

[REDACTED]

ATTORNEYS AT LAW

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802.2(d)

November 18, 1999

VIA FEDERAL EXPRESS

Mr. Patrick J. Sharpe
Premerger Notification Office
Bureau of Competition
Federal Trade Commission
6th & Pennsylvania Avenue NW
Washington, DC 20580

Re: Assisted Living Facilities – Applicability of the Real Estate Exemption
Under 16 C.F.R. § 802.2(d)

Dear Patrick:

This letter confirms my telephone conference on November 16, 1999 with you and [REDACTED] about the applicability of the real estate exemption to assisted living facilities under 16 C.F.R. § 802.2(d).

You confirmed that assisted living facilities are generally subject to the real estate exemption as residential complexes. Residents of assisted living facilities pay rent for apartment-like residences. Many assisted living facilities offer additional services, such as assistance for bathing and dressing, dispensing medication, recreational activities, meal service, and licensed nurses on-site. You indicated that because assisted living facilities are "primarily" residential, the provision of these services is also exempt, and not separately subject to the reporting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "Act"). See 16 C.F.R. § 802.2(d)(2). To the extent that an assisted living facility owns medical equipment (such as wheelchairs, walkers, etc.), we assume there is no need to value the medical assets separately because the facility is "primarily" residential.

Assisted living facilities do not provide skilled nursing care as do skilled nursing facilities that are subject to more stringent state and federal regulations. You indicated that skilled nursing facilities are not subject to the real estate exemption. You also indicated that businesses operating in an assisted living facility (such as a pharmacy, barber shop, etc.) are non-exempt assets and separately subject to the notification requirements of the Act. However, only if such non-exempt assets are [REDACTED]

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Patrick J. Sharpe, Esq.
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controlled by the assisted living facility and, in the aggregate, exceed \$15.0 million dollars, would a transaction meet the size-of-transaction test under the Act.

Finally, we are assuming that the real estate exemption applies to the acquisition of voting stock of an issuer that controls assisted living facilities. See 16 C.F.R. § 802.4. Only if the issuer holds non-exempt assets that, in the aggregate, exceed \$15.0 million, would an HSR filing be required (assuming the size-of-person tests are met). The managing offices of the issuer, which are not held on-site at an assisted living facility, would also be subject to the real estate exemption as offices under §802.2(d)(2). Similarly, managing offices within an assisted living facility would be exempt. OK

Please call me immediately if my understanding about the applicability of the real estate exemption to assisted living facilities, as discussed above, is incorrect. Thank you for your prompt attention and assistance in addressing this issue.

Sincerely,

[Redacted signature]

[Redacted text]

*I concur with this letter.
called [Redacted] 11/22/99.*

[Redacted text]