



CALCRA News

California
Continuing Care
Residents Association

Volume IV, Issue VIII
Fall 2007

FROM THE PRESIDENT

As we travel about the State meeting with CALCRA members, by far the most common concern we hear is of the unwillingness of providers to be forthcoming on how monthly fees are determined. Of course, we all recognize that fees must produce sufficient income to cover budgeted expenses, plus a prudent surplus to build adequate reserves for future



Walter P. Rozett

needs and contingencies. So what reason can there be for providers to not fully disclose whatever goes into making budget and monthly fee decisions?

It would be unfair to conclude that all providers are alike in wanting to withhold this information to conceal their intentions to use CCRC reserve funds to finance ventures that really will have little or nothing to do with the financial security and quality of life of the residents, who, after all, pay the fees from which these reserves are accumulated. But how else to explain increasing evidence that at least some providers are indeed already misusing reserve funds under their trust?

The industry's current record in this respect is not pretty. In one recently reported instance a provider actually has transferred the reserve funds of CCRCs under its management to its own general account. In another, a provider has loaned funds from the reserves of CCRCs it manages to an affiliated low cost housing entity experiencing financial problems, thus putting the loaned amount at undue risk. To make matters worse, the interest

rate the provider has placed on this loan is much less than the return on the investments from which the funds were withdrawn. In yet another multi-facility operation reserves are totally inadequate to finance recovery from a calamitous event. With this operation tenuously dependent on cash flow from future entrance fees, there is inadequate provision for any necessary renovation--and what will happen if a fire, flood or earthquake interrupts the inflow of those entry fees?

These are clear indications that inadequate regulatory oversight, coupled with inattention by the involved boards of directors, are at the seat of such provider abuses of the duties entrusted to them. In California, the agency primarily responsible for licensing and oversight of CCRCs (which are predominantly nonprofit) is the Continuing Care Contracts Branch of the Department of Social Services. The Branch is congenitally under-staffed in the financial area and functions within the environment of social service rather than as a financial watch dog. At the federal level, regulatory authority over nonprofit CCRCs rests with the Internal Revenue Service, but that agency also is ineffective in providing financial oversight because of its overriding priority to collect taxes.

continued to page - 3

Executive Board

Walter P. Rozett
President

Barbara Krings
Vice President
& Secretary

Ed Washburn
Treasurer

William Allewelt
Ed Delaney

Norm Eichberg
Denise Fleig

Art Halenbeck
Sid Hanson

Pat Herron
Stefan Moses

Boyd Steele
Bernard Werth

Members - At - Large

CALCRA

1515 Shasta Dr., #2109
Davis, CA 95616

Phone: (530) 747-6229

Fax: (530) 747-6229

E-Mail:

wrozett@urcad.org

Inside this issue:

From the President 1

Congratulations to
CALCRA's '08 Board 2

Report on Annual &
Board Meetings 2

Disability
Discrimination 2

Director Comments
on Their Communities 3

CONGRATULATIONS TO CALCRA's 2008 EXECUTIVE BOARD

Walt Rozett, President (University Retirement Community at Davis), Barbara Krings, Vice President and Secretary (Eskaton Village), Bill Allewelt (University Retirement Community at Davis), Ed Delaney (St. Paul's Towers), Denise Fleig (Piedmont Gardens), Norm Eichberg (La Jolla Village Towers), Art Halenbeck (Valle Verde), Sid Hanson (Air Force Village West), Pat Herron (Spring Lake Village), Stefan Moses (The Village at Hemet), Boyd Steele (The Covington), Bernard Werth (San Francisco Towers). C.E. (Ed) Washburn (Air Force Village West) continues as Treasurer.

REPORT ON ANNUAL AND BOARD MEETINGS

The meeting was held October 4, 2007 at La Jolla Village Towers in San Diego. Barbara Krings and Bill Allewelt were reelected to the CALCRA Board along with Boyd Steele of The Covington in Aliso Viejo. Boyd has been president of the resident council at The Covington. He is a graduate of the Naval Academy and retired from the Navy as a Captain in 1988. After his retirement he worked for several companies in the defense sector. He is a most welcome addition to the Board.

Iris Masotti assisted by Bea Rose, both residents of La Jolla Village Towers, gave a presentation of a "Statement of Resident and Provider Rights and Responsibilities". The presentation provided an objective approach to the issues involved in the transfer of residents to higher levels of care. Iris will provide copies of the presentation if you contact her at iris@nachbar.com.

Directors gave short reports on their communities. Several of those reports are included on page 3 of this newsletter.

A review of CALCRA's legislative effort this year was given by President Rozett. Senate Bill 489, sponsored by CALCRA has been deferred until next year after heavy lobbying by providers against the bill. Further, the Department of Social Services

objected to the bill because they were not prepared to take on the additional workload that the bill would create for the Department indicating a probable veto by the governor. The bill provides important protection for residents in the event a provider closes all or part of a facility, temporarily or permanently. Passage of the bill in a simplified form with a reduced administrative burden will be a CALCRA priority for 2008.

At the subsequent executive session the board adopted an amendment to the bylaws increasing the size of the board by three to a total of twelve. Those appointed to the new board positions were Stefan Moses of The Village at Hemet, Art Halenbeck of Valle Verde in Santa Barbara and Pat Herron of Spring Lake Village in Santa Rosa. Stefan has been a director for three years. Art is an MIT graduate who designed and developed electronic and surveillance systems and subsequently became Director of the Office of Program Evaluation and Improvement for the U.S. Government. He has been active politically in his retirement. Pat has a J.D. from UC Berkeley, a graduate degree from Catholic University and an undergraduate degree from Trinity College. She has experience as assistant dean of women and taught

at several universities prior to practicing law. She was appointed a judge of the Superior Court in 1977 and retired in 1987. Since then she has been in private judging. We are most fortunate to have these special people on the CALCRA board.

Officers elected for the year ending September 30, 2008 are Walt Rozett, President; Barbara Krings, Vice President and Secretary; Ed Washburn, Treasurer. Norm Eichberg has been appointed Membership Chair.

The board discussed and approved the legislative agenda for 2008 with these priorities: 1) SB 489 revision and enactment, and 2) introduction of a bill related to monthly fee determination including a provision that prohibits use of resident funds for any other purpose. Walt Rozett and Bernard Werth will continue to work with California Advocates for Nursing Home Reform (CANHR) concerning the analysis of the financial information on all California CCRCs available from the Department of Social Services and the Federal Forms 990 and the posting of significant information on the CALCRA and CANHR websites.

The next meeting of the board will be early in April 2008 at a site yet to be determined.

DISABILITY DISCRIMINATION

On August 28, 2007 the United States District Court for the Eastern District of California entered a consent order resolving a lawsuit against the Covenant Retirement Communities related to discrimination against persons with disabilities. The lawsuit alleged that Covenant limited access to common areas for those with disabilities who used mobility aids, including wheelchairs, motorized wheelchairs, motorized scooters, walkers, crutches and canes. The settlement included the establishment of a claims process so that any individual who believes that he or she was discriminated against may file a claim for compensation. Covenant Village of Turlock, Mount Miguel Covenant Village in Spring Valley, The Samarkand in Santa Barbara and a number of retirement communities

outside California are operated by Covenant.

The settlement of the lawsuit resulted in Covenant issuing a new mobility aids policy which states that residents and potential residents who require such aids will be welcomed and integrated into the Covenant communities. All residents and visitors using mobility aids shall have full access to any dwelling unit for which he or she is otherwise qualified and to any common area that is open and available to other residents. This includes dining rooms, cafes, lounges, computer-access facilities, swimming pools, beauty salons, libraries, chapels, offices, restrooms and auditoriums. Residents or visitors with physical impairments are not required to prove that they need to use the mobility aids, however, the use of a

motorized mobility aid may be restricted if its use constitutes a threat to the safety of others. The policy also points out that pedestrians always have the right of way over motorized mobility aids whether indoors or outdoors and emphasizes the need for caution in operating them.

The lawsuit was based on the Fair Housing Act which is, effectively, the Americans with Disability Act as applied to private rather than public facilities. The decision and the required policy changes apply to all CCRCs in the United States, not just those operated by Covenant. If your community has any restrictions on the use of mobility aids or on access to common areas for people using them you might want to call the attention of management to this lawsuit.

DIRECTOR COMMENTS ON THEIR COMMUNITIES

At CALCRA's annual meeting on October 4, Board members reported on their respective communities. These serve to illustrate the range and variety of concerns of residents.

AIR FORCE VILLAGE WEST by Sid Hanson

Air Force Village West (AFVW) is a community started by retired Air Force officers to provide continuing care for officers of the seven United States uniformed services, who have been retired or honorably separated from active duty, their spouses and qualified dependents. The common backgrounds create a special camaraderie. AFVW is now starting its nineteenth year and is thriving. We have 276 single-family cottages, ranging up to 3360 sq. ft., 60 duplex units and 104 apartments. Including residents in the three stages of health

care, our occupancy is nearly 700.

We had maintained capacity level until the onset of the housing crunch. Unfortunately, our recent expansion of thirty-five independent cottages, fifteen assisted living units and twenty special care units, has proved to be untimely. In spite of long waiting lists, occupancy has fallen below 90%. This negative impact on monthly fees has created some serious concerns among residents.

THE COVINGTON by Boyd Steele

The Covington is an up-scale retirement community located on twelve park-like acres. This location provides residents breathtaking views of Saddleback Mountain and is cooled by ocean breezes. The Covington is large enough to provide a full range of activities, yet small

enough to deliver personalized services, all the while retaining a feeling of intimacy.

During my just completed two years as president following a year as vice president of the Residents Council we wrote the bylaws for the Residents Association and achieved a spirit of mutual respect and trust with management leading to improved flow of financial data, including monthly financial status meetings and residents' annual input into the budget development process.

It is clear, however, that resident/provider interaction and openness needs further improvement. In particular CCRC board of directors meetings need to be open to residents so that they have the opportunity to understand the basis for provider decisions. This should

continued to page - 4

From the President con't...

It should be noted that the tax exemption for nonprofit CCRCs is based on an IRS decision that CCRCs servicing the elderly, without regard to their financial resources, are appropriately the beneficiaries of a charitable designation. This means that the CCRC residents are intended to be the beneficiaries of the tax exemption not a source of funds for other activities.

What this regulatory inattention boils down to for aggrieved residents is that their only recourse is to go to the courts for relief from exploitation by providers. Several such cases are currently pending in California. But defense tactics can make this pursuit of justice daunting, even when the facts and evidence are overwhelmingly in the favor of plaintiffs. This is because attorneys for deep pocket providers can be expected to pursue a defense that typically utilizes all procedural delays possible, hoping the delays will wear out the staying power of plaintiffs as they become intimidated by escalating legal expenses. The

elderly are extremely vulnerable to such tactics because of usually limited financial resources and because most are physically incapable of persevering under the withering anxieties sought by this legal maneuvering.

One might hope that responsible providers would join CALCRA in an effort to bring order to these chaotic conditions for the good of the industry. Clearly what is needed is legislation that would stipulate appropriate conditions to govern establishment of monthly fees and to make it illegal for a provider to use CCRC generated funds for any purpose other than to directly better the financial security and quality of life of its residents. Above all, legislation must prevent a provider from moving CCRC funds to any other entity under its management, whether by loan or otherwise.

Unfortunately, past history is discouraging to the likelihood that any provider would dare cooperate and collaborate in pursuit of such vital legislation. Without exception the

provider organization, Aging Services (formerly CAHSA) has opposed adoption of needed regulatory safeguards sponsored by CALCRA even when it has been clearly evident they benefit the entire industry. So we must anticipate vehement provider opposition to such legislation even though its safeguards would only encumber unscrupulous operations.

Notwithstanding, we must take on what promises to be our most difficult campaign ever, for what will truly be at stake is protecting the financial security of CCRC residents from future occurrences of the kinds of predatory or incompetent management practices that currently afflict elements of our industry.

CALCRA will need the help of all members as this legislation advances, especially in recruiting new members to add strength to our representation. There can be no other issue as important as this in protecting resident rights, as well as to validate the integrity of California's CCRC management.

DIRECTOR COMMENTS ON THEIR COMMUNITIES con't...

result in increased acceptance by residents of those decisions.

On a broader scale, residents and prospective residents would have a sounder foundation for understanding each CCRC if all public records and reports concerning CCRCs were available on the Internet. This would enable residents to conveniently compare performance and costs of their community with others and should result in upgrading performance of the entire industry.

SAN FRANCISCO TOWERS by Bernard Werth

San Francisco Towers (SFT) is one of five life care facilities owned and operated by Episcopal Homes Foundation (EHF). Approximately one year ago EHF announced a major reorganization including affiliation with Lytton Gardens Senior Communities, which includes three low cost housing corporations and a 145 bed skilled nursing unit. The plan provided JTM, the newly created

parent of EHF and Lytton Gardens, a \$10 million loan at 3 5/8% interest. JTM then contributed \$2 million to Lytton Gardens to cure the default of their bond issue and arranged a \$4 million line of credit. The loan came from the general reserves of our life care facilities and was turned over to a non-licensed, unregulated operator at an interest rate far below current investment returns.

An ad hoc committee of residents contacted the Continuing Care Contracts Branch concerning the matter. The Branch concluded that it had no authority to prohibit the raid on EHF's reserves. Nor did it require a commitment by EHF that no further transfers to the non-licensed, unregulated entity will be made.

The Branch had ruled differently in the case of ABHOW, because they had dangerously depleted their reserves. It stated that the EHF situation was different, because the transfer of \$10 million and the potential draw down of an additional \$4 million did not threaten the

financial viability of EHF. In other words the Department only steps in when the horse is out of the barn!

This ruling by the Department is distressing since one of the prime purposes of the Continuing Care Contract Statutes is to protect consumers from predatory or dishonest providers, or from individuals who want to use resources not their own to build an empire.

A San Francisco Towers resident has filed a suit against EHF and other named defendants. A demurrer was filed by EHF resulting in an order to materially amend the complaint. It will be many months before the merits of the case will be determined. This inappropriate use of funds that were provided by and intended to be used for CCRC residents indicates that CALCRA must introduce legislation that will prohibit transfer of reserve funds to any entity not licensed and regulated by DSS.

WWW.CALCRA.ORG
We're on the Web!!!

**California Continuing Care
Residents Association, Inc.
1515 Shasta Dr., #2109
Davis, CA 95616**