

# Resident Agreements

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## New Jersey Assisted Living Attorneys Creating Comprehensive Resident Agreements

Senior care and assisted living facilities operate efficiently and effectively when the needs and expectations of the facility and residents are clear. The facility must take appropriate steps to outline this relationship and responsibilities to its residents. Einhorn Barbarito works with owners and administrators to create comprehensive resident agreements to achieve these needs and goals, working with his clients to ensure accurate and consistent implementation, while minimizing exposure for the facilities.

Although assisted living facilities are heavily regulated, the resident agreement still sets forth the basic financial obligations and understanding of the parties and acts as the guidebook for the expectations of the parties. There are several significant provisions that should be included in every resident agreement. The following is a non-exhaustive list of provisions that should be in every resident agreement:

- **Room rate:** It is essential that the room rate is clearly set forth, along with the terms for increases in the room rate and that residents be notified of any changes, in writing, well in advance of the increase.
- **Services:** The services that are included in that rate should be clearly identified in the resident agreement. If your facility has varying levels of care as is often the case, the qualifications, services and costs for each level should be identified. Not only is it important to identify included services, it is equally important to identify the services that are excluded.
- **Miscellaneous Fees:** All other fees, including new resident fees (move-in fees), security deposits, and optional services should be identified to the extent possible. If you want to assess any fee, make sure you first reference the fee in your agreement.
- **Security Deposits:** Security deposits remain the property of the resident and shall be deposited in an interest bearing account separate from the operating accounts of the facility, unless the facility complies with additional requirements which permit it to comeingle. The deposit and earned interest is refundable to the resident or designated person when the resident moves out as long as the resident provides the facility with 30 days notice. The facility is allowed to deduct no more than one-percent (1%) per year for the costs associated with the servicing of the account.

- **Billing Procedures:** The date that payment is due, late fees, interest and rate changes should be included in the resident agreement. It is recommended that monthly billing statements be sent and payment be received prior to or at the beginning of the month for which services are billed. In addition, if you intend to charge residents for periods of absence, the resident agreement should include appropriate language.
- **Personal Needs:** Often, facilities will have personal needs accounts for residents, and these accounts are required for public assistance funds. The administrator must keep a ledger with detailed records of deposits and withdrawals.
- **Non-payment and Termination:** In the event of non-payment, the facility is required to send the resident a 30 day involuntary discharge notice. The language set forth in the involuntary discharge regulation, along with the resident's right to appeal the basis for the discharge should be identified to avoid any future dispute over termination of the agreement and discharge.
- **Medicaid and Spend down:** Specific policies regarding Medicaid and participation in Medicaid Waiver shall be established. Spend down provisions shall be clear. If your facility does not plan to open any more beds than it is required or has chosen (if greater than required) to provide and one is not available when a resident becomes eligible for Medicaid Waiver, the resident agreement should clearly state that the facility is not required to open a Medicaid slot.
- **Guaranty:** Many assisted living facilities request or even require that a guarantor or responsible person guaranty payment of the living expenses of the resident. Although this is specifically prohibited under New Jersey and Federal law for skilled nursing facilities, it is permitted for assisted living facilities. However, the guarantee must be fair and reasonable.