BEYOND YEAR 15: PRESERVING HOUSING CREDIT PROJECTS & PORTFOLIO

A GUIDE FOR NONPROFITS TO ADDRESSING YEAR 15 LOW-INCOME HOUSING TAX CREDIT COMMUNITIES

By Nancy Rase

ACKNOWLEDGEMENTS

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BACKGROUND

This paper is intended to serve as a guide for nonprofit organizations to develop policies to deal with Low-Income Housing Tax Credit (Housing Credit) communities that reach Year 15. Organizational procedures for preparing for Year 15 events as well as strategies for repositioning communities for the long term are outlined in this paper. Although the paper addresses exit strategies and provides examples for all types of projects, the focus is on issues around the most challenging projects and approaches to address those challenges.

ORGANIZATIONAL STRUCTURE

Before getting into the issues of how to deal with specific transactions, it is wise for an organization to assess its staff capabilities, determine where in the organization Year 15 work will be managed and evaluate external options if there is insufficient internal capacity or there will be a minimal number of transactions. The first step generally involves the executive and senior management having high level discussions about the issues and implications for the organization with the board of directors. These discussions lay the ground work for formal organizational policies for Year 15 work and possible new staffing requests.

Year 15 work is generally handled in the asset management or development divisions of an organization or sometimes, depending on the nature of the transaction, both divisions will be involved. Very few organizations have the resources or volume of activity to create and staff a division to deal just with Year 15 transactions. The pros and cons of the various approaches to handling this workload are discussed below:

- Asset management seems like a logical placement for these responsibilities because staff is already involved with the projects and very familiar with operating performance and physical issues, and they have existing relationships with the asset management staff of the syndicator or investor. These advantages are balanced by the possibility that asset management staff can be more process-oriented than transaction-oriented and may find the challenge of evaluating financing options and negotiating terms beyond the normal scope of responsibilities. An organization may want to increase asset management capabilities to deal with Year 15 work by increasing training for existing staff or adding a person with more transaction experience.

- Development staff has the advantage of having knowledge of a wide range of financing options and experience negotiating deal terms with syndicators and investors. Generally unless a transaction is undergoing a total recapitalization with significant rehabilitation, development is not the most logical organizational location for this work. Some organizations have development staff take the lead on projects that involve a major rehabilitation/recapitalization and have asset management handle the more “minimally invasive” transactions.
Another consideration relative to organizational placement is that traditional development and preservation financing sources will not always be a solution for Year 15 projects. Most organizations are familiar with debt and equity sources for major rehabilitation and property acquisition/refinancing. With Year 15 work, it is not unusual to require corporate level financing in lieu of project level financing. If an organization is buying out a partner’s interest or needs funding to pay exit taxes or transaction costs, the traditional development sources are not viable. The existing property already has a debt stack, and entering new property level financing is not always viable. An organization needs to consider where corporate level financing is or should be managed and how to involve that staff in Year 15 work. In many organizations, the chief financial officer is responsible for finding and managing organizational lines of credit.

In most cases, no one division or area has sole responsibility for Year 15 work. It is important to clearly define who is responsible for which kinds of transactions, at what point responsibility is handed from one division to another (and handed back), and identifying the lead staff if multiple divisions are involved.
A STEP-BY-STEP GUIDE TO PREPARING FOR YEAR 15 EVENTS

EARLY PREPARATION

The first step of preparation for Year 15 begins when an organization is negotiating the ownership agreement with the syndicator or investor partner prior to construction or rehabilitation of the rental community. Early preparation and understanding the options that will be available to the organization in the future are important to having a smooth transition. Nonprofit organizations should negotiate exit strategies which include entering into a right of first refusal to purchase the property and/or a right to buyout the investor limited partner or investor member (investor partner). The Internal Revenue Service (IRS) provides special provisions for Qualified Nonprofit Organizations (defined in Section 42(h)(5)(C) of the IRS Code) to purchase Housing Credit properties (purchase option).

Generally the purchase option is subject to a right of first refusal agreement between the entity owning the property and the nonprofit organization. Typical purchase option terms include:

- A right for the nonprofit to buy the property for an amount equal to the sum of (1) the principal amount of all outstanding indebtedness secured by the property, all loans from the partners or members or affiliates and all accrued and unpaid interest on any of the listed debts and (2) all the federal, State, and local taxes attributable to such sale including those incurred by the Investor Partner.

- A period of time after the end of the initial 15-year compliance period, during which the nonprofit has the right to exercise the purchase option before the property is offered for sale to others. This period of time can be as short as one year and as long as five years.

- Agreement by the nonprofit to maintain the property for low-income use for at least 15 years after the end of the initial compliance period or for any longer extended use term. The nonprofit has to pay all the costs of exercising the purchase option including filing and recording fees.

The right of first refusal is a property acquisition, not a partnership acquisition; therefore other assets of the partnership (operating cash account, operating reserve, reserve for replacement, etc.) typically are not being purchased. There will be a HUD-1 Settlement Statement which will include property transfer taxes, closing costs and proration of rental income and operating expenses. The transaction is much the same as buying a property on the market. After the transaction, the original limited partnership will be dissolved, and the partners will be required to pay taxes.
Do not assume that you will not need financial resources because you are buying the property for the amount of the debt. You will need funds to pay: the tax obligations; government transfer, deed, and recordation taxes; other closing costs and fees; and possibly cash to cover some property operating costs for a period of time. Since the operating reserve and reserve for replacement are typically property of the partnership, a nonprofit should not assume these resources will be available to pay for transaction costs.

Read the terms of the right of first refusal agreement carefully. Not all syndicators and investors provide rights as favorable as those permitted by the IRS as outlined above. In some cases a right of first refusal is merely a right for the nonprofit to match any price offered by a willing buyer(s) on the market.

The “buyout option” allows the nonprofit general partner/managing member to purchase the investor partner’s entire interest in the ownership entity for a formula based price called the buyout price. To exercise the buyout option, the nonprofit general partner/managing member must give a notice to the investor partner within the timeframes specified in the ownership agreement. The buyout price typically is the greater of:

- the fair market value of the investor partner’s interest, based on maintaining the property as low income housing for at least another 15 years after the initial compliance period or through the end of the extended use period, if longer; or
- all federal, state and local taxes attributable to the sale, including taxes incurred by the partners of the investor member.

Buyout options typically have requirements for third party analysis such as an appraisal of the assets of the company and an accountant’s calculation of the value of the investor partner’s interest based on the appraised value. Some agreements permit the investor partner to object to the appraised value provided by the member and solicit a second valuation based on a specified procedure for selecting another appraiser.

The definition of fair market value (FMV) is a key aspect of this exit strategy. FMV is defined in the partnership agreement and may vary from transaction to transaction. The FMV may be defined as an accountant’s calculation that does not reflect an actual transaction in the market and therefore does not often represent an achievable dollar amount, or market value, for the limited partner interest.

Typically, the defined FMV of the investor partner’s interest is the amount the investor partner would receive from the partnership upon a sale of the property for its market value as determined by the property appraisal and a subsequent liquidation and dissolution of the partnership. The amount is determined by calculating the proceeds that the investor partner
would receive from a sale or capital proceeds waterfall in the partnership agreement and other distributions the investor partner would receive from the liquidation of the remaining partnership assets (reserve accounts, operating cash, etc.). The capital proceeds waterfall may provide for priority payments from the sale proceeds to be made to the partners based on tax implications of the sale, repayment of previous capital contributions or advances, unpaid benefits, etc.

The liquidation of any remaining partnership assets after all other partnership liabilities are accounted for may be distributed to the partners based on their capital account balances in the partnership. The buyout option is based upon a liquidation valuation and accordingly assumes there would be no need to maintain any reserves going forward. The liquidation valuation methodology also does not include any discount factors to reflect a lack of control or lack of marketability inherent in selling limited partnership interests on the open market.

Many nonprofit organizations have their board of directors approve policies that establish terms the organization must include in all transactions relative to 15-year rights and expectations. Policies of this nature can help when negotiating new agreements. In addition, shifts in the investor climate since 2008, with more focus by some investors on “cashing out” to the maximum at the end of the initial compliance period, provide a good format for board discussions about expectations from syndicators and terms of limited partnership agreements for future transactions.

**INFORMATION FLOW AND PERFORMANCE TRACKING**

It is important for developers to share the terms and conditions of any 15-year agreements included in the ownership documents with the organization’s chief financial officer (CFO) and asset managers (AM) and for the organization to develop procedures for tracking each property’s performance relative to Year 15 issues. Enterprise Community Investment and NeighborWorks both provide, with their Year 15 training, a very comprehensive Excel workbook for memorializing the terms of ownership documents relative to Year 15 and tracking annual performance such as losses, credits and total benefit delivered to the investor partner, property value, partner interest value, reserve account balances, etc.

A good approach to ensuring an organization has all the information it needs to make decisions prior to Year 15 is to have the project developer set up the Year 15 workbook after initial closing when all the terms and conditions of the documents are fresh and underwriting information is readily available. The organization also could designate staff responsible for updating information annually after property audits are received so that the information is current and the organization has a clear picture of its position each year. Generally annual updates to the workbook are handled in the accounting or asset management division of an organization.
The benefits of annually tracking a property's position relative to Year 15 can help an organization make informed decisions. For example, an organization can evaluate the impact of a debt refinancing to reduce interest rates on investor benefits for the remaining term. This information can help in making an argument for approval of the refinance. If an investor's capital account is reducing too rapidly early in the compliance period, knowledge of the trends can help the organization take steps to avoid the account going negative before Year 15. Monitoring operating cash flow can help assess the current value of the property and develop trends to estimate potential value at Year 15. Early projections of property value can help the organization identify resources it may need as it approached Year 15. The information in the tracking report can help the organization evaluate approaches (purchase, buyout, sale, etc.) to Year 15 to determine if they make economic sense for the organization.

YEAR 10-14 PREPARATIONS

Year 10 is a good point for an organization to take a hard look at each property and begin to formulate Year 15 plans. Issues to examine closely between years 10 and 14 include:

- **Property condition (year 10).** Obtaining capital needs assessments, energy audits and other evaluations help quantify the property's physical needs and the cost of those needs. Most syndicators/investors allow the costs of these studies and reports to be funded from the property's reserve for replacement fund. The organization should use this data to develop a five-year capital plan and to address immediate physical needs and resources to address those needs.

- **Subordinate debt.** Does the property have subordinate debt that is not being repaid? Does the local government have an expectation of repayment? Are there policies in place at the local government level to forgive or restructure subordinate debt? What is the right time to initiate discussions? Assessing the property needs and government policies and practices at this early stage will give time to work through any issues that static or growing subordinate debt may pose relative to the future of the property.

- **Reserve balances.** Does the property have healthy reserve for replacement, operating reserve or residual receipts reserve? Are these reserves sufficient for capital needs and expected transaction costs at Year 15? Will these reserves be available after Year 15 or will they be disbursed as part of the cash flow waterfall at Year 15? Are government approvals needed to access these funds? Are processes in place for those approvals?

- **Operational performance.** Does the property as structured cover all operating expenses and needs? Do pro forma projections for the next 10, 15 or 20 years support the viability of the property from an operating perspective? Historically, has new housing in the market had an adverse impact on vacancy rates? If so, how much vacancy can the property sustain before operations suffer?
Identifying the property issues outlined above will be important to choosing a viable exit strategy. For example, if the property is not in need of any significant capital improvements, a recapitalization and resyndication would not be necessary or appropriate. If a property needs minor rehabilitation the reserve for replacement or a small CDBG, HOME or the state affordable housing trust grant may be viable approaches to efficiently and cost effectively addressing the needs. If the property has significant subordinate debt that will remain in place, it might make a resyndication with Housing Credit infeasible because of a likely residual value issue, unless the local government is willing to restructure debt. It is wise to identify potential impediments and opportunities for each property well in advance to help formulate the organization’s Year 15 approach.

**ORGANIZE THE DATA**

Spreadsheets that organize information to show the big picture and help make informed decisions are essential. A spreadsheet that simply lists each Housing Credit property in the portfolio in order of the placed in service date and the end of the 15-year period helps the organization visualize its upcoming Year 15 workload by year.

Summarizing financial data also helps focus in on potential strategies. It is helpful to categorize transactions based on the likely Year 15 strategy. If the property has value, the investor is likely to want a buyout. The financial data can help identify the estimated amount of cash needed for the buyout. If the property has no value, a right of first refusal purchase option may be the only option. If so, will the debt balances make it infeasible to undertake a recapitalization (residual value issue if original soft debt is not forgiven and new soft debt is obtained)?

Generally if a property has value in excess of the hard and soft debt, the nonprofit will have Year 15 options. If there is no value, generally there is only one option – right of first refusal and own an over-leveraged property with limited potential for recapitalization.

Sample formats for organizing data are shown below and on the following page.

**A. General Data**

<table>
<thead>
<tr>
<th>Community</th>
<th>P.I.S. Date</th>
<th>End of 15-Year Period</th>
<th>Right of First Refusal</th>
<th>Buyout Option</th>
<th>Co-GP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property 1</td>
<td>07/01/1997</td>
<td>12/31/2012</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Property 2</td>
<td>08/26/1997</td>
<td>12/31/2012</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Property 3</td>
<td>03/09/1998</td>
<td>12/31/2013</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Property 4</td>
<td>12/27/1999</td>
<td>12/31/2014</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Property 5</td>
<td>12/18/1999</td>
<td>12/31/2014</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Property 6</td>
<td>12/28/2001</td>
<td>12/31/2016</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>
### B. Financial Data

<table>
<thead>
<tr>
<th>Property</th>
<th>Property Value (Capped NOI)</th>
<th>Hard Debt Balance</th>
<th>Soft Debt Balance</th>
<th>Interest Rate (must pay)</th>
<th>Operating Reserve/Residual Receipts Balance</th>
<th>Purchase Price LP Interest (Buyout) (^2)</th>
<th>Purchase Price Property (ROFR) (^3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property 1</td>
<td>$200 K</td>
<td>$0</td>
<td>$800 K</td>
<td>N/A</td>
<td>$8 K</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Property 2</td>
<td>$2.4 M</td>
<td>$570 K</td>
<td>$430 K</td>
<td>9.0%</td>
<td>$47 K</td>
<td>$1.3 M</td>
<td>$1.1 M</td>
</tr>
<tr>
<td>Property 3 (^1)</td>
<td>$13.5 M</td>
<td>$6.0 M</td>
<td>$747 K</td>
<td>5.6%</td>
<td>$0</td>
<td>$2.4 M</td>
<td>N/A</td>
</tr>
<tr>
<td>Property 4</td>
<td>$2.6 M</td>
<td>$1.1 M</td>
<td>$476 K</td>
<td>7.6%</td>
<td>$79 K</td>
<td>$1.0 M</td>
<td>$1.7 M</td>
</tr>
<tr>
<td>Property 5</td>
<td>$4.3 M</td>
<td>$2.9 M</td>
<td>$0</td>
<td>6.0%</td>
<td>$0</td>
<td>N/A</td>
<td>$3.1 M</td>
</tr>
<tr>
<td>Property 6</td>
<td>$2.2 M</td>
<td>$1.1 M</td>
<td>$1.7 M</td>
<td>8.4%</td>
<td>$77 K</td>
<td>$0</td>
<td>$2.9 M</td>
</tr>
</tbody>
</table>

1. Amounts based on actual events. Buyout of limited partner was negotiated in year 12 in conjunction with a refinance of the existing debt on the property. Co-GP was also bought out for $400K.
2. Buyout estimated at 99.99\% times estimated property value less sum of hard and soft debt. Investor will likely want all cash balances included in the property value.
3. Purchase price estimated as sum of hard and soft debt and exit taxes.

### C. Physical Data

<table>
<thead>
<tr>
<th>Property</th>
<th>No. Units</th>
<th>Date CNA Needed/Obtained</th>
<th>Critical Needs Cost Per Unit</th>
<th>Additional Desired Rehab Cost Per Unit</th>
<th>Reserve for Replacement Balance &amp; Per Unit Balance</th>
<th>Other Potential Funding Sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property 1</td>
<td>20</td>
<td>Jan 2012</td>
<td>$0</td>
<td>$1,500</td>
<td>$57,933 / $2,896</td>
<td>Energy grant</td>
</tr>
<tr>
<td>Property 2</td>
<td>58</td>
<td>Jan 2012</td>
<td>$1,200</td>
<td>$3,000</td>
<td>$162,187 / $2,796</td>
<td>(Note 1)</td>
</tr>
<tr>
<td>Property 3 (^1)</td>
<td>120</td>
<td>Feb 2012</td>
<td>$0</td>
<td>$2,000</td>
<td>$300,000 / $2,500</td>
<td>Energy grant</td>
</tr>
<tr>
<td>Property 4 (Note 1)</td>
<td>62</td>
<td>Jan 2013</td>
<td>$1,200</td>
<td>$3,000</td>
<td>$109,086 / $1,757</td>
<td>(Note 1)</td>
</tr>
<tr>
<td>Property 5</td>
<td>120</td>
<td>Jan 2013</td>
<td>$0</td>
<td>$1,200</td>
<td>$73,200 / $610</td>
<td>Cash flow $50K/Year</td>
</tr>
<tr>
<td>Property 6</td>
<td>55</td>
<td>Jan 2015</td>
<td>$5,000</td>
<td>$3,000</td>
<td>$93,143 / $1,694</td>
<td>Recapitalize</td>
</tr>
</tbody>
</table>

Note 1: This is phase 1 of a 3 phase project. Plan is to wait until third phase comes out of compliance period and recapitalize all three phases as one project using tax exempt bond financing and 4\% Housing Credit.
ASSIGN STAFFING RESPONSIBILITIES

Assigning responsibility for managing the Year 15 workload is an often overlooked but important task. The first step involves the executive and management staff recommending organizational priorities and policies to the board. Possible strategies for board discussion and approval are discussed below in step 6.

After a policy framework is established, management needs to assess staff capabilities and define roles for handling the workload. Is the volume significant and regular enough that staff needs to be added or should the organization hire an experienced consultant? Does existing staff need targeted training? Will the workload be split? For example, will development staff be responsible for recapitalization/resyndication transactions, and asset management for refinance, right of first refusal and buyout transactions? If so, are staff capable and well versed or will new capabilities be needed? The Organizational Structure section on page 1 had more detail on these considerations. Organizational structure and necessary staffing should be decided well in advance of reaching the point where actual staffing responsibilities are designated.

IDENTIFY PRELIMINARY EXIT STRATEGIES

It is helpful for an organization to decide from a policy approach, with board approval, its priorities for implementing a 15-year strategy. For example, some organizations try to deal with entire portfolios by recapitalizing with 4 percent Housing Credits and tax-exempt bonds. This approach deals with capital needs, generates revenue for the organization through development fees and may provide proceeds to the exiting investor partner.

Not all portfolios or properties lend themselves to this approach. It is helpful for the organization to assess its portfolio based on the information collected in steps 1 to 4 outlined above and organize projects into several categories that best suit the property based on its financial and physical situation. This process should be undertaken approximately two years before the first properties reach Year 15 and reassessed and reevaluated periodically based on the portfolio.

It is helpful to broadly categorize properties before honing in on specific strategies. Categorization will help the organization assess staffing needs, develop timelines for completing tasks and outline partners who need to be aligned with the organization’s strategy. Generally, the categories are: projects with amortizing first mortgage loans and healthy debt service coverage (1.25 or more); projects with minimal capital needs ($2,000 per unit or less); projects with interest rates on amortizing loans 200 basis points or more above current interest rates; and/or projects with little or no subordinate public debt are the easiest to deal with and probably do not need a two year lead time to perfect the exit strategy.
There may not be good, viable options for all projects. Projects which have subordinate, surplus cash loans with large balances that will not be forgiven, projects with insufficient net operating income to leverage new amortizing loans, and projects with significant rehabilitation needs will be very challenging for an organization. While it may be possible to negotiate favorable exit terms with the investor, the organization could face the issue of solely owning a property with significant needs and few options to address those needs.

**BEGIN DISCUSSIONS WITH PARTNERS**

The last point in step 6 above will lead organizations to initiate discussions with asset management staff of subordinate public lenders to fully understand policies and practices relative to 15-year transactions in general; release of operating reserve funds for buy-outs or improvements; subordination of public debt to enable refinancing; and restructuring of existing subordinate debt.

Have discussions with the asset management staff of the syndicator to understand the expectations of the investor and sensitivities relative to using funds of the limited partnership (operating reserves, reserve for replacement, etc.) as part of the Year 15 funding strategy.

If there is a development partner (co-general partner), incorporate the expectations and views of the partner into project planning. Talk with asset management staff of the partner and understand their views, requirements and timeframes.

After all the information is compiled and evaluated, the organization’s staff will develop property-specific strategies in accordance with board approved policies.

**DISCUSSION OF VARIOUS APPROACHES**

The most common approaches to the Year 15 issue are summarized below. The various advantages and disadvantages of each option are outlined. These options are all not mutually exclusive of one another and may be combined. For example, an organization may exercise a right of first refusal followed by a resyndication or may do a refinance in conjunction with a partner buy-out.

**Refinance.** If a property has minimal rehabilitation needs and the capital needs projections do not show a need for major capital work over the five – 10 years following the end of the initial 15-year compliance period, refinancing debt may be an option. The viability of refinance is dependent on the strength of the property operations and the differential between the property’s mortgage interest rate and current rates in the market. When interest rates dropped in 2012 and 2013 to below 4 percent, refinance was an attractive option. Projects financed in the mid- to late 1990s had interest rates in the 9 - 9.5 percent range. The significant rate reduction allowed organizations to generate capital without increasing debt service payments and in many instances debt service payments were reduced.
The advantages of refinance:

• With the right market conditions, capital is generated to buy out limited partners, increase reserve for replacement funding, address critical improvements and reduce subordinate debt.

• A refinance can increase property surplus cash by reducing debt service with a resulting increase in annual distributions to the organization or cash flow at the property level to undertake improvements.

The disadvantages of refinance are:

• It usually only works if the current market interest rate is below the project’s mortgage interest rate.

• Generally, only projects with amortizing first mortgages can benefit from this approach.

• It requires subordinate lender approval and some public lenders require that a portion of proceeds from the new loan be applied to reduce the public loan before any owner receives funds. The later point can make it challenging to have sufficient funds to buy out the limited partner.

Buyout of Limited Partner. As described above, the buyout is a formula calculation of the fair market value of the investor partner’s interest. For a property with limited value, this may be the best approach for negotiating the exit of the partner. Since most mortgages give the lender the right to approve changes in ownership of 10 percent or more, a buyout will require the approval of lenders. This process can take time, and some lenders charge a fee to process approval of a change in partners.

The sole advantage of the buyout is it gives the nonprofit sole ownership of the property.

The disadvantages are:

• A buyout presumes liquidation of partnership assets so all the reserves are at risk of being distributed.

• If the investor partner interest had little value, the same will hold true for the property, and a property with little value presents its own set of challenges.

• Lender approval must be obtained and may have costs.
**Right of First Refusal (ROFR).** The right of first refusal, like the buyout, is an approach which gives the nonprofit sole ownership of the property. If a property has market value, resyndication potential, good cash flow, in other words is strong, the ROFR is the best approach. The price is fixed, and the standards are clear. The advantages include every advantage listed above for each of the other options. The disadvantage is that the nonprofit will need to pay for closing costs associated with a transfer of real estate, but with a strong property there will be options for recovering this investment over a short period.

If a property is not financially strong, there is little incentive for the nonprofit to exercise the ROFR. The nonprofit would be assuming the obligations of all the existing debt, which presumably is not being repaid, and would have to pay closing costs with limited potential for recovery. At some point, the property will need rehabilitation, and there will be significant challenges to securing financing.

**Combine Properties.** If a nonprofit owns several properties in relative close proximity to one another and they will reach Year 15 within several years of one another, consider how the numbers might improve and open up more options if all the properties are consolidated under one owner and operated as one. Run several scenarios and see if the prospects improve. There would be some cost savings through efficiencies, and stronger properties could support weaker ones in a consolidation. The organization’s CFO could prepare a consolidated financial statement for the multiple properties and eliminate duplications to see how one new bigger property would look financially. There are more logistics with this approach – lender coordination, timing on Year 15 actions, and interim holding periods.

**Assignment of Interest.** In situations where the property has no value, discuss with the syndicator the possibility of the investor partner entering into a simple assignment of interest for a $1.00. This approach enables the investor to exit and may free up the sponsor to look at other options for preserving the property.

**Forgiveness of Debt.** In cases where a property is over-encumbered with debt, talk to the lenders about the possibilities of forgiving all or a portion of the debt, reducing interest rates or restructuring amortizing debt to reduce the amortizing portion and subordinate the balance to be repaid from cash flow or proceeds from a capital event. Forgiveness of debt creates taxable income for the owner. The limited partner will very likely desire to exit the partnership before a forgiveness of debt event.
Resyndicate. Resyndication is an option to consider when a property is in need of rehabilitation and the costs exceed (1) funds available in the property reserves, (2) the rehabilitation thresholds to qualify for an allocation of Housing Credits, (3) the State Allocating Agency policies permit Housing Credits to be used for a project after the initial 15-year compliance period. Some State's require use of 4 percent Housing Credits and bonds for resyndication projects or have such stringent requirements for allocating competitive Housing Credits that 15-year transactions cannot receive resources.

The big advantages of a resyndication are:

• Generates new funds for needed rehabilitation

• Generates funds to acquire the property which cover transactions costs and may provide a payment to the limited partner without wiping out all the reserve funds and development fee revenue for the organization.

The big disadvantage can be adding new subordinate debt to a project that could not retire its original subordinate debt during the first 15 years.

Before heading down the resyndication path, negotiate the exit with the current limited partner. Taking this step first will enable the organization to identify all the costs it will have to cover relative to the existing partnership (buyout price, right of first refusal costs, remaining reserve balances, if any, etc.). If the property has current subordinate public debt, and the tax-exempt bond loan and 4 percent Housing Credit are insufficient to finance all the costs, the organization needs to understand whether new public debt will be available. Remember the regulations do not allow HOME funds to be allocated to the same project more than one time unless the initial loan term has expired, so if the only public subsidies are through the HOME program and the project previously received HOME, there will not be an option for new soft funds.

Another consideration is having a viable plan for ensuring the property will not have to be resyndicated every 15 years. What happens if the Housing Credit program goes away? Carefully think about options in lieu of heading down the same path again. Remember the definition of insanity is doing the same thing over and over again and expecting a different outcome.

Do Nothing. The options might lead a nonprofit owner of a financially weak property to conclude that doing nothing is the appropriate option, and the nonprofit can continue to own the property and it limps along providing housing to low-income households as it has for the last 15 years. That decision may not be viable. The investor partner is motivated to exit the partnership after Year 15, and some partnership agreements may have provisions where the limited partner may force a property to a sale if the nonprofit does not exercise its buyout option or ROFR in the timeframes provided for in the documents. If project performance improves post year 16, the investor partner may be less flexible with exit negotiations.