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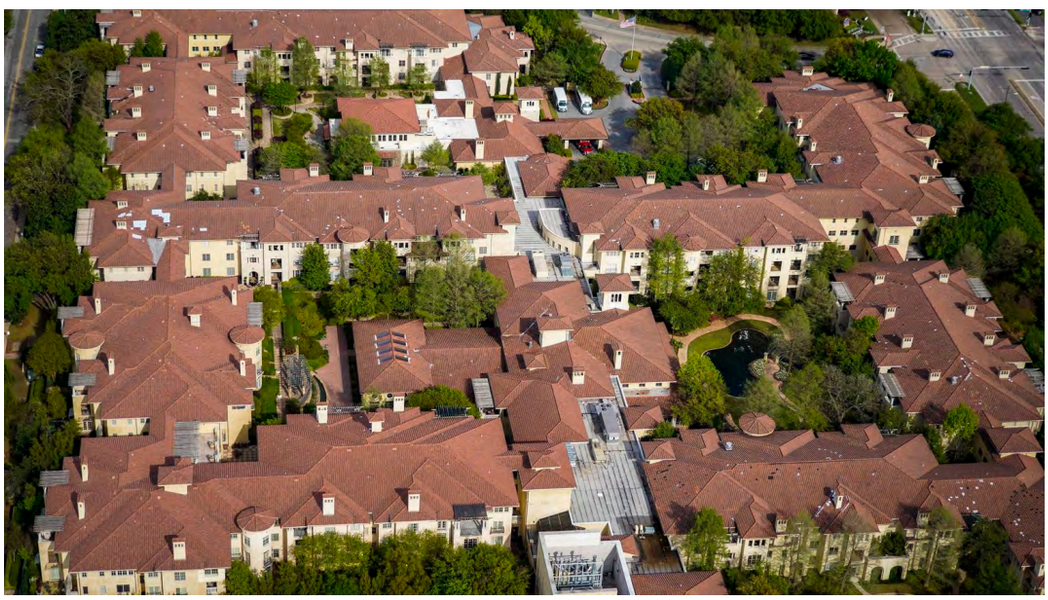

Dallas-based luxury retirement community Edgemere filed for Chapter 11 bankruptcy protection April 14. Its assets and liabilities were both estimated to be between $100 million and $500 million. (Smiley N. Pool / Staff Photographer)

By Natalie Walters
9:09 AM on Apr 29, 2022

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Steve Leach's mom paid $584,000 in entrance fees in February 2020 for the Buckingham, which promotes itself as the "definitive luxury retirement community in Houston." The next month, the COVID-19 pandemic hit, and Leach pulled her out.

"Little did we know that those few weeks would cost us upwards of $500,000," said Leach, who expected 90% to be refunded when his mom moved out or died.

Buckingham, a 495-unit facility in the exclusive River Oaks neighborhood, filed for bankruptcy the following year, leaving Leach and others to wonder whether they would get their deposits back. By contract, they were unsecured creditors with no guarantee of payment.

"I've asked everyone, and no one thinks we are ever getting paid," Leach said.

Buckingham residents like Leach say they are worried about what will happen to seniors or their heirs at luxury retirement community Edgemere, a 1.55 million-square-foot facility spread over 16 acres in Dallas between Preston Hollow and University Park. Edgemere filed for bankruptcy April 14 and accused its landlord of trying to take back the prime property for a "windfall profit."

Edgemere and Buckingham are two of four high-profile retirement communities forced into bankruptcy in Texas since 2019. All relied on a business model that requires hefty entrance fees to guarantee care for life, with a contractual promise that a portion will be refunded to the resident or their heirs when they move out or die.

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These amenity-rich continuing care retirement communities, known as CCRCs, can be convenient for seniors who move in when they're at the independent living stage and can stay on the same campus as they age into assisted living, memory support and skilled nursing facilities.

But they're also expensive to build and maintain, leaving them highly dependent on keeping occupancy levels at around 90% or above in order to make the economics work. Edgemere originally cost over $93 million to develop in 1999, according to bond documents on the Electronic Municipal Market Access website.

Dips in occupancy from increased competition and a global pandemic can wreak havoc on the model. Without monthly fees and lucrative entrance deposits coming in regularly, CCRCs can be left unable to meet their substantial payment obligations.

"It's an industry that historically has balanced on the head of a pin," said Katherine Pearson, a professor of elder law at Penn State University's Dickinson Law School and a national expert on CCRCs.

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LOCAL COMPANIES

Here's how continuing care retirement communities work and why some go bankrupt

The average occupancy rate for 23 CCRCs in Dallas fell from 85% in the first three months of 2020 to 79.9% for the same period in 2022.

BY NATALIE WALTERS ·

DMN CREATE NEW

The pandemic is the latest event to test the financial strength of CCRCs. Occupancy in Dallas' 23 CCRCs dropped from about 85% in the first three months of 2020 to 75% a year later before trending up to about 80% at present, according to the National Investment Center for Seniors Housing in Maryland.

Of the four Texas CCRC bankruptcies, two attribute part of their failure to COVID while the other two happened before the pandemic. They all share a common connection. The properties were previously operated by Senior Quality Lifestyles Corp., which also had a fifth community in Indiana file for Chapter 11 protection.

In 2019, SQLC transferred ownership of Edgemere, Stayton at Museum Way in Fort Worth and Querencia at Barton Creek in Austin to Iowa-based Lifespace Communities, the nation's fifth-largest not-for-profit multi-site senior living operator with 15 communities.

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David Drumm, a partner at Dallas-based law firm Carrington Coleman, represents a family in the Edgemere bankruptcy case. He compares high-end CCRCs with how banks were perceived before the financial crisis.

"Everybody thought the banks were too big to fail," Drumm said. "I think everybody thought Edgemere was such a premier community that it would not get into dire financial straits."

In its bankruptcy filing, Edgemere said it intends to honor resident contracts. Spokeswoman Rachel Chesley said repayment details won't be determined until the bankruptcy court approves a reorganization plan.

For now, Edgemere is using a court-approved initial $2 million loan to continue normal operations.

Experts across the board say CCRCs in bankruptcy, as well as debt bondholders, generally want to keep residents in place and honor entrance fee refunds. If the communities are seen as risky options for seniors, operators fear occupancy will drop and their survival will be threatened.

"There are many good business reasons to treat heirs and residents well," said Mike Sutherland, a partner at Carrington Coleman.

The Texas bankruptcies can help seniors and their families ask the right questions to understand the financial health of a retirement community, as well as how they and their money will be handled in court.

The Mirador filed for bankruptcy in early 2019, coming out of the process in fall 2020 with a new owner, The Woodlands-based Methodist Retirement Communities. MRC honored resident contracts, bankruptcy filings show.

Mirador in Corpus Christi

Year opened: 2011

Size: 271,455 square feet

Employees: 183

Date filed for bankruptcy: Feb. 8, 2019

Date closed bankruptcy case: Aug. 20, 2020

Total units: 228 (125 independent living, 44 assisted living, 18 memory care, 41 skilled nursing)

Entrance fee range: $150,000 to $300,000

Nineteen months after filing for bankruptcy in early 2019, Mirador emerged with a new owner, The Woodlands-based Methodist Retirement Communities.

Sally Rausch, a member of the Mirador Resident Council at the time, wrote in a February 2022 blog post that "the time between the announcement and the final resolution of the situation was difficult but the day the community had MRC as a bidder was a 'day of celebration.'"

Mirador went into bankruptcy with $53 million in assets and $118 million in liabilities. The bulk — $74.5 million — was in municipal bond obligations. Resident refund obligations totaled $26.3 million.

It attributed its financial troubles partly to an entrance fee model based on affiliates in Dallas, Fort Worth and Austin, something Corpus Christi, with a lower median income, simply couldn't sustain, according to court documents.

The economic downturn that started in 2008 also meant some residents couldn't sell their homes to afford the entrance fee. The facility said it reduced entrance fees but then didn't have enough money to cover refunds owed to previous residents. It also blamed increased competition, saying it had four competitors in a 10-mile radius.

Mirador's bankruptcy plan offered strong protections for families, such as allowing existing residents to stay and making deposit repayments to former residents or their heirs according to terms laid out in their contracts. Mirador also retained 95% of its employees.

"Now almost three years after joining the MRC family, the prevailing feeling among residents is one of security," Rausch wrote.

Jill Janes, vice president of sales and marketing for MRC, said Mirador continues to issue refunds as new sales occur. "Mirador blended beautifully into MRC," she said.

The Stayton at Museum Way in Fort Worth, with three eleven-story towers, filed for Chapter 11 in 2019, citing highly competitive market conditions. (Rebecca Slezak / Staff Photographer)

Stayton at Museum Way in Fort Worth

Year opened: 2011

Size: 574,000 square feet

Employees: 182

Date filed for Chapter 11: Nov. 5, 2019

Date closed bankruptcy case: March 20, 2020

Units: 296 (188 independent living, 42 assisted living, 20 memory support, 46 skilled nursing beds)

Entrance fee range: $395,655 to $1.9 million

Stayton at Museum Way was flush with occupants of its three 11-story towers when it filed for bankruptcy in 2019. Its independent living units were 93.6% filled, its assisted living and memory support rooms were 100% occupied and its skilled nursing facility was at 97.8% of capacity, according to bankruptcy documents.

But Stayton's filing said it grossly overestimated its financial projections — the adjusted net operating margin was about 54% less than initially projected. The community cut costs but continued to face financial pressure "due to highly competitive market conditions."

"As has become common in the senior living industry and in particular among CCRCs, Stayton has historically faced financial challenges, the effect of which threaten Stayton's ability to honor its long-term debt obligations and maintain its operational stability," a court filing said.

Stayton had $124.3 million in assets and $222.7 million in liabilities. That included $2.6 million of current resident refund obligations, $102.3 million in future entrance fee liabilities and $110.4 million of long-term municipal bond debt.

Residents or their families were owed amounts ranging from $780,000 to $1.2 million, bankruptcy records showed.

"Entrance fees are critical to the debtor's operations, and any negative publicity suggesting that a CCRC is in bankruptcy will necessarily deter prospective residents from entering into continuing care contracts," Stayton said in its filing.

Post-bankruptcy refunds are being paid based on a queue, as is common with an entrance fee model, with the next resident in line receiving payment whether his or her unit is the one that sold most recently or not, said Lifespace spokeswoman Sandra Hodgson.

Stayton projects its cash on hand will grow from 45 days in 2020 to 221 days by 2024, bankruptcy records show.

Buckingham in Houston filed for Chapter 11 in 2021, citing events like Hurricane Harvey and "the highly competitive local senior living market." (Karen Warren / Staff photographer)

The Buckingham in Houston

Year opened: 2005

Size: 465,000 square feet

Employees: 370

Date filed for Chapter 11: June 25, 2021

Date closed bankruptcy case: Nov. 9, 2021

Units: 495 (303 independent living, 67 assisted living, 33 memory care, 92 skilled nursing)

Entrance fee range: $269,220 to $2.1 million

Buckingham sought Chapter 11 protection in June 2021, with $198 million in assets and $345 million in liabilities. It had $1.5 million in entrance fee refund obligations that had already been triggered, $32 million in future entrance fee refunds and $160 million of long-term municipal bond debt.

In its filing, Buckingham said it took its initial success as a sign to expand, securing $109 million in financing in 2015 to buy six additional acres and build 187 new residences. But while it was being built, Hurricane Harvey hit Houston in 2017, halting construction and preventing people from selling their homes. As a result, the new tower units filled up more slowly and the facility had trouble covering its operating expenses as well as paying off the additional debt.

Buckingham discounted its entrance fees but generated less than the amount it owed to residents or their heirs. Then the pandemic hit.

In January 2021, seven residents sued, accusing Buckingham of a number of wrongs, including an inability to fulfill refund obligations. Some residents withheld their monthly service fees.

By June 1, Buckingham "owed and was unable to pay resident refunds of approximately $33.5 million." Thirty former residents or heirs were owed refunds ranging from $458,000 to $1.1 million when their units sold, according to its filing.

Its bankruptcy plan said residents or heirs owed a refund would be paid semiannually based on a formula, but only if the company had more than 135 days of cash on hand to run the 465,000-square-foot facility. As of Oct. 31, Buckingham had 28 days of cash on hand, according to its most recent financial filing. The last time it met the 135-day threshold was in 2017.

It's often necessary for residents or their heirs to make concessions on their refunds, said Kristina Wesch, co-chair of the restructuring and distressed transactions practice group at Wiggin and Dana, which has offices in Connecticut, New York, Pennsylvania, Florida and Washington, D.C.

"It's not unusual for them not to get the full amount," Wesch said.

Driscoll Otto said he was "livid" at the outcome. He's owed $539,100 that his mom and former Buckingham resident, Ruthe Wilson, left her family after she died in October 2020, according to documents he provided to *The Dallas Morning News*.

"Fortunately, my sister and I worked our entire lives and did fairly well," he said. "But there were some people who we talked to who really needed that money, and they're just not going to get it."

"Mad as hornets" is how some families felt, said Lana Ledet, whose mother lived at Buckingham from 2016 to 2020. Ledet worked as team coordinator for a group of unsecured creditors, creating an email chain with 80 recipients, some of whom were lawyers, CEOs and financial professionals, so they could help each other understand what was happening.

"We were overwhelmed," she said. "It was a nightmare."

Leach said Buckingham signed up his mom shortly before filing for bankruptcy, ensuring she'd "get pennies on the dollar." If he had known the community was in default, he said he would have never considered it.

When asked whether the facility gave Leach any indication it was struggling, Buckingham sent *The News* a prepared statement.

"The Buckingham has been fully transparent at all times with respect to its financial condition. Its voluntary Chapter 11 bankruptcy proceeding is a matter of public record. We have no further comment."

Ledet said the experience soured her on retirement communities that require sizable entrance fees.

"It's happening over and over again, and nobody is taking notice," she said. "And people like my mom and so many of her friends are going into these facilities thinking, 'Oh, I'm going to be taken care of so I'm willing to pay this huge amount of money and I'm going to get this money back.' Nobody is looking at the big picture of how often is this happening."

Natalie Walters, Money Reporter. Natalie is an award-winning reporter who covers banks, crypto, fraud, deals and other money topics for The Dallas Morning News. She was previously based in New York where she reported for The Motley Fool, TheStreet and Business Insider. She grew up in Augusta, Ga. and holds an MA in Investigative Journalism from The Cronkite School.

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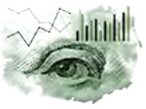

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