

## Publications

### Sales and Marketing Tip - Legal Advice

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As an active member of the American Seniors Housing Association (ASHA), SeniorHousingNet has met some remarkable people who have valuable expertise in the marketing and management of senior housing. Joel Goldman, an attorney who sits on the executive board of ASHA, is one of those people that we would like to highlight for this month's marketing and sales tip.

Market materials used by providers of congregate senior housing and assisted living have profound legal implications. Stated simply, if you put a promise in a marketing document, you might as well put it in your admission agreement. Even if your admission agreement contains a boilerplate statement to the effect of "This Agreement contains the entire understanding between the parties," most courts will hold a provider to representations it has made in its brochures and advertisements.

Although we have found that most providers routinely have their legal counsel review their admission agreements and other legal documents, few providers routinely run their marketing materials past their legal counsel, sometimes with profound ramifications. Marketing materials should be treated as though they are legal documents because in reality they are.

Some of the most common problems we have seen arise from marketing materials are noted below:

- **Materials that promise unachievable results are highly problematic.** For example, one provider included the following statement: "We are dedicated to providing an environment that ensures your safety, security and peace of mind." Obviously, security is important to your residents and their family members. But statements such as the above are an open invitation to a lawsuit if anything ever goes wrong. A provider cannot possibly "ensure" safety, security or peace of mind. Security features are best promoted by sticking to the facts. For example, a provider might note that, "We have a state of the art emergency call system and personnel available 24 hours a day to respond to emergencies. We also have sign-in and sign-out procedures, and all of our employees undergo criminal background checks." By sticking to factual representations, providers reduce their liability risks without in any way hindering their marketing efforts.
- **Providers should avoid statements that set unrealistically high goals.** Phrases such as, "highest standards," "unsurpassed services," "uniquely trained staff" and the like can be problematic. Similarly, statements such as "We are always ready to respond to your every need" and "Staff will respond immediately in the event of an emergency" may set you up for a lawsuit.
- **Be careful regarding the choice of words that you use in your marketing materials.** One provider included the following statement: "We strive to maintain cost-effective, competitive services for our clients. However, nominal rent increases may occur in response to changes in the market and to increases in the costs of providing services." The problem here, of course, is the word "nominal." The standard dictionary definitions of "nominal" include "trivial," "of little value," "worthless" and "insignificant." It is doubtful that these are the words your residents will use to describe a 5% monthly fee increase. One entrance fee community stated in its advertisements that "Units will never be cheaper." When ultimately they were forced to reduce prices in response to lagging sales, they were confronted with demands from residents who had paid higher prices who claimed that they had been misled.

In sum, providers need to assume that they will be held to the representations and promises they include in their marketing materials. These materials need to be prepared with considerable thought to be certain that words are properly chosen and that providers are not unwittingly making promises that they cannot keep or creating unrealistically high consumer expectations.