

**§ 58-64A-5. Definitions.**

The following definitions apply to this Article:

- (1) Accepted actuarial standards of practice. – Standards of practice that conform with Actuarial Standards of Practice No. 3 for Continuing Care Retirement Communities, Revised Edition, effective June 1, 2022, including subsequent amendments and editions.
- (2) Actuarial opinion. – An opinion issued by an actuary in accordance with accepted actuarial standards of practice.
- (3) Actuarial study. – An analysis that includes an actuary's opinion of whether the provider or applicant is in satisfactory actuarial balance in accordance with accepted actuarial standards of practice.
- (4) Actuary. – An individual qualified to sign an actuarial opinion in accordance with the American Academy of Actuaries' qualification standards and who is a member in good standing with the American Academy of Actuaries.
- (5) Advertisement. – Any written, visual, or electronic information provided to potential residents, or their representatives, to induce those persons to subscribe to or enter into a nonbinding reservation agreement, binding reservation agreement, continuing care contract, or continuing care at home contract.
- (6) Affiliate. – A person that, directly or indirectly, through one or more other persons, controls, is controlled by, or is under common control with a provider or applicant.
- (7) Annual debt service. – The current year's capitalized interest cost plus interest expense and scheduled principal payments, excluding any balloon principal payment amounts and any portion of the annual debt service that has been or will be funded by debt for the payment of debt service.
- (8) Applicant. – Any person with a pending application or other request for approval under this Article.
- (9) Audited financial statements. – Financial statements that have been prepared in accordance with Generally Accepted Accounting Principles and examined by an independent certified public accountant.
- (10) Binding reservation agreement. – A binding contractual agreement between a provider and a depositor that requires the payment of a deposit to reserve the right to purchase continuing care, including the right to live in an independent living unit at a continuing care retirement community. A purchase and sale agreement for an independent living unit shall not be considered a binding reservation agreement for the purposes of this Article.
- (11) Cancel. – To terminate the force and effect of an agreement or contract.
- (12) Continuing care. – The rendering to an individual other than an individual related by blood, marriage, or adoption to the person rendering the care, of housing in an independent living unit, together with related services, including access, when needed, to progressive levels of health care, including either assisted living care, as defined in G.S. 131D-2.1, or nursing care, as defined in G.S. 131E-176, or both, regardless of whether the health care is provided at the continuing care retirement community where the individual resides or another location, or through a contractual relationship with a third party, pursuant to a contract effective for the life of the individual or for a period longer than one year.
- (13) Continuing care at home. – A program offered by a provider holding a permanent license under this Article that provides continuing care to an

individual who is not yet receiving housing, which may include programs that offer an individual an opportunity to move to an independent living unit at a future date, if desired, according to the provider's established priority and admissions policies at the continuing care retirement community sponsoring the continuing care at home program.

- (14) Continuing care retirement community. – A retirement community consisting of one or more structures where a provider renders continuing care to residents. A distinct phase of development approved by the Commissioner may be considered to be the continuing care retirement community when a project is being developed in successive distinct phases over a period of time.
- (15) Control. – The direct or indirect ability to direct or cause the direction of the management and policies of a person, including the right to designate or elect not less than a majority of the members of its board of directors or other governing board or body.
- (16) Controlling person. – The person that controls an applicant or provider.
- (17) Debt service coverage ratio. – A capital structure ratio that measures a provider's ability to pay annual debt service with cash flow from net cash revenues and net entrance fee receipts. The quotient shall be calculated by dividing the sum of total excess of revenues over or under expenses plus interest expense, depreciation expense, amortization expense, other noncash operating losses or expenses, and net cash proceeds from entrance fees, minus entrance fee amortization, entrance fee refunds contractually past due, and other noncash operating gains or revenues divided by annual debt service. Entrance fees received from the initial residents of independent living units at a continuing care retirement community that have been financed in whole or in part with the proceeds of indebtedness shall be excluded from the net proceeds from entrance fees up to an amount equal to the aggregate of the principal amount of the indebtedness.
- (18) Deposit. – Any transfer of consideration made by a depositor to a provider to reserve an independent living unit at a continuing care retirement community.
- (19) Entrance fee. – The sum of any initial, amortized, or deferred transfer of consideration made or to be made by, or on behalf of, an individual entering into a continuing care or continuing care at home contract.
- (20) Escrow agent. – Any person approved by the Commissioner to hold entrance fees and deposits required to be placed in escrow under this Article.
- (21) Escrow agreement. – An agreement between a provider and an escrow agent by which entrance fees and deposits required to be held in escrow in accordance with this Article are held by the escrow agent until release is permitted in accordance with this Article.
- (22) Hazardous condition. – A present, or reasonably anticipated future condition, whereby (i) a provider is unlikely to be able to meet its continuing care obligations or to pay other obligations in the normal course of business or (ii) the continued operation of a provider or continuing care retirement community in its current condition is potentially harmful to depositors, residents, creditors, or the general public.
- (23) Housing. – A living unit set forth in a continuing care contract.
- (24) Independent certified public accountant. – A certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which he or she is licensed to practice who is not employed by, or otherwise affiliated with, an applicant or provider.

- (25) Independent living unit. – A living unit in a continuing care retirement community for residents who are routinely able to carry out activities of daily living, as defined in G.S. 160D-915, with minimal or no assistance. The accommodations may be in the form of apartments, flats, houses, cottages, condominium units, or rooms. Receiving home care or similar services, regardless of whether the services are provided by the provider or another person, does not preclude a living unit from being considered an independent living unit.
- (26) Insolvent. – A condition whereby the provider is unable to pay its obligations as they come due in the normal course of business.
- (27) Living unit. – An independent living unit, adult care home bed, nursing bed, or other area within a continuing care retirement community set aside for the exclusive use or control of one or more identified residents.
- (28) Long-term care facility. – As defined in G.S. 131E-231.
- (29) Manager. – A person who administers the day-to-day business operations of a continuing care retirement community for a provider, subject to the policies, directives, and oversight of the provider.
- (30) Net cash proceeds from entrance fees. – Total entrance fees received less entrance fees refunded, and less initial entrance fees received for new independent living units.
- (31) Nonbinding reservation agreement. – An agreement between a provider and a depositor, which may be canceled by either party upon written notice at any time, confirming a person's desire to reserve an independent living unit at a continuing care retirement community on a nonbinding basis.
- (32) Obligated group. – One or more persons that agree to be jointly and severally bound by a financing structure containing security provisions and covenants applicable to the group.
- (33) Occupancy rate. – A ratio used to show the actual occupancy or utilization of living units, calculated by living unit type, at a continuing care retirement community for a given time period expressed as a percent. The occupancy rate shall be a rolling average that is equal to 100 times the quotient obtained by dividing occupied living unit days by living unit days available. For purposes of this definition, "living unit days available" is the maximum number of living unit days that would have been provided if all available living units were filled during the given time period. The total shall equal the sum of all living units, minus any living units that are unavailable for occupancy, on each day for the given time period. For purposes of this definition, "occupied living unit days" is the sum of each daily living unit census at the continuing care retirement community for a given time period, excluding any second person occupants. The total shall equal the sum of each daily census for the given time period.
- (34) Periodic fee. – The fee charged to a resident on a monthly or other periodic basis for housing, services, or both.
- (35) Person. – An individual, partnership, firm, association, corporation, joint-stock company, trust, any similar entity, or any combination of the foregoing acting in concert.
- (36) Presale. – Entering into an agreement or contract with a depositor for an independent living unit that is not yet constructed or available for occupancy.
- (37) Primary market area. – The area from which a continuing care retirement community will likely draw the majority of its residents.

- (38) Prospective financial statements. – Financial forecasts or financial projections, including the summaries of significant assumptions and accounting policies prepared by an independent certified public accountant.
- (39) Provider. – A person that offers or undertakes to provide continuing care under a continuing care or continuing care at home contract, or that represents himself, herself, or itself as providing continuing care. For the purposes of this Article, the term provider shall also include a person who has been issued a permit to accept deposits, a start-up certificate, or a preliminary certificate.
- (40) Related party. – A person or persons that have common interests with a provider as a result of ownership, control, or by contract, including affiliates, principal owners, management, or their affiliates and their management and members of the immediate family of the principal owners, management, or their affiliates and their management.
- (41) Resident. – An individual who enters into a continuing care or continuing care at home contract with a provider, or who is designated to be the individual to receive care under the contract.
- (42) Satisfactory actuarial balance. – Meeting all of the required conditions, as of a specified valuation date, as set forth in accordance with accepted actuarial standard of practice. (2025-58, s. 2.)