



RENO & CAVANAUGH PLLC
Lawyers Building Community

**Transactional Pitfalls and Challenges in
Affordable Housing Development**

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RENO & CAVANAUGH PLLC

Transactional Pitfalls and Challenges in Affordable Housing Development

- Predevelopment
- Development
- Post-Development

Predevelopment

➤ Environmental Review

- Normal due diligence
- If using federal funds – comply with 24 CFR Part 50 or 58

➤ Zoning

➤ Disposition Application for Public Housing

- Mixed Finance Development – Streamlined review process subject to Section 18 of the Housing Act of 1937, as amended. Development Requirements, 24 C.F.R. § 905 et seq., also see, Notice PIH 2016-20 (HA)
- Choice Neighborhoods Initiative – Development Requirements, 24 C.F.R. § 905 et seq., also see, Notice PIH 2016-20 (HA)
- Not Required for RAD
- Acquisition Timing/Finance
- Showing Site Control for Tax Credit Applications

Predevelopment (cont'd)

- Ten Year Rule - There has to be at least 10 years between the date of acquisition by the owner and the last time the building was placed in service. Internal Revenue Code, 26 U.S.C. §42(d)(2)(B) (1986), as amended
- LIHTC Basis
 - 10% Test
- Site and Neighborhood Standards Applicable to Federal Funds – 24 CFR §905.602 (public housing); 24 CFR §983.57 (project based vouchers); §92.202 (HOME program)

Predevelopment (cont'd)

➤ Significant Title Issues

➤ Relocation, If Needed

- Section 18 Dispositions governed by 24 C.F.R. §970 (not the URA). 24 C.F.R. §970.11
- Uniform Relocation Act
- Additional Rules for RAD- Notice PIH 2014-17
 - Documentation
 - Required resident meetings
 - No relocation until RCC issued- Notice PIH 2014-17, Section 7
 - Transfers of Assistance- PIH-2012-32 (HA), Rev-3, Section 1.4(A)(12)
 - Right to Return

Predevelopment (cont'd)

- Additional Rules for Developments Funded by HOME or CDBG
 - Section 104(d) of the Housing and Community Development Act also known as “The Barney Frank Amendment” 104(d) is triggered by the use of HOME, CDBG, Section 108 Loan Guarantee, or UDAG funding in a project involving the demolition or conversion of low- or moderate-income housing.
 - Practically, applies in transfers of assistance, but not new construction or rehabilitation
 - Practical Example
- **Business Arrangements Between Partners**
- **Davis-Bacon/Prevailing Wages [24 C.F.R. § 905; PIH-2012-32 (HA), Rev-3, Section 1.4(A)(13); 42 U.S.C. § 12836]**

Predevelopment (cont'd)

➤ Financial Structure

- 9% LIHTC
- 4% LIHTC/Bonds
- Either of the Above Plus HOME
- Either of the Above Plus Public Housing Capital Funds/Replacement Housing Factor Funds
- CNI
- Project Based Vouchers
- Subsidy Layering- Administrative Guidelines; Subsidy Layering Reviews for Section 8 Project-Based Voucher Housing Assistance Payments Contracts and Mixed-Finance Development, 79 F.R. 57955.
- State Housing Loan Funds
- Thinking about Year 15
- Guarantees

Development

➤ **Cost Overruns**

➤ **Compliance**

- 50% Test (Bonds)
- Davis Bacon/Prevailing Wages

➤ **Construction Warranties**

Post-Development

- **If LIHTC, monitored by state housing finance agency, HUD (if HUD funds), and funders**
- **Placing units in service under LIHTC rules**
- **Lease Up**
 - LIHTC Income Limits – 60% and below
 - HOME Income Limits vary from state to state. “HOME Income Limits.” hudexchange.info. HUD Exchange, n.d. Web. 16 June 2017
 - High HOME
 - Low HOME
 - RAD Right to Return
- **Tax Credit Adjusters**
- **Filing the 8609 for Tax Credits**
- **Compliance with Funding Sources**



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