

## NYC REIC Legal Entity Proposal For Member Review – June 28, 2016



### Proposed Structure

The NYC REIC Steering Committee engaged a group of legal students from Fordham Law School, who, under the guidance of the NYC REIC legal counsel, researched legal entity options for NYC REIC. After careful review of the students' work, the NYC REIC Steering Committee proposes the following legal entity structure:

- The NYC REIC forms a parent company that is a New York Not-for-Profit Corporation (a NFP), structured as a member-controlled NFP.
- The member-controlled NFP will form limited liability special purpose entities, such as limited liability companies (LLCs), through which members will make investments into each individual project. The special purpose entities will raise capital, and have a direct relationship with the properties.
- A NYC REIC member will hold membership to both the NFP, and the special purpose entity formed for the project(s) they have invested in. The entity will pay dividends to member-investors. The member-controlled NFP will hold broader decision-making powers over the NYC REIC.

### Alternative Structure

The NYC REIC could alternatively incorporate as a cooperative corporation entity under New York State law. However, there are a number of benefits to the NFP/Special Purpose Entity structure.

- The use of special purpose entities allows us to limit the liability of our members to the value of the investments that they put in to a particular project.
- With a NFP, we will be eligible for tax exempt status that will allow us to receive charitable donations. A cooperative corporation may be eligible for charitable tax exempt status, though even if we could get this it would likely be through a slower, work-intensive start-up process.
  - This will allow us to avoid paying taxes, until we have an investment opportunity.
  - Further, charitable tax-exempt entities can choose to fundraise, accessing capital from foundations, institutions, and charitable donations, which could provide a source of operating capital for the NYC REIC during the startup phase of the cooperative.
- A charitable NFP operates for the benefit of the public, and not just for the benefit of its members.

### Adherence to Cooperative Principles

As a member-controlled NFP, the members of the NYC REIC will have final authority over the activities of the cooperative. By carefully drafting the bylaws of the NFP, we can ensure that it will operate in accordance with the cooperative principles and the purpose of the NYC REIC, "to make long-term, stabilizing, and transformative investments for the benefit of our member-owners and our community." The proposed structure is flexible enough to allow us to interact with different communities in a number of different ways, and secure enough to give our member-owners and other investors the confidence to entrust the NYC REIC with their savings.

### Local Control

While LLCs and other special purpose entities have traditionally been used in New York City to obscure the decision making process around real estate transactions, the special purpose entity structure for the NYC REIC could allow us to localize democratic control (in conjunction with other tools for democratizing decision-making power). We will pair our investments with heavy recruitment efforts in the neighborhoods

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where we invest, and could use the special purpose entities to ensure that decisions about each project are made by the subset of the REIC membership that has a direct relationship with the property.

At the same time, the proposed structure will allow us to centralize decisions that are best made on an all-NYC REIC basis (uniting the voices of all communities that are connected to our projects). General assembly (all-member) meetings can function as spaces for discussion and decision-making that impact all members.

### **Can we call ourselves a cooperative?**

The law prevents us from forming a non-profit entity with “cooperative” in the legally-filed name. However, we can form a non-profit entity as “NYC REIC, Inc.” and use “New York City Real Estate Investment Cooperative” on our website, in our public discussions and on our public materials. This is common practice among cooperatives that choose to use the non-profit legal entity.