

Focus | Construction/Real Property Law

Traditional Financing? Where We're Going, We Don't Need It

BY JULIA BECKMAN
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When we hear “alternative forms of financing,” our first thought is usually that there has to be a reason traditional financing cannot be obtained. We may also assume a project will be more challenging overall, and possibly unsuccessful. While this is sometimes the case, there are some very worthwhile alternative forms of financing available to a variety of borrowers and projects. Tax-credit programs such as the New Markets Tax Credit, the Low-Income Housing Tax Credit and the Historic Tax Credit, and the Property Assessed Clean Energy program, among others, are unique sources of financing for real estate developers and investors. While they can be complex, the benefits are significant, and attorneys should have a basic understanding of these programs.

The New Markets Tax Credit (NMTC) is a federal tax-credit program that is available to borrowers depending on the purpose and location of their project. The program was passed originally as part of the Community Renewal Tax Relief Act

of 2000, and though it is temporary and must be renewed, it has continued to be extremely successful. Some of the benefits of the NMTC include non-conventional financing terms such as lower interest rates, higher loan to value ratios, lower debt service coverage ratios, and low or no origination fees. Typically, these loans are interest-only for the first seven years, the time during which the credit is claimed. The tax credit is equal to 39 percent of the amount of cash investments made as part of the NMTC project that are used to make an investment, known as a Qualified Low-Income Community Investment (QLICI), into a Qualified Active Low-Income Community Business (QALICB), the borrower. To be eligible, the borrower must be in a low-income community or serve a targeted population, both of which are defined by the IRS. Some examples of investments include community facilities operated by non-profits, manufacturing facilities, and other projects that create jobs, provide services to low-income communities, or have beneficial social or environmental impacts.

The Low-Income Housing Tax Credit

(LIHTC) incentivizes the development of affordable rental housing. The available tax credits vary depending on the type of project. The application process is extremely competitive, and the projects are lengthy and often complex, requiring various real estate, legal, and financial professionals. The Texas Department of Housing and Community Affairs administers this program, after the federal government has made allocations to each state annually. The LIHTC program requires properties to meet certain requirements for the rental rates charged to tenants and the income of tenants. In addition to the income-tax benefits that investors receive, the LIHTC program is one of the most successful federal affordable housing programs in history. Nationally, there are approximately 110,000 affordable units created each year through the program, and the projects typically perform well for the investors involved.

The Historic Tax Credit (HTC) is also a federal program, encouraging rehabilitation of properties located within and contributing to a registered historic district or those that are listed on the National Register of Historic Places. The HTC is a 20 percent tax credit for qualified expenditures to rehabilitate an eligible property and can be claimed over a 5-year period. Qualified expenditures include structural work, plumbing, HVAC, and associated construction fees, legal fees, and other construction-related costs that increase the property's basis. Like the other programs, the HTC requires collaboration across multiple specialties, including historic consultants and architects. In addition to the federal program, Texas also has its own program, the Texas Historic

Rehabilitation Tax Credit, which is a 25 percent credit against the Texas Franchise Tax in addition to real-property tax abatement and a sales-tax exemption on labor costs associated with a historic rehabilitation.

Finally, the Property Assessed Clean Energy program (PACE), creates low-cost, long-term loans through voluntary assessments imposed on many types of commercial real property with the consent of existing mortgage lenders. The focus of the program is energy efficiency and water conservation improvements made to existing structures. There are a number of benefits, including the ability to transfer the repayment obligation to the next owner upon a sale of the property. Like many states, Texas has passed an enabling statute that allows local governments to create PACE programs at the city or county level. The Texas PACE Authority (TPA) administers the program for most municipalities in Texas. Beyond the benefits to investors, the process is streamlined by the TPA, and is not quite as complex as the Federal programs described above. The PACE program also creates jobs, saves water and energy, and reduces CO₂ emissions.

While these programs may seem daunting due to their complexity, there are significant benefits for investors and borrowers, and the additional community benefits such as job creation, neighborhood revitalization, and environmental conservation do not typically result from traditional financing projects. **HN**

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How did you first get involved in pro bono?

One of my first exposures to pro bono work was during law school, when I had the opportunity to serve as a student attorney in SMU's Civil Clinic. Through the Clinic, many of us felt for the first time in our young careers that we were making an impact, and the clients were always very appreciative. This experience left an indelible mark on me and served as an early motivator for future community involvement.

What types of cases have you accepted?

Each pro bono case is different. As a litigator, I enjoy the cases that require court room participation. My cases so far have included a variety of civil litigation matters, including issues of family law, adoption proceedings, and real property disputes.

Which clinics have you assisted with?

I have participated in various legal clinics throughout my career. During the COVID-19 pandemic, Fawaz Bham at my firm helped set up an online tool that was used to host virtual intake clinics for DVAP. These virtual clinics became one of my favorite and more rewarding pro bono activities.

Describe your most compelling pro bono case.

A young family was being mistreated by its landlord, and the case ended up in an ugly eviction court proceeding. We represented the family and were able to get the landlord's case thrown out. After the hearing, the family was overjoyed. It is cases like these that make it all worth it.

Why do you do pro bono?

There is a great need in our community for those who need legal assistance but cannot afford it. We have an opportunity as attorneys to provide important services for this community, just by getting involved. There is also something very fulfilling about using your role as an attorney to give back and make an impact without expecting anything in return. This feeling keeps me coming back for more.

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