



AFFORDABLE HOUSING

CREATIVE, EXPERIENCED SOLUTIONS FROM AN INDUSTRY LEADER

The business of affordable housing raises intricate legal challenges.

Nixon Peabody's Affordable Housing practice offers unparalleled experience in the housing programs administered by the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Agriculture's Rural Development agency, both in connection with federally assisted housing overseen by these agencies and in accessing capital markets for various kinds of affordable housing development. Our attorneys—many of whom previously worked at HUD in legal and policy positions—have been involved with every major federal affordable housing initiative for the last forty years, so we're able to help our clients work through the complex regulatory environment and benefit from public financing opportunities. Our years of experience and the relationships we've made in government and throughout the industry also give our clients an advantage as we bring deals, parties, and innovative ideas together.

Housing credits

The Nixon Peabody team members working on housing credit transactions are among the nation's foremost legal authorities in complex transactions involving the low-income housing tax credit. Nixon Peabody attorneys helped shape the legislation that created the housing credit program, and we have contributed to the creation and implementation of major federal housing programs. Our knowledge of the transactional, regulatory, and legislative history of the housing credit program helps us solve common and uncommon problems associated with it.

Affordable housing bond issuances

We represent private developers, nonprofits, and syndicators, as well as issuers and underwriters, in the tax-exempt or taxable bond financing or refinancing of affordable housing developments, where affordability is required on 20% to 100% of the development. We also advise clients on the acquisition and disposition of bond-financed properties and the precarious interplay of state and federal requirements when bond-financed properties are transitioning to market rents.

HUD-insured and other multi-family mortgage finance

Our attorneys represent both lenders and borrowers under the HUD-FHA mortgage insurance programs, and are familiar with the rules and requirements of MAP and FHA risk-sharing. We also have closed numerous transactions with credit enhancements provided by Fannie Mae or Freddie Mac.





INDUSTRY-WIDE REPRESENTATION

- Developers
- Local housing authorities
- State housing finance agencies
- Management agents
- Lenders and equity syndicators
- National housing trade organizations
- Other public bodies

Section 8 contract expiration, renewals and opt-out

Members of our group have been involved in Section 8 financing and program rules since the inception of many of these programs and the contracts governing these programs, so we can address any legal question raised by the expiration of Section 8 project-based housing assistance payments contracts.

Rental Assistance Demonstration (RAD) program

The group works closely with HUD's RAD program, obtaining approval for a significant share of these transactions to date. These transactions involved conversion of Rental Assistance Program (RAP), Rent Supplement (Rent Supp) and, Section 8 Moderate Rehabilitation (Mod Rehab) contracts and public housing assistance to project-based Section 8 contracts. Nixon Peabody worked collaboratively with our developer clients and HUD's Office of Recapitalization to implement this cutting-edge program successfully. We also helped pioneer the effective conversion of tenant-based assistance to project-based assistance in the years prior to the introduction of the RAD program. We are currently working with HUD to implement the new authority to convert Section 202/PRAC assistance under RAD.

Sophisticated full-service developer counsel representation

In addition to our deep knowledge of affordable housing programs, our team works with developers on large-scale, mixed-use, and mixed-income urban development and redevelopment projects. Many of these projects involve complex ownership structures and financing arrangements (both public and private), tax credits (involving historic, solar, and new markets in addition to housing credits), lease negotiations, and equity arrangements. A broad-based team of attorneys with concentrations in real estate, tax, and corporate law assist, affordable housing developers in structuring and forming a variety of investment vehicles and pass-through entities, including joint ventures (which can be particularly complex in the affordable housing context). From forming complicated business ventures to navigating complex tax matters, we steer clients through the most sensitive and challenging issues and transactions.

Prepayment and preservation/ Section 236 decoupling (and re-decoupling)

Our attorneys advise owners on their right to prepay Section 236 mortgages and decouple the Section 236 interest reduction payment subsidy to preserve the project as affordable housing. We can also assist owners of multi-family apartment buildings reexamining their options under the ELIHPA and LIHPRHA preservation programs.

Public housing revitalization

Our practice helps public housing authorities and private developers in their efforts under the RAD, mixed-finance, and Choice Neighborhoods programs to create public-private partnerships that enable new units to be built on former public housing sites and revitalize communities. We also represent housing authorities and issuers in connection with capital fund securitizations, which allow housing authorities to leverage their capital fund monies to renovate new projects more efficiently.

Seniors housing/Section 202

We represent nonprofit owners, developers, lenders and investors in seniors housing, ranging from independent living to assisted living to nursing homes, and we are familiar with the state laws and regulations that affect such developments. We are also at the forefront of the efforts to prepay and refinance HUD Section 202 projects, including the new authority provided under the RAD program to convert PRAC assistance to long-term Section 8 contracts.

Rural Housing Service programs

Our group has extensive involvement in the Rural Housing Service and its predecessor agency, the Farmers Home Administration, primarily in the Section 515 multi-family program, but also in other programs, such as the Section 538 guaranteed loan program. We have assisted owners, investors, and Section 538 lenders in closing loans and syndicating equity. We have represented owners in mortgage prepayment, refinancing, workouts, and regulatory compliance.

HOME and CDBG

Our group works with developers and public organizations that use the HOME and Community Development Block Grant (CDBG). This includes CDBG's Section 108 loan guarantee program.

We advise on all aspects of community development programs and confer with HUD's implementing offices to aid in program implementation.

Fair housing

We counsel public and private entities, including owners, builders, managers, and others, in developing strategies to comply with antidiscrimination laws, such as the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, and other federal and state laws that impose strict obligations to prevent discrimination on the basis of race, sex, religion, national origin, familial status, and disability, among other criteria.

Housing regulation

Our attorneys work with federal agencies and federally assisted programs to address federal regulatory requirements like Davis-Bacon wage rates, lead-based paint, environmental compliance, and residential and business relocation benefits.

Mortgage restructuring

We represent owners and lenders in all types of mortgage restructuring matters, including mark-to-market mortgage restructurings, partial payments of claims and workouts.

Defaults, foreclosures, and property disposition

We represent owners in HUD enforcement actions, including REAC, FASS, 2530 clearances, suspension and debarment procedures, mortgage workouts to prevent foreclosure, mortgage prepayment overrides, and defeasance. Our attorneys also represent mortgagors and potential mortgage buyers in the HUD mortgage sale program and project buyers under the HUD property disposition program. We also assist lenders before the Mortgagee Review Board and MAP lenders in connection with HUD probation actions.

Housing litigation and enforcement

We represent clients in all venues, including federal agencies, boards of contract appeals, and state and federal courts. When disputes arise, we counsel clients on the legal and factual issues involved, advise them concerning the opportunity to settle or resolve disputes through alternative dispute resolution techniques, and represent them in administrative proceedings and judicial trials.

INDUSTRY-RECOGNIZED THOUGHT LEADERS

Attorneys in our Affordable Housing practice have chaired national seminars and are frequently asked to address meetings of housing trade associations focusing on affordable housing issues.

Congressional representation

Our firm represents leading housing trade organizations on Capitol Hill and has been involved in shaping significant housing bills, as well as tax legislation affecting affordable housing.

State and local law issues

Much federally assisted housing is also regulated and assisted at the state and local levels. Our Affordable Housing practice works with developers and financiers to use these local programs and coordinate them with the federal programs, from tax exemptions and city/state subsidy programs to state tax credits and local law issues.

Condominiums and cooperatives

Clients on every side of a cooperative or condominium deal can be confident that NP attorneys have the experience, knowledge, and skills to achieve the outcome they want. From initial planning and formation to drafting organizational documents and offering plans to navigating the regulatory process (including Article 23-A of the New York General Business Law, otherwise known as the Martin Act), we can efficiently guide our developer clients—and their projects—to closing.

Opportunity Zones

The Federal Qualified Opportunity Zone (O-Zone) program has the potential to transform land use and real estate investment in urban and rural areas across the United States. The O-Zone incentive is designed to inspire equity investments in designated low-income areas by permitting investors to defer payment of the capital gains tax on the sale of an asset they currently hold and likely eliminate a future capital gains tax on appreciation in the investment they make in the O-Zone. Investors seek out Nixon Peabody attorneys to speak at conferences and write about the O-Zone incentive nationally and regionally. Nixon Peabody has a dynamic, cross-practice opportunity zone working group with more than 40 attorneys. We anticipate opportunity zones opening the door for high-impact investment in a variety of sectors. Our attorneys are coveted writers and speakers as investors look for insights on the future of this new tool.

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.

FOR MORE INFORMATION, PLEASE CONTACT:

Joseph Lynch
212-940-3717
jjlynch@nixonpeabody.com

Richard Price
202-585-8716
rprice@nixonpeabody.com

Deborah VanAmerongen
212-940-3054
dvanamerongen@nixonpeabody.com

@NIXONPEABODYLLP
NIXONPEABODY.COM