Affordable Housing and Community Development

Financing affordable housing, community development and mixed-income housing projects requires legal complexity not normally found in traditional market real estate deals. Katten's Affordable Housing and Community Development group is made up of experienced practitioners, including pioneers in the industry who are well-positioned to guide owners, developers, equity investors, tax credit syndicators, public and private lenders, quasi-governmental entities and government agencies through the regulatory and financing requirements of affordable housing and mixed-income housing projects throughout the nation, including in California, Illinois and New York. Our affordable housing attorneys work with federal, state and local entities to not only yield much-needed, affordable and mixed-income housing, but also present attractive financing and tax benefits to developers and project owners.

Moreover, during times of economic crisis, our attorneys know how to handle workouts and restructurings for troubled affordable housing loans, thanks to their deep experience dealing with the complexity of affordable and mixed-income housing, as well as workout-challenged community developments, during past and current distressed real estate markets.

Innovative structuring for affordable housing and community development transactions

Katten's Affordable Housing and Community Development team is comprised of real estate and tax attorneys who work jointly to deliver practical solutions to complex problems, whether in the case of new transactions or working out non-performing properties and loans. Our attorneys have a thorough understanding of both the financing available for affordable housing and the maze of regulatory requirements clients must navigate to attain it. Katten attorneys have been instrumental in creating innovative financing structures for affordable housing, workforce

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housing, mixed-income housing and community development projects, utilizing public-private partnerships, federal and state tax credits (in particular the federal Low-Income Housing Tax Credit (LIHTC)), taxable bonds, tax-exempt bonds and private equity. It is this experience and innovation that separate us from our peers. Our breadth of experience includes working on the following transactions:

- In California, our attorneys represented The Pacific Companies, one of the most prolific developers of new affordable housing in California and nationwide, with respect to the ground lease acquisition, equity investment and financing of a 200-unit multi-family affordable housing development to be built in Santa Clara.
- In California, our attorneys represented a leading developer of affordable housing in connection with the ground lease acquisition, equity investment and financing for a new transit-oriented, mixed-use development in San Diego. This project will provide 100 units of affordable housing for low-income families as well as commercial space.
- In New York City, our real estate and tax attorneys engineered the creation of a number of unique tax structures that began in New York and have since become widespread across the country. One of these formed the basis for the "80/20", “75/25” and other iterations of market and low-income rent, tax-credit syndication structures now standard in the industry. Another, known as the “Sub-50 Tax-Exempt Bond Structure,” is a volume-cap efficient structure, originally utilized by both the New York State Housing Finance Agency and the New York City Housing Development Corporation, and now in use nationwide. Recently, our attorneys assisted a developer in a complex transaction in which the City of New York conveyed the land to the developer and provided significant long-term, subordinated low-interest financing for the development of a mixed-income project. The project comprised three separate condominium units containing more than 1,200 residential units, ancillary parking facilities and a large retail eatery. In this project, 20 percent of the units were affordable rate, 33 percent were market rate and the remaining units were workforce housing. We also represented a developer in refinancing a multifamily development that involved conversion of tax-exempt and taxable publicly held bonds to direct purchase bonds; and represented a developer in a simultaneous closing on three parcels of land and subsequent financing of affordable and market-rate units on the site, including 83 micro-units.
- In California, our attorneys worked closely with an affordable housing developer to create and implement a B-bond program, which enables affordable housing projects to support a larger debt burden than is typical for most projects. This structure has been used on a number of urban infill transactions throughout California,



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"Katten is absolutely one of the best firms we have ever engaged with respect to real estate transactions and affordable housing expertise. We recommend Katten highly."

***Best Law Firms*® 2023 (Real Estate Law) survey response**

including projects located in Los Angeles, San Jose, Santa Ana, Rohnert Park, Inglewood, Hawthorne, Garden Grove, Gilroy and Oxnard.

- In Illinois, we provided value-added counsel to a developer in connection with a mixed-use project anchored by Whole Foods in an area that was previously a food desert on Chicago's South Side. The financing for the project was a true public-private partnership that included a below-market ground lease, federal New Markets Tax Credits, TIF dollars and private equity. We have also worked with several market-rate developers to satisfy the requirements imposed by Chicago's affordable housing ordinance.
- Nationwide, we represent developers, investors and lenders in complex transactions, including representation of: (1) an investor in a joint venture to acquire and develop a warehouse/industrial park in Maryland; (2) a developer in an acquisition and financing of a multifamily, public-private partnership with the Plano Housing Authority in Texas; (3) a major US bank in connection with the bankruptcy of Lehman Brothers, to preserve the client's interests in its collateral, which consisted of troubled mortgages in more than 35 properties located throughout the country with an aggregate value of more than $1 billion dollars; and (4) a hedge fund and real estate private equity fund joint venture in connection with the acquisition of general partner interests in 50 LIHTC projects throughout the Midwest and West.

Our attorneys have a broad base of experience working with the Department of Housing and Urban Development (HUD) and have a deep understanding of many HUD and government-sponsored enterprise (GSE) programs that generate (or help preserve) affordable and mixed-income housing units nationwide, particularly in California, Illinois and New York. Our attorneys have represented owners, lenders and bond issuers in connection with defaulted HUD, Fannie Mae and Freddie Mac insured loans and have collaborated with our Restructuring practice to restructure defaulted, tax-exempt, bond-funded, HUD insured loans through the issuance of refunding bonds.

National reach for affordable housing and community needs

Recognized by *U.S. News* as the 2022 “Law Firm of the Year” in Real Estate Law and the 2023 “Law Firm of the Year” in Litigation (Real Estate Law), our approximately 80-attorney real estate practice is well-represented in every major US property market – and our day-to-day collaboration transcends geography, as our attorneys routinely work with colleagues in offices throughout the country. This national platform ensures that the experience from one market can be readily leveraged and applied to other markets. Wherever affordable housing becomes a viable option, anywhere in the US, we have the know-how and experience

to steer clients through the regulatory complexities and financing obstacles to close the deal or to restructure a troubled deal.

We are experienced in all aspects of affordable and mixed-income/mixed-use housing and community development transactions, including:

- Low-Income Housing Tax Credits
- Opportunity zones
- Workforce housing
- Mixed-income and mixed-use developments/public-private partnerships
- Public finance — tax-exempt bonds
- FHA-insured and GSE mortgage programs
- Federal, state and local government housing assistance and grant programs
- Projects receiving Section 8 housing assistance payments
- Rental Assistance Demonstration (RAD) program development
- Quasi-governmental financing programs
- Corporate, tax and business entity structuring
- New Markets Tax Credits (NMTC)
- Historic Tax Credits (HTC)

Our Experience

- Advise multifaceted real estate company regarding the structuring, financing, redevelopment and preservation of RAD conversion projects. The transactions were structured to facilitate the greatest leveraging of public funds with private financing sources, including maximization of available equity from the syndication of LIHTC. Financing was obtained through the issuance of tax-exempt bonds, secondary financing from the housing authority and utilization of certain tax benefits, such as a PILOT agreement.
- Developer counsel in the negotiation and closing of a purchase and development agreement (with different kinds of debt and equity) with the United States General Services Administration (GSA) for a mixed-use, 42-acre property in Washington, DC, next to the baseball stadium.
- Senior bondholder representative counsel in the workout of a defaulted bond financed loan for a low-income housing tax credit project located in Richmond, Virginia, in which the bondholder acquired a general partnership interest in the owner and additional tax credit investor equity capital in lieu of pursuing a mortgage foreclosure.

- Developer counsel for many affordable housing transactions across the country utilizing multiple tranches of debt and equity financing, including LIHTC equity, HOME and CDBG loans, AHP funds, TIF, HTCs and energy grants. Served as developer counsel in closing a series of transactions utilizing a new structure to preserve existing Section 8-subsidized projects involving restructuring of existing HUD-held debt, tax-exempt bond financing, LIHTC equity, and subordinate municipal financing, which may also include TIF and bridge financing.
- NMTC community development entity and developer counsel on multiple NMTC transactions throughout the United States. Serve as counsel to a nonprofit educational institution in Chicago in the development of athletic facilities using NMTC equity and as counsel to a nonprofit developing a mixed-use project in Washington, DC, providing nonprofit office space and housing for victims of domestic violence.
- Developer counsel in HUD regulatory and compliance issues on a nationwide basis, including Section 8 contract renewals, rent adjustments, approval of property transfers, allowable distributions and equity take-outs, fair housing and accessibility issues, transfers of physical assets, 2,530 previous participation clearances, 202 project transfers and loan subordinations.
- Lender counsel in a variety of construction and permanent loan transactions across the United States involving LIHTCs and HTCs—including workouts, foreclosures and recapitalizations. Lender counsel in closing a restructuring and recapitalization of a $1.4 billion, 3,700-acre master-planned community in Orange County, California.
- Lender counsel in refinancing a portfolio of 30 affordable, multifamily housing projects located in five states. The refinancing involved 30 separate municipal bond transactions totaling $171 million and included tax-exempt and taxable bonds and associated derivative products.
- Lender counsel to an agency lender and several national banks providing credit enhancement for multifamily housing bond transactions. Serve as counsel to sponsors in the securitization of more than $3 billion of tax-exempt and taxable multifamily housing bonds through an agency lender program and credit enhancement programs. Lender counsel assisting lenders in obtaining agency lender licenses and approvals. Provide ongoing counsel on regulatory and compliance issues.
- Bond counsel in numerous placements of tax-exempt bonds involving a wide range of facilities and projects (multifamily housing, continuing care facilities, medical offices, airports and port facilities).

- Public Housing Authority representation in mixed-finance transactions involving public housing capital grants, HOME funds and TIF. Includes counsel in four large mixed-finance transactions and as trustee counsel in bond issuances, in which HUD receipts were pledged as security for the payment of the bonds.
- Represented a large national bank as construction lender for the development of a $120 million mixed-use, commercial retail/apartment project in Chicago, which will include 110,000 (rentable) square feet of commercial/retail space anchored by a grocery store, and 180 apartment units, including 36 affordable housing units in a project that includes TIF with a redevelopment agreement with a city government.
- Tax credit investor counsel and developer counsel in investments in numerous 80/20 mixed-income apartment and multi-use projects in California, New York and Washington, DC. Developer counsel in more than 75 high-rise 80/20 and mixed-use projects in Manhattan and elsewhere in New York City, including $1.2 billion construction financing for three towers between West 59th and West 61st streets, $539 million construction financing on West 42nd Street, $470 million financing in the Hudson Yards area, $407 million financing in Midtown West, and permanent construction financing on West 38th Street. Individual matters involve the New York State HFA issuing tax-exempt bonds and taxable bonds that are credit-enhanced by a letter of credit from an international bank, LIHTCs, 421-a real property tax exemptions, and floor area bonuses pursuant to the Inclusionary Zoning Program of the City of New York.
- Represented Starrett City Associates, as seller, and Brooksville Company LLC and Rockpoint Group LLC, as purchasers, in the $905 million sale of Spring Creek Towers (formerly called Starrett City), the largest federally subsidized housing development in the United States.
- Represent various real estate developers in the financing and development of mixed-income multifamily projects in the Long Island City, East Harlem and Jamaica neighborhoods of New York City. Each project will be one of the largest apartment projects in its respective neighborhood. These transactions are structured to facilitate the generation and potential syndication of LIHTCs.
- Represent strategic real estate development company in ground leasing more than one acre of land off Webster Avenue in the Bronx. Involves client demolishing the existing structures on the property, constructing a multifamily residential rental building with accompanying retail spaces, and operating the new development under a 99-year ground lease. This project will create 340 brand new, affordable housing units in a highly desirable area of the Bronx and showcases the client's commitment to including a valuable

resource to the community in the form of a neighborhood grocery store in an area lacking healthy, nutritious food options.

- Public-private representation, including of a residential and commercial real estate acquisition, development and management company, in financing a very large and impactful multifamily development in Long Island City, Queens. The project creates a public-private partnership between New York City and our client to create much-needed and difficult-to-develop affordable and workforce housing. Tax-exempt bonds will be issued to finance the affordable portion of the development, and the transaction will be structured to facilitate the generation and potential syndication of LIHTCs.
- Represent real estate developer in a 20-acre planned unit development in northeast Washington, DC. The redevelopment is expected to contain approximately 1,750 apartments (22 percent affordable) in multifamily buildings, seniors-only housing and row houses, plus approximately 180,000 square feet of retail space, including a 56,000-square-foot anchor grocery store along with community and open/green spaces. The years-long development process will require the coordination of zoning approvals, temporary relocation of tenants, attracting retail tenants, updating HUD contracts, obtaining private and public financing, providing community support programs, demolition of the existing structures and the phased construction of the new buildings.

Recognitions

Recognized or listed in the following:

- *Best Law Firms*
  - Real Estate Law
    - Law Firm of the Year, 2022
    - National, 2011–2026
    - Charlotte, 2011–2026
    - Chicago, 2011–2026
    - Los Angeles, 2011–2026
    - New York, 2011–2026
    - Washington, DC, 2011–2025
  - Litigation – Construction
    - Washington, DC, 2026
  - Litigation - Real Estate
    - Law Firm of the Year, 2023

- National, 2012–2026
- Chicago, 2024
- New York, 2012–2026
- Washington, DC, 2012–2026

- *Chambers UK*
  - Real Estate: £10-50 million (London Firms), 2016–2027
    Hotels & Leisure (UK-wide), 2019–2027
- *Chambers USA*
  - Real Estate
    - Nationwide, 2012–2026
    - District of Columbia, 2016–2020, 2026
    - Illinois, 2006–2026
    - North Carolina, 2016–2018
  - Real Estate: Finance
    - North Carolina, 2012–2026
  - Real Estate: Mainly Corporate & Finance
    - New York, 2016–2019, 2021-2025
- *The Legal 500 United Kingdom*
  - Real Estate
    - Property Finance, 2015–2027
  -
- *The Legal 500 United States*
  - Real Estate, 2016–2026
    - Real Estate and Construction, 2013–2018