

NHD Qualified Contract Procedure

15 Year Affordability Term Properties- LIHTC

(Effective 8/1/11 to 7/31/14 or until revised)

Pursuant to Sec. 42 (h) (6) of the Internal Revenue Code (IRC), all projects which received an allocation of Low Income Housing Tax Credits (LIHTC) commencing in year 1990 and all subsequent years are subject to a 30 year affordability term. The initial 15 years are reportable to the IRS, and the remaining 15 years (extended use period) are reportable to the State of Nevada Housing Division (Division). These affordability restrictions are specified in the Declaration of Restrictive Covenants issued to the project after an allocation of LIHTCs is received.

The Post Year 15 LIHTC Compliance and Monitoring Procedures (Ex. F on the NHD Website) were established by the Division for compliance through years 16-30 (extended use period) and vary slightly from the IRC requirements. Although they are to be followed until the end of the 30 years, Sec. 42 (h)(6)(E)(i)(II) of the IRC allows the owner of a tax credit property to opt out of the extended use period by requesting a termination or a "Qualified Contract". This section of the code allows the Division a one (1) year time-frame to present a buyer who is willing to:

1. Maintain the property as low income; and
2. Purchase the property for the Qualified Contract Amount

In the event the Division is unable to present a buyer in that one year time frame, the extended use period is terminated.

A request for termination, or a "Qualified Contract" may be submitted by the property owner to the Division after the last day of the fourteenth year of the compliance period, based upon the date of the last building placed in service.

Properties that obtained preference points in the application for LIHTCs to extend the affordability period (30+) years are not eligible to participate in the Qualified Contract procedure. Prior to the approval of the Qualified Contract, the Division will conduct a compliance review of 20% of the units (physical inspections) and the corresponding tenant files to verify that the property is in compliance. If any non-compliance is found, the Qualified Contract will not be approved until the identified non-compliance is corrected and verified by the Division. Projects that have outstanding, non-corrected non-compliance issues and/or unpaid compliance fees are also ineligible until the issues are resolved and/or the payment is received.

The Qualified Contract request must be sent to the Division via overnight or express mail, requiring a signature confirming receipt by the Division. The request must certify that there are no outstanding issues of non-compliance and that the property was not subject to additional affordability restrictions.

A request for a “Qualified Contract” shall include:

1. A \$3,000.00 application fee payable to the Division.
2. Completed first year IRS Form 8609s for all of the buildings in the project.
3. The Qualified Contract Amount must be calculated in accordance with Sec. 42 (h) (6)(F) of the Internal Revenue Code. It must be certified by a CPA firm with no less than 7 years experience working with the LIHTC program. The CPA firm must also certify that the following was utilized to determine the “Qualified Contract” amount:
 - a. All annual federal tax returns for the partnership for all 15 years of project operation;
 - b. Audited annual project financial statements for all 15 years of operation;
 - c. All secured debt loan documents during the compliance period; and
 - d. Partnership agreement (current, original and all amendments).
4. Copies of all documents in 3 (a) thru (d) above, if requested by the Division.
5. Direct payment to the CPA firm selected by the Division to review the qualified contract amount and methodology to protect the Division’s interest. The property owner is responsible for all contracts and payments to the CPA firm, with the Division approving the contract for services.
6. Direct payment to the Real Estate / Property Management firm selected by the Division to market the property for the one year period after the Qualified Contract amount is approved. The property owner is responsible for all contracts and payments to the Real Estate /Property Management firm, with the Division approving the contract for services.
7. Guarantee in writing submitted by both the property owner and the CPA submitting the Qualified Contract stating that the property owner will fully cooperate with the CPA firm selected by the Division so that a comprehensive review/recommendation can be attained in 60 days.

8. All additional costs deemed necessary to process the Qualified Contract will be the responsibility of the property owner.

The one year period specified per Section 42(h)(6)(l) of the IRC will not commence until all items referenced and requested above have been received to the satisfaction of the Division, and the owner is notified in writing that the Qualified Contract is approved. If the Qualified Contract is challenged by the Division, the one year timeframe will be extended until an agreement on the Qualified Contract amount is finalized. This will be verified by a signed memorandum by both parties.

Pursuant to Sec. 42 (h)(6)(E)(i)(II) of the IRC, the Nevada Housing Division's sole obligation is to present to the owner a contract signed by a prospective buyer to acquire the owner's property for the specified Qualified Contract amount. If a signed contract is presented and rejected by the property owner, the extended use period requirements will not be waived and will remain in full force until the termination of year 30.

The Division recommends that the property owner, prior to submitting a request for a Qualified Contract, ensure that the most up to date procedure is used. Please check our web site at www.nvhousing.state.nv.us or call 775-687-2033 (Carson City) or 702-486-7220, x226 (Las Vegas) to verify that the most current Qualified Contract procedure is being utilized.