

Property Transfers

Summary

Pursuant to the Commission's rules (WAC 262-01-140), *Policies* and Regulatory Agreements, an Owner may not sell a property or transfer its interest in a bond financed property without prior notice to the Commission and prior written consent by the Commission. This 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, although projects that include tax credits should refer to the *Tax Credit Compliance Procedures Manual* for guidance on transfers. 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. A fee is assessed for processing the transfer request. To initiate a transfer consent, contact the Portfolio Analyst assigned to your property.

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

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 an 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 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, provided that notice of the transfer and documentation of the transfer as requested by the Commission is still required;
- For the issuance, redemption, or transfer of stock or shares of a corporation that is not a Closely Held Corporation.

**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 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, the Tax-Exempt Bond Program, or Section 142(d) of the Code;
3. The property is in compliance for the most recent reporting period;
4. The Transferee/Transferor have satisfied all other reasonable requirements communicated to them by the Commission.

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 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* and the Regulatory Agreement; and
2. Considered an event of default under the Regulatory Agreement, allowing the Commission to exercise any or all available remedies.

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 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. **

**Timeframe and
Completeness**

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 to confirm the exact fee.

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 which must be signed by the Commission and 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.

Additionally, 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:

**Required
Document for
All Transfers**

For full property transfers:

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

**Specific
Documentation
Required for
Sale of Property**

In a cover letter, the 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.

1. Written cover letter explaining the transfer as noted above.
2. Schematic showing Ownership before and after proposed transfer.
3. Complete *Owner Request for Commission Approval, Summary of Transfer (Sale of Property)* form attached on Compliance website.
4. A check for the \$3,162 transfer fee.
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. *Legal Counsel and Professional Representative Form.*

8. 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).
9. Final copy of the Purchase and Sale Agreement.
10. 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
Changes to
General Partner
or Managing
Member**

1. Written cover letter 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. IRS Form SS4 (or IRS letter with same information)
7. Copy of proposed management contract and company resume, including a list of all properties managed in Washington State.
8. Certificate of Existence/Authorization from Washington Secretary of State (must be current within 30 days) for incoming partners.
9. Resolution pertaining to change/assumption of responsibilities and signature authority.