80D.05 ENTRANCE FEE ESCROW.

Subdivision 1. **Escrow account; release of fees.** Prior to soliciting or entering into any contract for the provision of continuing care, the provider shall establish with a bank or trust company having its principal place of business in this state, as an escrow agent, an entrance fee escrow pursuant to which the provider shall deposit with the escrow agent, within 72 hours of receipt by the provider, each entrance fee or portion of an entrance fee received by the provider from or on behalf of a resident prior to the date the resident is permitted to occupy a living unit in the facility, subject to release as follows:

(a) if the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider at the time the living unit becomes available for occupancy by the new resident, or shall be returned to the resident or the resident's personal representative under the conditions described in section 80D.04, subdivision 3, if the escrow agent has received written demand for return of the entrance fee prior to the release thereof to the provider;

(b) if the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be returned to the resident or the resident's legal representative under the conditions described in section 80D.04, subdivision 3, if the escrow agent receives written demand for return of the entrance fee prior to release thereof to the provider, or the entrance fee shall be released to the provider at the time all of the following conditions have been met:

(1) the facility has 65 percent of its units reserved as determined by signed written agreements and minimum deposits received; or if the written agreement requires a minimum deposit of more than one-third of the entrance fee, then the facility may have 50 percent of the units reserved and 50 percent of the facility must be completely constructed; and

(2) the sum of entrance fees received or receivable by the provider pursuant to binding contracts for continuing care, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment, plus funds from other sources in the actual possession of the provider, equals or exceeds the sum of 90 percent of the aggregate cost of constructing or purchasing, equipping and furnishing the facility plus 90 percent of the funds estimated in the statement of anticipated source and application of funds submitted by the provider as part of its permit application, to be necessary to fund start-up losses of the facility plus 90 percent of the amount of the reserve fund escrow, if any, required to be maintained by the provider pursuant to section 80D.06; and

(3) a commitment has been received by the provider for any permanent mortgage loan or other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement on file pursuant to section 80D.04, and any conditions of the commitment prior to disbursement of funds thereunder, other than completion of the construction or closing of the purchase of the facility, have been substantially satisfied; and

(4) if construction of the facility has not been substantially completed, all governmental permits or approvals necessary prior to the commencement of construction have been obtained; and a maximum price contract has been entered into between the provider and a general contractor responsible for construction of the facility; a bond covering the faithful performance of the construction contract by the general contractor and the payment of all obligations arising thereunder has been issued by an insurer authorized to do business in this state with the provider as obligee; a loan agreement has been entered into by the provider for an interim construction loan in an amount which, when combined with the amount of entrance fees then held in escrow under the provisions of this section plus the amount of funds from other sources then in the actual possession of the provider, will equal or exceed the estimated cost of constructing, equipping and furnishing

the facility; not less than ten percent of the amount of the construction loan has been disbursed by the lender for physical construction or site preparation work completed; and orders at firm prices have been placed by the provider for not less than 50 percent in value, including installation charges if applicable, of items necessary for equipping and furnishing the facility in accordance with the description set forth in the disclosure statement required by section 80D.04; or

if construction or purchase of the facility has been substantially completed, an occupancy permit covering the living unit has been issued by the local government having authority to issue these permits.

Subd. 2. **Limitation.** The aggregate amount of entrance fees which may be released to the provider pursuant to subdivision 1, clause (b) prior to the date on which any reserve fund escrow under section 80D.06 is established shall not exceed the aggregate amount of entrance fees then received or receivable by the provider pursuant to binding contracts for continuing care less the amount of the entrance fees received or receivable which will be required to be initially maintained in the reserve fund escrow.

Subd. 3. **Fee returned after 36 months.** If an entrance fee to which subdivision 1, clause (b) applies is not released pursuant thereto within a period of 36 months from receipt of the entrance fee by the provider or within a greater time that has been specified by the provider in the disclosure statement delivered, pursuant to section 80D.04, to the person with whom the contract for continuing care to which the entrance fee pertains was made, then the fee shall be returned by the escrow agent to the persons who had paid them to the provider.

Subd. 4. **Nonrefundable application fees.** Nothing in this section requires the escrow of any nonrefundable application fee that does not exceed two percent of the entrance fee and is clearly designated as such in the contract for continuing care.

Subd. 5. **Accrued interest.** Interest accrued on entrance fees or deposits held in escrow is the property of the provider only if the funds are ultimately released to the provider.

Subd. 6. **Resident copy of escrow agreement.** The provider shall provide each prospective resident who has signed a contract for continuing care with a copy of the escrow agreement referred to in subdivision 1, which agreement shall set forth the name, address, and telephone number of the escrow agent.

History: *1980 c 516 s 7; 1981 c 135 s 6*