

By Ted M Handel and David C. Nahas

Leveraging the Low-Income Housing Tax Credits Program

Affordable housing project financing requires creative mixing of federal and local sources

Seventeen years after it was enacted into law as part of the Tax Reform Act of 1986, the federal low-income housing tax credit (LIHTC) program is generating \$6 billion in housing investments and creating more than 115,000 affordable rental housing units nationwide each year for low-income families, seniors, the homeless, and persons with special needs. LIHTCs are part of an overall sophisticated financial structure for developing decent, safe, affordable rental housing and related amenities. This structure includes raising equity through partnerships with tax credit investors, leveraging private and public funds to cover gaps in construction and permanent financing, and obtaining loans and grants to create child care facilities and community rooms.

Access by developers to LIHTCs and other financial resources is essential in meeting the critical shortage of affordable housing¹ both locally and nationwide. In Los Angeles, Mayor James Hahn's advisory committee

noted, "Los Angeles has far too few housing units, those that do exist are often overcrowded and riddled with substandard conditions...[and] rents vastly exceed the earning capabilities of a significant percentage of the city's population..."²

This demand creates significant business opportunities for developers and owners of rental properties. Many properties are ripe for financial restructuring as rehabilitation is needed, market conditions change, or owners seek to reposition portfolios and address tax concerns. Developers and owners can use a variety of specialized financing programs to achieve their financial goals while responding to this essential public need.

In enacting IRC Section 42, Congress created the LIHTC program to tie "affordable housing syndication and tax benefits...to the low-income tenants who resided in a complex as opposed to credits for building the housing itself."³ This is accomplished by

making LIHTCs available to owners of residential rental property who can satisfy certain low-income occupancy requirements and rent restrictions. LIHTCs are annual credits claimed for each building over a 10-year credit period beginning the year the building is placed in service. However, the building must satisfy the occupancy requirements and rent restrictions over a 15-year compliance period. If the project fails to com-

ply with these requirements during this period, a portion of the credits may be recaptured.

LIHTCs come in two forms: 9 percent and 4 percent credits.⁴ The 9 percent⁵ credit is calculated so that the present value of the annual credits over the 10-year period equals 70 percent of the building costs.⁶ The 4 percent credit equals 30 percent of the present value of the costs incurred.⁷ The 9 percent credit is available for new construction and substantial rehabilitation projects, while the 4 percent credit applies to the acquisition cost of buildings that will be substantially rehabilitated.⁸

A developer who buys an existing building and substantially rehabilitates it can apply the 4 percent credit toward acquisition costs (excluding land) and the 9 percent credit to rehabilitation expenses.⁹ In contrast, if the developer buys vacant land and constructs a new building, all construction costs are eligible for the 9 percent credit.¹⁰ However, if rehabilitation or new construction costs are federally subsidized (e.g., through tax-exempt financing or below market interest rate loans), then only the 4 percent credit may be used unless the owner elects to reduce the basis for calculating the credit by the subsidy amount.¹¹

The LIHTCs that may be claimed are calculated by multiplying the applicable credit percentage by the building's "qualified basis." The first step in making this calculation is determining a building's "eligible basis." Eligible basis is the cost for the entire building, including non-low-income units if the qual-

ity of those units is comparable to that of the low-income units.¹² The eligible basis is determined at the end of the first year of the credit period (subject to reduction for federal subsidies).¹³ Only building costs are included, not land costs.¹⁴ Building costs include related structures, such as recreational and parking facilities, if provided to all tenants at no cost.¹⁵ Eligible costs also generally include those incurred to design and construct the improvements—including construction loan interest and local government fees¹⁶—while costs for permanent financing and reserve funds are ineligible.¹⁷ In addition, the basis can include developer's fee for the for-profit or nonprofit entity creating the housing.¹⁸

For acquisitions, only depreciable property is included in the basis. Projects involving substantial rehabilitation may include only expenditures within a 24-month period that can be capitalized. "Substantial rehabilitation" means that rehabilitation expenses must either equal at least 10 percent of the building's adjusted basis at the beginning of the 24-month period or cost at least \$3,000 per low-income unit, whichever is greater.¹⁹ For new construction, only costs that can be capitalized are included.²⁰ Also, the eligible basis may be increased to 130 percent for new construction in areas of difficult development or high-cost adjustment.²¹

The building's qualified basis is then calculated as the portion of the eligible basis that is used for low-income tenants, based on the percentage of total units or

Ted M. Handel is of counsel to Loeb & Loeb, LLP, where he leads the firm's Affordable Housing Practice Group. David C. Nahas is president of Veloce Partners in San Juan Capistrano.

floor space, whichever is less.²² The initial qualified basis is determined on the last day of the first year the building is placed in service or, at the owner's election, on the last day of the following year.²³ The owner must maintain the initial qualified basis throughout the 15-year compliance period.

In exchange for receiving LIHTCs, a project must truly be affordable to its tenants. Gross rents are limited to 30 percent of the qualifying-income standard applicable to the unit, adjusted for family size.²⁴ Gross rents include a utility allowance and the cost of any services that tenants are required to pay. The building must also be used on a nontransient basis; that is, initial leases must usually have a six-month term.²⁵

A property must be restricted for rental to households that satisfy one of two set-aside tests—either 20 percent of the units must qualify at or below 50 percent of the Area Median Income (AMI) established by HUD, or 40 percent must qualify at or below 60 percent of AMI.²⁶ AMI is determined annually according to small geographic regions, such as a county or Metropolitan Statistical Area. The AMI for a family of four in Los Angeles is \$56,400. Once a project is placed in service, the project owner must make an irrevocable election as to which set-aside test will be applied to the project.²⁷

Allocating Tax Credits

After the LIHTCs have been calculated and a pro forma financial statement has been prepared that shows that, based on applicable rent restrictions, the project is financially feasible, the project must actually qualify for an allocation of 9 percent credits. This is far from automatic. First, Congress imposes a limit on the number of 9 percent credits that are available nationwide, and they are allocated on a per capita basis among the states.

In fiscal year 2000, Congress increased the per capita amount from \$1.25 to \$1.50 for 2001, to \$1.75 for 2002, and indexed the rate for inflation beginning in 2003.²⁸ Applying this formula, California was allocated approximately \$61 million in LIHTCs in 2003.

Each state is delegated the responsibility for allocating its share of LIHTCs. In 1987, the California Tax Credit Allocation Committee (TCAC) was established in the state treasurer's office.²⁹ The TCAC comprises three voting members (the state treasurer, the state controller, and the governor or his or her finance department director) and four advisory members (the California Housing Finance Agency executive director, the Housing and Community Development Department director, and two local government representatives).

Each state is required to adopt a Qualified Allocation Plan (QAP) to administer the allocation process.³⁰ A QAP must give preference to projects serving the lowest income tenants and those whose affordability is restricted for the longest period, as well as those located in qualified census tracts.³¹ Project selection criteria require that consideration be given to project location, housing needs, the characteristics of the project and its developer, the requirements of persons with special housing needs and individuals with children, and public housing waiting lists.³²

The TCAC has adopted a QAP that goes beyond the federal requirement that 10 percent of the LIHTCs be set aside for projects developed by qualified nonprofit organizations. The California QAP also mandates that a percentage of the state's allocation be made available for certain types of housing projects, such as those in rural areas and ones serving persons with special needs, such as the homeless.³³

The TCAC estimates that the demand for LIHTCs exceeds the credits available for allocation by a factor of 4 to 1 and therefore uses a competitive allocation process. The committee employs a point scoring system,³⁴ and experienced developers file applications that are assured of qualifying for the maximum number of points. The TCAC then uses a series of tiebreakers that change periodically in response to state housing policy, to make the final allocations. Recent tiebreakers have emphasized large family developments with 3 or 4 bedrooms over senior and special needs projects with 1 and 2 bedrooms.³⁵

Once a project receives an allocation, the developer raises project equity by marketing the LIHTCs to prospective investors. While the developer may use the credits itself, this is uncommon because nonprofit developers generally do not pay federal income taxes, and for-profit developers usually do not have income tax liabilities equal to the credits they receive.

Instead, developers typically form a limited partnership or limited liability company to own the project and allow the LIHTCs to flow through to investors. Developers usually retain a .01 percent interest in the project during the compliance period and the investor receives a 99.99 percent limited partnership interest in exchange for making its capital contributions.

In the program's early years, LIHTCs were not in wide demand as investments because of sunset provisions contained in the original statute and the perceived risk of developing and managing an affordable housing project. Because corporations showed little interest in the tax credits, syndication funds were created and used public offerings to attract individual investors. When the LIHTC program was made permanent in 1993, corporations began acquiring the credits directly and through syndication funds. Corporations now constitute virtually the entire market of LIHTC investors and include banks and insurance companies as well as Fannie Mae and Freddie Mac. Banks not only receive the credits and other tax benefits but use these investments to meet federal Community Reinvestment Act obligations.

Over time, the LIHTC market stabilized in California and elsewhere. Initially, developers received as little as 40 or 50 cents for each dollar of LIHTCs, and investors were rewarded with significantly high returns. Today, LIHTCs are generally priced in California at 80 to 84 cents on the dollar, and developers continue to seek higher prices. While investors' returns have declined correspondingly, this has been offset by the acknowledgment that low-income housing is not generally a risky venture. If anything, the

Calculating the Value of Tax Credits

The following scenario describes the value of 9 percent tax credits in the development of an affordable housing project. The scenario assumes that all units are used for qualified low-income tenants.—T.M.H. & D.C.N.

| | |
|------------------------------------|----------------|
| Total development costs | \$10,000,000 |
| Less ineligible costs | \$ 2,000,000 |
| Eligible basis | \$ 8,000,000 |
| Percentage of low-income tenants | 100 |
| Qualified basis | \$ 8,000,000 |
| Assumed current 9% credit | Factor 7.75% |
| Annual credit available | \$ 620,000 |
| Total value of 10-year credit | \$ 6,200,000 |
| Typical value ratio to an investor | \$ 0.80/\$1.00 |
| Potential equity to developer | \$ 4,960,000 |
| Required loans or subsidies | \$ 5,040,000 |

opposite is true: A 2002 study found that the foreclosure rate for low-income housing was 0.14 percent, or 100 times less than the rate for commercial properties.³⁶

Managing a LIHTC Project

When a tax credit investor enters into a partnership with a developer, a comprehensive partnership agreement is negotiated. Under the agreement, the developer/general partner must achieve certain benchmarks before the investor will make capital contributions. These benchmarks often involve achieving, by a mutually agreed-upon deadline, certain levels of construction completion and occupancy. Investors usually require developers to cover project cost overruns and to guarantee that the investor will actually receive the LIHTCs applied for or else face a reduced capital contribution. Agreements also regulate distribution of project cash flow, allocate profits and losses and tax benefits, and provide for project disposition at the end of the 15-year compliance period.

Developers put projects out for bid and receive offers from prospective investors. The successful investor is not necessarily the one who offers the highest price but often the one whose guarantee and tax credit adjusters are the least onerous from the developer's perspective. Developers also consider the investors' asset management requirements, including the deadlines for submitting financial and asset management reports and the penalties for noncompliance.

A developer must satisfy certain tax requirements after receiving an allocation. The first is the carryover allocation—that is, 10 percent of the anticipated project costs must be spent by the later of six months from when the allocation was made or the end of the calendar year in which the allocation was received.³⁷ This 10 percent test is critical and often involves technical issues over whether an expense has been incurred. Owners retain accountants to prepare 10 percent test letters to provide to allocation agencies. The project owner must also generally place buildings in service by the end of the second year after the year in which the allocation was made.³⁸

A cost certification must be submitted to the state allocating agency confirming the actual project costs.³⁹ The agency then uses this certification to determine the actual LIHTCs for the project and issues an IRS Form 8609 which the developer attaches to its annual partnership tax return. In addition, project owners must enter into a long-term regulatory agreement,⁴⁰ annually certify tenant incomes to ensure compliance with rental restrictions, and keep appropriate financial

records.⁴¹

LIHTCs are subject to recapture in whole or in part under certain circumstances. Full recapture can occur if the owner fails to meet the applicable set-aside test that it has elected.⁴² Partial recapture can happen if the qualified basis amount decreases from the prior year or the percentage of units occupied by low-income tenants falls below the designated percentage.⁴³

Tax-exempt bonds provide an alternative means of financing a housing project. In California, a developer must receive approval from the California Debt Limit Allocation Committee (CDLAC) in the state treasurer's office. Like the process followed by TCAC for LIHTC allocations, CDLAC employs a competitive bond allocation process for housing. This is because of congressional limitations on the amount of private activity bonds that each state may issue annually.

Projects financed by qualified private-activity, tax-exempt bonds can receive 4 percent tax credits for new construction or rehabilitation costs. These credits are not awarded competitively and are available to any project that receives approval for the bond issuance.⁴⁴ However, at least 50 percent of the project's development costs must be financed with tax-exempt bonds to qualify the entire project for these tax credits.

The tax-exempt bond process requires a housing developer to agree to rental restrictions similar to those used for 9 percent credits. Further, the bonds must be issued by a public agency authorized by state law to serve as a housing bond issuer. Most cities, counties, housing authorities, and redevelopment agencies can perform this role. The California Housing Finance Authority (CalHFA) and several joint-powers authorities serve as bond issuers on a statewide or regional basis.

Developers obtain two benefits from tax-exempt bond financing: access to long-term financing at attractive tax-exempt interest rates and avoidance of the often keen competition for 9 percent credits.

Leveraging Public Funding

While LIHTCs and/or tax-exempt bonds may cover a significant portion of the cost of constructing or rehabilitating an affordable housing project, they almost never provide sufficient funds to finance an entire project. Developers must qualify for and obtain a permanent first mortgage. However, lenders will limit the loan to the amount they determine the project can reasonably support based on applicable rent restrictions. This requires finding other public sources to subsidize a project and make it economically feasible.

Several federal programs provide direct financial assistance for housing development.

Generally, this consists of either rental assistance for owners and tenants or subsidized loans and grants for property development. Most programs originate within HUD but are often administered at the state or local level.

Section 8 of the United States Housing Act of 1937⁴⁵ is the most well-known rental assistance program. Historically, Section 8 provided owners with project-based rental assistance if they agreed to enter into long-term contracts (often 10 to 20 years) with HUD or a local housing authority. Under these agreements, tenants paid monthly rent equal to 30 percent of their household income, and HUD paid a monthly subsidy directly to the landlord. The subsidy amount is the difference between the tenant's rent payment and a HUD-determined fair market rent that reflects market conditions and any unique project operating costs.

HUD is now increasingly shifting its focus from project-based to tenant-based rental assistance. Accordingly, under the current Section 8 program, HUD issues rental vouchers directly to income-qualified tenants rather than enter into long-term rental assistance contracts. Tenants then use these vouchers at any property of their choice, and landlords must compete to attract and retain qualified tenants.

Many properties with Section 8 project-based subsidies were financed through HUD-insured loan programs that imposed a rent regulatory agreement. As project-based subsidy contracts expire and loans become eligible for prepayment, current owners can terminate the rent restrictions and subsidies and convert properties to market rate projects. The affordable housing community refers to these projects as "at risk" and is making an intense effort to preserve their affordability. At-risk properties are attractive to affordable housing developers because they often meet the 10-year hold requirement for acquisition LIHTCs and transactions can be readily completed without the delays associated with new construction.

Annual appropriations under the Community Development Block Grant (CDBG) and HOME Investment Partnerships Act programs are another funding source. These programs provide direct financing subsidies to cities, counties, and states based on a per capita allocation formula. Public agencies can use CDBG and HOME funds for community development, infrastructure, and housing.⁴⁶ Developers often receive loans funded by HOME or CDBG proceeds to fill in their financing gaps. These subordinate loans are long term, typically bear a low interest rate, and are repaid only from residual receipts (i.e., project cash flow remaining after pay-

Judgments Enforced

Law Office of Donald P. Brigham

23232 Peralta Dr., Suite 204, Laguna Hills, CA 92653

P: 949.206.1661

F: 949.206.9718

dbrigham@earthlink.net

AV Rated



We're your connection to the courts.

For fax filing and process serving.



Call 1-415-491-0606 or visit www.onelegal.com

THE BEST LEGAL MINDS IN THE COUNTRY TALK TO US

- Metallurgical Failures
- Corrosion & Welding Failures
- Glass & Ceramic Failures
- Chairs / Ladders / Tires
- Automobile/Aerospace/
Accidents
- Bio-Medical/Orthopedic Implants
- Plumbing/Piping/ABS Failures
- Complete In-House Laboratory
Testing & Analysis Facilities
- Expert Witnesses/Jury Verdicts
- Licensed Professional Engineers

Contact: Dr. Naresh Kar, Fellow ASM, Fellow ACFE
Dr. Ramesh Kar, Fellow ASM, Fellow ACFE

KARS'

ADVANCED MATERIALS, INC.

Testing & Research Labs

2528 W. Woodland Drive
Anaheim, CA 92801

■ TEL: (714)527-7100

■ FAX:: (714)527-7169

■ www.karslab.com

■ email: kars@karslab.com

ment of the first mortgage and operating expenses).

The state of California has long been another public source of housing development funds. The Housing and Community Development Department (HCD) administers most state funding programs; however, CalHFA also offers loan programs to developers and local public agencies. Certain HCD programs involve distribution of Federal HOME and other specialized program funds. Others are funded by voter approved bond measures like the Multifamily Housing Program (MHP) created by Proposition 46 in November 2002. MHP funds are available for new construction or acquisition and rehabilitation of projects not using 9 percent credits. The program helps fill the gap that occurs because equity from 4 percent credits is approximately half the amount available from 9 percent credits.

HCD uses a competitive application process to qualify projects for MHP loans. To ensure that projects remain affordable, developers must comply with long-term rental restrictions. Loans are made for 55 years at 3 percent interest and repaid primarily from residual receipts.⁴⁷ Project owners must provide a high percentage of units of three or more bedrooms to serve large families or provide specialized social service programs to serve residents with special disability needs.

Los Angeles has also been a leader in the effort to fund affordable housing. The city recently established an Affordable Housing Trust Fund to accrue funds from a broad range of sources (HOME, CDBG, local general fund appropriations, and specialized energy conservation funds) and distribute them to developers through a single application process.

Inclusionary zoning and "in-lieu" fees are an additional source for creating housing or raising funds. Inclusionary zoning ordinances require developers of new market rate projects (i.e., apartments or single-family home subdivisions) to construct a certain percentage of rent-restricted units based on the overall size of the market rate project. Some programs allow developers to pay a fee in-lieu of building the affordable units, and these fees are then made available to develop affordable housing throughout a community.

City redevelopment agencies may be a subsidy source. California law allows redevelopment agencies to be formed to improve blighted communities.⁴⁸ These agencies designate redevelopment plan areas, which are neighborhoods meeting certain blight criteria. Once established, a plan area normally exists for 20 to 30 years. At the outset of a redevelopment plan, property tax assess-

ments are fixed at a presumed low level due to the area's depressed economic state. As improvements take place over time and assessed values and property tax revenues rise, the agency retains the tax revenue above the initial base rate (known as the "tax increment") to fund redevelopment efforts.

California law requires that 20 percent of the tax increment be used strictly for affordable housing—an apportionment referred to as "housing set-aside" funds.⁴⁹ Remaining funds are used for agency operating costs and redevelopment of commercial properties. In this way, redevelopment agencies are usually financially self-sufficient and do not rely on funding from general tax revenues.

A successful housing project involves more than making the units affordable. It also means providing tenants with access to essential services. The competitive application processes used by TCAC, CDLAC, HCD, and Los Angeles each take this into consideration. When developers apply for LIHTCs, a bond allocation, or a loan, a detailed description of on- and off-site amenities must be provided. TCAC, for example, awards points for projects located within certain distances of schools, public transportation, parks, and shops.⁵⁰ Developers also often set aside project space for child care facilities and community rooms to gain additional points.

Putting the Programs into Action

Affordable housing developers may be motivated by one or more goals, including serving an important social need, earning reasonable development fees and future cash flow, and participating in complex development projects with a more modest equity investment than market rate developments require.

Developers, however, face several challenges in today's strong real estate market. Vacant land with appropriate entitlements is scarce, competition has driven land costs upward to record highs, and neighborhood opposition to increased growth continues to mount. Most developments also involve a variety of complex financing programs whose application processes, restrictions, and availability are not well coordinated nor provide quick approvals.

On the other side are property owners who hold difficult-to-develop vacant parcels or older multifamily properties needing financial restructuring or rehabilitation. When properties are located in modest rental markets where the spread between market and restricted "affordable" rents is small, transitioning to affordable housing may present a good opportunity for both parties.

Property sellers frequently face significant tax implications associated with sales of

DAVID OSTROVE ■ ATTORNEY-CPA

- Expert Witness — 43 years
- Lawyer/Accountant Malpractice
- Forensic Accounting
- Tax Matters
- Business Valuation
- Value of Services
- Computation of Damages
- Mediator, Arbitrator



323/939-3400 dostrove@comcast.net

REAL ESTATE ARBITRATOR



Arthur Maziorow

- Over 30 years experience as a real estate lawyer dealing with industrial, commercial, office and shopping centers including purchases, sales, leasing, ground leasing, financing, development, joint ventures, construction, brokerage, title insurance, easements and protective covenants.
- 18 years as counsel to the forms committee of the American Industrial Real Estate Association, publishers of the AIR ease and purchase forms.
- Real estate law and ADR lecturer on CA State Bar sponsored programs, the extension divisions of UCLA, UCI, UCSB and various educational and realty organizations.
- AAA Commercial Panel Member.

Tel 310-255-6114 Fax 310-391-4042 Email am@ffslaw.com
3415 S. Sepulveda Blvd, Los Angeles CA 90034

Jean's been at the helm since the first day you became counsel to the company.

You have always counted on each other to get things done.

Now, Jean is facing personal workplace challenges and needs an attorney. She's counting on you for a "great referral."

Doesn't Jean deserve an attorney who specializes in executive matters?

One who has represented over 500 senior executives?

The Senior Executive is our only Client!

Severance Packages Release Agreements
Employment Contracts Crisis Representation

To learn more about us, please visit our web site at www.execlaw.com.

law for today's senior executive™
Executive Law Group™
www.execlaw.com

888.920.EXEC (3932)

**CORPORATE
LAW
EXPERT
WITNESS**

B. Keith Martin, Esq.
CALTECH BSEE • USC JD

34 Years Experience in the Boardroom

- Member, Corporations Committee of the Business Law Section, State Bar of California
- Author, Lecturer, Consultant
- Editor of the *Southern California Law Review*

**ROGERS, SHEFFIELD &
CAMPBELL, LLP**

(805) 963-9721
kmartin@rshlaw.com
www.high-techlawyer.com



assets. While no magic solution exists for each tax problem, several beneficial techniques are available in the affordable housing arena beyond the traditional Section 1031 tax-deferred exchange.⁵¹ The Internal Revenue Code provides an extended exchange period of up to 24 months for properties sold under threat of condemnation.⁵² Many public agencies can accommodate a seller by making the required condemnation findings in the context of a proposed affordable housing transaction. If so, a seller who meets this criteria can obtain additional time to find an appropriate replacement property, something particularly useful in markets where quality properties are scarce and asking prices are at a premium.

Sellers can also convert equity to a tax-exempt investment by providing seller financing for a portion of the property sale price. If permitted by the issuer in a tax-exempt-bond financed transaction, the seller may receive carryback financing in the form of a subordinate tax-exempt bond that bears interest at an above-market rate. Such loans may also be eligible for installment sale tax treatment or structured with interest-only payments to maximize tax deferral.

If a property can be appraised at a value exceeding the agreed purchase price and the buyer is a nonprofit entity, the seller may receive a charitable-donation tax deduction for the difference in value. When historic properties are involved, a charitable donation deduction may also be claimed for the value of granting a "façade easement." These easements preclude future changes in the façade of a historic structure and are based on the diminution in value resulting from foregoing alternative development.

Mutually beneficial negotiations between buyer and seller can achieve the simplest benefits. Cooperative sellers can receive an above market price for a property in exchange for allowing the buyer an extended escrow closing period in which to obtain necessary zoning and financing approvals.

Structuring an affordable housing deal today is a sophisticated undertaking, especially in California. In-depth familiarity with federal and state LIHTC requirements, the ability to leverage public and private financing sources, and persistence are each essential to this task. However, as the 17-year history of the LIHTC program demonstrates, when this is achieved, developers and investors gain financially, and the community benefits through the availability of more affordable housing. ■

¹ Affordable housing is defined by the U.S. Housing and Urban Development Department as any dwelling where tenants pay 30% or less of their income in rent.

Quo Jure Corporation

1-888-MEMO-911

LAWYERS' WRITING & RESEARCH

www.quojure.com
jschenkel@quojure.com

When you can't do it yourself, but you still need a brief or memo done—and done well, by experienced attorneys who are skilled writers—turn to Quo Jure Corporation.

Quo Jure provides premium legal writing and research services to practicing attorneys. Our work has contributed to million-dollar settlements and judgments. Oppositions to motions for summary judgment are our specialty. Call for a free analysis and estimate.



DEPEND ON THE EXPERTS FOR:

1031 EXCHANGES

A 1031 exchange is one of the last IRS-approved tax shelters. But one misstep and the tax advantage can be lost or severely reduced. The experienced professionals at Exchange Resources, Inc. are well versed in successfully completing simultaneous, delayed, build-to-suit, reverse, or personal property exchanges.

NON-JUDICIAL FORECLOSURES

The team at Foreclosure Resources, Inc. combines in-depth knowledge and experience in California real estate foreclosure, whether it involves commercial, residential, agricultural or vacant land.

Exchange Resources, Inc. & Foreclosure Resources, Inc. offer...

- In-house legal counsel
- Full-time administrators
- Secure funds (fidelity bond)
- Holdback accounts
- Nationwide service
- Prompt and friendly service

**Maximize your time.
Depend on the experts.**



Exchange Resources, Inc.
877-799-1031

Corporate Headquarters
8885 Rio San Diego Drive, Ste. 135
San Diego, CA 92108
www.exchangeresources.net



Foreclosure Resources, Inc.
866-218-2320

² HOUSING TRUST FUND ADVISORY COMMITTEE, REPORT TO MAYOR JAMES K. HAHN 13 (Nov. 14, 2002).

³ NEW HAMPSHIRE HOUSING FINANCE AUTHORITY, LOW INCOME HOUSING TAX CREDIT COMPLIANCE MANUAL 2.

⁴ I.R.C. §42(b)(1).

⁵ The exact percentage varies as interest rates change and is currently below 8% for 9% credits and 3.5% for 4% credits.

⁶ I.R.C. §42(b)(2)(B)(i).

⁷ I.R.C. §42(b)(2)(B)(ii).

⁸ I.R.C. §§42(b)(1)(B) and (d)(2)(iv). The building must also have been acquired by purchase from an unrelated person or party and must not have been placed in service or substantially rehabilitated within 10 years of the acquisition. The rehabilitation will be capitalized separately to keep track of the respective 4% and 9% credits for the property.

⁹ I.R.C. §§42(b)(1)(B) and (e)(1).

¹⁰ I.R.C. §42(b)(1)(A).

¹¹ I.R.C. §42(i)(2)(B).

¹² I.R.C. §§42(b)(1)(A) and (d)(3).

¹³ I.R.C. §42(d)(1).

¹⁴ H.R. REP. NO. 99-841, at II-89.

¹⁵ *Id.* at II-90.

¹⁶ Tech. Adv. Mem. 200227009 (July 5, 2002).

¹⁷ See I.R.C. §42(d)(1).

¹⁸ Tech. Adv. Mem. 200043017 (July 14, 2000).

¹⁹ I.R.C. §42(e)(3).

²⁰ See I.R.C. §42(d)(1). For capitalization of costs generally, see I.R.C. §263A.

²¹ I.R.C. §42(d)(5)(C).

²² I.R.C. §42(c)(1).

²³ I.R.C. §§42(c)(1)(A)(i) and (f)(1).

²⁴ I.R.C. §42(g)(2).

²⁵ I.R.C. §42(i)(3)(B)(i). See H.R. REP. NO. 99-841, at II-95.

²⁶ I.R.C. §42(g)(1).

²⁷ *Id.*

²⁸ I.R.C. §§42(h)(3)(C) and (H).

²⁹ HEALTH & SAFETY CODE §50199.8.

³⁰ I.R.C. §42(m)(1)(A)(i).

³¹ I.R.C. §42(m)(1)(B)(ii).

³² I.R.C. §42(m)(1)(C).

³³ CAL. CODE REGS. tit. 4, §10315 (2003).

³⁴ CAL. CODE REGS. tit. 4, §10325(c) (2003).

³⁵ CAL. CODE REGS. tit. 4, §10325(c)(12) (2003). TCAC Executive Director Jeanne Peterson announced on November 5, 2003, that she anticipates changes in the tiebreakers as part of the 2004 QAP and TCAC regulations.

³⁶ See ERNST & YOUNG, UNDERSTANDING THE DYNAMICS OF A COMPREHENSIVE LOOK AT AFFORDABLE HOUSING (2002).

³⁷ I.R.C. §42(h)(1)(E)(ii).

³⁸ I.R.C. §42(h)(1)(E)(i).

³⁹ CAL. CODE REGS. tit. 4, §10328 (2003).

⁴⁰ CAL. CODE REGS. tit. 4, §10337 (2003).

⁴¹ Treas. Reg. §§1.42-5(b)(1) and (2).

⁴² I.R.C. §42(g)(1).

⁴³ I.R.C. §42(j).

⁴⁴ I.R.C. §42(h)(4).

⁴⁵ The United States Housing Act of 1937, §8 (codified as amended at 42 U.S.C. §1437f).

⁴⁶ Use of CDBG and HOME funds does not constitute a federal subsidy for purposes of the LIHTC program, provided, with regard to HOME funds, 40% of the units are targeted at 50% or below of AMI. See §§42(i)(2)(D) and (i)(2)(E).

⁴⁷ CAL. CODE REGS. tit. 25, §§7306, 7308 (2003).

⁴⁸ HEALTH & SAFETY CODE §33131(a).

⁴⁹ HEALTH & SAFETY CODE §33334.2(a).

⁵⁰ CAL. CODE REGS. tit. 4, §10325(c)(5) (2003).

⁵¹ See Robert A. Briskin, *Fair Exchanges*, LOS ANGELES LAWYER, Sept. 2003, at 50.

⁵² I.R.C. §1033(a).

Business Valuations

Quality Beyond Expectations

www.sphvalue.com

- ◆ Business & Securities Valuations
- ◆ Estate & Gift Tax Planning
- ◆ Fairness & Solvency Opinions
- ◆ Family Limited Partnership Discount Studies
- ◆ Litigation Support & Expert Witness Testimony
- ◆ Goodwill Valuations for Condemnation
- ◆ ESOPs & Incentive Stock Options
- ◆ Valuations for Equity & Debt Financing

Headquarters:

1990 So. Bundy Drive
Suite 800
Los Angeles, California 90025
310/571-3400

Los Angeles
San Francisco
San Diego
Sacramento

SANLI PASTORE
& HILL 
The Measure of Value™



Steven Richard Sauer, Esq.

Counselor at Law

Professional arbitrator and mediator since 1974.

Settlement Impasse?

Masterful guidance when the stakes are high.

4929 Wilshire Boulevard, Suite 740 • Los Angeles, California 90010-3821
Telephone: (323) 933-6833 • Fax: (323) 933-3184 • E-mail: arbitr@aol.com

When you need to impress someone with the truth...

POLYGRAPH

JACK TRIMARCO & ASSOCIATES POLYGRAPH/INVESTIGATIONS, INC.



Jack Trimarco - President
Former Polygraph Unit Chief
Los Angeles F.B.I. (1990-1998)

CA. P.I. #20970

Member Society of Former Special Agents
Federal Bureau of Investigation

9454 Wilshire Blvd.
Sixth Floor
Beverly Hills, CA 90212
(310) 247-2637

1361 Avenida De Aprisa
Camarillo, CA 93010
(805) 383-8004

email: jtrimarco@aol.com
www.jacktrimarco.com

Former Polygraph Inspection Team Leader
Office of Counter Intelligence
U.S. Department of Energy