

Arkansas Development Finance Authority

Qualified Contract Policies and Procedures

The following terms and conditions (“Policies”) shall govern how the Arkansas Development Finance Authority (ADFA) will administer requests from development owners who intend to make a Request for a Qualified Contract (QC) under Section 42(h)(6)(E)(i)(II) of the Internal Revenue Code (IRC) to produce a bona fide contract to acquire (within a reasonable period after the contract is entered into) the non low-income and low-income portions of a development for the QC Price (as such term is defined below). Capitalized terms not defined herein shall have the meanings assigned to them in IRC Section 42.

Preliminary Application

1. ADFA will require advance notice, in the form of a Preliminary Application, before an owner may submit a request for a QC (QC Request). This notice will not bind owners to submit a QC Request. The Preliminary Application form follows these Policies.
2. ADFA will accept Preliminary Applications for Tax Credit developments (that do not have HOME funds) after the end of the 14th year of the Compliance Period unless prohibited by applicable law or conflicting requirements in other sources of funding for the development. Owners of Tax Credit developments with HOME funds will be permitted to submit a QC Request at the end of the 19th year of the development’s Compliance Period, unless prohibited by applicable law or conflicting requirements in the other sources of funding for the development. Upon receipt, ADFA will determine if the development is eligible to submit a QC Request, as described below. ADFA will inform owners whether they are eligible to submit a QC Request within 10 business days of receiving a Preliminary Application.
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.

Documentation Requirements for a Preliminary Application

The owner must submit the following items with the Preliminary Application:

- (a) Written request to terminate the Declaration of Land Use Restrictive Covenants (LURA);
- (b) First year 8609’s showing Part II completed;
- (c) Documentation regarding right of first refusal for purchase and waivers thereof;
- (d) Copies of uncorrected 8823’s;
- (e) Copies of additional affordability restrictions (i.e., USDA Rural Development, HUD, HOME, AHP, state or local funding, etc.);
- (f) Copy of Recorded LURA;
- (g) Copies of project-based rental assistance agreements; and
- (h) Items (d-g) must be submitted only if applicable.

Eligibility to Submit a QC Request

1. ADFA will consider a QC Request only from an eligible owner. The earliest date on which an owner may be eligible to submit a QC Request for a particular development is contained in the development’s LURA. ADFA will determine actual eligibility to submit a QC Request based upon the information submitted in the Preliminary Application.

2. Many owners elected additional extended use periods for particular developments, which allowed those owners to earn additional points in their initial application for Tax Credits. The LURA for those developments delay the earliest date on which the owner would otherwise be eligible to submit a QC Request for a period of time equal to the length of the additional extended use period elected at the time of application.
3. In determining when a development is eligible to submit a QC Request, ADFA will consider only the latest date for developments with multiple Tax Credit periods or allocations. The owner may not submit a QC Request until after the end of the 14th year of the last Compliance Period for:
 - a. Developments with buildings that were placed in service in different years, or
 - b. Developments with multiple Tax Credit allocations in different years.

For example, if five buildings in the development began their credit period in 1991 and one started in 1992, the end of the 14th year for the purposes of a Preliminary Application would be 2005. If the development received its first allocation of \$500,000 in 1991 and a subsequent award of \$25,000 in 1993, the end of the 14th year for the purposes of a QC Request would be 2006.

4. ADFA will not consider a QC Request until the owner secures a complete, unconditional waiver of all purchase options, including any right of refusal or other purchase options in favor of a nonprofit general partner or a nonprofit affiliate of a for-profit general partner [any member or partner of the owner or any affiliate or subsidiary of such a member or partner].

Documentation Requirements for a QC Request

1. ADFA will not consider a QC Request until after receipt of all supporting documentation. Owners must submit the following items within 60 days of receiving written notification from ADFA that the owner is eligible to submit a QC Request:
 - (a) Certification of QC Price by a certified public account that is not an employee of the owner, of any member or partner of the owner, or of any affiliate or subsidiary of such member or partner (Eligible CPA);
 - (b) Physical needs assessment for the entire development, performed by a qualified third party selected by the owner and approved by ADFA prior to preparation of the assessment;
 - (c) Title report not more than 30 days old, along with copies of all exception documents;
 - (d) Copies of all leases affecting any portion of the development's land or improvements;
 - (e) Consent and authorization letter(s) in form specified by ADFA and signed by all partners/members of the owner consenting to owner's submission of the QC Request, to owner's delivery to ADFA, of all information and documentation deemed necessary or desirable by ADFA in connection with the QC Request, and to ADFA's use of all information and documentation received in connection with the QC Request; and
 - (g) Written request for amendment to LURA.
2. The following items are necessary to determine the price as required under IRC Section 42(h)(6)(F) (QC Price) and should be provided to the Eligible CPA for use in determining the QC Price (item 1(b) above). These items should not be sent to ADFA unless specifically requested by ADFA.
 - (a) Annual partnership federal tax returns (Form 1065) for all years of operation since the

- (b) Annual financial statements for the development for all years,
 - (c) Loan documents for all debt and grants during the Compliance Period,
 - (d) Partnership Agreement (original, current and all interim amendments).
3. The QC Price must be calculated in accordance with Section 42(h)(6)(F), which provides currently that the QC Price is the sum of (1) the fair market value of any portion of the development that is not low-income; plus (2) the product of “adjusted investor equity”, as such term is defined in IRC Section 42(h)(6)(G), increased by the consumer price index for each year (not to exceed 5% per year); plus; (3) the outstanding debt secured by or with respect to the development; plus (4) capital contributions not reflected in “2 or 3” minus cash flow distributed or available to be distributed by the owner.
 4. 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 two options for owners who have not fulfilled this responsibility:
 - (a) ADFA deems the development ineligible for consideration, or
 - (b) An Eligible CPA deduces the missing information by interpolation (for example, an Eligible CPA re-creates what would have been the development’s financial statements using prior accounting work papers).

ADFA, in its discretion, will determine which option is available to owners who failed to fulfill the recordkeeping requirements necessary for determining the QC Price.

Marketing the Development for Sale

1. Once ADFA approves the QC Request, the owner will be responsible for submitting the following to ADFA for its approval, within 30 days of ADFA’s notice of approval of the QC Request:
 - (a) Name, address, e-mail, website address, and phone number of the licensed real estate agent selected by the owner to market and advertise the development for sale,
 - (b) Copy of the marketing plan and/or advertising materials, and
 - (c) Digital photos of the development’s interior, exterior, amenities, and grounds.
2. The one-year period which ADFA may offer a (“1YP”) will not begin until ADFA receives the Preliminary Application, QC Request, marketing information (items 1(a)-(c) above), and all required supporting documentation. Any unreasonable or intentional delays caused by the owner, as determined in ADFA’s sole discretion, will cause the commencement of the 1YP to be tolled during any period of time during which ADFA is waiting for additional documentation or information from the owner.
3. ADFA will advertise the development for sale by posting the development information on its website at www.ADFA.Arkansas.gov. This information will include, but not be limited to, photos of the development, QC Price, name of the development, address, owner’s name and phone number, number of units, type of financing, and the real estate/marketing agent’s name and phone number.
4. Costs for all of the documentation that may be necessary to sell the development will be the owner or prospective buyer’s responsibility. ADFA reserves the right at any time, before or after

commencement of the 1YP, to require owner to provide copies of any or all of the following documentation:

- (a) Appraisal for the entire property,
- (b) Market study for the entire property,
- (c) Phase I Environmental (and reliance letter and Phase II if necessary),
- (d) Rent rolls certified by an authorized officer of the owner,
- (e) Most recent as-built survey of the development,
- (f) Current zoning letter from the municipality having jurisdiction over the development, and
- (g) UCC searches in owner's state of organization.

Presenting a Qualified Contract

1. Under IRC Section 42(h)(6)(E)(i)(II), ADFA's only obligation is to "present" to the owner a QC. Once ADFA presents a QC to the owner, the possibility of terminating the Extended Use Period is removed forever and the property remains subject to the provisions in the Declarations.

2. There is no requirement in the Code that the prospective buyer actually purchase the property. Whether or not the owner actually executes the QC and closes the transaction is a separate, legally unrelated matter.

3. Owner shall notify ADFA when there is a potential buyer. *[ADFA will create a standard form agreement to use when presenting the QC.]* This form simply establishes what the buyer needs to accept in order for ADFA 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 transaction actually closes.

4. Owner shall provide ADFA with a copy of the purchase contract for ADFA's approval at least 10 business days prior to the closing. The purchase contract must contain the affordability restrictions outlined in the development's Declarations.

5. If a QC is not presented to the owner before the expiration of the 1YP, then the Declarations terminate subject to the requirements set forth in IRC Section 42(h)(6)(E)(ii). Pursuant to such Section, for a three-year period commencing with the release of the Declarations, the owner may not evict or terminate the 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 IRC Section 42.

General

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