Qualified Contract Process

Summary

The Omnibus Budget Reconciliation Act of 1989 required that all properties receiving an allocation of Housing Credit after December 31, 1989 are subject to an "extended use period, "which lengthened the time Housing Credit properties were required to maintain affordability from 15 to 30 years. In efforts to ease concerns of program participants about the economic viability of maintaining affordability without additional subsidy, the 1989 Act also provided an option for owners to exit the program at the end of the initial 15-year compliance period by requesting that the state agency either purchase the property or assist in finding a buyer at a determined "Qualified Contract Price" (QCP).

Owners are encouraged to review their copies of applications submitted to the agency when applying for an allocation of credits, as well as deed restrictions (LURA), to determine if and when they are eligible to pursue the opt-out provision. **Projects that were awarded points in their application for agreeing to maintain the requirements past the initial compliance period are not eligible to go through the qualified contract process.** Eligible owners must notify Kentucky Housing Corporation (KHC) of their desire to sell the property through the Qualified Contract provision by using the process outlined in this document. Once all documents are approved, KHC has one year to find a buyer for the project at a pre-determined price, not to exceed the QCP. The qualified purchaser can be a nonprofit or for-profit entity that agrees to maintain the affordable housing units and fulfill all requirements of the extended use agreement.

The Land Use Restrictive Agreement (LURA) often includes additional KHC restrictions that the owner agreed would remain in place regardless of any Qualified Contract Request results. In many cases KHC will remove these restrictions at the same time it removes the LURA on projects that were unsuccessful in obtaining a purchase offer through the Qualified Contract Process. However, KHC is under no obligation to remove such restrictions and depending on the specific situation may not be willing to do so. **Owners concerned about such restrictions are encouraged to contact KHC prior to submitting a Qualified Contract request to discuss how these restrictions would be treated for the specific project in question.**

The project and owners should be in compliance with all programmatic requirements to be eligible to apply for the opt-out provision. The Qualified Contract may be suspended or terminated due to any mortgage defaults or encumbrances on the property or IRS audit or investigation that may adversely affect the sale of the property.

Owners will be allowed only one opportunity to request the Qualified Contract process per property. If KHC is unable to find a buyer pursuant to a Qualified Contract, the property may be converted to other uses.

Current Owners should be aware that the qualified contract process is not the only option for identifying a potential purchaser for a property. In many cases, Owners will find that alternatives such as a sale subject to the program restrictions, sale and recapitalization through KHC's Tax Credit program and/or using one of the many subsidy resources available are more appropriate mechanisms for finding a purchaser for a project or recapitalizing the project.

Other Resources

If other local, state and/or federal resources were used in the development or operation of the Housing Credit property, the termination of the extended use agreement will only be valid for the Housing Credits. The current and/or future owner of the property will still be required to uphold the income, rent or other restrictions that are required for the remaining funding sources for the remainder of the mortgage, note or deed restriction covering those funds.

If the owner does not get a Qualified Contract and the property has Project- Based Section 8 assistance, the Project-Based Section 8 assistance contract will be terminated if the owner decides to have KHC release the extended use agreement.

Fees and Conditions for Qualified Contract Request

There will be a $3,500 non-refundable administration fee for processing a Qualified Contract request. In the event that additional third-party reports are required by a potential buyer or KHC, the Qualified Contract process may be suspended during the time needed to prepare the reports. The cost of the additional reports will be at the expense of the property owner. All payments for service must be made within a timely manner. Non-cooperation by the property owner to respond to reasonable third-party report requests by KHC or a potential buyer will lead to the termination of the Qualified Contract process. Non-cooperation or excessive delays by the property owner on any issues of the Qualified Contract process will also result in the termination of the process and will result in the owner being required to comply with the property low-income usage requirement for the remaining extended use period.

<u>Request</u>

Owners who elect to exercise their option to request a Qualified Contract must complete and submit a request consisting of a complete Qualified Contract Packet, as described in the next section. The request may be made at anytime after the last day of the fourteenth year of the compliance period of the last building or the last year of a multiple allocation.

> For example, in a six building project, if five buildings in the project began their credit periods in 1990 and one started in 1991, the 15th year for the purposes of a request for the entire project would be 2005.
>
> If the project received its first allocation of $500,000 in 1990 and a subsequent award of $25,000 in 1992, the 15th year for the purposes of a Request would be 2006.

Please note that it is KHC's general policy to require scattered site projects to submit a separate request for each parcel/site. Projects that are made up of several buildings on a single site are required to submit one application for the entire project and are not allowed to submit the request for only a portion of the buildings. Please contact KHC if you feel you have an exceptional circumstance that would not work with this general policy.

The Tax Credit property should be in compliance with all regulatory agreement requirements. The Qualified Contract may be suspended or terminated due to any defaults, liens or encumbrances on the property or IRS audit or investigation that may adversely affect sale of the property. Please note: The owner may only request a Qualified Contract from KHC one time.

Qualified Contract Packet Materials

At a minimum, the owner will need to provide the following as a part of the request:

1. Qualified Contract Notification Letter.

2. A fully completed "Calculation of Qualified Contract" Price, including Worksheets A-E. These forms must be accompanied by a signed letter, or an examination report, from a certified public accountant, stating the name of the project and that they are an independent CPA. The letter must further state that they have completed, or examined, the calculation of qualified contract price in accordance with 26 CFR Part 1, Section 1.42-18 and the AICPA Statements on Standards for Attestation Engagements. The letter must also state the determined qualified contract price.

3. A thorough narrative description of the project, including all amenities, suitable for familiarizing prospective purchasers with the project.

4. A description of all income, rental and other restrictions applicable to the operation of the project.

5. A detailed set of digital photographs of the project, including the interior and exterior of representative apartment units and buildings, and the property's grounds.

6. A copy of the most recent 12 months of operating statements for the property which will fairly apprise a potential purchaser of the property's operating expenses, debt service, gross receipts, net cash flow and debt service coverage ratio.

7. If any portions of the land or improvements are leased, copies of the leases (we are not referring to normal LIHTC tenant leases, this is talking about other types of leases like the land being leased or commercial property being leased, etc.).

8. If the partnership agreement or other legal documentation grant any form of preference for purchasing the project (for example, a right of first refusal granted to a nonprofit partner or tenants), attach a waiver of that right if it is to be waived. If it is not to be waived, please provide further information.

9. First Years 8609's showing Part II completed.

10. Pay the required administrative fee of $3,500 described previously in this chapter.

All items are to be sent to KHC in one submission. KHC will not accept the submission of the various items over time. Once these items have been received, KHC will review them in a timely manner. This will require staff and the owner to work closely together to ensure that all required information has been submitted and a QCP has been set. If any of the items are inadequate the one-year time frame will not begin until the situation is resolved. In all cases, the one-year time frame will not begin until KHC notifies the owner in writing of the start date of the one-year time frame.

Owner Certifications and Commitment

In addition to the Qualified Contract Packet Materials, the owner must agree to the following requirements:

1. Agree to allow KHC to post summary data about the property on its Web site.

2. Reasonably cooperate with KHC and its agents to present a qualified contract for purchase of the property. This may include providing copies of additional rent rolls, project tax returns, income certifications, repair and maintenance records,

operating expenses and debt service information, and other due diligence documents. KHC may suspend the one-year time frame while waiting on such items.

3. Provide access to the property for inspection by KHC, its agents and prospective purchasers.

At the time of application, the owner must certify to the following:

1. They have conducted their own investigation and due diligence in determining calculations of the QCP.

2. They are solely responsible for documents and information provided to KHC and to prospective purchasers.

3. All information submitted is accurate and complete.

4. KHC has made no independent investigation of the owner's submissions and cannot attest to their accuracy or completeness.

5. The owner agrees to indemnify, defend and hold KHC harmless with respect to the use of information submitted.

Finally, if KHC finds a prospective purchaser willing to present an offer to purchase the property for an amount at the QCP, the owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property and provide a reasonable time for necessary due diligence and closing of the purchase.

Marketing

Upon receipt and subsequent approval of the owner's request to exercise their option year (*Notification Letter, Qualified Contract Price Worksheets and other items noted above)*, KHC staff will post the property information on KHC's Web site.

Presentation of a Qualified Contract

KHC will create a standard form contract to use when presenting the QC that includes basic real estate transaction terms and that is as close to a contingency-free contract as possible. The owner and the proposed buyer would be free to negotiate different transaction terms prior to closing. Also please note that 26 CFR Part 1, Section 1.42-18(c) requires the owner and the buyer to adjust the qualified contract price formula at the time an actual offer to purchase is made. This is to account for the fact that some items in the calculation (for instance the principal owed) would have changed between the times the owner requested the QC from KHC to the time the offer to purchase is made.

Under IRC 42(h)(6)(E)(i)(II), KHC's only obligation is to "present" to the owner a bona fide contract to acquire the owner's project for the QC price ("the Contract.") When KHC presents the contract to the owner, regardless of when or if the contract is fulfilled, the possibility of terminating the extended use period is removed forever and the project remains bound to the provisions in, and may not terminate, the extended use agreement. Whether or not the owner actually executes the contract and closes the transaction is a separate, legally unrelated question.

Three-Year Period

If KHC fails to present a Qualified Contract before the expiration of the one-year period (or such longer period as the owner may agree to in writing), the project will remain subject to the requirements set for in Section 42(h)(6)(E)(ii): For a three-year period commencing on the termination of the compliance period, the owner may not (i) evict or terminate a tenancy of an existing tenant of any low-income unit; or (ii) increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code, as well as the requirements of the regulatory agreement.

For questions regarding the Qualified Contract process, please contact a member of the KHC Asset Management staff at (502) 564-7630

Qualified Contract Notification Letter

Date

Kentucky Housing Corporation
C/O Asset Managment Department
1231 Louisville Road
Frankfort, KY 40601

Re:
BIN #(s)

Dear

On behalf of ____ (Property Owner), we hereby request Kentucky Housing Corporation (the "Agency") present a "qualified contract" for the purchase of ______________________________.(Property Name). This request is made pursuant to Section 42(h)(6)(E)(i)(ii) of the Internal Revenue Code. We understand the Agency will review the accompanying items and, if acceptable, notify us when the one-year period to present a "qualified contract" for the purchase of the Project will begin.

We have enclosed all of the following items and information required by the Agency:

1. A fully completed "Calculation of Qualified Contract" Price, including Worksheets A-E. These forms must be accompanied by a signed letter, or an examination report, from a certified public accountant, stating the name of the project and that they are an independent CPA. The letter must further state that they have completed, or examined, the calculation of qualified contract price in accordance with 26 CFR Part 1, Section 1.42-18 and the AICPA Statements on Standards for Attestation Engagements. The letter must also state the determined qualified contract price.

2. A narrative description of the Project, including all amenities, suitable for familiarizing prospective purchasers with the property.

3. A description of all income, rental and other restrictions applicable to the operation of the property.

4. A detailed set of digital photographs of the property for use on the Agency website, including the interior and exterior of representative apartment units and buildings, and the property grounds.

5. A copy of the most recent 12 months of operating statements for the property which will fairly apprise a potential purchaser of the property's operating expenses, debt service, gross receipts, net cash flow and debt service coverage ratio.

6. If any portion of the land or improvements are leased, copies of the leases.

7. If the partnership agreement or other legal documentation grant any form of preference for purchasing the project (for example, a right of first refusal granted to a nonprofit partner, or tenants), I have attached a waiver of that right if it is to be waived. If it is not to be waived, I have provided further information.

8. First Years 8609's showing Part II completed.

9. Non refundable application fee of $3,500.

We understand that the above information may be shared with prospective purchasers, real estate brokers, and agents of the Agency and that summary data may be posted on the Agency website.

We will cooperate in a reasonable manner with the Agency and its agents with respect to the Agency's efforts to present a qualified contract for the purchase of the property. In this regard, we understand that prior to the presentation of a qualified contract, we may need to share property "due diligence" with the Agency and with prospective purchasers, including but not limited to, additional rent rolls, project tax returns, income certifications and other Section 42 compliance records, records with respect to repair and maintenance of the property, operating expenses and debt service. Provided, before information is shared with a prospective purchaser, we may require that it enter into a commercially reasonable form of nondisclosure agreement. We will also share with the Agency, at its request, the documents and other information that were used to prepare the enclosed "Calculation of Qualified Contract Price, including Worksheets A-E. We also agree to allow the Agency, its agents, and prospective purchasers, upon reasonable written notice, to visit and inspect the property, including representative apartment units.

We acknowledge and certify that

1. We have conducted our own investigation and due diligence with respect to the Calculation of the Qualified Contract Price and the Qualified Contract procedures set forth in Section 42(h)(6)(F) of the Internal Revenue Code;
2. We are solely responsible for documents and information provided to the Agency with this notification letter, including the Calculation of Qualified Contract Price form and the exhibits thereto, and any other documents or project information that we may provide to the

Agency and/or share with prospective purchasers at a later time (Collectively, the "Project Sales Information");

3. To our knowledge, the Project Sales Information is truthful, accurate and complete and contains no misstatements or misleading information;
4. Neither the Agency nor any employees or agents have made any independent investigation or review of the accuracy, truthfulness or completeness of the Project Sales Information; and
5. If KHC fails to present a Qualified Contract before the expiration of the one-year period (or such longer period as the owner may agree to in writing), the project will remain subject to the requirements set for in Section 42(h)(6)(E)(ii): For a three-year period commencing on the termination of the compliance period, the owner may not (i) evict or terminate a tenancy of an existing tenant of any low-income unit; or (ii) increase the gross rent with respect to any low-income unit except as permitted under Section 42 of the Code, as well as the requirements of the regulatory agreement.
6. By submission of this notification letter, we agree to indemnify, defend, and hold the Agency harmless with respect to the Agency's use of the Project Sales Information; and

We agree that the Agency and its employees and agents shall have no liability to us with respect to the Calculation of the Qualified Contract Price or any other act, omission, or determination by the Agency with respect to marketing the property or carrying out its responsibilities under Section 42(h)(6)(F) of the Code, so long as the Agency is acting in good faith.

We also understand that if the Agency finds a prospective purchaser willing to present an offer to purchase the property for an amount equal to or greater than the "qualified contract" price, we agree to enter into a commercially reasonable form of earnest money agreement or other contract of sale for the property which will allow prospective purchaser a reasonable period of time to undertake additional, customary due diligence prior to closing of the purchase.

Sincerely,

Attachments

Instructions for
Calculation of Qualified Contract Price

Before the Agency will commence marketing your project, you must complete the Calculation of Qualified Contract Price form attached to these instructions (the "Calculation Form"). This calculation will establish the minimum price at which the Agency will market your project and present an offer for its purchase. **All calculations are to be prepared in accordance with the 26 CFR Part 1, Section 1.42-18(c).** Also please not that the proposed rule requires that if a purchaser is found, the owner and purchaser must adjust the qualified contract price to reflect changes in the components of the Qualified contract, such as mortgage payments that have reduced outstanding indebtedness between the time the original calculations were made and the sale closing date.

To complete the Calculation Form, you must complete all Exhibits. Please remember that the twelve-month period for finding a buyer will not commence until after the Calculation, and Exhibits A through E, are completed and returned to the Agency with the notification letter and other required materials. The Calculation must be prepared by, or Examined and attested to, by an independent third-party CPA in accordance with the AICPA Statements on Standards for Attestation Engagements.

Calculation of Qualified Contract Price
Pursuant to Section 42(h)(6)(F) of the Internal Code
As of _________________, 200_

A. Calculation of Low-Income Portion of Payment:

(i)	Outstanding Indebtedness secured by, or with respect to the Buildings (from *Worksheet A*)	$ ____________	
(ii)	Adjusted Investor Equity (from *Worksheet B)*	$ ____________	
(iii)	Other Capital Contributions not reflected in (i) or (ii) (from *Worksheet C*)	$ ____________	
(iv)	Total of (i), (ii) and (iii)	$ ____________	
(v)	Cash Distributions from or available from, the Project (from *Worksheet D*)	$ ____________	
(vi)	Line (iv) reduced by Line (v)	$ ____________	
(vii)	Applicable fraction (as set forth in the Tax Credit Regulatory Agreement)	__________ %	
(viii)	Low-Income Portion of Qualified Contract Price (Line (vi) multiplied by Line (vii))		$ ____________

B. Fair Market Value of Non Low-Income Portion (from *Worksheet E*) See Section 1.42-18(b)(3), for detailed instructions. **Of particular note, the land underlying the Low Income Units is considered Non-Low Income even if the applicable fraction is 100%.** $ ____________

Qualified Contract Price
(Sum of Line A(viii) and Line B) $ ____________

WORKSHEET A
Outstanding Indebtedness
With Respect to Low-Income Building(s)
Code Section 42(h)(6)(F)(i)(I)

Instructions

Please see 26 CFR Part 1, Section 1.42-18(c)(3) for detailed instructions on how to determine outstanding indebtedness for this specific purpose. Of particular note, **outstanding indebtedness does not include debt used to finance non-depreciable land costs, syndication costs, and other non eligible basis costs. It also does not include any refinancing or mortgage debt in excess of qualifying building costs.** If these costs were paid with the loan, these amounts must be subtracted prior to entering the indebtedness amounts below. Additionally, it includes only those amounts that would be actually paid to the lender or assumed by the buyer as a part of the sale of the building.

In the section marked "Other Information" (subsection (ii) with respect to each loan), please set forth any information with respect to the loan that may be relevant to the Agency's efforts to market the project. Examples of relevant information include whether the loan has a "due-on-sale" clause or if any portion of the loan is payable from net cash flow (i.e., is "soft" debt). Please also attach to the worksheet an amortization schedule for each loan, if available.

Worksheet

1. **First Mortgage Loan:**
   (i) Lender: ______________________________
   (ii) Other Information: ______________________
   ____
   _[attach amortization schedule, if available]__
   Outstanding Indebtedness for this loan $ ___________

2. **Second Mortgage Loan:**
   (i) Lender: ______________________________
   (ii) Other Information: ______________________
   ____
   _[attach amortization schedule, if available]__
   Outstanding Indebtedness for this loan $ ___________

3. **Third Mortgage Loan:**
   (i) Lender: ______________________________
   (ii) Other Information: ______________________
   ____

_[attach amortization schedule, if available]__
Outstanding Indebtedness for this loan $ ___________

4. Fourth Mortgage Loan:

(i) Lender: ______________________________
(ii) Other Information: ______________________
____
_[attach amortization schedule, if available]__
Outstanding Indebtedness for this loan $ ___________

5. Other Indebtedness with Respect to Low-Income Building(s):

(i) Lender: ______________________________
(ii) Other Information: ______________________
____
_[attach amortization schedule, if available]__
Outstanding Indebtedness for this loan $ ___________

Total Indebtedness with respect to Low-Income Portion of the Building(s) (Sum of 1-5 subtotals above) $ ___________

WORKSHEET B
Calculation of Adjusted Investor Equity
In the Low-Income Building(s)
Code Section 42(h)(6)(F)(i)(II)

Instructions

The Qualified Contract Price includes the sum of the "Adjusted Investor Equity" with respect to the project. Please see 26 CFR Part 1, Section 1.42-18(c)(4) for detailed instructions on how to determine the adjusted investor equity. **Of special note, The initial investor equity does not include non eligible basis items, thus equity paid for land, legal, syndication costs, etc., are not eligible to be included in this section.**

The final rule that was published on May 3, 2012 changed the method of calculating the CPI Multiplication Factor. Please review the rule if you have not performed a price calculation since the issuance of the final rule. The calculation requires the use of the U.S. Department of Labor's Consumer Price Index **CPI for all urban consumers (CPI-U), not seasonally adjusted**. This information can be found at www.BLS.gov/data.

In general, the multiplication factor is found by adding the CPI numbers for each month of year prior to the QC request, and then dividing by the total of the monthly CPI numbers for the year the investment was made. Please note that a year is defined as ending on August 31. Thus, the CPI numbers for 2011 would be the monthly numbers from September 2010 through August 2011. The regulations require the calculation be made out to a minimum of 10 decimal places when doing the dividing described above. This should happen automatically if you use a spreadsheet to perform the calculations.

Worksheet

1. Year of investment _____________
(i) Investor: ______________________________
(ii) Investment Amount $ ___________
(iii) CPI multiplication factor ___________
Subtotal (ii) x (iii) $ ___________

2. Year of investment _____________
(i) Investor: ______________________________
(ii) Investment Amount $ ___________
(iii) CPI multiplication factor ___________
Subtotal (ii) x (iii) $ ___________

3. Year of investment _____________
(i) Investor: ______________________________
(ii) Investment Amount $ ___________
(iii) CPI multiplication factor ___________
Subtotal (ii) x (iii) $ ___________

4. Year of investment _____________
(i) Investor: ______________________________

(ii) Investment Amount $ ____________

(iii) CPI multiplication factor ____________

Subtotal (ii) x (iii) $ ____________

5. Year of investment ______________

(i) Investor: ________________________________

(ii) Investment Amount $ ____________

(iii) CPI multiplication factor ____________

Subtotal (ii) plus (iii) $ ____________

Total Adjusted Investor Equity (Sum of 1-15 subtotals above): **$ ____________**

WORKSHEET C
Other Capital Contributions
Code Section 42(h)(6)(F)(i)(III)

Instructions

The Qualified Contract Price includes the amount of other capital contributions made with respect to the project. Please see 26 CFR Part 1, Section 1.42-18(c)(5) for detailed instructions on how to determine Other Capital Contributions.

Do not include in this Worksheet any amounts included in Worksheets A or B.

Worksheet

1. **Investment Amount** **$__________**
   (i) Name of Investor: ____________________________
   (ii) Date of Investment: __________________________
   (iii) Use of Contributions/ Proceeds: ________________
   ____
   ____
   (iv) Other Information: ___________________________
   ____
   ____

2. **Investment Amount** **$__________**
   (i) Name of Investor: ____________________________
   (ii) Date of Investment: __________________________
   (iii) Use of Contributions/ Proceeds: ________________
   ____
   ____
   (iv) Other Information: ___________________________
   ____
   ____

3. **[Add as needed.]**

Total of Other Contributions (1 - _____) **$__________**

WORKSHEET D
Cash Distributions
From, or available from the Project
Code Section 42 (h)(6)(F)(ii)

Instructions

The Qualified Contract Price is reduced by the total of all cash distributions from, or available from, the project. Please see 26 CFR Part 1, Section 1.42-18(c)(6) for detailed instructions on how to determine cash distributions. Of particular note, cash available for distribution includes reserve funds unless there are legally, regulatory, or contractually required to stay with the project. Cash available for distribution does not include any refinancing or mortgage proceeds in excess of qualifying building costs.

To complete Worksheet D, please total the qualifying cash distributed for all calendar years under Section A and the cash available (or that will be available) for distribution in Section B. The total of Sections A and B should be transferred to Section A(v) of the Calculation Form.

Worksheet

A. **Total Cash Distributions** **$__________**

B. **Cash and Cash Equivalents Available for Distribution:**

1. Replacement Reserve Account(s)
Amount available for Distribution $__________

2. Operating Reserve Account(s)
Amount available for Distribution $__________

3. All other amounts available for Distribution $__________

Total Amount Available for Distribution
(Sum of Lines 1 – 3) **$__________**

Total Cash Distributed and Available for Distribution
(Sum of Sections A and B) **$__________**

WORKSHEET E

Fair Market Value on Non-Low-Income Portion

See 26 CFR Part 1, Section 1.42-18(b)(3) for detailed instructions on how to determine the amount to enter in this worksheet. **Of particular note, the land underlying the low income units is considered Non-Low-Income. This is because the cost of the land was not allowed to be included in any of the other sections of the calculation.** You may leave this section as $0 if you prefer but if you decide to insert the land value, you must get an appraisal done that meets the requirements of 26 CFR Part 1, Section 1.42-18(b)(3). This includes taking into account the low income restriction of the units.

By entering a number in this section you are also certifying that the appraiser used is not currently on any list for active suspension or revocation for performing appraisals in any State or and is not listed on the Excluded Parties Lists System (EPLS) maintained by the General Services Administration for the United States Government found at www.epls.gov

The fair market value of the non-low income portion is: $ ___________.

Set or attach to this worksheet the appraisal for the fair market value of the non-low-income portion.