



# Year 15 Properties

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Section 42(h)(6) of the Internal Revenue Code requires an extended low-income housing commitment of at least 15 years in addition to the compliance period. Such requirement is applicable to all properties awarded housing credits starting in 1990. The exact term of the extended use period for each tax credit property can be found in its Deed of Easement and Restrictive Covenant for Extended Low-Income Occupancy.

New Jersey Housing and Mortgage Finance Agency has established monitoring procedures during the extended use period (19k PDF). Unless specifically addressed within these procedures, the compliance requirements during the extended use period shall remain the same as those requirements established by HMFA during the initial compliance period (see the Compliance Manual (28MB PDF)).

Section 42(h)(6)(E)(i)(II) of the Internal Revenue Code provides a procedure by which an Owner may request termination of the extended use period ("request for termination"). This section provides HMFA a one-year timeframe within which to present a buyer willing to a) maintain the property as low-income and b) purchase the property for a qualified contract ("QC") amount. In the event HMFA is unable to present a buyer, the extended use period is terminated.

If other local, state and/or federal resources were used in the development or operation of the Housing Credit property, the termination of the extended use agreement will only be valid for the Housing Credits. The current and/or future owner of the property will still be required to uphold the income, rent or other restrictions that are required for the remaining funding sources for the remainder of the mortgage, note or deed restriction covering those funds. If the owner does not get a Qualified Contract and the property has Project-based Section 8 assistance, the Project-based Section 8 assistance contract will be terminated if the owner decides to have HMFA release the extended use agreement.

A request for termination may be submitted to HMFA after the last day of the fourteenth year of the compliance period of the last building placed in service. Properties with uncorrected noncompliance and/or outstanding monitoring fees shall not be eligible to submit a request for termination until such items are corrected. A request for termination shall include the following:

1. The Agency 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.
2. Evidence of consent of all partners and lenders to seek a qualified contract (or proof consent is not necessary);
3. $2,500 non-refundable application fee;
4. first year 8609s showing Part II completed (if not previously submitted);
5. copies of all uncorrected 8823s (if any);
6. A current or updated Physical Needs Assessment for the entire property (within 6 months) - See Capital

Needs Assessment Guidelines (1.3MB PDF);

7. A current or updated Phase I environmental assessment (and Phase II if recommended by the Phase I) (within 6 months);
8. Current Rent roll with lease dates;
9. Unit breakdown by size/rental rate;
10. Title Report showing all outstanding liens and encumbrances on title;
11. Certification that the property is in compliance with all Section 42 requirements;
12. Qualified contract ("QC") amount calculated in accordance with Section 42(h)(6)(F) of the Internal Revenue Code, certified by an independent certified public accountant (2 copies required);
13. Back-up documentation (2 copies required) used in determining the QC amount, including, but not limited to:
    1. Annual partnership federal tax returns for all 15 years of operation since the start of the credit period ("all years");
    2. Audited annual project financial statements for all years;
    3. loan documents for all secured debt during the compliance period; and
    4. partnership agreement (original, current and all interim amendments);
14. $30,000 deposit for anticipated third–party costs. Such third-party costs may include, but are not limited to, the following:
    1. an accountant to confirm the reasonableness of the qualified contract amount;
    2. an appraisal for the entire project;
    3. A market study for the entire project

If third party costs exceed the deposit amount, HMFA shall request additional deposits. All expenses incurred by HMFA to process a request for termination shall be borne by the requestor.

By submitting a qualified contract request, the owner grants NJHMFA the authority to market the development and provide applicable information to interested parties. Any and all information, including property and partnership financial statements and tax returns may be provided to third parties or otherwise used by the Agency as it deems appropriate in its discretion. The Agency must have continuous cooperation from the owner. Lack of cooperation will cause the processing of the qualified contract request to be terminated.

If at any time during the Agency's processing of a qualified contract request, the partnership receives notification of audit or investigation by the IRS regarding the tax credit property, the one year period will be suspended and processing will stop until the investigation or audit is complete. In addition, any event of default of material noncompliance with the terms of any of the mortgages, liens or encumbrances on the processing of a QC, will disqualify the Owner from seeking a QC or extend the one-year period the Agency has to respond. In the event processing is suspended or terminated due to any noncompliance or audit, the property must continue to be maintained and operated under the extended use agreement. The one-year timeframe imposed by Section 42(h)(6)(I) of the Internal Revenue Code shall not begin until all items referenced above have been submitted to the satisfaction of HMFA, including the 3rd party reports referenced in #14 above. **Owners submitting a qualified contract must have either a tracking number or delivery confirmation receipt for their package or it will not be accepted.**

HMFA reserves the right to request additional items as needed. The one-year timeframe shall be suspended for any period during which HMFA is waiting for additional documentation from the Owner which HMFA determines to be necessary to determine the QC price.

In the event HMFA calculates a QC price different from the QC price calculated by the Owner, the one year timeframe shall be suspended from the time HMFA presents its QC price to the Owner until such time as the Owner and HMFA agree to a QC price with a dated and signed memorandum.

Under Section 42(h)(6)(E)(i)(II) of the Internal Revenue Code, HMFA's only obligation is to "present" to the Owner a bona fide contract signed by a prospective buyer to acquire the Owner's project for the QC amount (the "Contract"). When HMFA presents the Contract to the Owner, regardless of when or if the Contract is fulfilled, the possibility of terminating the extended use period is removed forever and the project remains bound to the provisions in, and may not terminate, the extended use agreement. Whether or not the Owner actually executes the contract and closes the transaction is a separate, legally unrelated question.

HMFA may add to or amend these procedures at any time. Before submitting a request for termination, please visit the website to obtain the most current information.

## Offers to Purchase

**Receipt of an Offer**

Any prospective purchaser wishing to submit an offer should submit the offer in writing to the NJHMFA (Agency) prior to expiration of the one-year period. The Agency will promptly review the offer within five (5) business days of receipt. If the Agency determines that the offer is complete and meets the requirements for a QC (Qualified Contract) under Section 42, the Agency will present the offer to the owner. The Agency's determination that the offer is a QC and presentation of the QC to the owner satisfies the requirements of Section 42 of the Code. Whether a QC is accepted or rejected, the Extended Use Period will continue, unless the closing does not occur for reasons other than a default by the owner or matters within the owner's control, as described below.

Upon receipt of an offer of a QC, the owner and the prospective purchaser shall have a sixty (60) day Negotiation Period to negotiate the other terms of the transaction. No later than the end of the Negotiation Period, the owner must accept or reject the QC. A failure to accept or reject will be deemed a rejection.

An owner may not require a higher price than the Qualified Contract Price (QCP), but may accept an offer at less than the QCP. Consequently, any offer that is submitted to the Agency even though it does not qualify as a QC will be presented to the owner for review and possible acceptance. If the owner accepts an offer at less than the QCP and closes on the sale of the project within the one-year period, however, the Extended Use Period will not terminate and the Agency's obligation to market the project and present a QC will end.

**The Owner's Acceptance of the Qualified Contract**
If the owner accepts the QC prior to the end of the Negotiation Period and agrees to sell the property, the owner must proceed diligently and in good faith to closing. The owner shall assign its obligations under the Deed of Easement and Restrictive Covenant to the purchaser at the closing.

**The Owner's Rejection of the Qualified Contract**
The owner is not required to accept any QC that is offered. Under Code Section 42(h)(6)(E)(i)(II), however, the Agency's only obligation is to present the owner with a QC or bona fide contract to acquire the property for the QCP. If the owner rejects an offer of a QC at (or above) the QCP from a Qualified Purchaser (QP), the project shall remain subject to the provisions of the Deed of Easement and Restrictive Covenant throughout the entire Extended Use Period, and the Agency will have no further obligation to market the project.

**Qualified Contract is Accepted but Fails to Close**
If the sale pursuant to any QC that is accepted by the owner does not close for any reason other than a default by the owner or matters within the owner's control (e.g. failure of a condition precedent to closing such as the purchaser's inability to obtain financing or the purchaser's dissatisfaction with other aspects of the project), then the Agency will continue to seek offers at the QCP through the end of the one-year period. If no other QC is presented to the owner during the one-year period, then the project will be treated as if no QC had been presented and the Deed of Easement and Restrictive Covenant will terminate.

If the sale does not close due to a default by the owner or other matters within the control of the owner (such as the owner's failure to clear title, to provide financial information or otherwise act in good faith), then unless another QC is presented, accepted and closed, the project shall remain subject to provisions of the Deed of Easement and Restrictive Covenant for the entire Extended Use Period.

**Qualified Contract is Not Presented**
If the Agency is unable to present the owner with a QC by the expiration of the one-year period, the Extended Use Period will be terminated. The project will, however, continue to be subject to the 3YP as required by Section 42(h)(6) of the code. During the 3YP, the owner may not:

> Evict or terminate the tenancy of an existing tenant of a low-income unit, other than for good cause; or
>
> Increase the gross rent with respect to such unit except as permitted under Section 42 of the Code.

If an existing LIHTC tenant vacates the unit during the 3YP, the unit will no longer be considered low income and the 3YP restriction will cease with respect to that unit. The owner will be required to submit annual certifications as required by the Agency for the duration of the 3YP.

**Obligations of the Purchaser**
A prospective purchaser is at all times expected to act in good faith, and to proceed diligently to closing once a QC has been accepted. The purchaser shall enter into a written assumption of the owner's obligations under the Deed of Easement and Restrictive Covenant at closing.

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