



To Our Clients and Friends

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**Mortgage Forgiveness Debt Relief Act of 2007 Provides Relief for
Cooperative Housing Corporations With “80/20” Problems**

On December 20, 2007, President Bush signed into law the Mortgage Forgiveness Debt Relief Act of 2007 (the “Act”). In addition to the forgiveness of debt provision, the Act includes a new rule that is extremely favorable to cooperative housing corporations (“co-ops”).

Pursuant to section 4 of the Act, a co-op that wishes to qualify under section 216 of the Internal Revenue Code may now satisfy either a square-footage test or an expenditure test, in lieu of the so-called “80/20” gross income test.

A co-op will satisfy the new square-footage test if, at all times during the taxable year, 80% or more of the total square footage of its property is “used or available for use by the tenant-stockholders for residential purposes or purposes ancillary to such residential use.” A co-op will satisfy the new expenditure test if 90% or more of its expenditures for the taxable year are “paid or incurred for the acquisition, construction, management, maintenance, or care of the corporation’s property for the benefit of the tenant-stockholders.”

Most co-ops will satisfy at least one of the new tests. Nevertheless, there will undoubtedly be exceptions to the rule. Co-ops should carefully evaluate how the new tests apply to them in their particular circumstances.

Co-ops that have become providers of parking or cable television services to their residents, invested in tax-free bonds, added “safety caps” to their commercial leases, or taken other measures to address their “80/20” issues should reassess the desirability of such arrangements in light of the new legislation.

The new legislation is effective for taxable years ending after December 20, 2007, which means the new rules apply for the calendar year 2007.

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