Overview

Financing of affordable housing projects entails legal complexity and financing layers not normally seen in traditional market real estate deals. While the federal, state and city/local regulatory requirements affecting the development and operation of affordable housing projects can be complex, working with such entities can not only yield much-needed quality affordable housing, but can also confer attractive financing and tax benefits to developers and project owners. Katten's Affordable Housing and Community Development group comprises pioneers in the industry, attorneys who deftly guide developers, investors, tax credit syndicators, public and private lenders, quasi-governmental entities, and government agencies through the regulatory and financing requirements of affordable housing projects throughout the nation.

Innovative structuring

Katten's Affordable Housing and Community Development group comprises real estate and tax attorneys who work jointly to deliver practical solutions to complex problems. 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 housing and community development projects utilizing public-private partnerships, federal and state tax credits, tax-exempt bonds, and private equity. It is this experience and innovation that separate us from our peers, including the following representative transactions:

- In New York City, where these types of transactions originated and are most prevalent, our track record of steering complex deals through to completion is exemplary. Katten 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” mix of market-to-low-income rent structures now standard in the industry. Katten 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 comprising three separate condominium units, which contained more than 1,200 residential units, ancillary parking facilities and a large retail eatery. In this project, 20% of the units were affordable rate, 33% were market rate and the remaining units were workforce housing.

- In California, Katten 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 utilized on a number of urban infill transactions throughout California, 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 advice 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.

Our attorneys also have a broad base of experience working with the Department of Housing and Urban Development (HUD), and have a deep understanding of many HUD programs that generate (or help preserve) affordable housing units throughout the country.

**National reach**

While our 120-attorney real estate department is well-represented in every major US property market, our day-to-day collaboration transcends geography — our attorneys routinely work with colleagues in offices throughout the country. This national platform assures that the experience from one market can be readily leveraged and applied to other markets. So 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.

We are experienced in all aspects of affordable housing and community development transactions, including:

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

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.

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 the District of Columbia providing nonprofit office space and housing for victims of domestic violence.

United States General Services Administration (GSA) negotiation as developer counsel in the negotiation of, and financings under, a development agreement with the GSA for a mixed-use 42-acre parcel in Washington, DC.

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.

- 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, 2530 previous participation clearances, 202 project transfers and loan subordinations.

- Lender counsel in a variety of 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 advice 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.

- Special tax counsel for a mixed-use transaction (residential and office uses) involving the syndication of both LIHTCs and HTCs. Syndicator and investor counsel for multiple LIHTC fund transactions, including a guaranteed LIHTC fund transaction utilizing a proprietary GAAP-efficient structure designed by Katten.
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% 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.

- Opportunity Zone counsel for structuring and tax guidance. Provide investor or developer representation and economic development guidance including recent [developer] representation of a complex development. Involved commercial mortgage debt, opportunity zone equity, conventional equity, low income tax credit (LIHTC) equity, Brownfield tax credit equity, tax exempt bonds and commercial mortgage debt in a complicated financing structure.

- Economic development representation of an NBA team in acquiring land ancillary to its arena as part of efforts to help rehabilitate the neighborhood.

- Represent publicly traded investor in entering into a complicated and highly structured commitment to acquire the fee estate in land located less than a mile from the US Capitol in Washington, DC. The property is subject to a ground lease (negotiated by the firm on behalf of the client) with a development venture between a prominent local development company and a major real estate private equity fund management company for the development of a $117 million multifamily apartment building. The project will have 295 market rate units and 20 affordable units.
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Recognitions

- **Chambers USA**
  - Real Estate
    - Nationwide, 2012–2020
    - District of Columbia, 2016–2020
    - Illinois, 2006–2020
    - North Carolina, 2016–2018
  - Real Estate: Finance
    - North Carolina, 2012–2020
  - Real Estate: Mainly Corporate & Finance
    - New York, 2016–2018

- **The Legal 500 United Kingdom**
  - Real Estate
    - Property Finance, 2015–2019

- **The Legal 500 United States**
  - Real Estate and Construction, 2013–2018

- **U.S. News Best Lawyers – “Best Law Firms”**
  - Real Estate Law
    - National, 2011–2020
    - Charlotte, 2011–2020
    - Chicago, 2011–2020
    - Los Angeles, 2011–2020
    - New York, 2011–2020
    - Washington, DC, 2011–2020