



**TIDWELL**

 **group**

# What is The Year 15 Problem?

- GP thinks it is a 90/10 residual split
- Tax Code:
  - “on liquidation, distributions must be made in accordance with capital accounts”
  - Treasury Reg 1.704-1(b)(2)(ii)(b)(2) “cash is distributed according to positive capital accounts”
- But wait! The partnership agreement waterfall...

# Typical Waterfall

Sale or Refinancing Proceeds shall be applied in the following order of priority:

- A) To the payment of all expenses of such sale or refinancing.
- B) To the payment of all debts and obligations of the partnership other than amounts owed to Partners.
- C) To establish any Reserves reasonably required by the GP.
- D) To repay any LP Loans.
- E) To repay any GP Loans.
- G) The balance shall be distributed 10% to the LP and 90% to the GP.

# What “Trumps” the Waterfall

Events which cause a Dissolution of the Partnership shall include:

- A) Election made by the GP with the consent of the LP
- B) Withdrawal of GP
- **C) *Sale or other disposition of all or substantially all of the assets of the Partnership.***

Priority on Liquidation – To extent proceeds are sufficient, they shall be applied in the following order:

- A) In accordance with waterfall A through E
- **B) *The balance shall be distributed in accordance with positive Capital Accounts.***

# 4% Example

		GP	LP
Sales Price	12,000,000		
Assets	8,000,000		
Debt	8,500,000		
Capital Account	(500,000)	0	(500,000)
Gain	4,000,000		
Gain Allocation Neg Capital Accts	500,000	0	500,000
Remainder Per LPA	3,500,000	3,150,000	350,000
Cash Distribution	(3,500,000)	(3,150,000)	(350,000)
Ending Capital Account		0	0
Cash Split		90%	10%

# 9% Example

		GP	LP
Sales Price	12,000,000		
Assets	8,000,000		
Debt	6,000,000		
Capital Account	2,000,000	0	2,000,000
Gain	4,000,000		
Gain Allocation Neg Capital Accts	0	0	0
Remainder Per LPA	4,000,000	3,600,000	400,000
Cash Distribution	(6,000,000)	(3,600,000)	(2,400,000)
Ending Capital Account		0	0
Cash Split		60%	40%