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Appropriate Housing for Older Clients

*Lawrence A. Frolik**

As an estate planner, you listen to your clients' concerns and give appropriate advice. But you are also proactive; you bring up possible problems that the client should be concerned about. One of those is your client's need to reside in age appropriate housing.

Appropriate housing means housing that is "appropriate" or "good" for the individual. A simple example: If an individual has severe arthritis, living in a two-story house with the bedroom on the second floor and the laundry in the basement is probably not appropriate.

As individuals age, what is appropriate housing changes. The house that your clients may have lived in for the past 30 years may not be the house that they should live in for the next 20.

To assist your clients, ask a few pertinent questions that will encourage them to realistically think about whether their current home will continue to be appropriate for them in the years to come. The older the client, the more important it is to have that conversation.

The variables that determine what is appropriate housing are physical health, mental acuity, financial wherewithal, and marital status.¹ As an estate planner, you likely have a pretty fair understanding of your clients' physical and mental condition. And you certainly know their financial and marital status. However, you probably need to inquire about their living situation. Once your client has told you about their current housing, you need to be prepared to offer knowledgeable advice.

You should be familiar with the housing choices that are available to them. The housing market for those age 60 and older is quite varied. How to choose?

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¹ See Jami Barnett, *11 types of senior living options*, CONSUMER AFF., <https://www.consumeraffairs.com/health/senior-living-options.html> [<https://perma.cc/HDG3-2PXD>] (last updated Jan. 10, 2020).

Suggest to your client that they must first decide whether they wish to live in the community at large or whether they might prefer to live in a community dedicated to housing older residents.

Clients who want to live in the community at large don't need much advice. Just encourage them to think about the kind of housing that will meet their needs in the future.² Suggest that they look online at the AARP Livability Index that lists seven key factors.³ They should be considering housing that has no stairs, little maintenance, and is located near shops, services, and good medical care. Whether they downsize to a smaller house, a condominium, or an apartment, they should focus on not what they are giving up – a house full of memories – but what they are getting – no driveway to shovel or no steps to climb.

If your client is considering moving away, perhaps for better weather or to be closer to the grandchildren, you might advise them to think about renting before purchasing a house or condominium. By renting, they can learn which neighborhood will best fit their needs. Maybe living very close to a child is a good idea or maybe a little more distance would be better for the relationship. Also remind clients that they will age. Moving to a two-story townhouse on a golf course sounds great today, but will it make sense ten years from now?

If the task of moving seems just too daunting, suggest that they look on-line for downsizing hints⁴ or consider hiring a professional “downsizing” advisor.⁵ Often just having a someone to tell the homeowner what to discard, what to give to charity, and what to keep, is all that is required to spark the older client to agree to move. You can point out that downsizing is also beneficial to their heirs. If the client throws out the family “heirlooms,” they may save their children a good deal of emotional pain – “I can't throw this away, Mom loved it” – and possible family disharmony over who gets what.

Some clients, some still in their 50s, are attracted to housing designed for older residents, age-restricted housing.⁶ “Retirement” communities are not just located in the “sun” states, such as Arizona or

² SALLY BALCH HURME & LAWRENCE A. FROLIK, WISE MOVES: CHECKLIST FOR WHERE TO LIVE, WHAT TO CONSIDER, AND WHETHER TO STAY OR GO 14 (2020).

³ AARP Livability Index, AARP, <http://livabilityindex.aarp.org> [https://perma.cc/NF6P-8TYT] (last updated June 2020) (providing seven livability categories: housing; the neighborhood; transportation; environment; health; engagement; and opportunity).

⁴ See, e.g., Sarah Moore, *How to Downsize Your Home*, LIFE STORAGE BLOG (July 26, 2018), <https://www.lifestorage.com/blog/moving/how-to-downsize-your-home> [https://perma.cc/4GFY-DLCQ].

⁵ E.g., NAT'L. ASS'N. OF PRODUCTIVITY AND ORG. PROF., <https://www.napo.net> [https://perma.cc/9TG5-DL63].

⁶ Age restricted housing is protected by federal law. 42 U.S.C. § 3607(b). Some states also have laws protecting the right to discriminate in favor of older residents.

Florida. Age-restricted housing is almost everywhere. Many cater to “active” older individuals. There are over 2,000 active adult communities across the United States,⁷ If you live in a mid-size city or larger, there is almost certainly active adult housing nearby.

These communities like to advertise that they are designed for “active retirees.”⁸ The “communities” often consist of several hundred living units. Some feature single-family homes, while others are multistory condominiums. A few are rental apartment complexes. Most offer a wide variety of amenities that may include tennis courts, a swimming pool, walking paths, a dog park, a library, a fitness center, and perhaps even tanning beds.

What’s not to like? Well, if your client’s mental or physical health declines, they may find the active retirement community is no longer a good fit. They may need in-home care rather than a tanning bed. Usually these communities, however, do not provide any health care assistance.⁹ Getting personal care assistance in a semi-isolated retirement community can be difficult, which is why so many assisted living facilities and nursing homes are located in urban areas, often near public transportation.

Advise the client to consider how long the community has been in operation. If it has recently opened, the average age of the residents is likely to be fairly young, often in the mid-60s. Clients, who are age 67 when they move in, will find themselves among others of a similar age. But as time passes, the average age of the community will rise. The morning jogging group will become the mid-day walkers. The heavier weights in the fitness room will gather dust. What was once a vibrant, active community gradually will become a collection of older, not so active, retirees.

If the community has been in operation for more than 15 years, the average age is likely to be much higher as residents age. A 65-year old may not want to move into a community where over half the residents are age 75 or older. Or the client may like the idea of being one of the “younger” folks.

⁷ Brad Mitchell, *The 55 Best 55+ Active Adult Communities of 2019*, 55PLACES.COM (July 22, 2020), <https://www.55places.com/blog/the-55-best-55-active-adult-communities-of-2019> [<https://perma.cc/3LMB-Q9LF>].

⁸ Javier Simon, *The Best 55+ Active Retirement Communities*, SMARTASSET (Mar. 12, 2020), <https://smartasset.com/mortgage/the-best-55-active-retirement-communities> [<https://perma.cc/FU6Z-U9GY>].

⁹ Brad Breeding, *The Pros and Cons of 55+ Active Adult Communities*, MYLIFESITE (Apr. 9, 2018), <https://www.mylifesite.net/blog/post/pros-cons-55-active-adult-communities/> [<https://perma.cc/T5M4-KEHM>].

There are other age-restricted housing arrangements ranging from a single apartment building to an entire town.¹⁰ Here the attraction is less on being “active” and more on the lack of younger residents. Be sure your client appreciates the reality of resident age restrictions. Federal law permits ages restriction housing either solely for those age 62 or older and alternatively for those age 55 and older, as long as 80 percent of the residents are age 55 or older.¹¹ If the community is restricted to those age 62 and older, your 65-year-old client who is married to a 60-year-old will not be permitted to live there with his spouse.¹² Suppose clients, who are both age 70, move in. Later their 45-year-old childless daughter, who has just gone through a messy divorce, wants to move in for a few months until she stabilizes her life. She will not be allowed to do so. Nor will another couple’s grandson, age 22, be permitted to move in with them for a several weeks after college graduation until he moves to Japan to teach English.

If the community is limited to those age 55 and older, your clients must realize that as long as 80 percent of the residents are 55 or older, the community can have much younger residents.¹³ Your clients may find themselves living next to a neighbor, age 70, who shares her townhouse with her unemployed 40-year-old son, who spends much of the day sitting on the porch smoking and listening to the radio.

Whether an active retirement community or age-restricted one, advise your client to learn who owns the common areas and the recreational facilities. Some communities own and operate these common areas. That gives the residents some protection as to the monthly cost and assurance that the common areas will be properly maintained. If the common areas are owned by an outside party, there is the danger that the costs may escalate or the quality of maintenance may decline.¹⁴

For clients more focused on the future, a Continuing Care Retirement Community (CCRC) may be a good fit.¹⁵ The CCRC model, or Life Plan Community as some now call themselves,¹⁶ promises its re-

¹⁰ *Definitions of Community Types*, RETIREMENTLIVING, <https://www.retirementliving.com/arcd-community-types> [<https://perma.cc/HC5M-MZ92>].

¹¹ 42 U.S.C. § 3607(b); 24 C.F.R. §§ 100.303-305 (2009).

¹² 24 C.F.R. § 100.303(b).

¹³ *Id.* §§ 100.304, 100.305.

¹⁴ 23 GERRY W. BEYER & STUART M. SAFT, WEST’S LEGAL FORMS, REAL ESTATE TRANSACTIONS (COMMERCIAL) § 49:1 (2019).

¹⁵ Michael Brohawn & Kim Natovitz, *Strategies to Manage Long Term Care Risks*, 47 EST. PLAN. 42, 46-47 (2020).

¹⁶ Katherine C. Pearson & David Sarcone, *Ongoing Challenges for Pennsylvania Continuing Care and Life Plan Communities*, 90 PA. BAR ASS’N. Q. 1, 1 (2019); *Life Plan Community (CCRC) Software*, MATRIXCARE, <https://www.matrixcare.com/life-plan-community-software> [<https://perma.cc/CTA7-N4SB>].

sidents that they will never have to move again. The traditional model for a CCRC offered independent living, assisted living, and skilled nursing care.¹⁷ New residents initially moved into independent living and enjoyed a nightly meal in the community dining room. If their physical or mental health declined and they required daily personal assistance, they would move into assisted living. If their health declined further or they became bedridden, they moved into the CCRC's nursing home.¹⁸

The original model for a CCRC required a new resident to pay a large, nonrefundable admission fee – usually several hundred thousand dollars – and then pay a monthly occupancy fee – often \$3,000 to 5,000 or more. In return, the CCRC promised to provide whatever level of care the resident required without an increase in the monthly occupancy fee even though the resident was receiving costly personal care. The admission fee was essentially insurance that paid for the higher costs of assisted living and nursing care for the minority of residents who eventually required those levels of care.¹⁹

Today, almost all CCRCs offer alternate payment plans. The admission fee is usually partially refundable based on how long the resident lived there, usually until the resident dies.²⁰ The CCRC may also offer a lower admission fee for residents who agree to pay a higher monthly occupancy fee if they move into the assisted living or nursing care facility. Some CCRCs no longer offer nursing home care or offer it off-site.

For clients thinking of moving to CCRC, be sure that they investigate its finances. Because they will pay a large upfront admission fee, they must be assured that the CCRC will be able pay for its future care obligations. The client should ask to see the CCRC's financial statements and should also contact the appropriate state authority and inquire about the CCRC's financial condition. Note that states regulate CCRCs in a variety of ways but they all require disclosure about the financial standing of the community.²¹ Which state agency regulates CCRCs varies. In Pennsylvania, for example, CCRCs are regulated by the Pennsylvania Department of Insurance.²²

CCRCs are both profit and nonprofit entities with some nonprofits having some association with a religious entity. Physically, CCRCs are quite varied. Some are high rises, some look like three or four-story

¹⁷ 2 A. KIMBERLEY DAYTON, ET AL., ADVISING THE ELDERLY CLIENT § 21:41 (2020); see Brohawn & Natovitz, *supra* note 15, at 46-47.

¹⁸ LAWRENCE A. FROLIK & MELISSA C. BROWN, ADVISING THE ELDERLY AND DISABLED CLIENT ¶ 16.04, 1, 1 (2d ed., Mar. 2020).

¹⁹ *Id.*

²⁰ *Id.* at 2.

²¹ *E.g.*, N.C. GEN. STAT. §§ 58-64-1 to -85 (2020); FROLIK & BROWN, *supra* note 18, at 4-6.

²² 40 PA. CONS. STAT. §§ 3201-25 (2020).

apartment complexes, while others feature attached townhouses or even small houses.²³ Typically, the CCRC will have a central core area that houses residents who require assisted living or nursing care, and also contain common areas such as the dining room, a library and often an auditorium. If the CCRC permits an overnight visit by a prospective resident, your client should take advantage of that opportunity in order to better appreciate what it would mean to live there. They should also ask current residents about the quality of life in the CCRC.²⁴

Couples sometimes revisit their estate plans when one of them begins to exhibit signs of dementia. If so, you should discuss possible residential options if the dementia becomes too severe for the individual to continue to live at home. In the past, a nursing home was often the only option. Today, assisted living is almost always a better choice. Most assisted living facilities, which cost about half as much as a nursing home, can house individuals with dementia.²⁵ Often, individuals with moderate or severe dementia are housed on separate, secured floors or separate wings.

Also suggest to the clients to consider a memory care unit, which is residential community that specializes in caring for individuals with dementia.²⁶ Some are stand-alone facilities, while others are part of a larger residential entity such as assisted living or nursing home.²⁷ Most residents enter a memory care unit when the dementia has progressed to the moderate or severe stage. Memory care units have professional staffers trained to care for those with dementia and understand how to respond to all aspects of the disease, including its effect on a spouse and the family.²⁸

Memory care units are licensed by the state, which regulates who they can admit.²⁹ Admission requires assessment of potential residents to ensure that the unit has the ability to meet their particular needs. The

²³ FROLIK & BROWN, *supra* note 18, at 16, 20.

²⁴ NanOak, *Questions to Consider When Evaluating Continuing Care Contracts*, NAT'L SENIOR CITIZENS L. CTR. (Nov. 11, 2009), <http://nslcarchives.org/index.php/questions-to-consider-when-evaluating-continuing-care-contracts> [<https://perma.cc/9RVP-W9HM>].

²⁵ *Residential Care for Dementia: Assisted Living, Memory Care, Nursing Homes & Other Options*, DEMENTIA CARE CENT., <https://www.dementiacarecentral.com/memory-care-vs-assisted-living/> [<https://perma.cc/EBF4-FFU5>] (last updated July 20, 2020).

²⁶ *Senior Housing 101, A PLACE FOR MOM*, <https://www.aplaceformom.com/planning-and-advice/senior-housing-101#memory-care> [<https://perma.cc/A9FG-SRHQ>].

²⁷ DEMENTIA CARE CENT., *supra* note 25.

²⁸ *What is Memory Care?*, BROOKDALE SENIOR LIVING, <https://www.brookdale.com/en/our-services/memory-care/what-is-memory-care.html> [<https://perma.cc/AE2S-9XEJ>].

²⁹ Paula C. Carder, *State Regulatory Approaches for Dementia Care in Residential Care and Assisted Living*, 57 GERONTOLOGIST 776, 776 (2017).

unit creates a written care plan for each resident, reviews it periodically, and amends it as needed. Memory care units are usually more expensive than assisted living but less expensive than a nursing home. Free standing units are often more costly than those associated with a larger facility, such as a nursing home.

Although advising clients about the need for appropriate housing will never become a profit center for an estate planner, it is a way to assist clients to better face a significant aspect of aging. And a happier, more content client, is always a more appreciative client.

