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ELDER LAW MINUTE

Before you admit Mom or Dad to a nursing home or assisted living facility, you are asked to sign a thick stack of papers evidencing the agreement between the facility and the resident. The transition into the facility is often times very emotional and strategically difficult. So your patience for reviewing legal documents is impaired. Besides, you trust the facility which has agreed to care for Mom or Dad. Right?

With the increase in geriatric malpractice actions and the size of their verdicts, many of the documents today contain several undesirable provisions that you should look out for. Mandatory binding arbitration is a common provision. By signing the agreement you waive your constitutional right to a trial by a jury of your peers.

I recently reviewed a residency agreement for an assisted living facility which in addition to the arbitration provisions contained a limitation of liability provision and the following exculpatory provisions:

The Company makes no representations or guarantees that its staff can prevent falls. The Company does not represent or guarantee your health condition will not change or deteriorate throughout your residency. The Company makes no representations or guarantees that it can predict the behavior of its residents. The Company also makes no representations or guarantees that it can always prevent a resident from wandering or attempting to wander from the Community, entering a private area, misplacing or losing items or engaging in physical contact with another resident. The Company makes no representations or guarantees that it is secure from theft or any other criminal act perpetrated by any other resident or person.

What do you do if presented with a document like this? Ask for a few days to review it. Discuss it with your attorney. See if the facility will negotiate the terms that offend you. If they won't, consider another facility for Mom or Dad. I don't recommend trusting the care of Mom or Dad to a place that refuses to take responsibility should something go wrong.