

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



Online Seminar  
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**Resurgence In Real Estate  
Offerings / Investments**

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

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**Resurgence In Real Estate  
Offerings / Investments**

- **Diversification**

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**Resurgence In Real Estate Offerings / Investments**

- Inflation

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**Typical Entity Structure**

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

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**Securities Law Issues**

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

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**Securities Law Issues**

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

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**Due Diligence Questions**

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

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**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?

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**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?

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**Review / Due Diligence – 10 Steps**

Acknowledgement: Stuart A. Ober, AIFA, CFE

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

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**Review / Due Diligence – 10 Steps**

Acknowledgement: Stuart A. Ober, AIFA, CFE

- 2. Economics of deal**

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**Review / Due Diligence – 10 Steps**  
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**3. Examine the “dirt” and “bricks and sticks”**

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**4. Expenses, fees, commissions**

- Excess reimbursement
- Skewed distributions
- Brokerage commissions

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

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

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

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**6. Tax issues**

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**7. Financial viability of principals**

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**8. Conflicts of interest**

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**9. Review pertinent reports**

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**10. Call in the pros**

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**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

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**Causes Of Action**

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

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**Remedies**

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

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**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**

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**Questions**  
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**Thank You**

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