



STRENGTH MATTERS

Boot Camp on Financial Reporting for Rental Housing Nonprofit Enterprises

Module 2: Entity Formation and Deal Structure

Wednesday, May 25, 2022
1:00 – 2:30 PM Eastern



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Morgan Stanley



Meet the Presenters

Gayle H. LaCroix, CPA

Chief Financial Officer

Volunteers of America of Massachusetts



Rita B. Dela Cruz, CPA, CGMA

Partner

Lindquist, von Husen & Joyce LLP



CPE Credit Requirements

- We use polls and the Zoom attendance record to verify participation throughout the session.
- **Participants seeking CPE credits must:**
 - Participate fully in the learning activities and submit ALL polls throughout the course.
 - Log in to each session with first name, last name and email before the scheduled start time.
 - Request a certificate via the final evaluation or email.
- **If you plan to petition your state board of accountancy for CPE credits, please submit ALL polls, including the final evaluation.**



To request a certificate of completion or for more information on CPE credits, **contact Lindsay Wells at consult.lwells@gmail.com.**

Getting Started

- If you have a technical issue, including issues with Polls, please contact the Host via **Chat**.
- Please use the **Chat** feature to submit all content questions.
- We will pause for questions during the presentation.
- Participants will be muted during the course presentation. Participant breakout rooms offer small group discussion with audio and video sharing.

Module 2: Entity Formation and Deal Structure

90 min/1.5 CPEs

- See CPE Summary handout for **Core Competencies and Learning Objectives.**

Module 2 Materials

***Please have your Handouts
PDF available for reference.***

2. Summary of Key elements of a Non-Profit, a Limited Partnership and a Limited Liability Company
3. Affordable Housing Deal Structure – Restoration Housing LP ******Please have this available for reference during class.***

Topics covered to date

- Module 1
 - Identify the Deal
 - Grants, Contributions & Exchange Transactions
 - Predevelopment Best Practices

Module 2: Entity Formation and Deal Structure

Topics for this session:

- Entity formation
- Deal structure

Development Activity

Poll 1

1. Do you have an early-stage development project in the works at your organization? Yes/No
2. If yes, do you have more than one?
 - A. No. We have only 1 project in development.
 - B. Yes. We have 2 - 4 projects in development.
 - C. Yes. We have 5 or more projects in development.
 - D. N/A

Entity Formation

- One of the most complicated aspects of affordable housing development is the number of legal entities involved and the interactions between them.
- Entity types frequently involved in affordable housing transactions:
 1. Non-Profit Corporations
 2. Limited Partnerships (LP)
 3. Limited Liability Companies (LLC)



Entity Formation



Poll 2

1. Have you set up a new non-profit legal entity recently?
Yes/No
2. Are they easy to establish?
Yes/No

Entity Formation

Poll 3

1. Do you normally use partnerships or LLC organizations as the owner of the affordable housing project?
 - A. Partnerships
 - B. Limited Liability Companies

Entity Formation

- Non-Profit Corporations
 - Generally a 501(c)3 is seen as the general partner in a partnership, managing member in an LLC, as the sole owner of an affordable housing property or parent organization.
 - Tax exempt status granted by the IRS & the State
 - Characteristics:
 - No ownership of a 501(c)3
 - Controlled by a board of directors
 - Board members may have a liability for their conduct as board members, but they are generally not liable for the debts of the organization
 - In many states, the board is not allowed to be compensated

Entity Formation

- Non-Profit Corporations
 - Characteristics continued
 - When a 501(c)3 liquidates, it distributes its remaining assets to a similar charity
 - Non-profits are subject to tax on unrelated business income if the activity is a trade, business or activity not related to the charitable purpose of the organization
 - Despite being called a non-profit, these organizations should make a profit. In fact, FASB now refers to these as “not-for-profit” rather than “non-profit.”
 - The tax return filed is an informational return filed on Form 990, a similar state form is also filed

Entity Formation

- Non-Profit Corporations (*continued*)
 - It is possible to be a for profit for federal purposes if the IRS does not determine that the mission justifies a non-profit status, and still be a non-profit for state purposes.
 - You should hunt down the letters from these agencies as to their status, or request a letter if you can not locate them

Entity Formation

Poll 4

1. Which of the following can cause unrelated business taxable income for a non-profit?
 - A. Market rate housing owned by the non-profit
 - B. Profit from a grocery store providing fresh produce at below market rates for the residents of an affordable housing development
 - C. Both A and B above

Entity Formation

- Limited Partnerships (LP)
 - Characteristics
 - No Board of Directors, only partners
 - Owned by at least two partners, one of which is the general partner and the other a limited partner
 - General Partner has unlimited liability for the partnership's obligations
 - Limited Partners have limited liability and cannot lose more than the capital that they have invested
 - Special Limited Partner – provide oversight on behalf of the investor, also provide a third partner so that the partnership does not dissolve if the GP is kicked out.

Entity Formation

- Limited Partnerships (LP), continued
 - Partnership agreement dictates capital contributions and the allocation of income
 - Capital accounts are maintained to identify each partners share of equity based on contributions, share of income and loss, distributions
 - A limited partners capital account should not go negative for GAAP purposes unless there is a deficit guarantee agreement which is uncommon.
 - Partnerships file a form 1065 and corresponding state return
 - Each partnership tax return includes a mini return for each partner, called a K1, that shows each only that partners allocation of income, distributions, etc. for the year. These are required to be mailed to each partner.

Break

- We will take a 10-minute break.
- Remain logged in during the break.
- Please return promptly.
 - This is especially important for participants seeking CPEs so that you may receive full credit.

Checking In

Poll 5

*Please use the **Chat** to share what has been most helpful.*

1. Have you learned anything today that you already know will directly impact your work?
 - A. Yes, definitely.
 - B. Maybe.
 - C. No, definitely not.
 - D. Not sure.

Entity Formation

- Limited Liability Companies (LLC)
 - Characteristics
 - No Board of Directors, Owned by at least one member (a single or sole member LLC) or multiple members
 - Managing member in an LLC and a general partner in an LP are entitled to manage the business, however a managing member retains the limited personal liability. Normally LLC members are not personally liable for LLC debts or legal liabilities, putting only their financial contributions to the LLC at risk. LLC owners may still be personally liable for their own conduct that harms others, for breaches of their duties owed to the LLC or any personally-guaranteed LLC loans

Entity Formation

- Limited Liability Companies (LLC)
- Characteristics (*continued*)
 - If there is only one member, it is disregarded for tax purposes and its activities are reported on the return of the managing member. However, if the LLC that owns the general partnership interest elects accelerated depreciation (27.5 years) at the investors request, then the LLC must make an election in the first year to be treated as a taxable corporation
 - All members have limited liability so they cannot lose more than the capital invested

Entity Formation

- Limited Liability Companies (LLC)
 - Characteristics (*continued*)
 - LLC Capital Accounts can go negative
 - LLC's are easier to form and there is no need for an annual meeting as the managing member is deemed to control the LLC
 - The tax return to be filed depends upon whether the entity elected to be treated as a partnership or as a corporation. State returns may vary.

Entity Formation

- Limited Liability Companies (LLC)
 - Characteristics (*continued*)
 - Many state laws have adopted all or part of uniform laws that help govern general partnerships, limited partnerships, and LLCs. Know your state laws.
 - Most states have annual LLC fees. They can be either a flat fee or a fee that also considers the entity's annual gross receipts
 - Some state agencies limit the number of organizations between the parent developer and the operating property.

Entity Formation

Poll 6

1. When do you become aware that new entities have been formed for an affordable housing deal?
 - A. During early predevelopment, before they are formed
 - B. Only after they are formed, but before the investor steps in
 - C. After the investor steps in and someone from development finally gets around to letting me know

Entity Formation

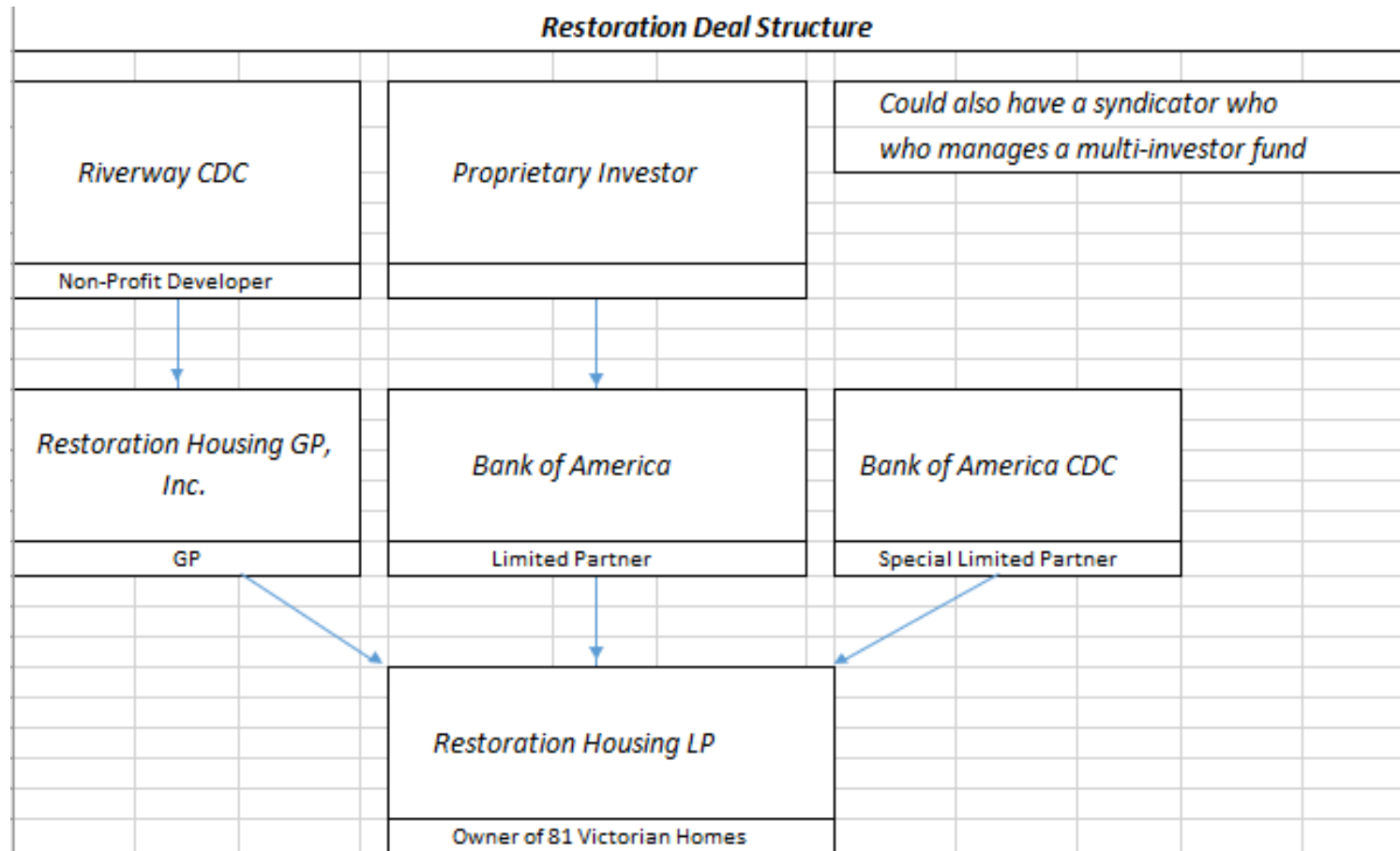
Please use the Breakout Room for this Exercise.

Class Exercise

In your breakout room, discuss the types and numbers of entities that would be included in a typical affordable housing structure.

Using the Deal Structure hand out, discuss whether this is the structure that you usually see and if not, what is different. If you see something different, please add it to the chat or be prepared to explain when you return from the Break out room.

Deal Structure



Deal Structure

*Please use share your responses or use the **Chat** to share.*

Are any of the entities on the previous chart a surprise to you?

Do you normally see something different?

QUESTIONS?

- Please use the **Zoom Chat** to submit questions.
- Instructors will remain on the line to answer remaining questions.

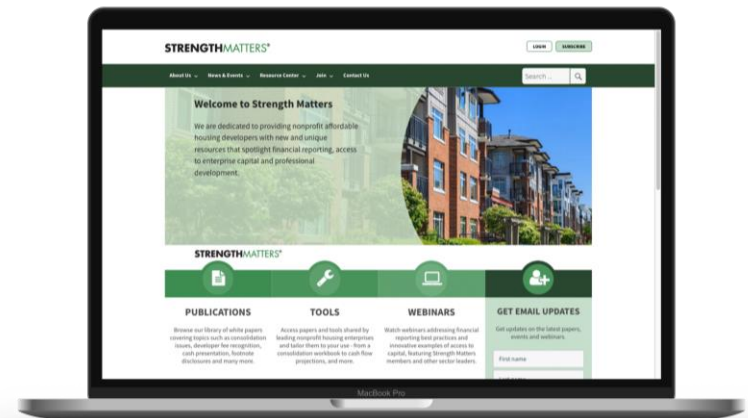
Next Session: Deal Structure, Deal Cycle & Participants, Qualified Allocation Plans LIHTC Calculations and the State Determination Letters
Date: June 8, 2022
Time: 1:00 – 2:30 PM Eastern

EVALUATION POLL

Your feedback is important to us!

- ✓ **Please complete the evaluation poll for this session.**
- ✓ **Email info@strengthmatters.net with any questions or concerns.**

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CONTACT INFORMATION

Gayle H. Lacroix

glacroix@voamass.org

617-390-0227

Rita Dela Cruz

rdelacruz@lvhj.com

415-905-5423

Lindsay Wells

(CPE credit contact)

consult.lwells@gmail.com

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