

**Recovering Your Losses  
From Misguided Real Estate Investments  
...and Recognizing Red Flags Before You Invest**



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**PRESENTED BY**



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## **Resurgence In Real Estate Offerings / Investments**

- **Lack of investor confidence**
  - **Stocks**
  - **Bonds**
  - **Mutual funds**

## **Resurgence In Real Estate Offerings / Investments**

- **Diversification**

## **Resurgence In Real Estate Offerings / Investments**

- **Inflation**

## Typical Entity Structure

- Direct Ownership
- REITS
- Limited Partnership
- LLCs
- TICs

## Securities Law Issues

- LLPs, LLCs, TICs nearly always meet definition of “securities”
  - Thus requiring registration

## Securities Law Issues

- **Exemptions**
  - Promoters take advantage of private offering to exemption “accredited” investors
    - Determined by net worth or income

## Due Diligence Questions

- Normally, promoters of LPs and LLCs prepare a private placement memorandum or offering circular
  - Careful TIC promoter will do same

## Due Diligence Questions

- **First question:**
  - **Do the offering materials of an investment provide complete disclosure of every material fact that might affect an investment decision?**

## Due Diligence Questions

- **Second question:**
  - **Is information provided in a manner that makes it possible to thoroughly evaluate both the economic and tax merits of the offering?**

## **Review / Due Diligence – 10 Steps**

Acknowledgement: Stuart A. Ober, AIFA, CFE

- 1. Investigate principals**
  - Experience**
  - Integrity**
  - Track record**

## **Review / Due Diligence – 10 Steps**

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### **2. Economics of deal**

## **Review / Due Diligence – 10 Steps**

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### **3. Examine the “dirt” and “bricks and sticks”**

## **Review / Due Diligence – 10 Steps**

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### **4. Expenses, fees, commissions**

- Excess reimbursement**
- Skewed distributions**
- Brokerage commissions**

## **Review / Due Diligence – 10 Steps**

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### **4. Expenses, fees, commissions** contd.

- Design / supervision fees
- Guarantee fees
- Administrative fees
- Service fees

## **Review / Due Diligence – 10 Steps**

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### **5. General / limited structure and cash flow**

## **Review / Due Diligence – 10 Steps**

Acknowledgement: Stuart A. Ober, AIFA, CFE

### **6. Tax issues**

## **Review / Due Diligence – 10 Steps**

Acknowledgement: Stuart A. Ober, AIFA, CFE

# 7. Financial viability of principals

## **Review / Due Diligence – 10 Steps**

Acknowledgement: Stuart A. Ober, AIFA, CFE

### **8. Conflicts of interest**

## **Review / Due Diligence – 10 Steps**

Acknowledgement: Stuart A. Ober, AIFA, CFE

### **9. Review pertinent reports**

## **Review / Due Diligence – 10 Steps**

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# 10. Call in the pros

## Duties

- LP partners and LLC members have duties of loyalty and care, including:
  - No self-dealing
  - No competing with the partnership or LLC
  - Not usurping business opportunities
  - Not acting in a grossly negligent manner
  - Not inducing purchasers to invest through fraudulent or misleading offering materials

## **Causes Of Action**

- **Negligence**
- **Breach of Fiduciary Duty**
- **Fraud**
- **Statutory violations of**
  - **RUPA**
  - **ULLCA**

## Remedies

- **Rescission**
  - Of investment, to recover initial investment amount, pre-judgment interest and attorneys' fees
- **Accounting**
- **Injunctive relief**
- **Constructive trust**
- **Money damages**

## Limitations

- **Time to sue**
  - **Varies by state**
  - **Varies by cause of action**
  - **However, typically it is several years**
  - **And, time period typically begins to run when the investor knew or should have known of the wrongdoing**

# Questions



**NOTICE:** The Internal Revenue Service requires us to state that advice contained in this document is not intended or written by the writer to be used, and cannot be used by the reader, for the purpose of avoiding penalties under the Internal Revenue Code.

## **Thank You**

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