

## ***Eventual Tenant Ownership***

### **Preface**

The guidelines contained in this Appendix are based on the Commission's interpretation of current IRS regulations concerning this federal commitment. These guidelines will change if the IRS issues additional guidance pertaining to Eventual Tenant Ownership. This guidance is not intended to provide, and should not be relied on for, any tax, legal or accounting advice. Owners should consult their own tax, legal, accounting and other advisors prior to choosing Eventual Tenant Ownership for their project.

### **Background**

Eventual Tenant Ownership (ETO) is an option in the Tax Credit Program. If an Owner chooses this option for a tax credit project, ETO will require the rental units to be made available to residents for purchase as homeownership units after the end of the initial 15-year federal compliance period. After Year 15, units are made available for sale under the conditions and requirements outlined in the Lease Addendum and in compliance with the project's Conversion Plan. Residents are provided the opportunity to purchase their unit but are not required or obligated to purchase. If a resident is not eligible or chooses not to purchase their unit, the owner is required to allow them to continue renting and maintain any unsold units as rental units subject to the terms of the LIHTC regulatory agreement through the term of the Project Compliance Period, or, if earlier, until sold to a resident.

After Year 15 and once the process of converting units from rental to homeownership begins, if a unit becomes vacant, the unit must first be rented to LIHTC income eligible households who may later choose to purchase the unit for homeownership. There is no minimum length of tenancy required by the Commission. However, to convert a unit from rental to homeownership, a household must first be a resident of the property in order to exercise their Right of First Refusal to purchase the unit for homeownership. Units not purchased initially after Year 15 remain available for purchase in the future until sold and released from the LIHTC Regulatory Agreement.

### **Compliance**

Owners are responsible for meeting the requirements of the LIHTC federal guidelines as well as the Commission's additional requirements as outlined in the 9% Competitive Housing Tax Credit Policies and follow guidance provided in the 9% Housing Credit Program Eventual Tenant Ownership Guide for Property Owners and Residents. Specific compliance requirements are outlined in the Commission's Tax Credit Compliance Procedures Manual and Tax Credit Frequently Asked Questions documents. Owners must be in compliance with their approved Conversion Plan.

**Conversion Plan**

Each project is required to have a Conversion Plan that specifies the details of Eventual Tenant Ownership for the project that is inclusive of, but not limited to, the following:

- Investor Exit
- Encumbrances
- Purchase Price
- Counseling and Training
- Maintenance and Inspections
  - At year 14, owners must submit a more detailed timeline of each unit's expected conveyance and acknowledge the inspection requirements. The owner must inspect all units in year 14. All unsold units are required to be maintained as rental units for the duration of the Project Compliance Period and shall be in compliance with standard LIHTC inspection requirements, until sold to a resident.
- Resident Communication and Eligibility
  - Low Income Housing Tax Credit Lease Rider
  - Owner's Lease Addendum – detailing the specific ETO provisions and resident eligibility criteria for the project.
- Tenant Selection Plan
- Fee Simple/ Land Lease
- BIN/Legal Description- Each unit will be required to have its own Building Identification Number, commonly referred to as the BIN, and separate legal descriptions for each unit.
- Timing for conversions
- Reporting
  - Owners must complete the LIHTC *Owner's Annual Certification* each January 31.
  - Commencing on January 31 of the 13<sup>th</sup> anniversary of the date of the Regulatory Agreement, Owners must submit a report describing their progress towards implementing the Conversion Plan, including, but not limited to, the number of eligible residents having received homeownership, budget, financial, and maintenance counseling held with the appropriate parties.
- Resale and other restrictions (if required by the owner)
- The owner(s) will be responsible for any fees associated with the conveyance.

Note that the Commission retains the right to request more or different documentation from the Owner to satisfy its monitoring requirements and ensure a tax credit project complies with both federal and state regulations.

**Requirements for Conversion**

Once the property reaches Year 15 and the LIHTC Investor has exited, the Owner shall start the process of selling units to residents by extending an offer to purchase (Right of First Refusal) to those residents. The Owner shall notify the Commission when an offer Right of First Refusal is delivered and if the receiving resident accepted or declined. The Owner must notify the Commission when a unit is sold and request approval for that unit to be released from the Regulatory Agreement. The following information must be included in the notice along with documentation as applicable:

- Conveyance packets to Commission per conveyance timeline
  - Conveyance packet should include
    - BIA approval of a ground lease transfer or property transfer, if required and applicable
    - Proof that sale price is in compliance with the Conversion Plan
    - Proof of Resident LIHTC income eligibility
    - Proof of resident completion of financial and homeowner education
    - Purchase and sale agreement between owner and resident
    - Proof of Inspection and completion of repairs from year 14, appraisal or inspection
- Fees- Each time a unit is ready for conveyance the owner will be responsible for the costs associated with the conveyance, such as recording and legal fees.
- The Commission will provide the form of release of the unit from the LIHTC regulatory agreement after review of the conveyance materials.

**Noncompliance**

See Chapter 2, Chapter 3 and Chapter 7 of this Manual for more detailed information on noncompliance and consequences of noncompliance.

The Commission will work with owners to correct non-compliance with Eventual Tenant Ownership requirements.

**Changes to these Guidelines**

These procedures are subject to change at any time by the Commission based on staff experience and/or Commissioner guidance. These procedures may also be suspended or amended based on additional IRS clarification, guidance or changes to regulations.