does not confer an ownership interest in the CCRC. Under this law, the entrance fee will significantly work to delay an individual's eligibility for Medicaid and radically limit or eliminate a Medicaid applicant's spouse's opportunity to retain assets other than the entrance fee.

The Deficit Reduction Act also permits CCRCs to prohibit residents from transferring assets to expedite their Medicaid eligibility and instead require them to spend the assets they listed on their admissions paperwork on care. This provision potentially precludes individuals from legal asset protection planning for public benefits.

While CCRC's offer many advantages and comforts to its residents, the decision to move into one has many legal ramifications that should be carefully considered by families and their attorneys.



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Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and

Lawrenceville, New Jersey and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley & Bookbinder at 800-533-7227.

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