

Can Continuing Care Retirement Community (CCRC) Residents Benefit from Having Residents as Voting Members on Provider Boards of Directors

Question. The question of residents on CCRC governing Boards is a question that surfaces repeatedly. Most recently the inquiry came as follows.

“Our Board of Directors has two Board Members who complete their terms this year. I asked the President of the Board to consider putting a resident on the Board but his response was very negative. This has been a long ongoing issue and I would like to try to build a case for adding a resident to our Board. Do you have any suggestions on how I could acquire good background material for this cause?”¹

Not long ago Katherine Pearson, a Law Professor from Pennsylvania, reported to the U. S. Senate Committee on Aging that, “Oregon has amended its CCRC law to require greater disclosure of the identities of persons who have direct or indirect ownership or beneficial interests in CCRCs within the state and to require resident representation on the governing boards of CCRCs.”²

In short the suggestion that there should be residents on CCRC Boards is a matter that comes up frequently.

Response. I don’t think that I can be much help with persuading your board that residents should be added to their number. Some states, I believe, do have laws mandating that residents be on CCRC Boards, and I know of several communities in which residents are on the boards. But board members are under a legal duty of loyalty, care, confidentiality and obedience and that limits the effectiveness which they can bring to the board as advocates for resident interests.

[There is a NaCCRA Residents Learning Center presentation on the nature of board service which you can access by clicking on this sentence.](#)

¹ Private Communication.

² <http://aging.senate.gov/events/hr224kp.pdf>, 2 accessed on July 5, 2012.

Some states have found that residents have a conflict of interest and, therefore, ought not to be allowed to serve on CCRC Boards since it is thought that residents will seek to keep residency charges unnaturally low and will, therefore, impair the financial stability and prudent management of the community. On the other hand, once a resident takes a seat on a board, the resident assumes legal liability unless the resident puts the interests of the enterprise before the interests of the resident group he or she may feel called to represent.

Of course, executives and managing firms, too, have a conflict of interest in the representations and recommendations that they make to a board. There is no one on the board who is likely to be in a position to push back against a well-reasoned position put forward by an executive. As Jacob Schiff said in a quote that is now over 100 years old:

Q. Prior to the time that you became a member of the Finance Committee and while you were simply a director of the society, what did you do as director? A. I directed as much as under the prevailing usages in corporations was permitted me to direct; in other words, I went to the meetings of the society when they were called, I listened to the reports as submitted by the executive officers, and I voted upon the same and I gave such advice as was asked of me. And if you will permit me, Mr. Hughes, to say right here, because I suppose it will come up later, that the system of directorship in great corporations of the city of New York is such that a director has practically no power; he is considered, in many instances, and I may say in most instances, as a negligible quantity by the executive officers of the society; he is asked for advice when it suits the executive officers, and if under the prevailing system an executive officer wishes to do wrong or wishes to conceal anything from his directors or commit irregularities such as have been disclosed here, the director is entirely powerless, he can only be used in an advisory capacity and can only judge of such things as are submitted to him.

I think this³ is as clear a statement of the limitations of board service as anything that might be put forward. Little has changed in this regard in the years since Mr.

³ *Testimony Taken Before the Joint Committee of the Senate and Assembly of the State of New York to Investigate and Examine into the Business and Affairs of Life Insurance Companies Doing Business in the State of New York, Volume II, (Albany, NY, 1906), p. 1000.*

Schiff offered his candid appraisal. Or as one resident, who has long served on the board of the provider organization for the CCRC where he lives, said to me, “The authority of a board to direct or change policy is greatly overrated.”⁴ The ideal is for a CEO or Board Chair, who truly has a service orientation rather than a focused interest in self-preservation and self-aggrandizement, to recruit as directors and senior officers people who are the most highly qualified people available.

CCRCs, however, typically look to local luminaries to fill their board seats. I don’t think that is likely to change. It’s much too comfortable for the existing directors and officers to leave things as they are and to stay with the status quo than for them to change no matter how much change might open up new opportunities to them for service and improved performance.

There is a saying that goes, “First rate people hire other first rate people. Second rate people hire third rate people. Third rate people hire fifth rate people.”⁵ In short, the best people are not afraid to have associates who might supersede them. They know that if they lose their job they can land on their feet in a new and better position, or they will start a business that will with time surpass the business that dismissed them. Mediocre and provincial people, in contrast, have a myopic vision and are fearful of much that is new. Original thinking is threatening to them, and they will not welcome those who seek to institute change for the better.

I’m sorry not to be able to be more encouraging. Many residents clearly believe that resident representation on boards is a desirable step forward. My own understanding is different, however, so board seats for residents is not an initiative to which I give a high priority. I don’t think it will hurt but I also don’t think it will help. It would simply sustain the status quo. But, if this is something that you feel is important, you will find that there are many residents across the country who agree with you.

-- Jack Cumming
July 5, 2012

⁴ Private conversation

⁵ Various ascribed to André Weil or Leo Rosten.