

QUALIFIED CONTRACT PROCESS

The Omnibus Budget Reconciliation Act of 1989 required that all properties receiving an allocation of Housing Credits after January 1, 1990, be subject to an “extended use period.” The extended use period lengthened the time that LIHTC developments are required to maintain affordability from 15 to 30 years. In an effort to ease concerns of program participants about the economic viability of maintaining affordability without additional subsidy, the 1989 Act also detailed an option for owners to exit the program at the end of the initial 15-year compliance period by requesting the state allocation agencies assist in finding a purchaser, willing to continue the affordability restrictions, at a “Qualified Contract Price” (QCP).

Even though the 1989 Act provided some owners with an opt-out provision in or after year 15, many developers in Kansas, as well as across the country, waived their right to an early opt-out. The policy below will apply only to those properties that did not waive the opt-out provision and are eligible for opt-out at some point prior to the 29th year of use.

Owners are encouraged to review their copies of their LURAs to determine if they are eligible to pursue the opt-out provision. Additionally, if able to pursue the opt-out provision under the LURA, the development and owner must also be in compliance with all program requirements to be eligible. If eligible for early opt-out, owners may request, in writing, that KHRC find a buyer for the low-income portion of the property according to the process and procedures outlined below. If KHRC is unable to find a buyer pursuant to a Qualified Contract, the property may be converted to market rate subject to a decontrol period as detailed below, provided there are no other use restrictions on the property (subordinate loans, HUD Use Agreements, etc.).

Owners who elect to exercise this option must complete the following information and provide all required due diligence documentation listed therein.

1. Qualified Contract Notification Letter (Required Document Provided by KHRC)

In the letter, the owner must agree and acknowledge that information submitted to KHRC may be shared by KHRC in its discretion with prospective purchasers, real estate brokers, and staff and agents of KHRC, and that data provided may be posted on KHRC’s website for purposes of marketing the development.

The owner must agree to work with and cooperate with KHRC throughout the Qualified Contract process. This may include, but is not limited to, providing copies of rent rolls, income certifications, repair and maintenance records, operating expenses, and other due diligence documents, as well as allowing access to the property for inspection by KHRC, its agents, and prospective buyers, upon 48-hour notice. Prior to sharing any information with a prospective purchaser, the owner may require that the prospective purchaser enter into a commercially reasonable form of nondisclosure agreement. If the owner will require such an agreement, the owner must note that in the notification letter and provide a proposed copy of the nondisclosure agreement.

The owner must acknowledge and certify in the notification letter that it has conducted its own due diligence review of the calculation of the Qualified Contract Price. The owner must further agree and acknowledge that it is solely responsible for all documents and information provided to KHRC.

The owner must agree to indemnify, defend, and hold KHRC harmless, and its officers, employees, and agents from any and all liabilities, claims, demands or suits, and all related costs and expenses, including attorneys' fees, with respect to KHRC's use of any information provided by the owner.

The owner understands that if KHRC presents a prospective purchaser willing to make an offer to purchase the property for an amount equal to or greater than the Qualified Contract Price, the owner must agree to enter into a commercially reasonable form of a contract for sale of the property that will allow the prospective purchaser a sufficient period of time to undertake additional, usual and customary due diligence prior to closing.

2. Calculation of Qualified Contract Price Form (Required Excel Workbook)

The workbook contains the *Calculation of Qualified Contract Price* worksheet as well as worksheets A through E and instructions for the use of each. This workbook must be completed by a certified public accountant and accompanied by a signed letter, or an examination report, from that CPA, stating the name of the development and that they are an independent CPA. The letter from the CPA must further state that the CPA has completed the calculation of QCP in accordance with 26 CRF Part 1, Section 1.42-18 and the AICPA Statements on Standards for Attestation Engagements. The letter must also state the determined QCP.

The completed workbook document and CPA letter or examination report must be submitted to KHRC electronically when you submit your other documentation to KHRC.

3. Required Attachments to Qualified Contract Notification Letter and Excel Workbook

- a. *Property narrative* - A thorough narrative description of the development sufficient to familiarizing prospective purchasers with the property, including all amenities within the units, as well as common areas, and a detailed description of the property's proximity to schools, business districts, shopping, mass transportation, and highways.
- b. *A description of all income, rental or other restrictions* applicable to the operation of the property.
- c. *A current third-party physical needs assessment.*
- d. *A current appraisal of the property if there are market rate units.*
- e. *Copies of the most recent 12 months operating statements* for the property which will fairly apprise a potential purchaser of the property's operating expenses, debt service, gross receipts, and net cash flow and debt service coverage ratio.
- f. *Copy of lease(s)* if any portions of the land or improvements are leased (not the normal

LIHTC tenant leases but other types of leases such as the land being leased or commercial property being leased, etc.).

- g. Current rent roll* documenting unit number, name of head of household, move in date, security deposit held in trust, current rental charge, amount delinquent, and move out date for current vacant units.
- h. Copy of the partnership agreement or other legal documentation* granting any form of preference for purchasing the development (for example, a right of first refusal granted to a nonprofit partner or tenants) and provide a waiver of that right if it is to be waived. If it is not waived, please provide further information.
- i. First Years 8609's showing Part II completed.* Please note that for developments which consist of more than one building (as evidenced in the development's 8609(s)) all buildings must be in last year of their initial compliance period or after in order to request the Qualified Contract.
- j. Payment of the non-refundable processing fee* to be submitted after KHRC invoices the Owner and prior to publication of the property for sale.

4. Non-Refundable Processing Fee.

This fee is for processing a Qualified Contract request. The fee must be submitted after KHRC invoices the Owner and prior to publication of the property for sale. The processing fee is non-refundable.

The processing fee is the total of \$2,000 plus 1.2% of the annual tax credit amount allocated.

Qualified Contract packets will be accepted year-round and will be processed by KHRC in March, June, September, and December. Packets received by KHRC 30 days prior to the last day of the previously listed months will be reviewed by KHRC for posting that quarter. Any packets received less than 30 days before the deadline will not be processed until the next quarter. For example, to be processed in June, a complete application packet must be received by KHRC on or before May 31st, and if not received by that date, then the application packet will not be processed until September.

5. KHRC Procedure

Upon receipt of the owner's properly submitted request to exercise their option (Qualified Contract Notification Letter, Calculation of Qualified Contract Price form with worksheets, Fee, and all required documentation) KHRC staff may do any or all of the following:

- a. Review the owner's packet of due diligence materials and agree on an appropriate QCP.* This will require KHRC staff and the owner to work closely together to ensure all required information has been submitted and a QCP has been set. The one-year period begins on the publication date. Upon completion of the review, should the package be determined to be incomplete or lacking in required submissions, KHRC will provide a written notice of deficiency to the owner. The one-year period will begin at the end

of the current quarter in which the owner cures the noted deficiencies.

- b. Post the property information on KHRC's website.
- c. Prepare a campaign email and send to a pre-established emailing list. This list will include current owners of Tax Credit Developments; contacts at large; management companies; other public funding agencies in the state; local, state nonprofit and for-profit Owners interested in preserving affordable housing; and tax credit investor contacts.

For more information on this process, contact the Director of Housing Development. The required Qualified Contract forms are located on the KHRC website at www.kshousingcorp.org.

6. General Information

- a. KHRC shall be under no obligation to undertake an investigation of the accuracy of the information submitted for Qualified Contract. KHRC's review shall not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the property to be purchased, constructed, or rehabilitated pursuant to IRC §42. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability, and risk of the development. If any information submitted by a building owner to KHRC is later found to be incorrect in any respect, KHRC shall have no liability to the owner or any potential buyer for such inaccuracy. It is the responsibility of the building owner to inform KHRC and to request a reexamination of the information in the event any information is later found to be incorrect. KHRC is not, and is not acting in the capacity of, a real estate agent or real estate broker. KHRC's role is limited to implementation of IRC §42 requirements and facilitating the presentation of a Qualified Contract, as defined in the code. Interested parties should obtain advice from independent sources, including consultation with knowledgeable tax professionals and legal counsel.
- b. KHRC will market the property in good faith and will continue such efforts until the property is sold or the one-year period has expired.

Lack of cooperation by the owner in the marketing of the property or other noncompliance by the owner may cause KHRC to suspend or terminate the Qualified Contract process in KHRC's discretion, and the owner will be required to comply with the full term of the LURA. Lack of cooperation or other noncompliance shall include, but shall not be limited to, the owner's failure to respond to any request for additional documentation or request for information by KHRC or potential purchasers, any unnecessarily delay by the owner in response to requests for additional documentation or information, refusal by the owner to allow inspections of the property by KHRC or potential purchasers in a reasonable amount of time, the owner's intentional or negligent misrepresentation of any material fact to KHRC or any potential purchaser, any mortgage default by the owner on a senior lien on the property, the placing of any additional liens or encumbrances on the property, or an

IRS audit or investigation that may adversely affect the sale of the property.

The owner is not required to accept any purchase offers presented through KHRC; however, if the owner rejects an offer at or above the QCP, the property will remain subject to the terms specified in the LURA through the extended use period. The qualified purchaser may be a nonprofit or for-profit entity that agrees to maintain the affordable housing units and fulfill all requirements of the LURA. KHRC may reject purchasers who have failed to demonstrate proficiency in the LIHTC program, or any other housing program administered by KHRC.

- c. If KHRC is unable to locate a buyer pursuant to the Qualified Contract before the expiration of the one-year period, the property will continue to be subject to the requirements of IRC §42(h)(6)(E)(II) for the decontrol period as defined in the LURA. IRC §42(h)(6)(E)(II) states the owner may not evict or terminate the tenancy (other than for good cause) of an existing resident of any low-income unit OR increase the gross rent with respect to such unit except as permitted under IRC §42.

In this event, the owner will be required to provide written notice to each existing resident of the development advising of the protections afforded by IRC §42(h)(6)(E)(II). The owner will be required to submit a certification to KHRC at the end of each year of the decontrol period, stating that the requirements of IRC §42(h)(6)(E)(II) have been met. KHRC will issue a release of the lien with respect to the LURA within 30 days of the end of the decontrol period as defined in the LURA or upon the submission of evidence that all low-income units have turned over.