Right to Purchase at the End of the Compliance Period

A benefit found in IRC section 42(l)(7), provides that a right of first refusal, which applies to nonprofit organizations among others, will not affect the tax benefits generated by a project. The right of first refusal allows the property to be purchased by the qualified nonprofit organization after the close of the compliance period for a minimum purchase price. This price is equal to the principal of any outstanding indebtedness incurred before the 5-year period ending on the date of sale to the qualified nonprofit organization, as well as the taxes (federal, state, and local) which would be generated in a transaction involving the sale of the property.

Qualified Nonprofits

Nonprofit organizations must have an ownership interest in and materially participate in, the development and operation of the low-income housing project throughout the 15-year compliance period. In addition, the following requirements must be met to qualify:

1. The organization must be tax-exempt under IRC section 501(c)(3) or 501(c)(4).
2. The state housing credit agency must have determined that the organization is not affiliated with or controlled by a for-profit organization. This was added under the Omnibus Budget Reconciliation Act (OBRA) of 1990.
3. One of the exempt purposes of the organization must be to foster low-income housing.
4. The ownership and material participation test can be met by the organization if it owns stock in a qualified corporation that owns and materially participates in a low-income housing project. A qualified corporation must be a corporation that is 100-percent owned at all times during its existence by one or more qualified nonprofit organizations.