Herskowitz, Kreick and Nelson in Healthcare Business Today: Legal Considerations for Structuring Sale-Leasebacks of Healthcare Real Estate

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As healthcare organizations continue to seek innovative capital solutions amid rising operational costs and demands, sale-leaseback transactions can serve as an effective tool when properly structured to navigate the complex regulatory landscape unique to healthcare real estate. Haynes Boone attorneys Jeremy Herskowitz, Jennifer Kreick and David Nelson authored an article for *Healthcare Business Today* examine what companies should keep an eye on as the regulatory landscape continues to evolve through the rest of 2026 and beyond, ensuring that transactions are structured with both capital objectives and long-term operational sustainability in mind.

Read an excerpt from the article below.

Sale-leasebacks involving healthcare real estate – which are specialized commercial properties such as hospitals, clinics, and medical office buildings – can be a powerful tool for healthcare organizations. When properly structured, these transactions can provide healthcare organizations with much-needed financial flexibility and real estate investment firms with attractive assets, often resulting in true win-win situations. However, sale-leaseback transactions that are not properly planned and structured may lead to difficult and costly outcomes for the parties, as illustrated by the highly publicized bankruptcy of Steward Health Care. To effectively navigate a healthcare real estate sale-leaseback transaction toward a successful result for everyone involved, it is critical to understand (i) the evolving regulatory landscape surrounding these types of transactions, and (ii) how to best structure them to meet the needs of the applicable parties. This article will take a closer look at both of these components primarily from the perspective of the healthcare organization, while also addressing certain implications for real estate investors.

The Fundamental Structure of a Healthcare Sale-Leaseback Transaction

Generally, a sale-leaseback entails (i) the sale of commercial real estate by the owner to a third-party, and (ii) the simultaneous entry (at closing) into a typically long-term lease agreement between the third-party buyer, as landlord, and the selling owner, as tenant, pursuant to which the former owner remains in occupancy at, and continues to operate, the property. These transactions may involve a single property or a larger portfolio, and the lease may take the form of individual leases for each property or a master lease covering the entire portfolio. In the healthcare real estate context, such a transaction will often work as follows:

- *A healthcare organization (e.g., a physician group, hospital, nursing home operator, etc., and broadly referred to in this article as an "HCO") owns real estate assets that house its operations, such as inpatient services, outpatient services, post-acute care, or administrative functions.*
- *The HCO sells the property to a third-party real estate firm (e.g., a private real estate owner, investment manager, developer, private equity firm, REIT, opportunity fund, etc., and broadly referred to in this article as a "RE Company").*

- *As part of the transaction, the HCO commits to lease the property back from the RE Company under a long-term lease (potentially with renewal options) such that it becomes the lessee and retains operational control of the facility.*
- *The RE Company obtains ownership of the underlying real estate asset and receives the lease income stream, while the HCO receives an infusion of capital from the sale proceeds.*
- *The rent obligations under the lease represent both a fixed occupancy cost for the HCO and a predictable, steady source of income for the RE Company.*
- *Among other advantages to the HCO, this arrangement may facilitate the unlocking of capital that was previously tied up in an illiquid asset (i.e., owner-occupied real estate) and can now be redeployed into strategic priorities, although this benefit must be weighed against the creation of a long-term fixed rent obligation and the loss of any future appreciation in the property's ownership value.*

Benefits and Risks for Healthcare Organizations

HCOs face an ever-increasing demand for funds to modernize operations, such as: (i) upgrading aging infrastructure; (ii) investing in costly electronic health record management and cyber-security systems; (iii) acquiring technologically advanced patient care equipment; (iv) meeting provider salary demands in a competitive talent market; and (v) expanding service lines. In addition to financial challenges that stem from modernization, many HCOs also face mounting levels of debt on their balance sheets. Sale-leasebacks can help HCOs address these obstacles by providing access to untapped capital sources without incurring further debt or raising outside equity. Additionally, depending on the specific lease structure, sale-leasebacks may also serve to relieve HCOs from certain management burdens of property ownership, while maintaining operational control in key areas.

Read the full article from *Healthcare Business Today* here.