

AFFORDABLE HOUSING

Low Income Housing Tax Credit Partnership Litigation



SPOTLIGHT ON: LOW-INCOME HOUSING TAX CREDIT LITIGATION TEAM

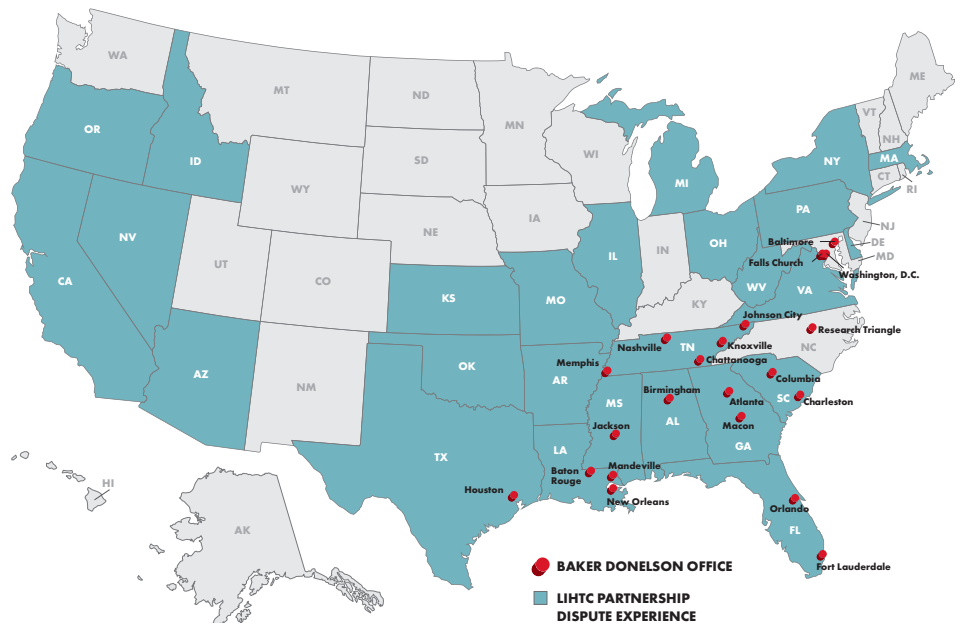
The Low-Income Housing Tax Credit (LIHTC) program provides billions of dollars in federal tax credits to help incentivize the development and rehabilitation of multi-family affordable housing.

Our LIHTC Litigation Team routinely advises LIHTC investors across the country on litigation and other matters affecting their investments. The team has experience representing clients in both state and federal court on all types of litigation, including partnership disputes and other high-stakes disputes. Our objective 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.

AFFORDABLE HOUSING PRACTICE OVERVIEW

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 government entities, for-profit and non-profit developers, owners, lenders, investors, investment bankers, credit enhancers, and contractors.

LIHTC PARTNERSHIP DISPUTES



LIHTC PARTNERSHIP DISPUTES EXPERIENCE



Represented limited partners through trial and obtained judgment removing general partners and affiliated management company from two partnerships in Florida for defaults of partnership agreements.



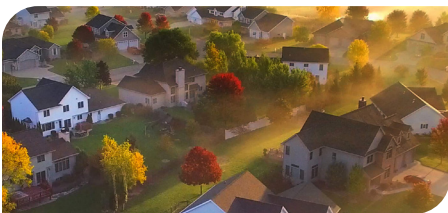
Represented limited partners in out-of-court negotiations following removal of general partner in LIHTC partnership located in Virginia.



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 in the client's favor.



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.



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.



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.



CASE STUDY

TRIAL VICTORY FOR LIHTC INVESTORS

BACKGROUND

The plaintiff, a Tampa-based real estate developer that served as the general partner and property manager for two partnerships, was accused of repeated stealing/misappropriating partnership funds over numerous years, which continued even after the general partners defaulted and were served notice for removal. Our client, the limited partners, also alleged the plaintiff improperly distributed cashflow and failed to provide timely financial and tax reporting.

STRATEGY

The general partners had their own claims against the limited partners, seeking to invalidate the removals and claiming monetary damages. We responded to the general partners' lawsuits with claims seeking to confirm the June 2019 removal of the general partners of the two partnerships.

Prior to trial, the general partners refused to entertain any offer allowing for its departure, and it made nuisance value offers to purchase our client's interest. We rejected those offers.

RESULT

At trial, the court rejected all the plaintiff's claims and removed the general partners from the two partnerships. The court dismissed the general partners' claims with prejudice and entered judgment for the limited partners declaring both general partners removed effective the date of entry of judgment. The court also declared the common property manager terminated effective 30 days from the entry of judgment. The court ruled that the general partners breached the partnership agreements and their fiduciary duties of loyalty, and committed willful/intentional misconduct, malfeasance, and misappropriation of funds, which were all material violations warranting removal. **The court did not find any evidence of improper motive on the part of our client in pursuing the removals. After a December 2021 bench trial, the court issued the trial decisions on April 5, 2022, delivering a big trial win for the limited partners.**

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