

# LIHTC MONTHLY REPORT

A MONTHLY PUBLICATION OFFERING NEWS, OPINION, FEATURES AND COMMENTARY ON THE LOW-INCOME HOUSING TAX CREDIT INDUSTRY

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## SDHDA Approves Y15 Plan for LIHTC Qualified Contract Process

By Alex Ruiz, Staff Writer, Novogradac & Company LLP

The South Dakota Housing Development Authority (SDHDA) board of commissioners has adopted the Housing Tax Credit Year 15 Plan and Application. The plan highlights changes in compliance monitoring that will occur after the 15th year of the low-income housing tax credit (LIHTC) compliance period, and the application and submission requirements for the qualified contract process.

Owners of LIHTC developments that are entering the 14th year of their compliance period are eligible to begin the qualified contract process, requesting SDHDA to find a purchaser for their LIHTC development. SDHDA will review on an annual basis the filed declarations and Form 8609s to determine which projects are entering their 14th year. By the December prior to the 14th year, the authority will provide notice to development owners that the upcoming year begins their 14th year and explain what options are available to them. In order to utilize this process efficiently, SDHDA is also seeking parties that may be interested in purchasing such developments.

### Qualified Contract Process

Owners that are no longer interested in owning and/or retaining the low-income use restrictions on the development can pursue the qualified contract option. SDHDA encourages owners to contact their legal counsel and CPA to determine if they are eligible and to be advised as they proceed through the process outlined in the plan. Because owners will be allowed only one opportunity per development to pursue the qualified contract process, SDHDA recommends that owners review the process carefully before submitting an application.

During, or any time after the 14th year of the compliance period, the owner may request that SDHDA find a buyer for the low-income portion of the development. If SDHDA is unable within that period to find a purchaser for the development pursuant to a qualified contract, the development may be converted to market-rate use.

To initiate the qualified contract process, an application packet, which must contain the following documentation, must be submitted to and received by SDHDA:

- ◆ Cover letter indicating the owner's intentions,
- ◆ Completed application and certification,
- ◆ Stated qualified contract price (including documentation of calculation),
- ◆ Narrative of the project and amenities,
- ◆ Current rent and income restrictions from all funding sources,
- ◆ Pictures of the property (interior and exterior),
- ◆ Area maps, site and architectural plans, and an as-built survey (if available),
- ◆ Copy of the most recent 12 months of operating statements for the development, including a current operating budget and year-to-date comparison of actual expenses to operating budget and a current (within three months) operating budget,
- ◆ Most recent three years of historical financial statements (audited if available),
- ◆ Description of utilities provided by the owner, special assessments, real estate tax assessment, valuation, etc.,
- ◆ Current tenant rent roll,

*(continued on page two)*

# SDHDA Approves Y15 Plan

(continued from page one)

- ◆ Sample tenant lease(s) and copy of the land lease (if applicable),
- ◆ Copy of the most recent title insurance policy,
- ◆ Copy of the most recent physical needs assessment,
- ◆ Sale provisions anticipated by the seller,
- ◆ Copy of most recent property appraisal (or calculated market price utilizing the most recent year-end net operating income and the current cap rate),
- ◆ Application fee of \$1,000, and
- ◆ Additional information as deemed necessary.

SDHDA will review the items submitted and may request additional information to document the qualified contract price calculation or other information submitted. SDHDA will then have a one-year period to find a buyer. SDHDA will market the development and provide development information to interested parties, including pictures of the development, location, amenities, number of units, age of building, etc. Owner contact information will also be provided to interested parties. The owner is responsible for providing staff to assist with site visits and inspections.

The authority will contact owners when an interested party is requesting financial information on the development. At the owner's discretion, the interested party may be required to enter into a commercially reasonable form of nondisclosure agreement. SDHDA reserves the right to contract with third-party agencies in marketing the developments. The cost of such service will be paid for by the existing owner.

SDHDA stresses that it must have continuous cooperation from the owner. Lack of cooperation will cause the process to cease and the owner will be required to comply with low-income use and compliance requirements for the remainder of the extended use period. This cooperation includes, but is not limited to:

- ◆ Allowing access to the property and tenant files as deemed appropriate by SDHDA,
- ◆ Keeping SDHDA informed of potential purchasers, and
- ◆ Notifying SDHDA of any offers to purchase.

The owner is not required to accept the first or any of the purchase offers presented. The owner may also accept less than the qualified contract price for the development. However, the owner cannot require a price higher than the qualified contract price. If within the one-year period the owner does not accept an offer that has been presented by a qualified purchaser at the qualified contract price, the development will remain as affordable housing and must meet the low-income use and compliance requirements for the remainder of the extended use period.

If a qualified purchaser is not found by the end of the period, SDHDA will no longer restrict the development to low-income requirements and compliance. However, for the three years following the termi-

(continued on page three)

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## **SDHDA Approves Y15 Plan**

*(continued from page two)*

nation, the owner will not be able to evict or displace tenants for reasons other than good cause and will not be permitted to increase rents beyond the tax credit maximum rents.

Parties with questions regarding the plan or those interested in being added to the Year 15 purchasers list, should contact Julie Anderson at 605-773-2461 or Lorraine Polak at 605-773-3108. Copies of the Year 15 Plan and application are available at [www.sdhda.org](http://www.sdhda.org). ❖

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