



Financing for Middle-Income Housing

Ballard Spahr is helping set the foundation with public agencies, developers, housing authorities, and financial institutions to create a new asset class to address national and local affordable housing crises.

These types of financings, also called “essential” or “workforce” housing finance, provide affordable rental housing for tenants —among them, nurses, teachers, civil servants, and first responders—who earn too much annually to qualify for traditionally subsidized housing but increasingly can’t afford market-rate housing in the communities they serve.

Our attorneys are experienced in working with joint-powers authorities, developers, and underwriters to create thousands of units of desperately needed multifamily rental properties for middle-income households, which are those households typically earning up to 120 percent of the local median income.

One innovative structure utilizes governmental ownership as a way both to take advantage of tax-exempt debt to finance the transaction, as well as exempt the project from cost prohibitive *ad valorem* property taxes, allowing for the reduction of rents which are still sufficient to pay debt service. For example, in California, joint-powers authorities (JPAs) issue bonds with the agreement of local governments that join as members, and use the proceeds to purchase an existing property, as well as establish debt service, operating, and capital reserves. The ownership by the JPA, as a governmental entity, qualifies the apartment complexes for an *ad valorem* property tax exemption.

Other structures include the use of nonprofit organizations that qualify as exempt from taxation under Section 501(c)(3) of the Internal Revenue Code (the Code). Such 501(c)(3) entities can construct multifamily rental housing as described in their exemption application to the IRS (Form 1023) as part of their “charitable purposes” without needing to comply with the income restrictions of Section 142(d) of the Code (with some exceptions). Additionally, certain transactions also can be completed under the safe harbor of IRS Rev.Proc. 96-32 where up to 25 percent of the units can be market rate units but at least 75 percent of the units must be rented to tenants who earn no more than 80 percent of area median income, with certain additional requirements.

Ballard Spahr attorneys are at the forefront of the build-out of this innovative asset class. We draw from our attorneys’ vast experience in finance, housing and infrastructure projects to complete transactions under a variety of structures and advance new ones to better serve this growing area of need. And we have the lawyers to handle every aspect of the transaction, including complex real estate and environmental matters.

Our attorneys have closed more than 30 such middle-income housing transactions for the development, purchase, and conversion of multifamily affordable housing properties. Our team has served as underwriter’s counsel and purchaser’s counsel to investment banks and purchasers in the issuance of over \$5.5 billion in bonds utilizing senior, mezzanine, and subordinate structures.

Our middle-income housing transactions have included acquisitions of single assets and multiple assets as part of the same transaction and have included various features including major rehabilitation components, condominium structures, layers of regulatory agreements with local jurisdictions and low-income affordable restrictions, and social bond designations.

Ballard Spahr has one of the premier public finance practices in the country, participating in the issuance of more than \$1 trillion of tax-exempt obligations in all states, the District of Columbia, and American territories. Our lawyers are national leaders in affordable and market-rate multifamily housing development, representing housing authorities, developers, lenders, and servicers across the country. We advise on complex public-private partnerships, corporate governance, leasing, restructurings, and tax. We often are called to guide the purchase or sale of assets and portfolios.

Our work in the affordable housing industry has also included mixed-finance and RAD transactions, regulatory compliance, corporate governance and board issues, and the full complement of construction- and development-related services—land use, property dispositions, entitlement process, contracting, environmental, and litigation, if needed. This breadth of experience fuels our insight into the real-world application of statutory and other requirements for public entities, government housing agencies, housing finance programs, and public-private alliances.

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