****

**Texas Housing Finance Corporations Act**

* Housing finance corporations have broad powers to finance “residential developments” under the Act
* At least 90% of the units in a residential development must be reserved for occupancy by persons of low and moderate income, as determined by the housing finance corporation
* For bond-financed developments, 50% of the units must be reserved for individuals and families earning less than 80% of the area median income

**Overview of Partnership Structure**

* Often, the “borrower” in a multifamily housing financing consists of an entity formed by the developer and the tax credit investor
* Developers frequently seek to take advantage of the “partnership structure” by including a wholly-owned affiliate of the housing finance corporation as the general partner of the borrower
* Using this structure in Texas generally permits the borrower to take advantage of exemptions from ad valorem property taxes. An exemption from sales tax hard construction costs can be obtained by the HFC or its affiliate serving as general contractor
* Partnership structure can be implemented in a bond 4% LIHTC, 9% LIHTC financing and conventional financings

**Overview of Partnership Structure**

The “partnership structure” in Texas generally involves participation of the housing finance corporation in one or more of the following roles:

* **General Partner**. GP in a limited partnership with the affordable housing developer and tax credit investor
* **Ground Lessor**. Formed to own the land on which the development is located. Leases land back to borrower pursuant to long-term lease
* **Co-Developer**. Formed to serve as co-developer along with affordable housing developer in connection with a development agreement
* **General Contractor.** Enters into a construction contract (and subcontract) or joint venture agreement with respect to construction of the affordable housing development

**Partnership Structure Tax Exemption**

**Ad Valorem Property Tax Exemption**

* Ad valorem property tax exemption has been challenged based on the argument that housing finance corporation does not truly own the land due to long term lease to the borrower
* Texas courts have upheld the exemption so long as the housing finance corporation has “beneficial ownership.” See Harris County Appraisal District v. Southeast Texas Housing Finance Corporation.
* Key factors in determining beneficial ownership include:
1. Land titled in HFC-owned entity
2. HFC has right to compel title at any time (i.e. purchase option)
3. Reversion to housing finance corporation upon dissolution of subsidiary

**Partnership Structure Tax Exemption**

**Sales Tax Exemption**

* Housing finance corporations can obtain sales tax exemption three different ways:
1. Directly, by acting in the name of the housing finance corporation
2. Forming a 501(c)(3) entity
3. Forming an LLC to act as agent of the housing finance corporation
* Sales tax exemption may be achieved through Master/Sub or Joint Venture structures

**Limitation of HFC Liability**

* Housing finance corporations should limit risk by forming wholly-owned subsidiaries to serve in roles of General Partner, Ground Lessor, Co-Developer and General Contractor instead of serving in such roles directly
* Housing finance corporations frequently form limited liability companies to serve in each of these roles
	+ A 501(c)(3) entity is commonly used for General Contractor role
* Housing finance corporations are typically the sole member of limited liability companies formed for these purposes
	+ Capitalize limited liability companies at level commensurate with obligations
	+ Obtain appropriate indemnifications
	+ Limit representations

**Benefits and Burdens of Partnership Structure**

**Benefits**

* Housing finance corporations typically share in the following fees:
1. Developer Fee (typically 20-30% split)
2. Excess cash flows, including cash generated by a sale of the project (typically 30-50% split)
3. Sales tax savings (typically 20-25%)
* Granted purchase option and right of first refusal if developer seeks to sell the project
* Increased oversight of management of project

**Burdens**

* Liability risk
* Administration of subsidiary entities and project ownership
* Political risk

**Working with an HFC – 4% Bond Deal** **Timelines**

* Submission of initial application to the HFC by the developer
* Negotiation and finalization of MOU containing deal terms
* Initial resolution by HFC board
* Bond Review Board initial application
* Bond Review Board 35-Day, 150-Day, and 180 deadlines
* Request preliminary determination letter from appraisal district confirming availability of property tax exemption (varies by county, but can take up to 3 months to obtain)
* TEFRA/Public Hearing (notice of hearing)
* TEFRA Approval
* Bond Resolution approved by HFC Board of Directors
* Attorney General filing deadlines:
* Initial filing 12 business days before closing
* Final Bond 5 business days before closing
* Final documents and all signatures 3 business days before closing
* Final AG Opinion issued
* Closing

**HFC Takeaways**

* HFCs bring significant value to deal with property tax and sales tax exemptions and should be compensated for providing these benefits
* HFCs are entering into long term business relationship with a developer and need to conduct proper due diligence
* Partnership transactions are complicated; HFCs need team of experienced advisors
* HFC risk should be limited to fullest extent possible through use of subsidiary entities and indemnification