
VALUATION & ADVISORY

Fair Market Value for Stark Law/ Anti-Kickback Statute Compliance



NEWMARK

A Fair Market Value (FMV) Rent Analysis is a report in which an appropriate lease rate (and other leasing characteristics) is determined based on comparable market transactions and a deeper analysis of a particular subject property. Millions are paid by providers every year in fines or settlements to resolve kickback allegations, and one of the most common technical violations of Stark Law/Anti-Kickback Statutes is the lack of documentation to support fair market value. Independent real estate experts should prepare FMV reports to avoid bias, which is why many of the largest providers in the United States only utilize licensed real estate appraisers with the MAI professional designation. These individuals certify within their FMV appraisals that they have no bias with respect to the property and that their value opinion is not contingent on the outcome of their opinion. Other individuals who develop fair market value opinions could be construed as having a vested interest, creating a conflict of interest.

Newmark Valuation & Advisory's Healthcare & Seniors Housing practice produces fair market value reports that arm providers with the information needed for their lease negotiations. Furthermore, our FMVs provide the market support required to maintain compliance with Stark Law.

When gathering report data, we speak with a variety of market participants who we interview about market rent, escalations, tenant improvement allowances, concessions, and market conditions. Based on analysis of market data and carefully selected market rentals, we conclude to market rent on a full-service basis, modified gross basis (excluding utilities and janitorial), and on a triple-net basis. Market rent conclusions are presented in a range to mirror the market, as shown in the example below:

So that our FMV reports can be used over a variety of sizes and lease terms within a building, we account for varying lease lengths and unit sizes in our market conclusions. For example, this allows our clients to have a range of estimated market rent terms for a tenant looking to lease 5,000 SF for 5 years and/or a tenant looking to lease 1,000 SF for 1 year. We recognize that the rent for these suites will be different in most instances, and we account for the difference in our analysis to give our clients a range of options for negotiating rental terms within these ranges.

Additionally, our FMV reports provide market indications of tenant improvement allowances (when the market is giving TI's), including first-generation (shell space), second-generation (previously built-out space), and lease renewals. We provide a complete picture of the market for a given building or space so our clients can negotiate with market intelligence. Our reports are presented with the client's needs in mind, allowing our clients to be flexible in their negotiations without having to engage a professional multiple times for a single transaction or even multiple transactions within the same building.

In our experience, the most overlooked but significant area to be considered and analyzed is the building's load factor which must be accounted for in the rent. That is why we test the reasonableness of the building's load factor by comparing it to other similar buildings' load factors within the market for all our FMV reports. For instance, older, inefficient buildings with load factors of 30% or more in a market with a breakpoint of 15% likely cannot achieve the same market rent when the load factor is taken into consideration. If a real estate professional does not recognize this issue, the fair market rent could be inaccurate.

Timeshares are one of the most multifaceted, complex areas to provide a fair market value opinion. The frequency (number of days per week/month), half days or full days, the length of the lease (month-to-month, yearly), time of day (day time/night time), services provided to the tenant (phone, internet, receptionist, janitorial, etc.), size of the timeshare space, whether the lease is an entire unit within the building, just a portion of a unit, or simply one exam room must be considered. In addition, we build necessary premiums into our model to account for the increased vacancy risk and entrepreneurial incentive that are imperative to a timeshare leasing model.

Moreover, our timeshare model considers the in-unit load factor if the timeshare consists of a partial unit. An in-unit load factor is similar to a building load factor. However, instead of using the common areas of an entire building, we only consider the suite's common area that the timeshare tenant will have access to while leasing within the suite. Examples of common areas within a suite include kitchens, private restrooms, waiting rooms, reception areas, file storage, printing areas, labs, and other common areas that might typically be found within a suite. We make sure our FMV reports account for all common areas that the tenant will have access to within a suite.

Our fair market value reports provide documentation to support fair market value and provide our clients with the flexibility they need when negotiating leases. Furthermore, we lend our expertise of complex real estate lease deals, a multitude of valuation and advisory services, and unique healthcare property types, including short-term and long-term acute care hospitals, rehabilitation hospitals, institutional psychiatric hospitals, specialty and micro-hospitals, freestanding emergency hospitals, surgery centers, cancer/oncology/imaging centers, dialysis centers, residential substance abuse and other behavioral healthcare facilities, and medical offices. Let our healthcare team help you with our decades of real estate and compliance experience.

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