YEAR 15

DEFINITIONS

Accruing Interest – Interest calculated on the unpaid principal balance of a loan at rate stated in the loan documents.

Adjusted Basis – The cost basis of a building including any capital improvements minus depreciation.

Affordability Restrictions – Recorded tenant income and rent restrictions that are placed on a project by a city, state (including the state credit allocating agency), bank or other lender of funds to a project. These restrictions are monitored by designated credit agencies and are enforceable for a set period of time. The restrictions bind the property and are assumed by any purchaser of the property.

Allocation Date – Date the tax credits are allocated to the owner. Found on IRS form 8609.

AMI - Area Median Income - Statistical expression used to calculate income guidelines for various projects funded under affordable housing programs. "Area" refers to the Census Bureau's definition of a metropolitan statistical area. For example, the median income for Ohio in 2002 was $51,900, meaning that half of the population of Ohio makes above this amount and half makes below it.

Amortization Period – The period of time over which debt is reduced by regular payments of interest and principal. If the amortization period equals the Term of the debt, then the loan is a fully amortizing loan and will be repaid in full as of the maturity date; if not, then a Balloon payment will be due.

Assignment/Assumption of Debt – One party assumes the liability of another party.

Balloon Payment – The amount of a loan that is unpaid at the end of its term (the unpaid balance). This occurs if the amortization period is greater than the term.

Basis Point – One – one – hundredth of a percentage point (.01%).

Buyout Option - The option giving the General Partner the right to purchase the Limited Partner's interest in the partnership at the Buyout Price.

Buyout Price is the greater of Fair Market Value of the limited partner's interest or all federal, state and local taxes incurred as a result of the sale of the limited partner's interest.

Capital Account – The amount of capital contributed by a partner to a partnership increased by any income, gains and other increases and reduced by losses, distributions and other decreases allocated to that partner.

Capital Contribution – Equity (either cash or property) that is paid into (or transferred to) a partnership by a partner.

Capital Gain – The amount of gain recognized as the result of the sale of a capital asset.

Capital Improvements – Physical work that is completed on a project and is reflected as a capitalized expense.

Capital Loss – The amount of loss recognized as the result of the sale of a capital asset.

Capital Needs Assessment (a.k.a. CNA) - an inspection completed by an architect or engineer which identifies physical work that a project may need and/or a timeline of when repairs and capital improvements may be necessary. The report would typically include a schedule of roof replacements, water heaters, HVAC, etc.

Capitalization Rate (cap rate) – the rate used by an appraiser to determine a project's value under the income approach. The project's NOI is divided by the capitalization rate to derive the project's market value.

Charitable Contribution – A tax deduction that is taken when a for profit entity donates cash, its interest, real estate, etc. to a non profit entity. In a tax credit project, the limited partner may donate its interest, if there is value in the project.

Compliance Period – Begins January 1st of the first year tax credits are taken and ends December 31st of the fifteenth year thereafter. The owner can elect on the 8609 to begin taking credits the year the building is Placed In Service (PIS) or the following year. At the end of Year 15, the IRS will no longer be responsible for compliance monitoring because the tax credit compliance period will expire. For those projects that are bound by extended use restrictions, the IRS has authorized the State Housing Agency to create their own compliance monitoring rules for the duration of the extended use period. As of this date, State housing agencies are considering how to implement compliance monitoring rules, and these rules are expected to vary state by state.

Example: Building PIS 10/01/87 and owner elects to begin credit period in 1988. The Compliance Period ends 12/31/02

Credit Period – The ten-year period over which the low-income housing tax credit is usually taken. It generally begins on the date a property is placed in service, but a taxpayer may elect to start the credit period in the year following the year the low-income housing tax credit property is placed in service. Note that deferring the credit will extend the compliance period an additional year.

Deficit Restoration Obligation (DRO) – Provision in the partnership agreement requiring one or more partners to infuse capital into the partnership to restore negative capital account balances upon liquidation of the partnership or partner's interest.

Dissolution – The process of unwinding a partnership.

Disposition – The transfer or sale of an item, including the property, the partnership interest, reserve and other partnership assets.

Disposition Bond – A bond that may be posted to avoid credit Recapture upon Disposition of the property or partner's interest prior to the end of the compliance period.

Disposition Budget – The general partner should prepare a disposition budget to project expenses related to acquiring the partnership assets including staff time, deferred maintenance issues, legal and accounting, refinancing costs, and other transaction related costs required to transitioning the property for new ownership.

Equity – Cash or property contributed to a partnership by a partner. The partner receives a like amount of capital account credit for its contribution.

Exit Taxes - When the cumulative tax losses claimed by an investor exceed the amount of capital invested, then the investor will recognize a gain at the time of disposition of the property or investor's interest in the partnership. This gain is taxable, and will result in a tax liability, which is referred to as an "exit tax," meaning the taxes due when the investor exits the partnership.

Extended Use Agreement – An agreement between the owner and housing credit agency extending the low-income housing restrictions an additional 15 (or more) years beyond the initial Compliance Period. Federal extended use agreements are required for LIHTC projects with credit allocations after 1989, and many states impose additional extended use restrictions.

Fair Market Value (FMV) - The value of the partnership assets determined by a third party appraisal.

Fiduciary Responsibility – The responsibility of a person or company (syndicator) to holds assets in trust and maintains the responsibility for a beneficiary (investor).

Foreclosure – An action by a Lender to judicially sell property in order to satisfy its debt caused by the failure of a party to make required payments on a mortgage loan. Upon foreclosure, title to the property transfers to the purchaser at the foreclosure sale.

Forgiveness of Debt – The entity holding claim to a debt/loan acknowledges and waives its right to repayment of that debt. Forgiveness of debt is income to the party whose obligations have been released.

8609 Form – IRS document that is filed with a partnership tax return declaring the amount of tax credits for each building and the placed in service date. This is issued after construction is completed and all costs are accounted for.

Gross-up Factor – A method of calculating the true income tax cost to an exiting partner whereby the limited partner’s income tax incurred upon exiting or dissolving a partnership is multiplied by a factor to account for the tax on the income that the limited partner will receive when the general partner pays the limited partners exit tax (i.e., 135% where the tax rate is 35%).

Hard Debt, 1st Mortgage, Must Pay Debt – Any debt or liability incurred by the partnership with required payments regardless of cash flow.

HOME Funds – Federal Funds that may be granted or loaned to a project from a City or State government. If a loan, the interest rate, term and amortization period may vary per project.

HOME Compliance Period – For rehabbed units, the compliance period is 15 years and for new construction, 20 years. Tenant files are required to be maintained for an additional 3-year period after move-out. The Partnership should confirm with their local HOME administrator on the monitoring requirements in years 16-20. It is assumed that HOME agencies will monitor HOME units after year 15.

Internal Rate of Return (IRR) - The IRR for an investment is the discount rate at which the total present value of future cash flows equals the cost of the investment.

Lease-Purchase Option Agreement – The Option Agreement is the document that gives a resident the contingent right to purchase his/her home from the Partnership after the 15 year Compliance Period. It is contingent on: 1) the Partnership taking title to the property; and 2) the resident remaining a tenant in good standing. The Option Agreement provides a framework for the purchase price formula, notification the resident in Year 16 and the amount of time a resident will have to exercise his/her option.

Lease-Purchase – Single Family homes that may be rented for 15 years and then sold to an income eligible tenant at the end of the 15th year. The unit will then be released by allocating agency from the additional 15 year extended use compliance period.

Land Use Restriction Agreement (LURA) – The document containing Affordability Restrictions and other restrictions placed on the project.

Limited Partner – The limited partner is typically an investor or investors, or a fund made up of investors, who own up to 99.99% of the interests in the limited partnership. The limited partner(s) look to the general partner of the partnership to oversee the day to day operations of the partnership. The limited partnership is a vehicle for investors to receive a return on their investment in the form of tax credits, loss benefits and residual value upon disposition.

Limited Partnership – A state law ownership entity comprised of a general partner and one or more limited partners, which in a tax credit deal is formed for the sole purpose of owning real estate. Limited partnerships are disregarded entities for state and federal tax purposes so the losses, credits and profits are passed through to the partners based upon their respective interests.

Limited Partnership Agreement - Is a comprehensive agreement between the limited partner and general partner that reflects the duties, rights, fiduciary obligations and responsibilities of the partners. The Partnership Agreement is the definitive guide to financial requirements and oversight of the operation and disposition of the partnership assets. Partnership Agreement requirements vary by syndicator and by investment funds.

Minimum Sales Price – Applies to Qualified Contract terms for projects with Extended Use Agreements. Per Section 42(h)(6) of the Code the Minimum Purchase Price for a 100% low-income building equals the outstanding indebtedness secured by the building, plus adjusted investor equity in the building, plus other capital contributions less cash distributions. (Adjusted investor equity means the amount of cash invested with respect to the project increased by the cost of living adjustment for the calendar year)

Minimum Gain (704b) – The amount that nonrecourse debt secured by the Property (land and buildings) exceeds adjusted basis in the company.

Non-Recourse Debt – Debt for which no one can be held personably liable (i.e., no partner bears economic risk of loss). So, the creditor's only remedy upon default is usually to foreclose upon the property that secures the debt.

Operating Reserves – Funds set aside for a project to utilize if the project is unable to meet its cash flow needs or does not have the funds available to pay for a Capital Improvement. *Note: Reserves are assets of the partnership and may be available for distribution to the partners upon sale of the property, unless they are collateral for existing loans. Through negotiation, reserves may be donated to the nonprofit sponsor, expensed as a fee, capitalized into the property or used to pay exit taxes. Some partnership agreements provide for an Exit Tax Reserve to pay exit taxes.*

Outstanding Debt – The sum of all debt secured by the Project including accrued interest, that is due and payable at the end of the Compliance Period. *Note: Although a loan may have a 30 term, upon a transfer, including at year 15, all debt must be repaid, assumed or forgiven, unless the lender approves assumption of the debt by the new owner.*

Placed In Service Date – The date the building is ready for occupancy. Found on IRS form 8609, which is an attachment to each of the Partnership's tax return.

Reallocation – Changing the allocation percentages of taxable deductions or benefits during the Compliance Period. One method to reduce exit taxes to a limited partner is by reallocating losses from the limited partner to the general partner.

Recapture of Tax Credits –The owner is obligated to maintain the required percentage of low income units in the project and by building through annual tenant income certifications and rent restrictions. Failure to meet this obligation can result in the filing of form 8823 with the IRS and the recapture of credits for the unqualified units. General partners are generally obligated to provide tax credit guaranties if any units fall out of compliance. Foreclosure on the Project or sale of the Project (or a partnership interest) before the end of the Compliance Period can also cause recapture, unless a bond is posted and the Project remains low income.

Residency Credit – A residency credit is incorporated into the Lease Purchase purchase price formula to address the issue of fairness (e.g. a one year resident might otherwise realize as much equity as a fifteen year resident). To address this concern, the Option Agreement adds some amount, i.e. $15,000 to the sale price of each house, and then subtracts $1,000 for each year of residency up to fifteen years. Any surplus revenues earned by the general partner can be used to offset costs associated with implementing the Option Agreement or to fund other program goals or expenses.

Replacement Reserves – Reserves established to replace long-lived items on the property, usually funded from current cash flows. See discussion of Operating Reserves.

Resident Tenant Option Agreement – See Lease Purchase Option Agreement.

Residual Value – The value of an interest or real estate after all costs of sale (including repayment of all mortgages) have been deducted.

Resyndication – The process of applying for new tax credits once a project's Compliance Period is over. *Note: The IRS allows projects to receive new tax credits following the end of the Compliance Period if they are eligible under the State's Qualified Allocation Plan (QAP). Some State QAP's provide special set asides to preserve affordability. The IRS has special regulations regarding the ownership structure with resyndicated projects and the Sponsor should consult with their attorney and/or CPA to review the requirements.*

Right of First Refusal – A right offered to tenants (in co-operative form or otherwise), a resident management corporation, a qualified non-profit organization or a government agency, which allows the holder the right to purchase the real property (real estate) at a Minimum Purchase Price. The Minimum Purchase Price is equal to the principal amount of indebtedness secured by the property (other than indebtedness incurred within the 5-year period ending on the date of the sale to the tenants), and all Federal, State, and local taxes attributable to such sale. This right may or may not require an offer from a third party to purchase the real property. Statutory authority for the right of first refusal is contained in Sec. 42(i)(7) of the Code, which applies to projects with LIHTC tax credits allocated after 1989.

704b Analysis - An analysis of the capital accounts of the partners, minimum gain generated by the project and the potential impact on the allocations to the partners as a result of such allocations.

Sale of Limited Partner Interest – The limited partner's interest is sold or transferred to another party. The sale of the interest may be as little as $1.

Sale of Real Estate – The sale of the real estate owned by the partnership. After the real estate is sold, the partnership may be dissolved. This may cause an assessment of transfer taxes. Any reserves associated with the project are assets of the partnership, not part of the real estate, and may be available for distribution at dissolution.

Sponsor Debt – A loan made to a project from a sponsor. Typically these are 2nd, 3rd, or 4th mortgages that are cash flow contingent and have accruing Interest.

Syndicator – This corporate entity i.e. ESIC raises capital from corporations for investment in housing qualifying for Low Income Housing Tax Credits. The syndicator is usually the general partner of a Fund that is the limited partner in a LIHTC limited partnership.

Tax Credit Recapture – See Recapture.

Taxable Gain – See Capital Gain.

Taxable Loss – See Capital Loss.

Tax Rate – The rate at which exit taxes are calculated. For corporate taxpayers the Federal tax rate is usually assumed to be 35%; an additional state tax rate may also be applied.

Tax vs. GAAP – Different methods of financial presentation.

Transaction Costs – Expenses related to sale or transfer of a property or a partnership interest. Costs may include items such as title work, appraisal, accounting fees, legal fees, transfer taxes and transfer fees.

Transfer Tax/Fee – A fee that is charged by a governmental entity upon sale (transfer). This fee may be incurred if the project is sold, but may be avoided in some states if the partnership interests are sold instead.

Yield Maintenance – A method that allows an investor to receive additional benefits in order for it to obtain its projected tax benefits. In a year 16 transaction, this could be payment of cash to the limited partner to increase its total benefits to the amount originally projected.

Contributors to these definitions include:
John Brandenburg, Enterprise Social Investment Corporation
Greg Griffin, Enterprise Social Investment Corporation
Holly Heer, Attorney at Law, Squires Sanders & Dempsey
Dan Mendelson, DTM and Associates
Marian O'Conor, Enterprise Social Investment Corporation
Randy Shorr, Attorney at Law
Meg Slifcak, West Side Rental Housing Collaborative
Jonathan Welty, Ohio Capital Corporation for Housing