

# **Guide to Qualified Contract Procedures for the Low-Income Housing Tax Credit (LIHTC) Program**

## **Introduction**

The Low-Income Housing Tax Credit (LIHTC) program, established under Section 42 of the Internal Revenue Code, incentivizes the development of affordable rental housing for low-income households. A critical aspect of this program is the compliance period and the conditions under which property owners may exit the program, particularly through the Qualified Contract process.

## **What is a Qualified Contract?**

A Qualified Contract is a binding written offer to purchase a LIHTC property for a specified price determined under the guidelines set by the IRS. This process allows owners to exit the LIHTC program after the initial 15-year compliance period, referred to as the "Extended Use Period."

## **Steps in the Qualified Contract Process**

### **1. Notification to Housing Credit Agency**

The property owner must notify the Housing Credit Agency (HCA) in their state of their intention to seek a Qualified Contract. This notice typically occurs at the end of the initial 15-year compliance period but can occur any time during the Extended Use Period.

### **2. Submission of Documentation**

The owner must submit a comprehensive set of documents to the HCA, including:

- A Qualified Contract request form.
- Evidence of compliance with LIHTC regulations.
- Property appraisal.
- Detailed financial and operational history of the property.
- A statement of compliance with tenant notification requirements.

### **3. Determination of Qualified Contract Price**

The Qualified Contract price is determined based on the formula provided in Section 42(h)(6)(F) of the IRC. This price includes:

- The sum of the outstanding indebtedness secured by the building.
- The adjusted investor equity in the building.
- Other capital contributions not reflected in the adjusted investor equity.
- Reduced by cash distributions from (or available for distribution from) the project.

#### **4. Marketing the Property**

The HCA will attempt to find a buyer for the property at the Qualified Contract price. This process involves:

- Listing the property in relevant databases.
- Conducting outreach to potential buyers, including non-profits and other affordable housing operators.
- Providing necessary information to interested buyers.

#### **5. Finding a Buyer**

If a buyer is found who agrees to purchase the property at the Qualified Contract price, the sale proceeds, and the new owner must continue to operate the property under the LIHTC restrictions for the remainder of the Extended Use Period.

#### **6. End of Compliance Period**

If the HCA is unable to find a buyer within one year of the notification, the property is released from the LIHTC program's affordability restrictions. However, existing tenants must be protected, and rent restrictions generally continue for three years following the end of the Extended Use Period.

### **Key Considerations**

- **State-specific Regulations:** Each state HCA may have additional requirements and procedures for processing Qualified Contract requests.
- **Tenant Protections:** Tenants are provided with protections against displacement and excessive rent increases for three years post-compliance period.
- **Documentation Accuracy:** Ensuring all documentation is accurate and complete is crucial for the smooth processing of the Qualified Contract request.

## Conclusion

The Qualified Contract process is an important mechanism for LIHTC property owners seeking to exit the program while maintaining compliance with federal regulations. By understanding the steps and requirements involved, property owners can navigate this process effectively, ensuring compliance and protection for low-income tenants.

For specific guidance tailored to your property and jurisdiction, it's advisable to consult with legal and tax professionals experienced in LIHTC regulations.

Jeffery Faile, CPA has extensive knowledge of the application process for each state and a thorough understanding of IRC Section 42 and calculating the Qualified Contract. Let us evaluate whether or not the Qualified Contract is right for you, and determine the likelihood of your LIHTC property being released from the extended use affordability restrictions.