

Hotel Conversions to Assisted Living in the Wake of COVID-19

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How do you take a negative and turn it into a positive? COVID-19 has made answering this question very difficult, as the pandemic continues to have a negative and in some cases long lasting and devastating impact on people's daily lives and the many businesses that help sustain daily living. One area of business that has been hit particularly hard, as a result of the pandemic, has been the hospitality industry. According to a new national report completed by Trepp [1], the hotel industry is facing an unprecedented number of foreclosures as the COVID-19 pandemic continues to devastate small business hotel owners and its workforce. More specifically, American Hotel & Lodging Association (AHLA) conducted a survey of more than 600 hotel owner respondents and more than half of them stated that they are in danger of losing their property to foreclosure by commercial real estate lenders due to COVID-19.[2] As a result of these market conditions, some senior living developers and operators see a growing opportunity to capitalize on the hotel foreclosures by converting them to assisted living facilities.[3] However, turning this negative into a positive won't go without its challenges, and developers and owners should be mindful of some pitfalls when attempting to make this conversion a reality in Texas.

Hotels present themselves as prime candidates for conversion to assisted living facilities because their general make-up mimics that of an assisted living facility in so many respects – they generally contain the same core structure; they are highly amenitized; they contain 150 to 200 rooms on average; they contain a kitchen and dining area; and they conform to the same general building codes, all of which are core essentials for an assisted living facility. Moreover, assisted living residents want public spaces with a contemporary and hotel-like look and “customers expect a hospitality experience even though they are moving in to get assisted living help,” according to Chris Bird, executive vice president of operations at LCS.[4]

That being said, similarities will not get you an assisted living facility license with the Texas Health and Human Services Department (HHS). HHS licenses assisted living facilities based on residents' physical and mental ability to evacuate the facility in an emergency and whether nighttime attendance is necessary. There are two types of licenses issued by HHS, a “Type A” and a “Type B”. Type A licenses are for facilities that care for residents who do not require routine attendance during sleeping hours and are capable of following directions in an emergency. Type B licenses are for facilities that care for residents who require staff assistance to evacuate, are not capable of following directions in an emergency and require nighttime attendance.[5] Basically, a resident must be able to demonstrate they can travel from their living room to a centralized space, such as the lobby, on the level of discharge within a 13-minute period without continuous staff assistance, or without the use of an elevator. A resident who cannot perform the aforementioned task in the allotted time would be categorized as a Type B resident. These license designations are critical when mapping out a hotel conversion to an assisted living facility.

One of the first areas developers and owners should focus on when looking at a conversion is life safety. All buildings and structures comprising an assisted living facility must comply with the 2000 Edition of NFPA 101, as published by the National Fire Protection Association, Inc. (NFPA) and the type of license you seek in connection with such conversion will actually dictate which chapter of the NFPA 101 will govern. All existing Type A facilities and small Type B facilities must comply with Chapter 33 of the NFPA 101, and all existing Type B large facilities must comply with Chapter 19 of the NFPA 101.[6] The NFPA 101 standards help answer certain questions one should be thinking about when first contemplating a hotel conversion; i.e., are the hallways wide enough; what is the fire rating of my doors; what are the common walls made up of; what kind of fire sprinkler system do I need; do the rooms comply with minimum square footage requirements and other spacing requirements? All of these questions plus many others should be answered as you look towards converting a hotel to an assisted living facility. In addition to the NFPA 101 standards, the facility must comply with the accessibility requirements for individuals with disabilities in the revised regulations for Title II and III of the Americans with Disabilities

Act of 1990, and the Texas Accessibility Standards (TAS)[7], each of which a hotel should already conform to, thus lending itself well to the natural fit of converting a hotel to an assisted living facility.

But why leave any of this up to chance? Moreover, why risk a delay to your project because you overlooked one of these requirements? Well, you shouldn't. HHS has a procedure in place under which a person proposing to construct or modify an assisted living facility may submit building plans to the department for review for compliance with the department's architectural requirements before beginning construction or modification - its call an "Early Compliance Review." [8] HHS will review your plans submitted for compliance with the department's architectural requirements and inform you of the results of the review within thirty days after receipt.

In addition to the numerous considerations surrounding the building, such as the Life Safety Code and architectural requirements, further consideration should be given to the timing of the submission of the licensure application. It is recommended that completed licenses should be submitted at least forty-five days before the building is expected to conform to the Life Safety Code and architectural requirements. This timing may be somewhat confusing in certain instances, because a provisional license may be issued prior to a Life Safety Code inspection, but only in the event certain conditions precedent are met. [9]

The opportunity for hotel conversions may prove to be more bountiful in Texas in the months to come. Houston, Dallas, and Austin alone hold three out of the top ten places in the United States for the highest percentage of commercial mortgage-backed securities (CMBS) loans that are thirty or more days delinquent, with Houston and Dallas ranking #2 and #4, respectively. [10] These are not the rankings you typically want to find yourself atop; however, the foreclosed properties will present an opportunity for those senior living developers and owners or operators willing to take on the challenge.

[1] Historical CMBS Report: An Update on Hotel Commercial Real Estate, by Trepp; www.trepp.com

[2] Survey: Only 37 Percent of Hotels Have Brought Back at Least Half of Their Employees; American Hotel & Lodging Association; <https://www.ahla.com/press-release/survey-only-37-percent-hotels-have-brought-back-least-half-their-employees>

[3] Atria CEO Moore, Senior Living Developer Reis Bullish on Hotel Conversions, by Tim Mullaney; Senior Housing News; July 23, 2020; <https://seniorhousingnews.com/2020/07/23/atria-ceo-moore-senior-living-developer-reis-bullish-on-otel-conversions>

[4] What's Old is New Again, by Jane Adler; Seniors Housing Business, February-March 2020

[5] <https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/assisted-living-facilities-alf>

[6] Texas Administrative Code Title 26, Part 1, Chapter 553, Subchapter D, Rule §553.20

[7] Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 68

[8] Health and Safety Code, Title 4, Subtitle B, §247.0261

[9] See *Id.* §247.021(c)

[10] Trepp

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