

Property Transfers

Summary

An Owner may not sell a property or transfer its interest in a tax credit property without prior notice to the Commission and prior written consent by the Commission. This also applies to changes in the general partner of a partnership owning a property, the managing member if a limited liability company is the Owner, and the investor member/limited partner member of the ownership entity. The Commission will require information on the prospective new Owner to ensure it is validly assuming the obligations under the Regulatory Agreement, and that the new Owner is aware of all the existing commitments regarding the low-income use of the property. The Commission will require information on the prospective new investor member/limited partner to ensure a smooth exit for the general partner/managing member at the end of the partnership term. A fee is assessed for processing the transfer request. To initiate a transfer consent, contact the Portfolio Analyst assigned to your property. Since a transfer may affect the Owner's tax credit, the Commission is required to report transfers to the IRS.

Bond Posting No Longer Required

The IRS no longer requires a seller to post a bond on transfers of ownership as long as there is a reasonable expectation that the property will remain in compliance throughout the Project Compliance Period. Owners who do not post a bond extend the IRS recapture period on transfers to three years beyond the time when an Owner notifies the IRS of a recapture event.

General Partner, Managing Member and Partner changes at any level require Commission approval and will require similar documentation as a complete Ownership transfer. In most cases, the old and/or remaining "For Profit" GP or MM *must post a bond for their own ownership interest*, regardless of how small an interest it is, within 60 days of the transfer of ownership interest.

The following information is being provided to assist you in understanding the Commission's role and requirements for property transfers or assignments.

The Owner should consult their legal counsel and/or tax advisor about the effect of a Property Transfer or Assignment.

Maintaining Credit Set-Asides

In the initial credit award process, the Commission sets aside stated percentages of its total credit authority for various groups of applicants, such as qualified nonprofits, other nonprofits, Rural Development Owners or for-profit Owners. The balance of the annual credit authority is allocated from a general pool. **If credit was initially awarded from a credit set-aside category, subsequent transfers must be made only to another organization fitting the category.**

For Nonprofit Entities

If the property received tax credits from the Qualified Nonprofit Set-Aside category, the transferee (new Owner) *must* provide documentation demonstrating they are a **bona fide 501(c)(3) qualified nonprofit** and that one of their principle purposes is to provide low-income housing.

Types of Transfers or Assignments Requiring Commission Consent

A Property Transfer or Assignment means any direct or indirect sale, contribution, assignment, lease, exchange, or transfer of, or other change in:

1. An interest in the Land, the Property, or any Building;
2. An Ownership interest in the Property;
3. The rights, title, or interest of the Owner in any agreement in which the Commission and the Owner are parties.

Property Transfers or Assignments requiring written consent of the Commission generally fall into one of the two categories listed below (these two categories are not intended to describe all Property Transfers or Assignments that require the prior written consent of the Commission):

1. A change in an interest in the Land, the Property, or a Building or in the Owner's Property and Ownership rights.
2. A change in any Ownership interests in the entity that owns all or a portion of the Property.

The typical types of changes in Ownership interests in these entities are related to the addition, removal or withdrawal of persons having a Restricted Ownership Interest in the Property. These include:

- ➔ Change in the structure of Limited Partnerships, Limited Liability Companies, Joint Ventures, or General Partnerships related to the actions of individuals.

- Collaterally, changes in Closely Held Corporations pertaining to the issuance, redemption or transfer of stock or shares.
- A sale or transfer of, or change in, the limited partner or member or an interest in a limited partner or member (including the addition, removal, or withdrawal of a limited partner or member)

Only a few specific types of Property Transfers or Assignments do not require the prior written consent of the Commission:

- To lease or rent Housing Units to Residents for their use as contemplated in the Tax Credit Program;
- For any other incidental use, to the extent permissible under all applicable federal, state, and local laws and regulations;
- To grant a security interest or lien junior to the interest of the Commission;
- The transfer of limited partner or member interests among affiliated entities of an equity investor; or
- For the issuance, redemption, or transfer of stock or shares of a corporation that is not a Closely Held Corporation.

Transfers to Owners with No Previous Tax Credit Experience

The complexity of the Low Income Housing Tax Credit program requires that property owners and management companies have experience with the program in order to properly run tax credit properties.

All proposed owners and property management companies unknown to the Commission will be required to complete a *LIHTC Capacity Certification* form which describes how the owner/management company is qualified to run a tax credit property.

The Commission reserves the right to withhold approval for any transfer where the owner's or management company's *LIHTC Capacity Certification* indicates a clear lack of tax credit experience. For such transfers to be approved, the Commission will require that, at minimum, the new Owner execute a contract with a Commission-approved property management company prior to the Commission's written approval of the transfer.

Conditions and Consent

The Commission will consent to a proposed Property Transfer or Assignment only if it is determined that:

1. The Transferee and/or any Related Party is not in arrears on the payment of any fees due to the Commission or in default under a Regulatory Agreement or Extended Use Agreement for any Property;
2. The Transferee and/or any Related Party has not engaged in or allowed instances of Noncompliance with the provisions of any Regulatory Agreement, Extended Use Agreement, the Tax Credit Program, or Section 42 of the Code;
3. The property is in compliance for the most recent reporting period;
4. Evidence that the Transferee and Transferee's property management company have demonstrated experience owning/managing a tax credit property, or that the Transferee has provided a copy of a contract executed between them and a Commission-approved property management company;
5. For limited partner or upper tier member changes only, that the Transferee has not had a claim filed against it in litigation in any jurisdiction concerning a sponsor's, partner's, or member's ownership interest in a low Income Housing Tax Credit project after the initial term of the partnership (year-15 exit), or in case of any such claims, that (1) each claim filed against it was no fault of the Transferee's and (2) the Transferee has consistently acted in furtherance of the Low Income Housing Tax Credit Program's goals, including the preservation of projects as low income housing for the longest periods and, to the extent applicable, the continuing material participation of nonprofit housing organizations.
6. The Transferee/Transferor have satisfied all other reasonable requirements communicated to them by the Commission.

If removal and replacement of Partner/Member do not occur simultaneously

Note: The Commission will, **in its sole discretion**, accept written notice of the removal of a General Partner in a Partnership, Managing and Administrative Members in a Limited Liability Company or Partners in a Partnership and the payment of the \$1,500 transfer fee, in lieu of the documentation above, if the removal and replacement of such entity do not occur simultaneously. The replacement of the entity **and the submission of the documentation listed elsewhere in this chapter** must occur within six months of the removal or an additional \$1,500 transfer fee will be assessed.

Any Property Transfer or Assignment made **without** the Commission's prior written consent (unless otherwise expressly permitted) or otherwise in violation of the requirements or provisions of the Regulatory Agreement, or the Tax Credit Program will be:

1. Ineffective to relieve or release the Transferor, the Land, the Property, and/or any Building from the obligations and provisions of the *Policies*, the Regulatory Agreement, and/or the Tax Credit Program;
2. Considered an event of default under the Application, the Regulatory Agreement, and the Tax Credit Program, allowing the Commission to exercise any or all available remedies; and
3. Considered an event of Noncompliance that may result in the cancellation or invalidation of the Reservation and/or Allocation of Credit for the Property and/or any Building.

The indemnity and hold-harmless provisions of the Regulatory Agreement or any other Tax Credit Program agreement by the Owner and/or a successor in interest will survive the ending of such parties' interest in the Property and will continue to be a personal obligation of such party.

Fees

Commission Processing Fees to review and approve transfers are as follows:

- ◆ For complete Ownership changes and/or sale of a property to a new individual, partnership or limited liability company: Fee is \$3,162.00 due with transfer approval request. **
- ◆ For complete Ownership changes at Year 15 where original Nonprofit Sponsor is taking sole ownership of the property: Fee is \$2,500.00 due with transfer approval request. **
- ◆ For changes to the General Partner(s) in a Limited Partnership; changes to the Members or Managing Members in a Limited Liability Company **or changes to the Partners in a Partnership**: Fee is \$1,500 due with transfer approval request. **

Note that the transfer review will not commence until the Commission receives a check for the transfer fee.

** Fees are subject to change. Contact the Commission at transfers@wshfc.org to confirm the exact fee.

Timeframe and Completeness

For the Commission to consider and act on the Owner's request, the Owner must satisfy each of the following requirements **at least 45 days before** the proposed effective date of the Property Transfer or Assignment:

1. Pay to the Commission the applicable Transfer Fee for each Property Transfer or Assignment
2. Fully and accurately complete and return **all** of the forms, documents, and other information required in these Transfer Instructions or in writing by the Commission staff.

The Commission will review the Owner's completed Transfer Packet. The Commission may determine that additional information is necessary in order to consider the Owner's request or that the Commission's consent must be conditioned upon certain events, facts, or requirements. Commission staff will follow up with the Owner to ensure all requirements are met. Once all requirements are met, the Commission will execute a Transfer Agreement (sample Agreement available on our website) which must be signed by the Commission's Executive Director and by the proposed buyer. This Agreement is then recorded against the property after both parties have signed.

The Commission makes no guarantee and provides no assurance that it can execute the Transfer Agreement by the Owner's closing date if the required fee and correct documentation are not received by the Commission at least 45 days prior to the closing date.

Any transfer requests received on or after November 15th of any year will not be completed until after January 1st of the following year.

HOW TO SUBMIT REQUIRED DOCUMENTS

The remaining sections of this Chapter describe the documents that must be submitted for review to the Commission, depending on the type of transaction taking place. All documents are to be completed and submitted via an online portal accessible through a Commission-provided web link:

For full property transfers and Year 15 Exits:

https://form.jotform.com/WSHFC_IT/property-transfer-app

For GP, Managing Member and Limited Partner changes:

https://form.jotform.com/WSHFC_IT/management-change-app

Contact Information

All correspondence concerning the transfer process, timeline, fees or how to enter data/attach files in the JotForm submission portal should be directed to our transfer staff at transfers@wshfc.org.

If you have concerns or questions about specific forms, need to discuss capacity issues, want to substitute one form for another, or any other compliance-related questions, please contact the Portfolio Analyst who monitors the property. You can find them at:

<http://www.wshfc.org/managers/Other/ProjectAssignments.pdf>

Required Document for All Transfers:

In the initial transfer submittal, Owner should describe:

1. The name of the Property;
2. The names of the current Owner(s), the proposed Transferor and Transferee, and all other relevant parties;
3. A complete description of the proposed Property Transfer or Assignment including the purpose of transfer, the proposed effective date; and
4. Any special circumstances related to the proposed Property Transfer or Assignment.
5. For changes to the General Partner, Managing Member or Partners, a description of the new roles and responsibilities.

Description of Transfer

Specific Documentation Required for Sale of Property

1. A check for the \$3,162 transfer fee.
2. Written description explaining the nature of the transfer, as noted above.
3. Schematic showing Ownership before and after proposed transfer.
4. Complete *Owner Request for Commission Approval, Summary of Transfer (Sale of Property)* form attached on Compliance website.
5. A copy of the preliminary title report **showing the correct names of the proposed insured and property street address.**
6. IRS letter or *IRS Form SS-4* assigning taxpayer identification number.
7. *Financial Solvency and Litigation Form.*

8. ***Legal Counsel and Professional Representative Form.***
9. Copy of the proposed management contract and resume of the management company including a list of all properties currently managed (a signed copy of management contract will be due at closing).
10. Final copy of the Purchase and Sale Agreement.
11. Proposed Ownership entity documentation as described below.

For Limited Partnerships

- Partnership Agreement
- Certificate of Limited Partnership with Secretary of State filing stamp from jurisdiction of formation
- Partnership Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
- Names of partners with their percentage of interest
- Entity documents for the general partner as required hereby depending on the entity type. (For example, if the general partner is a corporation, provide articles and bylaws of corporation.)
- Certificate of Existence/Authorization from Washington Secretary of State (must be current; issued within 30 days)

For Corporations

- Articles of Incorporation (with Secretary of State filing stamp from jurisdiction of formation)
- Bylaws
- Corporate Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
- Certificate of Existence/Authorization from Washington Secretary of State (must be current; issued within 30 days).

For Limited Liability Company

- Operating Agreement (or Limited Liability Agreement)
- Certificate of Formation with Secretary of State filing stamp from jurisdiction of formation
- Certificate of Existence/Authorization from Washington Secretary of State (must be current; issued within 30 days)
- Names of members with percentage of interest
- Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority

For Out-of-state Purchasers

For partnerships, corporations, and limited liability companies located outside the state of Washington the following additional documentation is required.

- A current Certificate of Existence/Authorization from the foreign state of formation is required (if issued in the state of formation)
- If the new Owner (individual(s), limited or general partnerships, corporations, or limited liability company) is a non-resident or not licensed to conduct business in Washington State, the Owner must have an agent who will act as property manager and said agent must be licensed to conduct business in Washington.

The following additional documentation is required for out-of-state purchasers, not licensed to conduct business in Washington who will be using management agents:

- A Certificate of Existence/Authorization (must be current; issued within 30days) for agent;
- A certification (in the form of a letter) from new Owner that they will always maintain an agent (or management company) which is licensed to conduct business in the state of Washington or become qualified to do business in the state of Washington themselves.

**Specific
Documentation
Required for**

1. A check for the \$2,500 transfer fee.
2. Written explanation of the nature of the transfer.

**Sale of Property
(Assumption by
Original
Nonprofit
Sponsor)**

3. Schematic showing Ownership before and after proposed transfer.
4. Complete *Owner Request for Commission Approval, Summary of Transfer (Sale of Property)* form.
5. *Financial Solvency and Litigation Form*.
6. *Legal Counsel and Professional Representative Form*.
7. Confirmation letter indicating no change in management company.
8. A letter or statement indicating status of Project reserves (if applicable) and the consideration for the transfer (assumption of debt, most of which are nonrecourse, plus estimated exit tax liability, if any).
9. New owner Certificate of Existence if applicable.
10. Resolution pertaining to change/assumption of responsibilities and signature authority.
11. If applicable, new owner's policy showing the name of the proposed insured and property street address.
12. Provide any other documentation as requested by Portfolio Analyst.

**Specific
Documentation
Required for
Changes to
General Partner
or Managing
Member**

1. Written description explaining the transfer as noted above.
2. Schematic showing Ownership before and after proposed transfer.
3. Complete *Owner Request for Commission Approval, Summary of GP/Managing Member Change* form found on Compliance website.
4. LP approval of new General Partner.
5. A check for the \$1,500 transfer fee.
6. *Financial Solvency and Litigation Form* for new partner(s).
7. IRS Form SS4 (or IRS letter with same information)
8. Copy of proposed management contract and resume of the management company including a list of all properties currently managed.
9. Certificate of Existence/Authorization from Washington Secretary of State (must be current within 30 days) for incoming partners.

**(For Changes to
Limited Partner
or Upper Tier
Member please
provide items
2,3, 6 and 12
only)**

10. Resolution pertaining to change/assumption of responsibilities and signature authority.
11. For any out of state General Partner, Managing Member or Partners, a certification (in the form of a letter) from the Owner that agent is licensed to conduct business in Washington State and that it will always maintain an agent (or management company) which is licensed to conduct business in the state.
12. For limited partner or upper tier member changes only, the Transferee must submit a certification that the Transferee has not had a claim filed against it in litigation in any jurisdiction concerning a sponsor's, partner's, or member's ownership interest in a low Income Housing Tax Credit project after the initial term of the partnership (year-15 exit). Otherwise, in case of any such claims, the Transferee must provide a complete list of proceedings in which such claims have been filed (specifying case names, case numbers, courts, dates, parties, claims raised, and dispositions) along with a written explanation and supporting documentation demonstrating by clear and convincing evidence to the Commission's satisfaction that (1) each claim filed against it was no fault of the Transferee's and (2) the Transferee has consistently acted in furtherance of the Low Income Housing Tax Credit Program's goals, including the preservation of projects as low income housing for the longest periods and, to the extent applicable, the continuing material participation of nonprofit housing organizations. The entire submission (list, explanation, and supporting documentation) should not exceed 20 pages total. The Commission reserves the right, in its sole discretion, to request more information, and if extensive review is required, to charge a supplemental fee to recoup its costs.
13. Provide any other documentation required by Commission staff.