

Q&A: Attorney Margaret Hirschak on Tribal Housing as Economic Development

TRIBAL BUSINESS NEWS CONTENT TEAM

Tribal housing is economic development. It's a simple concept, but one that many tribes haven't fully considered. For many council members and tribal officials, housing is public assistance.

But with funding through the Indian Housing Block Grant (IHBG) stagnated for years, some tribes are turning to other federal programs to develop housing for their members and tribal workforce, including casino, healthcare, and hospitality workers.

One increasingly popular program among tribes: **Low-Income Housing Tax Credits (LIHTC)**, which subsidize the acquisition, construction, and rehabilitation of affordable rental housing for low- and moderate-income tenants. Since 1986, LIHTC has helped finance more than 3.5 million affordable homes around the country.

"I think a key thing with LIHTC is looking at housing from a different angle," says Margaret Hirschak (Eastern Shoshone), an attorney at the majority-Indian owned national law firm Rosette LLP. "LIHTC is for affordable housing and it's still providing that much-needed resource to the community, but there is also flexibility in terms of providing housing for tribal workforce, for example, or supportive housing for tribal elders and citizens with special needs."

Tribal Business News spoke with Hirschak about how tribes are using

LIHTC to advance their housing and economic development efforts, as well as some of the best practices and potential pitfalls tribes should know about. This interview has been edited and condensed for clarity and brevity.

As you talk with tribes about housing, where does LIHTC fall into the conversation?

It's still fairly new in Indian Country, and some tribal council members are hesitant about the whole idea of tax credits. They just don't understand how they work, and some have suspicions because they're not used to structuring housing development that way. They're used to housing being a public assistance thing, not an economic development tool.

But housing truly is about both assistance and economic development, right? If you want quality of life for your people, you have to give them a decent place to live, right?

Absolutely. With LIHTC, there is a dual purpose because it is affordable housing — it's got pretty stringent income and rent requirements — and at the same time, the tribes can benefit in a number of ways. They can benefit financially from developer fees, for example, or use the housing in ways that aren't allowed under federal



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grant programs like Indian Housing Block Grant.

Can you expand on that?

Sure. A lot of times tribal housing programs are specific to members of the tribe and specific types of building projects.

With LIHTC, there's more flexibility. These projects can be for tribal workforce. That includes people who aren't tribal members, but work at the tribe's casino or resort or its healthcare facility, for example. Having high-quality, affordable housing can be helpful

when it comes to recruiting and retaining qualified employees.

We're also seeing some tribes that are interested in using LIHTC to fund mixed-use developments that include commercial space or supportive services on-site. Again, there's flexibility in the LIHTC program for tribes that want to look at things from a different angle.

How are you seeing tribes leverage the economic development aspect?

I think LIHTC is encouraging tribes to look at housing from that different perspective. Instead of building through their housing department or TDHE, they're looking at their economic development arm or other third-party developers to build and administer LIHTC projects.

We have worked with tribal clients on implementing that type of scenario, where their economic development arm administers the program and hires a third-party property management firm to oversee the asset, make sure occupancy standards are being met, and provide the necessary information to make sure the tribe stays in compliance and maximize the tax credits.

What type of expectations do tribal leaders need to have with LIHTC?

We always invest time in helping them understand the process, because it is a long process. It's not just an application and a check. Oftentimes, the application is denied the first time you submit. But there's a process for working through that to help you get ap-

proved when you submit a second application.

What's the biggest challenge for tribes in the LIHTC application process?

States issue a Qualified Allocation Plan each year that sets the criteria and grading for how a LIHTC application is evaluated. Sometimes, those criteria don't fit with how tribal communities work when it comes to things like grocery stores or public transportation, for example. The criteria may say, there has to be a grocery store within X number of the feet of the development or a bus stop within X number of feet of the proposed development. That's not how things are in many Native communities.

How do tribes overcome that?

Tribes can lobby for changes. They're not just lobbying for their project, they're lobbying for rules that are fair and reasonable for any tribe that wants to apply for tax credits. In my experience, states are responsive to that.

What else do tribes need to know?

It's a very complicated process just to get the tax credits awarded. That in and of itself is a huge win. There's another side of it in terms of administering the program, and making sure you're in compliance with these extremely complicated IRS regulations.

That's where getting your economic development arm or a property development or management firm involved may make sense. Ultimately, you're dealing with the federal government, so it makes a

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lot of sense to work with experts that can ensure you're in compliance and making the most of the opportunity that LIHTC presents.

For more information about how tribes can use Low-Income Housing Tax Credits, contact Margaret Hirschak at mhirschak@rosettelaw.com or (480) 889-8990.

MARGARET HIRCHAK BIO:

Margaret has practiced Indian law throughout the majority of her eight-year legal career, including advising tribally designated housing entities (TDHEs), tribal housing programs and economic development entities. She has significant experience working with tribes on issues related to Native American Housing Assistance and Self-Determination Act (NAHASDA), as well as LIHTC and other emerging housing programs that offer self-determination, autonomy and control to tribal nations.

Margaret is a descendant of the Eastern Shoshone and graduated with honors in 2012 from the Arizona State University Sandra Day O'Connor College of Law. She is admitted to practice law in the State of Arizona, the San Carlos Apache Tribal Court, Crow Tribal Court and in the State of Montana.