



Why Senior Health Care Asset Owners and Investors Should Reexamine Their Loan Agreements

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Although it seems like we have been enduring COVID-19-related issues for a while, the crisis has been with us for only a few months. Given that length of time, it is reasonable to assume that most loan agreements executed by owners of senior health care-related assets were negotiated and executed in the pre-COVID-19 world and without any regard to the possible impacts of the crisis. As a result, compliance by owners and operators with certain provisions of those loan documents may have been unintentionally adversely impacted by costs, requirements and practicalities arising out of the way in which those owners and operators have been required to act in response to the crisis. While owners and operators have been struggling to address the many day-to-day issues that needed addressing during the crisis, many borrowers will not have had either the time or the inclination to go back and review those agreements to determine whether there are any problems under those documents.

Most borrowers would be well served by reviewing their loan documents now in order to identify any actual or potential defaults and developing a strategy to address those issues. Financial results from April are now being delivered to lenders. April was the first full month during which borrowers incurred additional costs and took protective measures related to the COVID-19 crisis. And with two months of experience in operating in the COVID-19 environment, owners and operators are beginning to understand that certain operational requirements and costs may become the new normal in the longer term.

Lenders are beginning to see a clearer picture of the impact that the COVID-19 crisis is having on borrowers and to determine that breaches may have occurred. Although the lending community has been encouraged to act in a cooperative manner with businesses in order not to create further economic turmoil, lenders should not be expected to refrain from exercising their rights forever. Borrowers are likely to benefit from identifying actual and potential breaches, proactively addressing these issues and crafting solutions while the financial community is still handling these issues with a cooperative outlook.

Resources

Williams Mullen's Senior Housing Transactions Team has developed two articles on loan agreements that describe the various key provisions that may be impacted by COVID-19. Please click below to download the articles.

