# 10 Red Flags in Housing Credit Deals

Year 15 disputes - in which profit-motivated parties seek to accelerate the sale of a property, convert to market rate or extract profits from affordable housing that were not as intended under the Low Income Housing Tax Credit (Housing Credit) program or designed for such parties – are on the rise, contributing to the loss of affordable housing developed or preserved through the Housing Credit program. There is particular concern about disputes related to the Section 42(i)(7) Right of First Refusal (ROFR) intended for non-profits and Purchase Options often provided to for-profit developers that threaten the long-term affordability of Housing Credit properties, as well as the preservation of stable housing that these properties provide for low-income families.

It is critical that owners and developers of Housing Credit properties be aware of and recognize the potential "Red Flags" in their own Housing Credit deals, to address them and preserve affordable homes for the residents they serve. Year 15 disputes have become a matter of significant public interest and Housing Credit developers should be aware of them. The "Red Flags" below, which may indicate a problem is looming, are drawn from industry experts and collective experience and knowledge of key industry issues. They are intended to educate Housing Credit developers, owners and syndicators. We encourage General Partners to consider the following "Red Flags" and review their circumstances beginning no later than Year 10. If one or more of the following "Red Flags" exists, there may be additional steps needed to proactively seek to protect the property.

- 🚩 The investor limited partner interests have changed hands from the original limited partner. Is your partner today the same as the one you did your deal with at the beginning?
- 🚩 The investor limited partner interests are managed by or affiliated with organizations that have been involved in litigation concerning LIHTC project partnerships around Year-15. For more information, please refer to the Legal Cases Concerning Year 15 Disputes.
- 🚩 The investor limited partner has a large positive capital account and believes that it should be allowed to monetize the accounting book entry through a "cash-out" process when exiting the LIHTC Partnership.
- 🚩 The investor limited partner claims its consent is necessary to consummate a ROFR or offers other roadblocks suggesting an exercise of the ROFR is difficult or cannot occur.
- 🚩 The investor limited partner begins discussing future planning, values, and circumstances beyond Year-15, like refinancing or re-syndication proposals to generate proceeds to "buy them out" or restricting use of reserve accounts
- 🚩 The investor limited partner begins to question routine financial reports or suggests that a forensic audit of past events is necessary for some reason.
- 🚩 The investor limited partner suggests Partnership liquidation should occur with its Year-15 Exit.
- 🚩 Forced Sale or Qualified Contract requests are presented, with suggestions of priority over ROFRs or Purchase Option rights.
- 🚩 Exit negotiations stall or you experience periods of non-responsiveness.
- 🚩 You are not adequately familiar with your documents and are discussing the limited partner's Year-15 exit.

If any of this applies to your Housing Credit properties, please contact: David A. Davenport
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