

§ 58-64A-90. Expansion application.

(a) Prior to commencing construction of an expansion of a continuing care retirement community that is twenty percent (20%) or more of existing independent living units, a provider shall do both of the following:

(1) Receive Commissioner approval of an expansion notification pursuant to G.S. 58-64A-85.

(2) Apply to the Commissioner for approval to commence construction.

(b) The application required by this section shall include all of the following:

(1) An application fee of one thousand dollars (\$1,000).

(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 expansion. The study shall include all of the following items:

a. A description of the applicant's proposed expansion project, including the number of independent living units being added, fee structure, a description of how the projected fees were computed, and the anticipated project time line.

b. A description of the construction plans, construction financing, and permanent financing for the proposed expansion project, 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 any equity to be contributed by the applicant.

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 expansion.

4. A statement itemizing all estimated project costs, including the real property costs, the cost of designing and constructing the proposed expansion, and all similar costs that the applicant expects to incur prior to the opening of the expansion. This itemization shall identify all costs related to the proposed expansion, including financing expenses, resident acquisition costs, marketing costs, and furniture, fixtures, and equipment.

5. An estimate of any reserves required by financing and the operating reserve required pursuant to Part 11 of this Article.

c. An analysis of the potential market for the proposed expansion, 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 expansion, positively or negatively, including real estate, income, employment, and the general economic outlook for the primary market area and surrounding areas.

4. Existing and planned competition in the primary market area.
 - d. 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.
 - e. Projected move-in rates and resident profiles, adult care home bed and nursing bed utilization, and living unit turnover or resale rates.
 - f. A description or analysis of costs and revenues throughout the development and resident fill-up period of the proposed expansion.
 - g. Five-year prospective financial statements of the applicant which shall be prepared in accordance with standards adopted by the American Institute of Certified Public Accountants.
 - h. Any other factors that, in the opinion of the preparer, will affect the feasibility of the expansion.
 - i. The name of the person who prepared the feasibility study and their experience in preparing similar studies or otherwise consulting in the field of continuing care.
 - j. 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 whether the assumptions are reasonable and proper.
- (3) An actuarial study prepared in accordance with accepted actuarial standards of practice which estimates when the continuing care retirement community is projected to be in satisfactory actuarial balance once stabilized occupancy of the expansion is achieved. Applicants who do not collect entrance fees or some other type of up-front 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 home care 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) If applicable, confirmation that 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.
 - (6) If the expansion includes any land or other real property that is to be leased, confirmation, if applicable, that the lease has been approved by the Commissioner pursuant to G.S. 58-64A-25.
 - (7) Any other data and pertinent information as the Commissioner may reasonably require with respect to the applicant or the continuing care retirement community to determine the feasibility of the expansion.

(c) The Commissioner shall comply with the review schedule in G.S. 58-64A-70 in response to an expansion application.

(d) The Commissioner shall approve the expansion application if all of the following requirements are met:

- (1) The expansion 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 current obligations and liabilities of the applicant as well as those to be undertaken by the applicant.
 - b. Demonstrates that the expansion is financially viable and will not have an unreasonably adverse effect on the financial ability of the applicant to furnish continuing care.
 - c. Demonstrates the existence of a market for the proposed expansion based on reliable data, which meets all of the following requirements:
 1. Is specific to the continuing care retirement community.
 2. Considers existing and proposed competition in the primary market area.
 3. Demonstrates that the rate of penetration in the proposed market area is within acceptable industry ranges.
- (4) The applicant demonstrates the ability to provide continuing care and meet all financial and contractual obligations related to its operations, including the financial requirements of this Article.
- (5) The applicant, if applicable, 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.
- (6) The actuarial study, if applicable, projects that the continuing care retirement community will be in satisfactory actuarial balance within a reasonable period of time once stabilized occupancy of the expansion is achieved, 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 needs of residents and the contractual obligations of the applicant.

(e) After the Commissioner approves the expansion application, the provider shall submit periodic sales and development reports to the Commissioner in a form prescribed by the Commissioner to monitor the expansion project.

(f) After the Commissioner approves the expansion application, the provider may commence construction of the new independent living units at the continuing care retirement community as proposed and, upon completion of construction and the satisfaction of all other legal requirements, open the expansion and provide continuing care to the residents of the new independent living units. (2025-58, s. 2.)