

Continuing Care Provider (CCP): Release of funds from escrow

► Release of funds from the entrance fee escrow

- (A) The escrow agent must notify the department of a request for release of funds from the entrance fee escrow account to the provider in writing within three banking days of receipt of the request. The notice shall be sent to the department on CCRC Form #9 (Notice of Request to Release Entrance Fee Escrow Funds).
- (B) The conditions listed in paragraphs 1-5 of this subsection must be met before funds in the entrance fee escrow account may be released to the provider.
1. At least 50% of the living units in the facility must be reserved for residents or prospective residents. In support of this, the provider must have sufficient binding continuing care contracts and at least 10% of the entrance fees designated in the binding continuing care contracts on deposit in the entrance fee escrow account.
 2. The sum of the entrance fees received or receivable by the provider under binding continuing care contracts; the anticipated proceeds of any first mortgage loan or other long-term financing commitment described under paragraph.
 3. of this subsection; and funds from other sources in the provider's actual possession must be equal to or more than the sum of at least 90% of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility; at least 90% of the funds estimated as necessary to cover initial losses of the facility as stated in the current disclosure statement on file with the department; and at least 90% of the amount of the loan reserve fund escrow account required under Section 33.405 of this title (relating to Loan Reserve Fund Escrow Accounts).
 4. The provider must have commitments for all permanent mortgage loans and other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement on file with the department.
 5. Except for the conditions regarding the completion of construction or closing on the purchase of the facility, the commitment for disbursement of funds must be unconditional.
 6. Either subparagraph (a) or (b) of this paragraph must be satisfied.
 - (a) If construction of the facility is not substantially completed:
 - the appropriate party must have obtained all necessary governmental permits or approvals; and
 - the provider and the general contractor responsible for construction of the facility must have entered a maximum price contract; and
 - a recognized surety authorized to do business in Texas must have executed a construction bond in favor of the provider covering the general contractor's faithful performance and payment of all obligations arising under the construction contract; and

- the provider must have entered into a loan agreement for an interim construction loan in an amount which, when combined with the amount in the entrance fee escrow account plus the amount of funds from other sources in the provider's actual possession equals or exceeds the estimated cost of constructing, equipping, and furnishing the facility; and
- the lender must have disbursed at least 10% of the amount of the construction loan for physical construction or site preparation work; and
- the provider must have placed orders at firm prices for at least 50% of the items necessary to equip and furnish the facility in accordance with the current disclosure statement on file with the department, including installation charges if applicable.

(b) If construction or purchase of the facility is substantially completed, both clauses (1) and (2) must be satisfied, if appropriate:

(1) the appropriate local government must have issued an occupancy permit covering the living unit; and

(2) if the entrance fee applies to a living unit which has been previously occupied, the living unit must be available for occupancy by the new resident.

(C) The provider shall deliver a completed CCRC #14 (Calculations Concerning Conditions for Release of Entrance Fees to Provider) to the department.

(D) The funds in the entrance fees escrow account that may be released before the facility is complete and before the loan reserve fund escrow is established under Section 33.405 of this title (relating to Loan Reserve Fund Escrow Accounts), may not exceed the total of entrance fees and reservation agreement deposits received or receivable by the provider under binding continuing care contracts less the amount of funds required to be deposited in the loan reserve fund escrow account.

► **Release of funds from loan reserve funds escrow account**

(A) For release of an amount equal to not more than one-twelfth of the loan reserve fund escrow account, the provider shall submit a request in writing to the escrow agent.

(B) For the release of an amount more than one-twelfth of the loan reserve fund escrow account, the procedures in paragraphs (1)-(3) of this subsection shall apply.

(1) The provider shall submit a completed CCRC Form #2 (Application for Approval of the Commissioner for Release of Loan Reserve Amounts in Excess of that Allowed by Health and Safety Code, Section 246.078(a)) with the department for approval. The provider may not withdraw funds under this paragraph more than once during a calendar year.

(2) The department shall notify the provider by letter whether the application is approved within 30 days after the completed application is received by the department. If the department disapproves the application, the provider may request a hearing seeking Commissioner review of the matter by filing a motion for reconsideration addressed to the Commissioner and filed with the department's docket clerk. After a hearing, the Commissioner shall dispose of the matter by entering an order approving or disapproving the application. The department will send a copy of the order to the provider.

(3) If the department approves the application, the provider may present the letter of approval or the Commissioner's order approving the release to the escrow agent. The escrow agent shall then release the funds from the loan reserve fund escrow account in the amount requested.

(C) The escrow agent shall give the department notice of the release not later than the 11th day before the date of release. The notice shall be submitted to the department on CCRC Form #10 (Notice of Request to Release Funds from the Reserve Fund Escrow Account).

► **Instructions**

Incomplete applications impede a timely review; therefore, it is important that applications are complete. Submit a complete filing to: FinancialAnalysis@tdi.texas.gov