



# **HOW TO PREPARE FOR AND APPROACH YEAR 15 OF A LIHTC DEAL**

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## **INTRODUCTIONS**

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## AGENDA

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- > **Overview of LIHTCs, Compliance Period, and Deal Structure**
- > **Positioning project partners early-on for a smooth transition at Year 15**
- > **Preparing for the Year 15 transition**
- > **What are some Year-15 issues that may arise?**
- > **Developer's perspective – Anecdotes from CommonBond Communities**

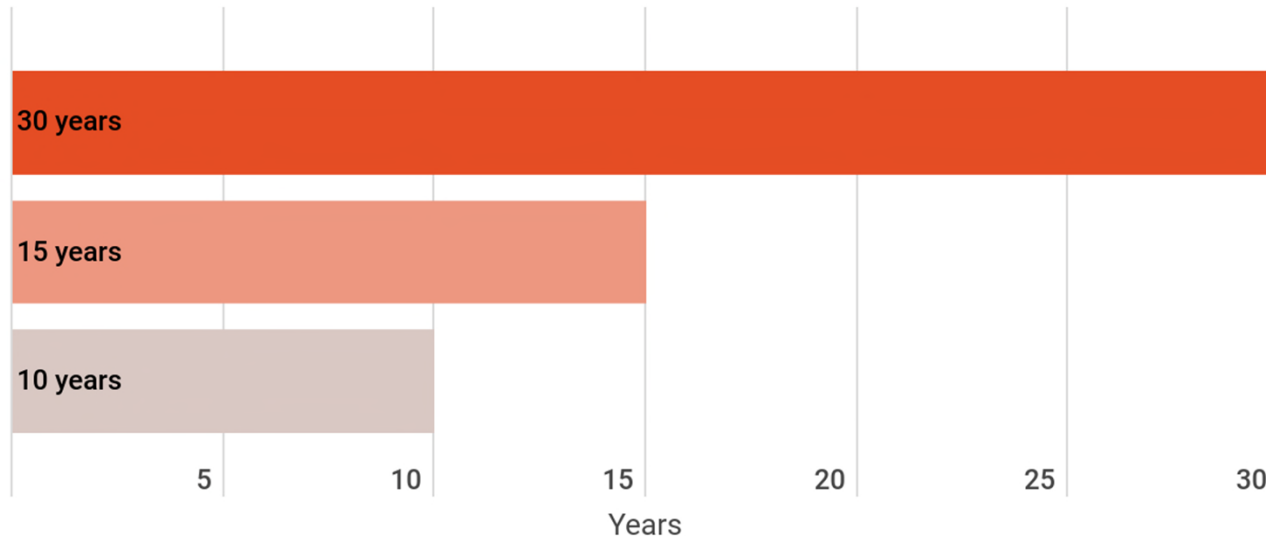
## **LIHTCS AND THE 15 YEAR COMPLIANCE PERIOD – BRIEF OVERVIEW**

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- > The Low-Income Housing Tax Credit (“LIHTC”) is a federal income tax credit used to create and preserve rental housing affordable to households earning 60% or less of area median gross income at rents restricted to 30% of that income.**
- > Investors, or limited partners, "purchase" LIHTCs from project owners, resulting in significant tax savings for the investor and equity for the project.**

# TIMELINE

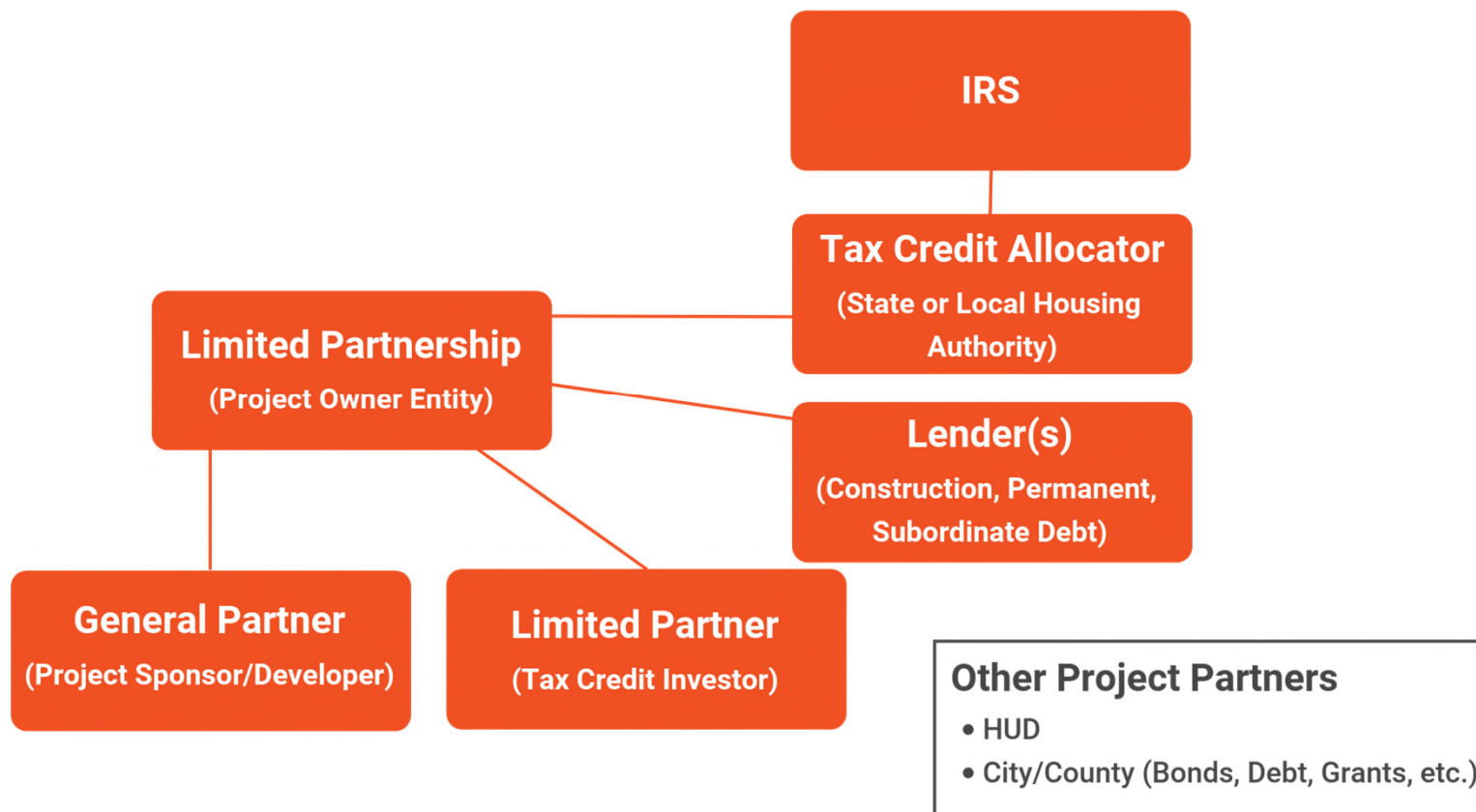
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● Extended Use Period ● Compliance Period ● Credit Period

# STRUCTURE OF A PARTNERSHIP AND PROJECT PARTNERS

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## THINK ABOUT YEAR 15 NOW

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- > **Communicate with project partners**
- > **Discuss and plan for Year 15 when negotiating equity LOI**
- > **Consider long-term project goals and options after Year 15**
- > **Continue to monitor capital accounts annually**

## WHAT ARE THE POTENTIAL OPTIONS AT YEAR 15?

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- > Non-profit ROFR – Code Section 42(i)(7)
- > Contractual ROFR
- > Purchase Options
- > Continue to operate as-is and hold
- > Re-syndicate the project
- > Sale of the project
- > Puts/Calls
- > Qualified Contract
- > “Forced Sale” requirements



## REVIEWING AND NEGOTIATING THE LPA

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- > Limited Partnership Agreement (“LPA”) governs the relationship between the limited and general partners.
- > LPA is drafted with the expectation that the limited partner will exit at the end of the Compliance Period.
- > LPA may contain provisions addressing the investor exit. Examples include:
  - Right of First Refusal
  - Buyout Option
- > Consider including a clause in the LPA which restricts who investor can sell/transfer its interest to.

## **REVIEWING AND NEGOTIATING THE LPA – STATUTORY RIGHT OF FIRST REFUSAL**

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- > Gives qualified project sponsor the right to purchase the property before a third party can**
- > Purchase price set by Section 42(i)(7)(A) of the Internal Revenue Code; equal to debt plus taxes.**
  - Debt: any outstanding mortgage on the property. Debt will equal the outstanding principal of the mortgage plus unpaid interest.**
  - Taxes: all federal, state, and local taxes attributable to the sale, which may include exit taxes incurred by the existing partner (e.g. the investor/limited partner).**

# REVIEWING AND NEGOTIATING THE LPA – BUYOUT OPTION/CONTRACTUAL ROFR

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- > Gives the GP the right to purchase either the property or, depending on the LPA, the LP's share.
  - The purchase price is usually the greater of fair market value or taxes plus unpaid benefits.
- > Option Period - Usually begins the first day following the end of the Compliance period.
- > Notice - GP is generally required to give LP notice of its intent to exercise the Option during the Option Period.
- > Understand what happens to reserves with each option and how they are liquidated

## WE'VE CLOSED THE DEAL, NOW WHAT?

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- > Save all closing documents and make note of post-closing deliverables/requirements.
- > Understand and calendar requirements for capital installments and tax credit delivery.
- > File 8609 to claim credits and know when your 15 Year clock starts to run.
- > Finalize and record LURA
- > Asset management team and property management team will work to ensure that proper compliance and reporting occurs.
- > Keep an eye on capital accounts - want to ensure that your investor's account does not go negative - that will result in large exit taxes.

## PREPARING FOR YEAR 15

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- > Start planning early, and involve your attorney and accountant
- > Locate and review transaction documents to understand notice provisions, consent requirements, etc.
  - Examples include Partnership Agreement and Ancillary Documents; Financing Documents; Regulatory Agreements; Declarations of Land Use Restriction Agreements; and Projections
- > Communications should be formal
- > Be sure to follow the LPA
- > Be on time!

## WHAT ARE SOME YEAR-15 ISSUES THAT MAY ARISE?

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- > Refinance issues
- > Whether the option is properly exercised as required by the LPA
- > Valuation issues
- > Limited Partners trying to exercise removal rights
- > Forced Sale
- > Year 15 is not truly addressed in the LPA
- > Negative capital accounts and exit taxes
- > Negotiation of reserves/liquidation

## **DEVELOPER'S PERSPECTIVE**

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- > Silver Lake Pointe Dispute**
- > CommonBond examples of current/ongoing exit negotiations**

# THANK YOU.

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## QUESTIONS?

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