

# OUR PRACTICE

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## Affordable Housing

**Baker Donelson's Affordable Housing practice includes a highly qualified and experienced team to meet the present and changing needs of all major participants in the affordable housing sector, including state and local governmental entities, for-profit and non-profit developers, owners, lenders, investors, investment bankers, credit enhancers and contractors.**

**Low Income Housing Tax Credits (LIHTC).** The Firm has an extensive housing tax credit practice. Our leadership in the affordable housing community began 30 years ago, when one of our members chaired Mississippi's Housing Task Force. In that role, he served as the principal author of Mississippi's first Qualified Allocation Plan and then as Mississippi Home Corporation's first general counsel. Since then, members of our team have successfully closed more than 250 housing credit transactions throughout the South as public and private developer's counsel, lender's counsel, investor's counsel and special tax counsel, many of which involved tiers of funding derived from a variety of public and private sources. Our tax practitioners routinely analyze Section 42- and Section 704- specific concerns, as well as other Subchapter K provisions within limited partnership and operating agreements.

Our litigators represent some of the nation's leading LIHTC investors throughout the country, both in federal and state court, on issues impacting their investments, such as Year 15 issues and other investor-related disputes.

**Public Housing Authorities and Affiliates.** Our experience working with PHAs and PHA non-profit affiliates/instrumentalities across the region in routine matters, at points of critical threats and challenges, and from the beginning of massive overhauls in program assistance and disaster recovery, is a hallmark of who we are as counselors and advisors. Our engagements include a 25-plus year general counsel role leading resolution on all types of legal matters, special development counsel to multiple PHAs and their affiliates, general counsel to affordable housing trade organizations, and counsel to PHAs in mixed finance developments, RAD transactions, Section 18 Demo/Dispo approvals and CDBG implementation programs.

**Public Finance.** Baker Donelson's housing finance practice is leading in our footprint. In recent years our attorneys have served as bond counsel on housing bond deals for a dozen state and local issuers on transactions aggregating in excess of \$500 million in bond proceeds. We also have served as bond counsel, underwriter's counsel, issuer's counsel and trustee's counsel in virtually every area of both tax exempt and taxable public finance.

**HUD Insured and General Lending.** We are one of the few law firms in the nation with a niche national practice dedicated to representing lenders and borrowers in connection with HUD-insured loans for commercial, multifamily and senior housing projects, including refinancing, acquisition, substantial rehabilitation and new construction of affordable housing projects.

**Litigation and Dispute Resolution.** Our affordable housing clients call on us to represent them in all types of litigation, including those based on partnership disputes and other high-stakes disputes – particularly, those involving investor limited and special limited partners of LIHTC partnerships, the Fair Housing Act and Americans with Disabilities Act, the Civil Rights Act, bankruptcy, construction, and premises liability. Our object is always to reach the best solution for our clients, which means we often work with them to manage risks under tight liability insurance coverage constraints, so that coverage provides for all claims/settlement funds.

Our experience spans the legal spectrum of issues that industry participants encounter.



## Case Studies

- Trial Victory for LIHTC Investors - Litigation



## Representative Matters

### Low Income Housing Tax Credits

- We have structured and closed more than 250 housing credit transactions throughout the South in the last decade, many of which involved tiers of funding derived from a variety of public and private sources, including tax-exempt bonds; HUD's HOME Investment Partnership Program (HOME); CDBG funds; GSE programs; Federal Home Loan Bank Affordable Housing Program (AHP) funds; HOPE VI and other HUD-provided grants and subsidies; Section 8; Rural Rental Housing Loans (RD Loans) under Section 515 of the Housing Act of 1949, as amended; Replacement Housing Factor funds; Tax Credit Assistance Program (TCAP Funds); the Exchange Program (1602 Funds) and Neighborhood Stabilization Program (NSP Funds).
- We actively counsel clients in multiple states in mixed-income, mixed-finance and Rental Assistance Demonstration Program (RAD) transactions involving a co-development relationship between a public housing agency (PHA) affiliate and a private developer partner, including traditional developer's counsel representation, establishing the project ownership structure, tax credit applications, and HUD regulatory reviews.
- We frequently represent project owners in ad valorem tax matters before local taxing authorities.
- We have served as lead trial counsel in LIHTC partnership disputes in Alabama, Arkansas, Florida, Illinois, Kansas, Louisiana, Massachusetts, Mississippi, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia, among others.
  - We represented limited partners through trial and obtained judgment removing general partners and affiliated management company from two partnerships in Central Florida for defaults of partnership agreements.
  - We represented limited partners in out-of-court negotiations following removal of general partner in LIHTC partnership located in Virginia.
  - We represented limited partners in litigation arising from defaults by general partners in more than a dozen LIHTC partnerships located in Arkansas, Kansas, and Oklahoma, and the removal of certain of the general partners. After lengthy negotiations, the limited partners were able to obtain a desired business divorce and settlement resulting in their purchase of the general partners' interests on terms favorable to the client.
  - We represented investor limited partners in litigation arising from general partners' defaults in seven LIHTC partnerships located across Ohio and West Virginia, and investor limited partners' right to remove general partners. The principal of the general partner entities aggressively contested limited partners' removal rights and asserted counterclaims on behalf general partners. After extensive document discovery and dispositive motion practice, the limited partners obtained a settlement and desired business divorce through mediation, resulting in the general partners' purchase of the limited partners' interests on terms favorable to the limited partners.
  - We represented investor limited partners of LIHTC partnerships in litigation arising from the removal of general partners in 13 partnerships, valued at more than \$100 million across Southern Florida. The principals of the removed general partners had pled guilty to defrauding the federal government of more than \$30 million through other LIHTC partnerships. We negotiated a settlement favorable to client with the general partners forfeiting a portion of its economic rights in the partnerships.
  - We successfully dismissed, through appeal to the U.S. District Court, LIHTC partnership's bankruptcy filing by the general partner without the express consent of the limited partners in the

U.S. Bankruptcy Court for the Eastern District of Arkansas. The debtor/partnership, through the general partner and guarantor of certain partnership debts, unsuccessfully argued that the partnership clause requiring unanimous consent from all partners was a veto clause unenforceable in bankruptcy because it made the limited partnership a bankruptcy remote entity. The District Court affirmed the bankruptcy court's ruling finding that the debtor lacked the requisite corporate authority to file the bankruptcy petition.

- We represented investor limited partners of LIHTC partnership in Arkansas state court in the pursuit of claims for breach of a development deficit guaranty agreement, piercing of the corporate veil, civil conspiracy and tortious interference when the general partner refused to enforce the guaranty agreement against the guarantor – its affiliated entity – and failed to pay ongoing monthly operating expenses, including the mortgage payment.
- We represented national low-income housing tax credit syndicator and asset manager in a commercial dispute between client – the investor limited partner and special limited partner in 14 partnerships valued at more than \$100 million formed under the laws of Florida, Georgia, and Michigan – and the general partner of the partnerships over the general partner's mismanagement of funds and defaults under the Limited Partnership Agreements. Settled favorably in the client's favor.

### **Public Housing Authorities and Affiliates**

- The Firm serves as general counsel and special development counsel to the Biloxi Housing Authority (BHA) and has served as special counsel to BHA since 2001, advising on the implementation of its \$35 million HOPE VI Grant, its use of \$85 million post-Katrina CDBG grant funds and its designation as the urban renewal agency for the City of Biloxi.
- Since 2011, the Firm has served as both development counsel and general counsel for South Mississippi Housing and Development Corporation (SMHDC), the instrumentality non-profit developer created by Mississippi Regional Housing Authority No. VIII, as it leveraged \$70 million in post-Katrina CDBG Grant funds in its 14-county area of operation.
- Members of the Affordable Housing Team have served and are currently serving as special counsel to a number of PHAs and developers in affordable housing development matters, including RAD, mixed-finance, and mixed-income transactions involving a variety of public and private development sources.
- The Firm is currently serving multiple clients, including public housing authorities utilizing RAD. These engagements include counseling clients through the milestones provided in the Commitment to Enter into a Housing Assistance Payments Contract (a CHAP), as well as providing advice and counsel on issues typical of an affordable housing development. Our lawyers have served as lead counsel in both RAD acquisition/rehabilitation projects converting public housing units to Section 8 Project-Based Voucher units under a HAP contract, and portfolio-wide programmatic conversions for the purpose of stabilizing subsidy levels in existing developments.
- Since 2009, the Firm has served as general counsel to MHARM, the self-funded insurance entity created by Mississippi's PHAs under authority of 24 CFR Part 965, as well as special counsel to self-funded insurance pools in other states.
- The Firm has assisted clients in implementing a \$20 million Workforce Housing Community Development Block Grant (CDBG) from the state, utilizing Replacement Housing Factor Fund Grants (RHF), private loan proceeds and Housing Assistance Payments under Section 8 of the U.S. Housing Act of 1937, as amended (Section 8).
- Our lawyers have taken responsibility for the legal function in developing HUD-approved homeownership programs, tax credit properties and unique mortgage products accessing Fannie Mae and Federal Home Loan Bank financing.
- During our mixed-finance engagements, we have participated in negotiating developer-partner agreements; established the project ownership structure, including formation of PHA affiliates, as necessary; assisted in preparing tax credit applications; materially participated in the preparation and

submission of mixed-finance proposals; prepared mixed-finance evidentiary documents; assisted with securing HUD operating subsidies; and regularly represented PHAs in dealings with developers, investors, lenders, and federal, state and local officials.

- We routinely advise affordable housing clients and boards concerning employee complaints of discrimination and conduct internal investigations of the same. We also represent affordable housing clients before the EEOC regarding employee' allegations of discrimination in employment decisions and termination.
- We routinely advise and represent affordable housing clients in the unemployment claims handling process, including through telephonic hearings and the appeals process.
- We counsel and advise affordable housing clients on all areas of daily personnel matters, issues and improvements, including but not limited to the FLSA classification of employees; job duties and descriptions; discipline decisions concerning employees with absenteeism, behavior, and performance issues; handbook and policy revisions and updates interview techniques; and documentation, etc.
- We advise and counsel affordable housing clients through federal investigation of and responses to Office of Inspector General complaints filed through the U.S. Department of Housing and Urban Development.

### **Public Finance**

- \$10,500,000 – The Industrial Development Board of the County of Hamilton, Tennessee Multifamily Housing Revenues Bonds (Jaycee Tower Apartments Project), Series 2017 (Bond Counsel and Borrower's Counsel).
- \$25,000,000 – The Health and Educational Facilities Board of The Metropolitan Government of Nashville and Davidson County, Tennessee Multifamily Housing Revenue Bond (Hermitage Flats Apartments Project), Series 2017 (Bond Counsel).
- \$4,000,000 – The Health, Educational and Housing Facility Board of the City of Jackson Collateralized Multifamily Housing Bonds (Kingfield South Project), Series 2017 (Underwriter's Counsel).
- \$5,220,000 – Mississippi Home Corporation Multifamily Housing Revenue Bonds (Dorchester Place Apartments), consisting of \$4,240,000 Series 2016-4A and \$980,000 Taxable Series 2016-4A-T (Bond Counsel).
- \$9,390,460 – Mississippi Home Corporation Single-Family Rental Housing Revenue Bonds (Eastgate Subdivision Project) Series 2016-2 (Bond Counsel).
- \$7,225,369 – The Health, Educational and Housing Facility Board of the County of Shelby, Tennessee Educational Facilities Revenue Bond (Memphis College of Art) Series 2016 (Bond Counsel).
- \$4,240,000 – Mississippi Home Corporation Multifamily Housing Revenue Bonds (Dorchester Place Apartments), Series 2016-4A and \$980,000 Mississippi Home Corporation Multifamily Housing Taxable Revenue Bonds (Dorchester Place Apartments), Series 2016-4A-T (Bond Counsel).
- \$14,000,000 – Mississippi Home Corporation Senior Multifamily Housing Revenue Bonds (Mississippi Portfolio Tranche I) Series 2015-1A and \$2,440,000 Mississippi Home Corporation Subordinate Multifamily Housing Revenue Bonds (Mississippi Portfolio Tranche I) Series 2015-1B (Bond Counsel).
- \$58,000,000 – Mississippi Home Corporation Single Family Mortgage Revenue Refunding Bonds Series 2015-A (Federally Taxable-Monthly Pass-Through) (Underwriter's Counsel).
- \$15,000,000 – The Health, Educational and Housing Facility Board of the County of Knox Collateralized Multifamily Housing Bonds (Pinnacle Park Apartments Project) Series 2015 (Underwriter's Counsel).
- \$5,695,000 – Mississippi Home Corporation Multifamily Housing Revenue Bonds (Shady Lane Apartments), Series 2014-4 (Bond Counsel).
- \$6,000,000 – The Industrial Development Board of the City of Knoxville Collateralized Multifamily Housing Bonds (Golden Age Retirement Village Project) Series 2014 (Underwriter's Counsel).

## HUD Insured and General Lending

- We have significant experience representing lenders involved in traditional affordable housing construction and permanent loans, as well as loans sourced through the AHP Program, HOME Program, and TCAP Program.
- Served as general counsel to a tax exempt consortium of banks making construction and permanent loans on affordable housing projects and administering affordable housing grants and loans.
- We have represented owners in mortgage restructuring through HUD's Office of Affordable Housing Preservation (OAHP) and HAP Contract renewals under MAHRO.

## Litigation and Dispute Resolution

- We serve as lead counsel in defending putative class action claims, single plaintiff cases and coordinated attacks by multiple plaintiffs alleging discrimination under the Civil Rights Act, the ADA and the Fair Housing Act, among others.
  - We defended LIHTC developer from Fair Housing Act, ADA and state law challenges in six different states, all with no cause findings and no follow-up litigation.
  - We defended a large, multi-family complex owner against a coordinated national origin discrimination claim brought by eight tenants, resulting in a dismissal with prejudice of all claims following extensive HUD investigations and ensuing litigation.
- We routinely represent owners of affordable apartment complexes in connection with tenant-brought ADA and FHA claims, as well as provide advice and counsel in connection with handling of reasonable accommodation requests.
- Our successful defense of premises liability claims has included cases involving loss of life, allegations of sexual assault, allegations of abuse by security guards, and allegations of defective workmanship and maintenance, among others.
  - We represented the owners of multi-family apartment complex in a premises liability actions, including complaints based on a tenant's claim of sexual assault on the premises and a tenant suffering a gunshot wound to the leg from an unknown assailant.
  - We represented owner of apartment complex in a premises liability case where teenage girl was raped by complex's employee, whose previous deviant behavior was known to property management company. Resolved case on the eve of trial for less than one-fifth of plaintiff's original demand.