

Residents File Suit Over Building Maintenance Failure

Homeowners at The Carlisle, a 90+ unit condominium San Francisco CCRC whose residents include a number of CALCRA members, are nearing a court date for litigation filed against management Sunrise Senior Living, a Virginia corporation with more than 300 senior living communities in the U.S., Canada and the U.K. At stake is who will wind up paying for the \$14+ million exterior cladding repair and replacement project now underway. The project is anticipated to take another year at minimum. In the interim, the building is shrouded in scaffolding and protective mesh, and residents are living with the constant noise and disruption of demolition, drilling (to correct corroded metal, etc) and construction.



fiduciary duties and/or to adequately inform new buyers about projected costs, and the suffering of current residents.

There's little question of suffering being endured by current residents. On most weekdays there will be demolition, drilling, debris-removal and concurrent noise, dust and disruption. Original opaque covering – installed on

the west side of the building when the panels fell in early 2017 – was replaced nearly a year later with the mesh that now covers most of the building and allows for air and light in the apartments. But residents are looking for ways to cope with the chaos that has replaced what were anticipated to be carefree retirement years. Units that come on the market are still selling, but usually at substantially reduced prices. Traditionally there have been fewer than one or two units available at any given time; today the Carlisle marketing department is offering more than a dozen condos of varying sizes.

As to the pending litigation, most Carlisle residents are optimistic about their chances of success once the case goes to court in San Francisco. But hundreds of lawsuits have been filed against Sunrise Senior Living, and the vast majorities have been settled before going to court. With the case now in mediation (but with the litigation continuing) the corporation has yet to make any meaningful offer for a financial settlement.

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Nearly two years ago, when anticipated repair costs were at \$3.8 million, the Carlisle Homeowners Association Board began considering options for covering those costs. The reserve fund was inadequate for coverage of such expenses. A roof replacement for the 12-story building had just been completed (2015) and Sunrise had declined to contribute – so that entire cost was covered by homeowners. (A special assessment was levied.) The need to examine the building exterior and make needed repairs was noted during and after the roof repair project.

After management reports that residents would be expected to bear the full cost of the exterior repair – despite a website invitation (still visible) to enjoy “a maintenance-free lifestyle” – the homeowners voted (72 to 2) in December, 2016 to file suit in San Francisco Superior Court. Among the allegations: that management failed to properly maintain the building, with the result of extensive damage to the exterior cladding. (Several 4' x 8' panels fell off during a severe storm in February, 2017, underscoring this point.) Other elements of the litigation address management's failure to perform

Board Meeting

The CALCRA Board of Directors will meet Thursday, October 25 at 8:30 am, at Eskaton Village, 3939 Walnut Avenue, Carmichael, 95608. All CALCRA members are welcome to attend.



Visit CALCRA's website: www.calcra.org

CALCRA is the only organization working solely for the interests of residents of California CCRCs

Legislative Update

CALCRA's bill, AB 3088, authored by Assemblymember Kansen Chu (D-San Jose), has passed through its required legislative committees, off the Assembly Floor with only one "no" vote and passed off the Senate floor with bipartisan support. Following the Senate vote, AB 3088 will now move to the Governor's desk to be considered for a signature – the final step before becoming law.

Obtaining a signature on AB 3088 is going to be an uphill battle as the bill is now facing late opposition from the Department of Social Services (DSS). CALCRA, and our members, are pushing back! We have gathered more than 300 individual letters from residents across the state that show ample support for AB 3088. Thank you for sending in your letters – we are working to get the bill across the finish line and signed!

Since its introduction, the coordinated opposition from both for-profit and non-profit providers to AB

3088 has been very strong. Now, after their opposing arguments failed to gain any ground in the legislative hearing process, DSS has come in with a late opposition position and arguments similar to the industry's talking points. With no apparent policy or workload concerns, DSS has cited the main reasons for their opposition as: 1) staff needs more time to research the utilization of actuarial studies for CCRCs, and 2) they are not sure if actuarial studies are the right tool for assessing a CCRC's future financial risks for other than Type A contracts.

There are several elements of the department's actions that are puzzling. In addition to the timing of their action coming so late in



the legislative process, the fact is that DSS took this position without giving the author of the bill any indication that this action was even being considered. With hardly any time left in the current legislative session to work to resolve the department's demands, CALCRA has held two separate meetings with department staff to try and come to a mutually agreeable solution to their

suggested amendments. The author, in collaboration with CALCRA, has proposed a set of compromise amendments. Unfortunately, the department has made it clear that they are unwilling to work in good faith with the residents and will not consider the amendments proposed by the author in response to the department's stated concerns. This is very troubling.

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DSS Issues Guidance on Privacy and Social Media

On July 19, 2018, the Department of Social Services issued a Provider Information Notice (PIN 18-05-ASC) regarding the rights of residents in Adult and Senior Care facilities – which includes CCRCs – and the responsibilities of providers regarding the use electronic devices and social media platforms to share confidential resident information. DSS recommends providers develop specific policies around these issues, and provide regular training to staff and volunteers. This PIN can be accessed on the Continuing Care Branch's website, under their Quick Links list.



Residents File Suit con't...

Carlisle residents also sent a complaint letter to the Department of Social Services, which has opened an investigation of four possible licensing violations: 1. Failure to maintain the building resulting in extensive damage to underlying structure including the exterior. 2. Lack of air flow and deprivation of light/sunshine within the resident units. 3. Possible violation(s) per Admission Agreement and CCRC Continuing Care Contract. 4. Licensee/Administrator failed to exercise general supervision over the affairs of the licensed facility and established policies.

CALCRA is watching the progress of both the legal action and the complaint.

What Will Be Your Legacy?

by Caroline Steelberg, PsyD and Daughter of Stefan Moses, Resident of The Village at Hemet

A friend visited recently whom I've known since college. She told me that she's trying to determine what to do with the next 30 years, or, the last third of her life. I said that we could write off the last ten years of life to dementia or poor health. "Two ninths" she responded. "So we have 2/9th's left," I teared up. From laughter? Or, was it despair?

My friend is a math teacher so it is natural for her to think of legacy in terms of numbers. In the musical "Hamilton", it stuck with me that Hamilton's wife Eliza lived for "another fifty years" after her husband's death. Did Hamilton's death make her a 50/50? After Hamilton's death she went on to painstakingly tell and keep his story alive, raise funds for the Washington Monument, speak out against slavery



and establish an orphanage in New York City.

In December 2015, Gord Downie, the lead singer and lyricist for the Canadian band Tragically Hip was diagnosed with glioblastoma, an aggressive brain tumor. He died in October, 2017 from a disease that gradually erased his memory. In his last year of his life, he released a solo album to bring attention to the government policy that sent Canadian children from indigenous families to

abusive, state funded residential schools from the 19th century until the 1970's. Downie's Secret Path project became his Legacy Project, to make people aware of this tragic aspect of his country's history.

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Legislative Update con't...

It has been undisputed by the Legislature that all CCRC contracts, regardless of type, involve elements of risk that can only be adequately identified and analyzed by the statistical modeling procedures employed by actuaries. In addition to addressing the risks and costs of providing health care under Type A contracts, health care and the provision of other services, including the pricing of entry contracts and monthly fees, are critical elements in the operation of all CCRCs and these are all elements addressed by actuaries in their reports. An actuarial analysis is the only tool that offers an assessment of the risks associated with the wide spectrum of services and health care that CCRC's promise to provide.

In addition to actuarial studies, AB 3088 would have required all providers to obtain a maintenance and replacement review of the accessible areas that they are obligated to repair, replace, restore, or maintain every three years. This is similar to the facility plant and equipment review required by home owners' associations for condominiums. The department's amendment package would extend the cycle of these reviews from three years to five.

In an attempt to compromise with the department, the author put forth an amendment that would extend the cycle of maintenance and replacement reviews from three years to five. And it would continue the

requirement that actuarial studies be done by all CCRCs, but insert a sunset date of January 1, 2030 at which time the requirement would drop unless extended or eliminated by subsequent legislation. The sunset date was proposed to provide a realistic trial period, but assure the opposition that the provision would be repealed unless extended or reauthorized.

AB 3088 is a common-sense consumer protection bill that would require California's CCRCs to use accepted strategic planning tools, specifically actuarial studies and maintenance and repair reviews, to assess the risk of future events occurring that would impact the financial soundness of our communities, and to help formulate policies that minimize the impact of those risks on residents. This information would help to minimize spikes in resident fees that result when "unforeseen emergencies" occur.

*At the time of this writing (late-August) the fate of AB 3088 remains in flux. It has become clear that the issues raised by DSS will not be resolved, but CALCRA will continue to fight for residents and for responsible financial management by our providers. We will take your support and our strong legislative record to the Governor's office and fight for a signature. The Governor has until September 30th to sign or veto bills.

CALCRA needs you and you need CALCRA.

What Will Be Your Legacy con't...

Apparently, Downie had not known about the schools or treatment of aboriginal children prior to his diagnosis. He chose thoughtfully about how he wanted to spend his remaining life. What was his legacy fraction, 1/26? He died at 52.

Martha Nussbaum a distinguished professor at the University of Chicago (and named one of 100 Leading Global Thinkers) spoke to a group of psychologists in January 2018 in Chicago, which I attended. She and her co-author, Saul Levmore wrote a book titled "Aging Thoughtfully - Conversations about Retirement, Romance, Wrinkles and Regret". Nussbaum's message is to encourage each of us to give thought to what we want to do with our lives, especially as we age. I see adults of all ages in my practice. They don't usually come in to address legacy but there is often an undercurrent; an attempt to understand what life is all about, a desire not only to make meaning of it but to figure out where they can fit in, and what they want to contribute.

Of course, few of us know the true fraction that represents the percentage of life un-lived. Maybe it's ridiculous to put a number on it, yet the idea intrigues me. And, I know I'm not alone. The comfort is in talking about it out loud. Martha Nussbaum and my

friend are talking about legacy and aging openly and candidly. I encourage you to join the conversation. Talk to friends, relatives or a therapist about it. To want to be known and remembered as bigger than oneself is nothing to be ashamed of. It's your life.

Dues Coming Due

The CALCRA membership year runs from January – December. Please use the Membership Form in this issue to renew for 2018. Payments (\$25 for an individual, \$35 for a couple) may be sent to Al Hale, 1515

Shasta Drive, #4104, Davis, CA 95616. *Contributions in addition to dues are always welcome!*



Speakers Available

Members of the board are available to speak at your community. Contact Margaret Griffin at info@calcra.org or (530) 747-6471 for more information.

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We're on the Web!!!

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