10 RED FLAGS IN LIHTC DEALS

The orderly and efficient facilitation of LIHTC investor exits after the end of the 15-Year Compliance Period is crucial to the efficacy of the LIHTC program, but Year-15 disputes have intensified, become more common, and been well documented in recent years with the rise of Aggregators and those who have begun to mimic their behavior. Thus, Year-15 disputes have become a matter of significant public interest and LIHTC developers should be aware of the following "**Red Flags**" — all of which are drawn from our collective experiences and knowledge of key industry issues. In our opinion, these potential events or circumstances may indicate a problem is looming and General Partners should review their circumstances beginning no later than Year-10.

1. 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?

2. 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.

3. 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.

4. The investor limited partner claims its consent is necessary to consummate a Section 42(i)(7) Right of First Refusal (ROFR) or offers other roadblocks suggesting an exercise of the ROFR is difficult or cannot occur.

5. 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.

6. The investor limited partner begins to question routine financial reports or suggests that a forensic audit of past events is necessary for some reason.

7. The investor limited partner suggests Partnership liquidation should occur with its Year-15 Exit.

8. Forced Sale or Qualified Contract requests are presented, with suggestions of priority over ROFRs or Purchase Option rights.

9. Exit negotiations stall or you experience periods of non-responsiveness.

10. You are not adequately familiar with your documents and are discussing the limited partner's Year-15 exit.

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