

Property Transfers

Summary

Pursuant to the Commission's rules (WAC 262-01-130), *Policies*, and Regulatory Agreements, 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 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 transfer to ensure it will promote satisfaction of all applicable regulatory and contractual obligations, and further the Commission's priorities for LIHTC projects as set forth in WAC 262-01-130. This includes ensuring that the new Owner or partner is validly assuming the obligations under the Regulatory Agreement, is aware of all the existing commitments regarding the low-income use of the property, and is fit to serve as a participant in the project and program. A fee is assessed for processing the transfer request. To initiate a transfer consent, contact the Portfolio Analyst assigned to your property. The request will be processed in accordance with the Commission's *Policies* on transfers and instructions in this Chapter.

Since a transfer may affect the Owner's tax credit, the Commission is required to report transfers which occur during the property's federal compliance period 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 so you understand 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

See Commission *Policies* (available on our website under **Multifamily** navigation tab) for detailed explanation of types of transfers and assignments requiring Commission consent; also review the entirety of this Chapter.

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 the new Owner execute a minimum 3-year contract with a Commission-approved property management company or a third-party LIHTC compliance consultant prior to the Commission's written approval of the transfer.

Conditions and Consent

The Commission will not consent to a proposed Property Transfer or Assignment if it is determined that:

1. The Transferee and/or any Related Party is 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 engaged in or allowed instances of material Noncompliance with the provisions of a Regulatory Agreement, Extended Use Agreement, the Tax Credit Program, or Section 42 of the Code;
3. The Transferee and/or Transferee's property management company lack demonstrated experience owning/managing a tax credit property, and the Transferee has not provided a copy of a minimum 3-year contract executed between them and a Commission-approved property management company or third-party LIHTC compliance consultant;
4. The Transferee/Transferor have failed to satisfy all other reasonable requirements communicated to them by the Commission.

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 \$5,000.00** 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 \$2,175** due with transfer approval request. **

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

** Fees are subject to change. Contact the Commission at transfers@wshfc.org to confirm the exact fee and instructions on how to submit payment via ACH.

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 via ACH 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 Commission staff.

The Commission will review the Owner's completed Transfer documents. 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'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 a 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 A TRANSFER REQUEST

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 link. Begin the transfer process by submitting a Transfer Request at:
<https://portal.wshfc.org/Forms/AMCTransferRequest>.

Contact Information

All correspondence concerning the transfer process, timeline, fees or how to enter data/attach files through our submission portal should be directed to our 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. Their contact information is listed in the above-mentioned Transfer Request link. Additionally, all forms mentioned below are provided after you submit the Transfer Request.

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. A complete set of before and after organization charts showing the current ownership structure and the structure as it will be after closing.

Specific Documentation Required for Sale of Property

1. ACH payment for the applicable transfer fee.
2. Written description explaining the nature of the transfer, as noted above.
3. Schematic showing complete Ownership structure before and after proposed transfer.
4. Complete *Owner Request for Commission Approval, Summary of Transfer (Sale of Property)* form.
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 LIHTC History 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 30 days) 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 Year 15 Exit (Dissolution of Partnership, Assumption by Original Nonprofit Sponsor)

1. ACH payment for the applicable transfer fee.
2. Written explanation of the nature of the transfer.
3. Schematic showing complete Ownership structure before and after proposed transfer.
4. Complete *Owner Request for Commission Approval, Summary of Transfer (Sale of Property)* form.
5. *Financial Solvency and LIHTC History 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 complete Ownership structure before and after proposed transfer.
3. ACH payment for the applicable transfer fee.
4. Complete *Owner Request for Commission Approval, Summary of GP/Managing Member Change* form.
5. LP approval of new General Partner.
6. *Financial Solvency and LIHTC History Form* for any new partner(s) or partners whose prior form is outdated.

(For Changes to Limited Partner or Upper Tier Member please provide items 1, 2,3,4, and 6 only)

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.
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.

Any other documentation required by Commission staff must also be provided.