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STATE OF IDAHO
DEPARTMENT OF FINANCE
700 W. STATE STREET, 2ND FLOOR
P. O. BOX 83720
BOISE ID 83720-0031
Website: <http://finance.state.id.us>

October 21, 2003

BY FACSIMILE AND REGULAR MAIL

Re: lba

Dear M

This is in response to your August 29, 2003 request for a no action position from this Department with regard to the offer and sale of Life Estate Deeds ("Deeds") and continuing-care contracts ("Contracts") pursuant to the Idaho Securities Act. This same analysis applies if [redacted] decides to move to fee simple contracts.

While we do not necessarily agree that the offer and sale of these deeds and contracts are not securities, we do agree to recommend to the Director that no enforcement action be taken with regard to any violation of the Idaho Securities Act. This is conditioned upon [redacted] full compliance with the requirements of the Idaho Continuing Care Disclosure Act, to which we understand you have agreed.

We also understand that [redacted] intends to use Idaho licensed realtors to assist in the sales of its properties. While we offer no opinion as to any real estate issues, we reiterate that the sales force is required to provide all material information, such as that required under the Continuing Care Act, to prospective purchasers.

Please be advised that this no action position is based solely on your representations of the facts and different facts may require a different conclusion.

If you have questions or comments regarding this matter, please contact me at (208) 332-8070.

Sincerely,

Handwritten signature of Marilyn T. Chastain in cursive.
Marilyn T. Chastain
Bureau Chief

Banks and Savings Banks	(208) 332-8005	PHONE:	(208) 332-8000	Supporting Services	(208) 332-8001
Credit Unions	(208) 332-8003	Fax:	(208) 332-8098	Mortgage Companies	(208) 332-8002
Securities	(208) 332-8004	Director's Fax:	(208) 332-8097	Finance Companies	(208) 332-8002
Money Transmitters	(208) 332-8003	Securities Fax:	(208) 332-8099	Collection Agencies	(208) 332-8002

EQUAL OPPORTUNITY EMPLOYER

August 29, 2003

Ms. Nancy Ax
State of Idaho, Department of Finance
700 West State Street
Boise, ID 83720-0031

208-332-8078

Re:

Dear Ms Ax:

 has asked me to assist them in responding to your concerns that the sale of cottages at () might constitute registerable securities and/or the offering of continuing care contracts under Idaho law. Although I am a California lawyer, I have worked with retirement communities around the country for 28 years, particularly with CCRCs, and have written a book analyzing continuing care regulations and securities issues for such facilities. I have also helped draft continuing care legislation in California and Oregon. I hope that my viewpoint will be of some assistance to you.

Offerings for the Personal Use of a Homeowner are not Securities

In Waldo v. Central Indiana Lutheran Retirement Home, Fed. Sec. Law Rep 97960, (copy enclosed) the federal district court followed two U.S. Supreme Court decisions (United Housing v. Forman and SEC v. Howey) and determined that the sale of life interests in a retirement community was not a security because the "purchaser is motivated by a desire . . . to occupy the land" and not to "profit . . . from the efforts of others." The court also noted that the requirement of paying monthly fees to maintain occupancy of the premises "strongly supports" the conclusion that the arrangement was a real estate transaction and "not an investment in a security." A similar holding can be found in Aschenbach v. Covenant Living Centers, 482 F. Supp. 1241 (also enclosed) where the court determined that buyers were not "attracted solely by the prospects of a return on their investment" but that their "primary purpose" was to acquire housing and services.

All of these cases were cited by the Idaho Department of Finance in its No-Action Letter of October 6, 1987, (copy enclosed) where it was determined that continuing care contracts are not securities under Idaho law.

Ms. Nancy Ax
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At _____, the primary motivation of purchasers clearly is to obtain housing and services. It is not primarily, much less "solely," for a return on investment.

Continuing Care Issues

_____ intends to seek permission to offer continuing care contracts in the future after its health facilities are built, but believed that it was not necessary to register as a continuing care provider at this early stage when the occupancy agreements for the cottages do not yet provide for the delivery of care.

As you know, section 67-2753 of the Act requires registration by someone who "provides" continuing care in a "facility." At this stage, _____ has no facilities in which to provide continuing care and does not provide continuing care, but only proposes to provide such care in the future, after the care facilities are built. Our understanding is that there have been few, if any, applications under the Disclosure Act, and so the nuances of its interpretation may have yet to be applied in actual practice.

Although _____ believes there has been no violation of the Continuing Care Disclosure Act, it wants to comply with the Finance Department's requirements and is eager to work with you to satisfy the law, both with respect to future sales and those that have already been consummated. Please advise me or _____ COO, as to the next steps that should be taken to meet that objective. Of course, we hope you share with us the desire to be sure the project is in compliance with minimal or no disruption to the expectations of _____ existing cottage owners, or to the financial stability of the project.

A final thought is that the primary goals of the laws governing securities and continuing contracts are the same, namely, disclosure to the consumer. By being sure _____ is in compliance with the more specifically applicable CCRC law, we believe that the Idaho Legislature's intent regarding the offering of cottage agreements will be met.

Please let me know if there is any question or comment and what course of action you recommend. I look forward to working with you.

Very truly yours,

Enclosures