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Land Use Conference

Overview of Low-Income Housing Tax Credits

by

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A partner in the Austin office of Locke Lord LLP, **Cynthia Bast** is nationally recognized as a preeminent attorney in the area of affordable housing finance. She leads her firm's Affordable Housing Section and is Co-Chair of the Firm's Board of Directors. For 25 years, Cynthia has been assisting clients with complex affordable housing and community development transactions using a variety of financing tools, including housing tax credits, tax-exempt bonds, HUD programs, and other federal, state, and local resources. In addition to her transactional work, Cynthia actively represents clients before relevant governmental authorities and advocates for affordable housing issues with the Texas Department of Housing and Community Affairs and Texas Legislature. More recently, Cynthia has been working with clients to reposition affordable housing properties that are nearing the ends of their regulatory compliance periods or in need of financial restructuring. Cynthia uses her vast experience to write on matters related to affordable housing and speak at conferences around the country. In 2014, her contributions were acknowledged by the receipt of the Jean W. MacDonald Lifetime Achievement Award, given by the Texas Affiliation of Affordable Housing Providers. Cynthia is listed in *Chambers USA* for 2017.

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Introduction. The low-income housing tax credit is the most powerful and successful tool for the development of affordable housing in our nation's history. The tax credit was first implemented as part of the federal Tax Reform Act of 1986, in Section 42 of the Internal Revenue Code (the "Code"). It provides a reduction in direct federal tax liability (not gross income) to the owners of rental housing preserved for low-income tenants. This reduction is an incentive for private industry to fulfill community needs for affordable housing for low-income citizens in a way that government-owned housing of prior decades never could. In Texas, more than 237,000 residential units are currently serving our citizens in the tax credit program.[1]

This paper will provide: (1) a summary of the federal law that establishes the tax credit program; (2) an understanding of how the tax credits are used for financing; (3) a description of how the Texas Department of Housing and Community Affairs ("TDHCA") administers the tax credit program; (4) some thoughts as to how state law and regulation with respect to the tax credit program affects land use; and (5) notes as to the status of the tax credit program under the current federal administration, including changes that might be expected.

The tax credit program is far more complex than can be addressed in a 30-minute presentation or a 20-page paper. I hope this overview provides a basic understanding and am happy to answer follow-up questions at any time.

Federal Law

Developments Eligible for Tax Credits. A development proposing to use the tax credit program must be a qualified residential rental project.[2] Both newly constructed developments and existing properties that are acquired and rehabilitated can be eligible for the tax credit.[3] Developments may be designed as multifamily apartments, duplexes or fourplexes, single family developments, or townhomes. In certain circumstances, tax credit developments may serve special needs populations with assisted living or single room occupancy projects.[4] Some tax credit developments are "mixed use," including areas that are reserved for retail or non-residential use. Some tax credit developments are "mixed income," with some units reserved for low-income tenants and some units reserved for tenants that do not meet the low-income requirements and can pay market rate rents.

Operating Restrictions Imposed on Tax Credit Developments. The owner must set aside a minimum number of residential units for low-income use, with restrictions on rents and tenant incomes for the designated units. The owner must irrevocably choose one of the following standards: (1) at least 20% of the residential rental units must be rent-restricted and occupied by households whose income is 50% or less of the area median income, adjusted for family size or (2) at least 40% of the residential rental units must be rent-restricted and occupied by households whose income is 60% or less of the area median income, adjusted for family size.[5] The area median income figures are published by the United States Department of Housing and Urban Development each year. By way of example, for 2016, income limits for certain cities are as follows[6]:

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Also available as part of the eCourse
Land Use 2017: Financing & Tax Credits

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