

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, who owns and operates several assisted living facilities, was one of the founders and General Counsel of Kapson SENIOR QUARTERS Corp. and he 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.



RUSKIN MOSCOU FALTISCHEK, P.C.

Smart Counsel. Straight Talk.

Attorney Advertising



Wayne L. Kaplan

The Industry Today

While the U.S. economy is not out of the woods, the environment continues to improve slowly. Over the past year, seniors' housing fundamentals have begun to stabilize, and most metro areas have posted improvements in occupancy as seniors transition into more costly assisted living units from home or independent living facilities. Industry fundamentals could improve significantly in the next 12 months if the economic recovery continues. Occupancy in assisted living facilities for 1Q10 remained pretty constant at 88.1%, even though it has declined in 11 of 12 quarters since 1Q07. Independent living facilities were at 87.9%, CCRCs were at 89.7%, and skilled nursing facilities were at 89%. Cap rates for assisted living facilities for 4Q09 had an average mean of 9.9, while independent living facilities averaged 8.8 and skilled nursing averaged 13.3. HUD, with interest rates at historic lows and non-recourse, long-term financing available, is still the "go-to" entity for financing, but HUD's time frame for closing deals keeps getting longer.

Other lending is starting to make a comeback, but it's nowhere near the record levels of 2005 to 2007 and certain players have yet to make a reappearance. Equity participants, seemingly tired of sitting on the sidelines, are also starting to come back into the market again, completing a few select deals. Nevertheless, the seniors' housing industry has emerged as one of the nation's strongest real estate sectors and the future has never looked brighter with 78 million aging baby boomers on the horizon. With the over-85 cohort being the fastest growing segment of the U.S. population, and virtually no new assisted living supply coming online in the next couple of years, the performance in this asset class will no doubt be strong and the demand for seniors' housing is expected to rise sharply over the next few decades.

The Growing Aging Population

The growth in the aging population is going to be phenomenal starting next year. About one in five U.S. citizens will be "elderly" by 2030. The elderly population was 30 million in 1988 and will not reach 40 million until 2011 but then it will reach 50 million in 2019, just eight years later (Senior Living Business).

Alzheimer's

Some 7.7 million Americans older than 65 are expected to have Alzheimer's disease by 2030, up from 5.1 million in 2010 because of the aging population,

Seniors' Housing Legal News Alert is a publication for distribution without charge to our clients and friends. It is not intended to provide legal advice, which can be given only after consideration of the facts of a specific situation.

according to the Alzheimer's Association. In 2010, nearly a half million Americans will develop new cases of the disease and by 2050, that number will double to nearly a million new cases per year. Every 70 seconds, someone develops Alzheimer's disease. Alzheimer's is now the sixth-leading cause of death in the United States, surpassing diabetes; it is the fifth-leading cause of death among individuals 65 and older, following heart disease, breast cancer, prostate cancer and stroke. The National Academy of Sciences estimates that an additional 3.5 million health-care workers will be required by 2030 just to maintain current levels of staffing for Alzheimer's care demands. Scientists don't know exactly what causes Alzheimer's, a progressive brain disorder that accounts for the majority of dementia cases, although genetics and age likely play a role. There are only four drugs approved for the disease, but these just treat individual symptoms and don't stop the relentless course of the illness. New medicines are in testing but are likely to take years before they reach medical clinics. For senior living companies that care for residents with Alzheimer's, the data reaffirms the increasing demand for specialized memory care services.

Seniors' Housing Rent Growth

A chief reason why seniors' housing is viewed as "outperforming" other asset classes is the fact that, year over year, rents are continuing to grow, according to NIC MAP. 1Q10 rent growth was 1.5%, with assisted living averaging \$3,553 per month (average rents in independent living were \$2,701 and in nursing homes the private pay rate averaged \$7,928), which compares to data provided by the Mortgage Bankers Association and Property and Portfolio Research (PPR) showing that office and multifamily year over year asking rents declined by 9% and 6%, respectively.

Where Seniors Get Their Income

Social Security is still the largest source of income for those currently age 65 and older, accounting for 39.8% of their income on average. Pension and annuities income was 19.7%, income from assets was 13%, and income from earnings was 25.6%. Nearly all individuals (89.2%) received income from assets, 35.4% received income from pensions and annuities, and 20.4% received income from earnings (U.S. Census Bureau's March 2009 Current Populations Survey).

Other Tidbits

- Almost 90% of the homes owned by the 75+ age group are owned free and clear.
- The U.S. Census Bureau indicated that the ratio of seniors needing assistance with everyday activities varies from 9.3% of those 65 - 69 years old to 45.4% of seniors over 85 years old.

What Other Experts Are Saying

"The improving employment market is likely to alleviate some of the stress seen in seniors housing during the recession. As the number employed begins to substantially increase, there will likely be more adult children able to finance care and less with the time to provide home care. This scenario will likely lead to gradual improvements in occupancy and allow properties to slowly resume rent increases as the economy recovers."

- Ben Frank, VP of Sunwest Bank

"I would love to see more home and community-based options. There is still a generation, my parents' generation, that has a view of long-term care as the 1960s view of nursing homes and it terrifies them. They want to avoid that at any cost. We had the ability to take care of my mom at home. She had Alzheimer's. We could never get my dad to accept that there are different types of care."

- Senator Mark Warner (D-VA)

"I was so much older then, I'm younger than that now."

- Bob Dylan

"If you are not the lead dog, the view never changes."

- Author Unknown

If you no longer wish to receive this communication, please send an e-mail to info@rmfpc.com with "Remove from Seniors' Housing Legal News Alert e-mail" in the subject line.


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

Copyright © 2010 Ruskin Moscou Faltishek, P.C. All Rights Reserved.