

大成 DENTONS

Seniors Housing, Long-Term Care and Assisted Living Facilities

May 2020

Main Entrance
Valet Parking
Drop-Off

Seniors Housing, Long-Term Care and Assisted Living Facilities

Dentons is a leading provider of legal services to the Seniors Housing sector across several of the Canadian provinces. We are considered a “go-to” firm by operators because of the depth and breadth of our expertise and experience, industry knowledge and senior care regulator relationships within the sector. Our clients benefit from Dentons’ deep team of leading lawyers covering the full spectrum of regulatory and dispute resolution. Dentons can act as a single point of contact with ease ensuring consistency and quality control on all of our clients’ transactional activity across the country.

Whether dealing with one or multiple facilities our Dentons team can assist clients in navigating the legal, strategic and operational challenges.

COVID-19

According to the Public Health Agency of Canada, an estimated 80 per cent of the Canadians who have died of COVID-19 have been residents of long-term care facilities. This has given rise to a growing number of proposed class actions and individual law suits. The Ontario Government announced on May 19th that an independent commission into the long-term care system will be held commencing in September. There have been requests for a broader public inquiry in Ontario, a public inquiry at the federal level and a public inquiry in Quebec. While many of the owners and operators of the facilities in the Seniors Housing sector remain in crisis mode, management and the boards of such facilities need to strategically consider how to put in place well thought out and effective measures to ensure compliance with the ever changing regulations, business continuity and resiliency.

Our Services

At Dentons, we actively leverage our capabilities and expertise to anticipate the challenges our clients face and provide solutions that ensure our clients achieve their objectives in a timely, efficient and cost effective way. Dentons’ multi-disciplinary team advises in critical practice areas such as:

Banking and Finance

We work closely with the client to identify creative financing solutions for mergers, acquisitions and the construction of Seniors Housing facilities. The Banking and Finance group can assist in managing debt restructuring, reviewing current covenants and are well versed in the government enabled loan and guarantee programs. We represent both lenders and borrowers in restructuring, negotiating and completing a wide variety of credit transactions.

Construction and Infrastructure

The Dentons Construction/Infrastructure group can assist in all aspects of Project Development, Financing and Construction and Commissioning. We bring advice on construction agreements that relate to developers and operators in the Seniors Housing sector. This includes project development, procurement, contracting strategy and health and safety programs. Our team confidently addresses risk assessment, conflict avoidance, claims management and dispute resolution and we have extensive experience in litigation with courts, arbitration tribunals and international arbitration boards.

Employment & Labour

COVID-19 has resulted in a unique set of workplace management considerations for assisted living and long-term care homes. Those considerations include the enhanced protections required to ensure employee health and safety for front line workers and the need to balance employee privacy against safety concerns. These issues are being managed within the context of unionized and non-unionized workplaces. Dentons has a team of experienced lawyers with expertise in occupational health and safety requirements, labour relations, privacy rights and employment best practices.

Government Relations

The Dentons Government Relations and Public Policy group is well-positioned to assist our clients with government-related matters with respect to the COVID-19 outbreak. Our national team leverages its collective experience and knowledge at federal, provincial and municipal levels.

Insurance

COVID-19 has affected all business sectors, but there are considerable implications on the future of the insurance industry. Insurers in the Seniors Housing sector and, in particular, assisted living and long-term care homes, will be revisiting the risks they are prepared to underwrite in the future as they deal with claims under existing policies. Our insurance team has a wealth of experience in all areas of insurance and can provide valuable insight and guidance in assisting facilities in the sector navigate through the challenges that lay ahead.

Litigation, Public Inquiries, Regulatory Proceedings and Class Actions

The COVID-19 crisis has disproportionality affected the elderly in assisted living and long-term care homes, resulting in numerous class actions across the country as well as individual lawsuits. It is a certainty more litigation will follow along with regulatory proceedings under the governing legislation. The effects of the pandemic on assisted living and long-term care homes have resulted in the Ontario Government launching an independent commission into the long-term care system, a request for a broader public inquiry in Ontario, a request for a public inquiry at the federal level and a request for a public inquiry in Quebec. Our team at Dentons have particular expertise with redress plans and other strategies to limit exposure and safeguard reputations.

Mergers and Acquisitions

Our M&A Group has worked with various health authority regulators and ministries to assist stakeholders in the Seniors Housing sector to complete their transactions. In addition, our M&A Group can assist in the negotiation with prospective strategic investors, internalizing management companies and REIT formation structuring for investment.

Privacy and Cyber Security

Our Privacy and Cybersecurity team has expertise in both the public and private sectors of healthcare. Our team assists with compliance issues to reduce risk and mitigate against director and officer liability including Privacy Audits and Privacy Impact Assessments as well as the management of health information and personal information (e.g., medical records obligations, EMR issues, information custodian requirements, data sharing agreements, etc.). The team also assists sector stakeholders with data incident planning and response and provides one-stop data breach management. This includes the management of forensic providers, insurers and regulators. Our team handles day-to-day issues of employee and workplace privacy as well (e.g., families placing web cams in resident rooms, employee “snooping” issues, etc.).

Real Estate

Our Real Estate group brings well established local and regional experience, contacts and know-how to ensure our clients succeed in each of their real estate ventures. This includes advice on real estate leasing, contract disputes, project finance and acquisition and disposition. We identify and advise on all areas of land ownership and operational issues as well as advising on the appropriate structuring of investments, both by Canadian residents and non-residents. The Dentons Real Estate group has represented purchasers, sellers and investors in real estate property, including financial institutions, pension funds, real estate investment trusts (REITs), foundations and offshore and US-based interests and investors.

Regulatory

Our Regulatory team is well-positioned to assist our clients in the Seniors Housing sector strategically address complex issues and mitigate risk in the rapidly evolving regulatory landscape. This includes advising and advocating on behalf of industry clients in regard to health related changes in policy and governance. In addition, we cost-effectively manage and resolve disputes whether with suppliers, resident families or regulatory authorities.

Restructuring, Reorganization, Insolvency and, Bankruptcy

The impact of COVID-19 on the assisted living and long-term care homes in particular has been devastating and the future viability of the participants in the sector are at risk. The issue as to whether licensed operators of facilities will remain going concerns is significant to shareholders, creditors, prospective investors and other stakeholders. Some facilities will cease to operate or have to restructure their operations. Our Restructuring, Reorganization, Insolvency and Bankruptcy team has significant experience assisting companies facing such difficulties, providing strategic and practical advice exploring all options.

Tax

In the complex world of tax, our role is simple: to serve as an extension of our clients’ business. Together, we will develop and implement a plan based on the needs and aspirations of the client—one that proactively identifies creative, integrated commercial tax-saving solutions. Whether excise or extra-jurisdictional, taxes will always impact our clients’ business. As regulations and issues shift and evolve, Dentons ensures the client stays ahead—with their goals as our guide.

Transformative Technology and Data Strategy

The Transformative Technology and Data Strategy (“TTDS”) group assists organizations with all aspects of their transition to a digital environment. The TTDS team has helped Seniors Housing stakeholders implement resident location tracking systems on memory care units; migrate resident medical records to electronic format and to EMR/cloud solutions. They have assisted with the adoption of digital medication reminders and leveraged virtual care platforms to provide residents access to additional (and specialized) medical providers around the clock. The team has also assisted Seniors Housing stakeholders in developing their data strategy; the longer term plan by which an organization becomes data-driven generating cost-savings and value from insights derived from data.

Effective, holistic solutions for all your needs in dealing with Seniors Housing Sector



Efficient, cost effective multijurisdictional coordination

We provide efficiency and value and can direct work to our various Dentons offices throughout the country, without compromising quality or service.

We work with our clients to learn about their specific objectives, priorities and circumstances to develop, define and articulate the value of our services and to arrive at the appropriate pricing structure for their matters.

We do not default to hourly rates. While we are comfortable operating under this model, we are equally comfortable and experienced in working with an array of fee arrangements.



A single point of contact

By project managing the entire suite of services offered across the country, we eliminate the need for our clients to engage with a patchwork of law firms. By leveraging our national (and global) reach, our clients avoid the challenges associated with managing autonomous counsel in multiple jurisdictions, while working with professionals with a deep knowledge of each jurisdiction.



Ancillary work

We also provide support and expertise for all “spin-off” work arising within, or directly from, a transaction. For example, we advise on specific concerns regarding supply chain management, dispute resolution and more.

Crisis Response, Recovery, Re-emergence

The Seniors Housing sector is facing a myriad of change in the coming weeks, months and years ahead. To support you as you consider your needs now, short term and as you re-emerge, we've prepared some guiding discussion points

BANKING AND FINANCE		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> renegotiating terms and covenants of current financing applying for government backed loans and assistance refinancing assistance default or extension of construction loans 	<ul style="list-style-type: none"> managing debt restructuring (i.e. if loan payments have been deferred) assisting clients in obtaining mezzanine financing 	<ul style="list-style-type: none"> understanding capital financing structures
CONSTRUCTION		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> developers/operators inability to complete the construction projects dealing with trades understanding stabilization periods onsite liability due to COVID 	<ul style="list-style-type: none"> advise on construction regulation and building codes 	<ul style="list-style-type: none"> pre-fab construction methods that can play a role in this industry new construction and design parameters to mitigate future risk
CORPORATE		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> preserving value during this crisis period cash conservation activities, working with suppliers and contractors for reduced rates 	<ul style="list-style-type: none"> drafting and reviewing management company agreements considerations regarding internalizing or spinning out management company joint ventures negotiation with strategic investors 	<ul style="list-style-type: none"> mergers and acquisitions vertical integration real estate investment trust formation and structuring for investment

EMPLOYMENT & LABOUR		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> health and safety concerns for front line workers labour relations in a time of crisis develop return to work policies for non-essential employees 	<ul style="list-style-type: none"> implementing health and safety best practices in accordance with occupational health and safety guidelines negotiations for Collective Bargaining Agreements 	<ul style="list-style-type: none"> create crisis policies for addressing employment concerns establish remote work scenarios for non-essential employees
INSURANCE		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> insurance coverage and liability reviews tenant insurance for residents 	<ul style="list-style-type: none"> dealing with collection of insurance claims and payouts 	<ul style="list-style-type: none"> new insurance methods: new providers (health, property benefits)
LITIGATION, PUBLIC INQUIRIES, REGULATORY PROCEEDINGS AND CLASS ACTION		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> litigation mitigation class action litigation public inquiries or other proceedings 	<ul style="list-style-type: none"> reposition policy/documents to protect against potential litigation public relations responses 	<ul style="list-style-type: none"> strategies to limit exposure safeguard reputation
PRIVACY AND CYBER SECURITY		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> data collection (health records) impact of allowing cameras at facilities/resident rooms advice on privacy regulation 	<ul style="list-style-type: none"> building infrastructure for data collection saving documents to the cloud 	<ul style="list-style-type: none"> building a company on a strength of cyber security
REAL ESTATE		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> landlord/tenant (inability/deferral to pay rent) other businesses conversions into care facilities 	<ul style="list-style-type: none"> rent deferral/rent abatement dealing with capex related challenges 	<ul style="list-style-type: none"> acquisition and dispositions of certain or all real estate assets

REGULATORY		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> interpreting each provinces regulation changes (and the anticipated changes within the various jurisdictions) 	<ul style="list-style-type: none"> on-going changes and monitoring of changes in regulations 	<ul style="list-style-type: none"> best practice set of policy and infection and pandemic impacted documents
RESTRUCTURING, REORGANIZATION, INSOLVENCY, BANKRUPTCY		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> mitigating risk of bankruptcy 	<ul style="list-style-type: none"> assisting providers restructure their portfolios 	<ul style="list-style-type: none"> acquisition from insolvency proceedings
SECURITIES		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> disclosure concerns regarding update to previous earnings guidance and assessment of materiality to guide current disclosure potential unsolicited take-over offers cash preservation considerations re: distributions 	<ul style="list-style-type: none"> assessment of disclosure and blackout policies proactive disclosure possible defensive measures, including financings review of market for possible accretive targets for acquisitions 	<ul style="list-style-type: none"> enhanced governance and disclosure practices financing
TAX		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> tax eligible pandemic expenses 	<ul style="list-style-type: none"> tax structures for owners and operators – disposing of their assets (tax structures in advance of deals) 	<ul style="list-style-type: none"> formation of trusts
TRANSFORMATIVE TECHNOLOGY AND DATA STRATEGY		
SHORT TERM	RECOVERY	LONGER TERM
<ul style="list-style-type: none"> highlighting current technology providers to the industry purchase of various technology products to assist with monitoring COVID-19 	<ul style="list-style-type: none"> document scanning and digitizing (EMR system) and electronic health record processing 	<ul style="list-style-type: none"> IT platform for operations point of sales, meal trends, maintenance tickets

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