

LOW INCOME HOUSING TAX CREDIT PROGRAM

QUALIFIED CONTRACT PROCESS



October 2018

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 (“QCP”). It provides guidance with respect to the Missouri Housing Development Commission’s (“MHDC”) administration of the QCP 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 the 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 of the program, 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 QCP.

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.

MHDC hereby disclaims 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 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 QCP. 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 QCP 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 QCP 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 property for the sum of the existing debt, adjusted investor equity and other capital contributions less the property cash distributions as set forth in IRC §42(h)(6)(F). The QCP will establish the minimum price for the property required by IRC Section 42.

APPLICATION PROCESS

Instructions and the checklist for the QCP can be reviewed by reading the Qualified Contract Request Application Instructions ([Exhibit QCP-1](#)). The QCP 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 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;
- Property Information (Name, Address, # of Buildings in Project, Building PIS Date, Building Identification #, first 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 property (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 property 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 the completed 100 percent inspection and correction of all deficient items dated no earlier than six months prior to submission of the Qualified Contract Request Application;
- Proof of payoff if the property received gap financing from MHDC (i.e., HOME; MHDC Fund Balance; etc.);
- 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 received, the property will be scheduled to 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 property. 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 IRC Section 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 property 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.

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, there will be a 365 day waiting period to find a qualified buyer. The 365 day period to find a qualified buyer will not begin until all items required have been submitted, fully supported and approved by MHDC.

MHDC will post the property information on the agency website for the 365 day waiting period 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 the owner rejects an offer at or above the Qualified Contract Price, the development will remain affordable throughout the term of the LURA") recorded against the property. If no buyer is found, MHDC will release the LURA, and the three year decontrol period begins after the release has been recorded. MHDC will notify the owner of the beginning of the decontrol period.

DISQUALIFICATION OF QUALIFIED CONTRACT

Owners may choose to cancel the QCP 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 QCP to be terminated.

Additionally, if requests for missing information remain outstanding and the QCP has not been approved by year end, the process will be terminated and the owner will need to resubmit the QCP for consideration.

In the event of a QCP suspension due to noncompliance or audit, the property must be maintained and operated 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 IRC§ 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 residents have been evicted without good cause;
- The owner certifies that rent amounts for the existing residents 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 submits a list of existing residents, 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
Suite 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

Qualified Contract Request Notification (Form QCP 2); Qualified Contract Application (QCP-3); and Qualified Contract Price (QCP) Worksheets (Form QCP 4) Note: Forms can be submitted any time during or after the last year of the mandatory compliance period.

Owner Process

MHDC Process

Staff Reviews Submitted Package and determines:

1. The Qualified Contract Request Notification has been submitted.
2. The owner did not waive the right to request a qualified contract.
3. The property's tax credit compliance period is in the last year of the mandatory compliance period.
4. The owner did not agree to an extended compliance period (additional compliance period).
5. The Qualified Contract Application is complete and properly certified.
6. The property has been inspected by an approved MHDC inspector and all findings have been satisfactorily corrected.
7. The owner has provided completed copies of Form 8609.
8. The owner has provided waivers of purchase options and rights of first refusal, as applicable.
9. All pending 8823's have been resolved.
10. The QCP Worksheet has been reviewed by owners' CPA in accordance with Agreed Upon Procedures (Form QCP-5).
11. Adequate documentation to support QCP worksheets have been provided (i.e. Loan statement's; K-1s; partnership agreements; financial statements; appraisals; Assessed valuations; etc.).
12. The non-Refundable Administrative Fee provided.

Application Package is logged into tracking Spreadsheet

Submission Packet Complete

Submission Packet Incomplete

If Not Eligible

MHDC notifies owner in writing of the reason why. If the reason for ineligibility is related to numbers 4 through 8 above, MHDC will give the owner reasonable time to correct.

If Not Corrected

Process stops. Owner must submit a new application with updated information if outstanding items are not corrected or received by year end.

If Not Corrected

Additional follow-up questions relating to application and QCP worksheets are submitted to owner for correction. Owner has 30 days to correct.

Owner corrects application and submits incomplete

Owner corrects application and submits incomplete items.

MHDC sends letter to owner that the QCP has been approved and the 365 day waiting period to find buyer begins.

MHDC posts the property information on agency website to notify potential buyers of sale.

After 365 days if no buyer is found, MHDC releases the LURA and notifies the owner that the 3 year decontrol period for existing residents has begun.