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Year 15 for Low-Income Housing Tax Credit Partnerships

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Introductions

Elizabeth Harriger, CPA, HCCP
Partner & Director of Affordable Housing Services

Penny Indictor, Esquire
Partner at Berman Indictor LLP

Firm Overview

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M&L Compliance (MLCM) is a leading full-service consulting firm that specializes in the Federal Low-Income Housing Tax Credit (LIHTC), Federal HOME, Section 8, and Rural Housing 515 Programs.

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Notable Changes Potentially Impacting Year 15 Issues

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- Extended Use Periods
- Qualified Contracts
- Related Party Rules Impacting Resyndication
- Business Deal / Split of Capital Transaction Proceeds

Developer and Investor Perspectives Regarding Investor Exits

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- Common Ground – Developers and Investors May Agree that Investor Should Exit
    - Developer's Motivation: Investor Consent, Reporting Requirements, Asset Management Fees
    - Investor's Motivation: End of Credit Period/Recapture Period, Limited Future Cash Flow, Ongoing Losses, Reputation/Being a "Good Partner"
- Differing Perspectives – Developers and Investors May Disagree on How Much Exit Should Cost
    - Developer's View: Investor Received the Benefits it Bargained For and Should Exit for a Nominal Amount
    - Investor's View: If there is Back-End Value in the Project Investor Should Be Entitled to its Share

Negotiating Investor Exit Price

- Determining Back-End Value
  - Appraisal; Broker's Opinion of Value; Capital Needs Assessment; Reserves; Cash Balances; Soft Debt; Nonprofit Right of First Refusal
  - Easier to Negotiate Investor Exit When All Agree No Back-End Value

- Developer/Investor Relationship May Play a Role in Negotiations
  - Regardless of the Exit Provisions in the Equity Documents the Parties are Free to Negotiate
  - Multiple Projects Closed Between Developer and Investor
  - Future Projects Contemplated

Exit Taxes

- Exit Taxes are Triggered by Negative Balance in Investor's Capital Account

- Exit Taxes Can Impact the Cost of Exit under a Fair Market Value Purchase Option or Right of First Refusal

- Consider Ways to Minimize Exit Taxes
  - Reallocating Losses to Developer after 10-Year Credit Period
  - Foregoing Certain Depreciation Deductions
  - Reducing Interest Rates on Related Party Debt

Tax Concepts Influencing Investor Exit Provisions in Equity Documents

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- Equity Investor vs Lender
- Tax Credits are Allocated to Partners in a Partnership
- Equity Investor Must be Respected for Federal Tax Purposes as a Partner (Downside Risk and Upside Reward)
- Drafting Exit Provisions to Limit Investor's Exit Price May Jeopardize Allocation of Tax Credit to Investor – It's a Balance
- Tax Principles Allow for Arms-Length Negotiations Between Unrelated Parties with Divergent Interests

Investor Exit Provisions in the Equity Documents

- Investor's Unilateral Right to Put its Interest for Nominal Amount
  - Investor Can Exercise After Expiration of 10-Year Credit Period
  - Developer Can't Force the Investor to Exercise (Limiting Investor's Upside)

- Developer's Fair Market Value Purchase Option (Property or Investor Interest)
  - Developer Can Exercise After Expiration of 15-Year Compliance Period
  - Agreements Vary on How Much Detail Provided Regarding Determining Fair Market Value
  - More Detail Instructing the Appraiser on How to Value May Suggest the Exit Price is Not Based on Fair Market Value

- Valuing the Investor's Interest in the Partnership
  - Common Approach is for Appraiser to Value Property and Determine Amount Investor Would Receive Upon Sale
  - Consider Investor's Ongoing Rights as a Partner (Consent Rights; Ability to Force a Sale of the Property)
  - Split of Capital Transaction Proceeds May Be Impacted by Capital Account Balances Leading to Unexpected Results
  - Drafting Equity Documents to Minimize Risk by Ignoring Capital Accounts May Result in Undermining Tax Position

Nonprofit Right of First Refusal

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- The Internal Revenue Code Provides an Exception to Fair Market Value Requirement for Qualified Nonprofits / Government Agencies
- A Qualified Nonprofit May Acquire the Property at the End of Compliance Period for Minimum Purchase Price Equal to Outstanding Debt Plus Exit Taxes
- Some Uncertainty Under the Code (Right of First Refusal to Acquire Property vs. Investor's Interest; Right of First Refusal vs. Purchase Option)
- Investor's Negative Capital Account Balance Affects Right of First Refusal Price Due to Exit Taxes
- Draft Equity Documents to Provide for as Broad a Right of First Refusal as Law Allows (Including Sufficient Time to Exercise)

Investor Changes/Transfers

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- Careful Drafting is Key to Documenting Intent of Parties Regarding Investor Exit Provisions
  - Investors May Go Out of Business or Be Acquired
  - Even If Dealing with Original Investor in Year 15 the Business People May Have Changed
  - Investors May Voluntarily Transfer Their Interests/Portfolios to Other Investors

- So-called "Aggregators" May Be Motivated to Extract As Much Value as Possible
  - Negotiate to Draft Equity Documents to Require Developer Consent to Investor Transfer
  - Developer Consent May Vary (Sole Discretion vs. Reasonable Discretion) Based on Timing of Investor Transfer (Prior to or After Investor Capital Fully Contributed)
  - Expand on Definition of Reasonable Discretion (Financial Capability; Business Disputes; List of Prohibited Transfers to Bad Actors)

Decision Makers on Investor Exit Price (Syndicator/Upper Tier Investors)

- Multi-Investor Funds May Give More Discretion to the Syndicator to Act in Accordance with Parameters Set Forth in Upper Tier Fund Documents
- Proprietary Funds May Require More Input/Consent from Upper Tier Investor
- Direct Investors May Have Different Internal Departments with Different Objectives

Documenting the Investor Exit

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- Documents Often Include: Transfer Agreement; Assignment of Interest; Amendment to Equity Documents
- Document Provisions May Vary Depending on Timing of Investor Exit (Year 10 vs. Year 15)
- Transfer Tax Implications of Transferring Investor’s Interest
- Consider the Appropriate Entity to Acquire Investor’s Interest
- Consider Other Consents/Notices Required (Loan Documents/HUD Requirements)

Key Take-Aways

- Tax Issues Play a Role as Well as Business Issues – Drafting Equity Documents to Limit Investor Exit Price May Adversely Impact Allocation of Tax Credits
- Focus on Financial Projections as Early as Possible in Closing Process to Understand Projected Capital Account Balances and Exit Taxes Which Affect Exit Price
- Negotiate Investor Transfer Provisions as Part of the LOI Negotiations
  - More Leverage When Investors Want to Sign Up a Deal

Contact Information

Elizabeth Harriger, CPA, HCCP
Partner & Director of Affordable Housing Services

eharriger@macpas.com

717-972-5729

Penny Indictor, Esquire
Partner at Berman Indictor LLP

indictor@bermanindictor.com

215-825-9734

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2026 State and Local Tax Update

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Affordable Housing Seminar

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November 5, 2026

Location: Members 1st Corporate Office

More information coming soon!

MLCM Training: August 12

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