*** § 4663. Release of escrowed funds to the operator.** Escrowed funds shall not be released to the operator unless:

1. construction or purchase of the community or an approved phase of a community has been substantially completed, an occupancy permit covering the living unit has been issued by the local government having authority to issue such permits, and the living unit becomes available for occupancy; or

1-a. the operator has submitted an application to the commissioner, on forms approved by the department, for authorization to use escrowed entrance fees to assist the operator in financing the construction or purchase of a proposed community, and the commissioner, in accordance with such regulations as may be promulgated by the council, has approved such application. The commissioner shall not approve such application unless satisfied that the following conditions have been met:

a. the operator has executed contracts accompanied by an entrance fee or entrance fee deposit for at least seventy percent of all proposed living units or an approved phase of a community;

b. the aggregate entrance fees or deposits received or receivable by the operator pursuant to executed fee for service continuing care contracts equal at least ten percent of the total of the entrance fees due at occupancy for at least seventy percent of all proposed living units or an approved phase of a community;

c. the operator has entered into a contract for the construction or purchase of the community which contract has a fixed maximum price and, if a construction contract, the contractor has secured a performance or completion bond for the benefit of the operator;

d. the operator has received a firm commitment for a permanent mortgage loan or other long term financing and conditions to the commitment prior to disbursement of funds thereunder, other than completion of construction or purchase, are substantially satisfied;

e. the total amount of escrowed entrance fees or deposits that may be approved for release under this subdivision shall not exceed fifteen percent of the total costs of acquiring, constructing and equipping the proposed community;

f. use of the entrance fees or deposits shall not impair the operator's ability to comply with the requirements of section forty-six hundred sixty-four of this article;

g. the operator's executed contracts or amended contracts referred to in paragraph a of this subdivision, and all contracts generating the entrance fees for which release is sought, contain a provision conspicuously disclosing the intended use of entrance fees, and that all refunds shall be in accordance with the otherwise applicable provisions of this article, the regulations adopted pursuant thereto and the contract;

h. the use of the entrance fees or deposits under this subdivision will promote the efficient and cost-effective acquisition or development of the proposed community; and

i. the release, availability and use of the entrance fees comply with any other conditions the council shall establish.

2. if the entrance fee gives the resident the right to occupy a living unit which has been previously occupied, the entrance fee and any interest earned thereon shall be released to the operator when the living unit becomes available for occupancy by the new resident; or

3. if the entrance fee applies to a living unit which has not been previously occupied, the entrance fee and any interest earned thereon shall be released to the operator when the commissioner is satisfied that:

a. Aggregate entrance fees received or receivable by the operator pursuant to executed fee-for-service continuing care contracts equal at least ten percent of the total of the entrance fees due at occupancy for

at least seventy percent of all proposed living units or an approved phase of a community.

b. In lieu of any escrow required pursuant to this article, an operator is entitled to post a letter of credit from a financial institution, negotiable securities or a bond by a surety authorized to do business in this state, in a form approved by the commissioner and in an amount not to exceed the amount established in paragraph a of this subdivision. The operator shall execute the letter of credit, negotiable securities or bond in favor of the commissioner on behalf of individuals who are entitled to a refund of entrance fees from the provider.

* NB There are 2 § 4663's