



---

**HEALTHCARE MORTGAGEE ADVISORY COUNCIL**

Financing Seniors Housing for America

**The Future is What  
We Make of it, so Let's  
Make it Just.**

Legal Panel

# MEET THE PANEL





## Blair L. Schiff Troutman Pepper Locke

- **Blair Schiff**, is a partner in the Washington Office of Troutman Pepper, where he concentrates in the areas of real estate, housing and policy development. Blair's practice involves closings of multifamily and healthcare projects throughout the US, and he specializes in the Section 232 transactions, coordinating complex portfolio transactions involving account receivable financing and master lease structures. As well as working with Lenders, Mr. Schiff also represents a number of developers and public housing authorities navigating through the restrictions that go with the federal programs.

## Jaime A. Montoya Miles & Stockbridge

- **Jaime Montoya** represents mortgage lenders in a variety of commercial real estate financing transactions, including construction, acquisitions, refinancing and permanent financing loans utilizing a variety of different financing structures, such as GNMA securities-backed loans, Section 8 properties and tax-exempt financing.
- His practice is focused on federally insured and guaranteed financing transactions related to apartment buildings, nursing homes and hospitals.
- Jaime previously worked as a consultant providing advice in the housing and financial business sectors, including mortgage finance, securitization, and community development.

# Licensing Issues (particularly on acquisitions)

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- How to close “without” a license.
  - (i.e. license not in the name of your Operator)
- TX vs. NY (Texas allows you to close with multiple Operator side documents. but NY doesn't).
- What are other's experiences?



# Negotiating DACA/DAISAs

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Different Requirement in different HUD Offices.
- Different depository banks (and different counsels representing them) agree to different things.
- Why does HUD ask for DACA's on downstream accounts?
- Will HUD ever require a Rider (as opposed to requirement found in multiple documents)?

# Deals with Ground Leases and Deed Restrictions

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- One issue is the allowance by ORCF of increasing rents under the ground lease (whereas Multifamily doesn't allow it).
- Ground Lease Addendum (Public v Private Ground Lessor).
- Deed Restrictions (Use Restrictions and/or ROFR and ROFO).



# Closing “sister” deals

**HEALTHCARE MORTGAGEE ADVISORY COUNCIL**  
Financing Seniors Housing for America

- Different HUD attorneys.
- Different locations.
- Closing sister deals subsequent to the first closing.



## Accounts Receivable Issues:

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- Issues with A&R Structures (NY and FL).
- A/R issues with lines across multiple lenders.
- Amendments on Intercreditor Agreement.
- Adding facilities to existing line of credit.
- Back up with Asset Management approval is it needed?
  - How much approval do we really need?
- Do you need a cash flow chart for every facility in the portfolio?

# Accounts Receivable Issues continued:

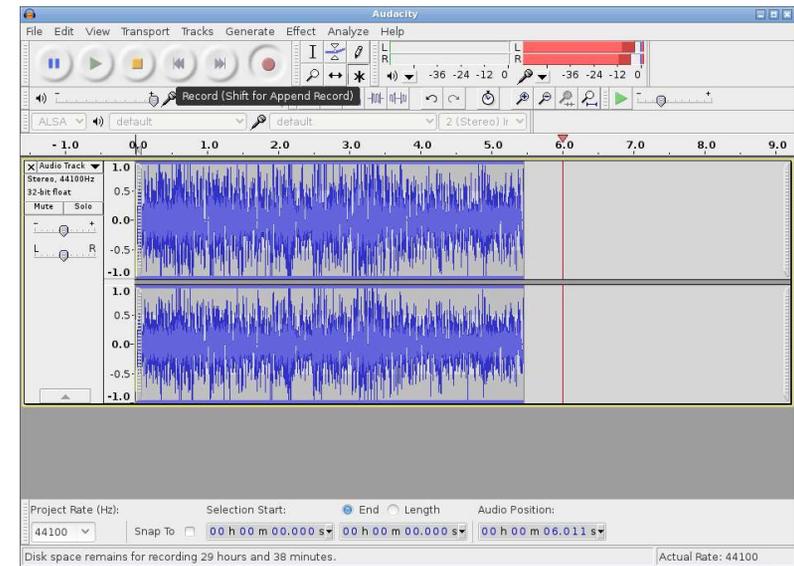
**HEALTHCARE MORTGAGEE ADVISORY COUNCIL**  
Financing Seniors Housing for America

- Process of A/R Terms Memo
  - Preparation and Approval
  - Changes to A/R Terms between Application and Closing

# Recording Issues

**HEALTHCARE MORTGAGEE ADVISORY COUNCIL**  
Financing Seniors Housing for America

- Recording issues (particularly in California).
- Acquisitions (how do you get around issues?)
- Challenging counties.
- Electronic vs. in person.



# Narrowly Averting Disaster:

- Closings gone wrong
  - What came up that no one saw coming/what happened?
  - How were things solved?
  - Could certain things have been anticipated?

HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America



# Free Legal Advice - Questions

## HEALTHCARE MORTGAGEE ADVISORY COUNCIL

Financing Seniors Housing for America

- CMS Medicare Revalidations:
  - Requiring skilled nursing facilities to report organizations that have a 5% or more interest in a mortgage, deed of trust, or other security interest in the SNF, as well as information on any adverse legal action imposed against that organization.
  - Do Lenders have to comply? Short answer, yes.
- Assignment Legal Instructions – form HUD 2510
  - Section 15 states the mortgagee must submit to the Secretary the original or a certified copy of the assigned Healthcare-related documents which lists:
    - Any lease (operating, master lease, lease, sub-lease, cross-default guaranty and all corollary SNDA's)
    - DACA/DAISA
    - Intercreditor agreement and all corollary Riders
    - All other agreements, instruments, documents, or collateral which evidence, secure, or otherwise relate to the Section 232-insured loan or required or permitted under the Section 232 Healthcare program, whether executed or delivered by or on behalf of a borrower, an operator, borrower representative, or master tenant, in each case, as amended, restated, supplemented, or otherwise modified.



## Questions?

- THANK YOU FOR ATTENDING OUR PANEL!