MONEY MANAGEMENT FOR ELDERLY RESIDENTS OF CONTINUING CARE RETIREMENT COMMUNITIES

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DRAFT of February 16, 2019

INTRODUCTION

Recently, I met with residents of a Continuing Care Retirement Community (CCRC) on the need for a State Association and why their Residents' Council should remain a member of the National Continuing Care Residents Association (NaCCRA). Following the presentation, an elderly resident came to me and expressed concern about her ability to manage her checking account and to review bills presented for payment by her CCRC. I thought that is a good question, and NaCCRA should know the answer to the question.

Those of us in CCRCs recognize the importance of moving to a CCRC before the loss of self-sufficiency. In a similar manner, shouldn't all CCRC residents set in place a plan to manage assets and pay bills in the event of incapacity?

Many people of all ages have difficulty managing and balancing their check book. It is not surprising that this elderly woman might also have such difficulty. The business model and accounting for not-for-profit CCRCs are not understood by most CCRC residents. The CCRC not-for-profit entry fee and monthly service fees are likely to be substantial and come with significant state and federal income tax consequences.

The question of money management for an elderly person usually takes place within the family. Frequently, a young family member will help an elderly relative. There are situations where having a family member manage an elderly person's affairs is infeasible. Many residents of CCRCs are living in a CCRC because they do not want to burden their family with their care or do not feel their family is capable of caring for them as they might prefer.

A person considered for providing assistance must:

- Be capable, qualified, and willing to serve,
- Not hurt family relationships or cause problems down the line,
- Offer continuity and protection against malfeasance,
- Accept a fiduciary duty to act in your best interest, and
- Be trustworthy

Unfortunately, there have been situations where family members, friends and others have not acted in the best interest of the elderly person.[1] Financial elder abuse, and elder abuse in general, is a significant matter:

> "… Oregon's population of older residents continues to grow. In 2014, an estimated 16 percent of Oregonians were 65 or older. By 2030, that number is expected to rise to 20 percent. Reports of possible elder abuse are also rising. In 2014, more than 38,000 cases of possible abuse were reported in Oregon, according to the Oregon Office of Adult Abuse Prevention and Investigation. In 2015, this number grew to 43,000 cases—a 13 percent increase in one year."[2]

Profiles of CCRC resident demographics suggest a CCRC resident is likely to have sufficient financial resources to warrant incurring the expense of retaining the services of professional help to properly manage a checkbook, finances in general, and to protect against elder abuse, fraud, and scams. This statement is based on the stated expectations by CCRCs of the qualifications of prospective residents and surveys of residents.

A CCRC typically look for prospective residents to have an income at least 150% to 200% of monthly service fees and a net worth of at least 150% to 200% of the entrance fee.

CCRC's in the Portland area are primarily marketed to heads of households over the age of 75 years with annual incomes of $75,000. Heads of households over 75 years of age with incomes of $50,000-$75,000 are defined as a potential secondary market. Approximately 80% have homes. Median home sale price in the Portland area was $454,000. The home prices are likely higher for the upper income segments. Actual data for one CCRC found applicants had a home value of approximately $790,000 and an estimated average net worth of just under $3 million.[3]

Moving to a CCRC is likely to involve a substantial Entrance Fee. While a resident might view the Entrance Fee for admission to a CCRC as an "investment," it is characterized in Oregon Administrative Rules, and most likely in their Residency Agreement, as a "consideration."[4]

While Entrance Fees are frequently characterized as partially refundable, in most instances the Entrance Fee will be paid to the departing resident by the resident who reoccupies the residence. Delays as long as 10 years have been reported.

In addition to the Entrance Fee, there will be substantial monthly expenses, which will escalate annually.

Not-for-profit CCRCs issue debt in the form of municipal bonds. These bonds are often unrated or rated less than investment grade. The bond offering, the ***Official Statement***, will carry a warning such as "Investment in the Series 2017 Bonds is highly speculative in nature and involves a high degree of risk."[5] The risk a bondholder incurs are typically described in 35 pages in the Official Statement.[6] The bondholders' investment is secured by the CCRC's assets. The resident's "consideration" is unsecured and part of the CCRC's assets securing the bonds.

There are other risks residents face besides a loss of Entrance Fee and escalating monthly fees. All CCRCs in Oregon, except one, are largely fee for service, Type B, residency agreements. Residents face a substantial step increase in monthly expense if a spouse must move to assisted living, residential care, or memory care while the other spouse remains in independent living. Monthly fees might step up as much as an additional $10,000. These additional fees could continue for many years.

In summary, this paper is intended to support money management advice to elderly individuals, who are likely to have high income, high net worth, a substantial part of their net wort as a consideration to the CCRC, substantial monthly CCRC expenses, and substantial risks. If an elderly person requires healthcare, costs could rise substantially and continue for many years.

WHO SHOULD MANAGE THE ELDERLY PERSONS FINANCES?

Not infrequently, an elderly person might not only have difficulty managing a checkbook, but he/she might also have difficulty managing his/her funds to earn a satisfactory return. Retaining professional services might result in recommendations on how to better invest funds for increased income. Possibly, sufficient income can be generated to offset the increased expense of retaining professional services.

The question of who should be designated to manage money should be given careful considera-tion. Unless very comfortable with a family member, an attorney or certified public accountant is preferred. If served for a long time by a financial advisor, he/she might be considered. Another option for consideration is a trust department at a bank. A lawyer or an accountant is recommended because their ethical standards and enforcement of their ethical standards are the greatest. While not with the same level of enforceable ethics as lawyers and accountants, a financial advisor, that is, a Chartered Financial Analyst (CFA) might be considered.

A CFA is a member of the CFA Institute. In Oregon, the CFA Institute is affiliated with several universities, including Oregon State University, Portland State University, and University of Oregon.[7] The CFA Institute with its affiliation with state universities provides a degree of comfort that ethical standards will be enforced.

There are other organizations who offer bill paying services which appear designed for the elderly with modest financial resources. They do not appear to be a suitable response for an elderly person with the resources to afford a CCRC. One such service will be described.

"Oregon Money Management Program (OMMP) regional sponsors choose which OMMP services to offer in their areas. Consumers may be enrolled in more than one OMMP service. While most services are provided in the consumer's home by volunteers, paid staff may also provide service. At a minimum, contact with program participants should occur monthly."[8] These services are provided at the county level and vary from county to county. The services are generally intended for the elderly or persons with disabilities. As this document is written, due to a shortage of resources, no service is offered in Multnomah County

ESTATE PLANNING

Before an elderly person considers how to manage a checkbook, and manage money in general, the elderly person should consider estate planning to provide a continuum of money management from the present time, when the elderly person is competent and only needs money management, through a time when the elderly person might be incapacitated and need not only money management, but management of all of his/her affairs. The person should also provide for health-care management and for disposition of assets upon death. In the absence of providing for these eventualities, they will be provided by state law with the possibility a court will need to intervene. In the absence of relative, assets will go to the state.

Start by consulting an attorney to advise, provide estate planning, and prepare the estate planning documents, if not previously prepared. Then prepare the documents required to manage the check book and whatever other assets are to be managed. While an attorney might be used to prepare the documents, consider a certified public accountant for management of money and income tax return preparation

The documents which are usually part of estate planning include:

- Durable springing general power of attorney to manage a person's affairs when incapacitated. A durable springing power of attorney is triggered (springs) when a person is incapacitated. It is durable because it becomes effective when signed and continues until terminated. Powers of attorney end at death.

- Advanced Directive to manage your healthcare, if unable to do so. In Oregon, this document includes *Appointment of Health Care Representative, Health Care Instructions*, and *Acceptance by Health Care Representative*. It's well to think carefully about the healthcare proxy. A person might want to appoint someone who shares their views on healthcare, theology, and philosophy. The healthcare proxy needs to be discussed with the person selected to administer the healthcare proxy and their agreement obtained. If there is no healthcare proxy, health-care decision making will proceed as established by law. In contested cases, a court order could be required.[9]

- There is sometimes an erroneous view that the executor of a will is empowered to manage a person's affairs while they are alive. A will conveys no such power.

Documents for Managing Money

The documents for having someone mange money include:

- A durable specific power of attorney becomes effective when signed and continues until terminated or until death occurs. It can be crafted to be temporary and to control specific assets and for specific purposes.[10]
- A trust, which can be revocable or irrevocable. A trust has the advantage that the power of the trustee is clearly limited to managing the asset(s) placed in the trust, such as a checking account.   A "revocable living trust" is another type of trust for estate planning and is not to be confused with "revocable trust" or "irrevocable trust."[11]

A power of attorney and a trust allow adding instruction. Both documents need to be executed while the person to be served still is in full command of their own faculties. The power of attorney is meant to be "durable," that is, to survive when the person being served becomes incompetent. However, both documents can also be revoked, or the person exercising the office replaced, as long as the person is of sound mind and signs new power of attorney document.

Two options to avoid or consider only with adequate caution:

1. Adding a second signature to a checking account is a simple way of giving a second person authority to manage an account. It is not recommended unless there is considerable trust between cosigners.

2. A court appointed conservator for managing property and finances or guardian for managing property, finances and care of a person's wellbeing is usually not recommended by lawyers, if other devices, such as a power-of-attorney or trust is sufficient. A conservator or guardian requires a court proceeding, the person appointed by the court must be bonded, and the court will required an annual audit. Conservatorship and Guardianship are usually reserved for people who are incapacitated and have the assets to afford appointment of a conservator or guardian.[12]

Further Information

Lawyers: If considering retaining the services of a lawyer and the elderly person does not know a lawyer, consider the services of the Oregon Bar, which provides a referral services. Through the service, a 30 minutes consult for $35 is assured. Consider speaking to three lawyers before selecting a lawyer. See https://www.osbar.org/public/ris/lrsform.html

A good reference for the elderly on a variety of legal topics is Janay Haas, Editor, ***and Legal Issues for Older Adults—An Oregon Information & Reference Guide,*** Oregon State Bar, Tigard, OR, 2017.

Accountants: Help locating a certified public accountant can be obtained the Oregon Society of Certified Public Accountants at https://www.orcpa.org/for-the-public/find-a-cpa

Chartered Financial Analysts is a professional credential offered internationally by the American-based CFA Institute to investment and financial professionals. Help in finding a CFA can be obtained from the CFA Institute at https://www.cfainstitute.org/membership/directory

Note: The author is neither an attorney or certified public accountant (CPA).

[1] U.S. Senate Special Committee on Aging, "***Hearing to Examine Ending Elder Abuse, Neglect and Financial Exploitation***." You can see the hearing at https://www.aging.senate.gov/hearings/watch?hearingid=A37FD7F4-3E16-4B94-8DF2-B9FF0D45717B

[2] https://www.doj.state.or.us/oregon-department-of-justice/office-of-the-attorney-general/spotlight-elder-abuse/

[3] See, for example, Amendment to Official Statement, $90,065,000 Hospital Facility Authority of Clackamas County, Oregon, dated, 12/13/2017, p. F-3.

[4] OAR 411-067-0000(15)

[5] See, for example, Amendment to Official Statement, $90,065,000 Hospital Facility Authority of Clackamas County, Oregon, dated, 12/13/2017, cover page.

[6] See, for example, Amendment to Official Statement, $90,065,000 Hospital Facility Authority of Clackamas County, Oregon, dated, 12/13/2017, pp. 17-37.

[7] https://www.cfainstitute.org/about/universities/university-affiliation

[8] https://www.oregon.gov/DHS/SENIORS-DISABILITIES/PROVIDERS-PARTNERS/Pages/Money-Management.aspx

[9] https://www.osbar.org/public/legalinfo/1120_LivingWill.htm

[10] https://www.osbar.org/public/legalinfo/1122_PowerofAttorney.htm

[11] https://www.osbar.org/public/legalinfo/1119_WhatIsATrust.htm

[12] "Guardianships and Conservatorships," Oregon Bar, Tigard, OR, October 6, 2017.