Escrow Agreement Worksheet

Facility Name _____ **Number** _____

Agreement Title _____

Agreement "Unique Identifier" _____

The Florida Office of Insurance Regulation (Office) developed the following worksheet to assist CCRCs in drafting and submitting escrow agreements for review by the Office. The Office encourages, but does not require, the CCRC to download, complete, scan, and upload this form as part of the form filing as it will expedite the review process. However, the Office offers this worksheet as guidance only and it should not be considered a directive by the Office.

All Escrow Agreements

1. Escrow agreement is in writing. (§ 651.033(1)(c))
Agreement Complies? Yes ____ No ____

2. Does the first page have a unique identifier consisting of the company number, an abbreviation for the type escrow agreement, and the draft or execution date?
Agreement Complies? Yes ____ No ____

3. Escrow agreement states that it is subject to Office approval. (§ 651.033(1)(c) & Rule 69O-193.023(1), F.A.C.).
Agreement Complies? Yes ____ No ____ Page _____

4. Escrow account is established in Florida bank, Florida savings and loan association, or Florida trust company acceptable to the Office or on deposit with the Department of Financial Services (DFS). (§ 651.033(1)(a))
Agreement Complies? Yes ____ No ____ Page _____

5. Escrow agreement contains the escrow account number(s). (Rule 69O-193.023(3), F.A.C.)
Agreement Complies? Yes ____ No ____ Page _____

6. Escrow agreement contains the physical location of each account governed by the escrow agreement. (Rule 69O-193.023(3), F.A.C.)
Agreement Complies? Yes ____ No ____ Page _____

7. Escrow agreement is between bank, savings and loan association, or trust company and the provider. (§ 651.033(1)(b))
Agreement Complies? Yes ____ No ____ Page _____

8. Escrow agreement states that the escrow agent agrees to abide by the duties imposed under section 651.033, Florida Statutes. (§ 651.033(1)(c))
Agreement Complies? Yes ____ No ____ Page _____

9. Escrow agreement contains blanks for dates and signature blocks for provider and escrow agent. (Rule 69O-193.023(2), F.A.C.)
Agreement Complies? Yes _____ No _____ Page _____

10. Escrow agreement contains a statement citing the specific provision of Chapter 651 for which the escrow agreement is drawn and for which the escrow account is established. (Rule 69O-193.023(3), F.A.C.)
Agreement Complies? Yes _____ No _____ Page _____

11. Escrowed funds are kept and maintained in an account separate and apart from the provider's business accounts. (§ 651.033(1)(a))
Agreement Complies? Yes _____ No _____ Page _____

12. Escrow agreement states that its purpose is to protect the resident or the prospective resident. (§ 651.033(1)(b))
Agreement Complies? Yes _____ No _____ Page _____

13. Escrow agreement states that upon presentation of evidence of compliance with applicable portions of Chapter 651, or upon order of a court of competent jurisdiction, the escrow agent shall release and pay over the funds, portions thereof, together with any interest accrued thereon or earned from investment of the funds, to the provider or resident as directed. (§ 651.033(1)(b))
Agreement Complies? Yes _____ No _____ Page _____

14. Regarding escrow funds invested:

A. Escrow agreement states that all funds deposited in the escrow account, if invested, shall be invested as set forth in part II of chapter 625. (§ 651.033(1)(d))
Agreement Complies? Yes _____ No _____ Page _____

B. Escrow agreement states that such investment may not diminish the funds held in escrow below the amount required by chapter 651. (§ 651.033(1)(d))
Agreement Complies? Yes _____ No _____ Page _____

15. Escrow agreement states that funds deposited in the escrow account are not subject to charges by the escrow agent except escrow agent fees associated with administering the accounts, or subject to any liens, judgments, garnishments, creditor's claims, or other encumbrances against the provider. (§ 651.033(1)(d))
Except: If the escrow account is a debt service reserve then it may be encumbered as provided by § 651.035(1). (§ 651.033(1)(d))
Agreement Complies? Yes _____ No _____ Page _____

16. Escrow agreement states that at the request of either the provider or the Office, the escrow agent will issue a statement indicating the status of the escrow account. (§ 651.033(1)(e))
Agreement Complies? Yes _____ No _____ Page _____

17. Escrow agreement states that the provider and the escrow agent will notify the Office in writing at least 10 days prior to any change in any of the terms and conditions of the escrow agreement, escrow account numbers, or location of the escrow accounts. (Rule 69O-193.023(3), F.A.C.)
Agreement Complies? Yes _____ No _____ Page _____

All MLR Escrow Agreements

18. Escrow agreement states that the escrow agent or another person designated to act in the escrow agent's place and the provider, except as otherwise provided in section 651.035, Florida Statutes, shall notify the Office in writing at least 10 days before the withdrawal of any portion of any funds required to be escrowed under the provisions of section 651.035, Florida Statutes. (§651.033(2))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

19. Escrow agreement states that in the event of an emergency and upon petition by the provider, the Office may waive the 10-day notification period and allow a withdrawal of up to 10% of the required minimum liquid reserve. (§651.033(2))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

20. Escrow agreement states that the Office shall have 3 working days to deny the petition for the emergency 10% withdrawal. If the Office fails to deny the petition within 3 working days, the petition shall be deemed to have been granted by the Office. For the purpose of this provision, "working day" means each day that is not a Saturday, Sunday, or legal holiday as defined by Florida law; in addition, the day the petition is received by the Office is not counted as one of the 3 days. (§651.033(2))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

21. Escrow agreement requires that the escrow agent furnish the provider with a quarterly statement indicating the amount of any disbursements from or deposits to the escrow account and the condition of the account during the period covered by the statement. (§ 651.033(5)(a))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

22. Escrow agreement requires that the statement be furnished to the provider by the escrow agent on or before 10th day of the month following end of quarter for which the statement is due. (§ 651.033(5)(a))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

23. Escrow agreement states that if the escrow agent does not provide the quarterly statement to the provider on or before the 10th day of the month following the month for which the statement is due, the Office may, in its desertion, levy against the escrow agent a fine not to exceed $25 a day for each day of noncompliance with the provisions of Section 651.033. (§ 651.033(5)(a))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

24. Escrow agreement states that if the escrow agent does not provide the quarterly statement to the provider on or before the 10th day of the month following the quarter for which the statement is due, the provider shall, on or before the 15th day of the month following the quarter for which the statement is due, send a written request for the statement to the escrow agent by certified mail return receipt requested. (§ 651.033(5)(b))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

25. Escrow agreement states that on or before the 20th day of the month following the quarter for which the statement is due, the provider shall file with the Office a copy of the written request to the escrow agent for the statement. (§ 651.033(5)(c))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

26. Escrow agreement states that the Office may, in its discretion, in addition to any other penalty that may be provided for under this chapter, levy a fine against the provider not to exceed $25 a day for each day the provider fails to comply with the provisions of 651.033(5), Florida Statutes. (§ 651.033(5)(d))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

Additional Requirements for
Renewal and Replacement Reserve MLR Escrow Agreements Only

27. Escrow agreement states that each fiscal year, a provider may withdraw up to 33% of the total renewal and replacement reserve available, which must be used for capital items or major repairs. (§ 651.035(6))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

28. Escrow agreement states that before any funds are withdrawn, the provider must obtain written permission from the Office. (§ 651.035(6)(a))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

29. Escrow agreement states that within 30 days after the withdrawal of funds, the provider must begin refunding the reserve account in equal monthly payments that allow for a complete funding of the withdrawal within 36 months. (§ 651.035(6)(b))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

30. Escrow agreement states that if the payment schedule changes from what is initially approved by the Office, the provider must update the Office with the new payment schedule. (§ 651.035(6)(b))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

31. Escrow agreement provides that if the provider fails to make a required monthly payment or the payment is late, the provider must notify the Office within 5 days after the due date of the payment. (§ 651.035(6)(b))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

32. Escrow agreement states that no additional withdrawals from the renewal and replacement reserve will be allowed until all scheduled payments are current. (§ 651.035(6)(b))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

Escrow Agreements for Entrance Fees Required to Be Escrowed During the Licensing Process (PCOA and COA, sections 651.022 and 651.023) *or* During the 7-Day Rescission Period (section 651.055(2))

33. Escrow agreement requires that the funds to be deposited with the escrow agent shall be accompanied with a copy of a receipt showing the payor's name and address, the date, the price of the care contract, and the amount of money paid. (§ 651.033(3)(a))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

34. Escrow agreement states that at the request of an individual resident of a facility, the escrow agent shall issue a statement indicating the status of the resident's portion of the escrow account. (§651.033(3)(b))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____

35. Escrow agreement states that the provider will escrow any fee more than $1,500 that is assessed with respect to prospective residents to have their names placed on a facility's waiting list. (§ 651.033(4))
Agreement Complies? Yes _____ No _____ N/A _____ Page _____

36. If the provider has a Certificate of Authority and has met the requirements of Section 651.023(6), Florida Statutes, the escrow agreement states that the escrow agent shall release funds to the provider 7 days after the date of receipt of the funds by the escrow agent. (§ 651.033(3)(a))
Agreement Complies? Yes _____ No _____ N/A _____ Page _____

37. If the provider has a Certificate of Authority and has met the requirements of Section 651.023(6), Florida Statutes, the escrow agreement states that if the resident rescinds the contract within the 7-day period, the escrow agent shall release the escrowed fees to the resident. (§ 651.033(3)(a))
Agreement Complies? Yes _____ No _____ N/A _____ Page _____

Escrow Agreements for Funds Required to Be Escrowed During the Licensing Process (PCOA and COA, sections 651.022 and 651.023)

38. Escrow agreement requires that the escrow agent furnish the provider with a quarterly statement indicating the amount of any disbursements from or deposits to the escrow account and the condition of the account during the period covered by the statement. (§ 651.033(5)(a))
Agreement Complies? Yes _____ No _____ N/A _____ Page _____

39. Escrow agreement requires that the statement be furnished to the provider by the escrow agent on or before 10th day of the month following end of quarter for which the statement is due. (§ 651.033(5)(a))
Agreement Complies? Yes _____ No _____ N/A _____ Page _____

40. Escrow agreement states that if the escrow agent does not provide the quarterly statement to the provider on or before the 10th day of the month following the month for which the statement is due, the Office may, in its discretion, levy against the escrow agent a fine not to exceed $25 a day for each day of noncompliance with the provisions of Section 651.033(5). (§ 651.033(5)(a))
Agreement Complies? Yes _____ No _____ N/A _____ Page _____

41. Escrow agreement states that if the escrow agent does not provide the quarterly statement to the provider on or before the 10th day of the month following the quarter for which the statement is due, the provider shall, on or before the 15th day of the month following the quarter for which the statement is due, send a written request for the statement to the escrow agent by certified mail return receipt requested. (§ 651.033(5)(b))
Agreement Complies? Yes _____ No _____ N/A _____ Page _____

42. Escrow agreement states that on or before the 20th day of the month following the quarter for which the statement is due, the provider shall file with the Office a copy of the written request to the escrow agent for the statement. (§ 651.033(5)(c))
Agreement Complies? Yes _____ No _____ N/A _____ Page _____

43. Escrow agreement states that the Office may, in its discretion, in addition to any other penalty that may be provided for under this chapter, levy a fine against the provider not to exceed $25 a day for each day the provider fails to comply with the provisions of 651.033(5), Florida Statutes. (§ 651.033(5)(d))

Agreement Complies? Yes _____ No _____ N/A _____ Page _____