



REPRESENTING NON-PROFIT HOUSING DEVELOPERS

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Last year, the Community Development Program (CDP) of the Legal Aid Society provided services to over 150 community-based non-profit organizations in metropolitan Louisville, Kentucky, that include a number of organizations with a focus on low and moderate income housing development. Some of the most important work of the CDP is the representation of local non-profit housing developers. The CDP operates as corporate counsel to these groups providing a wide range of services, representation, advice and training on a variety of issues, including new single-family and multi-unit housing construction, rehabilitation of older homes, advocacy around low income housing issues, and real estate transactions.

These groups vary in origin, structure, and program. They include a subsidiary of a local community ministry, a specialized committee of a neighborhood association, a spin-off of a senior citizen resident organization, and a number of independent community development corporations.

The projects that they have pursued have also been quite varied. As examples, I provided assistance in the creation of a non-profit to provide replacement housing for some families displaced by airport expansion resulting in 18 houses being built on land acquired with a local government grant from the Catholic Archdiocese. Another project involved the acquisition of a large vacant school building in a predominantly African-American neighborhood from the county Board of Education which has been converted to senior citizen rental housing. Several others, including the neighborhood association and the independent developers are now building in-fill housing.

Non-profit housing developers must deal with all of the organizational and structural issues confronting other tax exempt, non-profit groups. If they are new organizations they need to be incorporated, a structure created, including adoption of bylaws, and an application to the IRS for a 501(c)(3) determination needs to be prepared and filed. In addition, there are several ele-

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ments of this process that are specific to non-profit developers. The IRS has long been very cautious about providing 501(c)(3) status to housing developers. As a result there are a complex set of guidelines and tests that must be met in order to receive a 501(c)(3) determination.

It is also critical to the success of the organization to pay attention to the composition of the board of directors. In addition to including representation of the views of the constituency that the group is servicing it is important for the board to include expertise of use in the construction and planning process such as engineers, accountants, retired contractors and real estate agents, carpenters, and plumbers.

The addition of a real estate practice, even one representing non-profits requires both the acquisition of resources and the development of expertise in areas of

the law not normally handled by legal service providers. Books with instructions and advice as well as software providing model contracts for sale, deeds, mortgages, and closing statements, construction contracts, rental agreements and other documents will be needed in the library. Pro bono assistance may be necessary.

The client organizations also can tap in to available resources, particularly financial. Most local governments receive federal funds for housing development. The federal HOME program is one such source. The HOME program specifically requires that 10% of the grant to the local government must go to non-profit developers designated as Community Housing Development Organizations (CHDOs). There is a three-fold benefit to the CHDOs. The first is that it provides interest free loans for construction. Secondly, at the conclusion of the project, a portion of the construction money can be kept by the CHDO as a developer's fee. Finally, the low-income buyers are entitled to receive forgivable second mortgages which significantly bring down both the cost of the house as well as the monthly mortgage payments. A disadvantage in participating in the HOME and similar programs is that the transactions become a lot more complex than run-of-the-mill real estate deals and require knowledge of regulations and requirements not generally known by private practitioners.

A typical project begins with the non-profit reviewing its options and creating a plan of action. This includes assessing the neighborhood's housing stock and identifying available parcels. In some cases empty lots or lots with boarded houses, prime target for new housing, is owned by local government. As in Louisville, many other localities make these lots available, at a minimal price to non-profits, making title acquisition much simpler than if the property needs to be bought from a private land-owner through back-and-forth negotiations. In either event, purchase requires production of legal documents, identifying title problems, and negotiations with the seller.

In urban areas, because of the history of inner-city neighborhoods, prior ownerships, and generations of construction and demolition these properties quite often come with title problems. These can run the gamut including delinquent taxes, liens, various claims on the property, and discrepancies in metes and bounds descriptions.

Vacant inner-city properties often contain serious environmental problems resulting, among other things, from buried remnants of prior demolitions containing lead from lead-based paint, asbestos, and similar con-

Specific legal services provided to eligible organizations include:

- Preparation of articles of incorporation, bylaws, and 501(c)(3) or (4) applications
- Preparation of corporate legal documents
- Advice and training in organizational development
- Assistance with special projects
- Representation before the IRS
Training and advice on federal, state, and local statutory requirements for non-profits such as lobbying rules and restrictions
- Real estate transactions and financing
- Help with zoning issues
- Advice on personnel matters and employment law
- Litigation on utility rate cases

Eligible organizations include community-based groups in low to moderate income areas and groups primarily composed of low-income members or which primarily serve low-income households.

taminants. Non-profits need to conduct activities designed to identify any such problems and they need to be ameliorated before construction can begin.

As the lot is being made ready, construction plans need to be prepared and, if the non-profit does not have the capacity, an RFP drafted and issued to secure the services of a contractor and the preparation and execution of contract.

If at all possible, pre-sale to a qualified buyer is preferred since it avoids the non-profit having a completed house on its hands while the home is being marketed and it provides the buyer with an ability to customize features.

As the house is being built it is essential that the non-profit acquire, through experienced Board members, volunteers, or through paid services, the ability to oversee construction to ensure that it is being built as promised.

In general closings on house sales are time consuming and tedious and require the production of a large number of documents. Since the non-profit is the seller, in almost all cases, the closing will be handled by the attorney representing the bank or mortgage company. Even given this there are several things of which to be aware. The sales may involve additional documents relating to government programs, such as HOME, that

are involved, and, state statute, as is the case in Kentucky, may provide special benefits such as exemption from the real property transfer tax. Many closing attorneys are not familiar with these matters. This means that it is important to receive from the closing attorney a copy of the closing statement prior to the closing to review in order to avoid errors. A little time spent in preparation will go a long way in ensuring that the closing is handled as smoothly as possible. For the buyer this is particularly important since closing are, by their nature, confusing and anxiety producing with many legal documents quickly going from person to person all requiring the buyer's signature.

One of the most difficult aspects of non-profit housing development is marketing. It requires special efforts to reach the target market since they are often not individuals or families in touch with real estate agents or in the mainstream housing market. Marketing partners may include social service organizations, churches and community ministries, banks with active community reinvestment programs, neighborhood associations, and advocacy groups.

The non-profit also needs to be prepared to provide or refer potential buyers to other agencies to familiarize them with the complexities and pitfalls in buying and owning a home. In particular, quite often potential buyers will need to go through credit advice and repair programs in order to make them qualified for a mortgage.

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We anticipate that this will provide better coverage in the community than our former clinics, which were only held three times a year. Attorneys will be able to make a difference without making a commitment to ongoing representation, although, taking matters back to the office for ongoing assistance will certainly be an option. In the event that the program is replicated we will be able to mobilize a large cadre of lawyers that will help a broad array of organizations to receive comprehensive business assistance, including legal help, at one location.

Conclusion

Business lawyers can play an important role in community empowerment and non-profit capacity building. The presence of a pro bono intermediary organization like the CED Pro Bono Project is an element in the success of these efforts. The emphasis on strategic deployment of pro bono resources, community outreach and

Throughout this process legal services staff will be called on to provide advice, assistance in negotiating agreements, and preparation of numbers of required legal documents. This is particularly true in the final step: representing the non-profit in the closing.

For both the members of the non-profit and the legal services staff working on these projects the presentation of the keys to a new home to the buyer makes the efforts worthwhile.

As important as or maybe because these efforts are so important in the lives of our clients they are often fraught with controversy. Efforts to create low income housing, even low rise and scattered sit are regularly met with hostility from other neighborhood residents. This is particularly true of rental housing where anti-tenant biases bubble to the surface. These problems are particularly difficult to deal with because they are rooted in conflicts among neighborhood residents and must be handled delicately.

Work with non-profit housing developers in these circumstances will involve legal services staff in preparing them to meet these challenges and to be active and aggressive advocates for them and the people they serve.

1 Jeffrey Segal has been a staff attorney in the Legal Aid Society's Community Development Program since December 1980. He has worked with many community-based organizations providing a wide range of services to them and has represented many of the areas non-profit housing developers.

case screening, and volunteer support and training are critical to effectively marshalling pro bono resources. We are thankful to our volunteers and fortunate to be working in a bar that has such a long and rich pro bono tradition. We look forward to expanding our community development efforts. We will continue to broker strong community partnerships and provide interesting and meaningful pro bono opportunities for business lawyers in the DC Bar.

1 Deborah Austin is the Director of the Community Economic Development Pro Bono Project a program of the DC Bar Pro Bono Program, where she coordinates the delivery of non-litigation legal assistance to community based non profit organizations. Prior to joining the Bar staff Ms. Austin was the Interim Director of the National Neighborhood Coalition and the Legislative and Policy Director of the National Low Income Housing Coalition.