

802.2(d)

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April 23, 1998

This material may be subject to the confidentiality provisions of section 7(d)(1) of the Clayton Act which restricts release under the Freedom of Information Act.

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Mr. Michael Verne
FEDERAL TRADE COMMISSION
Premerger Notification Office
Washington, D.C. 20580

VIA EXPRESS DELIVERY

Re: Request for Confirmation of Inapplicability of Premerger Notification Requirements

Dear Mr. Verne:

On behalf of a client, we are requesting confirmation from the Premerger Notification Office that the transaction described below is exempt from premerger notification under the Hart-Scott-Rodino Antitrust Improvements Act (the "Act"), in accordance with Regulation Section 802.2(d).

Our client, Company "A," is a Delaware corporation. A and its subsidiaries are in the business of owning and operating a variety of senior living communities, including assisted living and skilled nursing facilities.

A has signed a purchase agreement with Company "Q" under the terms of which A or its subsidiaries will purchase the assets of Q that are used in the operation of three assisted living facilities ("Facilities"). The three Facilities are located in the State of Washington and are licensed as Boarding Homes under Washington law. Each of the Facilities is comprised of a residential component, which consists of residential apartments, and a services component, which consists of elements such as food preparation and dining areas, social or recreational rooms and administrative offices.

The total purchase price for the assets is \$22,000,000.00. However, as we will explain in more detail below, the percentage of the purchase price that is allocated to the nonresidential portion of the assets is well below the \$15,000,000.00 reporting threshold established by the Act.

The following is a description of each facility, including the purchase price for the assets comprising each facility and the allocation of the price between residential and non-residential components:

1. The purchase price for the assets used in the operation of Facility #1 is \$7,250,000.00. The residential component of Facility #1 comprises 31,190 square feet out of a

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total square footage of 66,783. Thus, the residential component of Facility #1 comprises 46.7% of the square footage and the nonresidential component comprises 53.3% of the square footage. A has determined in good faith that the fair market value of Facility #1 can be roughly allocated to the residential and non-residential components on a square footage basis.¹ Thus, the fair market value of the non-residential component of Facility #1 is approximately \$3,864,250.00.

2. The purchase price for the assets used in the operation of Facility #2 is \$4,750,000.00. The residential component of Facility #2 comprises 20,683 square feet out of a total square footage of 34,922. Thus, the residential component of Facility #2 comprises 59.2% of the square footage and the non-residential component comprises 40.8% of the square footage. A has determined in good faith that the fair market value of Facility #2 can be roughly allocated to the residential and non-residential components on a square footage basis.² Thus, the fair market value of the non-residential component of Facility #2 is approximately \$1,938,000.00

3. The purchase price for the assets used in the operation of Facility #3 is \$10,000,000.00. The residential component of Facility #3 comprises 60,782 feet out of a total square footage of 104,445. Thus, the residential component of Facility #3 comprises 58.2% of the square footage and the non-residential component comprises 41.8% of the square footage. A has determined in good faith that the fair market value of Facility #3 can be roughly allocated to the residential and non-residential components on a square footage basis.³ Thus, the fair market value of the non-residential component of Facility #3 is approximately \$4,180,000.00.

Thus, A has determined in good faith that the fair market value of the non-residential component of Q's assets being acquired by A is \$9,982,250.00, and the fair market value of the residential component of Q's assets being acquired by A is \$12,017,750.00.

Section 802.2(d) of the Regulations states that an acquisition of residential property shall be exempt from the requirements of the Act. It further states that in an acquisition that includes residential property, the transfer of any assets that are not residential property shall be subject to the requirements of the Act as if such assets were being transferred in a separate transaction.

Subsection (3) states that if the acquisition includes the purchase of a business conducted on a residential property, the transfer of that business, including the space in which the business is conducted, shall be subject to the requirements of the Act as if such business were being transferred in a separate acquisition.

¹ The "non-residential component" of Facility #1 includes the entire Facility other than the residential component.

² The "non-residential component" of Facility #2 includes the entire Facility other than the residential component.

³ The "non-residential component" of Facility #3 includes the entire Facility other than the residential component.



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The business of Q is predominantly conducted in the non-residential components of Facilities. While Q does provide services in the residential components (including housekeeping, linen service, and assistance of residents with activities of daily living), the residential components of the Facilities are predominantly residential in nature. Thus, the fair market value of the residential components of these Facilities should not be considered in determining whether the \$15 million threshold is met.

In light of the foregoing, we believe that, in accordance with Regulation Section 802.2(d), the above-described transaction is exempt from reporting requirements. The fair market value of the non-residential components of the Facilities acquired reflect the value of the "business conducted on the residential property, including the space in which the business is conducted." As stated above, this value is less than \$10 million, substantially below the reporting threshold.

We would appreciate confirmation that our conclusions are consistent with the understanding of the Commission. If you have any questions regarding the transaction or require further information, please do not hesitate to contact me.

Thank you for your assistance in this matter.

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AGREE - SEE SUPPLEMENTAL
ATTACHMENT ALSO.
B. Michael Verne
5/1/98

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