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Lawyers Find Profits, Stability in Affordable Housing Deals

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Attorney Bob Williams stands near the Northwest Gateway development. He and his team helped secure financing for the Los Angeles project using affordable housing incentives.

LOS ANGELES — When developers of the L.A. Live project needed to secure an additional $400 million loan from Bank of America for the multibillion real estate expansion on the western edge of downtown, Robert Williams, a partner at Sheppard M ullin Richter & Hampton, was more than happy to make the deal happen.

However, much smaller and complex developments are what keep the 56-year-old lawyer invigorated in the firm's real estate practice.

Sit down with the finance expert and you are more likely to hear about the decades he has spent developing his affordable-housing practice at the firm than the billion-dollar projects that dominate the headlines.

"It may be largely overlooked," said Williams, "but the Low Income Housing Tax Credit may be one of the most successful government subsidies ever and has consistently earned bipartisan support."

For instance, Williams negotiated the financing for the $55 million Northwest Gateway apartments. The project on the corner of Second Street and Glendale Boulevard will have 20 percent of its 275 apartments dedicated to lower income housing. To qualify, residents will have to earn less than half the median income for the area.

To pay for the construction of these below market units, Williams negotiated a financing deal that includes state bonds for the project, three different financial partners that broker those bonds, a federal tax credit and partners that sign on to take advantage of that money.

Williams' patience fits his line of work. In the affordable housing world, deals can include half a dozen parties pushing loans, interest, equity, tax credits and costs in countervailing directions.

But for the few law firms that have figured out the maze of the affordable housing sector, the practice can yield consistent profits for clients and lawyers. Navigating the regulations and various investors, said Williams, leads to more billable work hours than a typical market rate deal.

According to Williams and other lawyers in the field, the affordable housing market can be recession-proof and even grow when market-rate real estate flounders.

A small tight-knit community of lawyers negotiate affordable housing deals in California.

According to Lance Bocarsly, 45, a founding partner of Bocarsly Emden Cowan Esmail Parker & Arndt, there are fewer than 10 firms in the state with more than two attorneys dedicated to the practice.

"You see a lot of the same faces in every deal, but there isn't a cookie cutter format for any project; each one is unique," Bocarsly said. "There isn't a deal I do where I don't learn something.

"It's a multidisciplinary practice that touches on real estate, tax partnership law and basic economics and of course construction and developer issues. It's real-world problems that are unique and interesting."

Williams and Bocarsly work together frequently and agree that lawyers with a head for the complex field also can gain personal satisfaction of addressing a real need in the state.

"Knowing that in addition to running a viable practice I would be able to help the community for me was the difference between being able to practice law and not, " said Bocarsly, who has spent the past 20 years in the practice.

He began in the niche real estate area with the same group of attorneys who first worked together at the former Riordan & McKenzie firm, which was later absorbed by Bingham McCutchen, before founding their own firm in 2006.

"Although I would do it, and have done it, pro bono" Williams said, "we run a profitable practice just like every other group at the firm."

Williams' team at Sheppard Mullin includes one other partner and three associates. Through the Los Angeles County Bar Association's Public Counsel Affordable Housing Project he has represented nonprofit developers on a pro bono basis.

Cathy Creswell, deputy director of the California Department of Housing and Community Development, applauds the work of these law firms as affordable housing in the state needs all the advocates it can find.

Affordable Housing Deals Make a Profitable and Stable Niche

"The housing markets are different everywhere, but overall we are seeing more families homeless than previous decades," Creswell said. "Shelter providers are also seeing more and more working people, and so even with a job finding housing can be a problem in the state."

Just to keep up with population growth, she said, there needs to be 200,000 to 220,000 new homes built every year. However , she said, this level has only been achieved twice in the past two decades pushing up market prices and the income level need to avoid becoming homeless.

Creswell credits the work done by lawyers like Bocarsly and Williams and their clients for bringing much needed private sector funding for affordable housing.

However, it is a combination of carrots placed in just the right place by the federal government, according to Williams, that keeps for-profit companies coming back to the affordable housing market.

Since the mid-1990s, there has continued to be increased interest from developers and banks in the affordable housing market.

"Back in 1991 when other firms were laying off lawyers in from their real estate group, we were hiring, we did very well back then," said Bocarsly, who credits that growth with lower land prices at the time, government incentives and a demand for reasonably priced rentals.

The financial institutions that Williams has represented, such as Bank of America, Wells Fargo, Citibank and other major lenders, are enticed into these deals to earn community development credits. Since the late 1970s banks have needed these awards for community reinvestment in order to get governmental approval for major mergers, acquisitions and other purchases regulated by the Securities and Exchange Commission

That's where Bocarsly's developer clients come in.

By investing in affordable housing projects banks earn credits that they need, but take on little risk due to local, state and federal money propping up the developments.

The most common of which is the Low Income Housing Tax Credit.

Congress first passed the tax credit in 1986, and it provides millions in federal tax credits to states every year to build housing for residents who make 60 percent or less of the average median income of their communities.

Each state determines how the money is divvied up. In California a committee awards the money twice a year through a merit-based competition. Points are awarded to developers depending on the number of affordable units their proposals will create, income level of the residents targeted for the new apartments and cost per unit built, among myriad other factors.

This year the state's allotment was $80 million. Projects that receive this money are guaranteed to maintain affordable housing units at the site for a minimum of 55 years. To qualify for this funding, developments must also have a 20 percent minimum of their units dedicated to low-income residents. According to Williams though, that number frequently goes higher to compete for the larger subsidies available.

In 1996, the credit was made permanent and indexed to inflation after a Congressional study revealed that the program was highly successful in drawing in private sector investment into the low-income housing market.

Bocarsly said that prior to the downturn in the market in 1991, he only had a dozen clients in the affordable housing market and nearly all where nonprofit organizations. In the ensuing years he took on around 75 new clients, almost all that were for-profit and nearly all stayed in the affordable market even after the real estate values recovered from that recession.

This new interest increased the number of low-income housing projects being planned and, according to representatives from some nonprofit groups, it also made the federal money more scarce.

Paul Zimmerman is the director of the Southern California Association of Non-Profit Housing, which represents 450 of these community groups.

"Truth be told, if you look at who is getting the allocation there is something amiss," Zimmerman said. "For-profit developers seem to be winning. When it comes down to tie-breakers, the system seems to be biased toward them."

The 23-year veteran of nonprofit housing said that the ability of larger companies to build at a lower cost per unit may be the factor that earns them more of the federal allocations for housing.

However, despite the competition over funds, Zimmerman also sees these companies as necessary partners in the struggle to catch up with demand for more below-market-rate units.

Beyond the need for new affordable housing, much of the current inventory is vanishing. According to a study by the Southern California Association of Governments, 11,000 units of affordable housing have been converted to market-rate condominiums and more than 52,000 units of low-income housing are at-risk of following that lead.

Zimmerman noted that despite all the best efforts of nonprofit and for-profit groups alike, the task ahead is vast. He said in the best of years, Los Angeles has added only around 2,000 new low-income units citywide and that it would need to more than double that number to address this ever-growing deficit.

"We are entering an era of extreme polarization of wealth and every year are losing more and more of the middle class," he said. "This is very evident in the housing market, and eventually this is going to put pressure on the government to increase public policy to address this fallout."