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Hot Issues Facing Workforce Housing and PFCs

Hot Issues Facing Workforce Housing and PFCs

Today, we will discuss the hot topics facing public housing authorities and their public facility corporations in determining strategy for their workforce housing transactions. From negotiating ground leases to regulatory compliance, we will discuss issues to consider to ensure the best business models for PHA in workforce housing.

Discussion Topics

- Evaluating Your Portfolio and Goals
- Tools in Your Development Toolbox
- Transaction Types Available to Housing Authorities and their Affiliates
- HB 2071 – A Changed Landscape
- Negotiating Ground Lease
- Negotiating Other Business Considerations
- Best Practices

Getting Started: Evaluating Your Portfolio

- Reviewing Your Portfolio
 - Identifying Capital Improvement Projects and Necessary Rehabilitation
 - Undeveloped Land
- Assessing Your Client
 - Who is your client population and what are their challenges?
 - How long is your HCV waitlist?
 - Other members of your community not being served?
- Developing a Strategic Plan
- Assessing Your Team and skills

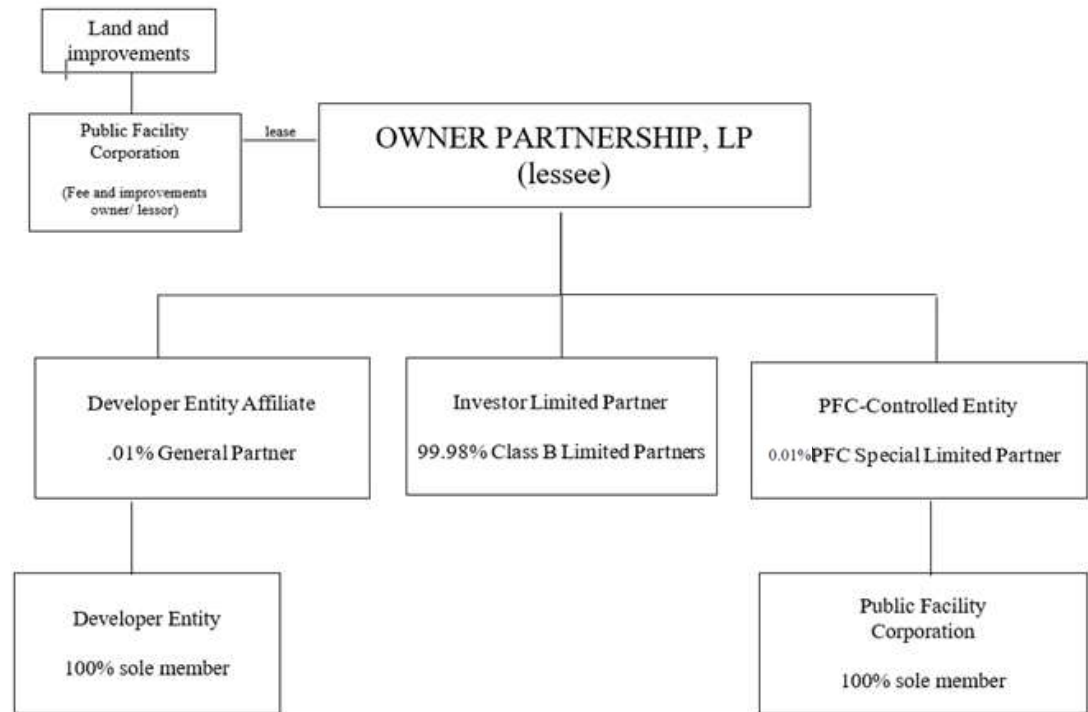
Know Your Why: Identifying Goals to Align with Your Mission

- Rehabilitating and Improving Existing Properties
- Creating Alternative Housing Options for Your Waitlist
- Preserving Existing Affordable Housing Stock
- Building Affordable Inventory
 - Acquisitions
 - New Construction
- Creating Income Streams to Support Agency Initiatives
- Repositioning Opportunities

Tools in Your Development Toolbox: What PHAs bring to the table in negotiations

- Development Corporations
 - Nonprofit Corporations formed pursuant to state law by eligible government sponsors, including Housing Authorities
 - Powers can include issuing Bonds, finance loan proceeds to other entities, and/or acquire, construct, rehabilitate, renovate, repair, equip, furnish, or place in housing development
- Property Tax Exemption (Ad Valorem)
 - Primary value brought by the PHA or its affiliate in most transactions
 - 100% Exemption from Property Taxes
 - Requirements to obtain the exemption vary by structure
 - Exemption lasts for as long as PHA is in the project and applicable requirements are met
- Existing Portfolio of Properties
- Eligibility for FHA Financing/221(d)(4) Loans
- Housing Choice Vouchers/Project Based Vouchers
- Gap Financing

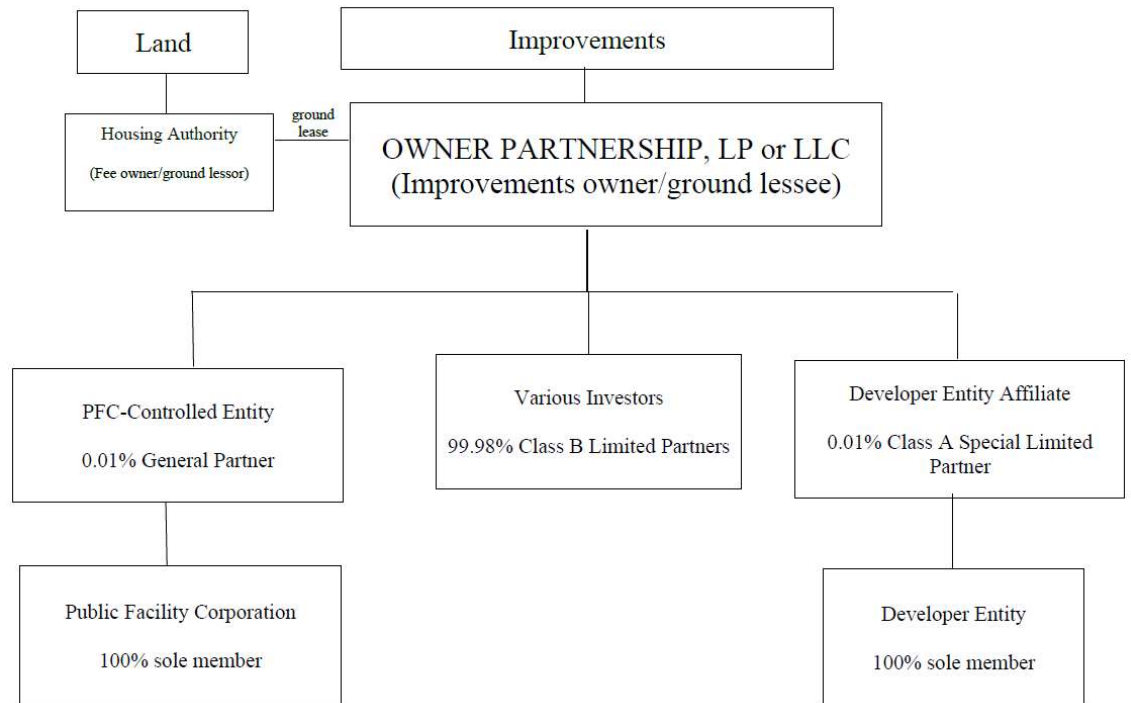
Chapter 303 Workforce/PFC Ownership Structure



New Chapter 303 – Key Structural Points

- Minimum Affordability Restrictions:
 - 10% of Units reserved for 60% AMI
 - 40% of Units reserved for 80% AMI
 - Deeper Affordability or Significant Rehabilitation required for Acquisition Transactions
- Minimum 10 Year Term for Affordability Restrictions
- Length of Exemption
 - 60 Years for New Construction
 - 30 Years for Acquisitions
- Administrative Requirements related to lease provisions, pre-approval notices and underwriting, and annual audits
- City Council Approval Required if PFC board is not composed of a majority of elected officials
- Developer gets to be General Partner

Chapter 392 model Ownership Structure



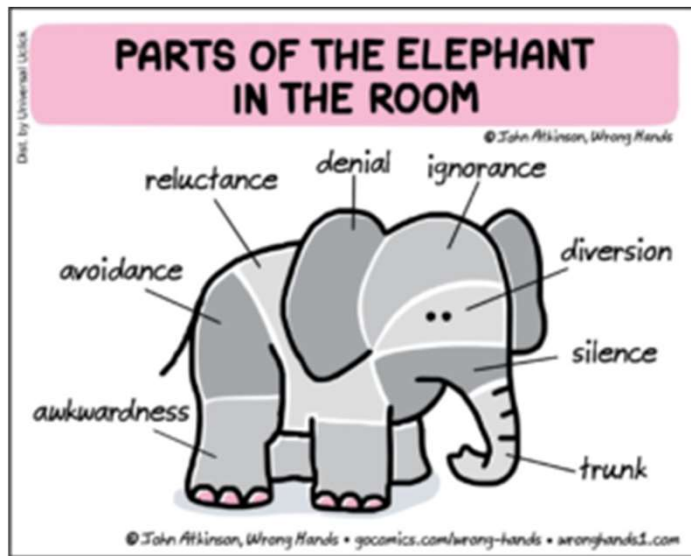
Chapter 392 Exemption –Beneficial Ownership Analysis

- Public Purpose:
 - Typical Affordability: 50% of Units at 80% of AMI
- Exemption Requirements:
 - Own the Fee Simple Interest
 - Control the General Partner
 - Purchase Option to Compel Title

329 Workforce Housing Model

- Typical Affordability: 50% of Units at 80% AMI
- New Construction or Acquisition
- General Requirements:
 - PHA Owns the Land and Serves as Ground Lessor
 - PHA Affiliate Controls the General Partner
 - PHA or Affiliate has a Purchase Option
- Common Points of Negotiation
 - Origination Fee
 - Annual Rent Payment
 - Cash Flow Split
 - Sales/Refinance Proceeds
 - Right of First Refusal/Purchase Option Terms
 - Minimum Term of Affordability/Lockouts (as long as statutory req. met)

HB 2071 – A Changed Landscape



- Deeper Income Affordability Requirements
- New Underwriting Requirements
- New Audit Requirements
- LURA Requirements
- City Approval Required for Certain Transactions
 - Acquisitions
 - PFC's with boards not made up of a majority of elected officials
- New Rules for Acquisitions
- Voucher and Tenant Lease Protections
- Carve-Outs for LIHTC, Public Housing, and RAD deals – New 392.005(c-1)

Comparing 392 and 303

	Chapter 392 Workforce	Chapter 303 Workforce
Benefits	<ul style="list-style-type: none"> • Faster • More Flexibility with Income Levels for Tenants • GP Role gives greater mechanism for accountability • Available to both new construction and acquisitions 	<ul style="list-style-type: none"> • Less risk with SLP role • May be easier for developer partners to obtain financing
Challenges	<ul style="list-style-type: none"> • More administrative burden and exposure with GP role • SLP role less desirable for developer partners 	<ul style="list-style-type: none"> • More cumbersome statutory requirements to maintain exemption <ul style="list-style-type: none"> • Audits • Underwriting • Frequently requires city council approval • More challenging for acquisitions

Different Roles and Transactions

Bond Issuers

- PHA Affiliate may issue tax exempt bonds for affordable housing development projects
- Mechanism to raise the capital needed to fund the acquisition

Public Housing Repositioning

- Properties may be transferred to the PHA Affiliate or a PHA Affiliate-controlled entity in conjunction with RAD conversions

LIHTC Transactions

- PHA Affiliate serves as general partner of the LIHTC Ownership Entity
- PHA serves as the Ground Lessor for the Project
- PHA Affiliate may issue tax exempt bonds for affordable housing development projects

Workforce Transactions

- PHA Affiliate acts as the lessor and serves in the ownership of the project
- State law prescribes parameters of affordability requirements

Negotiating Your 392 Documents

- Key Lease Provisions
 - Lease Payment (“Above” or “Below” the line)
 - Purchase Option and calculation of Purchase Price
- Key Regulatory Agreement Provisions
 - Leasehold and Fee Sales
 - Annual compliance requirements

Negotiating Your Business Points – Other Roles and Considerations

- Role in Property Management
- Sales Tax Exemption
- Bond Issuer Fees
- Nonprofit Sponsor role in LIHTC transactions
- Housing Choice Vouchers
- Project Based Vouchers

FHA Construction and Sub-Rehab Financing

- 40- year fully amortizing loan (combo construction & permanent)
- Loan amount up to 85% loan to cost
- Fixed interest rate and payment during construction and 40-year term
- Non-recourse
- Affordable projects receive priority processing

FHA Acquisition/Refinance Financing

- Up to 35-year fully amortizing loan
- Loan amount up to 85% loan to value/purchase price
- Fixed interest rate
- Non-recourse
- Affordable projects receive priority processing

Best Practices in PHA Development

- Build a Strong Team
 - Experienced Legal Counsel
 - Financial Advisors and Consultants
 - Experienced Developer Partners
- Sales Tax Exemption – Seeking a Predetermination from your local taxing authority
- Early filing of 501(c)(3) application
- Requirement to Accept Vouchers
- Board Strategic Planning

Avoiding Pitfalls

- Engage your team early in the negotiation process
- Stay on top of required filings
 - Franchise Tax
 - 501(c)(3) Filings
- Undergo internal audits / review compliance reports
- Comply with State Open Meetings Act and Public Information Act

Next Steps

- Soliciting Partners
 - Request for Proposals/Request for Qualification
 - Bring in additional partners for expertise
- Consider willingness to commit resources
- Execute Strategic Plan developed jointly by Board and PHA Leadership

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Questions?

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