



## Qualified Contracts Policies and Procedures

*Effective April 1, 2019*

The Georgia Housing and Finance Authority (GHFA) is responsible for administering the Low-Income Housing Tax Credit (LIHTC) program for the state of Georgia. The Internal Revenue Code (Code), Treasury Regulation 1.42-18, and Internal Revenue Bulletin: 2012-22 contain some of the basic provisions for handling Qualified Contract requests. The purpose of this policy is to set forth the policies and procedures to be followed by GHFA and the owners of Low Income Housing Tax Credit (LIHTC) developments who are considering making a request for a Qualified Contract.

### **FEDERAL DEFINITION**

The Qualified Contract is defined in Section 42 (h)(6)(F) of the Code as a bona fide contract to acquire the non- low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction of:

- (i) The sum of
  - (I) The outstanding indebtedness secured by, or with respect to, the building, plus
  - (II) The adjusted investor equity in the building, plus
  - (III) Other capital contributions not reflected in the amounts described in subclause (I) or (II), reduced by
- (ii) Cash distributions from (or available for distribution from) the project.

“Adjusted investor equity” is defined in Section 42 (h)(6)(G) as the aggregate amount of cash taxpayers invested with respect to the project increased by the amount equal to

- (I) such amount, multiplied by
- (II) The cost of living adjustment for such calendar year.

Cost of living increases in excess of five percent should not be taken into account.

Section 42(h)(6)(E)(i)(II) of the Code provides that the extended use period shall terminate if a housing credit agency is unable to present a Qualified Contract to an Owner who has requested such a contract. The initial compliance period for a development receiving a LIHTC allocation is 15 years. For LIHTC allocations made in 1990 and after, an extended use agreement required by Section 42(h)(6) of the Code extends the compliance period up to a minimum of 15 additional years.

Section 42(h)(6)(E)(i)(II) of the Internal Revenue Code created a provision that housing credit agencies respond to the request for presentation of a Qualified Contract for LIHTC developments with expiring compliance periods. The Qualified Contract request may not be initiated until year 15 of the compliance period. The request for a Qualified Contract is a request that the housing credit agency find a buyer (who will continue to operate the property as a qualified low-income property) to purchase the property for a Qualified Contract price pursuant to IRS regulations. If the housing credit agency is unable to find a buyer within one year, the extended use period is terminated.

## **SECTION I – GHFA General Policies for Qualified Contract Requests**

**A. Eligible Properties.** Properties are not eligible to submit an Eligibility Determination Request until all of the following requirements have been met:

- The commencement of the 15th year of the Compliance Period for all buildings in the property;
- The completion of any extension of the right to opt out made in any recorded Land Use Restriction Agreement for the property; and
- The entire property must be in full compliance with Section 42 requirements prior to submission of a Request.

**B. Scope of Request.** The Eligibility Determination Request and the Qualified Contract Request must be for all of the buildings in the property regardless of whether initial allocations were made on a property or a building basis and must include all market rate units.

**C. Completeness.** The Eligibility Determination Request and Qualified Contract Request must be complete and include all required documents. The inability to provide required documents will preclude the submission of a Qualified Contract Request.

**D. Costs.** All third-party costs incurred in meeting the requirements of the Qualified Contract will be the sole responsibility of the owner and must be paid in full prior to the issuance of an Eligibility Determination Letter and a Qualified Contract Approval Letter.

**E. Determination of One Year Period.** Time lapsed during disputes or negotiation regarding the calculation of the Qualified Contract Price will not be included in the one-year period, and accordingly, that time will be added-on to the one-year period at DCA's discretion.

**F. Bad Faith.** Disputes resulting from unreasonable, unprofessional, and/or bad faith conduct on behalf of the owner, may result in DCA issuing a written determination that DCA's obligation to present a Qualified Contract has been met. Owners are not allowed to make a payment to a prospective purchaser to avoid a Qualified Contract purchase. If the sale does not close for any reason other than a default by the owner or other reasons within the owner's control, then DCA will continue to seek other Qualified Contract Agreements until the expiration of the Qualified Contract Period.

## SECTION II – QUALIFIED CONTRACT PROCEDURE

### A. General Process

Prior to the submission of the Qualified Contract Request, an owner must submit an Eligibility Determination Request to DCA as outlined below.

### B. Eligibility Determination Request

**Step 1:** An owner must submit an Eligibility Determination Request with all minimum documentation as set forth below. This request will determine whether the owner has met all of the requirements of eligibility more fully set forth in Section 1A above. The submission of an Eligibility Determination Request does not bind the owner to submit a Qualified Contract request and does not start the Qualified Contract period. (See subsection C, Step 6 below for the start.)

**Step 2:** Mail the nonrefundable Eligibility Determination Request fee of \$2,500.00, payable to **Georgia Housing and Finance Authority**, to:

Georgia Department of Community Affairs  
Attn: Office of Portfolio Management  
60 Executive Park Drive S NE  
Atlanta, GA 30329  
Re: Qualified Contract

**Step 3:** DCA will review the Eligibility Determination Request package to confirm that the prerequisites have been met and the property is eligible to request a Qualified Contract.

**Step 4:** DCA will send the owner an Eligibility Determination Letter confirming the eligibility of the property to submit a full Qualified Contract Request. The Eligibility Determination Letter will include the name of the CPA firm that DCA has contracted with for Qualified Contract price determination and the fees required for DCA to process a Qualified Contract Request.

### C. Minimum Documentation Required for an Eligibility Determination Request

1. Completed 8609s
2. Legal opinion to confirm when each building reaches the end of year-15 compliance period
3. Signed Form 8821
4. Copies of two most recent DCA Compliance Review close-out letters
5. Copy of most recently filed Annual Owner Certification (AOC) form
6. Copies of any additional affordability restrictions and regulatory agreements (HOME, USDA Rural Development, local funding)
7. PBRA Agreement (if applicable)
8. Waiver of First Right of Refusal or Option Agreement (if applicable)

#### D. Qualified Contract Request Process

**Step 1:** Once DCA issues an Eligibility Determination Letter that the property is eligible to submit a Qualified Contract Request, the owner may submit a Qualified Contract Request. The Request must include the following:

- A. a check for the non-refundable Qualified Contract Request fee in the amount of \$7,500;
- B. a check for the inspection fees, the Qualified Contract Price Calculation fee, and any additional fees associated with this request specified in the Eligibility Determination Letter;
- C. all required documents listed in Section II (D) below to the address in Section II(A); and
- D. any additional items or fees identified by DCA during the request process.

**Step 2:** DCA will 1) review the Request for completeness and accuracy; 2.) order a Qualified Contract price determination from the CPA identified in the Eligibility Determination Letter; and 3) order a 100% unit inspection of the low-income portion of the property to assess conformity with Uniform Physical Conditions Standards (UPCS). If the property has been inspected within 12 months of the submission date, then DCA will inspect the balance of the low-income units. Any physical deficiencies identified by the inspector must be corrected by the Owner in advance of listing the property with the Approved Broker.

**Step 3:** Once DCA has received a Qualified Contract price determination and reviewed the submitted Qualified Contract Request, the owner will be notified by letter of the commencement of the one-year Qualified Contract period, which shall commence upon issuance of the letter. The owner must sign and return the letter to DCA within 14-days. If documents and fees are submitted in a timely manner and the inspection does not reveal any non-compliance issues, then DCA estimates that it should take approximately 30 days between the date of the submitted Qualified Contract request and the issuance of the letter informing the owner of the commencement of the one-year Qualified Contract period.

**Step 6:** DCA may require the owner to list the property with a DCA Approved Broker and to provide documents listed in Section II(D) to Broker.

**Step 7:** Upon approval of the Qualified Contract Request, the owner must notify all of the current residents and any future applicants of the pending process within 14-days of the commencement date.

#### E. Documentation Required to Request a Qualified Contract

The following documents are required to be submitted for a Qualified Contract Request. Items **5-10**, and item **12** must be dated within 60 days of the submission of the Qualified Contract Request.

1. Partnership Tax Returns for all years of operation
2. Capital Contribution Schedule for all years of operation
3. Audited annual financials for all years of operation
4. Monthly operating statements for the most recent 36 months
5. Current Rent Roll

6. Appraisal
7. Property Needs Assessment
8. Title Report
9. Phase I Environmental
10. Written consent of the Qualified Contract submission by all LP partners and/or LLC members
11. Copies of all leases affecting any portion of the land or improvements
12. Draft of the Exclusive Listing Agreement with an Approved broker

All documents must be submitted in order for DCA to commence review of the request.

### **SECTION III – COMPLETION OF THE PROCESS**

- A. Subject to Section I(F), if DCA presents a bona fide contract to acquire the Property for the Qualified Contract price, the possibility of terminating the extended use period is forever removed and the property remains bound to the LURC provisions. There is no requirement that the prospective buyer actually purchase the property. Absent the occurrence of bad faith conduct, whether the transaction closes is a separate, legally unrelated matter.
- B. If DCA is unable to present a bona fide contract within the one-year period, the LURC will terminate by operation of law and the Property will enter the Decontrol Period. DCA will notify the owner of the Decontrol Period dates upon expiration of the Qualified Contract period.
- C. A bona fide contract means a written agreement signed by the buyer evidencing the buyer's intent to purchase the property at the qualified contract price. Evidence of the buyer's intent includes the following:
  1. 5% of the purchase price or another amount determined to be reasonable by DCA as an earnest money deposit;
  2. A timeline for the closing process;
  3. A letter from a lender affirming the ability to close or proof of funds in excess of the purchase price;
  4. Resume of experience; and
  5. A plan that addresses the repairs, maintenance, and general renovations often needed for aging properties.

### **SECTION IV – EXPECTATIONS FOR BUYERS AND SELLERS**

- A. An Eligible Qualified Contract buyer must:
  1. Demonstrate the existence of lines of credit and/or other financial resources to pay the Qualified Contract price for a Property upon request of the owner;
  2. Be prepared to complete any due diligence and underwriting during a 60-day time period from the date of the Purchase and Sale Agreement;
  3. Have the ability to close on a contract no later than 90 days from the date of the Purchase and Sale Agreement;

4. Engage the services of a DCA approved management agent; and
5. Upon DCA's request, submit financial packages, resumes, or other documents necessary to evaluate buyer's ability to operate the property in accordance with Section 42 requirements.

B. An owner must:

1. Respond to inquiries from an Eligible Buyer or Broker within five business days.
2. Disclose material information and knowledge related to the Property, even if not discovered during the Due Diligence period.
3. Refrain from demanding non-refundable earnest money as a condition beyond what is reasonable in a similar commercial transaction.

In the event an owner receives and accepts an offer lower than the Qualified Contract price, DCA will suspend marketing activities and the running of the one-year period. If a sale is executed at a price lower than the Qualified Contract price, the new owner retains the right to request a Qualified Contract at a future time. If the sale does not go through at the lower price, DCA will resume marketing activities and the running of the one-year period. (Any brokerage listing fees incurred by the termination of the listing agreement are the sole responsibility of the owner.)

## **SECTION V – DECONTROL PERIOD**

A. During the three (3) year period following the termination of a LURC, the owner will not:

1. Evict or terminate the tenancy of any existing LIHTC tenant (absent good cause), or
2. Increase gross rent in a manner or amount not otherwise permitted by Section 42.

Lease non-renewals may be scrutinized by DCA for compliance with Section 42 requirements, Department of Treasury guidance, and applicable state law.

B. The owner must:

1. Notify all of the current low income residents using DCA's notification form within 14-days of the notification in Section III(B) above via certified mail. The form describes the impending changes to the property, along with the tenants' rights, responsibilities, and options for enforcement.
2. Provide DCA with an updated Rent Roll at the Decontrol Period start date;
3. Continue to update the state database (MITAS) by the 10<sup>th</sup> of each month;
4. Notify the DCA Office of Portfolio Management 30 days in advance of the sale of the Property during the Decontrol Period; and
5. Complete the Annual Owner Certification (AOC).

## **DISCLAIMERS**

DCA may add to or amend these policies at any time, without advance notice.

DCA is not obligated to nor will it undertake to investigate of the accuracy of the information submitted. DCA expressly does not warrant the accuracy of the information or of the quality or marketability of the housing. Interested parties should undertake their own independent evaluation of the feasibility, suitability, and risk.

In executing its responsibilities under Section 42, DCA itself is not acting in the capacity of a real estate agent or real estate broker.

For all submitted Qualified Contract Requests, DCA and the contracted Broker may furnish all submitted documents and forms to an interested buyer upon written notice of such interest to submit a bona fide contract to purchase the property.