

Qualified Contract Policies and Procedures

The following terms and conditions (Y15 Policies) shall govern how the Alabama Housing Finance Authority (AHFA) will administer requests from property owners who intend to make a request under IRS Code Section 42(h)(6)(E)(i)(II) (Request) to produce a bona fide qualified contract (QC) to acquire (within a reasonable period after the contract is entered into) the non low-income and low-income portions of a project for the QC Price (as such term is defined below).

Preliminary Application and Fees

1. AHFA will require advance notice, in the form of a preliminary application, before an owner may submit a Request. This notice will not bind owners to submit a Request and does not start the one-year period (1YP) under Section 42. The preliminary application form follows these Y15 Policies.
2. AHFA will accept preliminary applications after the 14th year of the compliance period. Owners will be limited to one preliminary application per project. Upon receipt, AHFA will determine if the property is eligible to submit a Request, as described below. AHFA will inform owners whether they are eligible to submit a Request within a reasonable period of time.
3. The owner will certify in the preliminary application that the necessary documentation is available and that all purchase options have been or will be waived.
4. AHFA will assess owners a non-refundable fee of \$500 for processing the preliminary application and \$1,000 for Requests. Any and all necessary third party costs incurred in developing a QC will be the direct responsibility of the owner. AHFA will make a determination as to how to advertise and market the property. All costs involved in marketing and transferring the property will be at the owner's expense. If funds requested by AHFA to contract for the appraisal, market study, Phase I, and any other pertinent document or information to advertise or market the property are not received within 15 days of notice to the owner, processing of the Request will be terminated.
5. If third party costs are not paid promptly, AHFA may suspend processing or terminate a Request.

Eligibility to Submit a Request for a Qualified Contract

1. A valid Request is a complete application from an eligible owner. Not all owners may be eligible to submit a Request in the 14th year. For example, many owners elected additional extended use periods for which they earned points in the initial application for tax credits and such extended use periods were recorded in the property's extended use agreement (the "Declarations"). Such an election would extend the time within which an owner would be eligible to submit a Request. Some properties may also be temporarily ineligible due to the factors described below.

In determining when a property is eligible, AHFA will only consider the latest date for properties with multiple credit periods or allocations. The owner may not submit a Request until after the 14th year (or such later date as may be specified in the Declarations) of:

- a) the last compliance period for properties with buildings that were placed in service different years, or
- b) the most recent of multiple allocations to the same property.

For example, if five buildings in the property began their credit period in 1991 and one started in 1992, the 15th year for the purposes of a Request would be 2006. If the property received its first allocation of \$500,000 in 1991 and a subsequent award of \$25,000 in 1993, the 15th year for the purposes of a Request would be 2007.

2. AHFA will not consider a Request until the owner secures a complete, unconditional waiver of all purchase options, including a nonprofit general partner's right of first refusal.
3. Properties that do not meet the basic physical compliance standards that are, or would be necessary to claim some or all of the Housing Credit allocation are ineligible for consideration. Owners must correct all such violations prior to submitting a Request.
4. The owner must submit the following items along with the preliminary application:
 - a) first year 8609's showing Part II completed,
 - b) copies of uncorrected 8823's,
 - c) documentation regarding right of first refusal for purchase and waivers thereof ,
 - d) copies of additional affordability restrictions (i.e., USDA Rural Development, HUD, state or local funding, etc.), and
 - e) copies of project-based rental assistance agreements.

Items (b-e) must only be submitted if applicable.

Documentation Requirements

1. The 1YP will not begin until AHFA determines that the owner has met all of the submission requirements (items a-j listed below) necessary to market and transfer the project.
2. AHFA will not consider a Request until after receipt of all supporting documentation. Owners will need to submit the following items along with a Request:
 - a) annual partnership federal tax returns for all 15 years of operation since the start of the credit period (all years),
 - b) annual property financial statements for all years,
 - c) loan documents for all secured debt during the compliance period,
 - d) partnership agreement (original, current and all interim amendments),
 - e) accountant's certification of QC price,
 - f) physical needs assessment for the entire property,
 - g) title report not more than 30 days old, along with copies of all exception documents, and
 - h) a consent and authorization letter addressed to AHFA and signed by all partners consenting to the Request and to the delivery of and use by third parties of all documentation provided to AHFA in connection with a Request.

Once the above-listed items are received by AHFA, third parties will be engaged by AHFA for the following required documentation at the owner's expense:

- i) appraisal for the entire property,
- j) market study for the entire property,
- k) Phase I Environmental (and reliance letter and Phase II if necessary),
- l) rent rolls certified by authorized officer of the owner,
- m) latest as built survey of the project,
- n) current zoning letter from the municipality or county have jurisdiction over the project,
- o) UCC searches in owner's state of organization.

The first four items (a-d) are necessary to determine the price as required under IRS Code Section 42(h)(6)(F) (QC Price) and should also be provided to the accountant for use in determining the QC Price (item e). The last ten items (f-o) will be necessary for prospective buyers.

Pursuant to Section 42(h)(6)(F), the QC Price to be paid for a property is the sum of (1) the fair market value of any portion of the property that is not low-income; plus (2) the product of "adjusted investor equity", as such term is defined in Section 42(h)(6)(G), increased by the consumer price index for each year (not to exceed 5%); plus; (3) the outstanding debt secured by or with respect to the property; plus (4) capital contributions not reflected in "2 or 3" minus cash flow distributed or available to be distributed by the owner.

3. Owners who expect to take advantage of the QC option have a corresponding duty to maintain the records necessary to allow computation of the QC Price. There are three options for owner who have not fulfilled this responsibility:

- a) AHFA deems the property ineligible for consideration,
- b) an accountant deduces missing information (interpolation), or
- c) the owner agrees to accept the three year period as required by IRS Code Section 42(h)(6)(E)(ii) and fair market value.

An example of item (b) is to re-create what would have been the property's financial statement using accountant work papers. AHFA, in its discretion, will determine which option(s) is/are available.

4. Any unreasonable or intentional delays caused by the owner will cause the 1YP to be tolled during any period of time during which AHFA is waiting for additional documentation or information from the owner.

Presenting a Qualified Contract

1. Under IRS Code Section 42(h)(6)(E)(i)(II), AHFA's only obligation is to "present" to the owner a QC. Once AHFA presents a QC to the owner, the possibility of terminating the extended use period is removed forever and the property remains bound to the provisions in the extended use agreement.
2. There is no requirement in the IRS Code that the prospective buyer actually purchase the property. Whether or not the owner actually executes the contract and closes the transaction is a separate, legally unrelated matter.
3. AHFA will create a standard form agreement to use when presenting the QC that includes basic real estate transaction terms (i.e. costs, due diligence period). This form simply establishes what the buyer needs to accept in order for AHFA to meet its statutory obligations

of presenting a QC. Once a buyer agrees to the standard terms and the QC Price, the owner cannot terminate the extended use period regardless of whether the owner actually executes the contract and regardless of whether the transaction actually closes. The owner and proposed buyer would be free to negotiate different transaction terms prior to closing.

4. If AHFA fails to present a QC to the owner before the expiration of the 1YP, the project will remain subject to the requirements set forth in IRS Code Section 42(h)(6)(E)(ii). For a three-year period commencing with the release of the affordability restrictions, the owner may not evict or terminate a tenancy of an existing tenant of any low-income unit except for good cause. For the same three-year period the owner may not increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Internal Revenue Code.

General

AHFA reserves the right to add to or amend these Qualified Contract Policies and Procedures as required by the amendment of Section 42 or the promulgation of related regulations at any time without prior notice.

Before submitting a Preliminary Application, please visit the website to obtain the most current information: www.ahfa.com

Please direct questions to: Barbara Wallace, HOME/Housing Credit Coordinator, (334) 244-9200 or email: bwallace@ahfa.com.