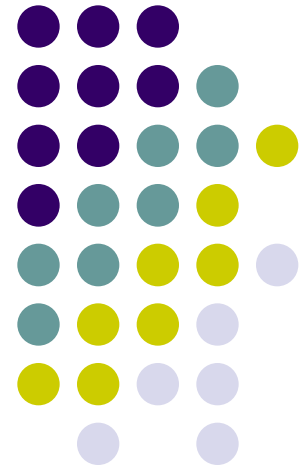


# Retirement Homes- Practice Challenges

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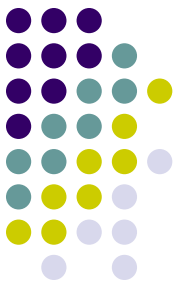
[wahlj@lao.on.ca](mailto:wahlj@lao.on.ca)





# Retirement Homes - Intro

- Legislation – Both Residential Tenancy Act and Retirement Homes Act
- What is a Retirement Home – rental accommodation and a place where the landlord also offers private care services at a fee
- Retirement Homes are NOT regulated health facilities



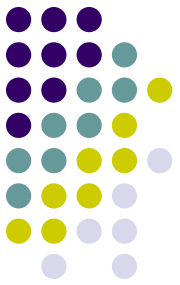
# Retirement Homes - Intro

- Retirement home is not equivalent to Long term care home although they may make available private care services (at a fee) at same level of care services available in a long term care home that is regulated by Long Term Care Homes Act and has oversight by Ministry of Health and Long Term Care
- Retirement home – no regulated “admission” requirements or rules
- LTC home – must meet eligibility as assessed by CCAC to get admission – eligibility is regulated



# Retirement Homes – Intro

- Retirement Homes Act
  - Set up retirement homes as parallel to LTC homes
  - Legislation is LTC homes “light”
  - Consumer model that is under oversight of Non government organization - Retirement Home Regulatory Authority (RHRA) - that is funded now by initial and annual licensing fees charged to landlords of Retirement Homes (similar to travel industry - TICO)
  - Issues- will “enforcement” be effective?
    - Depends on funding
    - Depends on interpretation by RHRA Board of duties and of statute (see act for composition of Board)

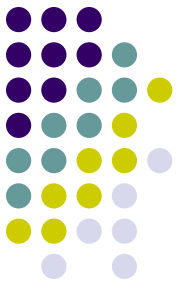


# Retirement Homes - Intro

- In Retirement Homes you pay RENT and you pay for Health and other services
  - health care - not OHIP coverage or Public health dollars - can set any rate market will bear
  - rent – no regulated rates, no rate reduction in statute, market
- In LTC home you pay for room and board
  - max rates for room and board are regulated by MOHLTC
  - Rates set for rate reduced basic related to seniors' guaranteed income less a “comfort allowance” so that any senior can afford LTC
  - Health care is paid by MOHLTC in public health dollars



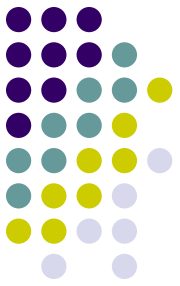
- Practice Issues
- LOOK at BOTH acts and think!!!



# Basic Tenancy Issues

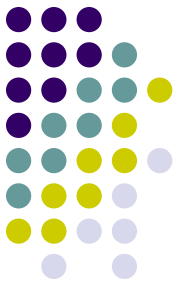
- Keys to unit and front door of building
- Guests – in unit, overnight?
- Requirements to check in and check out or be at home by a certain time?
- Access by tenant to external non Landlord services- access to suite/ room?
- Tenancy Agreement – is it in compliance with RTA?
- CHIP – is there one and is it complete?

# CHIP- IS IT COMPLETE?



- **Contents of information package**
- **47.** The information package referred to in section 140 of the Act must contain the following information:
  - 1. List of the different types of accommodation provided and the alternative packages of care services and meals available as part of the total charge. (**Does this mean DETAILS of the services in each package or general statements only?**)
  - 2. Charges for the different types of accommodation and for the alternative packages of care services and meals.
  - 3. Minimum staffing levels and qualifications of staff. (**Does this mean specific # on staff on duty at any one time and specific qualifications of all staff or only that “at any time in home will be on duty regulated staff, non regulated staff and maintenance staff”?** )
  - 4. Details of the emergency response system, if any, or a statement that there is no emergency response system.
  - 5. List and fee schedule of the additional services and meals available from the landlord on a user pay basis.
  - 6. Internal procedures, if any, for dealing with complaints, including a statement as to whether tenants have any right of appeal from an initial decision, or a statement that there is no internal procedure for dealing with complaints.





# Basic Tenancy Issues

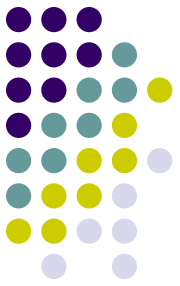
- Rent increases and Care services increases proper notices (timing and forms)
- DIFFERENTIAL increases on rent increase or care services increase to different tenants?
- LOCKED UNITS – are these legal? Can you detain a person in a Retirement home?

## **RHA - Permitted confinement - section Not yet proclaimed in effect**

- 70. (1) Subject to this section and the regulations, the licensee of a retirement home may confine a resident of the home to a secure unit of the home by the use of barriers, locks or other devices or controls in the home if the confinement of the resident is included in the resident's plan of care. 2010, c. 11, s. 70 (1).

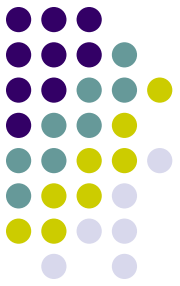
**BUT Many retirement homes have locked units NOW**

# Licensing Fees added to Rent



- Licensing Fees added to CHIP or as Additional Rent Charge separate from Monthly rent
- See article in ACE Newsletter Fall 2012
- Summary-
  - RTA s 135(1)(4)- application to LTB to get money back- 1 year
  - Rent increase – by guideline if rent control applies

# Licensing Fees added to Rent



- Rent increase – by guideline if rent control applies
- RTA S.134- prohibits LL from adding additional charges to rent (illegal charges)
- Licensing fees – cant be added as separate line – not rent / not care services
  - cannot be added to rent by agreement because not a prescribed service as defined in Reg
  - RTA s.123(1) and O.Reg 516/06

# Licensing Fees added to Rent



- Can you complain to RHRA about this and what is their position?  
Is this abuse under RHA s.75?

## **Reporting certain matters to Registrar**

75. (1) A person who has reasonable grounds to suspect that any of the following has occurred or may occur shall immediately report the suspicion and the information upon which it is based to the Registrar:

1. Improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident.
2. Abuse of a resident by anyone or neglect of a resident by the licensee or the staff of the retirement home of the resident if it results in harm or a risk of harm to the resident.
3. Unlawful conduct that resulted in harm or a risk of harm to a resident.
4. Misuse or misappropriation of a resident's money.

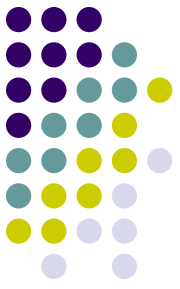
- Can you go to LTB – yes -RTA s.135



# Services Charges

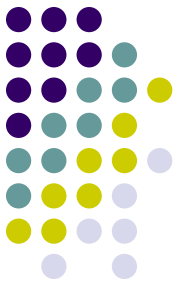
- Common practice in Retirement homes is to charge rent and then a compulsory Base services fee
- Then also offer a la care services or level of care services

# Services Charges – Base fees



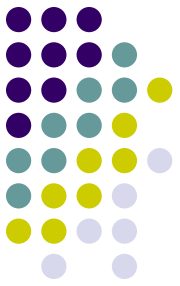
- WHAT DO YOU get for what you pay?
  - is this primarily a charge for availability of services on site or charges for usage and availability?
- Is there a cap on what you get in base if you use the base services?
- If usage cap– what is it , how much, how measured ( by use whatever time or by time?)

# Services Charges – A la Carte or levels of care service packages



- WHAT DO YOU get for what you pay?
  - Watch YOUR and YOUR clients assumptions about language
  - Ask what the language means ( nursing, support, assistance with..., quarterly nursing assessments, when services available, memory classes, footcare, transportation services? activities?)
- Nursing services – who delivers it? What is it? Qualifications? Limits on what they can do?
- Who provides any particular service and are there separate charges and how much – eg the \$500 Blood pressure tests.....

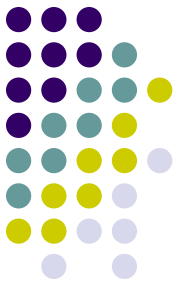
# Services Charges – A la Carte or levels of care service packages



- If a level of care -- Is it different and how is it different from base fees ? (have seen same thing in base description and in level of care and a la carte descriptions)
- If a level of care – what's in the level - actual services and how much time
- Are charges per TYPE of service (one block fee) and is there a limit on time in the block? or Quantum of service?

If quantum – how is time measured? BY 15 minute increments, by minute? How is this recorded or kept track of? **ASK FOR RECORDS**

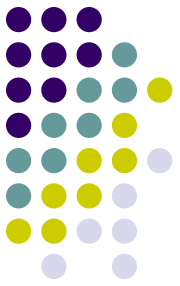




# Assessments for Services

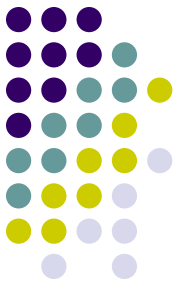
- How are service needs ASSESSED?  
WHO DOES the assessments?
  - marketing manager?
  - social worker?
  - nurse ( RN, RPN, PSW , or “nurse”)

# External Services



- What is the agreement in respect to the interaction / cooperation of external services and retirement home services ?

# RHA s.62 Plan of Care Will the RHA requirements help address Care Issues?



- **Plan of care**

62. (1) When a resident commences his or her residency in a retirement home, the licensee shall, within the prescribed times, ensure that the resident is assessed and that a plan of care is developed based on the assessment and in accordance with this section and the regulations.

### **Assessment only with consent, etc.**

(2) Nothing in this section authorizes a licensee to assess or to reassess a resident without the resident's consent. **Performance of assessments, etc.**

(3) All assessments and reassessments mentioned in this section that a licensee performs shall be performed in accordance with the prescribed criteria.



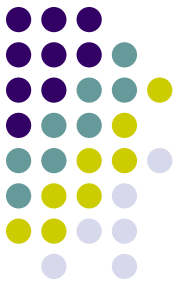
# RHA s. 62 Plan of Care

## RHA s.62 Integration of assessments and care

- (8) The licensee shall ensure that there are protocols to promote the collaboration between the staff, external care providers and others involved in the different aspects of care of the resident,
- (a) in the assessment of the resident so that their assessments are integrated and are consistent with and complement each other; and
  - (b) in the development and implementation of the plan of care so that the different aspects of care are integrated and are consistent with and complement each other.

## Persons who approve plans of care

- (9) The licensee shall ensure that the following persons have approved the plan of care, including any revisions to it, and that a copy is provided to them:
1. The resident or the resident's substitute decision-maker.
  2. The prescribed person if there is a person prescribed for the purpose of this paragraph.
  3. **A person with the requisite expertise in assessing the suitability of care services for the resident in light of those set out in the plan, if there is no person prescribed for the purpose of paragraph 2.**



# RHA s. 62 Plan of Care

**Note: Subsection (1) comes into force on January 1, 2014. See: O. Reg. 166/11, s. 66 (2).**

## **Approval of the plan of care**

**48. (1)** For the purposes of paragraph 2 of subsection 62 (9) of the Act and subject to subsection (2), the licensee shall ensure that a resident's plan of care is approved by,

- (a) a member of the College of Physicians and Surgeons of Ontario or the College of Nurses of Ontario; or
- (b) a person acting under the supervision of a member of the College of Physicians and Surgeons of Ontario or the College of Nurses of Ontario.

**(2)** For the purposes of paragraph 2 of subsection 62 (9) of the Act, if an assessment of a resident indicates that the resident's care needs may include dementia care, skin and wound care or the use of a personal assistance services device, the licensee shall ensure that the resident's plan of care is approved by a member of the College of Physicians and Surgeons of Ontario or the College of Nurses of Ontario. O. Reg. 166/11, s. 48 (2); O. Reg. 53/12, s. 7.

# Something to think about???



- Private pay fees for equivalent care services as in LTC homes – Is this fair? Can it be challenged in court in some way?