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Building for Care: Managing Construction Contract Risk in Senior Living Development

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Senior living is one of the fastest-growing real estate asset classes in the country. The nation's 85-and-over population is projected to reach nearly 16 million by 2045, and investors poured a record \$12.1 billion into senior housing real estate in the first quarter of 2026 alone. As more developers enter the space, many do not fully appreciate how these projects may differ from conventional commercial construction. Senior living and care facilities sit at the intersection of building code compliance, healthcare regulation, and commercial construction risk, producing legal exposures that standard

construction and design contracts were not designed to address. Below are the risks we see most often and the contract strategies that help owners and developers manage them.

Classification Drives Code Compliance

A facility's classification, whether independent living, assisted living, memory care, or skilled nursing, can trigger materially different code requirements. Under the International Building Code, independent living may fall under Residential Group R-2, assisted living under Institutional Group I-1, and skilled nursing under I-2, each carrying distinct requirements. A misclassification discovered after permitting or design can cause change orders and schedule delays. Ensure your architect agreement requires the architect to confirm the correct occupancy classification and to bear the cost of any redesign caused by a classification error attributable to the design team.

Licensing Is a Schedule Driver

Every state licenses senior care facilities differently. Some require approval of final construction plans before you break ground; others inspect at defined construction milestones. A substitution of materials or a minor layout change that would be a routine change order on an office building can require re-submission, a new plan review, and re-inspection, translating into weeks or months of delay and lost operating revenue. Maintain a "Licensure Critical Elements" schedule, and require the general contractor to obtain written approval before changing any project elements.

Accessibility Obligations Stack Up

Senior living projects face layered requirements under the Americans with Disabilities Act, the Fair Housing Act, and state accessibility codes. Where those standards conflict, you must comply with the most restrictive one. Engage an accessibility

consultant with senior living experience and prepare an Accessibility Matrix identifying the controlling standard for every space, then attach it to your design and construction agreements.

Plan for Regulatory Drift

Multi-year development timelines expose senior living projects to mid-project changes in laws and codes. Seek to keep the architect responsible for compliance with changes in law through approval of the 100% construction document set. Include a change-in-law provision that requires the contractor to promptly notify you of any changes in the law, so that you can consider value engineering and other alternatives to avoid cost and schedule exposure.

Conversions Carry Hidden Conditions

Converting hotels, offices, or hospitals into senior living can offer faster time-to-market and lower land costs, but existing structures may conceal asbestos or lead paint, inadequate structural capacity, or layouts that do not meet current accessibility or egress standards. Perform comprehensive invasive investigations during the design phase, and include detailed differing site conditions notice provisions so issues surface before the contractor incurs cost.

Protecting Residents During Phased Construction

Facility renovations and phased construction activities can expose vulnerable populations to noise, dust, and construction hazards and can trigger regulatory action, negligence claims, or licensing jeopardy. Include specific and enforceable resident safety requirements in these scenarios, such as dust barriers and negative air pressure, infection control protocols, background checks for workers with resident access, restricted construction hours, and potentially even damages for violations.

Coordinate Operators and Brands Early


Developers and operators often have different priorities, and disputes can arise when operator requirements exceed what was designed and built. Formalize an “Operator Requirements Document” covering the operator’s requirements. For branded properties, incorporate brand standards into the construction documents. Also involve your operator and/or brand early on. Adding these parties after design has commenced or completed can lead to change orders and delays.

Certificate of Need Considerations


In roughly 35 states, a Certificate of Need (CON) must be approved before a facility can be built or expanded, creating interdependencies with your schedule. On the one hand, CON timelines can cause delays to your design and construction contracts — and you may be liable for additional costs during delay periods. On the other hand, construction delays may jeopardize CON compliance. Internal scheduling is critical here, as is aligning design and construction schedules with your CON timeline.

The Takeaway

Whether the issue is classification, licensure, life safety, Certificate of Need compliance, or phased occupancy, the common thread is the same: proactive planning and well-drafted contracts are your best risk-management tools. The time to address these issues is before design and construction begins, not after problems arise. Developers and owners entering the senior living space should work closely with construction counsel who understand both the sector and its specific issues, and invest in the upfront planning that will protect the project, its residents, and your bottom line.



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