1. What is Enterprise's role at the end of the compliance period?

From the outset, Enterprise's desire has been that projects sponsored by nonprofit organizations would be transferred to their nonprofit sponsor after the end of the compliance period. Enterprise's role in this process is to represent the investor's interest while facilitating the transfer.

2. How does the General Partner/Sponsor obtain ownership of the project?

There are basically two ways Enterprise can structure the transfer. The General Partner/Sponsor can purchase the property and dissolve the partnership, or Enterprise can transfer the Limited Partner's interest to the General Partner/Sponsor and the partnership continues. We prefer the latter because it is usually easier and more cost effective.

3. How is it easier and more cost effective to transfer the partnership interest?

As opposed to selling the property, there is no change in title to the property when the Limited Partner's interest is transferred. Therefore no deeds are recorded; also transfer taxes may be avoided depending on state law. Debt assumption and additional consent requirements may also be avoided.

4. What legal documents are required to effectuate a transfer of Limited Partner's interest or a sale of the property, assuming the LIHTC compliance period has expired?

A transfer of Limited Partner interest will require the following documents:

- Assignment of Partnership Interest—this agreement provides for the assignment of the existing Limited Partner's interest to the new Substitute Limited Partner.
- Amendment to the Partnership Agreement—the amendment will reflect the withdrawal of the existing Limited Partner and the admittance of the new Substitute Limited Partner.

A sale of the property will require the following documents:

- Purchase Contract—provides terms and conditions of the purchase.
- Deed—recorded with the local department of land records.
- Cancellation of Limited Partnership—this document will be filed with the State and dissolves the partnership.

The General Partner is responsible for the preparation of the documents and Enterprise has prepared sample documents to reduce legal expenses.

5. Is the lender's approval required to sell the property or the partnership interest?

Possibly, the loan documents will state whether lender approval is required. Enterprise would expect the General Partner/Sponsor to obtain any lender and or agency approval.

6. What is the purchase price of the property or Limited Partner's interest?

That depends on what the partnership agreement says. Enterprise suggests that you review the entire agreement, particularly any Buyout Option, Right of First Refusal, Assignment of Limited Partner's Interest and Consent provisions. The Buyout Option provides an option for the General Partner to purchase the Limited Partner's interest for the greater of fair market value or investor unpaid benefits plus exit taxes. For projects with credits allocated after 1989 the IRS provided for a nonprofit organization, tenant, or tenant cooperative right of first refusal to purchase the property for the sum of Debt and Exit taxes. Most of Enterprise's partnership agreements incorporate this provision when there is a nonprofit sponsor.

7. What is an Exit Tax?

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

8. What happens to the Operating and Replacement reserves upon a sale or transfer?

Reserves are assets of the partnership and may be available for distribution to the partners upon sale of the property, unless the lender requires them to stay with the property. Through negotiation and/or the terms of the partnership agreement, reserves may be donated to the nonprofit sponsor, expensed as a fee, capitalized into the property or used to pay down debt or to pay exit taxes. Reserves may remain with the partnership upon a transfer of a Limited Partner's interest.

9. When does Enterprise begin the disposition process?

Approximately two years prior to the end of the compliance period.

10. How is the expiration of the compliance period determined?

Review the tax returns for the year(s) when the partnership started claiming the Low-Income Housing Credit. The compliance period expires December 31st of the fifteenth year, beginning with the year the credit started for each building. Just add 15 years to the first year credits were taken, and this is the year the transfer can occur, without recapture.

It gets more complicated if buildings in the project started taking credits in different years. Enterprise prefers to deal with the entire project at one time, rather than building by building, to keep brain damage to a minimum. So the transfer would occur in the year that the last building reaches year 16.

For example, if the credit period begins in 1990, the compliance period ends December 31, 2004. The transfer can occur without recapture in the following year, 2005.

11. This project is really in trouble. It is running negative cash flow, and needs some major upgrades. The roof is leaking, and the heat pumps are starting to fail. How can these issues be addressed?

Year 15 represents an opportunity to address some of these issues. Enterprise can help you think through the issues and potential solutions.

- First, expenses should be lower after year 15, as one may be able to reduce reporting expenses, and may be able to avoid an audit.
- Second the General Partner/Sponsor should go ahead and identify capital needs at the project. Also, would improvements to the project allow rents to be raised or reduce the operating expenses, hence improving operations? It may be a good time to get a capital needs assessment to determine what is needed and the costs?
- Third, consider if refinancing would be feasible. Can debt be refinanced at a lower rate, and could more debt help address some of the capital needs? And consider if this should be done before year 16, or as part of a restructuring in year 16.
- Fourth, consider if resyndication would help address these issues. 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. Enterprise can help evaluate this option.

12. Does Enterprise have a list indicating when our projects reach the end of the compliance period?

Yes, we have a list sorted by project and fund.

13. What is Fair Market Value?

The value of the partnership assets determined by a third party appraisal, subject to rental restrictions that are in place.

14. Should sponsors hire a consultant, attorney, or accountant to handle Year 15?

Sponsors should have an attorney review the partnership documents and closing documents, and have their CPA review any exit analysis to determine tax implications to the general partner and partnership. Enterprise has developed draft closing documents and exit analysis to keep transaction costs to a minimum.

15. What parts of the Partnership Agreement should sponsors review when determining their exit strategy?

They should be familiar with the entire agreement and particularly Exhibit A (Schedule of Partners), Buyout Option, Right of First Refusal, Allocation of Profit and Losses, Distribution of Capital Proceeds, Substitution and Assignment of Limited Partner's Interest, Dissolution of Partnership, Projections, and consent to sell requirements.

16. Is there a way to determine if the investor will have exit taxes?

Yes, assuming the sale price is equal to the outstanding debt, the federal tax rate is applied to a partner's capital account balance (at the year of sale), to the extent that it is negative. If the investor has a positive capital account with a sale price equal to debt there is no exit tax. If sale price exceeds debt resulting in gain there will be a tax on the amount of gain. A one time gross-up to cover the tax on the tax (income to investors) is added.

Example: Project sold to existing general partner in January 2003. Sale price equals debt. The capital account balance for the Limited Partner as of 12/31/02 was a negative ($10,000). The Limited Partner's federal tax rate is 35%.

$10,000 x 35% = $3,500
$3,500 x 1.35 = $4,725 grossed up exit tax owed

17. How can exit taxes be reduced?

By improving operating performance which will reduce losses, by creating income and/or by allocating losses away from the Limited Partner.

18. Does the Limited Partner's interest in the partnership expire at the end of the LIHTC compliance period?

No, the partnership will continue for the term as provided for in the partnership agreement.

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