10 RED FLAGS IN LIHTC DEALS

With the rapid increase of year-15 disputes and growing issues surrounding industry Aggregators, LIHTC developers should look out for the following “red flags” in their project partnerships — all of which are drawn from our collective experiences and knowledge of key industry issues. These potential events and/or circumstances, in our opinion, may indicate a problem is looming, and general partners should review their circumstances beginning no later than year-10.

1. Investor limited partner interests have changed hands from original investor limited partner. Is your partner today the same as the one you did your deal with at the beginning?

2. The investor limited partner interests are managed by and/or affiliated with organizations that have been involved in litigation concerning LIHTC project partnerships around year-15.

3. The investor limited partner has a large positive capital account and believes that it should be allowed to monetize the book entry through a “cash-out” process.

4. The investor limited partner starts talking to you about future planning, future values, future circumstances beyond year-15, like refinancing or re-syndication, as a means to generate proceeds to “buy them out” after year-15.

5. The investor limited partner undertakes efforts to restrict or limit use of reserve accounts and withholding approvals for project needs.

6. The investor limited partner begins to question otherwise routine financial reports, or suggests that a forensic audit of past events is necessary for some reason.

7. Exit negotiations stall or you experience periods of non-responsiveness from your investor limited partner.

8. Qualified Contract requests are suddenly presented.

9. Discussions concerning liquidation of the Partnership are presented.

10. You are not adequately familiar with your documents and/or are talking to or fielding questions from your investor limited partner about their exit.

For questions or to discuss, please contact:

DAVID A. DAVENPORT  P/ 612.604.6716  E/ ddavenport@winthrop.com