

ASSESS YOUR RIGHTS AND DUTIES AT YEAR 15

IPED Tax Credit Property Dispositions Conference – July 28-29, 2022





PART 1 – THE USE RESTRICTIONS MEMO

30,000 FOOT VIEW

- / **What** is a use restrictions memo?
- / **Why** do I need it?
- / **Where** do I start?
- / **Internal** approvals/rights
- / **Current** financing approvals
- / Long-term **restrictions**
- / **Examples**

WHAT IS A USE RESTRICTIONS MEMO?

Comprehensive Assessment of the Transfer Options for an Asset to assist in Valuation and Marketing



WHAT IS A USE RESTRICTIONS MEMO?

- / What are the **internal rights and options**?
- / What use restrictions **currently** encumber the property?
- / What long-term use restrictions **will remain**?
- / What 3rd party approvals are **required** for transfers?
- / **How long** will it take to obtain these approvals?

WHY DO I NEED A USE RESTRICTIONS MEMO?

BEST PRACTICE

- / **Seller:** facilitates marketing and purchase/sale negotiations
- / **Buyer:** knowledge!

WHERE TO START

Gather all partnership, financing, building, and financial documents.



WHERE TO START?

How to identify **complex deals**:

- / **Who** was the land originally acquired from?
- / **How** was the property construction or rehabilitation **financed**?
- / Does the property receive any **tax abatements or exemptions**?



WHAT INTERNAL CONSENTS ARE NEEDED FOR TRANSFER?

Partnership document requirements for transfers?

- / May GP **withdraw** without consent of LPs?
- / Does GP have **option** to purchase property?
- / Does LP need GP **consent** to withdraw?
- / Can LP **force** a sale?
- / Which partners must consent to **transfer** of property?

WHAT USE RESTRICTIONS CURRENTLY ENCUMBER THE PROPERTY?

Current financing:

- / **Prepayment** penalties or lock-outs
- / Bond **redemption** issues
- / **Due on sale** clauses (HUD)
- / **Consent** of mortgagee for assignment and assumption
- / **Notice** to mortgagee of management changes

WATCH OUT FOR RESTRICTIONS THAT SURVIVE PREPAYMENT OF FINANCING AND TRANSFER

Proxies for long-term restrictions:

- / Presence of **LIHTC** (extended LIHTC compliance period),
- / **HUD** participation (HAP Contract, Deed Restriction, HUD-insured mortgage or direct loan),
- / **State and/or local program** originally financed the deal; and/or
- / Local **tax abatements or exemptions**

WATCH OUT FOR RESTRICTIONS THAT SURVIVE PREPAYMENT OF FINANCING AND TRANSFER (CONT'D)

Examples of **long-term restrictions**:

- / Number and configuration of **rental units**
- / Maximum **rents and incomes**
- / Local **rent stabilization** law applicability
- / Prohibition on **condo/coop** conversions
- / **Tenant** selection and marketing
- / **3rd party approvals** of management agent and agreement & to transfer of property or interests in owner

**** Also, watch out for local “preservation” laws ****



HOW LONG WILL APPROVALS TAKE?

- / Assess prepayment notice periods and fees
- / Assess whether any parties have ROFRs or options
- / If governmental approvals required for transfer give yourself **ENOUGH TIME** to obtain them



MORAL OF THE STORY

If you are disposing of a tax credit property, preparing a “use restrictions” memo early will facilitate the structuring of your transaction and save parties time later on.



THANK YOU



Emily McKinney
Nixon Peabody LLP
emckinney@nixonpeabody.com



This presentation contains images used under license. Retransmission, republication, redistribution, and downloading of this presentation, including any of the images as stand-alone files, is prohibited. This presentation may be considered advertising under certain rules of professional conduct. The content should not be construed as legal advice, and readers should not act upon information in this publication without professional counsel. © 2022 Nixon Peabody LLP. All rights reserved.