

Preliminary Exposure Draft

For Comment and Review

Text of Model Investment Act

1. This Law shall be known as “The Continuing Care Retirement Community Investment Regulation Act” and may be referred to as the CCRC Investment Act.
2. The legislature finds that residence in Continuing Care Retirement Communities (CCRCs) or participation in a Continuing Care At Home (CCAH) program are desirable actions that older citizens can take to help ensure their well-being as they face the inevitable transitions of aging.
3. The legislature also finds that Continuing Care Contracts involve commitments enduring long into the future and that, therefore, a high degree of prudence is required commensurate with the trust inherent in such contracts.
4. The legislature further finds that it is in the public interest to encourage such Continuing Care Contracts, since they allow people facing the hazards of aging to meet those hazards without becoming a burden on others including the state.
5. Accordingly, the legislature concludes that it is desirable that the financial activity of Continuing Care Contract providers be consistent with the trust involved and with the potential vulnerability of those served, meaning that first priority should be given to the safe and sound use and investment of all funds involved in the enterprise; that the quest for yield should be subordinate to the need for security; and that provision should be made for sufficient liquidity to meet the obligations of the enterprise as those obligations come due.
6. Accordingly the legislature now enacts the following requirements governing the investment and use of funds by Continuing Care enterprises in this [State or Commonwealth].
7. The term “Continuing Care enterprise” means an entity licensed in this [State or Commonwealth] to issue Continuing Care Contracts or to provide multi-

level care services and includes a Continuing Care Retirement Community, a Multi-Level Retirement Community, or a Continuing Care At Home program.

Investment in Facilities and Operations

8. Any Continuing Care enterprise shall have an unrestricted option to invest in such physical facilities and equipment as shall be requisite for its convenient present and future accommodation in the transaction of its business. In the erection or purchase of any buildings for such purpose, additional space may be included ancillary purposes including rental income from commercial or residential facilities provided that they are incidental to the continuing care purpose.
9. For the purposes of this Act such ancillary activity shall be considered incidental if the revenues from such activity constitute 35% or less of the total revenues of the Continuing Care enterprise.

Inter-affiliate Transactions

10. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] shall only be permitted to invest by loans or otherwise in any affiliated organization directed by officers or directors of the Continuing Care enterprise if the investment is approved in advance by the [State or Commonwealth Regulator] and if the transaction is protected by sufficient collateral, as certified by the [State or Commonwealth Regulator], to ensure that the investment would have the same safety, yield, and liquidity characteristics as it would have if there were no common officers or directors between the affiliated organizations.

United States government obligations; call options.

11. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized

committee thereof, any of its funds, or any part thereof in bonds or other evidences of indebtedness issued, assumed or guaranteed by the United States of America, or by any agency or instrumentality thereof.

12. Such Continuing Care enterprise may write call options on government obligations permitted under this section which it owns. Call options may be purchased for the sole purpose of closing out a position taken previously with respect to one or more options having been written. The purchase of a call option for any reason other than as a closing transaction and the writing of naked (uncovered) call options are hereby prohibited.
13. Any United States government obligation owned by a Continuing Care enterprise obligated under an unexpired written call option shall be valued at the lesser of the striking price or value established in accordance with the method of valuation as prescribed by the [State or Commonwealth CCRC Regulator] for financial reporting purposes.
14. "Striking price" means the price per United States government obligation, exclusive of selling costs, the company would receive should the call option be exercised by the holder.

State, District of Columbia, territorial and municipal obligations.

15. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in bonds or other evidences of indebtedness issued, assumed or guaranteed by the District of Columbia, or by any state, insular or territorial possession of the United States of America, or by any county, city, town, school, road, drainage or other district, located within any state, or insular or territorial possession of the United States of America, or by any political or civil subdivision or governmental authority of any such state, or insular or territorial possession,

or by any agency or instrumentality of any such state, or insular or territorial possession, political or civil subdivision, or governmental authority.

Canadian government, provincial and municipal obligations.

16. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in bonds or other evidences of indebtedness issued, assumed or guaranteed by the Dominion of Canada, or by any province thereof, or by any municipality, district, agency or instrumentality thereof.

Investments in foreign jurisdictions and currencies;

17. Definitions. (a) As used in this section:
 - (1) "Business entity" means a sole proprietorship, corporation, limited liability company, association, partnership, joint-stock company, joint venture, mutual fund, trust, joint tenancy or other similar form of business organization, whether organized for-profit or not-for-profit.
 - (2) "Domestic jurisdiction" means the United States, Canada, and a state or political subdivision of the United States or Canada.
 - (3) "Foreign currency" means a currency other than that of the United States or Canada.
 - (4) "Foreign investment" means an investment in a foreign jurisdiction or in an asset domiciled in a foreign jurisdiction. An investment shall not be deemed to be foreign if the issuing business entity, qualified primary credit source or

qualified guarantor is a domestic jurisdiction or a business entity domiciled in a domestic jurisdiction, unless:

(A) The issuing business entity is a shell business entity; and

(B) The investment is not assumed, accepted, guaranteed or insured or otherwise backed by a domestic jurisdiction or a business entity, that is not a shell business entity, domiciled in a domestic jurisdiction.

(5) "Foreign jurisdiction" means a jurisdiction outside of the United States or Canada.

(6) "Qualified guarantor" means a guarantor against which a Continuing Care enterprise has a direct claim for full and timely payment evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.

(7) "Qualified primary credit source" means the credit source to which a Continuing Care enterprise looks for payment as to an investment and against which a Continuing Care enterprise has a direct claim for full and timely payment evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.

(8) "Shell business entity" means a business entity having no economic substance except as a vehicle for owning interests in assets issued, owned or previously owned by a business entity domiciled in a foreign jurisdiction.

(9) "SVO" means the securities valuation office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners.

(10) "Tangible assets" means assets that have a physical form, including both fixed assets, such as machinery, buildings and land, and current assets, such as inventory.

(11) "Marketable securities" means securities for which there is a ready market on a national securities exchange regulated under the securities exchange act of 1934, as amended, or securities which are regularly traded on a national or regional basis.

(b) Any Continuing Care enterprise organized under any law of this state may invest, by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof, in foreign investments of the same types as those that a Continuing Care enterprise is otherwise permitted to acquire under the laws of this [State or Commonwealth], if

(1) The aggregate amount of foreign investments then held by the Continuing Care enterprise does not exceed 20% of its tangible or marketable security assets; and

(2) the aggregate amount of foreign investments then held by the Continuing Care enterprise in a single foreign jurisdiction does not exceed 10% of its tangible or marketable security assets for jurisdictions that have a sovereign debt rating of SVO 1, or 3% of its tangible or marketable security assets for all other jurisdictions.

(c) Any Continuing Care enterprise organized under any law of this [State or Commonwealth] may invest, by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof, in investments of

the same types as those that a Continuing Care enterprise is otherwise permitted to acquire under the laws of this [State or Commonwealth], which are denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (b), if:

- (1) The aggregate amount of investments then held by the Continuing Care enterprise denominated in foreign currencies does not exceed 10% of its tangible or marketable security assets; and
- (2) the aggregate amount of investments then held by the Continuing Care enterprise denominated in the foreign currency of a single foreign jurisdiction does not exceed 10% of its tangible and marketable security assets for jurisdictions that have a sovereign debt rating of SVO 1, or 3% of its tangible or marketable security assets for all other jurisdictions.

(d) Notwithstanding any other provisions of these statutes, the Continuing Care enterprise's total foreign investments and investments denominated in foreign currencies shall not exceed the limitations set forth in subsections (b) and (c).

(e) The investment limitations in subsections (b) and (c) computed on the basis of a Continuing Care enterprise's tangible or marketable security assets shall relate to the amount as shown on such enterprise's most recent audited balance sheet.

(f) Investments acquired under this section shall be aggregated with investments of the same types made other statutes of this [State or

Commonwealth] for purposes of determining compliance with the limits, if any, contained in the other sections.

Corporate obligations; definitions.

18. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in bonds or other evidences of indebtedness issued, assumed, or guaranteed by a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof; or of the Dominion of Canada or any province thereof which are designated "1" or "2" by the National Association of Insurance Commissioners in their most recently published Valuations of Securities Manual or are rated investment grade in Standard & Poor's (at least BBB-) or Moody's (at least Baa3) corporate bond guides at the time of acquisition; or which meet the following qualifications:

(a) If fixed-interest bearing obligations, the average fixed charges shall have been covered at least 1 1/2 times by the average net earnings available for fixed charges of the last five years, and the company shall have earnings in two of the last three fiscal years immediately preceding the date of acquisition. In the case of obligations of finance companies, the coverage shall be at least 1 1/4 times;

(b) if income, or other contingent interest obligations, the net earnings available for fixed charges of the corporation for the five fiscal years next preceding the date of acquisition of the obligations shall have averaged per year not less than 1 1/2 times the sum of the fixed charges and the maximum contingent interest to which the corporation is subject as of the date of acquisition, and the company

shall have earnings in two of the last three fiscal years immediately preceding the date of acquisition. In the case of obligations of finance companies, the coverage shall be at least 1 1/4 times;

(c) the corporation or a predecessor thereof must have been in existence for a period of not less than five years;

(d) investments in any corporate obligations under this act shall not be eligible if the corporation is in default on any fixed obligations as of the date of acquisition. Statements adjusted to show the actual condition at the time of acquisition or at effect of new financing (known commercially as pro forma statements) may be used when determining investments in this act or in compliance with requirements.

(e) (1) The term "fixed charges" shall include actual interest incurred in each year on funded and unfunded debt. In the testing of obligations where interest is partially or entirely contingent upon earnings fixed charges shall include contingent interest payments; and

(2) the term "net earnings available for fixed charges" shall mean income, before deducting interest on funded and unfunded debt and after deducting operating and maintenance expenses, taxes other than income taxes, depreciation and depletion. Extraordinary, nonrecurring items of income or expense shall be excluded.

Preferred and guaranteed stocks; definitions.

19. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized

committee thereof, any of its funds, or any part thereof in preferred stocks of, or stocks guaranteed by, a corporation incorporated under the laws of the United States of America, or of any state, district, insular or territorial possession thereof, or of the Dominion of Canada, or any province thereof; in an amount not to exceed 25% of its tangible or marketable security assets as shown on such enterprise's most recent audited balance sheet, and which meets the following qualifications:

- (a) All bonds or other evidences of indebtedness and preferred stocks shown on the last published annual statement of the issuing corporation, if any, senior to the preferred stock acquired must be otherwise eligible as investments under these statutes as of the date of acquisition;
- (b) if cumulative preferred, not in arrears as to dividends, or if noncumulative, has paid full dividends in each of the last three years;
- (c) sinking fund payments are on a current basis;
- (d) if net earnings available for fixed charges for the most recently completed three fiscal year period is at least equal to 1 1/4 times the aggregate fixed charges, plus full contingent interest and preferred dividend requirements of the preferred stock under consideration and those on a parity therewith or having a priority thereto, for the same period; and
- (e) the corporation must have been in existence for a period of not less than five years.

(f) (1) "Fixed charges" shall include actual interest incurred in each year on funded and unfunded debt; and

(2) "net earnings" shall mean income, before deducting interest on funded and unfunded debt, and after deducting operating and maintenance expenses, depreciation and depletion and all taxes,

including income taxes. Extraordinary, nonrecurring items of income or expenses shall be excluded.

Common stocks; call options.

20. Any Continuing Care enterprise organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in the common stock of any corporation organized and doing business under the laws of the United States or any state, or of the District of Columbia, or of the Dominion of Canada or any province of the Dominion of Canada, in an amount, based upon cost, not exceeding 15% of its tangible or marketable security assets or not exceeding the combined capital and surplus, whichever is the lesser, as shown on such enterprise's most recent audited balance sheet. Such Continuing Care enterprise may write exchange traded, covered call options on shares it owns and may purchase call options for the sole purpose of closing out a position taken previously with respect to one or more options having been written. The purchase of a call option for any reason other than as a closing transaction and the writing of naked (uncovered) call options are hereby prohibited. Investments in common stocks and the writing of call options shall be further limited as follows:

- (a) The obligations, if any, shown on the last published annual statement of such corporation must otherwise be eligible for investment under these statutes;
- (b) cash dividends have been paid during each of the last three years preceding the date of acquisition;
- (c) the stock is registered with a national securities exchange regulated under the securities exchange act of 1934, as amended, or is regularly traded on a national or regional basis;

(d) the company shall have earnings in three of the last five years preceding the date of acquisition;

(e) at no time shall a Continuing Care enterprise invest in more than 5% of the total number of the outstanding shares of any one such corporation, nor an amount more than 2% of the investing Continuing Care enterprise's tangible or marketable security assets in shares of any one such corporation, determined on the basis of the cost of such shares to the Continuing Care enterprise at time of purchase;

(f) stock owned by a Continuing Care enterprise that is obligated under an unexpired written call option shall be valued at the lesser of the striking price or current market value. For the purposes of this subsection, "striking price" means the price per share, exclusive of selling costs, the company would receive should the call option be exercised by the holder;

(g) the provisions of subsections (b) and (d) shall not apply if at the time of acquisition:

- (1) The issuing corporation has net assets of \$10,000,000 or more;
- (2) the issuing corporation has a net worth of \$1,000,000 or more; and
- (3) the issuing corporation has an aggregate market value of \$500,000,000 or more.

Equipment trust obligations or conditional sales contracts.

21. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized

committee thereof, any of its funds, or any part thereof in bonds, certificates or other evidences of indebtedness secured by any transportation or other equipment used in the United States of America or Dominion of Canada, that provide a right to receive determined rental, purchase or other fixed obligatory payments adequate to retire the obligations and also provide for vesting of title to such equipment free from encumbrance in a corporate trustee, or for creation of a first lien on such equipment.

Real estate bonds, mortgages, tax lien certificates.

22. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in:

(a) Bonds, notes, obligations or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered real property and appurtenances thereto within the United States of America, or any insular or territorial possession of the United States, or the Dominion of Canada, and upon leasehold estates in real property wherein the term of such including any options to extend is not less than 15 years beyond the maturity of the loan as made or extended. At the date of acquisition the total indebtedness secured by such lien shall not exceed 80% of the market value of the property upon which it is a lien, unless that portion of the total indebtedness in excess of 80% of market value is insured by a mortgage insurance company authorized by the commissioner of insurance to do business in this state. These limitations shall not apply to obligations described in subsections (b), (c), (d), (e) and (f). For the purpose of this section a mortgage or deed of trust shall not be deemed to be other than a first lien upon property within the meaning of this section by reason of the

existence of taxes or assessments against real property and appurtenances thereto that are not delinquent, instruments creating or reserving mineral, oil, or timber rights, rights of way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when such real estate is subject to lease in whole or in part whereby rents or profits are reserved to the owner or when there is in existence a fixed obligation or lien against the property where an escrow account or indemnification bond is or has been established or obtained sufficient to cover the maximum liability created by such obligation or lien;

(b) bonds, notes, or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed or insured by the United States government or any agency or instrumentality thereof or insured by any insurance company authorized to transact such business in this state. Any uninsured or nonguaranteed portion shall not exceed 75% of the total amount;

(c) contracts of sale, purchase money mortgages or deeds of trust secured by property obtained through foreclosure, or in settlement or satisfaction of any indebtedness;

(d) bonds, notes, obligations, or other evidences of indebtedness secured by mortgages or deeds of trust which are a first lien upon unencumbered personal or real or both personal and real property, including a leasehold of real estate, under lease, purchase contract, or lease purchase contract to any governmental body or instrumentality whose obligations qualify the laws of this [State of Commonwealth], if there is adequate rental, after making allowance of lessors' or sellers' obligations and liabilities, if any, under the terms of the lease or contract, to retire the loan as to

payments of principal and interest and such rentals are pledged or assigned to the lender;

(e) bonds, notes or other evidences of indebtedness representing loans and advances of credit that have been issued, guaranteed or insured, in accordance with the terms and provisions of an act of the federal parliament of the Dominion of Canada approved March 18, 1954, cited as the national housing act, 1954, as heretofore and hereafter amended;

(f) participation in mortgage lending is specifically permitted in this section as between Continuing Care enterprises domiciled in this [State of Commonwealth], or, between Continuing Care enterprises domiciled in this [State or Commonwealth] and those Continuing Care enterprises organized under the laws of another country, state, or territory and authorized to do business in this [State of Commonwealth], or, between Continuing Care enterprises, life insurance companies and banks, trust companies or savings and loan associations located within this [State or Commonwealth], upon unencumbered real property and appurtenances thereto. At the date of acquisition the total indebtedness assumed by such lien shall not exceed 80% of the market value of the property upon which it is a lien, unless that portion of the total indebtedness in excess of 80% of market value is insured by a mortgage insurance company authorized by the [State or Commonwealth regulator of insurance] to do business in this [State or Commonwealth];

(g) first mortgages or deeds of trust upon improved real property to be occupied as a personal residence by an officer of the Continuing Care enterprise, if the mortgage is at an interest rate that is no less than the prevailing rate of the Continuing Care enterprise's existing portfolio of mortgage loans. Mortgages or deeds of trust entered into pursuant to this subsection shall be subject to the

conditions set forth in subsection (a) relating to mortgages or deeds of trust generally;

(h) tax lien certificates issued by local taxing authorities, which for financial reporting may be pooled by state and year of issue, but the amount invested shall not exceed 10% of the tangible and marketable security assets of the Continuing Care enterprise as shown on such enterprise's most recent audited balance sheet.

Real estate.

23. No Continuing Care enterprise organized under the laws of this [State or Commonwealth] shall purchase, hold or convey real estate, except for the purposes and in the manner herein set forth:

- (a) As provided in the Section "Investment in Facilities and Operations" above;
- (b) such as shall have been mortgaged to it in good faith, by way of security for loans previously contracted or for money due;
- (c) such as shall have been conveyed to it in satisfaction of debts previously contracted in their legitimate business or for money due;
- (d) such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts; or
- (e) such as shall have been acquired for development or income purposes.

24. It shall not be lawful for any such Continuing Care enterprise to purchase, hold or convey real estate in any other case or for any other purpose, except nothing in this section shall be deemed to prohibit any such enterprise from purchasing the principal residence owned and inhabited by an employee or

prospective employee who is being transferred by the company to a different community; and all such real estate as may be acquired as aforesaid, and which shall not be necessary for the accommodation of such company in the transaction of its business, except real estate acquired for development or income purposes, shall be sold and disposed of within five years after such company shall have acquired title thereto, unless the company shall procure a certificate from the [State or Commonwealth Regulator] that the interests of the enterprise will suffer materially by a forced sale thereof in which event the sale may be postponed for such period as the [State or Commonwealth Regulator] shall direct in such certificate. If the company so elects, real estate other than farm properties, which has been acquired under subsections (c) and (d) may be held by it for income purposes. The company's aggregate investment in real estate as herein provided shall not exceed 20% of the tangible and marketable security assets of the Continuing Care enterprise as shown on such enterprise's most recent audited balance sheet.

Collateral loans.

25. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in loans secured by collateral consisting of a pledge of bonds, mortgages, securities, stock or evidence of indebtedness otherwise qualified for investment by these statutes: Provided, That the amount of the loan is not in excess of eighty

percent (80%) of the market value of the securities: And provided further, That all restrictions placed on any security shall apply to the collateral securities pledged to the payment of loans authorized in this section.

Leeway clause.

26. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in investments whether or not qualified and permitted under this act and notwithstanding any conditions or limitations prescribed therein, in an aggregate amount not more than 10% of its tangible and marketable security assets of the Continuing Care enterprise as shown on such enterprise's most recent audited balance sheet.

Savings and loan shares or deposits.

27. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in shares or savings deposits in a federally insured savings and loan association.

Bank certificates of deposit.

28. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in certificates of deposit in a federally insured bank.

International bank for reconstruction and development, inter-American development bank and African development bank.

29. Any Continuing Care enterprise organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in bonds or other evidences of indebtedness issued, assumed or guaranteed by the international bank for reconstruction and development, the inter-American development bank or by the African development bank.

Real estate investment trusts.

30. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in shares of beneficial interest in or obligations issued by a real estate investment trust qualified under sections 856 through 858 of the federal internal revenue code which meet the following qualifications:

- (a) The obligations shown on the last published annual statement of such trust must meet the qualifications specified for corporate obligations elsewhere in these statutes;
- (b) cash dividends have been paid during each of the last three (3) years preceding the date of acquisition;
- (c) the shares are registered on a national securities exchange regulated under the securities exchange act of 1934 as amended;
- (d) the trust shall have earnings in three (3) of the last five (5) years preceding date of acquisition;
- (e) no Continuing Care enterprise shall own more than five percent (5%) of the total number of shares of any one such trust, nor invest more than two percent (2%) of its tangible and marketable security assets in shares of any one such trust.

31. Shares in each trust which has over one-half (1/2) of its assets invested in ownership of real estate or which has such ownership as its stated investment objective shall be considered a real estate investment for purposes of conforming with the limitation on real estate ownership imposed elsewhere in these statutes.

Prior lawful investments.

32. All investments owned by any Continuing Care enterprise at the time this act becomes effective and purchased pursuant to and in accordance with

prior investment laws of this state shall be deemed in compliance with this act.

Adoption of nominee name; designation of bank as trustee; defining clearing corporation.

33. Any Continuing Care enterprise organized under any law of this [State or Commonwealth], with the direction or approval of a majority of its board of directors, may:
 - (1) Adopt a nominee name unique to such Continuing Care enterprise in which such Continuing Care enterprise's securities may be registered;
 - (2) designate a state or national bank or a federal home loan bank having trust powers to obtain a nominee name for such Continuing Care enterprise in which such Continuing Care enterprise's securities may be registered; or
 - (3) designate a state or national bank having trust powers as trustee to make any investment authorized by this act in the name of such trustee or such trustee's nominee.
34. Under the provisions of paragraphs (2) and (3) of Section (30), the designated state or national bank or the federal home loan bank may arrange for such securities to be held in a clearing corporation. Such arrangement must be in accordance with a written agreement, approved by the [State or Commonwealth Regulator], between the Continuing Care

enterprise and its designated bank and must impose the same degree of responsibility on the bank as if such securities were held in definitive form by such bank.

35. As used in this section "clearing corporation" means: (1) A corporation defined under the laws of this [State or Commonwealth];

(2) any organization or system for the clearance and settlement of securities transactions which is operated or owned by a bank, trust company or other entity that is subject to regulation by the United States federal reserve board or the United States comptroller of the currency; or

(3) any clearing agency registered with the securities and exchange commission pursuant to the securities exchange act of 1934, section 17A, and amendments thereto.

Securities lending, repurchase and reverse repurchase transactions; requirements; definitions.

36. As used in this section:

(1) "Acceptable collateral" means:

(A) With respect to securities lending transactions: Cash, cash equivalents, letters of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States,

specifically including the federal national mortgage association and the federal home loan mortgage corporation, and with respect to lending foreign securities, sovereign debt rated 1 by the SVO, all to the extent authorized elsewhere in these statutes;

(B) with respect to repurchase transactions: Cash, cash equivalents, and direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States or any agency of the United States, specifically including the federal national mortgage association and the federal home loan mortgage corporation, all to the extent authorized elsewhere in these statutes; and

(C) with respect to reverse repurchase transactions: Cash and cash equivalents to the extent authorized elsewhere in these statutes.

(2) "Cash equivalents" mean short-term, highly rated, and highly liquid investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk of change in value. For purposes of this definition:

(A) "Short-term" means investments with a remaining term to maturity of 90 days or less;

(B) "highly rated" means an investment rated "P-1" by Moody's Investor's Service, Inc. or "A-1" by Standard and Poor's, or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO; and

(C) cash equivalents include government money market mutual funds and money market mutual funds rated 1 by the SVO.

(3) "Equivalent securities" mean:

(A) In a securities lending transaction, securities that are identical to the loaned securities including the amount thereof, except as to certificate number if held in physical form, except if any different security is exchanged for any loaned security by recapitalization, merger, consolidation or other corporate action, such different security shall be deemed to be the loaned security.

(B) In a repurchase transaction, securities that are identical to the purchased securities including the amount of the purchased securities, except as to certificate number if held in physical form.

(C) In a reverse repurchase transaction, securities that are identical to the sold securities including the

amount of the sold securities, except as to certificate number if held in physical form.

(4) "Letters of credit" means clean, irrevocable and unconditional letters of credit issued or confirmed by, and payable and presentable at, financial institutions on the list of financial institutions meeting the standards for issuing letters of credit pursuant to the purposes and procedures of the securities valuation office or any successor publication. To constitute acceptable collateral for the purposes of this section, a letter of credit must have an expiration date beyond the term of the subject transaction.

(5) "Market value" means for the purpose of this section:

(A) With respect to cash and letters of credit, the amounts thereof; and

(B) with respect to any security as of any date, the price for the security on that date obtained from a generally recognized source, or the most recent quotation from such a source, plus accrued but unpaid income thereon to the extent not included in such price as of that date.

(6) "Qualified business entity" means a business entity which is, or is a subsidiary or affiliate of:

(A) An issuer of obligations or preferred stock which are rated 1 or 2 by the SVO or an issuer of obligations, preferred stock, or derivative instruments which are rated the equivalent of 1 or 2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or

(B) A primary dealer in United States government securities, as recognized by the federal reserve bank of New York.

(7) "Repurchase transaction" means a transaction in which a Continuing Care enterprise purchases securities from a business entity which is obligated to repurchase the purchased securities or equivalent securities from the Continuing Care enterprise at a specified price, and either within a specified period of time or upon demand.

(8) "Reverse repurchase transaction" means a transaction in which a Continuing Care enterprise sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price and either within a specified period of time or upon demand.

(9) "Securities lending transaction" means a transaction in which securities are loaned by a Continuing Care enterprise to a business entity which is obligated to return the loaned

securities or equivalent securities to the Continuing Care enterprise, within a specified period of time or upon demand.

(10) "Substantially similar securities" mean securities that meet all the criteria for substantially similar securities specified in the NAIC accounting practices and procedures manual, as amended, and in an amount that constitutes good delivery form.

(11) "SVO" means the securities valuation office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners.

37. Any Continuing Care enterprise organized under any law of this [State or Commonwealth] may enter into securities lending, repurchase and reverse repurchase transactions, subject to the following requirements:

(1) The Continuing Care enterprise's board of directors shall adopt a resolution authorizing investments under this section and a written plan which specifies guidelines and objectives to be followed, such as:

(A) A description of how cash received will be invested or used for general corporate purposes of the Continuing Care enterprise;

(B) operational procedures to manage interest rate risk, counterparty default risk and the use of acceptable

collateral in a manner that reflects the liquidity needs of the transaction; and

(C) the extent to which a Continuing Care enterprise may engage in these transactions.

(2) The Continuing Care enterprise shall enter into a written agreement for all transactions authorized in this section. Such agreement shall adequately identify each security to which the agreement applies and shall require that each transaction terminate on a specified date no more than one year from its inception or upon earlier demand of the Continuing Care enterprise. In a repurchase transaction, the agreement must also state that in the event of default by the party agreeing to repurchase the securities described in the agreement at the terms contained in the agreement, title to the described securities must pass immediately to the Continuing Care enterprise without recourse. Such agreement shall be with the counterparty business entity, except for securities lending transactions the agreement may be with an agent acting on behalf of the Continuing Care enterprise, if such agent is a qualified business entity, and if such agreement:

(A) Requires the agent to enter into separate agreements with each counterparty that are

consistent with the requirements of this section;
and

(B) prohibits securities lending transactions under the agreement with the agent or its affiliates.

(3) Cash received in a transaction under this section shall be invested in accordance with these statutes, and in a manner that recognizes the liquidity needs of the transaction, or shall be used by the Continuing Care enterprise for its general corporate purposes. For so long as the transaction remains outstanding, the Continuing Care enterprise, its agent or custodian shall maintain in the United States, as acceptable collateral received in a transaction under this section, either physically or through book entry systems of the federal reserve or through clearing corporations, (A) possession of the acceptable collateral; or (B) a perfected security interest in the acceptable collateral.

(4) For purposes of calculating the limitations of these statutes, securities lending, repurchase and reverse repurchase transactions shall not be considered investments in the counterparty, or in any issue of securities issued by the counterparty, or in the jurisdiction in which the counterparty is located. For purposes of calculations made to determine compliance with this subpart (4), no effect will be given to the

Continuing Care enterprise's future obligation to resell securities in the case of a repurchase transaction, or to repurchase securities in the case of a reverse repurchase transaction. A Continuing Care enterprise may not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

- (A) The aggregate amount of all securities then loaned or sold to, or purchased from, any one business entity pursuant to this section would exceed 5% of its tangible and marketable security assets. In calculating the amount sold to or purchased from a business entity pursuant to repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or
- (B) the aggregate amount of all securities then loaned or sold to, or purchased from, all business entities under this section, without the effect of netting referred to in subpart (A), would exceed 40% of its tangible and marketable security assets.

(5) In a securities lending transaction, the Continuing Care enterprise shall receive acceptable collateral having a market value as of the transaction date at least equal to 102% of the market value of the securities loaned by such enterprise in such transaction as of that date. If at any time the market

value of such acceptable collateral is less than the market value of the loaned securities, the business entity to which the securities are loaned shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of the market value of the loaned securities.

(6) In a reverse repurchase transaction (other than a dollar roll transaction), the Continuing Care enterprise shall receive acceptable collateral having a market value as of the transaction date at least equal to 95% of the market value of the securities transferred by such enterprise in such transaction as of that date. If at any time the market value of such acceptable collateral is less than 95% of the market value of the securities so transferred, the business entity shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 95% of the market value of the transferred securities.

(7) In a dollar roll transaction, the Continuing Care enterprise shall receive cash in an amount at least equal to the market value of the securities transferred by such enterprise in such transaction as of the transaction date.

(8) In a repurchase transaction, the Continuing Care enterprise shall receive as acceptable collateral transferred securities having a market value equal at least to 102% of the purchase price paid by the Continuing Care enterprise for such securities. If at any time the market value of such acceptable collateral is less than 100% of the purchase price paid by such enterprise, the business entity shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of such purchase price. Securities acquired by a Continuing Care enterprise in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction or otherwise pledged.

38. Unless otherwise specified, an investment limitation computed on the basis of a Continuing Care enterprise's tangible and marketable security assets or capital and surplus shall relate to the amount as shown on such enterprise's most recent audited balance sheet. For purposes of computing any limitation based upon tangible or marketable security assets, the Continuing Care enterprise shall deduct from the amount of its tangible and marketable security assets the amount of the liability recorded on such statutory balance sheet for:

(1) The return of acceptable collateral received in a reverse repurchase or a securities lending transaction; and

(2) the amount reported as borrowed money in the most recently filed financial statement to the extent not included in subpart (1).

Stock in any Continuing Care enterprise, insurance company, health maintenance organization, incorporated marketing agency or holding corporation.

39. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in:

(a) Stock in any Continuing Care enterprise, insurance company or health maintenance organization, notwithstanding any limitations contrary thereto elsewhere in this statute. Before more than 5% of the outstanding shares of stock of any Continuing Care enterprise, insurance company or health maintenance organization is acquired, or a tender offer made therefor, prior written approval of the [State or Commonwealth Regulator] must be secured;

(b) stock in an incorporated marketing agency: (1) If 5% or less of the outstanding shares of such incorporated agency is acquired, the provisions of these statutes shall apply; (2) if more than 5% of the outstanding shares of such incorporated agency is acquired, or a tender offer is made therefor, the prior approval of the [State or Commonwealth Regulator] shall be required. In valuing the stock of

the agency, the assets of the agency shall be valued as if held directly by a Continuing Care enterprise; and (3) if majority interest in an incorporated marketing agency results from the organization of an agency by the Continuing Care enterprise to which this act applies, such investments shall be subject to the statutory provisions relating to Continuing Care enterprise investments until they have produced earnings for three out of five consecutive years.;

(c) stock in a holding corporation: (1) If 5% or less of the outstanding shares of stock of such holding corporation is acquired, the statutory investment provisions otherwise applicable shall continue to apply; (2) if at least 55% of the holding corporation's voting stock is acquired, the prior approval of the [State or Commonwealth Regulator] shall be required and the statutory investment provisions shall not apply. No Continuing Care enterprise may purchase in excess of 5% of the outstanding voting stock of a holding corporation unless such Continuing Care enterprise acquires at least 55% of such stock, nor shall the officers and directors of an Continuing Care enterprise collectively own or control, directly or indirectly, more than 25% of such stock. The [State or Commonwealth Regulator] may direct a Continuing Care enterprise to divest of its ownership in a holding corporation acquired pursuant to this subsection if it appears to the [State or Commonwealth Regulator] that the continued ownership or operation of the holding corporation is not in the best interest of the residents in a CCRC or the participants in a CCAH or both, or if the Continuing Care

enterprise's ownership in the holding corporation is less than 55% of the outstanding voting stock of the holding corporation, or if the officers and directors of the Continuing Care enterprise collectively own or control, directly or indirectly, more than 25% of such stock. A holding corporation acquired pursuant to this subsection shall not acquire any investment not otherwise permitted for Continuing Care enterprises pursuant to this statute. In valuing the stock of any holding corporation acquired under this subsection, value shall be assigned to the holding corporation's assets as though the assets were owned directly by the Continuing Care enterprise. A percentage of the holding corporation's assets exactly equal to the Continuing Care enterprise's ownership interest in the holding corporation will be added to the assets of the Continuing Care enterprise in application of the Continuing Care enterprise's investment limitations set forth in this statute.

Investment companies; money market mutual funds.

40. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in shares of a corporation registered and operated as an open-end regulated investment company in accordance with the investment company act of 1940, as amended.

41. Investments under this section, other than investments in money market mutual funds as described in subsection (c), shall be further limited as follows:

- (1) The Continuing Care enterprise's aggregate investment under this provision shall not exceed 25% of its tangible and marketable security assets as shown on such enterprise's most recent audited balance sheet;
- (2) the investment company in which the Continuing Care enterprise acquires shares shall have assets of not less than \$25,000,000 at the date of purchase;
- (3) The Continuing Care enterprise shall not acquire more than 15% of the outstanding shares of any one investment company;
- (4) Investments in the shares of any one investment company shall not exceed 10% of the tangible and marketable security assets of the Continuing Care enterprise as shown on such enterprise's most recent audited balance sheet, as determined on the basis of the cost of such shares to the insurance company at time of purchase.

42. Investments in money market mutual funds shall not be subject to the limitations contained in subsection (39) when the assets of the fund represent qualified investments described elsewhere in this statute. Investments in money market mutual funds shall be further limited as follows:

(1) The investment company in which the Continuing Care enterprise acquires shares shall have assets of not less than \$25,000,000 at the date of purchase; and

(2) Investments in the shares of any one investment company shall not exceed 20% of the tangible and marketable security assets of the Continuing Care enterprise as shown on such enterprise's most recent audited balance sheet, as determined on the basis of the cost of such shares to the Continuing Care enterprise at the time of purchase.

Financial futures contracts; definitions; use for hedging purposes; replication transactions; rules and regulations.

43. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may use financial instruments under this section to engage in hedging transactions, replication transactions and certain income generation transactions or as these terms may be further defined in regulations promulgated by the commissioner. For each hedging transaction in which a Continuing Care enterprise engages, such Continuing Care enterprise shall be able to demonstrate to the [State or Commonwealth Regulator] the intended hedging characteristics and the ongoing effectiveness of the financial instrument transaction or combination of the transactions through cash flow testing or other appropriate analysis.

44. As used in this section:

(1) "Cap" means an agreement obligating the seller to make payments to the buyer, each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interest exceeds a predetermined number, sometimes called the strike rate or price.

(2) "Collar" means an agreement to receive payments as the buyer of an option, cap or floor and to make payments as the seller of a different option, cap or floor.

(3) "[State or Commonwealth Regulator]" means the regulator of Continuing Care enterprises as defined elsewhere in these statutes.

(4) "Counterparty" means the business entity with which a Continuing Care enterprise enters into financial instrument transactions.

(5) "Crediting basis amount" means the amount of interest credited to an account value for the percentage of change on an underlying index.

(6) (A) "Financial instrument" means an agreement, option, instrument or any series or combination thereof:

(i) To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or

(ii) which has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one or more underlying interests.

(B) Financial instruments include options, warrants, caps, floors, collars, swaps, forwards, future and any other agreements, options or instruments substantially similar thereto, or any series or combination thereof.

(7) "Financial instrument transaction" means a transaction involving the use of one or more financial instruments.

(8) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount that a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance or value of one or more underlying interests.

(9) "Forward" means an agreement (other than a future) to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance or value of one or more underlying interests.

(10) "Future" means an agreement traded on a qualified exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance or value of one or more underlying interests.

(11) "Hedging transaction" means a financial instrument transaction which is entered into and maintained to reduce:

(A) The risk of a change in the value, yield, price, cash flow or quantity of assets or liabilities which the Continuing Care enterprise has acquired or incurred or anticipates acquiring or incurring; or

(B) the currency exchange-rate risk or the degree of exposure as to assets or liabilities which a Continuing Care enterprise has acquired or incurred or anticipates acquiring or incurring.

(12) "Income generation transaction" means a financial instrument transaction involving the writing of covered call options which is intended to generate income or enhance return.

(13) "Option" means an agreement giving the buyer the right to buy or receive, sell or deliver, enter into, extend or terminate, or effect a cash settlement based on the actual or expected price, level, performance or value of one or more underlying interests.

(14) "Potential exposure" means:

(A) As to a futures position, the amount of the initial margin required for that position; or

(B) as to swaps, collars and forwards, .5% times the notional amount times the square root of the remaining years to maturity.

(15) "Replication transaction" means a financial instrument transaction or combination of financial instrument transactions effected either separately or in conjunction with cash market investments included in a Continuing Care enterprise's investment portfolio in order to replicate the investment characteristic of another authorized transaction, investment or instrument or operate as a substitute for cash market transactions. A financial instrument transaction entered into by a Continuing Care enterprise as a hedging transaction, as defined in paragraph (11), or income generation transaction, as defined in paragraph (12), authorized pursuant to this section shall not be considered a replication transaction.

(16) "SVO" means the securities valuation office of the National Association of Insurance Commissioners or any successor office established by the National Association of Insurance Commissioners.

(17) "Swap" means an agreement to exchange for net payments at one or more times based on the actual or expected price, level, performance or value of one or more underlying interests.

(18) "Underlying index" means the index, market or financial futures contract used to determine the crediting basis amount.

(19) "Underlying interest" means the assets, other interests, or a combination thereof, underlying a financial instrument, such as any one or more securities, currencies, rates, indices, commodities or financial instruments.

(20) "Warrants" means an option to purchase or sell the underlying securities or investments at a given price and time or at a series of prices and times outlined in the warrant agreement.

Warrants may be issued alone or in connection with the sale of other securities, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another corporation.

45. A Continuing Care enterprise may enter into financial instrument transactions for the purpose of hedging except that the transaction shall not cause any of the following limits to be exceeded:

(1) The aggregate balance sheet value of options, caps, floors and warrants not attached to any other security or investment purchase in hedging transactions may not exceed 110% of the excess of such Continuing Care enterprise's capital and surplus as shown on such enterprise's last audited balance sheet over the minimum requirements of a new Continuing Care enterprise to qualify for a certificate of authority to offer the Continuing Care contracts which the enterprise is authorized to provide;

(2) the aggregate balance sheet value of options, caps and floors written in hedging transactions may not exceed 3% of the Continuing Care enterprise's tangible and marketable security assets; and

(3) the aggregate potential exposure of collars, swaps, forwards and futures used in hedging transactions may not exceed 5% of the Continuing Care enterprise's tangible and marketable security assets.

46. A Continuing Care enterprise may enter into the following types of income generation transactions if:

(1) Selling covered call options on noncallable fixed income securities or financial instruments based on fixed income securities, but the aggregate statement value of assets subject to call during the complete term of the call options sold, plus the face value of fixed income securities underlying any financial instrument subject to call, may not exceed 10% of the Continuing Care enterprise's tangible and marketable security assets; and

(2) selling covered call options on equity securities, if the Continuing Care enterprise holds in its portfolio the equity securities subject to call during the complete term of the call option sold.

47. A Continuing Care enterprise may enter into replication transactions if:

- (1) Such Continuing Care enterprise would otherwise be authorized to invest its funds under this article in the asset being replicated;
- (2) the asset being replicated is subject to all provisions and limitations (including quantitative limits) on the making thereof specified in this article with respect to investments by such Continuing Care enterprise, as if the transaction constituted a direct investment by such Continuing Care enterprise in the asset being replicated;
- (3) as a result of giving effect to the replication transaction, the aggregate statement value of all assets being replicated does not exceed 10% of such Continuing Care enterprise's tangible and marketable security assets; and
- (4) the replication transaction is entered into in accordance with the requirements concerning replication transactions contained in the SVO purposes and procedures manual of the SVO entitled "Purposes and procedures manual of the securities valuation office of the National Association of Insurance Commissioners" as published on December 31, 1999, or any later version as established in rules and regulations adopted by the [State or Commonwealth Regulator].

48. The limitations set forth in subsection (45) regarding financial instrument transactions for the purpose of hedging and in subsection (46) regarding income generation transactions shall not apply to any investments made by a Continuing Care enterprise where such investments are used only to hedge the crediting basis amount a Continuing Care enterprise receives on a particular contract which is determined by an underlying index, provided, however, that such investments shall not in the aggregate amount exceed 10% of the Continuing Care enterprise's tangible and marketable security assets as shown on such enterprise's last audited balance sheet, without the prior written approval of the [State or Commonwealth Regulator]. All investments made pursuant to this subsection shall only be made with counterparties that have a rating designated as "1" by the National Association of Insurance Commissioners (NAIC) in its most recently published valuations of securities manual or supplement thereto, or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO.

49. Upon request of the Continuing Care enterprise, the [State or Commonwealth Regulator] may approve additional transactions involving the use of financial instruments in excess of the limits of subsection (44) or for other risk management purposes pursuant to regulations promulgated by the [State or Commonwealth Regulator].

50. For the purposes of this section, the value or amount of an investment acquired or held under this section by an Continuing Care enterprise, unless otherwise specified in this code, shall be the same value at which assets of

a life insurance company are required to be reported for statutory accounting purposes as determined in accordance with procedures prescribed in published accounting and valuation standards of the National Association of Insurance Commissioners (NAIC), including the purposes and procedures of the securities valuation office, the valuation of securities manual, the accounting practices and procedures manual, the annual statement instructions or any successor valuation procedures officially adopted by the NAIC.

51. Prior to engaging in transactions in financial instruments, a Continuing Care enterprise shall develop and adequately document policies and procedures regarding investment strategies and objectives, recordkeeping needs and reporting matters. Such policies and procedures shall address authorized investments, investment limitations, authorization and approval procedures, accounting and reporting procedures and controls and shall provide for review of activity in financial instruments by the Continuing Care enterprise's board of directors or such board's designee.
52. Recordkeeping systems must be sufficiently detailed to permit internal auditors and regulatory examiners to determine whether operating personnel have acted in accordance with established policies and procedures, as provided in this section. Continuing Care enterprise records must identify for each transaction the related financial instruments contracts.
53. The [State or Commonwealth Regulator] shall have the authority to adopt rules and regulations necessary to implement this section.

Mortgage related securities.

54. Any Continuing Care enterprise heretofore or hereafter organized under any law of this [State or Commonwealth] may invest with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof in:

- (a) Mortgage related securities issued or guaranteed by the federal home loan mortgage corporation and federal national mortgage association but the amount invested in any one such issue shall not exceed the greater of \$750,000 or two percent of the tangible and marketable security assets as shown on such enterprise's last audited balance sheet;
- (b) mortgage related securities issued by or in the name of any private entity which are designated "1" or "2" by the National Association of Insurance Commissioners in their most recently published valuations of securities manual or supplement thereto or are rated investment grade by Standard and Poor's (at least BBB-) or Moody's (at least Baa3) at the time of acquisition. The investment in any one such issue shall not exceed two percent of the tangible and marketable security assets as shown on such enterprise's last audited balance sheet;
- (c) for purposes of this section "mortgage related securities" shall mean a security that either:

(1) Represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

(A) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in U.S.C. §5402(6) of title 42, whether such manufactured home is considered real or personal property under the laws of the state in which it is to be located; and

(B) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or by a mortgagee approved by the secretary of housing and urban development pursuant to U.S.C. §§1709 and 1715b of title 12, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the secretary of housing and urban development pursuant to U.S.C. §1703 of title 12; or

(2) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (1)(A) and (B) or certificates of interest or participations in promissory notes meeting such requirements.

For the purposes of this paragraph, the term "promissory note", when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument; or

(3) involve offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure, and participation interests in such notes:

(A) Where such securities are originated by a savings and loan association, savings bank, commercial bank, or similar banking institution which is supervised and examined by a federal or state authority, and are offered and sold subject to the following conditions:

(i) The minimum aggregate sales price per purchaser shall not be less than \$250,000;

(ii) the purchaser shall pay cash either at the time of the sale or within 60 days thereof; and

(iii) each purchaser shall buy for such purchaser's own account only; or

(B) where such securities are originated by a mortgagee approved by the secretary of housing and urban development pursuant to U.S.C. §§ 1709 and 1715b of title 12 and are offered or sold subject to the three conditions specified in subparagraph (3)(A) to any institution described in such subparagraph or to any Continuing Care enterprise subject to the supervision of the [State or Commonwealth Regulator], or any agency or officer performing like function, of any state or territory of the United States or the District of Columbia, or the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association.

55. Transactions between any of the entities described in subparagraph (3)(A) or (3)(B) involving nonassignable contracts to buy or sell the foregoing securities which are to be completed within two years, where the seller of the foregoing securities pursuant to any such contract is one of the parties described in subparagraph (3)(A) or (3)(B) who may originate such securities and the purchaser of such securities pursuant to any such contract is any institution described in subparagraph (3)(A) or any licensed Continuing Care enterprise or any insurance company described in

subparagraph (3)(B), the federal home loan mortgage corporation, federal national mortgage association, or the government national mortgage association and where the foregoing securities are subject to the three conditions for sale set forth in subparagraphs (3)(A)(i) through (iii).

Medium and lower grade obligations; definitions.

56. As used in this statute:

- (a) "Medium grade obligations" means obligations which are designated "3" by the National Association of Insurance Commissioners in its most recently published valuations of securities manual.
- (b) "Lower grade obligations" means obligations which are designated "4", "5" or "6" by the National Association of Insurance Commissioners in its most recently published valuations of securities manual.
- (c) "Tangible assets" means assets that have a physical form, including both fixed assets, such as machinery, buildings and land, and current assets, such as inventory.
- (d) "Marketable securities" means securities for which there is a ready market on a national securities exchange regulated under the securities exchange act of 1934, as amended, or securities which are regularly traded on a national or regional basis.

(e) "Tangible and marketable security assets" refers to the amount of such assets as shown on the most recent audited balance sheet of the Continuing Care enterprise.

(f) "Aggregate amount" of medium grade and lower grade obligations means the aggregate audited balance sheet value thereof.

(g) "Institution" means a corporation, a joint-stock company, an association, a trust, a business partnership, a business joint venture or similar entity.

(h) "Insurance company" or "insurer" means any life insurance company organized under the laws of this state.

Continuation on Medium and lower grade obligations; limitations; exceptions; Continuing Care enterprise required to adopt written investment plan.

57. No Continuing Care enterprise shall acquire, directly or indirectly, any medium grade or lower grade obligation of any institution if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by such Continuing Care enterprise would exceed 20% of its tangible and marketable security assets. Within this limitation no more than 10% of its tangible and marketable security assets shall consist of lower grade obligations; no more than three percent of its tangible and marketable security assets shall consist of obligations designated "5" or "6" in the valuations of securities manual; and, no more

than one percent of its tangible and marketable securities assets shall consist of obligations designated "6" in the valuations of securities manual. Attaining or exceeding the limit of any one category shall not preclude a Continuing Care enterprise from acquiring obligations in other categories subject to the specific and multi-category limits.

58. No Continuing Care enterprise organized under the laws of this [State or Commonwealth] may invest more than one percent of its tangible and marketable securities assets in medium grade obligations issued, guaranteed or insured by any one institution nor may it invest more than one-half of one percent of its tangible and marketable security assets in lower grade obligations issued, guaranteed or insured by any one institution. In no event, shall such Continuing Care enterprise invest more than one percent of its tangible and marketable security assets in any medium or lower grade obligations issued, guaranteed or insured by any one institution.
59. Nothing contained in this act shall prohibit a Continuing Care enterprise from acquiring any obligations which it has committed to acquire if the Continuing Care enterprise would have been permitted to acquire that obligation pursuant to this act on the date on which such Continuing Care enterprise committed to purchase that obligation.
60. Notwithstanding the limitations of subsection (56), a Continuing Care enterprise may acquire an obligation of an institution in which the Continuing Care enterprise already has one or more obligations, if the obligation is acquired in order to protect an investment previously made in

the obligations of the institution, except that all such acquired obligations shall not exceed one-half of one percent of the Continuing Care enterprise's tangible and marketable security assets.

61. Nothing contained in this act shall prohibit a Continuing Care enterprise to which this act applies from acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held or require such Continuing Care enterprise to sell or otherwise dispose of any obligation legally acquired prior to the effective date of this act.
62. Nothing contained in this act shall permit or be construed as permitting a Continuing Care enterprise to exceed, alter or otherwise circumvent any of the limitations or restrictions applicable to the investments authorized by the statutory requirements for such investments applicable in this [State or Commonwealth].
63. Notwithstanding the provisions of any other statutes, the total investment in medium and lower grade securities shall not exceed the limitations set forth in this section.
64. The board of directors of any Continuing Care enterprise organized under the laws of this [State or Commonwealth] which acquires or invests, directly or indirectly, more than two percent of its tangible and marketable security assets in medium grade and lower grade obligations, shall adopt a written plan for the making of such investments. The plan, in addition to guidelines with respect to the quality of the issues invested in, shall contain diversification standards acceptable to the [State or Commonwealth]

Regulator] which may include, but not be limited to, standards for issuer, industry, duration, liquidity and geographic location.

Investment in asset-backed securities; conditions; definitions.

65. Any Continuing Care enterprise organized under any law of this [State or Commonwealth] may invest, by loans or otherwise, with the direction or approval of a majority of its board of directors or authorized committee thereof, any of its funds, or any part thereof, in asset-backed securities, subject to the following:

- (1) To be a legitimate balance sheet asset under this section, an asset-backed security must, at the time of acquisition, be designated "1" or "2" by the National Association of Insurance Commissioners in its most recently published valuations of securities manual or supplement thereto; and
- (2) the investment in any one issue of asset-backed securities shall not exceed 2% of the tangible and marketable security assets of the Continuing Care enterprise as shown on its most recent audited balance sheet. Each issue designated as provided in paragraph (1) shall constitute a single issue regardless of any other obligations or securities issued by the same or any affiliated issuer; and

(3) the Continuing Care enterprise's aggregate investment in asset-backed securities as provided in this section shall not exceed 20% of the tangible and marketable security assets of such enterprise, as shown on such enterprise's most recent audited balance sheet.

66. As used in this section:

(1) "Asset-backed security" means any security or other instrument representing or evidencing an interest in, a loan to, a participation in a loan to, or any other right to receive payments from a business entity of any type or form, which has as its primary business activity the acquisition and holding of financial assets, directly or through a trustee, for the benefit of such business entity's debt or equity holders;

(2) "Financial asset" means a single asset or a pool of assets consisting of interest-bearing obligations or other contractual obligations representing or constituting the right to receive payment from the asset or pool of assets.

This Act shall take effect as of January 1, 20??.