



## Concerns on HB4180

- Many Life Plan Communities have governing boards with responsibility for areas that go beyond the day-to-day operation of a community, such that residents may not have the experience/expertise to vote on such matters. Board expertise and focus are necessary in areas such as:
  - Enterprise Risk Management – reviewing risk within organizations investment portfolio, the economy, cybersecurity, tax & legal compliance, financial reporting, and fraud.
  - Oversight of strategic planning and growth
  - Board member contacts essential for identifying new opportunities for growth and expansion
- Life Plan Communities are organized with resident associations, elected councils, and resident committees for the purpose of regular communication and engagement on matters of importance that impact resident life and satisfaction. Other than employee/human resources sensitive information and HIPAA protected information, Life Plan Communities strive for transparency on operational and financial matters. Life Plan Communities communicate annual operating and capital budgets, monthly service fee changes, financial audit results, resident satisfaction survey results, federal and state licensure survey outcomes, and a host of other important operational and organizational initiatives.
- Life Plan Communities have processes for resident leadership to interact with ownership, senior management, or Board members at least annually. Although, each does this different, the purpose for these meetings is similar – to ensure that ownership, senior management, or the governing Board can learn about the focus of resident leadership, their priorities, and specific concerns they want to share. This approach works and gives residents access to parties above onsite management and does not dilute/diminish board governance responsibilities. Requiring resident-elected voting board members will not help most Life Plan communities, and not solve the concerns of the few.
- Most Life Plan communities will need to review their current Directors and Officers insurance policies to confirm that the resident appointed board member will qualify as an “insured person” and is eligible for coverage in the event of litigation alleging financial loss due to mismanagement or wrongful acts. Directors and Officers policies are drafted narrowly and anticipate that board members are qualified, experienced individuals who provide expertise in ensuring the organization’s long-term success. Currently, the insurance market is very competitive and any changes to Directors and Officers coverage will likely result in an increase in insurance rates.
- Confidentiality of information shared during board meetings may come into question as well when residents are on the board.
- For multi-site organizations, that have one board, having a representative from each community complicates things because those representatives don’t have anything to do with other community related business and again, it adds complexity to the meeting setup and how the board can do it’s business.

- The bill requires that a resident voting member shall be elected by a resident's association or similar body, without input from the provider's board of directors or equivalent governing body. This requirement will potentially lessen board effectiveness. Board composition, including expertise and previous board experience, and board culture, is critical to effective governance and organization success.
- There are potential conflicts of interest when residents on boards begin to represent their own interests (or interests of other residents) versus the organizational interest. A fundamental legal duty of Board members is the duty of loyalty, putting the interests of the organization first when acting in a decision-making capacity. This can happen in several ways such as:
  - Advocating for an annual monthly service fee increase that is less than fiscally prudent.
  - Opposing capital expenditures for improvements that residents may not be around to enjoy or that are "must haves" for future generations of residents but seen as unnecessary by current residents.
  - Voicing concerns about management, services, programs that are personal concerns and not the opinions of the majority, including advocating for specific staff members, even though residents may not be aware of confidential performance concerns.
  - Including a resident on the board could lead to sensitive, or private information being shared with other residents.
- Every Life Plan community, regardless of how high their resident satisfaction is, has a handful of residents that will never be satisfied with others making management decisions of how to operate the community. This usually applies to less than 5% of the resident population. The overwhelming majority are very satisfied with moving to their respective community and do not wish to be involved in the day-to-day decisions.
- The bill has no provision for board vetting of prospective resident board member, removal, term limits or other best practices of highly functioning boards. While rare, in some cases, a conflict of interest, breach of confidentiality, unethical behavior, lack of support for decisions by majority vote, or lack of active participation and attendance may be grounds to remove an individual from a board. In other cases, the behavior of a board member may become so obstructive that the board is prevented from functioning effectively.
- Financial conditions of the community are already made available to all residents in an annual report.
- All boards that have a vote have a legal fiduciary responsibility that opens them up to liability. Under this bill, a community would be responsible for getting a resident to agree to assume this liability.
- The nomination of a resident(s) to the Board by the resident body, without concern or respect for the role of the Board in identifying appropriate membership, puts the Board in an unfair position.
- The bill creates divisiveness and is ripe for conflict of interest if the resident member is not fully and appropriately vetted, oriented to their role and responsibility and acting in the best interest of the long-term viability of the organization rather than in short term satisfaction of a particular group.
- An objecting resident could always be a minority vote of any action on record only creates angst and doesn't foster the cooperation with residents as much as their right to have an organized association and requirements for an owner representative to meet with that association.
- Residents have a conflict of interest and should abstain from any vote that would personally benefit them in any way. Residents have an inherent conflict of interest given that decisions

regarding fees impact them financially, especially when it comes to strategic decisions around funding, borrowing, affiliations, etc.

- Excellent Board governance is critical to an organization's success and any restrictions preventing or distracting a Board from this work is detrimental to the health of the organization and the residents it serves.
- Many life care communities are non-profit organizations, and therefore their Boards serve on a volunteer basis. Mandating quarterly meetings puts unreasonable expectations on volunteers' time and draws them into operational issues that distract from the good governance practices that a Board should be adhering to. The complexity of having to do board business in executive session makes things much harder and more time consuming for a volunteer board.
- A resident's memory, behavioral, or capacity issues could impact board business and decisions.
- Boards should be allowed to select board members that best meet the organization's current and future needs. Sometimes that would include a resident and at other times, it may not. They should also have the ability to remove Board members when it is in the best interest of the organization.