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HCP Files Complaint Against Sunrise

Long Beach, Calif.-based HCP recently filed a complaint against Sunrise Senior Living, McLean, Va., and its subsidiaries, claiming that Sunrise had defaulted on 64 HCP-owned properties under management and related agreements.

The complaints, filed in the Delaware Chancery Court on June 29, 2009, allege, among other things, that Sunrise systematically breached various contractual and fiduciary duties, including operating the properties in a manner that impermissibly favored the interests of Sunrise and its affiliates at the expense of HCP and its tenants.

Sunrise responded by claiming that the complaints are “without merit.”

“HCP purchased these communities under long-term management contracts with many years remaining,” Sunrise Chief Executive Officer Mark Ordan said in a statement. “The communities have steadily improved their

performance yet HCP has continually expressed their desire to terminate their agreements.”

Ordan said he views the complaints “as just another attempt to unlawfully terminate our agreements, and we will enforce our rights vigorously on behalf of all Sunrise stakeholders.”

In addition to equitable relief and money damages relating to the defaults, HCP and its tenants are seeking judicial confirmation of rights to terminate the agreements on the 64 properties.

But, according to Sunrise, the majority of its management agreements with HCP have expiration dates ranging from 2028 to 2038 and include extension options held by Sunrise.

HCP, however, claims that it acquired ownership of 101 seniors housing communities operated by Sunrise through its 2006 acquisition of CNL Retirement Properties.

HCP transitioned 11 of those com-

munities to a new operator in December 2008 and shortly thereafter notified Sunrise that it was in default of its obligations under the agreements for the remaining 90 communities.

“The agreements provide Sunrise with various periods to cure the defaults, which periods have now expired,” HCP said in a statement.

More recently, HCP announced that the management agreements on 15 additional Sunrise-managed communities were terminated effective Oct. 1, 2009, for “failure to achieve certain performance thresholds.”

HCP expects to transition these facilities to new operators during the second half of 2009, reducing the Sunrise-managed properties in its portfolio to 75 communities from the original 101 communities HCP acquired in the 2006 CNL Retirement Properties transaction.

— Meg LaPorte