

# Assess Your Rights & Duties at Year 15

## Today's Panelists



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# Due Diligence, Structuring and, Purchase & Sale

## First Steps | Understand your real estate

Understand what you own and what you will sell.

Summarize in a Restrictions Memo.

Restrictions Memo can be a marketing tool for the sale of the property.



# What is the Structure of the Deal?

- / **Assignment of partnership interests** to 3rd party
- / **GP acquisition of LP's interest**
- / Straight fee sale (i.e. **deed transfer**) of the property

## When determining structure, consider:

- / Transfer taxes
- / ROFRs and purchase options
- / Consents req'd from lenders, investors, agencies (consider timing)
- / Distribution Waterfall and purchase price
- / Other considerations (internal rights and options; existing and continuing restrictions on the property)

# Drafting the Purchase and Sale Agreement

**Depending on the structure of the deal you may need to draft**

- / Purchase and Sale Agreement; or**
- / Assignment of Partnership Interests**
- / Amendments to Partnership Agreements**

## **Note:**

- / This could vary depending on if you are selling 100% of the partnership interests, just the limited or general partnership interests or the entire fee interest.**
- / Are you selling to a third-party buyer or the GP?**
- / Review the Restrictions Memo.... again and again to ensure nothing is missed.**

# Negotiating the Purchase and Sale Agreement

## Specific contract issues to be aware of with respect to the disposition of a low-income housing property:

- / **Notice** requirements
- / **Time periods** for approvals and any required disposition process
- / **Right to terminate** if approvals are not obtained within such time periods
- / **Ability of purchaser to execute** both formally (i.e. 2530s and other disclosure processes)
- / **Who is responsible for obtaining the approvals?**—Seller or Purchaser (and discretionary approvals)
- / Assumption of regulatory agreements, loan documents, etc.
- / **Reserves**—Property- or entity-level
- / Existing **Non-Compliance** or other issues

# Negotiating the Purchase and Sale Agreement

## If sale is during the Compliance Period:

Existing Guarantor still on the hook after closing. Seller needs to protect itself (and its Guarantor)

- / Indemnity from Purchaser and preferred practice is to get an **indemnity from a creditworthy principal** of Purchaser
- / May want representation regarding net worth of guarantor and continuing **liquidity** requirement

- / Transfer restrictions likely apply requiring more onerous **consents** and cannot resyndicate so more limited financing
- / **Property Manager** may be in contract and replacement will require agency approval

# Negotiating the Purchase and Sale Agreement

## Frequently negotiated issues:

- / **Rights to terminate** for failure to obtain approvals
- / When does the **Due Diligence** clock start running?
- / Reps & Warranties
- / **Indemnity survival periods**; Seller **creditworthy backstop** and/or **holdbacks**
- / Interim **Operating Covenants**
- / Refundable and Nonrefundable **Deposits**
- / Net worth of guarantor, transfer restrictions and property manager requirements in **compliance period** deals



# Contract to Closing

- / If Seller is obtaining approvals, need to **secure approvals**
  - / If Purchaser is obtaining approvals, **need to monitor and cooperate**. Be aware of **Seller's decreasing leverage**. Set timeframes.
  - / Need to make sure all **partnership/corporate consents** and authorizations are in place.
- / **Mortgage payoffs**—what is the time period for notice?  
Are there prepayment penalties?  
If prepayment allowed?  
HUD prepayment process.
  - / Standard real estate closing issues

# Closing and Post Closing

- / In most cases, relatively typical real estate closing (with nuances for interest sales)
- / If re-syndication, as complicated, if not more, than the initial closing and development
- / If interest transfer to existing partner, may not even be title involved
- / Post-closing – send any required transfer notices

**And after you close – Congrats; on to the next deal!**



# Thank you!



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