

20009 Affordable Housing And Community Development

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Preservation for 2010 and Beyond

Issues:

1. Acquisition Issues
2. Renewable Energy Credits
3. Sale of GP interest market

Acquisition Issues

- Purchase property at end of “compliance period” to qualify for acquisition credits (eg, beyond 15 years)
- Can have technical terminations within 10 years
- Issue with tenants in existing property that maybe over income as of the date of purchase even though qualified tenant for 15 years (Rev Proc 2003-82)
 - requires the tenant income to be at or below the income limitations at the date the building was acquired or the date the tenant first occupied the unit, whichever is LATER (based on the AMI at that date)

- “Related party” acquisition expanded to 50% for purposes of determining whether building is acquired by purchase
- Must meet the minimum rehab rule of the greater of: 20% of adjusted basis of the building or \$6,000 per low-income unit (adjusted for inflation after 2009)
- 10 year rules does not apply to buildings that are now “substantially assisted, financed or operated” under Sec 8, 221(d)(3), 221(d)(4), 236, 515, or any housing program administered by HUD, RHS or any similar state law program

Renewable Energy Credits

- 2008 Housing Act added a provision that QAP must now include energy efficiency as part of the criteria
- States are providing incentives for renewable energy
- As part of section 1603 of the ARRA legislation, certain renewable energy credits are allowed to be exchanged for grants under 1603

- The grant is typically 30% of the cost of the qualifying property placed in service in 2009 and 2010
- It includes most solar, wind, fuel cell and geothermal property used for electricity
- The grant is not included in gross income but does reduce your basis as the credit would (which is 50% of the grant amount)
- In lieu of finding a buyer for the renewable energy credit
- Allowed to be passed through to master tenant lessee
- Recapture rules do apply typically for cessation of production or sale to nonqualified owners

- Now can have mixed use deals and have separate investors with New Markets Tax Credits
 - PLR 121674-09 allowed separate buildings of multifamily units and hotel/retail and still qualify for “nonresidential building” on a combined basis
 - shared common amenities, management
 - Contiguous parcels
 - Common plan of rehab and financing
 - Placed in service within 12 mos

Sale of GP Interests

- GP interested in selling existing portfolio of deals
- Does not want to be operator, changed development focus, **NEEDS CAPITAL**
- Properties have converted to permanent debt, last equity installment has been paid
- Can demonstrate history of positive cash flow
- Locations that have proven market
- Sizeable portfolio

Sales Proceeds Waterfall

- Partnership agreement controls
- Cash flow from sale or refinancing defined separately from operating cash flow
- Cash upon sale may be allocated to return of capital first and then some sharing percentage above that
- Other PSA may specify that cash is distributed in some ratio (eg, 50% to GP)
- There will be an overriding allocation that requires liquidating distributions to be distributed in accordance with positive capital accounts

- Buyer interested in:
 - Cash flow stream
 - Concentration of ownership
 - Increased management
 - Improve operations
 - Back end execution
 - Pipeline of redevelopment properties
 - Buildup of portfolio

- Marketplace has diminished but still buyers
- Purchase of GP interest, not fee simple
- Discounted valuation trending higher
- Mostly through equity raise
- Significant amount of consents
- Not always able to acquire management
- JV partners
- Valuations are buyer-specific
- Seeing high net worth, pension funds
- 704(b) issues very important
- Value deferred developer fee, GP cash flow, residual cash distributions, some value for management fee, good real estate
- Very concerned about ODG, Completion guarantees
- **KNOW YOUR PARTNERSHIP AGREEMENT!!!!**

