



ROFR and OPTION – A Nonprofit Perspective

- Key ROFR terms to aim for:
 - Try for 5 years from the end of compliance (insist on 2)
 - Define the trigger in the most lenient way
 - Aim for the best ‘last 5 years’ debt’ definition
 - Get the choice to purchase investor interest



ROFR and OPTION – A Nonprofit Perspective

- Key OPTION terms to aim for:
 - Aim for 3 years from end of compliance – (insist on 2)
 - Get the choice to purchase investor interest
 - Accept greater of
 - a. appraised value AS RESTRICTED, or
 - b. Total outstanding debt (period)
 - But try hard for NOT paying exit taxes on top of the total outstanding debt
 - Insist on 90% of net equity value for sponsor
 - This package ensures investor exit for very short money



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- Working at EXIT with inherited docs and partners:
- Scrutinize every clause – assume NOTHING!
- Be very careful about fiduciary duty – avoid contention
- Consider every avenue of exit;
 - ROFR or Option
 - Investor interests or real estate



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- Dilemma of Negative Capital Account
 - Orthodox view: Try for a zero Capital Account
 - How to optimize losses and not suffer at year 15
- Pre-1988 dissolutions/exits
 - Leverage of the General Partner and what it is worth
- Consider Part Gift, Part Sale, or pure gift