



# LIHTC: PLANNING FOR AND MANAGING YEAR 15 INVESTOR EXITS

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## OVERVIEW OF TERMS AND PLAYERS

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- > **General Partners (Managing Members in an LLC)**
- > **Limited Partners (Investor Members)**
- > **15 Year “Initial Compliance Period”**
- > **Additional 15 Year (or longer) “Extended Compliance Period”**
- > **Expectation of a “buy out” transaction at year 15**

## OVERVIEW OF TERMS AND PLAYERS (CONT'D)

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- > **Developers/General Partners: nonprofit or for-profit**
- > **For-Profit Investors: mission-motivated or market-focused**
  - **CRA-motivated (mostly banks)**
  - **Economic investors**
- > **Aggregators**

## OVERVIEW OF TERMS AND PLAYERS (CONT'D)

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- > **Area is complicated**
  - **Mix of tax and business considerations**
  - **Statutory law (IRC Section 42)**
  - **State policy (QAP and Extended Use Agreement)**
  - **Private contract (Partnership Agreement, collateral documents)**
  - **Relationship between these**

## OBJECTIVES FOR THIS SESSION

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- > Planning a Year 15 exit
- > How to manage and negotiate the Year 15 exit
- > What to do if things don't go as planned
- > Litigation update

## TYPES OF INVESTOR EXITS

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- > Put of LP interest at nominal price
- > GP Option to buy LP interest at fair market value (FMV)
- > GP Option to buy project at FMV
- > Right of first refusal (ROFR) – Code Section 42(i)(7)
- > “Forced sale” requirements
- > Qualified Contract
- > Charitable Contribution
- > Early Exits

## CURRENT LANDSCAPE ON ROFR

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- > **What is controversial?**
  - “Bona fide” offer
  - Calculating the purchase price
- > **Understanding Capital Accounts and Exit Taxes**
- > **Investor Expectations and Return/IRR**
- > **Litigation**

## RESERVE ACCOUNTS

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- > **What happens with reserve accounts during an investor exit?**
  - **Usually Partnership assets**
  - **Governed by Partnership Agreement, loan documents, other requirements (QAP, regulatory agreements)**
  - **Difference between an LP interest acquisition and a property purchase**

## FINAL THOUGHTS

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- > **Plan, plan, plan!**
- > **Work with fellow developers to provide mutual support**
- > **Understand these issues when negotiating new agreements – it matters (see SAHF 2015 memo)**
- > **Consult experienced counsel and accountants**

# THANK YOU.

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## QUESTIONS?

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