

Should They Stay Or Should They Go? Questions Assisted Living Facilities Need Answered When Accepting Private Pay Residents And Dealing With Those Who Do Not Pay

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A current or prospective resident does not have any liquid assets but owns a home. What can I do to make sure we get paid?

This is one of the most common questions that I get from my clients who own Assisted Living Facilities.

Once upon a time, in a real estate market long, long ago, individuals would list his or her home and upon the sale, move into an assisted living facility, meeting all of the often stringent requirements. Now, with the escalating costs of senior care, prospective residents and their families wait until the last moment before deciding whether and where to move mom and dad. Frequently, this decision coincides with the decision to list the home and the fact that they cannot wait for the proceeds from the real estate closing to move into an assisted living facility.

This scenario often presents a dilemma for assisted living facilities. On one hand, it is important to occupy a building to maximize revenue from private pay residents. On the other hand, no one wants to be faced with a scenario where the resident is out of money and the facility is no longer getting paid. One solution is to have the resident or responsible party sign a demand note and mortgage on property that is owned by the prospective resident or responsible party.

I cannot underscore more the importance of performing due diligence with private pay residents. When meeting with the resident and/or responsible person, it is important to thoroughly evaluate a prospective resident's ability to pay. Often, the single largest asset that an individual has is his or her home. This is particularly true for many elderly persons who rely on entitlements such as Social

Security and Medicare. In these circumstances, if the resident owns a home, they will not likely qualify for Medicaid.

In these cases, an agreement should be set forth in writing providing that the application is contingent on the demand note and mortgage. A title search should be performed on the property for the record owner, mortgages and judgments/liens on the property. If something is uncovered, you or your attorney should follow-up. The agreement should provide that the costs will be the responsibility of the prospective resident, a copy of the listing and perhaps a time restriction for the sale. The demand note and mortgage should reference the resident agreement, and the documents should be prepared and recorded by an attorney for the assisted living facility. This too can be passed to the prospective resident.

One of our private pay residents has run out of money, what do I do?

Frequently, there is no easy answer to this question. It is imperative that the facility maintain care of the resident until appropriate arrangements can be made for the care or transfer of the resident to an appropriate care setting.

The demand note and mortgage may be an option for current residents who own real estate. In addition, the assisted living facility can require that the resident has a guarantor or responsible party to execute the resident agreement of guaranty. It is recommended that this be done at the commencement of the relationship, if agreeable, to prevent an issue as the relationship continues. Once a resident has spent down assets, the resident may be eligible for Medicaid. If the resident is enrolled in Medicaid and you have an available Medicaid bed, the resident can become a Medicaid resident and transferred to a Medicaid room consistent with the resident agreement. It is important to have an executed resident agreement that fully describes this scenario.

If the resident cannot privately pay and is not eligible for Medicaid or if you do not have a Medicaid bed available, you can send the resident and/or his or her responsible party a notice of involuntary discharge pursuant to N.J.A.C. 5:27A-4.13. The notice of discharge must be provided to the resident or responsible party no less than 30 days prior to the involuntary discharge and set forth the reason for

the discharge. The notice of discharge should reference the resident agreement regarding the financial obligations of the parties. All residents have a right to appeal the discharge notice. Even after the 30 days has elapsed, you are required to transfer the resident to an appropriate care setting.

Although providing safe and compassionate care are of utmost importance, you are running a business and before accepting a private pay resident, it is vital to perform due diligence. Even when you responsibly accept a resident who has the ability to privately pay, there may be a point when that resident runs out of money. It is at that point when you are faced with a dilemma. It is important to perform due diligence at the commencement of the relationship. Of utmost importance is having a well drafted and updated resident agreement which should be prepared by a qualified attorney. If you are presented with either of these issues, you should contact an attorney to prepare the appropriate documents and advise you as to how best to handle the situation.