

ASSESS YOUR RIGHTS AND DUTIES AT YEAR 15

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PART II: **THE PURCHASE & SALE**

FIRST STEPS | FIND A BUYER

**Understand what
you own using the
Restrictions Memo**

**And what
you will sell**

**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
- / Distribution Waterfall & Purchase Price
- / Other Considerations

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**

Note:

- / This could vary depending on if you are selling 100% of the partnership interests or just the limited partnership interests
- / Are you selling to a third-party buyer or the GP?
- / Review the Restrictions Memo.... again and again

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) and based on reputation
- / **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 it's 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?
- / How can **reserves** be used?
- / 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
- / **Recapture Bond** requirement

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
- / 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
- / Keep an eye on notices that are required post-closing

And after you close—on to the next deal!



PRESENTER



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