E-BOOK

Am I Selling a Real Estate Security?

A Definitive Guide to Understanding When a Real Estate Interest is a Security

WEALTHFORGE

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Introduction

The real estate industry adopted the provisions of the JOBS Act, **particularly general solicitation using 506(c)**, earlier and more broadly than nearly any other industry. General solicitation complements the practices of many real estate developers looking for project financing, allowing developers with an online presence to rapidly expand their investor base regardless of personal connections or geographic proximity.

While the market is inundated with individuals and organizations that are extremely sophisticated in real estate development, there is a much broader range of understanding when it comes to raising capital compliantly. Many market participants don't even realize that they are selling or helping to sell securities, as opposed to real estate interests—**and the line is often blurred between the two.**

The distinction, though sometimes difficult to make, is a vitally important one, as securities are subject to regulatory requirements, such as registration with the Securities and Exchange Commission (SEC). So, even if a real estate company acknoweledges it is dealing with securities, it may not fully recognize the additional responsibilities inherent to that activity. Real estate developers, especially those with "financing" or "investor relation" arms, are in danger of inadvertently committing fraudulent behavior. However, the outcome of a hallmark U.S. Supreme Court case provides a test for real estate developers to determine when their activities could be considered securities transactions. This E-book provides an overview of this test as well as the implications of working with securities.

When is a Real Estate Interest a Security?

According to the Securities Act of 1933, a security is *"any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, or investment contract."* [1]

The definition is broad, particularly the term "investment contract," which can be interpreted in many different ways. In 1946, the Supreme Court heard the case SEC v. Howey, concerning the exact definition. The verdict resulted in the description of an investment contract as "a contract, transaction, or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." [2]

Out of that case, the **four-part Howey Test** emerged to determine whether a transaction was an investment contract and, therefore, a security. In order to be considered an investment contract, the following conditions must be met:

- *An investment of money*
- *In a common enterprise*
- *With an expectation of profits*
- *Derived from the efforts of a third party* [3]

All four elements must be present for a transaction to involve a security interest. Still, the Court found that the test "embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."

In practice, the first three qualifications are generally interpreted broadly. If one or more purchaser pools anything of value together with an eye towards a future return, the legal default is that the transaction constitutes a securities purchase. The final determination often hinges on the fourth and final qualification. When a venture's success does not depend on the "entrepreneurial or managerial efforts" of the investor, then the interest sold is a security. [4]

Applying the Howey Test

As a general rule, investments purely in real estate are not deemed a security. But what about when the real estate is purchased by the interest of a limited partnership (LP), general partnership (GP), or limited liability company (LLC)? Despite the Court's guidance in Howey and its continued application today, significant gray areas remain. Each deal requires a "case-by-case analysis into the economic realities of the underlying transaction." [5]

Limited Partnership Interests

Limited partnership interests generally are considered investment contracts and therefore must be registered as securities. This presumption derives from the lack of control attributed to limited partners. While limited partnerships have at least one general partner who controls the company's day-to-day operations, these entity structures also have passive partners called limited partners.

Limited partners contribute capital but have minimal control over daily business decisions or operations. This lack of control establishes the presumption that such interests fall under the purview of investment contracts. To rebut this presumption, a limited partner must show that the economic realities of the partnership permit the limited partner to have significant legal or actual control over management of the partnership. The control must rise to the level of "pervasive control" for a court to readily determine that the interest is not a security. The analysis likely turns on the Partnership Agreement, but the conservative presumption suggests treating all limited partnership interests as securities.

General Partnership Interests

General partnership interests typically do not constitute investment contracts. The distinction lies in the level of control afforded to members of the partnership. Unlike a limited partnership, general partnerships are composed of general partners each of whom possesses equal authority and control (or authority and control in proportion to their contributed capital investments). It makes sense, then, that these ventures do not constitute investment contracts as each general partner possess the opportunity to significantly influence business endeavors, failing the fourth qualification in Howey. A general partner may rebut this presumption, however, if he or she can show: no actual legal control (as exhibited by the Partnership Agreement); no capacity to control due to inexperience or lack of relevant knowledge; or dependence on unique managerial abilities of the promoter or manager causing the general partner to relinquish any actual control.

Limited Liability Company Interests

Limited liability companies present a more challenging question. If the LLC Agreement retains real power for members, then the interest generally cannot constitute an investment contract.

This conclusion may be drawn regardless of whether the member actually exerts his or her control. The question turns on whether the member is capable of meaningfully exercising his or her power. If the LLC agreement allocates specifically clear powers to the members to provide them with access to relevant information and with the means to protect their investments, the presumption arises that such LLC interests are not investment contracts. The presumption may not apply if the seller or the LLC interest presents evidence that the LLC members "were rendered passive investors because they were somehow precluded from exercising their powers of control and supervision." The presumption may also be rebutted by showing that LLC members, through their actions outside of operating agreements, exercised essential managerial efforts.

While various court cases on the issue of whether an LLC interest constituted a security have come to seemingly contradictory conclusions, a recent federal district court case found that an interest is not a security if an LLC member possesses:

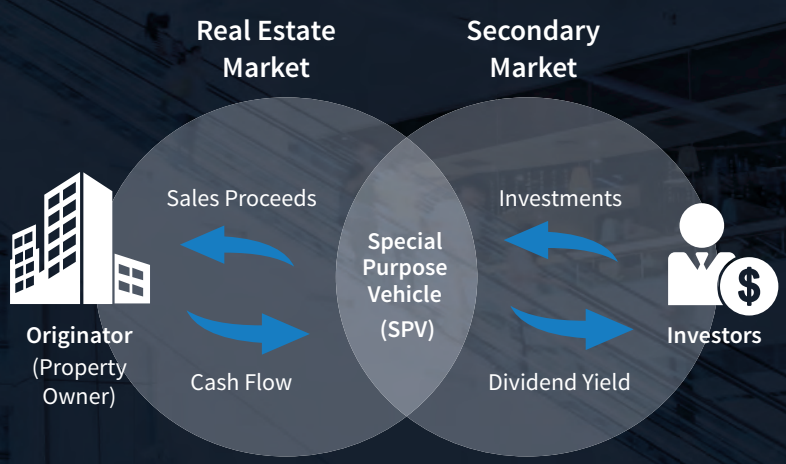
- the right to manage along with other members;
- the right to vote in proportion to his holdings;
- protection from other members acting individually on behalf of the LLC;
- protection from calls for additional capital without approval of two-thirds of the membership interests;
- the right to participate in a detailed cash flow distribution structure; and
- the right to call meetings.

The court found that not only did the investor have the right to take an active role in the LLC, but his efforts had contributed substantially to the success of the venture, and, therefore, could not be those of a passive investor.

What about special purpose vehicles?

The rise of special purpose vehicles (SPVs) further convolutes the distinction of what is, and what isn't, a security. The legal form of an SPV may be a limited partnership, limited liability company, trust, or corporation. Typically, SPVs exhibit the following characteristics: thinly capitalized; possess no independent management or employees; perform administrative functions by a trustee held to specified rules and standards; and make no other decisions.

The SPV is created to facilitate the "pay-through" of the receivable from securitized real estate to investors and to isolate investors from the bankruptcy risks of the originator.



The originator, also often the owner of the property, legally transfers the ownership right of the securitized property to an SPV in return for sale proceeds determined on the basis of an open market valuation. The setting up of an SPV helps to improve the transparency and enhance the credit rating of the issuer. But what effect does this structure have on the property's categorization as a security? Many authorities perceive the SPV process as a loophole capable of severing the label "security" from the property interest. This, however, represents a dangerously misguided interpretation of the current regulatory landscape.

Implications of Classification as a Security

- A person or firm executing a securities transaction must be registered with the SEC as a broker-dealer. Exemptions to this requirement require deliberate case-by-case analysis and, often, solid legal advice.
- Any persons involved in assisting others in making decisions about purchasing securities, may be considered an investment advisor, subject to federal and state registration and regulation.
- Unless a securities issuance falls under a specific exemption, the person or company conducting the offering must register it with the SEC. Each state also has registration requirements and exemptions. Regulation D is a widely used exemption for private securities, but it has specific requirements and pitfalls to navigate such as the issuer's duty to assure the accreditation status of investors.
- Section 17(a) of the Securities Act of 1933 and the related Rule 10b-5 prevent fraud and material misrepresentation in the sale of securities. Below board sales practices are illegal in many circumstances. Still, puffery related to a property's value, potential rent rates, and returns generally used to sell real estate can quickly become fraud to those unfamiliar with securities communications rules. Many SEC actions implicate this key threshold for communicating your capital raise.
- The Investment Company Act of 1940 requires registration for investment companies. One key statutory definition of investment company is *"an issuer that holds itself out as being engaged primarily…in the business of investing, reinvesting, or trading in securities."* Real estate SPVs are often investment companies under this definition. Often, there is an available exception under Sections 3(c)(1) and 3 (c)(7) of the Investment Company Act for "private investment companies."

  Also, REITs often excluded from registration under Section 3(c)5. Still, each of these exemptions has specific requirements. For example, Section 3(c)(1) has a 100-owner limit and Section 3(c)(7) limits owners to "qualified purchasers." [6]

RECENT SEC ACTIONS

In 2017, the SEC brought enforcement actions against individuals participating in the sale of "joint ventures" in oil and gas enterprises, which are often structured similarly to real estate projects.

In ***Sethi Petroleum***, the court found joint venture "units" were investment contracts using a test that looked at the actual power of the investors, the experience and knowledge of the investors, and the investor's dependence on the unique capabilities of Sethi Petroleum. [7] As a result, securities-related fraud provisions applied to the principal of Sethi Petroleum as an individual.

Similarly, in May 2017, the SEC brought action against two people selling interests in a joint venture who were individually liable for selling securities.[8] The investors did not have access to corporate information to exercise their "hollow and illusory" rights to call a meeting and did not have the expertise to make management decisions themselves. Instead of invoking the securities-related fraud provisions, the issue here was whether the principals were acting as unregistered securities brokers. Because the interests were securities, it was overwhelmingly clear based on admissions that they were selling the interests that the principals were acting as unregistered brokers.

If You're Selling Securities, Do You Need to be Registered?

Section 15(a)(1) of the Exchange Act of 1934 makes it unlawful for a broker or dealer to "effect any transactions in, or induce or attempt to induce the purchase or sale of any security" without registering with the SEC and joining FINRA. As a baseline, the law requires you to register if you are a part of securities changing hands or if you help facilitate a securities transaction. The prohibited activities are broad, and regulators enforce the requirement accordingly.

The illegal brokering of private securities is not a new problem. Rather, it is a problem that legal developments—and subsequent market activity, new business models, and novel deal structures—have illuminated across the entire private capital ecosystem. This is particularly true in the real estate industry.

Brokers and dealers are required to register with the SEC and meet other regulatory requirements. A broker is a "person engaged in the business of effecting transactions in securities for the account of others" and a dealer is a "person engaged in the business of buying and selling securities for his own account, through a broker or otherwise."

The registration requirement applies to both entities and individuals. An entity acts through its individual agents, or "associated persons." Often, securities issuers believe that they, and their agents, are exempt simply by the fact they are the entity raising the funds.

Under SEC guidance, a person may need to register as a broker if they do any of the following: [9]

- Act as investment advisors and financial consultants.
- Act as "finders" of investors on behalf of issuers or broker-dealers.
- Operate or control electronic or other platforms to trade securities.
- Market real-estate investment interests that are securities, such as tenancy-in-common interests.
- Act as "placements agents" for private placements of securities.
- Effect securities transactions for the amount of others for a fee, even when those other people are friends or family members.
- Provide support services to registered broker-dealers.

The truth is, the analysis is much more complex, and unregistered activities by an issuer's associated persons often run afoul of the registration requirement in practice. Ignorance can put those associated persons at risk of federal sanctions. Further, the SEC may determine that the issuer is in breach of the registration requirement if the issuer knows about activities of its associated persons, even if the issuer does not know the activities are illegal. Penalties for breach of the registration requirement are severe and include disgorgement of illicit compensation, pre-judgment interest, civil fines, and disqualification from the securities industry.

The Exception to the Rule: The Issuer Exemption

Many securities issuers attempt to avail themselves of Rule 3(a)4-1, a safe harbor afforded under SEC regulation commonly called the issuer exemption. Ambiguities in the rule can cause individuals to falsely believe they fall under this safe harbor. As a result, these individuals choose not to register or affiliate with a registered broker-dealer. This failure to register can open a person to civil and criminal liability as well as SEC investigation and penalties. It remains paramount for individuals to carefully analyze the meaning of the issuer exemption and its implications for registration as a broker-dealer.

An associated person is a partner, officer, director or employee of the issuer and other related corporate entities. To take advantage of the safe harbor, an associated person must satisfy all three preliminary requirements.

Preliminary Requirements

1. To reduce the chance of fraud and abuse of the safe harbor, the Commission requires that the associated person not be subject to a statutory disqualification. These statutory disqualifications apply if (a) a person is expelled or suspended from an entity that regulates securities (e.g. FINRA); (b) the SEC has suspended, revoked or denied the person's registration; or if (c) the person has committed a felony within the last 10 years.

» Although commonly called the issuer exemption, the 3(a)4-1 safe harbor applies specifically to activities of associated persons of an issuer—and not to the issuer itself.

2. The associated person must not be compensated for his participation by the payment of commissions or "other remuneration" based either directly or indirectly on transactions in securities. The Commission determined that a case by case analysis is required to determine whether "a particular compensation arrangement constitutes commissions or 'other remuneration.'" Among the factors considered are:
    - When compensation is determined, is it set up front, before any sale is made or after commencement of the sale?
    - Similarly, when is the associated person paid compensation? Before a transaction is completed regardless of the result; or afterwards based on whether a sale occurs?
    - Was there an increase in an associated salary? What were the circumstances surrounding the increase?
3. The associated person must not, at the time of his participation, be an associated person of a broker or dealer.

Substantive Requirements

In addition to meeting all three preliminary requirements, an associated person must fall under one of the following substantive requirements:

1. **12-month Activity Requirement.** The most common alternative used, the associated person must meet ALL of the following conditions:
   a. The associated person primarily performs, or is intended to primarily perform at the end of the offering, substantial duties for or on behalf of the issuer other than the securities offering. SEC guidance indicates the substantiality of an associated person's duties can be measured in terms of the percentage of time worked on matters not related to securities sales. Generally, if an associated person dedicates more time to the sale of securities during the initial offering of an issuer, he or she would still fall under the safe harbor, if his or her employment following the initial offering is restricted primarily to other duties outside of securities offerings.
   b. The associated person was not a broker or dealer, or an associated person of a broker or dealer, within 12 months.
   c. The associated person does not participate in selling an offering of securities for any issuer more than once every 12 months. The 12-month period begins when an offering ends. This limitation is to prevent associated persons from continuously selling securities, thus acting as a broker-dealer, without registering and complying with broker-dealer laws.

By way of example, an associated person that assists in an offering in May 2017 that closes in June 2017 may not, under Rule 3a4-1, assist in another offering until June 2018. If the associated person wants to make another offer in May 2018, he or she must register as a broker (unless his or her activities fall under another exemption).

Many issuers believe that their associated persons fall under the 12-month "Activity Requirement" and do not register their associated person, or themselves, as broker-dealers. For funds and real estate issuers selling LP interests, the amount of time they may wish to offer their security can vary greatly. The Commission believes that an issuer who regularly engages in the sale of securities "such as promoters of limited partnership interests," is required to register as a broker-dealer.

A COMMON EXAMPLE

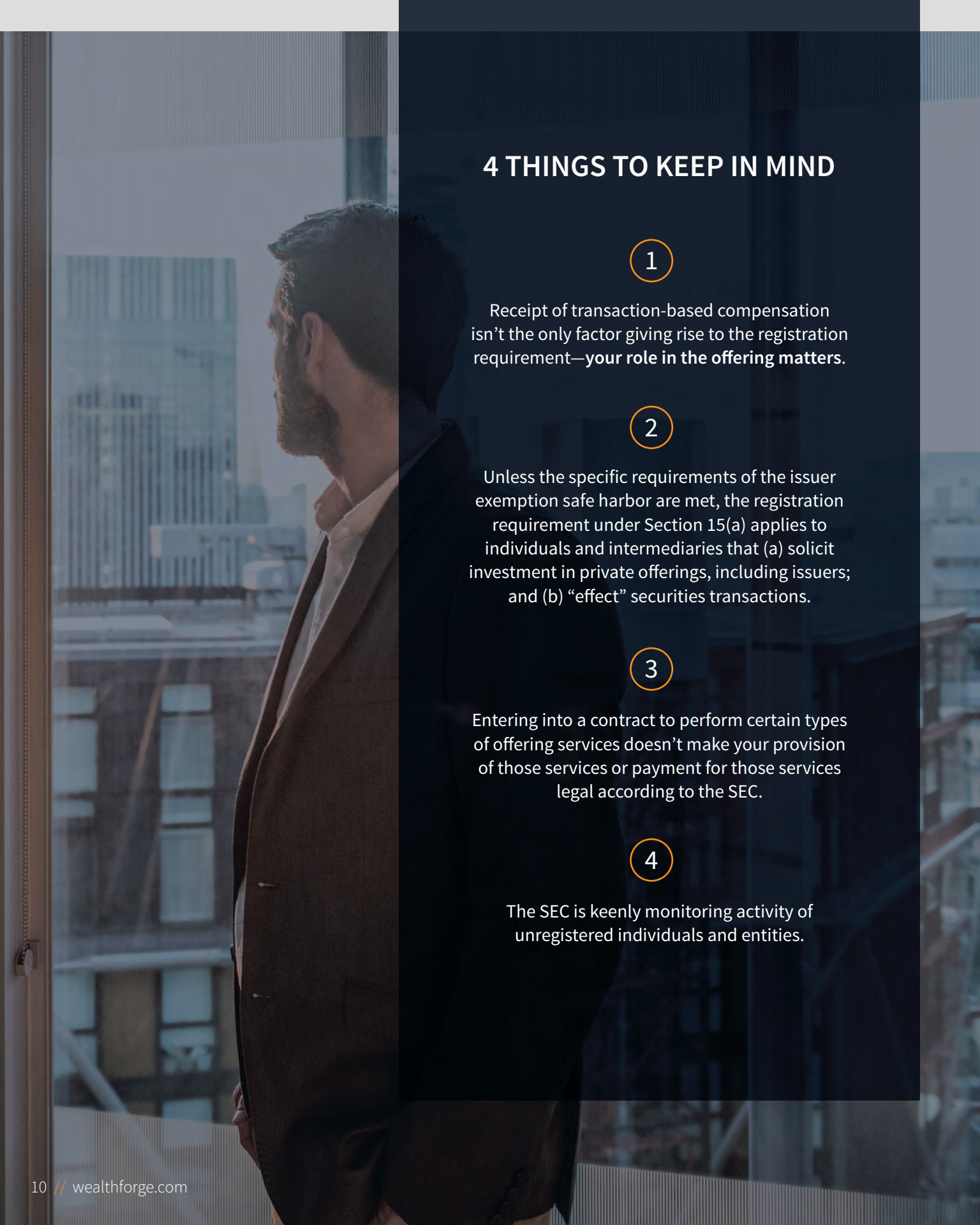
A real estate development company creates SPVs to invest in specific projects and acts as a "manager" for those projects. Often the manager-parent company also assists in the SPV's capital raise.

Because the parent company is assisting in effectuating the securities transaction, it may itself have to register as a broker-dealer. Additionally, the parent company uses the same team of associated persons to assist in the capital raising process. Each associated person is ineligible to assist in a subsequent capital raise for any of the SPVs, or any securities issuer of any kind, until the 12-month period has passed.

Additional Substantive Requirements

2. **Passive Participant.** The associated person must restrict his participation to the following:
   a. Preparing any written communication that does not involve oral solicitation by the associated person of a potential purchaser, provided that the content is approved by a partner, officer, or director of the issuer. This section prohibits an associated person from cold calling potential investors and offering securities. The section does, however, allow the associated person to prepare sales and marketing literature, so long as the content is approved by partners, officers and directors.
   b. Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; provided the content is limited to information contained in the registration statement and other offering documents. The Commission restricted communication in this section to responding to oral or written communications from potential purchasers. To protect investors, the Commission limits the response an associated person may give to information contained in the registration statement and other offering documents.
   c. Performing ministerial and clerical work involved in effecting any transaction. An associated person performing clerical work, such as bookkeeping, will not be deemed a broker.
3. The associated person may restrict activities related to specific types of securities sales. This does not usually apply to a company looking to solicit funds in a Reg D offering.
   a. To certain listed institutions and intermediaries. For example, the associated person may sell securities to a registered broker-dealer, an RIA, an insurance company, and certain banks.
   b. To a limited type of securities transactions, including bankruptcy exchanges, issuer exchanges and court-or-agency supervised exchanges.
   c. To securities sales made pursuant to a plan or agreement submitted for the vote or consent of the security holders who will receive securities of the issuer in connection with a reclassification of securities of the issuer, a merger or consolidation or a similar plan of acquisition involving an exchange of securities, or a transfer of assets of any other person to the issuer in exchange for securities of the issuer.
   d. To securities sales made pursuant to a bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees of an issuer or a subsidiary of the issuer.

» ***There are some who say that the issuer exemption is a non-exclusive safe harbor. These people espouse that there are some cases where a given situation may not exactly fall into the parameters stated in the rule, but may not require registration. Generally, these advisors are not at risk if the SEC disagrees with a given set of circumstances. As the person raising or assisting with a raise, you are at risk. Ask yourself whether proceeding without clear cover outweighs the penalties to you and your company if you are wrong.***



4 THINGS TO KEEP IN MIND

1

Receipt of transaction-based compensation isn't the only factor giving rise to the registration requirement—**your role in the offering matters**.

2

Unless the specific requirements of the issuer exemption safe harbor are met, the registration requirement under Section 15(a) applies to individuals and intermediaries that (a) solicit investment in private offerings, including issuers; and (b) "effect" securities transactions.

3

Entering into a contract to perform certain types of offering services doesn't make your provision of those services or payment for those services legal according to the SEC.

4

The SEC is keenly monitoring activity of unregistered individuals and entities.

Another Layer of Complexity: State Registration Requirements

Issuers relying on the federal issuer exemption often fail to consider parallel state requirements. Many states model their securities law after the Uniform Securities Act, which expressly excludes an issuer from the definition of "broker-dealer." Further, under the Uniform Securities Act, employees of issuers are exempt from themselves registering as broker-dealers if they do not receive compensation based on participation in the offering. But unfortunately, there are some states that do not follow that stance.

New York, for example, requires an issuer to register as a "dealer" before it offers securities in the state. New York also has a registration requirement for individuals besides officers or directors "who represent the issuer in the 'the sale or purchase of securities to or from the public within or from' the state." [10] Therefore, if other employees are helping to sell an issuer's securities, they must file a form and pass either the Series 63 or Series 66.

Some states, like New Jersey, require an issuer effecting the sale of securities other than through a registered broker-dealer to register at least one person as an agent. However, the relevant administrative code section exempts an individual representing an issuer effecting certain federally exempt securities. [11]

Virtually every state statute requires registration if an employee receives payment for assisting in the securities sale independent of his or her normal salary.

For example, in Ohio an "issuer" is expressly carved out of the definition of a dealer whose activities require registration. The exemption applies to "any officer, director, employee, or trustee of, or member or manager of, or partner in, or any general partner of, any issuer, that sells, offers for sale, or does any act in furtherance of the sale of a security that represents an economic interest in that issuer, *provided no commission, fee, or other similar remuneration is paid to or received by the issuer* for the sale."

Bottom line, even if you happen to be in the clear with certain states, each state has its own structure and requirements, which can be complicated and can change at the will of the state legislature or administrative agency, or through enforcement action or judicial review without notice. For online solicitation, some states have indicated that offering communications online does not constitute selling activity requiring registration, while some states have not.

Therefore, there is ambiguity on what constitutes sufficient activity in a state to trigger the registration requirement. A conservative view would be that an issuer making an offering generally available online should, together with its employees and agents, meet the registration requirements of all 50 states or engage with a broker-dealer that does.

Dismiss at Your Own Risk

Each state has its own penalties for breach of the broker-dealer and agent registration requirement. Perhaps the liability with most teeth comes in the form of an investor that can sue for rescission of the entire offering. Further, a state's action against an issuer or its associated person will affect the issuer's ability to raise capital in the future. A sanction from the state would likely rise to the level of a bad actor disqualification event under federal regulation, which means those involved would be precluded from participating in a future Reg D offering. An issuer can mitigate many of these risks by use of competent outside counsel, use of a broker-dealer registered in all 50 states, and maintaining an active awareness of the securities offering process.

Investment Advisor Regulations Could Also Apply

Real estate financing structures often include an array of fees for the promoters or sponsors. Further, activities of people helping to raise real estate financing often includes providing information to potential investors to make an informed choice. Combining those two factors, real estate professionals can unwittingly find themselves acting as investment advisors. While the threshold for federal registration is low, almost all states have regulations and requirements for investment advisers.

Section 202(a)(11) of the Advisers Act generally defines an "investment adviser" as any person that: (1) for compensation; (2) engages in the business of; (3) advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

An "investment adviser" is also a person that a) for compensation and (b) as part of regular business, (c) issues or promulgates analyses or reports concerning securities. [12] The SEC construes these elements broadly so as to include more activity than not, making it increasingly important to properly analyze whether an interest or financial vehicle constitutes a security.

Federal registration requirements are complex, but generally, an adviser must have more than $100 million in assets under management. There are also nuanced exemptions from registration including for "venture capital funds" and for advisers only to private funds with less than $150 million in assets under management. [13]

Think You're Exempt from Registering as an Advisor?

You may want to take a closer look. Do not make the mistake of thinking you are free and clear of regulation even if: you understand the requirement, understand how to calculate assets under management for your real estate-related securities SPVs, and have calculated your assets under management are less than $100 million.

First, there are key federal regulations that may apply to all advisers, even if an adviser is exempt from federal registration. Truncated filings of the Form ADV may be required. Also there are more substantive anti-fraud provisions with regards to client communications,[14] supervisory requirements for those who act on the adviser's behalf,[15] and for restrictions relating to political contributions.[16] Further, Section 206(3) of the Investment Advisers Act is a conflict-of-interest disclosure requirement when the adviser is also a principal in a proposed transaction. Because those in real estate development groups wear many hats, including both "sponsor" and adviser, this is important to keep in mind.

Secondly, almost always, state adviser registration requirements will apply. Most states use facilitate investment adviser registration using the IARD, or Investment Adviser Registration Depository, but each state has its own specific requirements.[17] Even if an adviser is not required to register in a state, state-specific regulations for activities in a state or towards a state's residents may apply.

Working with a Broker-Dealer is for Your Protection

Real estate offerings can be time-sensitive, high-stakes, high-dollar, and involve teams of people used to moving fast and making deals happen. Successful development companies enjoy close relationships with investors and potential investors for their projects. If your real estate financing includes pooling investment from third parties in any way, there likely are federal and state securities regulations and registration requirements on **the offering itself, the SPV issuing the offering, the people involved in selling the offering, and the real estate development company sponsoring the offering.**

More people are not following these rules than are, particularly when they do not have the help of competent counsel and financial intermediaries, like a broker-dealer. At best, many market participants are naively unaware of securities requirements or, even if they are, are naively aware of the risks they take in ignoring them. Some even knowingly weigh those risks and choose not to comply.

While compliance can add cost and time, the SEC is actively bringing securities-related claims. Additionally, state regulator enforcement arms can sometimes bring cases where the SEC might have other priorities. The risk of getting caught, and paying for it, is real. It is your responsibility to understand securities regulation as it relates to real estate financing.

A seasoned broker-dealer will be familiar with these requirements and can guide the company through the verification process. This may be ideal for many companies that, for privacy reasons or otherwise, aren't comfortable with requesting bank statements from potential investors. And because failure to reasonably confirm investor accreditation disqualifies a company from making a general solicitation offering, even if all investors in the offering are accredited, it is imperative that companies strictly comply with these requirements.

The right broker-dealer is also well positioned to help companies take full advantage of a general solicitation offering. Many smaller companies lack the robust networks of wealthy individuals that can provide the necessary capital to bring a company to the next stage. With access to large networks of accredited investors, broker-dealers can bring together companies and potential investors, and can even match them based on the type of issuer and the nature of the offering.

Broker-dealers can serve as a trusted and neutral third-party to facilitate transactions between the company and investors. The involvement of a broker-dealer behind an offering gives more credibility to the company and its offering, since investors know that the broker-dealer has conducted due diligence before commencing general solicitation. Some broker-dealers may also host their own online fundraising platform for use by their clients.

Focus on your business, not your back office

As a registered firm, our team of compliance experts specializing in Reg D 506(b) and 506(c) offerings are here to take care of the time-consuming back office activities involved with raising private capital. This allows you to focus on the people and relationships that are important to advancing your business.

- Optimized workflows developed by a managing broker-dealer to help speed up the overall process.
- Expertise in 506(c) offerings giving you the ability to more widely promote your deal.
- A dedicated point of contact for investor questions about the process.

> *"WealthForge's compliance team is extremely knowledgeable, responsive and has taken the time to understand the intricacies of our business. They have also actively sought to provide advice and introductions to advisors and potential sources of business."*
>
> *- David Dahill, Realized Holdings*

FULL SERVICE DILIGENCE INCLUDING:

AML, OFAC, FinCEN, and Bad Actor checks	✓
Suitability and KYC approval	✓
Investor accreditation	✓
Escrow administration	✓
SEC Form D and State Blue Sky Filings	✓
Books and records management	✓

* Testimonials may not be representative of the experience of all clients. Testimonials are not a guarantee of future performance or success.

References

[1] *See* 15 U.S.C. § 77b(a)(1) (2012).

[2] SEC v. W. J. Howey, 328 U.S. 293, 299 (1946).

[3] *See* Laura Anthony, What Is A Security? The Howey Test and Reves Test, SEC. L. BLOG (Nov. 25, 2014, 10:28 AM), http://securities-law-blog.com/2014/11/25/what-is-a-security-the-howey-test-and-reves-test/.

[4] *See* United Housing Found. v. Forman, 421 U.S. 837 (1975).

[5] U.S. v. Leonard, 529 F.3d 83, 89 (2nd Cir. 2008) (citing Reves v. Ernst & Young, 494 U.S. 56, 62 (1990)).

[6] *See* Richard P. Cunningham & Thomas G. Voekler, Real Estate Programs – Avoiding the Scope of the Investment Company Act (2008).

[7] *See* Sec. Exch. Comm'n. v. Sethi Petroleum, LLC., No. 4:15-CV-00338, slip op. at 14 (E.D. Tex. Jan. 17, 2017).

[8] *See* Sec. Exch. Comm'n. v. Meika Energy Corp., No. 4:15-CV-00300-ALM, slip op. at 10-11 (E.D. Tex. May 4, 2017).

[9] More information on the requirement can be found at Div. of Trading & Mkts., U.S. Sec. & Exch. Comm'n, Guide to Broker-Dealer Registration, U.S. SEC.& EXCHANGE COMMISSION (Apr. 2008), https://www.sec.gov/divisions/marketreg/bdguide.htm. See also Div. of Trading & Mkts., U.S. Sec. & Exch. Comm'n, Jumpstart Our Business Startups Act, U.S. SEC.& EXCHANGE COMMISSION (Feb. 5, 2013), https://www.sec.gov/divisions/marketreg/exemption-broker-dealer-registration-jobs-act-faq.htm.

[10] N.Y. Gen. Bus. Law § 359-e. See also Broker-Dealer and Securities Registration Information Sheet, New York State Office of the Attorney General (last updated July 2015), http://www.ag.ny.gov/investor-protection/broker-dealer-and-securities-registration-information-sheet.

[11] N.J. Admin. Code § 13:47A-3.3(b); See Frequently Asked Questions for Industry, New Jersey Bureau of Securities (last updated Sept. 26, 2016), http://www.njconsumeraffairs.gov/bos/Pages/FAQindustry.aspx.

[12] Investment Advisers Act of 1940, § 202 (a)(11); 15 U.S.C. § 80b-2(a)(11) (2017); see also Morrison & Foerster, Investment Advisor Registration for Private Equity Fund Managers (2016)

[13] *See* Morrison & Foerster, Investment Advisor Registration for Private Equity Fund Managers (2016)

[14] *See* Investment Advisers Act of 1940, Pub. L. No. 86-750, § 206 (2012);

[15] *See* Id. § 203(e)(6).

[16] *See* 17 C.F.R. § 275.206(4)-5 (2015).

[17] *See* State Investment Adviser Registration Information, http://www.nasaa.org/industry-resources/investment-advisers/ia-switch-resources/state-investment-adviser-registration-information/ (last visited Aug. 30, 2017).

PHONE	EMAIL	WEBSITE
1.866.603.4115	sales@wealthforge.com	wealthforge.com

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