

**§ 58-64A-140. Release of escrowed entrance fees and deposits.**

(a) To request a release of the first twenty-five percent (25%) of each escrowed entrance fee and deposit, a provider shall petition in writing to the Commissioner and certify all of the following:

- (1) The provider has presold at least fifty percent (50%) of the proposed independent living units, having received a minimum ten percent (10%) deposit of the total of each applicable entrance fee and placed it in escrow. Any independent living unit for which a refund is pending shall not be counted toward the fifty percent (50%) requirement.
- (2) The provider has long-term financing in place for the proposed continuing care retirement community or expansion, or if the provider is leasing the land or other real property of the continuing care retirement community, certification that the lease is in place and, if applicable, that the lease has been approved by the Commissioner pursuant to G.S. 58-64A-25.
- (3) For a proposed continuing care retirement community, the aggregate entrance fees received or receivable by the provider pursuant to binding reservation agreements and continuing care contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, plus any equity being contributed by the provider or a related party, are equal to not less than ninety percent (90%) of the following amount: (i) the aggregate cost of constructing or purchasing, equipping, and furnishing the proposed continuing care retirement community, plus (ii) not less than ninety percent (90%) of the funds estimated to be necessary to fund start-up losses and to reasonably assure full performance of the provider's future continuing care obligations, as reported in the statement of cash flows required by G.S. 58-64A-150(a)(37).

(b) To request a release of the remaining seventy-five percent (75%) of escrowed entrance fees and deposits, a provider shall petition in writing to the Commissioner and certify all of the following:

- (1) The provider has presold at least seventy percent (70%) of the proposed independent living units, having received a minimum ten percent (10%) deposit of each applicable entrance fee and maintains at least seventy-five percent (75%) of each entrance fee or deposit received in escrow, or has maintained an independent living unit occupancy minimum of seventy percent (70%) for at least 60 days. Any independent living unit for which a refund is pending shall not be counted toward the seventy percent (70%) requirement.
- (2) Construction or purchase of the independent living units has been completed and an occupancy permit, if applicable, has been issued by the local government having authority to issue those permits.
- (3) The independent living units are available for occupancy by the new residents.

(c) The Commissioner shall instruct the escrow agent in writing to release to the provider entrance fees and deposits in the escrow account only when the Commissioner has confirmed the information provided by the provider pursuant to subsection (a) or subsection (b) of this section.

(d) The escrow agent shall release the entrance fees and deposits held in the escrow account to the provider only when the Commissioner has instructed it to do so in writing.

(e) When a provider discloses in an application that construction will be completed and commence operating in different phases, the Commissioner shall apply the requirements in subsections (a) and (b) of this section to any one or group of phases requested by the provider, provided the provider demonstrates in the prospective financial statements filed with the

application that the phase or group of phases is financially viable without the need for any additional phases.

(f) For the purposes of this section, a refund is pending if a depositor has canceled a continuing care contract or a binding reservation agreement but has not yet received a refund, either because of timing or because another depositor has not reserved a similar independent living unit and paid the necessary entrance fee or deposit in order to trigger a refund to the canceling depositor. (2025-58, s. 2.)