

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

Wayne L. Kaplan is Of Counsel at Ruskin Moscou Faltischek, P.C., one of New York's leading healthcare and business law firms, and is head of the firm's Seniors' Housing Group. Wayne was one of the founders and General Counsel of Kapson SENIOR QUARTERS Corp. and is currently Chairman of the Legal Committee and member of the Board of Directors of the Empire State Association of Assisted Living. He can be reached at wkaplan@rmfpc.com or 516-663-6553.



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The Industry Today

The economic environment is deteriorating at a rapid and accelerating pace, and the seniors' housing and care industry has not been immune but has been holding up fairly well. Acquisition prices have declined as financing has dried up. Values have dropped and cap rates are up. While other sectors of commercial real estate are under more pressure to reduce rates, the seniors' housing industry is still able to raise rates. Nationwide, revenues have

increased 4.5 percent year over year to \$3,543 per occupied unit per month. Occupancies are either flat or have fallen a little, but nothing catastrophic, and there is anecdotal evidence of discounting, so rates could be lowered to help maintain occupancy. However, margins could be a possible bright spot, where lower commodity costs and interest rates could help with expenses, and with massive layoffs in many industries nationwide, labor cost increases will moderate.

The Current Credit Jungle

Those banks with money to lend are cherry-picking the best deals and have tightened underwriting parameters, lowered loan-to-value ratios and raised spreads, according to an article in Builder by Gary Nelson of D.A. Davidson & Co. Many lenders have narrowed their geographic lending footprints and are avoiding perceived risks with a strong focus on regulatory oversight. To avoid risk, lenders are showing much more interest in existing properties with proven cash flows, over construction projects. Lenders are also looking closer at proforma estimates and challenging borrowers' assumptions.

Cap Rates

Capitalization rates are higher this year than last. Rates for skilled nursing are up to 12.75% in the third quarter of 2008, compared with 12% in 2007. Numbers for the assisted living market are also higher, rising from 8.5% to 9.2% from 2007 to 2008, according to NIC numbers.

Employment

With more jobs being lost all the time across the board - more than 215,000 layoffs in the United States were announced in January (2009) alone, there should be comfort in the fact that one sector, health care, continues to add jobs. In December, employers added 32,000 health-related positions. According to the Labor Department, personal care and home care aides are expected to be the

second fastest growing occupation in the United States from 2006-2016, increasing by 51 percent, slightly behind the expected growth in systems and data communications analysts.

Total Number of Seniors' Housing Facilities

The NIC National Supply Estimate of Seniors Housing & Care Properties enumerated a total of 46,131 seniors housing properties with supportive services in the U.S. with a capacity to hold more than 3.4 million seniors as of 1999-2000. Of these 46,131 properties (3,411,891 beds), 50% were assisted living communities, 34% were nursing facilities, 7% were independent living communities, 4% were continuing care retirement communities (CCRCs), and 5% offered a combination of property types. Seniors apartments (that is, seniors housing properties without supportive services) were estimated at 11,726 properties and 821,173 units. The 2004 Update to the Size, Scope, and Performance of the Seniors Housing & Care Industry estimated 33,000 market rate professionally managed properties (independent living, assisted living, nursing homes, and CCRCs) with a capacity to hold 3,675,000 seniors.

Technology's Future

The technology future of assisted living, independent living and home-based care will be remote monitoring and sensor technology. These kinds of technologies can enable individuals to maintain safe independent living conditions. For instance, there are sensors that can automatically turn off the stove if it's left on too long, alert care givers if the refrigerator is left open, or also if it's not being opened frequently enough. There are many types of bio-technologies being developed to monitor vital health signs and there are new telecommunications tools for diabetics that can allow them to take a fingerstick glucose test that will electronically send the results to a doctor.

Silver Alert Systems

The Silver Alert system, similar to the Amber Alert system for finding missing children, is on the books in at least nine states to notify the immediate community of missing seniors, specifically those affected by Alzheimer's disease. Oklahoma, Illinois and Georgia were the first to implement such programs in 2006. Since then, Colorado, Kentucky, North Carolina, Ohio, Texas and Virginia have followed suit.

What Other Experts Are Saying

"Seniors are having difficulty selling their homes, the primary source of life savings for many of them. This has resulted in a decline in demand for some "for-sale" seniors housing, such as senior patio homes or for-sale senior condominiums.

Overall though, demand for seniors housing remains strong. The fact is that demand will continue to rise because of the aging of the population. However, while people are living longer than they did historically, many of them incur multiple illnesses or physical impairments in the latter years that require medical assistance. At some point, the demand for seniors housing goes beyond a financial decision; it becomes a life-saving decision."

– Mark Meyers, SVP, Marcus & Millichap

"If you can buy now at a lower-per-unit basis, you can afford to lower rental rates and charge less than the competition."

– Dave Hegarty, Pres., Senior Housing Properties Trust

"We are certainly in the midst of a once-in-a-lifetime set of economic conditions."

– Steve Ballmer, CEO, Microsoft

"Unfortunately, we found out that the light at the end of the tunnel was a train."

– Art Hogan, Chief Market Strategist, Jefferies & Co.

"When life looks like easy street, there is danger at your door."

– Grateful Dead song "Uncle John's Band"

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RUSKIN MOSCOU FALTISCHEK P.C.

Smart Counsel. Straight Talk.

East Tower, 15th Floor

1425 RXR Plaza, Uniondale, NY 11556-1425

516.663.6600 ▼ www.rmfp.com

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