

## *Qualified Contract Process*

### Summary

Tax Credit properties allocated credit in 1990 and beyond will be eligible for an “option year” in 2004 and beyond. This option year can occur, at the Owner’s election, any time after year 14 in a 30-year Regulatory Agreement (extended use agreement), unless the Owner voluntarily deferred that period until a later date in the agreement.

Owners must notify the Commission of their desire to sell the property using the process outlined in this chapter. Once complete and proper notice has been received, the Commission has one year to find a buyer for the project at a pre-determined price, not to exceed the “Qualified Contract Price” (QCP). The qualified purchaser can be a nonprofit or for-profit entity that agrees to maintain the affordable housing units and fulfill all requirements of the extended use agreement.

A list of properties with option years can be found on our website. See *Tax Credit Property Option Years List*.

Owners who elect to exercise their option year must complete the following information, pay applicable fee and deposit and provide all required due diligence documentation listed therein no later than March 1<sup>st</sup> in any year in which the project is eligible for this process. The Owner may only request a Qualified Contract from the Commission one time. These forms are located on our website:

- ▶ *Qualified Contract Notification Letter*
- ▶ *Calculation of Qualified Contract Price Worksheets*  
*(Sample) (Blank)*

The Tax Credit property must be in compliance with all Regulatory Agreement requirements. The Qualified Contract may be suspended or terminated due to any: Material Noncompliance, or any mortgage defaults, liens or encumbrances on the property or IRS audit or investigation that may adversely affect sale of the property.

The Commission will review the Owner’s packet of due diligence materials, submit the package to a designated third party consultant for review and agree on an appropriate Qualified Contract Price (QCP). This will require staff and the Owner to work closely together to ensure that all required information has been submitted and a QCP has been set. The one-year period begins once this step is complete. The Commission will complete this initial review within 90 days after receipt of all required documentation.

**Qualified  
Contract Packet  
Materials**

In order for the Commission to properly market the property, the Owner will be responsible for providing certain information. At a minimum, the Owner will need to provide the following:

1. A fully completed "Calculation of Qualified Contract" Price, including Worksheets A – E. This form must be completed, or reviewed and approved, by the accountant for the Project.
2. A thorough narrative description of the Project, including all amenities - suitable for familiarizing prospective purchasers with the Project.
3. A description of all income, rental and other restrictions, if any, applicable to the operation of the Project.
4. A detailed set of photographs of the Project, including the interior and exterior of representative apartment units and buildings, and the property's grounds (*including digital photographs that may be easily displayed on the Commission's website*).
5. A copy of the most recent 12 months of operating statements for the property which will fairly apprise a potential purchaser of the property's operating expenses, debt service, gross receipts, net cash flow and debt service coverage ratio.
6. A current and complete rent-roll for the entire property.
7. If any portions of the land or improvements are leased, copies of the leases.
8. Pay required administrative fee described later in this chapter.

**Fees**

In order to cover costs the Commission will assess the Owner a fee and deposit as outlined below:

1. \$3,500 non-refundable administration fee for processing qualified contract requests.
2. \$30,000 deposit for anticipated third party costs. This deposit may be used by the Commission to pay for such third party costs as:
  - ▶ Third party review of package by an accounting firm to confirm the qualified contract price requested
  - ▶ A physical needs assessment of the property
  - ▶ An appraisal of the property
  - ▶ A market study of the property

- ▶ A Phase I environmental study and if necessary Phase II environmental study

If third-party costs exceed the original Owner's deposit the Commission may make a request for additional deposits. The qualified contract process will be suspended during any time an additional deposit has been requested until such funds have been received. If requested funds are not received within 15 days of notice to the Owner the processing of the qualified contract request will be terminated. Any remaining deposits will be returned to the Owner at the end of the one-year period.

### **Additional Owner Requirements**

In addition to the above, the Owner must agree to the following requirements:

1. List the property for sale with a broker who works with affordable multifamily housing properties such as Marcus & Millichap, Hendricks & Partners, CB Richard Ellis, Cushman & Wakefield and others.
2. Agree to allow the Commission to post summary data about the property on its website.
3. Reasonably cooperate with the Commission and its agents to present a qualified contract for purchase of the property. This may include providing copies of additional rent rolls, project tax returns, income certifications, repair and maintenance records, operating expenses and debt service information, and other due diligence documents.
4. Provide access to the property for inspection by the Commission, its agents and prospective purchasers.

### **Owner Certifications and Commitment**

At the time of application the Owner must certify to the following:

1. They have conducted their own investigation and due diligence in determining calculations of the Qualified Contract Price.
2. They are solely responsible for documents and information provided to the Commission and to prospective purchasers.
3. All information submitted is accurate and complete.
4. The Commission has made no independent investigation of the Owner's submissions and cannot attest to their accuracy or completeness.

5. The Owner agrees to indemnify, defend and hold the Commission harmless with respect to the use of information submitted.

Finally, if the Commission finds a prospective purchaser willing to present an offer to purchase the property for an amount at the Qualified Contract Price, the Owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase.

Upon receipt of the Owner's request to exercise their option year (*Notification Letter and Qualified Contract Price Worksheets*), Commission staff will employ the following Marketing Plan:

1. Post the property information on the Commission website with links under the "What's New" section of our main Commission page and also post on the Compliance & Preservation Division page.
2. Put together an informational flyer and work with the broker to forward their offering brochure; these materials will be emailed to a pre-established mailing list. This list will include current Owners of tax credit properties; contacts at large management companies; the Affordable Housing Management Association (AHMA) and Council for Affordable and Rural Housing (CARH) contacts; other public funding agencies in the state; local, state and nation-wide nonprofit and for profit Owners interested in preserving the housing; and tax credit investor contacts.
3. Present information on the property(s) to preservation groups at stakeholder meetings we attend (add to the agenda).
4. Act as a conduit for all requests of prospective purchasers by quickly responding to requests for additional information from the Owner and forwarding that information immediately upon receipt.

If the Commission fails to present a Qualified Contract before the expiration of the one-year period (or such longer period as the Owner may agree to in writing), the project will remain subject to the requirements set for in Section 42(h)(6)(E)(ii); that is, for a three-year period commencing on the termination of the compliance period, the Owner may not (i) evict or terminate a tenancy (other than for good cause) of an existing tenant of any low-income unit, or (ii) increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code, as well as the requirements of the regulatory agreement.

### Marketing by the Commission

### Three-Year Period

For more information on this process please contact the Compliance & Preservation Division. Qualified Contract forms and property option years can be found at [www.wshfc.org/preservation/list.htm](http://www.wshfc.org/preservation/list.htm).

**Attachments:** *(See Website)*

<http://www.wshfc.org/managers/ManualTaxCreditIndex.htm>

- A. Tax Credit Properties Option Year List (1990 - 1995 Allocations) (Excel) (PDF)
- B. Qualified Contract Notification Letter (PDF)
- C. Calculation of Qualified Contract Price Worksheet (Blank) (WORD)
- D. Calculation of Qualified Contract Price Worksheet (Sample) (WORD)