§ 4675. Priority reservation agreements; after obtaining a certificate of authority. The provisions of this section apply to entities that seek approval to enter into priority reservation agreements and to solicit, collect or receive priority reservation fees, with respect to a fee-for-service continuing care retirement community, after obtaining a certificate of authority under this article.

1. No person, partnership, corporation or other entity shall solicit, collect or receive any priority reservation fee or enter into any agreement relating to the payment of any priority reservation fee with respect to any fee-for-service continuing care retirement community operated or to be operated within the state without first obtaining the written authorization of the commissioner. The commissioner shall not grant such authorization to an entity that has obtained a certificate of authority unless the requirements of this section and any applicable regulations are met. Upon obtaining the authorization of the commissioner under this section, an operator may enter into cancelable priority reservation agreements with prospective residents and solicit, collect and receive refundable priority reservation fees for direct deposit into an escrow account for the purpose of guaranteeing to prospective residents an opportunity for priority placement in the fee-for-service continuing care retirement community for which the operator has obtained a certificate of authority. A priority reservation fee shall not exceed two thousand dollars unless the commissioner, in the discretion of such commissioner, establishes that a priority reservation fee may exceed two thousand dollars. A non-refundable priority reservation agreement application fee shall not exceed the maximum amount established by the commissioner, in such commissioner's discretion.

2. In order to receive authorization by the commissioner to enter into cancelable priority reservation agreements and to solicit, collect or receive any refundable priority reservation fee, an operator shall apply for such authorization on forms or in a format prescribed by the commissioner and, as part of such application shall submit the following information:

a. a description of the applicant's plan to implement the process of entering into cancelable priority reservation agreements and to solicit, collect or receive refundable priority reservation fees;

b. the name and address of the escrow agent and a copy of the escrow agreement required pursuant to this section;

c. a copy of the instructions to the escrow agent regarding the issuance of refunds;

d. a copy of the forms to be used to document a request for a refund of a priority reservation fee and the issuance of such refund;

e. draft copies of all proposed marketing materials, provided that copies of the final marketing materials must be submitted as soon as they are available provided further that provision of such materials shall not be construed to require approval of such materials by the department or the council;

f. a description of the sales office and drawings of any proposed model units;

g. a copy of the proposed priority reservation agreement; and

h. any other information as may be required by regulations adopted pursuant to this article.

3. a. As a condition to receiving the commissioner's authorization under this section, an operator shall establish a government insured interest-bearing account, which earns interest at a rate which is consistent with prevailing interest rates, and enter into an escrow agreement with a New York state bank, New York state savings and loan association or New York state trust company for the deposit of any priority reservation fees collected by the operator pursuant to this section, which escrow funds shall be subject to release as provided for in this section.

b. The escrow agreement shall state that its purpose is to protect prospective residents who have paid a priority reservation fee to the operator in order to guarantee prospective residents an opportunity for priority placement in the fee-for-service continuing care retirement community for which the operator has been issued a certificate of authority and that, upon presentation of evidence of compliance with applicable provisions of this article, or upon order of a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or portions thereof, together with any interest accrued thereon or earned from investment of the funds, to the operator, the prospective resident or the prospective resident's legal representative as directed, within fifteen business days of receipt of the notice by the escrow agent.

c. Checks, drafts, and money orders for deposit from prospective residents shall be made payable to the escrow agent only.

d. All funds deposited in the escrow account shall remain the property of the prospective residents until released to the operator in accordance with this section, and the funds shall not be subject to any liens or charges by the escrow agent or judgments, garnishments, or creditors' claims against the operator.

e. At the request of the operator, the commissioner or a prospective resident, the escrow agent shall issue a statement indicating the status of the escrow account.

f. A prospective resident's escrowed funds shall not be released to an operator unless the prospective resident has elected to apply the priority reservation fee to an actual entrance fee or deposit on an entrance fee. Upon release to the operator, a prospective resident's escrowed priority reservation fee funds shall be deposited into the entrance fee escrow account provided for in section forty-six hundred sixty-two of this article; provided that the operator may retain such funds and shall not be required to deposit them in the entrance fee escrow account if the prospective resident's living unit is available for occupancy.

g. If the funds in an escrow account under this section, and any interest thereon, are not released to the operator within such time as provided by rules and regulations adopted by the council, then such funds shall be returned by the escrow agent to the persons who had made the payments or the person's legal representative.

h. A priority reservation fee, and the interest accrued thereon, held in escrow shall be returned by the escrow agent to the person who paid the fee upon receipt by the escrow agent of notice from the operator or the person who paid the fee or the person's legal representative that the priority reservation agreement has been canceled. Any priority reservation fee, and the interest accrued thereon, shall be returned by the escrow agent to the person who paid the fee or the person's legal representative within fifteen business days of receipt by the escrow agent of notice of cancellation of the priority reservation agreement.

i. Refunds of priority reservation fees upon the death of a prospective resident will be made upon the same basis as refunds upon cancellation of a priority reservation agreement.

j. Nothing in this section shall be interpreted as requiring the escrow of any non-refundable priority reservation agreement application fee, designated as such in the cancelable priority reservation agreement, which fee is received by the operator from a prospective resident.

4. Any marketing materials, including all materials associated with a sales office and model units, used in the solicitation of priority reservation agreements or priority reservation fees shall, at a minimum contain the following:

a. a statement that the purpose of the marketing material is for the operator to offer prospective residents an opportunity for a guaranteed priority placement in a fee-for-service continuing care retirement community by entering into cancelable priority reservation agreements and accepting refundable priority reservation fees;

b. a statement that the cancelable priority reservation agreement is not a fee-for-service continuing care contract and may be canceled by the person entering the agreement or the person's legal representative at any time, without cause; and

c. a statement that any priority reservation fees paid shall be held in escrow and shall be refunded, together with interest accrued at prevailing rates, to the person paying the fee or the person's legal representative upon request and cancellation of the priority reservation agreement.

5. Any priority reservation fees with respect to a fee-for-service continuing care retirement community may be collected only after issuance of a cancelable priority reservation agreement to the person paying the fee, which agreement shall contain the following information:

a. the name and location of the community;

b. the name and address of the operator;

c. the name, address and phone number of a contact person;

d. the name and address of the person paying the fee;

e. the name and address of the escrow agent;

f. the type of unit being reserved;

g. the current entry fee and monthly care fee, together with a statement explaining that these fees are subject to change and may be changed by the time the prospective resident has entered into a fee-for-service continuing care contract with the operator;

h. the amount of any non-refundable priority reservation agreement application fee;

i. a notice in bold twelve point type that the cancelable priority reservation agreement does not obligate the person entering into the agreement in any way; that there is no guarantee by the operator that the current fees set forth in the agreement will not change; that the person paying the priority reservation fee may receive a refund of the fee plus interest accrued at prevailing rates upon request; and that he or she shall be entitled on a priority basis to apply the priority reservation fee to an actual entrance fee or entrance fee deposit on a unit not already under contract;

j. the signature of the person paying the fee and the signature of the operator or the operator's agent;

k. a statement that the effective period of the agreement shall not exceed the duration of the commissioner's authorization; and

l. an outline of the fees, their associative service, and guidelines used for changing the residency status of a resident.

6. a. In order to approve an application under this section, the commissioner shall have determined that:

(i) the operator has satisfied the requirements of this section and any applicable regulations; and

(ii) the operator can be expected to meet its obligations in accordance with this section and in accordance with its priority reservation agreements with prospective residents.

b. If the commissioner approves an application, the commissioner shall issue a written authorization to the operator authorizing the operator to enter into cancelable priority reservation agreements and collect refundable priority reservation fees from prospective residents concerning the fee-for-service continuing care retirement community.

c. The commissioner's authorization shall remain in effect as long as the operator's certificate of authority for its community remains in effect; provided that the commissioner may rescind the authorization at any time for just cause, including any material misstatement of fact or

misrepresentation in any of the application materials or any materials subsequently disseminated.

d. The operator shall provide written notice to all parties who have entered into cancelable priority reservation agreements of the commissioner's recision of authorization to enter into cancelable priority reservation agreements.

e. The commissioner shall provide written notice to the escrow agent of the commissioner's recision of authorization to enter into cancelable priority reservation agreements, including instructions to release funds held in escrow to the persons who have paid refundable priority reservation fees.