

Affordable Housing Development



Developing affordable housing is at the core of Klein Hornig’s mission. We pair our experience helping clients to secure and structure financing with the real estate law experience needed to get projects built. We represent developers in all aspects of real estate transactions, from negotiating acquisition terms and managing title, survey, and related diligence prior to construction closing, through permanent loan conversion. Klein Hornig excels in designing and implementing sophisticated financing structures as well as navigating complex real estate issues in connection with affordable housing and community development projects.

Klein Hornig’s understanding of the intricate relationship between real estate, financing, tax, and regulatory issues, coupled with a focused and positive approach to working group dynamics and team leadership, enables us to spot potential issues and friction points early in the transactional process, reconcile conflicting regulatory and underwriting requirements, and build consensus around creative solutions. We efficiently manage everything from small one-off transactions to complex multi-phased and mixed-use projects.

Yes, the foremost goal is to get to closing, but in every one of our transactions the objective is durable relationships and a durable financing structure that preserves these important community assets for the long haul. The real estate structure and venture terms, the investor projections and 704(b) capital account analysis, and the range of loan terms in the debt financing – when properly structured – can all contribute to a project’s long-term success.

Real Estate Transactions

Klein Hornig routinely handles multi-phased projects, projects involving ground leases, and projects that involve combining multiple separately-financed components. Our services may include:

- Advising on land acquisition strategy and navigating state and federal regulations, including the Uniform Relocation Act and National Environmental Protection Act;
- Assisting in obtaining and reviewing subdivision plans, surveys and title insurance policies; identifying and resolving title defects; coordinating lender and investor title and survey review and approval;
- Utilizing condominium, air-right, and/or reciprocal easement regimes as required to tax-efficiently allocate costs and responsibilities among development components or phases; and
- Negotiating equity documents, construction and permanent loan documents, public loan and “soft debt” documents, bond documents, and bond credit-enhancement agreements.

Range of Financing Tools

Our projects use financing from housing, historic, New Markets and other credits, Section 8 rental assistance, tax-exempt and taxable bonds, federal grants and loans, FHA-insured loans, construction loans from local and national banks, credit enhancements from government-sponsored entities, state and local housing trust funds and tax abatement programs, and philanthropic sources.

Mission-Focused Joint Ventures to Leverage Land Value

Local governments, public housing authorities, faith-based institutions, and others who own land well suited for affordable housing sometimes lack the development resources to unlock that value. Klein Hornig has worked with a range of such landowners, or their chosen developer partners, to structure a joint venture that advances the aims of each party: the landowner's desire to maximize sales proceeds while advancing a public or charitable purpose, and the developer's desire to maximize deal feasibility and protect guarantees. Frequently a long-term ground lease will provide the optimal framework for such a balancing act, but such leases require careful attention to tax concerns, lender protections, each party's interests. Particularly with less experienced or business-oriented entities, an education process is necessary, and it can be critical to respect internal processes and cultural sensitivities. Our respect for such joint venture partners, coupled with deep knowledge of land use, financing programs and lender and investor requirements, allows us to structure these ventures well in advance of a closing with confidence that they will be successful.

Pioneering New Financing Structures

Klein Hornig attorneys are proud to have pioneered strategies and solutions that leverage and amplify scarce financing resources for affordable housing. For example, Klein Hornig is recognized as an innovator at capturing the value of "9-4 twinning" structures, which are projects that pair, in companion projects, 9% tax credits and tax-exempt bond financing with 4% tax credits. The use of tax-exempt bond financing minimizes the wasted eligible basis that often occurs with competitive 9% tax credit applications. 9-4 twinned projects must also properly segregate amenities and allocate costs to enhance scoring in a jurisdiction's Qualified Allocation Plan round, adhere to Internal Revenue Code requirements, and ensure these projects remain financeable for investors and lenders. Klein Hornig has counseled developers on best practices to mitigate against the risks of the bond proceeds "tainting" the 9% tax credits and how to effectively separate twinned projects – both existing and new construction – using a range of real estate structures, including air rights parcels, ground leases, and condominium regimes.

Commercial Condominium Practice

Klein Hornig has extensive experience with the creation of commercial condominiums to facilitate developments comprised of projects that must be financed separately due to incompatible financing sources. We have utilized innovative condominium structures to accomplish this in a number of different jurisdictions. Many of these were done in the context of twinned 4% and 9% LIHTC transactions. We have also used condominiums as a tool to facilitate mixed-use developments and developments involving components financed through the New Markets Tax Credit Program and Low-Income Housing Tax Credit Program.

Affordable Homeownership, Community Land Trusts, and Limited Equity Cooperatives

Low-income families share the general aspirations for the stable tenure and wealth-building opportunities of homeownership. We counsel our clients, which range from public and nonprofit sponsors to tenant organizations exercising rights of purchase, on the best organizational model to meet their objectives. In some instances, this means downpayment and interest subsidies applied to conventional homeownership structures. In other instances, it means a community land trust that makes land appreciation a social asset while conveying building ownership to individuals. And in still others, it means a limited-equity cooperative.

Klein Hornig attorneys were early innovators setting up structures allowing cooperatives to be financed with Low-Income Housing Tax Credits and Historic Tax Credits, and we have now helped some of our early clients successfully unwind those structures to achieve direct co-op or other form of resident ownership. We have also worked with HUD 236 and 221(d)(3) co-ops approaching the end of their 40-year mortgage and use restrictions on options for reorganizing. All such projects draw not only on our technical skills, but also on our “soft” skills of listening and educating.

Featured Work



The Pryde

Pennrose

The first designated LGBTQ+-affirming mixed-income senior community in New England, The Pryde involved the historic rehabilitation of the former William Barton Rogers School in the Hyde Park neighborhood of Boston, Massachusetts.

Essential Strengths

- Advising on land acquisition strategy and navigating state and federal regulations, including the Uniform Relocation Act and National Environmental Protection Act;
- Assisting in obtaining and reviewing subdivision plans, surveys, and title insurance policies; evaluating and resolving title defects; coordinating lender and investor title and survey review and approval;
- Negotiating construction and design contracts;
- Utilizing condominium, air-right, and/or reciprocal easement regimes as required to combine development components or phases;
- Negotiating equity documents, construction and permanent loan documents, public loan and “soft debt” documents, bond documents, and bond credit-enhancement agreements; and
- Negotiating funding agreements with other public bodies (State, County, City, etc.).

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