



# Preservation of LIHTC Developments

---

James Grow  
Senior Attorney  
June 2019

## Year 30 (or end of EUP)

- Owner Choice to exit
- Resources for recap -- acquisition and rehab
- Is property worth “preserving”?

## Year 15 (or after, during EUP)

- [Compliance during EUP]
- “Qualified Contracts”
  - Formula price often > mkt value
  - HFA can restrict – what and when?
- Foreclosure
  - Troubled projects
  - Planned FCs
- Premature release by HFA
- Investor impairment of NP ROFR

- **Notice requirements** on exit required by state law?
- **Qualified Contracts**
  - Violation of any state law standards and procedures
  - Does extended use period longer than 30 years constitute a sufficient restriction on QC rights? (*Front St.*, pending D. Haw.)
- **Planned foreclosure**: can secondary debt suffice to terminate LIHTC restrictions?
- **Releases**: violation of Sec. 42's req'd use agreement? Yes -- *Nordbye* (Or. Ct. App. 2011); *Kontur* (N.D. Ohio, pending)
- **NP ROFR**: *HRI* (Mass. SJC); *Sr. Hsg. Ass. Grp.* (W.D. Wa., pending appeal 9<sup>th</sup> Cir.)