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Scales Elder Law Newsletter

"Caring for a loved one shouldn't cost a lifetime of savings."



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Continuing Care Retirement Communities: Know the Facts for Informed Decisions

A growing trend in housing and healthcare for the elderly are Continuing Care Retirement Communities (CCRCs). These are often large, up-scale communities offering a range of living arrangements for seniors. From private homes and apartments, to assisted living, to skilled nursing care, CCRCs are designed to meet the changing needs of seniors so that they may "age in place." For people who can afford the sometimes hefty admissions deposits and monthly fees, CCRCs can be an attractive option worth considering. However, the contract that people sign when moving into a CCRC may also have unexpected consequences for people who later need a nursing home level of care. I'll illustrate this in the following example of "John and Ellen." (Note that this is not a real couple, but meant to show some of the issues faced by many of my clients.)

John (age 75) and Ellen (age 74) of Erie, Pennsylvania, decided a couple of years ago that they were ready to "down-size" and move into a local Continuing Care Retirement Community. John and Ellen looked forward to enjoying a simpler lifestyle. They would no longer have to worry about keeping up their big old house and yard, and they could even take their meals in the community dining room if they didn't feel like doing their own cooking. If either

of them needed long-term care down the road, they could move over to the community's assisted living unit or nursing care unit. The peace of mind that their future needs would be taken care of and that they would never be a burden on their children meant a lot to them.

Before moving into the CCRC, John and Ellen owned about \$250,000 in retirement savings and investments, as well as their home. The CCRC had an admission fee of \$150,000, but like many residents, John and Ellen used the proceeds from the sale of their home to pay the entrance fee. Each month, John and Ellen pay approximately \$2,500 to the CCRC for their housing expenses in the independent living section. There was a detailed admissions contract that John and Ellen had to sign, although they admit that they didn't fully understand some parts.

Last year Ellen was diagnosed with Alzheimer's disease and will likely need nursing level care much sooner than expected. The nursing care unit at the CCRC costs \$60,000 a year, on top of what John pays for staying in the independent living unit. They were understandably concerned that their entire life savings would soon be gone and called my office for help. "The CCRC promises that we won't be kicked out if we run out of money, but

I'd hate to lose everything," says John. "I read your articles about planning for long-term care. Isn't there something we can do?"

For most people who need nursing home care, it is often possible to protect a significant portion of their life savings by accelerating their eligibility for Medicaid (the only government program that will pay for long-term care, but only for those who are financially eligible). However, in a CCRC, this is not always possible. The first thing we had to do is review the terms of the CCRC admissions contract. Under the Deficit Reduction Act, a new federal law passed in 2005, CCRCs are allowed to prohibit residents from transferring assets for the purpose of qualifying for Medicaid – at least the assets that were declared at the time of admission. (This law essentially overturns the Maryland decision of *Oakcrest Village Inc. v. Murphy*, 379 Md. 229, 2004, which held such rules to be contrary to federal law.) Not surprisingly, the contract that John and Ellen signed contained just such a clause. This meant that unless they wanted to move out of the CCRC and into a different nursing home, there was no way to protect the rest of their \$250,000 from having to be spent paying for Ellen's care. Without this restriction, I would have been able to help them protect at least half of whatever was otherwise going to be paid for Ellen's nursing-home care.

Although a CCRC can be a good choice for many people, it is important to know about the potential effects of signing a CCRC admissions contract. A certified elder law attorney can help identify the pros and cons of choosing a CCRC versus other long-term care options, so that a fully educated decision can be made.

The content herein is for general informational purposes only and does not constitute legal advice. For specific questions you should consult a qualified elder law attorney.

Note: *With the new restrictions in the Deficit Reduction Act, it is more true than ever that "time works against you" when planning for long-term care. It is important that families who have a spouse,*

parent or other loved one needing long-term nursing care contact a knowledgeable and experienced elder law attorney for advice as soon as possible. While ideally this should be done when there is at least five years before such care will be needed, families need to realize that even with the new restrictions in the DRA, there remain planning opportunities for seniors facing an immediate crisis. Still, every day of delay represents a potential \$220 of irretrievable loss.

Attorney Scales will be speaking at the Caregiver Support Group at St. Brigid Church, Meadville, PA, on October 20, 2008 beginning at 7:00 p.m. This program is open to the public.

Kemp Scales, CELA,* is an Elder Law Attorney who serves clients throughout western Pennsylvania from his offices in Erie, Titusville, and Pittsburgh. Attorney Scales frequently makes presentations to professional and civic groups, to senior centers, hospitals and long-term care facilities throughout western Pennsylvania. If you would be interested in having attorney Scales speak to your group, please contact us at toll free at (888) 827-2788 or by e-mail at Info@ScalesElderLaw.com.

** Certified as an Elder Law Attorney by the National Elder Law Foundation as authorized by the Pennsylvania Supreme Court.*



The Colonel's Corner

From Attorney Scales' 91-year old father, Col. J. Shelton Scales, USMCR-Retired, who lives in a senior retirement community in southern Virginia.

A new teacher was trying to make use of her psychology courses. She started her class by saying, "Everyone who thinks they're stupid, stand up!"

After a few seconds, Little Davie stood up. The teacher said, "Why Little Davie, do you think you're stupid?"

"No, Ma'am, but I hate to see you standing there all by yourself!"