Reznick Group
Building Business Value

Discussion of Qualified Contract Draft Regulations

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General Observations on the Qualified Contract Process

I. Results from a qualified contract calculation can vary widely

II. It is imperative to have prior financial information

- All financial statements from inception
- All income tax returns since inception
- Sufficient information to determine uses of surplus cash
- Various financing documents
- Information regarding payment of deferred developer fees
- Any refinancing documents and uses of funds

Controversial Issues in Draft Regulations

I. Lack of Clarity on Process

- Definition includes a provision that allows the agency to adjust the Fair Market Value of the building if, after a reasonable period of time within the one year offer of sale period, no buyer has made an offer or the market values have been adjusted downward (no description of why or how)
- Does not address the issue of the buyer being unable to close. Is the seller free? Does that allow the seller to convert over the three year period?
- No specifics that identify how controversial issues between the potential buyer or seller are addressed or unreasonable requirements that may be put into effect.
- Lack of clarity on how to determine Fair Market Value of non-low-income portion of building.

Controversial Issues

II. Treatment of Land

- Requires separate appraisal
- "Genesis" is language in the statute that refers to building
- Unnecessary cost and complexity

Controversial Issues

III. Indebtedness Issues

- Seems to imply tracing
- Remaining principal cannot exceed qualified building costs
- Double hit on refinancing
- Indebtedness excludes debt used to finance non-depreciable land cost, syndication, legal, accounting and operating deficit payments. How is this determined?
- Below market debt must be present valued. Inherit conflict between the due-on-sale requirement that often requires such debt to be repaid versus the allowance of only Fair Market Value in the calculation.

Controversial Issues

IV. Investor Equity Issues

- Adjusted investor equity does not include amounts paid for certain costs (see financing).
- Excludes operating deficit loans equity.

Cash Distributions

- Cash distributions must include all distributions from the project to the owners or related parties within the meaning of Section 267(b) or 707(b). This seems to exclude deferred development fee payments.
- Existing reserves are considered cash distributions for purposes of this test.

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