



Novogradac 2017

# Credit and Bond Financing for Affordable Housing Conference

# Acq/Rehab Compliance

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# Basics: Acquisition and Rehab Credits

- **Rehabilitation Credits**
  - No federal subsidy – 9% of rehabilitation costs
  - Federal subsidy – 4% of rehabilitation costs
- **Acquisition Credits – 4% of acquisition costs**
  - To receive acquisition credits, the Building must have eligible basis of more than \$0

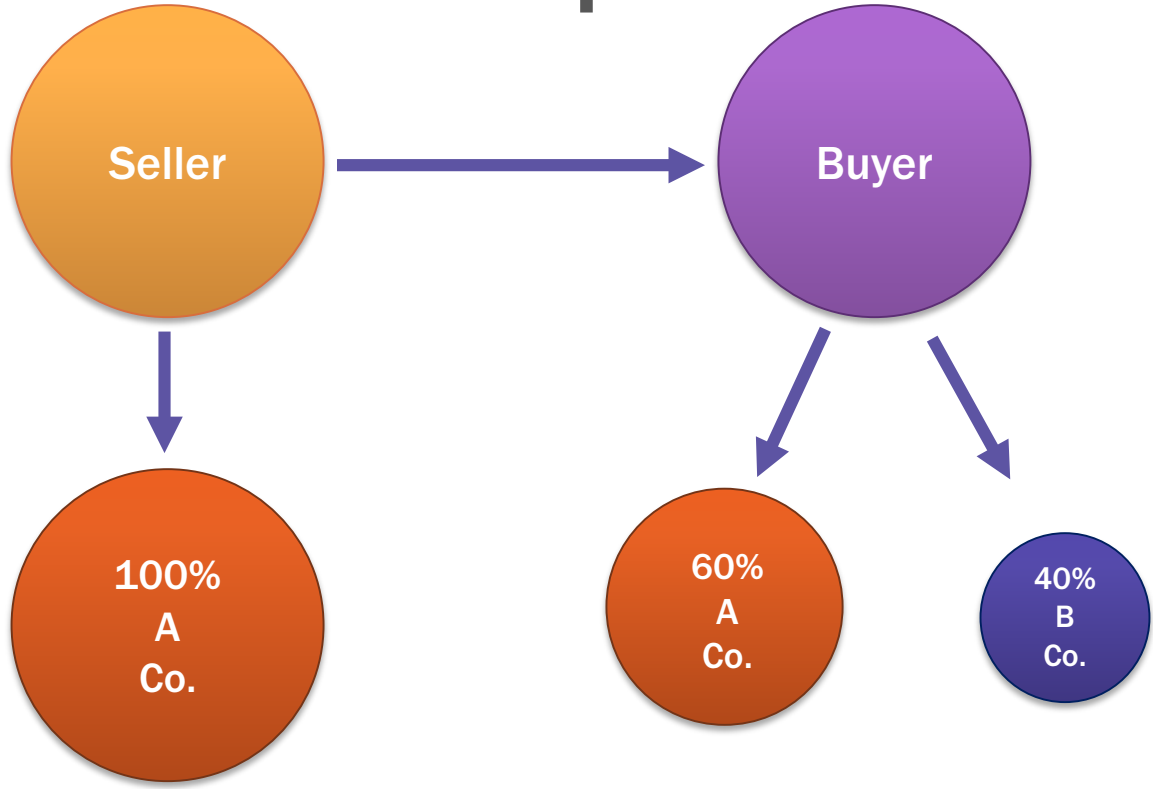
# Qualifying for Acquisition Credits: Section 42 Rules

- **Conditions**
  1. **Acquired by Purchase**

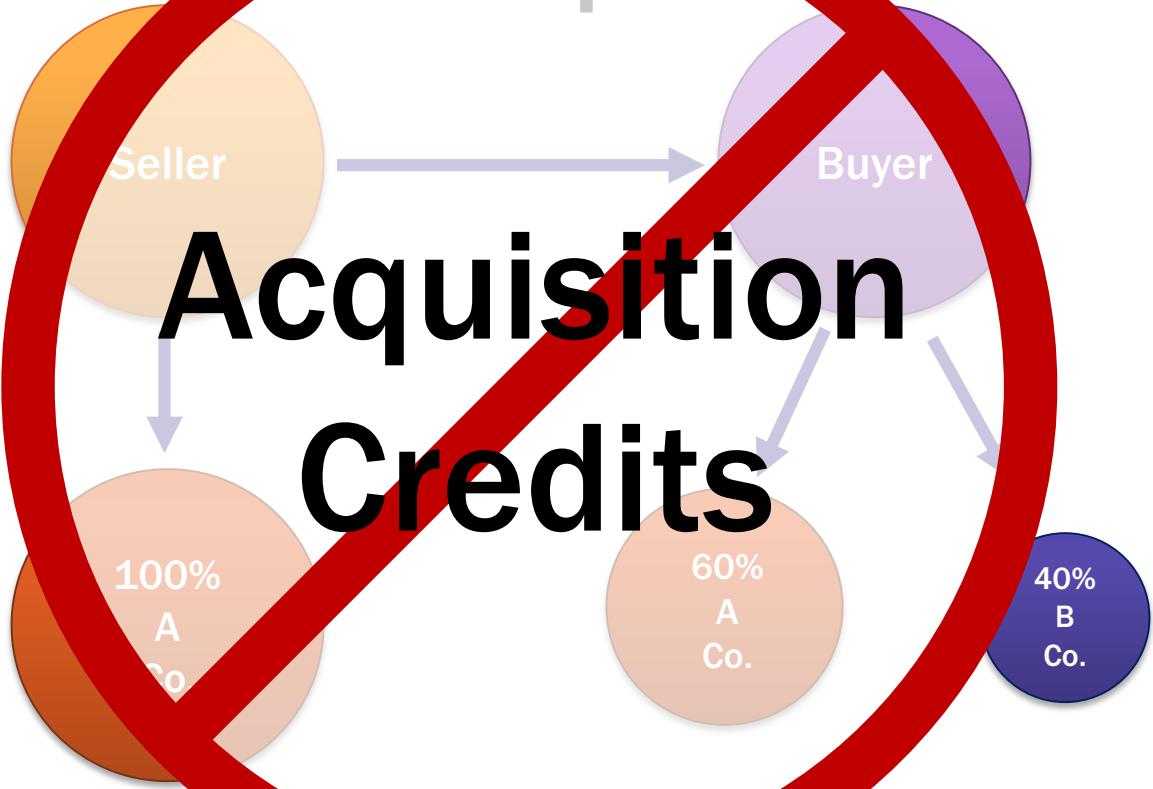
# Rule #1: Building Must be “Acquired by Purchase”

- “Purchase” if the purchaser is not related to the seller at the time of purchase
- Relatedness is based on more than 50% of *common capital or profit interest*
- If the buyer is more than 50% related to the seller at the time of purchase, then ***NO ACQUISITION CREDITS***

# Example

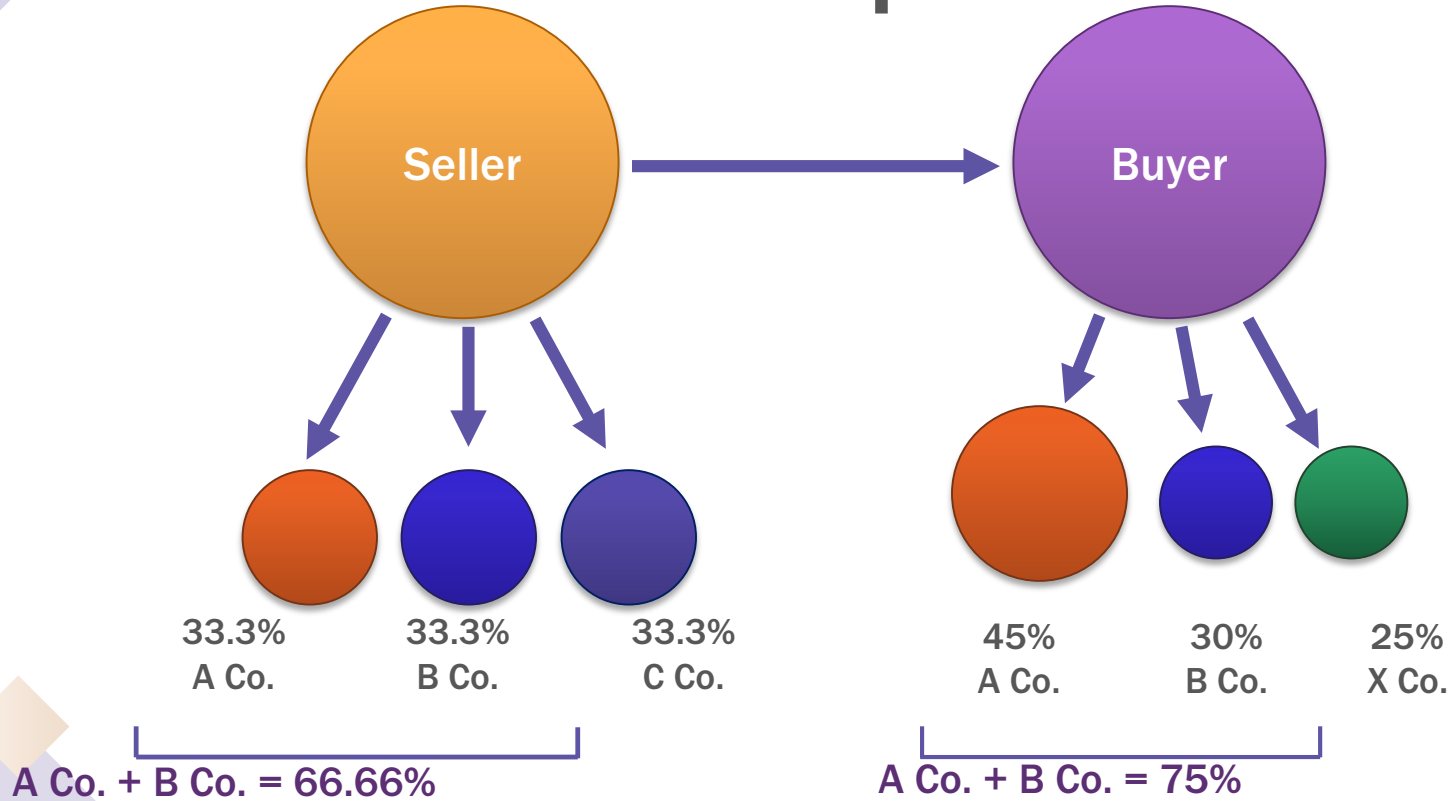


Example



# Acquisition Credits

# Example



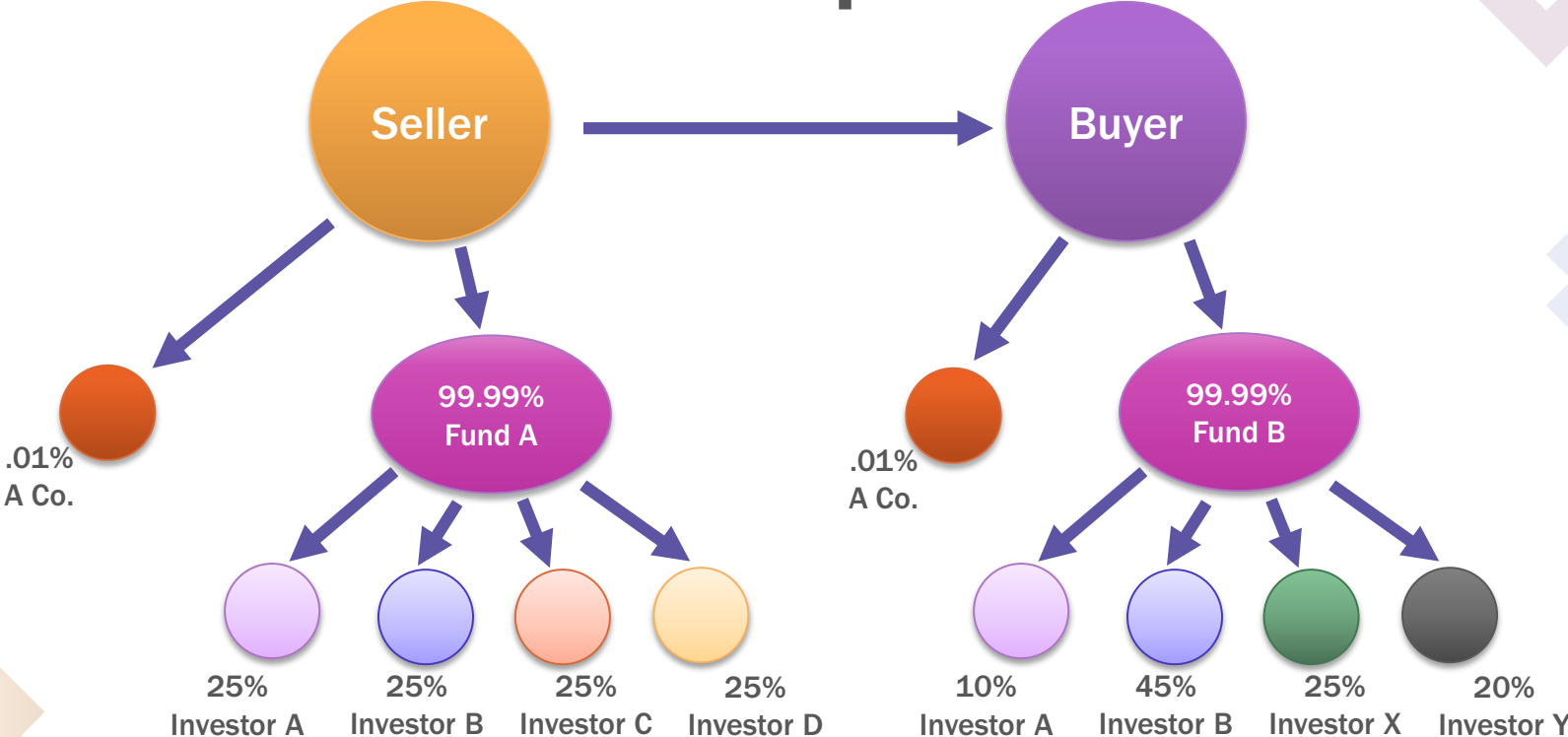


# Example

# Acquisition Credits



# Example



# Example

Seller

Buyer

# Acquisition Credits

.01%  
A Co.

99.99%  
Fund A

.01%  
A Co.

99.99%  
Fund B

25%  
Investor A

Investor B

25%  
Investor C

25%  
Investor D

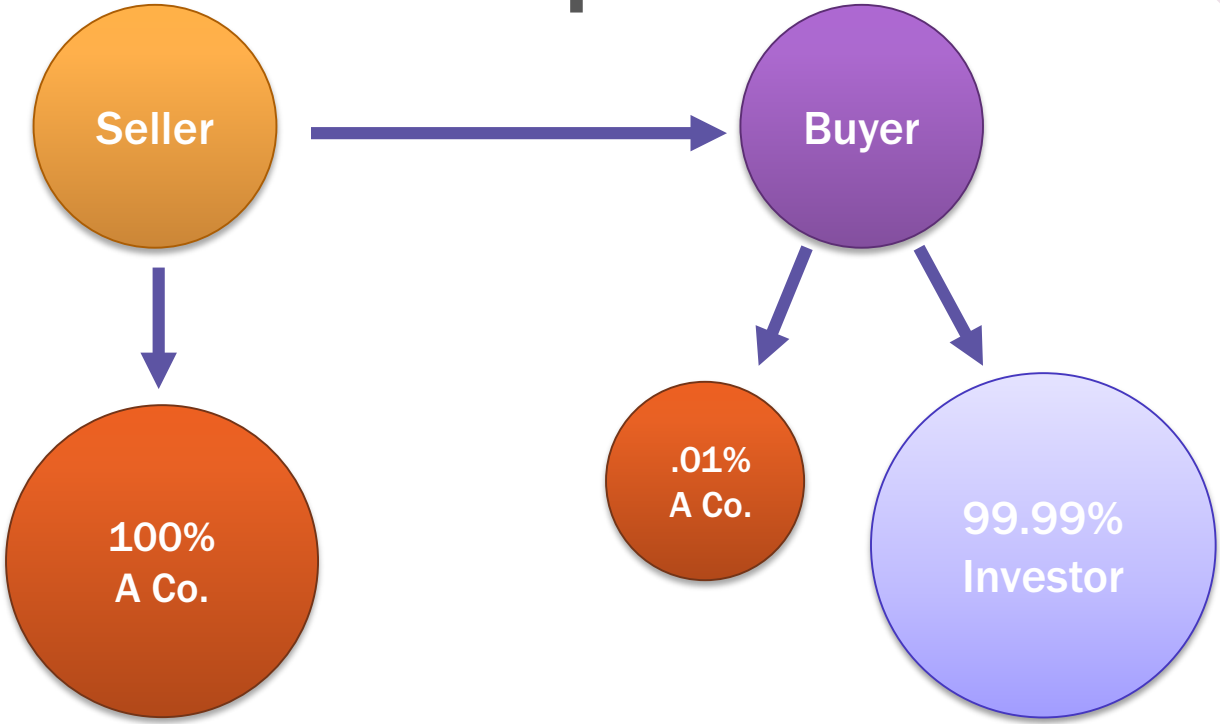
10%  
Investor A

Investor B

25%  
Investor X

20%  
Investor Y

# Example



Example

# Eligible for Acquisition Credits, But...

100%  
A. Co

.01%  
A. Co

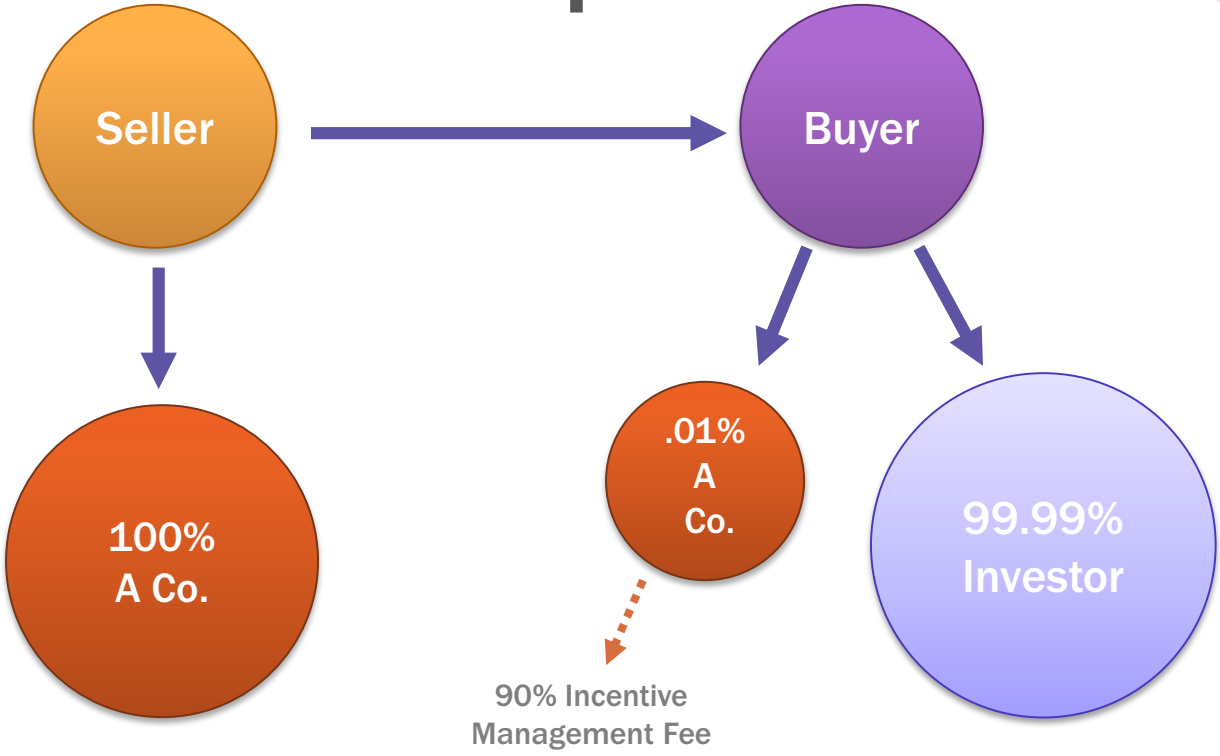
99%  
Investor

# Caveats:

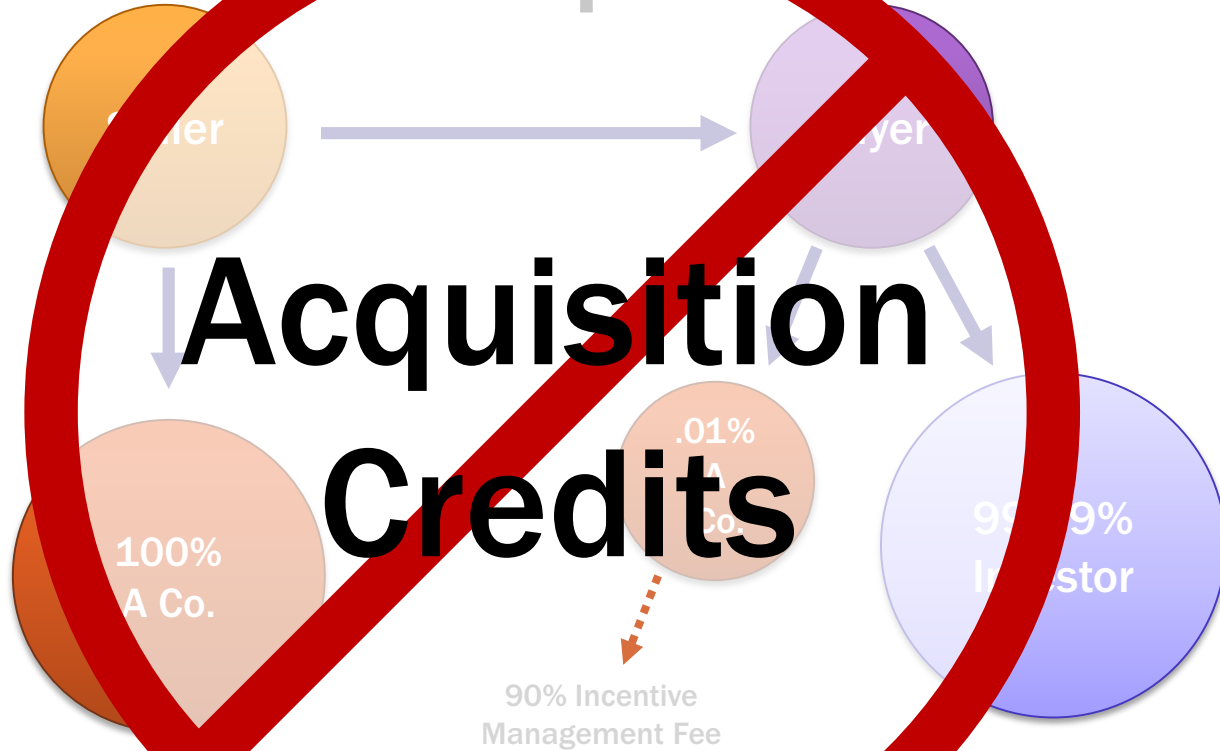
- Even if buyer is 50% or less related to the seller based on entity *ownership* (i.e., capital), analyze “profit interest”
- General rule: the related party’s allocations, distributions, percentage based fees, etc. should be less than 50%.



# Example



Example



# Acquisition Credits



# Qualifying for Acquisition Credits: Section 42 Rules

- **Conditions**
  1. **Acquired by Purchase**
  2. **10 years between acquisition and last PIS**

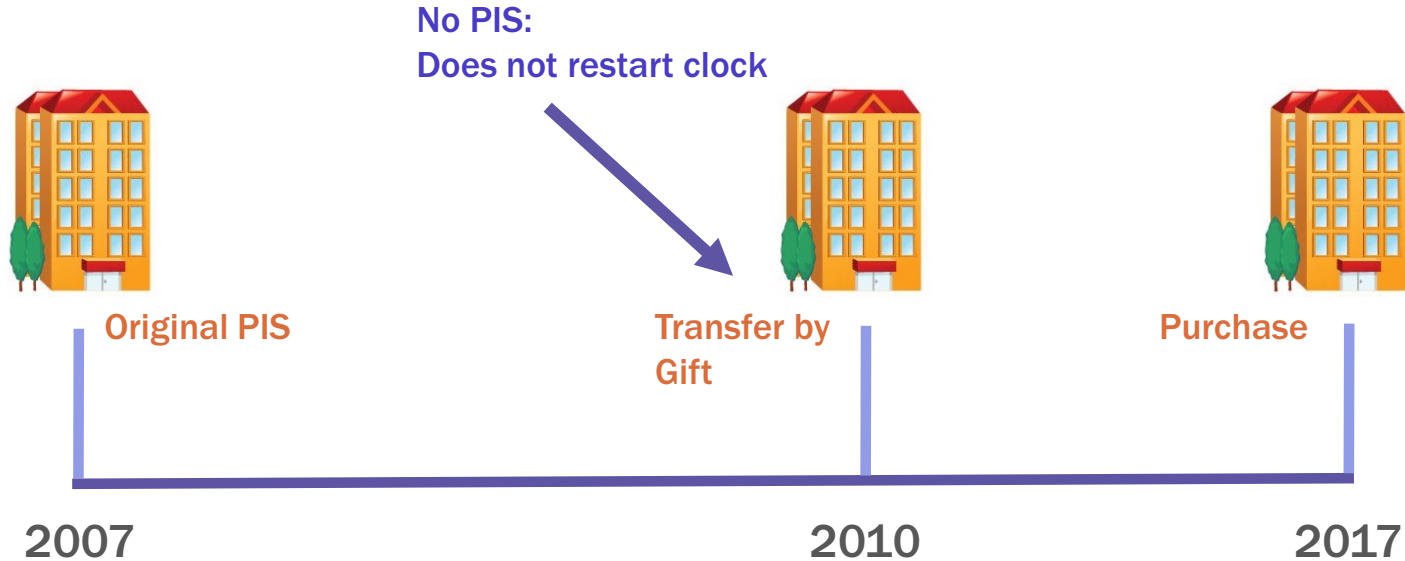
## Rule #2: 10 Years Since Last Placement in Service

- To qualify for acquisition credits, there must be at least **10** years between the date of acquisition and the last PIS
- A property is “placed in service” when it is *ready and available for its intended purpose*

# Exceptions to 10-Year Rule

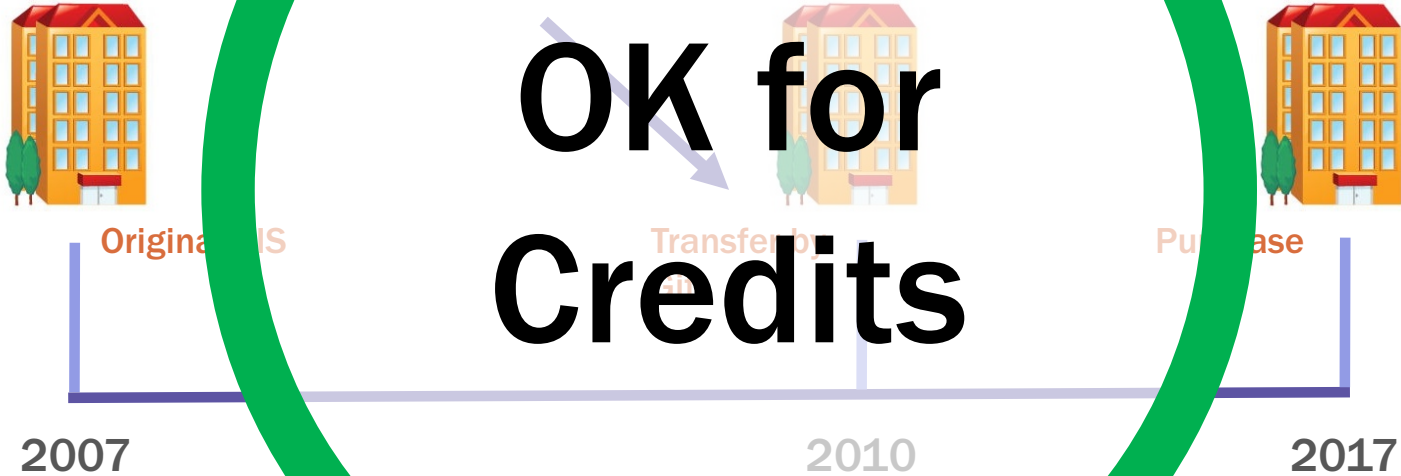
- 5 transfers that do not start a new 10-year period:
  1. Transfer by gift
  2. Transfer by death
  3. Transfer of an owner-occupied single family residence
  4. Transfer via foreclosure\*\*
  5. Transfer to a nonprofit or government unit\*\*

# Example



# Example

No PIS:  
Does not restart clock

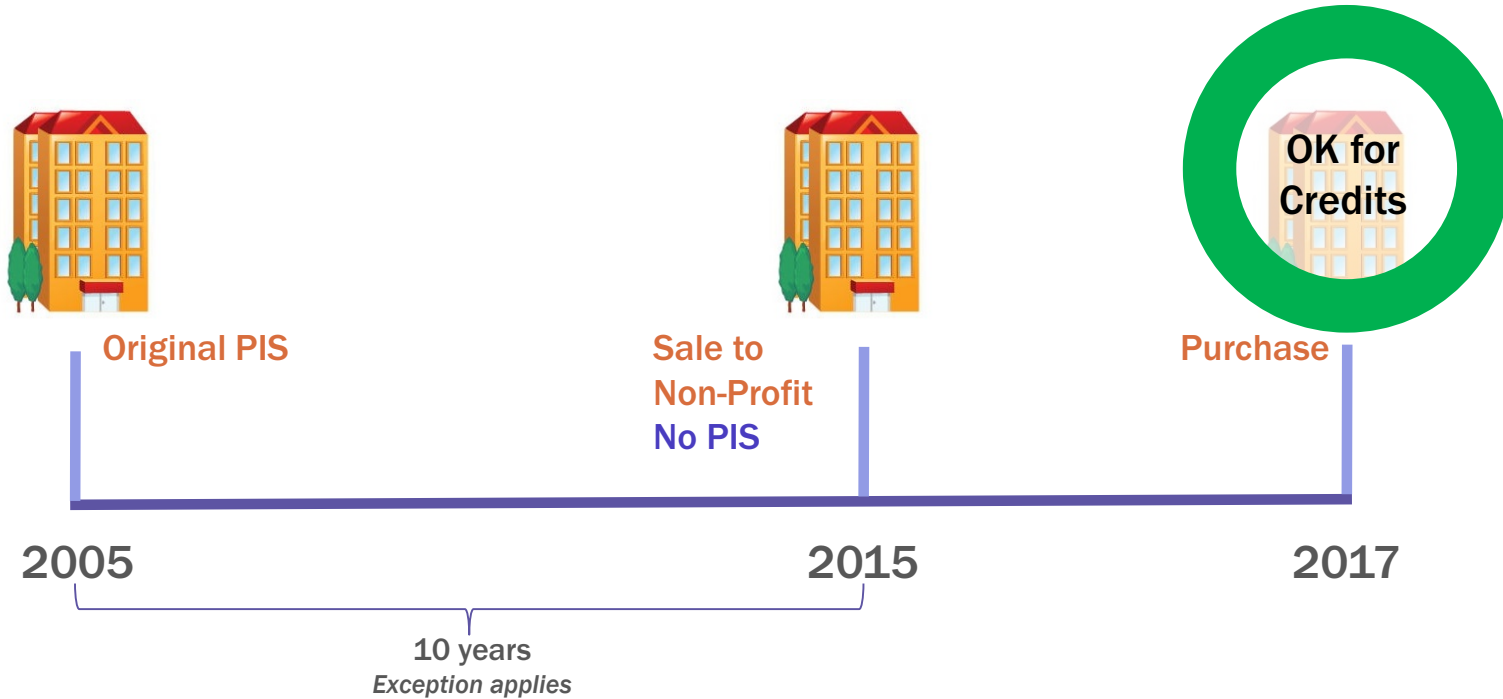


**OK for Credits**

# Example



# Example





# “Super”-Exceptions to the 10-Year Rule



- The 10-year rule does not apply to:
  - Federally- or State-assisted Buildings
  - Buildings acquired from insured depository institutions in default (with IRS approval)
- In those instances, a transfer does not start a new 10-year period *and* the Building is eligible for acquisition credits, even if the prior 10 year period has not expired



# Example: Building with HAP Contract



# Qualifying for Acquisition Credits: Section 42 Rules

1. Acquired by Purchase
2. 10 years between acquisition and last PIS
3. No prior PIS by a related party

# Rule #3: No Prior Placement in Service by a Related Party

- To qualify for acquisition credits, no prior PIS by the tax payer or any related entity
- Timing: Whether a party is related is tested at the last placement in service date
  - If the acquiring entity was not formed at the time of the last PIS, it cannot be related
  - Transfers to nonprofits are not exempt from this rule!

# Qualifying for Acquisition Credits: Section 42 Rules

1. Acquired by Purchase
2. 10 years between acquisition and last PIS
3. No prior PIS by a related party
4. Must be eligible for rehabilitation credits

# Rule #4: Eligible for Rehabilitation Credits

- Expenditures must benefit **1** or more low-income units
- Amount of expenditures over **24-month** period is at least equal to the greater of:
  - 20% of the adjusted basis of the Building; or
  - \$6,000 per unit (adjusted for inflation)

# Special Rules for Resyndications

- If LIHTC previously allocated to a Building, then no acquisition credits until the end of the Compliance Period
- If the investor wants out prior to the end of the Compliance Period, sell their interest and not the Building

# Other Considerations

- Expanded due diligence and costs (reviewing ownership chain, relevant organizational documents, etc. to determine compliance with Section 42)
- Compliance with tenant relocation statutes and regulations
- Zoning considerations (grandfathering)
- Tenant Opportunity to Purchase Act (currently in DC, contemplated in other jurisdictions)



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