

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES  
BUREAU OF CORPORATIONS, SECURITIES AND LAND DEVELOPMENT  
MOBILE HOME AND LAND RESOURCES DIVISION  
LIVING CARE

(By authority conferred on the corporation and securities bureau by section 39 of Act No. 440 of the Public Acts of 1976, as amended, being S554.839 of the Michigan Compiled Laws)

PART 1. GENERAL PROVISIONS R 554.1 Definitions.

Rule 1. (1) As used in these rules:

(a) "Act" means Act No. 440 of the Public Acts of 1976, as amended, being S554.801 et seq. of the Michigan Compiled Laws.

(b) "Advertisement" means a written, printed, or pictorial communication, or a communication by means of a recorded telephone message or message spoken on the radio, television, or similar communications media, published in connection with an offer or sale of a life interest or long-term lease.

(c) "Agent" means any individual who represents a facility in effecting or attempting to effect the offer or sale of a life interest or long-term lease.

(d) "Assessment" means a charge which is not required of all residents and which is not part of the monthly service fee. The term excludes charges for goods or services requested by a resident or group of residents.

(2) As used in the act, "material changes," whether favorable or unfavorable, includes any of the following:

(a) A variation of 10% or more in any of the following items as such items appeared on the facility's most recent pro forma financial plan filed with the bureau:

(i) Total assets.

(ii) Total liabilities.

(iii) Retained earnings.

(iv) Equity.

(v) Fund balance or deficit.

(vi) Long-term debt.

(b) A variation of 10% or more between the actual total revenue, total expenses or total cash flow and the respective amounts forecast in the facility's most recent pro forma financial plan filed with the bureau which occurred during any period of 6 consecutive months.

(c) Any substantive amendments or changes in the lease or membership agreement or the facility's rules and regulations.

(d) Any significant alteration in the care, amenities, or services indicated in the lease or membership agreement and the disclosure statement.

(e) Any change in a facility's tax status.

(f) Termination of the facility's sponsorship, or a portion thereof, by a religious, nonprofit, or proprietary organization or group, or the establishment of any new sponsorship.

(g) Any of the following:

(i) Denial, suspension, or revocation of any license, certification, or registration held by the facility.

(ii) The entry of any cease and desist order or order similar in nature.

(iii) The imposition of any sanction specifically in the form of a reprimand or censure by a state or federal agency.

(iv) The entry of a temporary or permanent injunction by a court of competent jurisdiction.

(h) Any assessment of more than 10% of the current average monthly service fee.

(i) Any increase in the monthly service fee of more than 10% of the current average monthly service fee.

(j) Any change in the application of proceeds received from entrance fees.

(3) As used in section 3(8) of the act, "operating expenses" includes 1 1/2% per month of the entrance fee.

(4) Terms defined in the act have the same meanings when used in these rules.

History: 1991 AACS.

R 554.2 Unreasonable risk explained.

Rule 2. An offering creates an unreasonable risk to prospective or present members under section 17(c) of the act if any of the following offering factors are present:

(a) The officers or directors of a facility have received, or shall receive, unreasonable compensation. The following compensation is reasonable:

(i) Compensation specifically approved by an appropriate state or federal agency.

(ii) Compensation which corresponds to that received by those performing the same or similar tasks in facilities of a comparable size or situation, or both, where payment of the compensation is proportionate to the amount of services provided.

(b) With respect to the offering, management companies, consultants, or their affiliates have received, or shall receive, unreasonable compensation. Compensation is reasonable if specifically approved by an appropriate state or federal agency or if the compensation corresponds to that received by those performing the same or similar services in relation to facilities of a comparable size or situation. A representation by the facility that the compensation paid is reasonable shall create a rebuttable presumption that such compensation is reasonable.

(c) The offering provides for compensation to officers, directors, or persons affiliated with them for services, care, or amenities other than in the normal course of employment with the facility, unless appropriate steps have been taken by the facility to insure that the services, care, or amenities are necessary, that the amount paid for these services, care, or amenities does not exceed that which the facility would have paid to obtain these services, care, or amenities from independent parties, and that the officers, directors, or persons affiliated with them were previously engaged in the business of rendering these services or selling or leasing these goods as an ordinary and ongoing business independent of the facility's business. A representation by the facility that the compensation paid is reasonable shall create a rebuttable presumption that such compensation is reasonable.

(d) Monthly service fees or assessments are not used for the purpose designated.

(e) With respect to an offering by a facility seeking registration or exemption, the offering fails to provide for adequate reserves or other adequate revenue sources for operations, repairs, and renovations. The bureau may utilize an industry representative or accounting representative to determine the adequacy of reserves or revenue sources as provided by section 23 of the act.

(f) With respect to a facility making an offering, the facility has been in operation less than 1 year or is in the development stage at the time of registration and has failed to achieve reservations for not less than 75% of the units at the date of first occupancy, unless the bureau finds that the financial condition of the facility or the escrow arrangements established in connection with the offering are such as to outweigh any special risk.

History: 1991 AACS.

R 554.3 Refund policy; monthly fee; withholding estimated cost of refurbishing; refunding actual cost of refurbishing.

Rule 3. (1) For the purpose of determining the amount of the refund payable under section 10 of the act to a member who cancels his or her residency, the monthly fee shall be deemed earned by a facility on a daily basis.

(2) If a facility charges a resident for the refurbishing of the unit upon cancellation of the residency, the facility may initially hold back from the member's refund the estimated cost of refurbishing. Within 120 days after notice of cancellation, or 60 days after the member moves out, whichever occurs first, the facility shall provide the member with an itemized written statement showing the actual cost of refurbishing the vacated unit and a refund of any amounts withheld in excess of the actual cost of refurbishing.

History: 1991 AACS.

R 554.4 Filing of application.

Rule 4. For the purposes of section 8(7) of the act, an application is not considered filed unless all required forms and fees are received by the bureau in compliance with the act and these rules. Upon receipt of the forms and information specified in section 8 of the act and the appropriate fees, the bureau shall issue a written notice of filing pursuant to section 8(7) of the act.

History: 1991 AACS.

R 554.5 Life interest and long-term lease agents.

Rule 5. (1) Pursuant to the provisions of section 27 of the act, a life interest or long-term lease agent may participate in the offer or sale of a life interest or long-term lease if the agent meets all of the following criteria:

- (a) Does not engage in the offer or sale of life interests or long-term leases for more than 1 principal.
- (b) Does not execute sales contracts of life interests or long-term leases or collect funds pertaining thereto unless the agent has written authorization from the facility.
- (c) Has not previously employed, in connection with the purchase or sale of a life interest or long-term lease, a device, scheme, or artifice to defraud.
- (d) Has not violated, or failed to comply with, the act, these rules, or an order of the bureau.
- (e) Has not engaged in unfair, unconscionable, or deceptive business practices. Examples are recommending the purchase of life interests or long-term leases without reasonable grounds to believe that the recommendations are suitable for the individual on the basis of information furnished by the individual after such reasonable inquiry as may be necessary under the circumstances.
- (f) Has not been convicted of a misdemeanor involving deceit and has not been convicted of any felony.
- (g) Has not been the subject of an administrative order of a state or federal agency relating to, or been permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing, any conduct or practice involving any aspect of the securities, franchise, real estate, banking, or insurance business.
- (h) Has not been the subject of an order of a state, federal, or self-regulatory agency denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or franchise agent or any other similar registration.

(2) The bureau may, by order, waive any of the criteria specified in subrule (1) of this rule and allow a person to participate in the offer or sale of a life interest or long-term lease as an agent.

History: 1991 AACS.

R 554.6 Resident representative to board of directors; election; expenses.

Rule 6. (1) Pursuant to the provisions of section 12 of the act, the election of the resident advisory representative to the board of directors shall provide for at least 1 alternate to serve when the resident representative is disabled or unable to attend board meetings.

(2) The expenses of the resident advisory representative to the board related to his or her duties as a resident advisory representative shall be borne by the facility.

(3) The resident advisory representative shall not have a vote unless the board grants such voting rights.

History: 1991 AACS.

## PART 2. REGISTRATION

R 554.21 Application for registration of facility; accompanying documents.

Rule 21. (1) Without limiting the bureau's power to require additional information under section 8(1)(t) of the act, an application for registration of a facility shall be accompanied by all of the following documents:

- (a) Three copies of the proposed disclosure statement.
- (b) If the facility is a corporation, a copy of its current articles of incorporation, with all amendments thereto, and a copy of the most recent executed Michigan annual report.
- (c) A copy of the life interest or long-term lease agreement.
- (d) The facility's current rules, policies, and procedures required for implementation of the act.

(e) An executed irrevocable consent to service of process, pursuant to the provisions of section 25 of the act, on the prescribed form, unless the facility is a Michigan corporation.

(f) Other documents or information establishing the legal and economic relationship between the facility and the purchaser of a life interest or long-term lease.

(g) The pro forma financial plan pursuant to the provisions of section 16 of the act.

(h) Most recent audited financial statements and, if the audited financial statements are more than 4 months old, current unaudited statements.

(2) A facility may request, and the bureau may grant, pursuant to section 40 of the act, confidentiality as to any document that is received pursuant to this rule. Pro forma financial statements, marketing plans, and feasibility studies of a facility shall ordinarily be granted confidentiality.

History: 1991 AACS.

#### R 554.22 Disclosure statement; format and content.

Rule 22. The disclosure statement shall be in the format and contain the information prescribed by the bureau.

History: 1991 AACS.

#### R 554.23 Disclosure statement; additional required information.

Rule 23. As provided in section 8(4) of the act, the following information, where applicable, shall be set forth in the forepart of the disclosure statement in not less than 12-point type:

(a) A statement that monthly service fees are subject to increase by the facility.

(b) A statement that members may be charged assessments, and a statement of the method used to allocate the assessments.

(c) A statement as to all of the following upon the death of a member:

(i) Whether the life interest or long-term lease is cancelled.

(ii) Whether all funds revert to the facility or to the member's heirs, assignees, or representatives.

(iii) Whether any part of the entrance fee is refundable.

(d) If a facility uses a name designating or inferring a religious affiliation, a statement explaining the relationship with the religious organization or group or a statement that there is no relationship.

(e) A statement that a member's life interest or long-term lease investment is subject and subordinate to any mortgages on the facility or any other creditors occupying a preferred status.

(f) A statement that the purchase of a life interest or long-term lease may involve a high degree of risk, and that the prospective purchaser should seek advice from an attorney or other financial adviser who is independent of the facility.

History: 1991 AACS.

#### R 554.24 Notification of change or increase in fees; form.

Rule 24. Notification to the bureau of changes or increases in fees shall be in the format and contain the information prescribed by the bureau.

History: 1991 AACS.

#### R 554.25 Filing of statements and reports.

Rule 25. Pursuant to the authority granted by sections 22(3) and 23(1) of the act, a facility shall file each of the following with the bureau:

(a) Within a period of 120 days following the end of each of its fiscal years, a copy of the facility's audited financial statements for the fiscal year or unaudited financial statements reviewed or compiled by a certified public accountant if the requirement for audited financial statements is waived by the bureau.

(b) Within a period of 120 days following the end of each of its fiscal years, an annual report of sales and the proceeds derived therefrom.

(c) As often as required by the bureau, but not more frequently than once every 3 months, an occupancy report stating the percentage of occupancy of the facility, the number of occupants who have life interests or long-term leases, and the number of members who have moved out of the facility since the last occupancy report.

History: 1991 AACS.

R 554.26 Membership contract; type; legibility; acceptance; rescission.

Rule 26. (1) All membership contracts shall be printed in 12-point or larger type and shall be prepared in a manner to ensure legibility and ease of reading.

(2) A disclosure statement and all proposed agreements shall be delivered to a purchaser not later than the time of making a payment to reserve a specific unit or executing the membership contract.

(3) The acceptance by a facility of a nonrefundable application fee in an amount not exceeding \$250.00 shall not require the prior or simultaneous delivery of a disclosure statement if a disclosure statement is made available upon request to each person paying such fee and the availability of a disclosure statement is disclosed, in writing, to each person paying such fee.

(4) All membership contracts with respect to the purchase of a life interest or long-term lease shall incorporate the rights accorded the purchaser under section 19 of the act.

History: 1991 AACS.

R 554.27 Exemption from registration requirements.

Rule 27. (1) The following procedure shall be observed to request that a facility be exempt from registration requirements pursuant to section 15 of the act:

(a) A letter requesting an exemption shall be submitted to the bureau, together with accompanying documentation demonstrating that the facility complies with both of the following provisions:

(i) Accords a member the right to cancel the life interest or long-term lease agreement without cause upon 30 days' notice and to receive the refund provided for in the act with no reduction for sales expenses or for the cost of refurbishing.

(ii) Has no long-term debt, has adequate reserves for refund and maintenance, and has the ability to meet current obligations.

(b) The request shall specifically mention each section or subsection of the act and each rule, subrule, or subdivision thereof that is requested to be waived and each transaction, person, firm, corporation, or industry requested to be excluded.

(2) A facility for which a request for an exemption pursuant to section 15 of the act is made shall file the applicable documents and reports listed in R 554.21, R 554.22, R 554.23, R 554.26, and this rule and any other information deemed material by the bureau.

(3) A facility exempted from registration, in whole or in part, shall notify the bureau, in writing, within 30 days after the occurrence of any change materially affecting the basis for the exemption.

History: 1991 AACS.

R 554.28 Term of registration.

Rule 28. Pursuant to section 20 of the act, a facility shall be registered for 1 year unless the bureau specifies a different period. A facility may be registered for a term of not more than 3 years if it is otherwise approved for reregistration and meets all of the following conditions:

(a) The facility was previously registered under the act during the immediately preceding 5 years.

(b) The facility meets all of the following financial criteria:

(i) The facility has not committed a material default in the payment of principal or interest on its indebtedness during the immediately preceding 3 years.

(ii) The facility has had income or revenues in excess of its expenses in each of the immediately preceding 3 years.

(iii) The facility has a ratio of current assets to current liabilities of not less than 1:1.

(iv) The facility has reserves or funds designated for the repayment of its indebtedness in an amount equal to or greater than 1 year's debt service.

(c) The facility or any person subject to liability under the provisions of section 30 of the act is not the subject of any order of the bureau pursuant to the provisions of section 28 or 29 of the act or of a court pursuant to the provisions of section 34 of the act.

History: 1991 AACS.

R 554.29 Temporary suspension of repayment of entrance fee; public hearing.

Rule 29. (1) To obtain an order from the bureau allowing the temporary suspension of repayment of an entrance fee pursuant to the provisions of section 14 of the act, a facility shall be in compliance with the following procedure:

(a) A letter requesting a temporary suspension order pursuant to the provisions of section 14 of the act shall be submitted to the bureau.

(b) The letter shall contain all of the following information:

(i) The name of the facility involved and its affiliates, if any.

(ii) The particular facts relied upon as a basis for the suspension request.

(iii) The time during which the facility desires the suspension to be effective.

(iv) Financial statements dated not more than 45 days before the date of the request.

(v) Other information required by the bureau.

(2) The bureau may hold a public hearing to determine whether the suspension should be granted.

History: 1991 AACS.

### PART 3. ESCROW

R 554.31 Imposition of escrow of funds paid by member.

Rule 31. Pursuant to the provisions of section 16 of the act, if the bureau finds that an applicant failed to demonstrate that adequate financial arrangements were made to fulfill obligations to provide care, services, or amenities, the bureau may impose, as a condition to registration or exemption, an escrow of the entrance fee and other funds paid by the member until these obligations are fulfilled.

History: 1991 AACS.

R 554.32 Escrow account.

Rule 32. When escrow is imposed by the bureau under R 554.31, the escrow account shall be in compliance with each of the following provisions:

(a) Checks shall be made payable to the depository approved by the bureau.

(b) The account shall be established with an escrow agent who is acceptable to the bureau and the funds shall be kept and maintained in an account separate and apart from the facility's business account.

(c) All proceeds deposited in escrow shall remain the property of the member and shall not be subject to any liens or charges by the escrow agent or to judgments, garnishments, or creditor's claims against the facility until the proceeds are released to the facility as provided in R 554.34. The escrow agreement shall state that the proceeds are not subject to any of the actions specified in this subdivision. The escrow is for the benefit of each member in the amount paid by each member.

(d) At the bureau's discretion, a statement indicating the status of the escrow account shall be furnished by the escrow agent to the bureau.

(e) An escrow agreement shall be entered into between the escrow agent and the facility. The agreement shall state that its purpose is to protect the member. The agreement shall authorize the bureau to inspect the records of the escrow agent relating to the escrow account and shall state that, upon order of the bureau or a court of competent jurisdiction, the escrow agent shall release and pay over the funds, or a portion thereof, to the facility or member as ordered.

(f) The bureau shall execute an acknowledgment on the face of each escrow agreement. This acknowledgment indicates approval of the form and content of the agreement, but shall not be construed to make the bureau a party thereto.

History: 1991 AACS.

R 554.33 Release of escrowed funds imposed pursuant to section 16 of the act.

Rule 33. When an escrow is imposed pursuant to the provisions of section 16 of the act, all of the following provisions apply:

(a) The bureau shall authorize the escrow agent to release to the facility those amounts of the escrowed funds applicable to a specified member upon a showing which satisfies the bureau that the conditions of the escrow have been fulfilled or that the escrow is not required for the protection of the member.

(b) An application for an order of the bureau authorizing the release of escrowed funds to the facility shall be verified and shall contain all of the following statements and information:

(i) A statement by the facility that the required proceeds from the sale of life interests or long-term leases have been placed with the escrow agent pursuant to the terms and conditions of the escrow agreement.

(ii) A facility's verified statement of completion of the facility's obligations for release of funds from escrow.

(iii) A statement by the escrow agent, signed by an appropriate officer, setting forth the aggregate amount of escrowed funds placed with the escrow agent, when required by the bureau.

(iv) The name of each member and the amount held in escrow for the account of the member.

(v) A showing that the conditions of the escrow have been fulfilled.

(vi) Other information the bureau may reasonably require.

(c) If the bureau finds that any condition of the agreement has not been satisfied, that any provision of the act or these rules has not been complied with, or that the registration or exemption of the facility has been revoked, the bureau may direct the full return of funds by the escrow agent to the members.

History: 1991 AACS.

R 554.34 Surety bond or guaranty in place of escrow.

Rule 34. (1) When the bureau has determined it is appropriate and necessary to protect prospective members, the bureau may, in place of an escrow agreement, permit a facility to post a surety bond or guaranty.

(2) The surety bond or guaranty shall be in an amount set by the bureau.

(3) The surety company or guarantor shall be authorized to transact business in Michigan.

(4) The bureau shall take into consideration the amount of the entrance fees and other fees to be charged in addition to the number of life interests or long-term leases to be offered, granted, or sold in determining the initial amount of the surety bond or guaranty and shall amend the amount of the surety bond or guarantee, as the public interest requires, using the same factors.

(5) If a facility fails to complete the obligations under the membership agreement, the surety company or guarantor may pay the appropriate money to the bureau or its designee for the benefit of all members in accordance with their contribution of entrance and other fees or amounts.

(6) If the surety bond or guaranty expires or is cancelled and the facility is still under an obligation to provide certain items under the membership agreement, the facility, at its option, may either post another surety bond or guaranty or have an escrow of entrance and other fees imposed by the bureau. Until another surety bond acceptable to the bureau is purchased or escrow is imposed, the facility shall not make any new sales.

(7) The bureau may be a party to the surety bond or guaranty and shall review its form and content.

History: 1991 AACS.

R 554.35 Purchase receipt.

Rule 35. When an escrow is imposed pursuant to the provisions of sections 10(b) and 19 of the act, a facility shall deliver to each member a purchase receipt in a form approved by the bureau. Purchase receipts shall be consecutively numbered and prepared in triplicate. The original shall be given to the member, the first copy shall

be given to the escrow agent or trust fund administrator, together with the payment received, and the second copy shall be retained by the facility.

History: 1991 AACS.

#### PART 4. BOOKS AND RECORDS

##### R 554.41 Recordkeeping.

Rule 41. Pursuant to the authority granted in sections 22(3) and 23(1) of the act, all of the following facility records and documents shall be maintained:

- (a) Records of each day's sales of life interests or long-term leases, receipts of cash, and other debits and credits.
- (b) Copies of contracts, including all of the following:
  - (i) Lease or membership agreements.
  - (ii) Sales contracts.
  - (iii) Management contracts.
  - (iv) Construction contracts.
  - (v) Any other contracts with affiliated persons.
- (c) Records of compensation paid to persons, directly or indirectly, in connection with the offer or sale of life interests or long-term leases which show all of the following information:
  - (i) The persons to whom payments were made.
  - (ii) The date and amount of each payment.
  - (iii) The reason for each payment.
  - (iv) The transaction from which each payment arose.
- (d) Records of all of the following:
  - (i) Each member's name, address, and age.
  - (ii) Total amount paid to date by each member and dates on which the payments were made.
  - (iii) Aggregate amount to be paid by each member.
  - (iv) The terms of payment.
- (e) Records of all of the following:
  - (i) Written complaints by members alleging violations of the act or rules.
  - (ii) When the complaint was made.
  - (iii) The course of action taken by the facility.
- (f) The most recent occupancy report required to be filed with the bureau.
- (g) A copy of all advertising used to solicit sales of life interests or long-term leases. Copies of advertising shall be maintained for a period of not less than 6 years.

History: 1991 AACS.

##### R 554.42 Pro forma financial plan.

Rule 42. (1) The pro forma financial plan required pursuant to the provisions of section 16 of the act shall include a financial forecast which is provided on the same basis that the financial statements are presented and which shows the forecasted annual results of operations and annual cash flow for a period of not less than 5 years and shall include a statement of assumptions and principles used to make the forecast, including all of the following information:

- (a) Expected cash proceeds from sales of life interests or long-term leases based upon projected occupancy rates and attrition rates.
  - (b) Expected operating expenses.
  - (c) Expected cash proceeds from monthly service fees.
  - (d) Expected proceeds from other sources, such as donations, interest, and endowments.
  - (e) Amount of reserves expected to be provided for capital replacement, improvements, maintenance, refunds, and other expenses.
- (2) In connection with any registration renewal application, and in place of a pro forma financial plan, the bureau will accept a business plan or management plan which is prepared by the facility and which contains the information required by subrule (1) of this rule.



History: 1991 AACS.

## PART 5. ADVERTISING

R 554.51 Advertising to be used to solicit offer; filing.

Rule 51. Pursuant to the provisions of section 26 of the act, advertising to be used to solicit an offer of a life interest or long-term lease shall be filed with the bureau not less than 10 business days before use.

History: 1991 AACS.

R 554.52 False, fraudulent, misleading, or deceptive information in advertisement prohibited.

Rule 52. An advertisement shall not contain any false, fraudulent, misleading, or deceptive information.

History: 1991 AACS.

R 554.53 Practices constituting false, fraudulent, misleading, and deceptive advertising.

Rule 53. Each of the following practices shall constitute false, fraudulent, misleading, or deceptive advertising:

- (a) A statement or inference that the purchase of a life interest or long-term lease is a safe investment.
- (b) A statement or inference that the facility is affiliated with a religious, nonprofit, or proprietary organization when in fact it is not.
- (c) A misrepresentation of services, care, or amenities, whether they are in existence or to be provided.

History: 1991 AACS.

## PART 6. FINANCIAL STATEMENTS

R 554.61 Required financial statements; preparation; audit.

Rule 61. Financial statements required to be filed in connection with an application for registration pursuant to the provisions of section 8 of the act or for an exemption pursuant to the provisions of section 15 of the act shall be prepared in accordance with generally accepted accounting principles. Financial statements shall be audited by an independent certified public accountant in accordance with generally accepted auditing standards, except when these rules permit the use of unaudited statements.

History: 1991 AACS.

R 554.62 Required financial statements; audit requirements.

Rule 62. (1) Financial statements required to be filed by a facility shall include each of the following:

- (a) A balance sheet as of a date within 90 days before the date of the application and balance sheets for the preceding 2 fiscal years.
- (b) An income statement.
- (c) A statement of cash flows.
- (d) A statement of changes in retained earnings.

(2) If the financial statements referred to in subrule (1) of this rule are not audited, an audited balance sheet as of the end of facility's last fiscal year shall be filed, unless such last fiscal year ended within 90 days before the date of the application. In such case, an audited balance sheet as of the end of the facility's fiscal year preceding its last fiscal year shall be filed.

History: 1991 AACS.

R 554.63 Waiver of audit requirements.

Rule 63. (1) The bureau may, in its discretion, waive the requirement for audited financial statements when they are not necessary for the protection of the public. The bureau may impose impound and other conditions and restrictions on the waiver that it deems appropriate.

(2) In all instances in which the requirement for audited financial statements has been waived for a specified period of time, the disclosure statement shall state that an individual who purchases a life interest or long-term lease during that period shall be entitled to damages or rescission under the same terms as provided in section 29 of the act if, upon the availability of audited financial statements or any other valid basis, it is revealed that material, adverse financial conditions existed at the date of the financial statements which were not disclosed.

History: 1991 AACS.

R 554.64 Exempt facility audit.

Rule 64. The annual financial statements of a facility that is exempt from registration pursuant to the provisions of section 15 of the act shall be audited by an independent certified public accountant unless that requirement is waived by the bureau as not being in the public interest or necessary for the protection of the public.

History: 1991 AACS.

R 554.65 Disclosure regarding unaudited financial statements.

Rule 65. If unaudited financial statements are utilized pursuant to a waiver by the bureau, they shall be accompanied by the following written disclosure, or a substantially equivalent statement, immediately adjacent thereto, in 14-point type:

"THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AUDIT. PURCHASERS OF LIFE INTERESTS OR LONG-TERM LEASES SHOULD BE ADVISED THAT A CERTIFIED PUBLIC ACCOUNTANT HAS NOT EXAMINED THE FINANCIAL STATEMENTS AND ACCORDINGLY HAS EXPRESSED NO OPINION ON THEM."

History: 1991 AACS.

R 554.66 Updating financial statements.

Rule 66. (1) If amendments or other delays cause financial statements to become more than 4 months old as of the effective date of the registration, then both of the following provisions apply:

(a) Updated financial statements, as of a date within 4 months of the effective date, shall be filed if the facility fails to have an established record of earnings or is currently showing losses or a weak financial condition.

(b) A paragraph containing later information as to sales, net income, and financial condition may be added in place of updating the financial statements when, in the discretion of the bureau, the facility has an established record of earnings and is in sound financial condition.

(2) Financial statements shall not be more than 6 months old as of the effective date of the registration.

(3) If a delay carries the effective date beyond the end of the facility's fiscal year, and if by applying due diligence the facility and a certified public accountant can complete the audit before the effective date, then audited financial statements, as of the end of that fiscal year, shall be filed.

History: 1991 AACS.

R 554.67 Certified public accounting firm's consent to use name and opinion in documents.

Rule 67. Audited financial statements filed with the bureau shall include a manually signed and dated consent of the certified public accounting firm, at or near the effective date, approving the use of its name and its opinion in the disclosure statement and registration application. In the case of a substantial delay in effectiveness or an adverse material change in the filing, the bureau may require an updated consent.

History: 1991 AACS.

R 554.68 Change in principal accountant.

Rule 68. If the independent certified public accountant engaged as the principal accountant to audit the facility's financial statements is not the principal accountant for the facility's most recently filed certified financial statements, or a legal successor thereto, then both of the following provisions shall apply:

(a) The facility shall furnish the bureau with a statement of the date when the current independent accounting firm was engaged and whether, in the 18 months preceding the engagement, there were any disagreements with the former principal accounting firm on a matter of accounting principles or practices, financial statement disclosure, or accounting procedure which, if not resolved to the satisfaction of the former accounting firm, would have caused that accounting firm to make reference, in connection with its opinion, to the subject matter of the disagreement.

(b) The facility shall request the former accounting firm to furnish the facility with a letter stating whether it agrees with statements contained in the letter of the facility and, if not, stating why it does not agree. The letter shall be furnished by the facility to the bureau.

History: 1991 AACS.

R 554.69 Consolidated and separate financial statements.

Rule 69. If an organization owns multiple facilities or if the organization has 1 or more affiliates, the bureau may require separate financial statements or other financial information for each facility or affiliate.

History: 1991 AACS.

R 554.70 Financial statement of guaranteeing person.

Rule 70. Complete financial statements of a guaranteeing person shall be required when the guarantor guarantees to assume the duties and obligations of the facility under the membership agreement. If the facility wishes to file a guarantor's statement, the guarantor shall guarantee the obligations of the facility or post an acceptable surety bond at the discretion of the facility. The surety bond shall be purchased from a surety company authorized to transact business in the state of Michigan and shall be in the amount required by the bureau as protection of the public requires. The amount may be amended by the bureau on the basis of the amount of fees and the number of life interests or long-term leases sold. If the surety bond is terminated or cancelled while the facility is still under an obligation to provide items under the membership agreement, then another surety bond, acceptable to the bureau, shall be purchased or a guarantee of the facility's obligations, acceptable to the bureau, shall be given before additional sales are made.

History: 1991 AACS.

R 554.71 Special financial report.

Rule 71. The bureau may at any time require the filing of a special financial report by a registered or exempt facility.

History: 1991 AACS.