

**LOW INCOME HOUSING TAX CREDIT PROGRAM
QUALIFIED CONTRACT PROCESS**



Strength, Dignity, Quality of Life

MISSOURI HOUSING

DEVELOPMENT COMMISSION

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PREFACE

This document is a reference guide for the Qualified Contract Process of the Section 42 Low Income Housing Tax Credit (LIHTC) Program in Missouri. It is designed to answer questions regarding procedures, rules, and regulations that govern the Qualified Contract Process. It provides guidance with respect to the Missouri Housing Property Commission's (MHDC's) administration of the Qualified Contract Process under Section 42 of the Internal Revenue Code of 1986 and the Treasury Regulations there under (the "Code") for tax credits allocated by MHDC to rental properties throughout the state of Missouri.

MHDC and its monitoring staff are committed to working closely with owners, management agents, and onsite personnel to assist them in completing their Request for Qualified Contract. Please note, however, that this document is to be used only as a supplement to compliance with the Code and all other applicable laws and rules. This manual should not be considered a complete guide to LIHTC Qualified Contract Process. The responsibility for compliance with federal program regulations lies with the owner of the building for which the Low Income Housing Tax Credit is allowable. This document is produced for use by LIHTC Program participants in Missouri interested in opting out and is to be used in conjunction with the tax credit program rules and Land Use Restriction Agreement (LURA).

Because of the complexity of LIHTC regulations and the necessity to consider their applicability to specific circumstances, owners are strongly encouraged to seek competent, professional legal and accounting advice regarding the Qualified Contract Process.

The publication of this document is for convenience only. Your use or reliance upon any of the provisions or forms contained herein does not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that your Qualified Contract Request will be in compliance with the requirements of the Internal Revenue Code of 1986, as amended.

The Missouri Housing Development Commission and contributing authors hereby disclaim any and all responsibility of liability, which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this document. You are urged to consult with your own attorneys, accountants, and tax consultants as MHDC will not make authoritative interpretations of the federal law.

Employees and officers of MHDC are not liable for any adverse consequences to taxpayers and/or investors as a result of programmatic non-compliance with federal laws in conjunction with the Qualified Contract Request Process. The owner agrees to at all times indemnify and hold harmless MHDC and its assignees against all losses, costs, damages, and liabilities of any nature directly or indirectly resulting from, arising out of, or relating to MHDC's acceptance, consideration, approval, or disapproval of the Qualified Contract Request.

The Qualified Contract Process is administered by the MHDC Asset Management Department. Questions regarding Qualified Contract issues should be directed to the Asset Manager at (816) 759-6856 or cmaupins@mhdc.com.

BACKGROUND

Properties in the tax credit program beginning with the tax year 1990 have a 30 year period of affordability which consists at minimum of a 15 year mandatory compliance period and a 15 year extended use period (EUP). However, the mandatory compliance period can be greater than 15 years. Depending on owner elections in the land use restriction agreement (LURA), it may be possible for an owner to opt-out of the tax credit program after the expiration of the mandatory compliance period. If in the LURA an owner elects the right to request a qualified contract after the end of the mandatory compliance period, the owner may begin the Qualified Contract Request Application Process no earlier than January 1, of the last year of the mandatory compliance period.

A qualified contract is a bona fide contract to acquire a low income housing tax credit project for the sum of the existing debt, adjusted investor equity and other capital contributions less the project cash distributions as set for in IRC 42(h)(6)(F). The QCP will establish the minimum price which is required by IRC Section 42.

APPLICATION PROCESS

Instructions and the checklist for the Qualified Contract Process can be reviewed by reading the Qualified Contract Request Application Instructions ([Exhibit QCP-1](#)). The Qualified Contract Process begins with the submission of the Qualified Contract Request Notification ([Exhibit QCP-2](#)), Qualified Contract Request Application ([Exhibit QCP-3](#)) and Qualified Contract Worksheets ([Exhibit QCP-4](#)).

The submission of the Qualified Contract Request Notification (Exhibit QCP-2) or equivalent to MHDC triggers the one-year period for MHDC to find a buyer that will maintain the project as a qualified low-income project. If the Qualified Contract Request Notification is submitted without the remaining Qualified Contract Application Worksheets and supporting documentation, the requester has 60 days to submit the remaining materials to MHDC. If outstanding items have not been received within 60 days, the one-year period will start to toll. MHDC in its sole discretion, may restart the one-year period if it determines necessary.

The Qualified Contract Request Application must be submitted with the required items below:

- Proof that the property is eligible to request a qualified contract according to the LURA;
- Project Information (Name, Address, # of Buildings in Project, Building PIS Date, Building Identification #, 1st Year Tax Credits Claimed);
- First year 8609's showing Part II completed;
- Ownership/Partnership Information;
- Proof that the partnership agreement or other legal document does not grant any form of preference for purchasing the project (for example, a right of first refusal granted to a nonprofit partner);
- Proof that the partnership agreement or other legal document does not provide for any form of agreement to sell the project for less than Fair Market Value;

- Proof that the property is not restricted by any other affordability restrictions (i.e. USDA Rural Development, state/local funding, or project based assistance);
- Copies of all pending 8823's with evidence of resolution;
- Documentation of inspection completed within six months of the submission of the Qualified Contract application along with documentation of correction of all deficient items. The LURA will not be released if noncompliance items are outstanding;
- Plan for addressing gap financing and affordability requirements from other MHDC Programs (i.e. HOME; MHDC Fund Balance; etc.) where applicable. Please note that additional affordability periods may apply regardless of loan payoff;
- Narrative Descriptions of the property to include financing, equity contributions, unit structure and current rent levels, occupancy levels, and market conditions;
- Exterior and interior photos;
- Location Map;
- Site plan;
- Name and contact information of the current Owner and Management Company and
- The Non Refundable Administrative Fee (see chart below).

NON REFUNDABLE ADMINISTRATIVE FEE

Development Size	Fee
1-12 units	\$ 500
13-24 units	\$1,000
25-47 units	\$1,500
48+ units	\$3,500

Once the Qualified Contract Request Notification ([Exhibit QCP-2](#)), Qualified Contract Request Application ([Exhibit QCP-3](#)); and Qualified Contract Worksheets ([Exhibit QCP-4](#)) are submitted in their entirety, the property will undergo a 100 percent physical inspection.

Please note, the Qualified Contract Agreed Upon Procedures ([Exhibit QCP-5](#)) must be reviewed as it contains an overview of agreed upon accounting procedures for the QCP calculation.

QUALIFIED CONTRACT PRICE (QCP) WORKSHEETS

All calculations must follow the IRS code. All assumptions must be reasonable and customary. The following assumptions must be used when calculating the QCP using worksheets A-E. Worksheets A-E must be submitted and include appropriate back up documentation (i.e. loan statement's; K-1s; partnership agreements; financial statements; appraisals; assessed valuations; etc.).

Completed QCP Worksheets include:

- **Worksheet A Outstanding Indebtedness**-Include the unpaid balance of all secured and unsecured indebtedness; the supporting documentation needed is mortgage statements; financial statements, etc.
- **Worksheet B Calculation of Adjusted Investor Equity**-Include investment amounts for all years taxpayer was required to invest and the extent the investment amount is included in the adjusted basis of the project. The investment amount should be increased by the applicable cost of living adjustment percentage set forth by US Department of Labor Statistics and calculated per the guidance under Sec. 42; the supporting documentation needed is partnership K-1s; financial statements, partnership agreements, etc.
- **Worksheet C Other Capital Contributions**-Include other contributions that were not required to be submitted on Worksheet A or B. For this purpose capital contributions are not limited to cash. Therefore, include amounts to replace capital items not paid from reserves i.e. furnace; land; etc. The supporting documentation would include invoices; financial statements; tax returns; HUD settlement statement; other information to support amount.
- **Worksheet D Cash Distributions**- Include all cash distributions made with respect to the project but also all cash that is available for distribution; all cash legally required by restrictions or regulatory agreements to remain with the property following the sale; The supporting documentation needed is partnership K-1s; financial statements; etc.
- **Worksheet E Fair Market Value**-Include Fair Market value on non-low income portion of buildings including total land cost. This amount needs to be determined by a certified appraiser. Using assessed valuation of land from county/city assessor's office in lieu of appraisal is acceptable for properties with 12 units or less.

Once the above items are submitted, MHDC will notify the owner in writing of any deficiencies in the submission. The owner must respond within 30 days. If outstanding items are not corrected or received by year end the owner must submit a new application.

Upon approval of the above listed items comprising the completed Qualified Contract Request submission, there will be a waiting period calculated based on the date of the Qualified Contract Request Notification for release of the LURA by MHDC. MHDC will post the property information on the agency website to notify any potential buyers.

If MHDC presents a prospective buyer to the owner, the owner must agree to allow the prospective buyer to inspect all relevant documents pertaining to the property. If no buyer is found, MHDC will release the LURA, and the three year decontrol period begins.

DISQUALIFICATION OF QUALIFIED CONTRACT

Owners may choose to cancel the Qualified Contract Process at any time during the process. However MHDC may determine that an owner cannot submit another request. MHDC must have continuous cooperation from the owner in respect to all aspects of property information, financial statements, and tax returns. Lack of cooperation will cause the processing of the qualified contract process to be terminated. At any time during the Qualified Contract Process, if MHDC receives notification of investigation or audit by the IRS regarding the tax credit property, the review process and/or website posting will be suspended. The process will stop until the audit or

investigation is complete. Default or material noncompliance with Section 42 will result in suspension of the Qualified Contract Process until MHDC can respond. In the event of a suspension due to noncompliance or audit, the property must maintain and operate under the extended use agreement.

THREE YEAR DECONTROL PERIOD

Following notification from MHDC of LURA release, the owner must implement and comply with the three year decontrol period procedures according to Internal Revenue Code Section 42(h)(6)(E)(ii).

The information below can be submitted on the Annual Owners Certification of Continuing Compliance ([Exhibit 3YDP](#)).

The three year decontrol period procedures are as follows:

- The owner certifies that none of the existing tenants have been evicted without good cause;
- The owner certifies that rent amounts for the existing tenants have not increased more than 7 percent per annum;
- The owner certifies the number of vacant units at the end of the reporting period; except for the first report, when the number of vacant units is the beginning number at the start of the decontrol period;
- The owner will submit a list of existing tenants, rent amounts, lease dates and unit numbers (i.e., current rent roll).

The [Exhibit 3YDP](#) items must be submitted annually to:

Missouri Housing Development Commission
Compliance Support
505 N. 7th Street, 20th Floor, Ste. 2000
St. Louis, MO 63101

APPENDIX

All forms may be accessed on the MHDC website at
http://www.mhdc.com/program_compliance/LIHTC/forms-documents.htm

[Exhibit QCP-1](#) Qualified Contract Request Application Instructions

[Exhibit QCP-2](#) Qualified Contract Request Notification

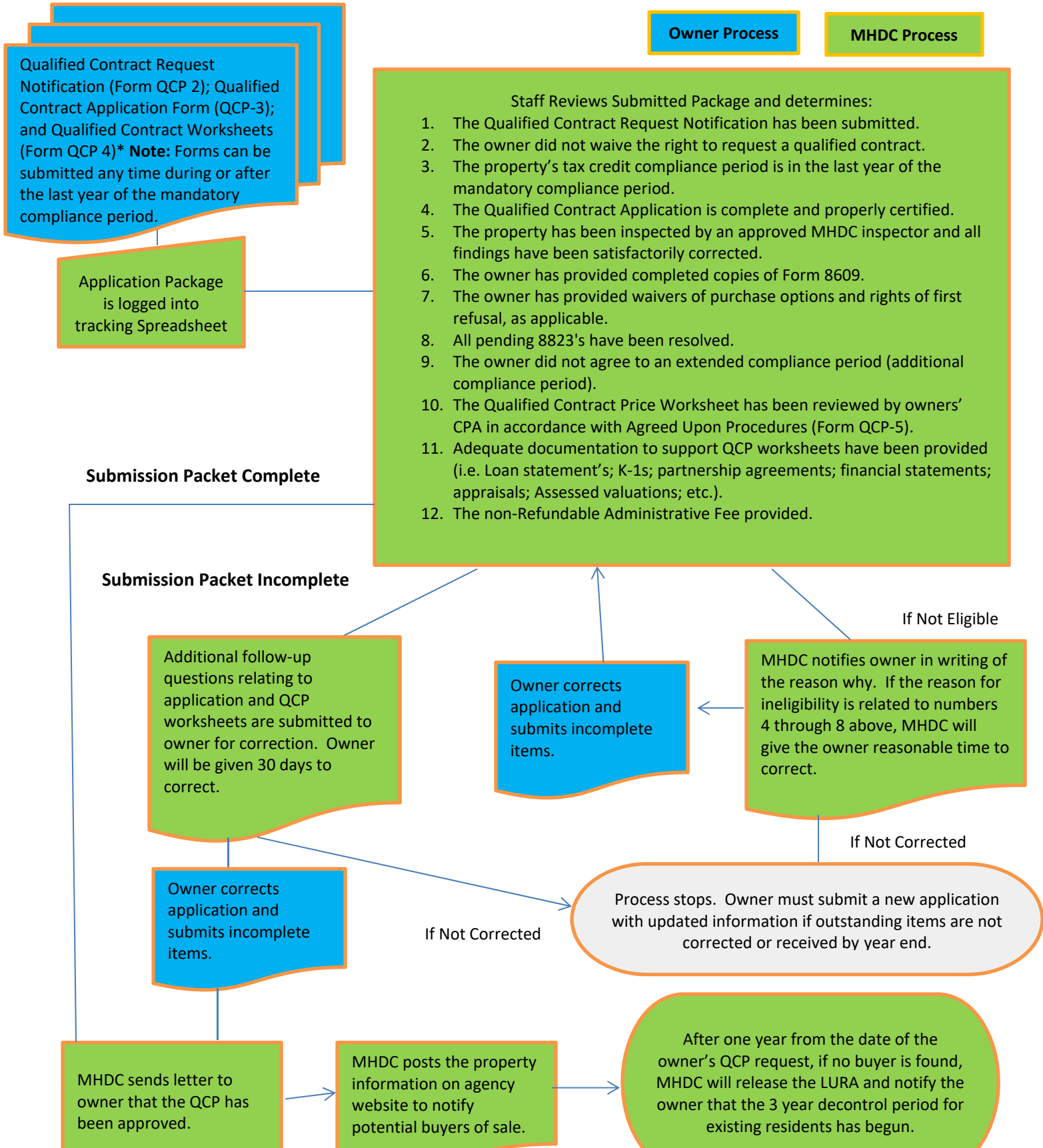
[Exhibit QCP-3](#) Qualified Contract Request Application

[Exhibit QCP-4](#) Qualified Contract Worksheets

[Exhibit QCP-5](#) Qualified Contract Agreed Upon Procedures

[Exhibit 3YDP](#) Annual Owners Certification of Continuing Compliance

MHDC Qualified Contract Process Flowchart



- The Qualified Contract Request Notification triggers the one-year period for MHDC to find a buyer to keep the project in the LIHTC program. If a Qualified Contract Request Notification is submitted without the Qualified Contract Application Worksheets and supporting documentation, the requester has 60 days to submit their remaining materials to MHDC. If items have not been received within 60 days, the one-year period will start to toll. MHDC in its sole discretion may restart the one-year period if it determines necessary.