

**§ 58-64A-60. Preliminary certificate.**

(a) A person may apply for a preliminary certificate by submitting all of the following to the Commissioner for review:

- (1) A statement signed by the applicant, under penalty of perjury, certifying that to the best of the applicant's knowledge and belief, the items submitted in the application are correct. If the applicant is a corporation, the chief executive officer or other authorized individual shall sign the statement. If there are multiple applicants, these requirements shall apply to each applicant.
- (2) A feasibility study, prepared by an independent person experienced in preparing feasibility studies for continuing care retirement communities, with financial, marketing, and actuarial assumptions that projects the market and financial viability of the proposed continuing care retirement community. The study shall include all of the following:
  - a. A description of the proposed continuing care retirement community, its service package, the number and type of living units, fee structure, and anticipated opening date, including a detailed schedule of projected periodic fees and a description of how the projected periodic fees were computed.
  - b. A description of any proposed construction plans, construction financing, and permanent financing for the proposed continuing care retirement community.
  - c. A description of the anticipated source, cost, terms, and uses of all funds to be used in the real property acquisition, construction, marketing, and operation for the proposed continuing care retirement community, including all of the following:
    1. A description of all debt to be incurred by the applicant, including the source, anticipated terms, and costs of financing.
    2. A description of the source and amount of equity to be contributed by the applicant or any other person.
    3. A description of the source and amount of all other funds, including entrance fees, that will be necessary to complete and operate the proposed continuing care retirement community.
    4. A statement itemizing all estimated project costs, including the real property costs, the cost of acquiring or designing and constructing the proposed continuing care retirement community, and all similar costs that the applicant expects to incur prior to the commencement of operation. This itemization shall identify all costs related to the proposed continuing care retirement community, including financing expenses, resident acquisition costs, marketing costs, and furniture and equipment.
    5. An estimate of any reserves required by financing and the operating reserve required pursuant to Part 11 of this Article.
    6. An estimate of the amount of funds, if any, that will be necessary to fund start-up losses and to otherwise provide additional financial resources in an amount sufficient to ensure full performance by the applicant of its continuing care contract obligations.
  - d. An analysis of the potential market for the applicant's proposed continuing care retirement community, addressing all of the following:

1. The population, household growth, age distribution, household income, household tenure, and resale housing values within the primary market area.
  2. A demand analysis of the range of likely target consumers within the primary market area as well as estimated penetration rates.
  3. An economic analysis of current market conditions and trends that can impact the feasibility of the proposed continuing care retirement community, positively or negatively, including real estate, income, employment, and the general economic outlook for the primary market area and surrounding areas.
  4. An analysis of the project location and immediate area in relationship to key variables, including accessibility, employment, and proximity to health care, retail, and other services.
  5. The types of services and amenities desired and the forms of ownership or interest in real property preferred.
  6. Existing and planned competition in the primary market area.
- e. A description of the sales and marketing plan, including all of the following:
1. Marketing projections, anticipated sales, and cancellation rates.
  2. Month-by-month projections of independent living unit sales through stabilized occupancy.
  3. A description of the marketing methods, staffing, and advertising media to be used by the applicant.
  4. An estimate of the total entrance fees to be received prior to opening the proposed continuing care retirement community.
- f. Projected move-in rates and resident profiles, including couple mix by living unit type, age distribution, adult care home bed and nursing bed utilization, and living unit turnover or resale rates.
- g. A description or analysis of costs and revenues throughout the development and resident fill-up period of the proposed continuing care retirement community.
- h. Prospective financial statements for the period commencing on the first day of the applicant's current fiscal year through at least the fifth year of operation which shall be prepared in accordance with standards adopted by the American Institute of Certified Public Accountants.
- i. Any other factors that, in the opinion of the preparer, will affect the feasibility of the proposed continuing care retirement community.
- j. The name of the person who prepared the feasibility study and the experience of the person in preparing similar studies or otherwise consulting in the field of continuing care.
- k. An evaluation and opinion by the person who prepared the feasibility study of the underlying assumptions used as a basis for the study, including a statement on whether the assumptions are reasonable and proper.
- (3) An actuarial study prepared in accordance with accepted actuarial standards of practice which estimates the earliest year that the proposed continuing care retirement community is projected to be in satisfactory actuarial balance.

Applicants who do not or will not collect entrance fees or some other prepayment of costs are exempt from this requirement and shall only be required to submit an actuarial projection of future population flows and adult care home bed and nursing bed needs. An actuarial projection of future population flows and adult care home bed and nursing bed needs shall use (i) appropriate mortality, morbidity, withdrawal, occupancy, and other demographic assumptions and (ii) a projection period that extends to a point at which, in the actuary's professional judgment, the use of a longer period would not materially affect the results and conclusions.

(4) An updated disclosure statement that meets the requirements of G.S. 58-64A-150.

(5) At least one of the following:

a. Confirmation of signed binding reservation agreements or continuing care contracts for at least fifty percent (50%) of the new independent living units, reserved by a deposit equal to at least ten percent (10%) of the entrance fee.

b. Confirmation of signed binding reservation agreements or continuing care contracts for at least fifty percent (50%) of the new independent living units, reserved by a nonrefundable deposit equal to the periodic fee for at least two months for proposed continuing care retirement communities that have no entrance fee.

c. Confirmation of one hundred thousand dollars (\$100,000) placed on deposit with the Commissioner, if the applicant (i) does not collect presale entrance fees or deposits in an amount equal to at least ten percent (10%) of the entrance fee or (ii) does not collect presale entrance fees or deposits and does not collect nonrefundable deposits equal to the periodic fee of at least two months. This deposit is subject to the following requirements:

1. The deposit shall only be returned to the applicant upon issuance of a permanent license.

2. The deposit shall be made in accordance with G.S. 58-5-20.

3. The deposit shall automatically be forfeited if the applicant does not obtain a permanent license within five years after the issuance of a preliminary certificate. Forfeited deposits shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(6) If applicable, confirmation that commitments have been secured for construction financing and long-term financing or that a documented plan acceptable to the Commissioner has been adopted by the applicant for long-term financing.

(b) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in response to an application for a preliminary certificate.

(c) The Commissioner shall approve an application for a preliminary certificate if all of the following requirements are met:

(1) The application complies with this section.

(2) None of the grounds for denial listed in G.S. 58-64A-280 apply to the applicant.

(3) The feasibility study meets all of the following requirements:

- a. Includes in the prospective financial statements all obligations and liabilities to be undertaken by the applicant pursuant to the terms of the proposed continuing care contracts.
  - b. Demonstrates that the anticipated sources of funds to finance and operate the proposed continuing care retirement community are equal to or greater than the anticipated uses of funds to (i) construct or acquire the proposed continuing care retirement community and (ii) fund start-up losses and provide sufficient resources to ensure full performance of the applicant's continuing care contract obligations.
  - c. Demonstrates that the continuing care retirement community is financially feasible.
- (4) A market for the continuing care retirement community appears to exist, based on data that meets all of the following requirements:
- a. Is specific to the proposed continuing care retirement community.
  - b. Considers existing and proposed competition in the primary market area.
  - c. Demonstrates the existence of a market for the age, marital status, number, population trends, net worth, home values, and income of the potential residents.
  - d. Demonstrates that the rate of penetration in the proposed market area is within acceptable industry ranges.
- (5) The actuarial study, if applicable, projects that the proposed continuing care retirement community will be in satisfactory actuarial balance within a reasonable period of time after achieving stabilized occupancy, as determined by the Commissioner, or if no actuarial study is required, the actuarial projection of future population flows demonstrates a sufficient number of adult care home beds and nursing beds to meet the future needs of residents and the future contractual obligations of the applicant, as determined by the Commissioner.
- (6) The applicant has met one of the requirements in subdivision (5) of subsection (a) of this section.
- (7) If applicable, the applicant has secured commitments for construction financing and long-term financing or that a documented plan acceptable to the Commissioner has been adopted by the applicant for long-term financing.
- (8) The applicant demonstrates an ability to comply with this Article and to provide continuing care as proposed and meet all financial obligations related to its operations.
- (d) After issuing a preliminary certificate, the Commissioner shall do both of the following:
- (1) Require the provider to submit periodic sales, development, and unaudited financial statements in a form prescribed by the Commissioner.
  - (2) Post the disclosure statement of the continuing care retirement community on the Department's website.
- (e) After receiving a preliminary certificate from the Commissioner, the provider may do both of the following:
- (1) Construct a continuing care retirement community.
  - (2) Convert an existing structure or structures into a continuing care retirement community. (2025-58, s. 2.)