

Syndication Attorneys

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More than a law firm.

We help entrepreneurs create
successful investment companies.
That's what keeps our clients coming back.

www.SyndicationAttorneys.com

KIM LISA TAYLOR

Corporate Securities Attorney



- ◆ Founder of Syndication Attorneys, PLLC
- ◆ Former Partner and Co-Founder, 2 prior law firms
- ◆ Real Estate Investor
- ◆ Former HUD Property Inspector
- ◆ Former MF Property Manager

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DISCLAIMER

We are **NOT** your attorneys!

- ◆ Signed fee agreement
- ◆ Understanding of your specific facts

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STATISTICS



>300 offerings



>\$500M raises



>\$1.5B real estate

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WHAT IS A SYNDICATE?



A group organized for a common purpose, a common interest or to carry out a particular business transaction... .

– Black's Law Dictionary, Seventh Edition

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WHAT WE'LL COVER

Securities
exemptions
& disclosure
obligations

Investment
models &
business
structures

Offering
documents
& marketing
strategies

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STEP 1: Understand Securities Laws

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8 STEPS TO A SUCCESSFUL SECURITIES OFFERING

1. Understand how Securities laws apply.
2. Select your Securities exemption.
3. Develop Investor Relationships
4. Determine your business structure.
5. Structure your offering with investors.
6. Prepare the offering package.
7. Set the stage for success.
8. Don't make fatal mistakes.

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SECURITIES LAWS PROTECT THE PUBLIC

- ◆ Require full disclosure of material facts
- ◆ Risks & rewards
- ◆ Deceit, fraud and misrepresentation

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SECURITIES ACT OF 1933

Defined Securities:

- ◆ Notes
- ◆ Investment contracts

*Established that the offer or sale of a
Security must be registered, unless exempt!*

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WHAT'S AN INVESTMENT CONTRACT?

The 4-Prong 'Howey Test'

1. Investment of money
2. In a common enterprise
3. Expectation of profit
4. Solely from the efforts of a promoter

US Supreme Court Case: *SEC v. WJ Howey Co. et al*, 328 US 293 (1946)

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WHAT'S ILLEGAL?

1. Use Interstate Commerce
2. To offer to sell any Security
3. Unless registered with the SEC (or
exempt)

Securities Act, Section 5

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ANTI-FRAUD PROVISIONS

Interstate commerce - Transport or Communication

- ◆ Mail (postal fraud)
- ◆ Telephone
- ◆ Email
- ◆ Internet
- ◆ Driving/Flying across state lines

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ANTI-FRAUD PROVISIONS

Schemes to defraud include:

- ◆ Making untrue statements
- ◆ Omitting material facts
- ◆ Investor damaged as a result

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LEGAL REMEDIES

- ◆ Rescission
- ◆ No SOL

*Barred from using certain exemptions
FOREVER!*

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COURT-IMPOSED REMEDIES

- ◆ Restraining order
- ◆ Preliminary injunction
- ◆ Permanent injunction
- ◆ Disgorge gains
- ◆ Civil penalties
- ◆ Criminal penalties

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SEC ACTIONS – FY 2016



868
Enforcement
Actions



548
entities and
individuals

\$4B in Disgorgement and Penalties!

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COMMON MISCONCEPTIONS

- ◆ Friends and family
- ◆ Exempt
- ◆ Only borrowing from single investors
- ◆ Raising <\$1MM
- ◆ <35 Investors

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3 TYPES OF SECURITIES OFFERINGS

Registered

Exempt

Illegal

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PEOPLE WHO DON'T FOLLOW SECURITIES LAWS

1 Don't know

2 Don't care

3 In denial



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WE WANT YOU TO BE SCARED STRAIGHT !!



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Questions?

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STEP 2: Select Your Securities Exemption

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8 STEPS TO A SUCCESSFUL SECURITIES OFFERING

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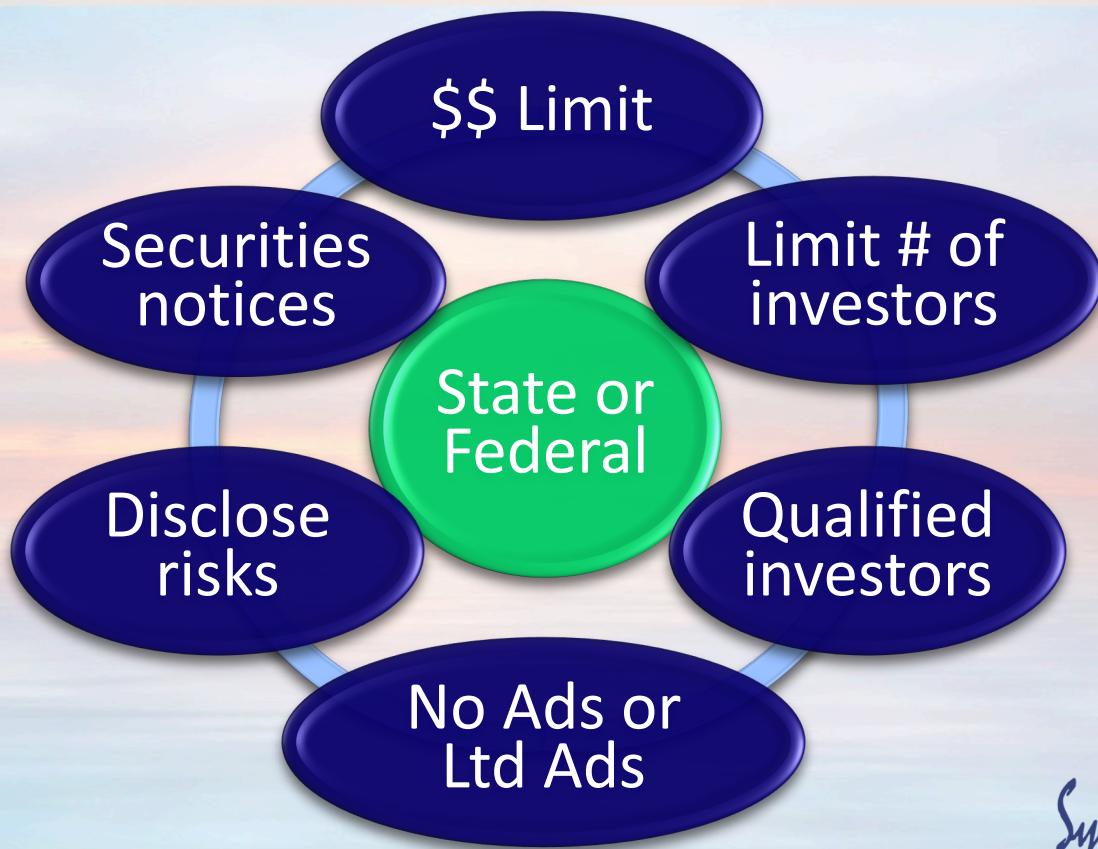
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TYPES OF EXEMPTIONS

- ◆ Intrastate
- ◆ Federal
 - ◆ Reg D, Rule 506
 - ◆ Reg A+
 - ◆ Regulation Crowdfunding
 - ◆ Public Offerings (registered)

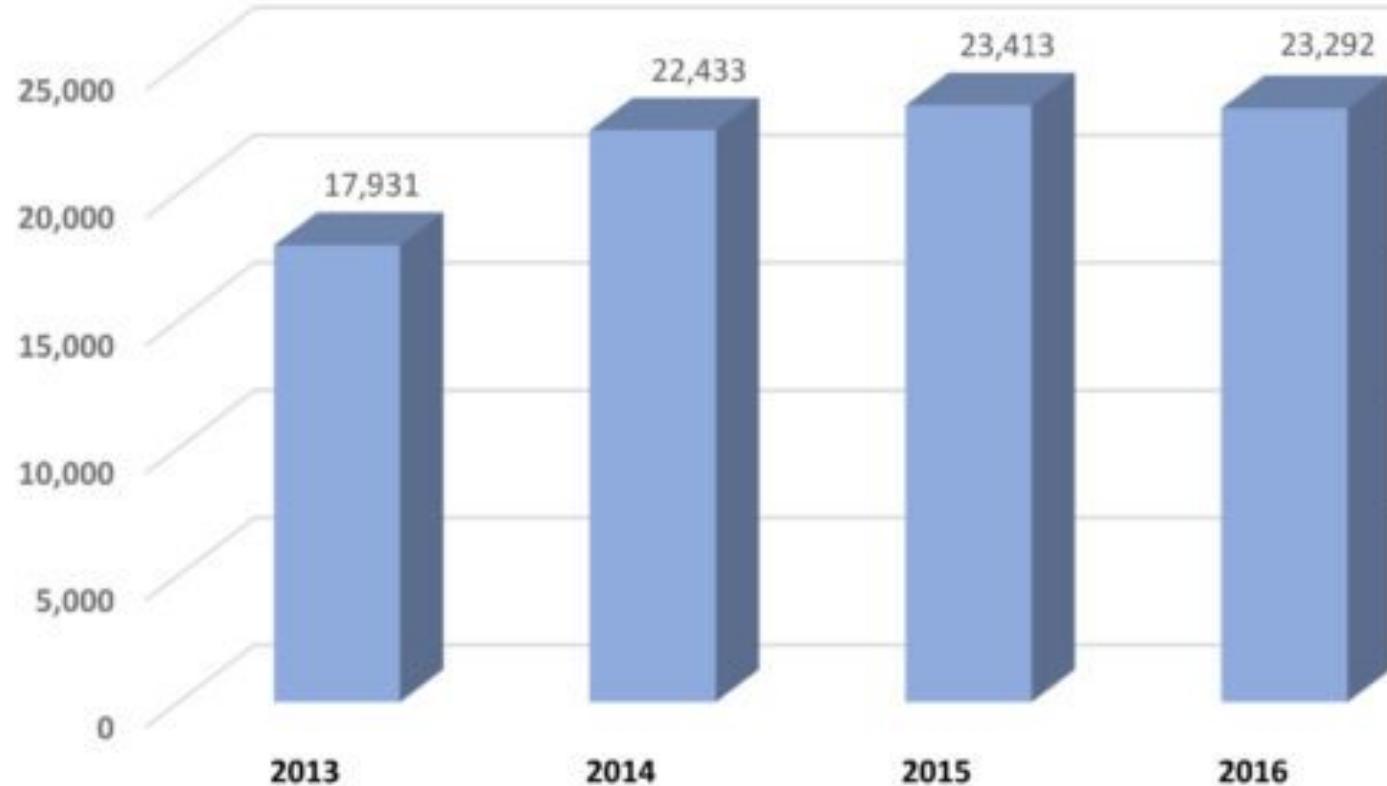
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TYPICAL EXEMPTION RULES

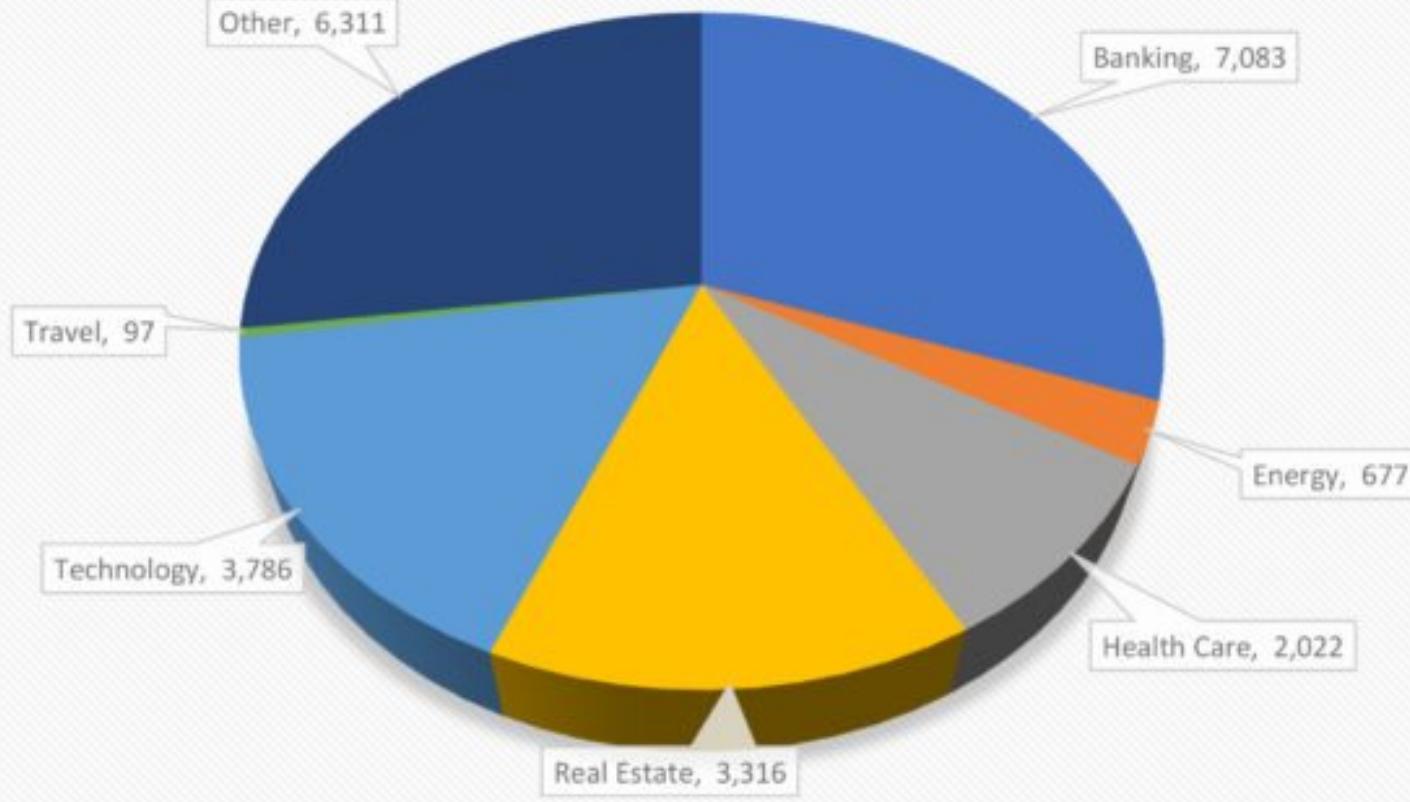


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Number of Reg D Offerings 2013-2016

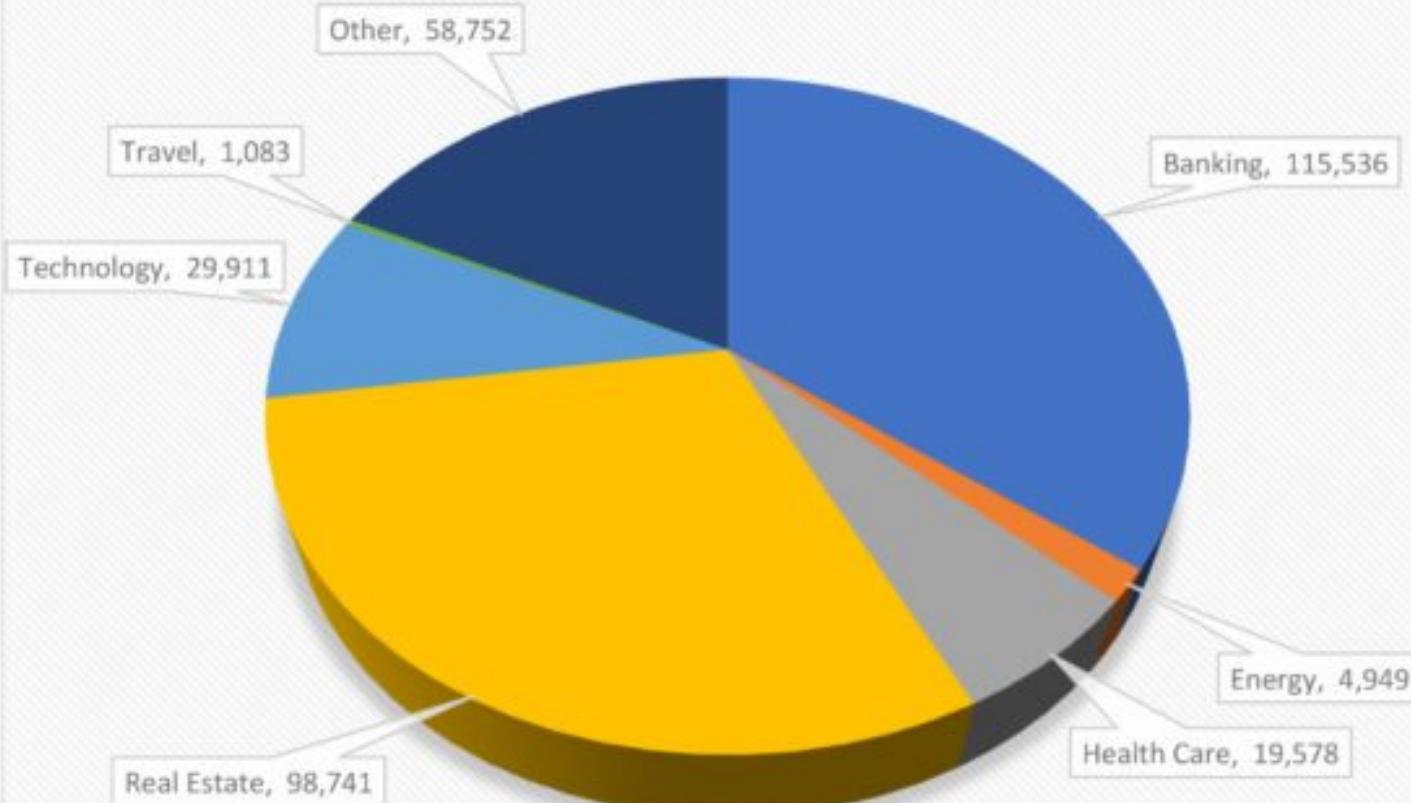


2016 Reg D Number of Offerings by Industry



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2016 Reg D Number of Investors by Industry



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EXEMPTION STATISTICS (2016)

- ◆ 23,292 Reg D Offerings;
- ◆ \$2.05 Trillion Raised (3 Offerings for
>\$1.1 Trillion)
- ◆ **99% Rule 506: Why? State Pre-emption**
- ◆ **97% raised less than \$5M**
- ◆ 20% Foreign (Canada, Cayman Islands,
Israel)

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INVESTOR QUALIFICATIONS



Accredited

- ◆ \$1MM net worth
- ◆ \$200K Income Individual
- ◆ \$300K Income Couple

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INVESTOR QUALIFICATIONS



Sophisticated

- ◆ Sufficient knowledge and experience in financial and business matters to understand merits and risks of the prospective investment

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ORIGINAL RULE – REG D, RULE 506(b)

- ◆ Unlimited \$\$
- ◆ Unlimited accredited / ≤35 Non-Accredited
- ◆ All must be sophisticated
- ◆ PPM & notice filings
- ◆ Pre-empts state laws – notices only
- ◆ No advertising or general solicitation

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RULE 506(b) = ADVERTISING PROHIBITED

- ◆ *Substantive pre-existing relationships before offer*
- ◆ *No offers or sales via advertising or general solicitation*
- ◆ Passage of time
- ◆ What relationship?
- ◆ What's a solicitation?

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IS THIS A PERMISSIBLE AD FOR 506(b)?

Received via Email Blast:

- I am super excited to share a new value-add opportunity in a fantastic sun-belt market. In addition to **19% annualized simple returns, and 9.8% projected annualized cash flow**, this deal has 10 year Fannie Mae financing so **current interest rates are locked in for 10 years!**
- This is a 506b investment **open to accredited AND sophisticated investors.**

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“Crowdfunding” & The JOBS Act

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What is Crowdfunding?



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NON-PROFIT CROWDSOURCING

Crowdsourcing

- ◆ Non-Profit
- ◆ Crowd + Outsourcing
- ◆ Ideas (Wikipedia)
- ◆ Work – Fiver.com
- ◆ Nonprofit
- ◆ Donations – no return
- ◆ Token Gift

Examples



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FOR-PROFIT CROWDFUNDING

Rule 506(c) or Reg A+ Offering

- ◆ Your Website
- ◆ Advertising Platform
 - Crowdstreet.com, Realcrowd.com
- ◆ Sub-Syndicator Model
 - Realty Mogul, iFunding

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CROWDFUNDING

- ◆ Success Requires Extensive Experience
- ◆ Track Record
- ◆ Alternatives are:
 - Friends and Family
 - Pre-existing Relationships
 - Regulation D, Rule 506(b) (No Ads)

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CROWDFUNDING PLATFORMS

- ◆ Very Selective
- ◆ Marketing Fee-based
- ◆ Equity based

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CROWDFUNDING EXEMPTIONS

Title II: Rule 506(c)

Title III: Regulation Crowdfunding

Title IV: Regulation A+

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REG D, RULE 506(c)

- ◆ Unlimited \$\$
- ◆ Accredited investors ONLY
- ◆ Verification Required
- ◆ Pre-empts state laws – notices and fees only
- ◆ *Advertising OK*

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WHO CAN MARKET A RULE 506(c) OFFERING?



You

Broker/
dealers

Platforms

Sub-
Syndicators

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RULE 506(b) v. RULE 506(c)

DESCRIPTION	RULE 506 (b)	RULE 506 (c)
MAX \$\$ AMOUNT	None	None
FILING REQUIRED	Yes	Yes
ACCREDITED	No limit	No limit/Verified
MAX # SOPHISTICATED	35/offering	NONE
DISCLOSURE REQUIRED	Yes	Yes, TBD
ADVERTISING ALLOWED	No	Yes
PRE-EXISTING RELATIONSHIP	Yes	No

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ONE MORE THING...



New Rule
506(d)
disqualified
'bad actors'

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TITLE III: REGULATION CROWDFUNDING

Regulation CF

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REGULATION CROWDFUNDING

- ◆ \$1MM limit/12 months
- ◆ Unlimited # of investors/\$2K or 5% of net worth
- ◆ No pre-qualification for \$2K investment
- ◆ Substantial disclosures
- ◆ Advertising only thru Funding Portal

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THE PROBLEM WITH REG CF

- ◆ All sales through portal
- ◆ Fee-based (like MLS)
- ◆ Must be approved by FINRA and SEC
- ◆ May dictate format & reports
- ◆ Auditing of >\$500K (\approx \$30K-\$40K/year)

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TITLE IV: REGULATION A+

Tier 1 and Tier 2

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REGULATION A+ (TIER 2)

- ◆ Public offering up to \$50MM
- ◆ No investor pre-qualification required
- ◆ Advertising OK
- ◆ Substantial disclosures
- ◆ Audit required & limited ongoing reporting
- ◆ Regulatory pre-approval – 78-120 Days

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REGULATION S

For Non-U.S. Investors

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REGULATION S

- ◆ Non-U.S. Persons only
- ◆ No financial qualifications
- ◆ No U.S. filings or disclosure reqs
- ◆ Must wire funds & sign SubAgmt offshore
- ◆ No ads in U.S.; Ads Ok outside U.S.

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REGULATION S CONSIDERATIONS

- ◆ U.S. Taxes; Structuring
- ◆ Foreign Securities Laws
- ◆ Banking
- ◆ AML
- ◆ Can combine with Reg D Offering

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STEP 3: Investor Communications & Crowdfunding

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8 STEPS TO A SUCCESSFUL SECURITIES OFFERING

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TRADITIONAL FUNDRAISING – 506(b)

- ◆ Meet Investors
- ◆ Create Database/CRM
- ◆ Pre-qualify Investors
- ◆ Passage of Time – Build Relationship
- ◆ Make Offers
- ◆ Close deals

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HOW TO MEET INVESTORS

Chance
Meetings



Networking
Events



Invitations

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GENERIC EDUCATIONAL INFORMATION

Live Event



Webinar



Free Report

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GENERIC EDUCATION TOPICS

Live Event
or Free
Report

- ◆ Emerging Markets
- ◆ Market Cycles
- ◆ Alternatives to Stock Market
- ◆ Why Multi-Family

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WHAT RELATIONSHIP DO YOU NEED?

Citizen VC SEC No-Action Letter

- Membership Website for 506(b) Offerings

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SUBSTANTIVE RELATIONSHIP PER SEC

- Quality of relationship most important factor
- Issuer must evaluate a prospective offeree's financial circumstances and sophistication
- No specific duration of time
- Relationship must predate the Offering

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EVALUATING INVESTOR SUITABILITY

- Pre-Qual Questionnaire
- Follow-up Conversation about:
 - Prior Investing experience
 - Financial goals & strategies
 - Financial status (AI or Sophisticated)
 - Answering questions about you
- Fostering further interaction (articles, drip system, white papers, events)
- Recordkeeping System

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STEP 4: Create Your Company

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8 STEPS TO A SUCCESSFUL SECURITIES OFFERING

1. ▶ Understand how Securities laws apply.
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4. ▶ **Determine your business structure.**
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TENANT-IN-COMMON

Tenant in
Common



- Direct ownership
- 1031 Ok
- Asset Mgmt & TIC Agmt

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Corporation

CORPORATION

- Shares/Stock
- Officers & Directors
- Bylaws & Shareholder Agmts

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LIMITED LIABILITY COMPANY

Limited
Liability
Company



- Units/Members
 - Member-managed OR Manager-managed
 - Operating or Company Agmt

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LIMITED PARTNERSHIP

Limited
Partnership



- LP Interests
 - Managed by General Partner
 - Limited liability for LPs
 - Limited Partnership Agmt

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LLC & LP BENEFITS

- ◆ Operating Agreement or LP Agreement
- ◆ Advantages:
 - ✓ Pass-through tax treatment
 - ✓ Not as formal as a corporation
 - ✓ No taxable event on liquidation
 - ✓ Limited liability for all members/LPs
 - ✓ No limited liability for illegal acts

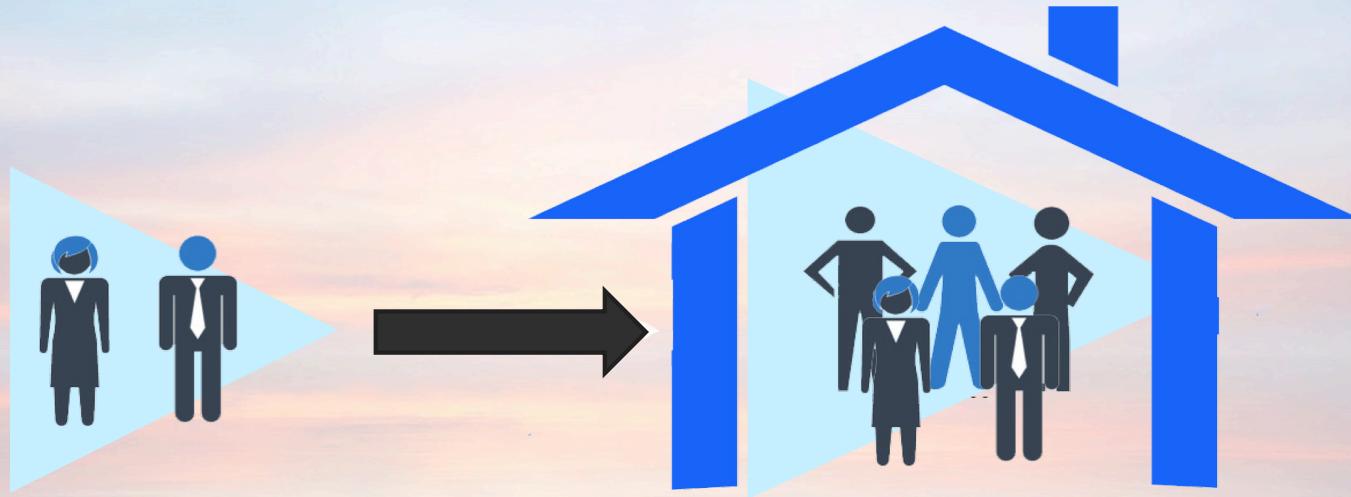
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WHY YOU DON'T WANT TO FORM A REIT

- ◆ Pass-through tax for C Corp
- ◆ At least 100 Investors
- ◆ 75% invested in real estate
- ◆ Must distribute 90% of the profits/year

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2-TIERED SYNDICATION STRUCTURE

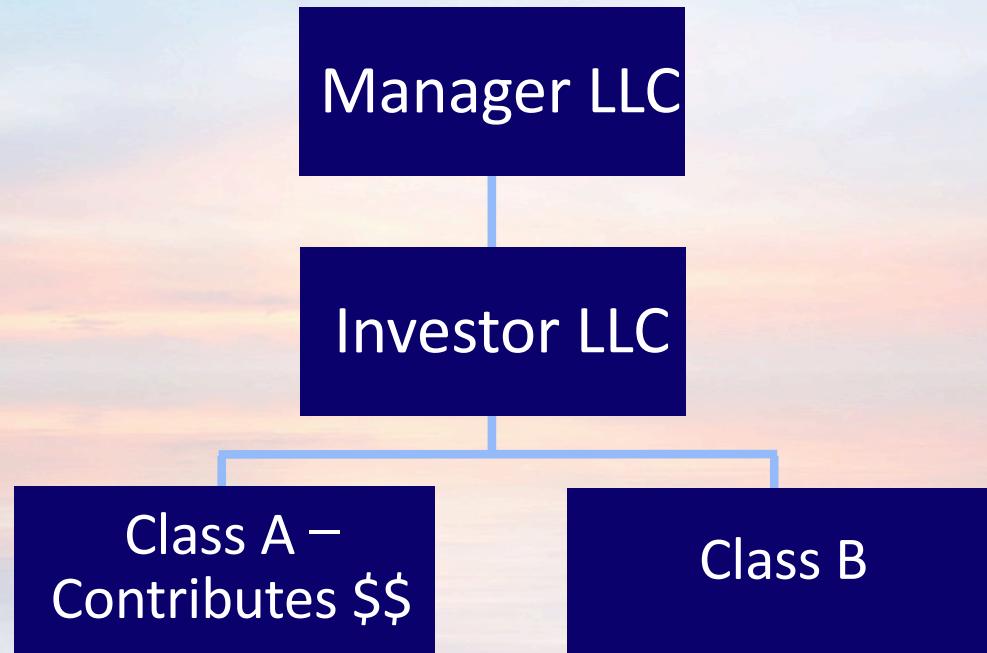


**Manager
Entity (JV)**

**Investor Entity
(Syndicate)**

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SINGLE PROPERTY STRUCTURE



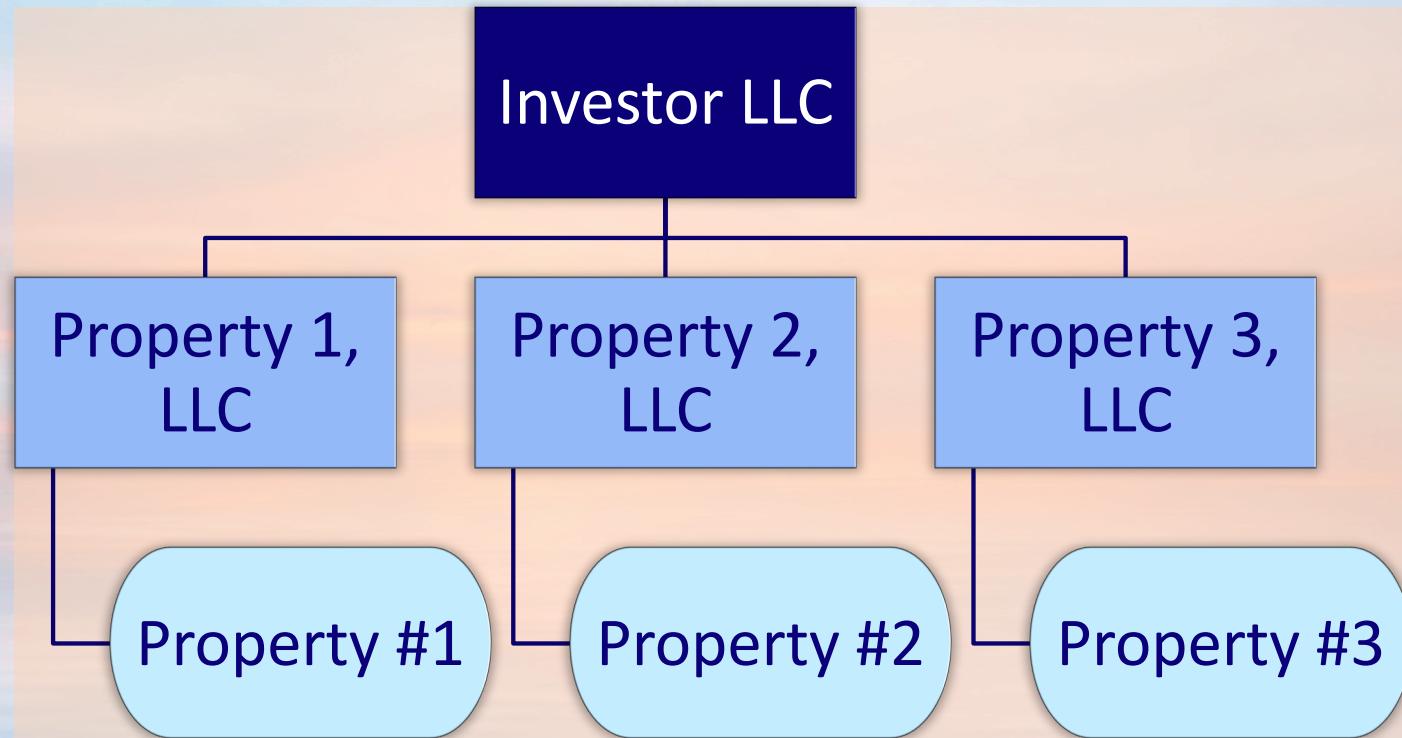
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MANAGER STRUCTURE



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BLIND POOL STRUCTURE



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STEP 5: Structure Your Offering With Investors

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ARE THESE SYNDICATES?

Which of
these are
syndicates?

- Group investment
- Private placement
- Private equity fund
- Debt fund
- Movie Deal

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THREE TYPES OF SYNDICATIONS

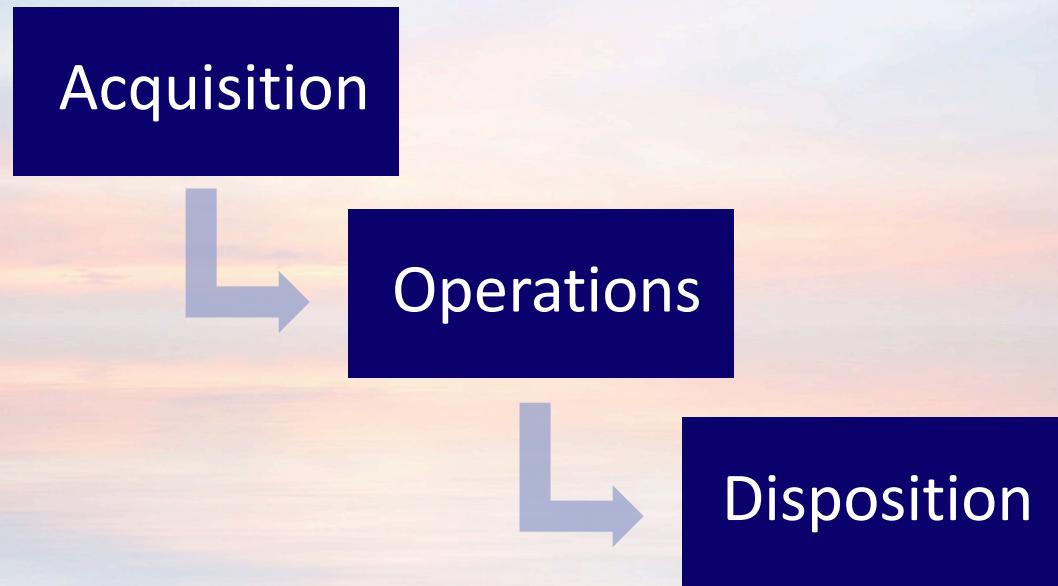
Specified

Semi-specified

Blind pool

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3 PHASES OF A SYNDICATION



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WHAT DO YOU CALL A SYNDICATOR?

- ◆ LLC Manager
- ◆ General Partner
- ◆ Group Sponsor
- ◆ Issuer (of Securities)

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JOB DESCRIPTION

- ◆ Raise Money
- ◆ Find Deals
- ◆ Conduct Due diligence
- ◆ Oversee Property Manager
- ◆ Oversee CPA
- ◆ Communicate with Investors

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SYNDICATOR CHOICES

- ◆ Entities
- ◆ What to Offer Investors
- ◆ What to Keep/Carve-Out
- ◆ Minimum Required Purchase
- ◆ Minimum/Maximum Raise
- ◆ Timing & Duration

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TERMINOLOGY

TERMS EVERY SYNDICATOR
SHOULD KNOW

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CAPITAL CONTRIBUTIONS

The cash investors give a company
in exchange for ownership interests.

- LLC Units or Interests
- LP Interests
- Corporate: _____ or _____

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PERCENTAGE INTERESTS

The Capital Contributions of a single investor compared to the total Capital Contributions of all investors of the same class or of the company as a whole:

- Example: a \$100k investor in a \$1M fund with 1 investor class owns 10% of the investor class
- If the investor class owns 60% of the Company, what is his % Interest in the Company? _____

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DISTRIBUTIONS

Distributions = cash paid to Members
in an LLC

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DISTRIBUTABLE CASH

Cash left after Paying:

- Operating Expenses
- Debt Service
- Operating Capital
- Reserves

Gets distributed to Members

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PREFERRED INTERESTS

Interests in a company whose
Distributions are paid before other,
subordinate classes are paid.

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PREFERRED RETURN

A provision in the Company Agreement that requires the company to pay Preferred Class Members all of the Distributable Cash up to a certain Hurdle Rate (usually expressed as a percentage of Investor Capital Contributions), before subordinate classes receive any Distributions.

- Cumulative v. Noncumulative

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CARRIED INTEREST

The share of profits the Management class receives as compensation for providing services (Non-Capital Contributions) to the company

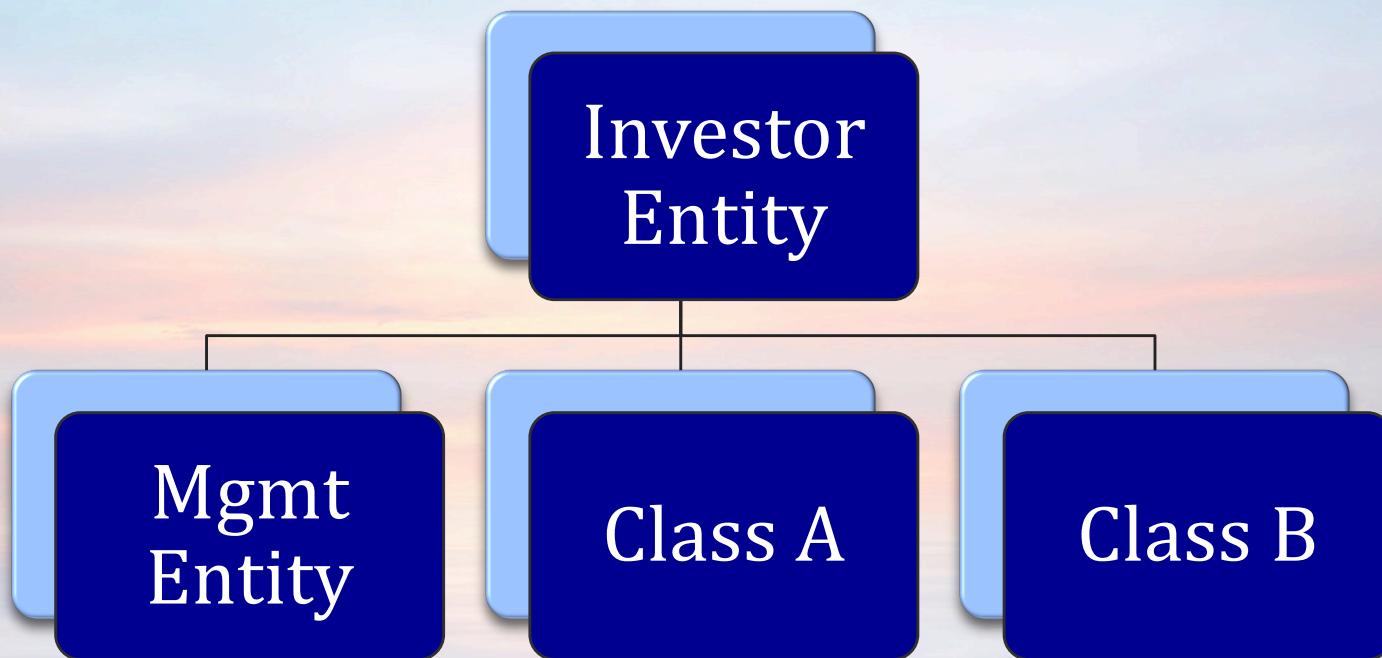
- Usually not paid until the Preferred Return has been achieved for the Investor class
- Class B Interests

CLASS B CATCHUP

- A fixed or pre-determined amount paid to the management class after the Investor class has received it's Preferred Return

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WHO GETS PREFERRED RETURN?



WHO GETS CARRIED INTEREST?

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RETURN OF CAPITAL

Distribution (Refund) of all or a portion
of an Investor's original Capital
Contribution.

- not considered income or capital
gains from the investment

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DISTRIBUTION WATERFALL

The order in which Distributions are made to members,

- considers priority of payment to preferred classes before the Mgmt class participates in profits (*pari-passu*).
- Once a class earns a Distribution, funds are distributed amongst the class members *pro-rata*

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PONZI SCHEME

Fraudulent Investing Scam

- Offers high rates of return
- Little or no risk
- Often “guaranteed” returns

Relies on new investors to pay returns promised
to earlier investors

- Charles Ponzi – 1919 (Intn'l Reply Coupons)

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HOW SYNDICATORS *LEGALLY* EARN MONEY

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HOW SYNDICATORS *LEGALLY* EARN MONEY

- ◆ Acquisition fee (1% to 5% of purchase price)
- ◆ Asset management fee (1% to 2% gross earnings)
- ◆ Refinance fee (1% to 2% of loan)
- ◆ Carried Interest (cash flow) (20% to 50%)
- ◆ Share of sales proceeds (20% to 50%)
- ◆ RE commissions/property management fees

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EXAMPLE STRAIGHT SPLIT WATERFALL

Distributions From Operations:

- ◆ Split Distributable Cash 60/40 between Class A & Class B

Distributions From Capital Transactions:

- ◆ First, to Class A – 100% of their money back; then
- ◆ Remainder split 60/40 between Class A & Class B

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EXAMPLE PREFERRED RETURN WATERFALL

Distributions From Operations:

- ◆ First, to Class A until they receive an 8% annualized Cumulative Preferred Return;
- ◆ Second, to Class B until they receive a cash distribution of 5.33% calculated against the Capital Contributions of Class A
- ◆ Second, remainder split 60/40 between Class A & Class B.

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EXAMPLE PREFERRED RETURN WATERFALL

Distributions From Capital Transactions:

- ◆ First, to Class A - 100% return of capital contributions; then
- ◆ To Class A - arrearages in Preferred Returns; then
- ◆ To Class B – arrearages in Class B Distributions; then
- ◆ Remainder split 60/40 between Class A & Class B.

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Qualified Opportunity Funds

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QUALIFIED OPPORTUNITY ZONES (QOZs)

- ❖ Designated zones in certain geographic areas where by feds and local government
- ❖ Objective: to spur economic growth and development
- ❖ Want investments that will:
 - ✓ develop vacant land or “substantially improve” existing properties
 - ✓ Invest in businesses within these zones

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QUALIFIED OPPORTUNITY FUNDS (QOFs)

- ❖ Investment Fund that will only invest in Opportunity Zones Properties or Businesses
- ❖ Proposed Regulations issued 10/19/18
- ❖ Offers **complete elimination of tax** on capital gains on assets held for 10 years **for investors in a QOF**
- ❖ Requires 90% of assets to be QOZ Properties, or
- ❖ 70% of business investments to be QOZ businesses

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STEP 6: Prepare the Offering Package

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8 STEPS TO A SUCCESSFUL SECURITIES OFFERING

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THE OFFERING PACKAGE

- ✓ Private Placement Memorandum
- ✓ Subscription agreement
- ✓ Investor Agreement
- ✓ Property Information
- ✓ Federal/State Filings



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SECURITIES COMPLIANCE

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PRIVATE PLACEMENT MEMORANDUM

- ◆ Exemption
- ◆ Investor Suitability Requirements
- ◆ Purpose
- ◆ Duration
- ◆ Risks
- ◆ Management Experience

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PRIVATE PLACEMENT MEMORANDUM

- ◆ Minimum Purchase
- ◆ Min/Max Dollar Amount
- ◆ Source & Use of Proceeds
- ◆ Distribution Waterfall
- ◆ Manager Compensation

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PRIVATE PLACEMENT MEMORANDUM

- ◆ Exhibits:
 - ◆ Company Formation Docs
 - ◆ **Investor Agreement**
 - ◆ Investment Summary/Property Package
 - ◆ Due diligence docs

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SUBSCRIPTION AGREEMENT

1. How to Subscribe
2. Investor Qualifications
3. Representations and Warrantees
4. Investor Questionnaire-Sophistication
5. How They will take title
6. Contact Information

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THE INVESTOR AGREEMENT

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11 D'S – YOUR INVESTOR AGREEMENT

1. Decision-making (Manager v. Members)
2. Duration
3. Distribution of Profits/Losses/Depreciation
4. Dissolution
5. Death

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11 D'S – YOUR INVESTOR AGREEMENT

6. Disability
7. Divorce
8. Disassociation
9. Debt
10. Disagreement/Dispute Resolution
11. Disappearance – MOST COMMON!

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PPM EXHIBITS

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PROPERTY INFORMATION PACKAGE

1. General Property Information
2. Sponsors/Promoters
3. Plan of Operations
4. Sources & Uses of Funds
5. Projections/Pro Forma
6. Proposed Exit Strategies
7. Management Team Biographies

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OTHER EXHIBITS

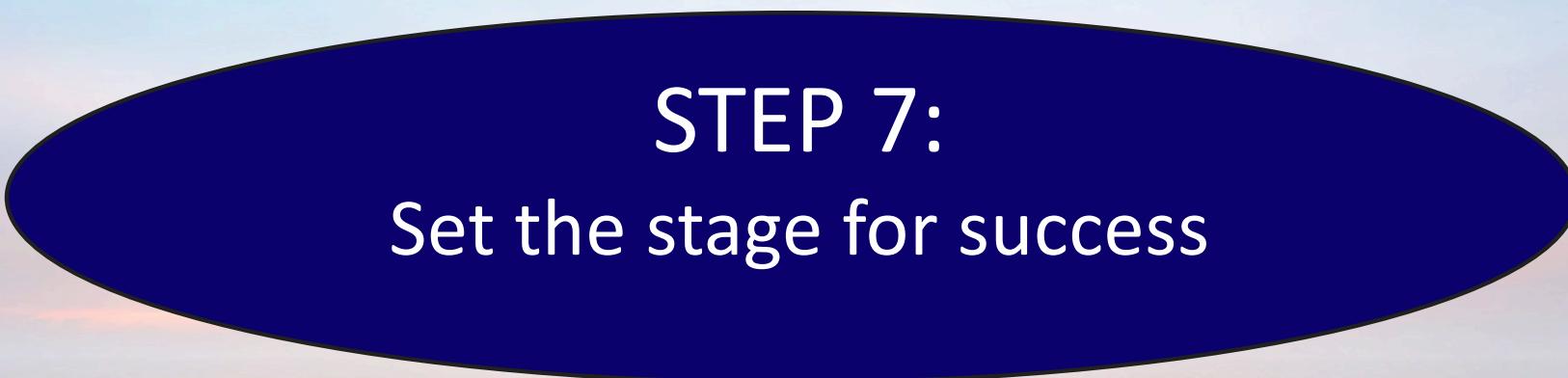
1. Purchase & Sale Agreement
2. Loan Term Sheet
3. Property Inspection Report
4. Title Report/Policy
5. Capital Improvement Budget

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Questions?

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STEP 7: Set the stage for success

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8 STEPS TO A SUCCESSFUL SECURITIES OFFERING

1. Understand how Securities laws apply.
2. Select your Securities exemption.
3. Develop Investor Relationships
4. Determine your business structure.
5. Structure your offering with investors.
6. Prepare the offering package.
7. **Set the stage for success.**
8. Don't make fatal mistakes.

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MINDSET



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TIMING

- ◆ Due Diligence (1-45 days)
- ◆ Legal documents (20-30 days)
- ◆ Loan Processing (45-90 days)
- ◆ Raising Money (45-90 days)
- ◆ Close property (90-120 days)

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FUNDING SOURCES



- ◆ Lender
- ◆ Private Investors
- ◆ Crowdfunding
- ◆ Private Equity/JVs
- ◆ Angel Investor

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MARKETING MATERIALS

Professional Editor/Graphic Designer

- ◆ Marketing Plan
- ◆ Company Brochure
- ◆ Investment Summary
- ◆ Property Information Package
- ◆ Website
- ◆ Newsletter/Drip System
- ◆ CRM

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OUR SERVICES

- ◆ Marketing Materials
- ◆ Securities Offering Documents
- ◆ Joint Ventures (big and small)
- ◆ Company Formation
- ◆ Federal/State Filings
- ◆ 6 months continuing legal support
- ◆ Review contracts with Crowdfunding Platforms & Broker-Dealers

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HOW WE CAN HELP YOU NOW

- ◆ Marketing Systems (Plan, Brochures, Invest Sum)
- ◆ Quickstart Annual Retainer
- ◆ Form Companies
- ◆ Draft Legal Documents
- ◆ Free Info

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Thank you!

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WE CAN HELP YOU BECOME A SUCCESSFUL
SYNDICATOR!

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LEGAL MISTAKES

- ◆ Inexperienced or wrong Securities Attorney
- ◆ Waiting too long to hire Securities Attorney
- ◆ Paying illegal finders fees or commissions
- ◆ Advertising when you shouldn't
- ◆ Not reading your Legal Documents

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PRACTICAL MISTAKES

- ◆ Not getting to know your Investors personally
- ◆ Offering monthly distributions (pay quarterly)
- ◆ Overpromising – creating unrealistic expectations or ‘GUARANTEES’
- ◆ Buying small properties far from home
- ◆ Closing without enough \$\$

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AMATEUR MISTAKES

- ◆ Chasing whales
- ◆ Negotiating different terms with individual investors
- ◆ Giving investors too much control
- ◆ Using wrong terminology (“Partners”)

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FATAL MISTAKES

- ◆ Not having a coach
- ◆ Not following Dave's training
- ◆ Going it alone

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WHAT WILL YOU DO WITH THIS INFORMATION?



Nothing

Get a
coach

Set Up
Marketing
System

Get Deals

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