

POLICY FOR THE SALE OF SINGLE FAMILY LOW INCOME HOUSING

CREDIT UNITS FOR HOME OWNERSHIP

BACKGROUND

26 U.S. Code Section 42(i)(7) allows a single-family building or condominium unit to be sold to a tenant for homeownership in the Low-Income Housing Tax Credit extended use period (post 15-year compliance period). The owner of low income units will continue to further the availability of low income housing by having a tenant holding a right of first refusal purchase a low-income unit.¹ The extended low-income housing commitment may be suspended or terminated after the initial 15-year compliance period to allow for the sale without the owner losing the federal tax benefits received.

An owner of low-income housing may market the units directly for sale to qualified income households, if agreed to by the state housing agency.² However, before marketing the unit for sale, the tenant of the unit must be provided the right of first refusal to purchase. If the tenant does not exercise their right, the unit must remain a rental unit and the tenant may remain for as long as the tenant chooses, unless evicted for good cause, without an increase in the gross rent unless permitted under IRC §42.³ Good cause examples include nonpayment of rent, violations of the lease or rental agreement, destruction or damage to the property, interference with other tenants or creating a nuisance, or using the property for an unlawful purpose. The owner is not obligated to renew a lease agreement when it expires and failure to do so does not, per se, constitute an eviction without good cause. Nevertheless, if challenged in state court, the owner may be required to demonstrate that the nonrenewal was not a termination of tenancy for other than good cause.

DEFINITIONS

1. **Extended Use Period:** Time that a unit must comply with the rent and income limitations, after the initial compliance period of 15 years, under the Low Income Housing Tax Credit Program; typically another 15 years.
2. **Good Cause:** documented and reasonable cause, including but not limited to nonpayment of rent, destruction or damage to the property, interference or nuisance to other tenants, fraud, use of the property for an unlawful purpose, or other violations of the lease agreement.
3. **Owner:** The owner stated on the deed of record most recently recorded in the county where the Unit is located.
4. **Qualified Buyer:** Buyer that, at the time of purchase, qualifies for purchase based on the lower amount income limitations under IRC §42 to which the Unit is subject to at that time.
5. **Tenant:** Individual occupying the Unit that initially met income limits under IRC §42.
6. **Unit:** Income and rent restricted buildings, properties, and units under IRC §42.

¹ Revenue Ruling 95-49

² PLR-130019-06

³ IRC 8823 Chapter 26

POLICY

A. Eligible Sellers

Only Owners of Units in the Extended Use Period, which meet the following, may submit a Request for Sale to Tenants or Qualified Buyers (Request For Sale) found on KHC's website:

1. Tenant Ownership Plan was submitted at the time of initial application or with the Request For Sale along with the appropriate box marked and the \$100 fee paid. All Tenant Ownership Plans must be approved by the Asset Management Committee, in its sole discretion, prior to further review of the Request For Sale;
2. Never placed on KHC's Suspension and Debarment list;
3. Current on ALL paperwork, fees, and obligations for all KHC Programs; and
4. Received a satisfactory capacity Asset Management Review on the most recently completed KHC audit (must be within the previous twelve (12) months).

B. Eligible Units for Sale

Units that are eligible to be sold to Tenants, under the Right of First Refusal, or to Qualified Buyers must:

1. Be in the Extended Use Period;
2. Have a UPCS inspection or equivalent completed within the last 30 days;
 - a. If the inspection was not done within the previous 30 days, then KHC shall request a new inspection at the cost of the Eligible Seller (\$500);
 - b. The most recent inspection will be made available to the Tenant or Qualified Buyer, upon request.
3. Not have any deficiencies on the most recent inspection completed or have all deficiencies rectified within 30 days of notice of deficiency and a new inspection completed at the cost of the Eligible Seller (\$200) to determine that all deficiencies are rectified;
 - a. KHC will only allow the sale of the Eligible Unit after a new inspection is completed with no deficiencies.
4. Not have any health and safety deficiencies found on the most recent inspection completed or have all deficiencies rectified and a new inspection completed at the cost of the Eligible Seller (\$200) to determine that all deficiencies are rectified;
 - a. KHC will only allow the sale of the Eligible Unit after a new inspection is completed with no deficiencies.
5. Be a single Eligible Unit (whether single family or part of a multifamily project) where the original LIHTC application included a Right of First Refusal to Tenants, or if the original application did not include a Right of First Refusal to Tenants, the Eligible Seller received prior approval from the KHC Asset Management Committee;
 - a. If the original application did not have a Right of First Refusal for Tenants, the Eligible Seller shall submit a Request for Sale with a Tenant Ownership Plan that includes a Right of First Refusal to Tenants prior to commencing discussions with Tenants or Qualified Buyers about the sale of Eligible Units.

6. Have access to all necessary utilities by and through public rights of way or by permanent easements; and
7. Have direct vehicular access to a public street.

C. Process

Eligible Sellers may sell Eligible Units to Tenants exercising their Right of First Refusal or to a Qualified Buyer. Prior to notification to Tenants or marketing the Eligible Unit for sale, the Eligible Seller must request and receive approval from the KHC Asset Management Committee, as follows:

1. Approved Tenant Ownership Plan

- a. A Tenant Ownership Plan may have been submitted at the time of application for funding. However, if a Tenant Ownership Plan was not previously submitted to KHC, then when the Request For Sale is submitted, the box for the Tenant Ownership Plan must be marked for review and the \$100 fee paid. This must indicate a modification to the project to allow sales to Tenants or Qualified Buyers. KHC's Asset Management Committee must approve, in its sole discretion.

2. Sale to a Tenant exercising their Right of First Refusal:

- a. The Eligible Seller shall submit the Request For Sale, found on KHC's [TDCS](#) portal, \$250 fee, and all required documentation to KHC, at least 30 days prior to notifying the Tenant of the sale or conversion for the sale process.
 - i. The Request For Sale will require, among other things:
 1. Income and asset verification documents for Tenants that have resided in the Eligible Unit for less than 6 years in accordance with the income guidelines of IRC §42, using the lower number calculated;
 2. A copy of the lease;
 3. A nonrefundable, \$250 fee that must be paid prior to KHC reviewing the Request For Sale;
 4. A copy of the notification that will be sent to Tenants;
 - a. The notification must include the intent to sell the Eligible Unit, timing for completion of conversion (if applicable), the method of selling and pricing, a statement that buying the Eligible Unit is in the Tenant's discretion, and a statement that the Tenant may remain in the Eligible Unit if they choose not to purchase.
 5. Certifications: (if applicable)
 - a. Proper income qualifications of the Tenant under the income guidelines of IRC §42 if they resided in the Eligible Unit for longer than 6 years;
 - b. The absence of any KHC loan or grant encumbrance;
 - c. Minimum sales price;
 - d. Maximum sale price;
 - i. The maximum sales price may not exceed the appraised value or the Tenant's ultimate financing.

- e. Eligible Seller status and Eligible Unit status; and
 - f. Compliance with all project application requirements and the current or past lease.
- 6. Appraisal, if required by KHC, in its sole discretion, at the cost of the Eligible Seller.
- b. KHC's Asset Management Committee will review and approve the Request For Sale, in its sole discretion.

3. Sale to a Qualified Buyer

- a. Prior to the Eligible Seller marketing Eligible Units for sale to Qualified Buyers:
 - i. Eligible Sellers shall submit a Request for Marketing to Qualified Buyers, found on KHC's [TDCS](#) portal, a \$100 per unit fee, and receive approval prior to any direct marketing.
 - 1. KHC will approve the Request For Marketing, in its sole discretion.
 - 2. Approvals for direct marketing are valid for 12 months. By default, if the Eligible Units are not sold at the end of the 12 months, the Eligible Seller is required to attempt to rent the Eligible Units. An Eligible Seller may submit another Request for Marketing, including fees, for an extension of another 12 months.
 - ii. All notice and other legal requirements to the current or previous Tenants must be satisfied.
 - 1. The Eligible Seller may not cancel or not renew a Tenant's lease, other than for Good Cause, because the Tenant is unwilling or unable to enter into a purchase agreement.
 - 2. The Eligible Seller may offer, but shall not require, relocation of the Tenant to a comparable unit. The Eligible Seller shall receive approval from KHC prior to any relocation.
 - 3. The Eligible Seller shall provide the Tenant with assistance in finding a comparable unit and cover the costs of relocation, if the Tenant is relocated. If the Tenant voluntarily agrees to relocate to another unit that the Eligible Seller operates, then the Tenant and Eligible Seller shall enter into an agreement that confirms that the Tenant is aware that they are not required to relocate, doing so is voluntary, and the Eligible Seller shall provide for all relocation expenses and not change the amount of rent the Tenant is charged monthly.
- b. Once a Qualified Buyer is identified, the Eligible Seller shall submit the Request For Sale.
 - i. The Request For Sale will require, among other things:
 - 1. Copies of income and asset verification documents for all Qualified Buyers in accordance with the income guidelines of IRC §42, using the lower number calculated and not exceeding 80% of area median income, who have either:
 - a. not resided in the Eligible Unit as a Tenant, or
 - b. have done so for less than six (6) years;

2. A nonrefundable, \$250 fee that must be paid prior to KHC reviewing the Request For Sale;
3. Certifications regarding:
 - a. proper income qualifications of the Qualified Buyer;
 - b. the absence of any KHC loan or grant encumbrance;
 - c. minimum sales price;
 - d. maximum sales price not greater than the appraised value and the Qualified Buyer's ultimate financing; and
 - e. Affirmation of compliance with all pledged project application requirements and the current or past lease;
4. An appraisal, if required by KHC, in its sole discretion at the cost of the Eligible Seller.

4. **Approval**

- a. Once the Request For Sale is received and the fee is paid, KHC Asset Management staff will:
 - i. Verify the Owner is an Eligible Seller;
 - ii. Verify the Unit is an Eligible Unit;
 - iii. Verify other information and requirements;
 - iv. If applicable, forward income qualification determination documentation to the Compliance Department for review; and
 - v. If KHC does not have a copy of the LURA or an acceptable legal description, it will be the Eligible Seller's responsibility to provide.
- b. Once tentatively approved, Asset Management staff will send a work order to the Legal Department for a LURA release.
- c. Once the LURA release is prepared, Asset Management staff will mail the LURA release to the closing firm, as identified on the Request For Sale.
- d. The closing firm will be instructed that the LURA release is to be recorded ONLY in conjunction with the sale to the Tenant or Qualified Buyer.

Exceptions may be made to this policy if it contradicts lease purchase plans approved at the time of the application or in KHC's sole discretion and without notice. KHC may withdraw any approvals at any time and in its sole discretion.

*** All affordable housing financed with KHC funds must be approved by KHC, in its sole discretion, PRIOR TO being sold or marketed for sale to a Tenant or Qualified Buyer in accordance with this policy, regardless if the property unit is or was a LIHTC unit.*

Potential Fees

Fees **will NOT** be waived under any circumstances.

1. New UPCS Inspection	\$500
2. Reinspection Fee	\$200
3. Appraisal	varies
4. Request for Sale to Tenant or Qualified Buyer	\$250
5. Request for Review of Tenant Ownership Plan	\$100
6. Request for Marketing to Qualified Buyers	\$100 per unit