

GEORGIA HOUSING AND FINANCE AUTHORITY QUALIFIED CONTRACT POLICY AND PROCEDURES ("Year 15")

OVERVIEW OF YEAR 15 AND REQUESTS FOR QUALIFIED CONTRACTS

The Federal Low-Income Housing Tax Credit ("LIHTC"), 26 U.S.C. § 42 ("Section 42"), was created by Congress as part of the 1986 Tax Reform Act. The Georgia Housing and Finance Authority is the primary LIHTC allocating agency for the State of Georgia. The Georgia Department of Community Affairs ("DCA") administers the LIHTC program on behalf of GHFA.

Properties awarded LIHTCs in 1987, 1988, and 1989 have a compliance period of fifteen (15) years. The Compliance Period is the period of fifteen (15) taxable years beginning with the 1st taxable year of the credit period. A change in federal law in 1990 mandated that projects are eligible for the credit only if they are subject to an extended use agreement which requires the project to remain in low-income use for an additional 15 years. In accordance with Section 42, the extended use period commences with the first day in the Compliance Period on which any building that is part of the Project is placed in service and ends on the date which is 15 years after the close of the compliance period. As a result, properties that were awarded LIHTCs in 1990 or afterwards must comply with rent and income restrictions for a total of 30 years unless the project can meet certain statutory requirements which would allow them to "opt out" of the extended use period.

QUALIFIED CONTRACTS

The qualified contract option was designed as a way for Owners of LIHTC properties who are no longer interested in owning LIHTC projects and/or retaining the low income use restrictions associated with the project, to "opt out" of the tax credit program after the first 15 years. At the same time, the qualified contract option gives allocating tax credit agencies a tool for preserving the affordability of these projects. The qualified contract option allows an Owner to make a request that the allocating agency secure an offer to purchase the project for price that is determined by the statute. If the allocating agency is unable to present a contract for that price within the one year period, the extended use period terminates. The IRS Code contains the formula for determining the qualified contract price. GHFA has adopted policies and procedures that will allow proper administration of this process.

Current Owners should be aware that the qualified contract process is not the only option for identifying a potential purchaser for a property. In many cases, Owners will find that alternatives such as a sale subject to the program restrictions, sale and recapitalization through

GHFA's Tax Credit program and/or using one of the many subsidy resources available are more appropriate mechanisms for finding a purchaser for a project or recapitalizing the project.

Owners should note that if GHFA does not provide a qualified contract within the required one year period, the property is still subject to the three year decontrol period set forth in Section 42. During such three year period, the Owner may not:

- evict the tenant of a low income unit or terminate the tenancy of an existing tenant of any low income unit other than for good cause and
- shall not increase the gross rent above the maximum allowed under the Code with respect to any such low income unit.

POST YEAR 15 COMPLIANCE

For those Owners not seeking to exit the program, the compliance rules will be greatly simplified.

GHFA's POLICIES AND PROCEDURES REGARDING QUALIFIED CONTRACT REQUESTS

The following terms and conditions ("Y15 Policies and Procedures") will allow GHFA to 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 qualified contract ("QC").

GHFA QUALIFIED CONTRACT POLICIES

In determining when a property is eligible, GHFA will only consider the latest date for properties with multiple credit periods or allocations. Owners may not submit a Request until after the 14th year of the last compliance period for properties with buildings that were placed in service in different years (different credit periods). All allocations for the same property will be taken into consideration in determining when the last compliance period expires.

Example: If five buildings in the property began their credit periods 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 theoretically be 2007 assuming that the first year of the credit period was the year following the allocation.

1. GHFA 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 or any buy/sell options.
2. 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.

3. The Request for a Qualified Contract must be for all of the buildings in the project and must include all market rate as well as low income units.
4. GHFA will not consider a Request until after receipt of all supporting documentation. The Year One Period (“1YP”) will not begin until GHFA determines that the Owner has met all of the submission requirements.

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. If the Owner has not maintained the necessary records, then GHFA may take the following actions:

- a) GHFA may deem the property ineligible for consideration, or
- b) GHFA, in its discretion, may allow an accountant to deduce missing information (interpolation)

If an Applicant is unable to produce all of the required documentation, GHFA, in its discretion, will determine which of the above options is available.

5. The 1YP shall be tolled during any period of time during which GHFA is waiting for additional documentation from the Owner.
6. Under IRC §42(h)(6)(E)(i)(II), GHFA’s only obligation is to “present” to the Owner a bona fide contract to acquire the property for the QC price (“Contract”). If the Owner elects not to proceed with the sale of the property once a prospective purchaser has been found, the Owner cannot again submit a Request for a Qualified Contract in an attempt to “opt out” of the program.
7. GHFA will create a standard form agreement 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 GHFA to meet its statutory obligation of presenting a Contract. Once a buyer agrees to the standard terms and QC Price, the Owner cannot terminate the extended use period. The parties would be free to negotiate different transaction terms prior to closing.
8. GHFA will resolve every case of doubt or interpretation in determining the QC Price, both with regard to the overall process and for particular properties, in favor of a lower value.
9. Any time spent by the Owner questioning or challenging GHFA’s calculation of the QC Price will not count against the 1 YP.
10. GHFA may add to or amend these Y15 Policies at any time. Such changes may include, but are not limited to, the following: effect of withdrawing a Request, number of times an Owner may submit a Request for a particular property, treatment of Owner investment, and characterization of cash distributions.

GHFA PROCEDURES FOR SUBMITTING A QUALIFIED CONTRACT REQUEST

I. PRELIMINARY APPLICATION

1. GHFA will require Owners to submit a Preliminary Application. This Preliminary Application will not bind an Owner to submit a Request for a QC and does not start the 1YP. However, this Preliminary Application will allow GHFA to make a preliminary determination that the project is eligible for a Qualified Contract before either the Owner or GHFA expends significant time and/or resources on calculating the QC price. The Preliminary Application and list of required documents can be found at the following link: _____.
2. Preliminary Applications must be submitted to GHFA at least 90 days prior to the submission of a Request for a Qualified Contract. Upon receipt of the Preliminary Application and all required Documentation, GHFA will make an initial determination that the property is eligible for consideration for a Qualified Contract. DCA may also make an initial determination at this stage that a Qualified Contract will not be offered. There are several reasons that an Owner may not be eligible for such a Contract or why DCA may decide that a Qualified Contract will not be offered. These reasons include, but not limited to, the following:
 - Many Owners elected to waive the right to make a Request for a Qualified Contract. Such waivers earned points in the initial application for Credits. GHFA will review each project to determine if the Owner agreed to a waiver of its right to “opt out” at the time the initial Application for credits was submitted.
 - The 14th year of the initial Compliance Period for all buildings in the project must be satisfied before an Owner can submit a Request for a Qualified Contract. Projects in which some, but not all of the buildings have met the 14th year of the Compliance Period, are not eligible to Request a Qualified Contract.
 - The documentation required for GHFA to review a Request may not be available.
 - The project is of a size and type that GHFA can make a determination, without reviewing the documentation required in the full Application, that it would not extend a Qualified Contract offer to the Owner of the project.
 - The project has rent and income restrictions from programs other than the LIHTC from which GHFA could make a determination, without reviewing the documentation required in the Full Application, that it would not extend a Qualified Contract to the Owner of the project.
 - Other factors that may make some properties temporarily ineligible.
3. The Owner must certify in the Preliminary Notice that the necessary documentation is available and that all purchase options will be waived at the time that the Request for a Qualified Contract is submitted.
4. GHFA will assess Owners a non-refundable fee of \$500 for processing preliminary applications. All necessary third party costs will be passed on to Owners.

5. The Owner must provide GHFA with a legal opinion of the date that the project will have met the Compliance period for all buildings.
6. GHFA will inform Owners as to whether they will accept a full Application for a Qualified Contract within ninety days from receipt of the Preliminary Application and required documentation.

II. REQUEST FOR QUALIFIED CONTRACT

1. Owners must use the GHFA Request Form. Owner's certified public accountant must complete the DCA Qualified Contract Worksheets which should be attached to the Request Form.
2. Owners will need to submit the following items along with a Request and Worksheets. (Items submitted with the Preliminary Application do not have to be resubmitted):
 - a) Certification from GHFA that Preliminary Application has been received and that the Project is eligible to proceed with a full Request for a Qualified Contract;
 - b) A GHFA Request for Qualified Contract along with a fully completed "Calculation of Qualified Contract" Price, including Worksheets A-D. This form must be completed, or reviewed and approved, by the accountant's for the project.
 - c) A thorough narrative description of the Project, including all amenities, suitable for familiarizing prospective purchasers with the Project.
 - d) A description of all income, rental and other restrictions, if any, applicable to the operation of the Project.
 - e) A detailed set of photographs of the Project, including the interior and exterior of representative apartment units and buildings, and the Project grounds.
 - f) A copy of the most recent 12 months of operating statements for the Project which will fairly apprise a potential purchaser of the Project's operating expenses, debt service, gross receipts, net cash flow and debt service coverage ratio.
 - g) A current rent roll.
 - h) If any portion of the land or improvements are leased, copies of the leases.
 - i) Copy of completed 8609's for all buildings;
 - j) Current rent roll;

- (k) Annual partnership tax returns for all years of operation since the start of the compliance period (“all years”);
- (l) Annual property financial statements for all years;
- (m) Loan documents (promissory note, mortgage or deed of trust, loan agreement and current balance) for all secured debt during the compliance period;
- (g) Partnership agreement (original, current, and all interim amendments);
- (h) Physical needs assessment for the entire property;
- (i) All Land Use Restrictive Covenants;
- (j) Completed GHFA approved worksheets;
- (k) Legal Opinion of date that project will satisfy the 14th year of the compliance period for all buildings in the project;
- (l) Waivers of all rights of First Refusal;
- (m) Copies of all PBRA agreements, if applicable
- (n) Actual Capital Contribution Schedule (include date of contribution)
- (o) Appraisal for the entire property (must be in accordance with GHFA Appraisal guidelines);
- (p) Phase I environmental (and Phase II, if necessary); and
- (q) Title report;

3. GHFA requires a \$1,000 application fee with the Request. In addition, the Owner will pay all third party costs associated with the request. If GHFA requires the services of a third party, it will notify the Owner and request additional funds. If the Owner delays in making a payment, GHFA may suspend processing or terminate a Request.

PRELIMINARY APPLICATION

Please complete and return the required documentation and \$500 (non-refundable) to:

Georgia Department of Community Affairs
Attn: Tax Credit Manager
60 Executive Park South
Atlanta, GA 30329

Required Documentation:

- Executed Partnership Agreement
- Recorded LIHTC Land Use Restriction Agreement
- Recorded Restrictive Covenants evidencing Rent and Income Restrictions
- 8609's for Property
- IRS Form 8821 (the form can be found at www.IRS.gov.)
- Executed Waiver of Right of First Refusal (if applicable)
- Legal Opinion Letter

1. NAME AND ADDRESS OF PROPERTY

Name of Project

GHFA Project number Year(s) of Tax Credit Allocation

Street

City State Zip Code

2. INFORMATION ON OWNERSHIP ENTITY

Name of Owner Entity (Usually Limited Partnership)

Name of General Partner Entity #1

Name of General Partner Entity #2

Name of Primary Contact

Address 1

4. RIGHTS OF FIRST REFUSAL

Does the partnership agreement or other legal documentation grant any form of preference for purchasing the property? (For example a right of first refusal granted to a nonprofit partner.)

Yes

No

If yes, please provide the following information on the individual or entity holding such right:

Name

Address 1

Address 2

City

State

Zip Code

Phone Number

E-mail

Fax:

Has there been an executed waiver of the right of first refusal?

Yes

No

5. NON-COMPLIANCE

a) Has the property been cited for any violations that have required an 8823 to be filed with the IRS that remain uncorrected? Yes No

If yes, please state the nature and date of the violation(s) (include copies of 8823s).

Nature of Violation

Violation Date

Please list any additional information as an attachment.

(b) Has any portion of your tax credit allocation been recaptured? Yes No

(If yes, please provide documentation as to amount and date of recapture.)

6. AFFORDABILITY RESTRICTIONS

(a) Tax Credit set aside

(I) Section 42 Elections

At least 20% of the Units in the Project will continuously be maintained as both rent-restricted low income units and occupied by Households whose income is 50% or less of Area Median Gross Income.

(or)

At least 40% of the Units in the Project will continuously be maintained as both rent-restricted low income units and occupied by households whose income is 60% or less of Area Median Gross Income.

(b) Additional affordability restrictions

- USDA Rural Development,
- HUD,
- HOME
- Tax Exempt Bonds
- Other _____

If yes, please submit a copy of restrictions.

If yes, how many years beyond the compliance period must the property maintain affordability restrictions? _____

I certify, to the best of my knowledge, that:

- There is no action, suit, or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending against Owner, the

Land, or the Project, or, to the knowledge of Owner, threatened against or affecting Owner, the Land, or the Project.

- During the Compliance Period, the Project has been operated as a "qualified low-income project," as defined in Section 42 and the Regulations.
- The information in this application is complete and accurate,
- All purchase options will be waived before a Request is submitted

Owner:

Signature: _____ Date: _____