

LEGAL NEWS ALERT

Ruskin Moscou Faltischek's Seniors' Housing Capabilities

- Licensing Applications and Regulatory Matters
- Real Estate, Construction and Financing
- Contract Drafting and Reviews
- Counsel and Advice on Third Party Deals
- Project Related Litigation
- Compliance Audits
- Fostering Alliances Between Housing and Healthcare Providers
- Exit Strategies
- Facility Sales and Refinancing
- Evaluating Model Types for Developers
- Federal and State Legislation
- Employment Matters
- Occupational Safety and Health Administration (OSHA) Regulations
- Antitrust Regulations
- National Labor Relations Act
- Copyrights and Trademarks

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Wayne L. Kaplan

CCRCs in New York

There are currently eight operating Continuing Care Retirement Communities (CCRCs), formerly known as Life Care Communities, in New York State, and one (Fox Run at Orchard Park) has been approved to enter into "Life Care Contracts" with residents. Five potential CCRCs have been approved to enter into "Priority Reservation Agreements," which are cancelable agreements between the proposed CCRC and a prospective resident for the purpose of evaluating market

demand and to guarantee the prospective resident an opportunity for priority placement in the CCRC, under which the prospective resident pays a refundable priority reservation fee. These 5 communities will be Woodland Park in New Paltz, The Amsterdam at Harborside in Port Washington (full disclosure - my client), Classic Residence by Hyatt in Briarcliff Manor, Skyline Commons in Jamaica and Harbor Village at Mount Sinai. In addition, there are currently two "Priority Reservation Applications" pending. These communities are Good Shepard Village at Endwell in Endwell, NY and Cuba Memorial CCRC in Cuba, NY.

Fast Facts

- *There are more than 2,200 CCRCs in the country today, the vast majority of which are owned by nonprofits.*
- *There are more than 36,000 assisted living facilities in the U.S. today. Roughly 1 million seniors live in these facilities and the typical resident is an 83-year-old woman requiring assistance with 1.7 activities of daily living (ADLs).*

Assisted Living Growth Strategies

Assisted living providers are increasingly facing competition from segments that previously posed little threat, according to highlights from ALFA's new research report entitled: "Inside the Minds of Leading Executives in Assisted Living & Seniors Housing." Independent living facilities and nursing facilities (to a lesser extent) are encroaching upon assisted living's domain. CCRCs are also representing a threat to some assisted living residences and will continue to provide stiff competition for the assisted living industry well into the future. Several different CCRC models are being marketed today, which have different price points that appeal to different wellness levels and income/asset levels.

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Assisted Living Rents Increase Five Percent

The average annual cost of a one-bedroom assisted living unit increased 5% over the past year to \$30,300 (\$2,525/mo.) according to a study from the insurance company, Genworth Financial, and from the MetLife Mature Market Institute's annual market survey. Assisted living in Hawaii was the most expensive, averaging \$49,200 per year (\$4,100/mo.), while the least expensive was in Arkansas, with an average price of \$18,100 per year (\$1,508/mo.). Stamford, CT posted the highest monthly average cost at \$4,327, while Miami came in least expensive at \$1,340. Other top 5 finishers were: Washington, D.C. at \$3,920/mo., Wilmington, DE at \$3,782/mo., the state of Alaska at \$3,757/mo., and Silver Spring, MD at \$3,718/mo. As a comparison, the average rate for a private room in a nursing home is \$69,120 (\$5,760/mo.), with the most expensive being in Alaska at \$201,960 (\$16,830/mo.) and the least expensive being in Shreveport, LA, at \$35,640 (\$2,970/mo.). In New York City, the average nursing home rate is \$112,320 (\$9,360/mo.).

Life Expectancy Rises

Life expectancy for Americans has reached an all-time high, according to the latest U.S. mortality statistics coming out of the Centers for Disease Control and Prevention (CDC). The report, "Deaths: Preliminary Data for 2003," shows life expectancy at 77.6 years in 2003, up from 77.3 in 2002. The gap between male and female life expectancy closed from 5.4 years in 2002 to 5.3 years in 2003, continuing a trend toward narrowing since the peak gap of 7.8 years in 1979. Record-high life expectancies were found for white males (75.4 years) and black males (69.2 years), as well as for white females (80.5 years) and black females (76.1 years).

Long Term Care Insurance

The bad news is that after more than 20 years on the market, long term care insurance remains a tough sell. Only 10% of people over 65 own policies, with many holdouts saying that they are intimidated by high costs and the bewildering array of benefit levels, deductible periods and other features. The good news is that many of the policies now cover home care, assisted living, respite care and hospice care; two decades ago many covered only nursing home care.

What The Experts Are Saying

"Affordable, seniors and student housing are distinct types of real estate, but they share one thing in common - they are poised for tremendous growth in the years ahead."

– Apartment Finance Today - June 2005

"The number of assisted living centers cropping up reduced the need for new nursing home beds."

– Martin Bieber, CEO of Mercy Medical Center, Rockville Centre, NY

On the proposed reform of Medicaid:

"If the states start paying for home health care or assisted living, they're obviously buying out a ton of private pay care, which they don't want to do. So I think there's a natural huge barrier to the states really going in a big way toward assisted living and home health care because their budget exposure is going to be enormous. Far, far more people are going to go on the state funding for assisted living and home health care if the state pays for it. Whereas, if it is private pay, they won't."

– Tom Scully, Senior Advisor with the investment firm Welsh, Carson, Anderson & Stowe, Senior Counsel for the law firm Alston & Bird, and former head of the Centers for Medicare and Medicaid Services (CMS).

Top Assisted Living Providers in 2005 (By Number of Beds)

Sunrise Senior Living	Merrill Gardens
Emeritus Assisted Living	Atria Senior Living
Alterra Healthcare	Leisure Care
Sunwest Management	American Retirement
Extendicare Health Services	Hearthstone Assisted Living

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