



TAX CREDIT WORKOUT AND LITIGATION

EFFECTIVE SOLUTIONS FOR TROUBLED OR “WATCH LIST” PROPERTIES

**NIXON PEABODY HAS
REPRESENTED VIRTUALLY
EVERY MAJOR PLAYER IN
THE TAX CREDIT INDUSTRY
IN CONNECTION WITH
THEIR TROUBLED OR
“WATCH LIST” PROPERTIES.**

As tax credit deals mature—whether in the historic, new markets, low-income housing or other areas—many investors and developers are realizing that they have a number of problem properties on their hands. “Watch list” properties burdened with construction, operational or exit issues are becoming more commonplace in their portfolios due to significant external economic pressures that have negatively impacted the real estate and financial markets recently. In this environment, it is critical that investors and developers manage their risks and enforce their rights as early as possible.

We are a leader in representing clients in every aspect of the tax credit industry, including providing industry leadership and guidance to investors and developers seeking to unwind their interests in tax-credit projects that have matured. We provide early assessments to resolve disputes and problems quickly and, if possible, without litigation. Where necessary, our dedicated team of litigators can help clients navigate through the more difficult waters of regulatory and partnership claims and dispute resolution.

Informed by over 20 years of direct experience involving workouts and litigation in this area, our team is one of the best known and most trusted providers of high quality, efficient and integrated workout and litigation advice for those institutions and businesses that have investments in or manage troubled or special tax credit assets. We understand how courts and arbitrators evaluate these matters—the key facts they look at in making important decisions affecting management of the property and exit strategies—so we can provide time-tested approaches and strategies that work best for our clients’ objectives.



Comprehensive solutions

Our team draws on its significant experience in handling matters across the country to provide a comprehensive array of tax credit property workout and litigation solutions. We have assisted clients with:

- Removal and other enforcement actions against general partners and managers
- Disputes with general and sub-contractors, developers, management agents, property managers, service providers and others
- Negotiations with lenders, investors, bondholders, trustees and others in connection with foreclosures and loan workouts
- Bankruptcy matters, including filings by local general partners, developers and others
- IRS audits and housing credit agency compliance reviews
- Enforcement of guarantees
- Construction defect issues
- Sales of disputed general partner interests
- “Year 15” and other unwind and exit scenarios and strategies, including enforcing put/call options
- Due diligence relating to “watch list” properties and portfolios

Representative matters

- Negotiated the removal of the general partner and the takeover agreement between the property owner and surety and construction completion of 173-unit affordable housing complex in Jacksonville, Florida.
- Negotiated removal of general partner/general contractor and construction takeover of 275-unit high-rise/mixed use development in Washington, D.C.
- Resolved a financing fee dispute in Washington State that might have blocked closing on the first solar project using New Markets Tax Credits nationwide.
- Negotiated the workout and removal of the general partner of historic rehabilitation project utilizing historic tax credits involving the Jackie Robinson minor league baseball stadium in Daytona Beach, Florida.
- Facilitated workout of three low-income housing tax credit properties located in Tennessee that involved tax credit swap, construction completion and defect issues, removal of general partner, and project completion issues.
- Negotiated removal and replacement of general partner of partnership owning long-term care facility in Long Beach, California. Handled litigation involving put of investor limited partners interests to general partner.
- Obtained a preliminary injunction to enforce removal of the manager of a combined new markets and historic tax credit project in Tacoma, Washington.
- Secured trial victory on behalf of a tax credit investment partnership after a lengthy trial in New Jersey state court. The dispute arose out of a municipality’s decision to claim that a “PILOT” tax exemption was unenforceable, thereby unfairly subjecting the client to significant tax liability and potential foreclosure.
- Secured final judgment on behalf of a tax credit investment partnership in California against plaintiffs’ claims in an involuntary bankruptcy proceeding. As part of the entry of final judgment to the partnership, the court ordered not only that plaintiffs’ claims be dismissed, but further that plaintiffs reimburse the fund for all of their attorneys’ fees.

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ABOUT NIXON PEABODY LLP

At Nixon Peabody, we see 21st century law as a tool to help shape our clients’ futures. We are constantly thinking about what is important to our clients now and next so we can foresee obstacles and opportunities in their space and smooth the way. We work together to handle complex challenges in litigation, real estate, corporate law, intellectual property and finance anywhere in the world.

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