

## **NCHFA POLICIES REGARDING QUALIFIED CONTRACT REQUESTS**

The following terms and conditions (Y15 Policies) will allow the North Carolina Housing Finance Agency (Agency) to administer requests from property owners who intend to make a request under IRS Code Section 42(h)(6)(E)(i)(II) (Request) to produce a qualified contract (QC).

### **Notice and Fees**

1. The Agency will require advance notice before an owner may submit a Request. This notice will not bind owners to submit a Request and does not start the one year period (1YP).
2. The Agency will accept Requests from January 1<sup>st</sup> through the 9% tax credit full application deadline. Upon receipt the Agency will determine if the property is eligible for consideration. For example, many owners elected to waive the right to make a Request. Such waivers earned points in the initial application for Housing Credits and were recorded in the property's extended use agreement. Some properties may also be temporarily ineligible due to the factors described below.
3. The Agency will assess owners a non-refundable fee of \$1,000 for Requests. All necessary third party costs will be passed on to owners. The Agency may require owners to fund a deposit of up to \$30,000 to cover such costs.
4. If third party costs exceed the owner's initial deposit, the Agency will request additional funds. The owner shall continue to make deposits to cover such costs. If the owner delays in making a deposit, the Agency may suspend processing or terminate a Request.

### **Eligibility to Request a QC**

1. In determining when a property is eligible, the Agency will only consider the latest date for properties with multiple credit periods or allocations. Owners may not submit a Request until after the 14<sup>th</sup> year of:
  - a) the last compliance period for properties with buildings that were placed in service different years, or
  - b) the most recent of multiple allocations to the same property.For example, if five buildings in the property began their credit periods in 1991 and one started in 1992, the 15<sup>th</sup> year for the purposes of a Request would be 2006. If the property received its first allocation of \$500,000 in 1991 and a subsequent award of \$25,000 in 1993, the 15<sup>th</sup> year for the purposes of a Request would be 2007.
2. The Agency will not consider a Request until the owner secures a complete, unconditional waiver of all purchase options, including a nonprofit general partner's right of first refusal.
3. Properties that do not meet the basic physical compliance standards that are (or would be) necessary to claim some or all of the Housing Credit allocation are ineligible for consideration. Owners must correct all such violations prior to submitting a Request.

## **Documentation Requirements**

1. The 1YP will not begin until the Agency determines the owner has met all of the submission requirements.
2. The Agency will not consider a Request until after receipt of all supporting documentation. Owners will need to submit the following items along with a Request:
  - a) first year 8609s,
  - b) annual partnership tax returns for all years of operation since the start of the compliance period (all years),
  - c) annual property financial statements for all years,
  - d) loan documents for all secured debt during the compliance period,
  - e) partnership agreement (original, current and all interim amendments),
  - f) physical needs assessment for the entire property,
  - g) appraisal for the entire property,
  - h) market study for the entire property,
  - i) title report, and
  - j) Phase I environmental (Phase II if necessary).

Items (a) through (e) are necessary to determine the price as required under IRS Code Section 42(h)(6)(F) (QC Price). Items (f) through (j) will be necessary for prospective buyers. The Agency will consider waiving some or all of items (f) through (j) until after the QC Price is established if the owner agrees to delay the start of the 1YP.

2. Owners who expect to take advantage of the QC option have a corresponding duty to maintain the records necessary to allow computation of the QC Price. There are three options for owners who have not fulfilled this responsibility:
  - a) the Agency deems the property ineligible for consideration,
  - b) an accountant deduces missing information (interpolation), or
  - c) the owner agrees to accept a three year period and fair market value.

An example of item (b) is to re-create what would have been the property's financial statement using accountant work papers. The Agency, in its discretion, will determine which option(s) is/are available.

3. The 1YP shall be suspended during any period of time during which the Agency is waiting for additional documentation from the owner.

## **Presenting a QC**

1. Under IRC §42(h)(6)(E)(i)(II), the Agency's only obligation is to "present" to the owner a bona fide contract to acquire the property for the QC price (Contract). Once the Agency presents a Contract to the owner, the possibility of terminating the extended use period is removed forever and the property remains bound to the provisions in the extended use agreement.

2. There is no requirement in the IRS Code that the prospective buyer actually purchase the property. Whether or not the seller executes a contract and closes the transaction is a separate, legally unrelated matter.
3. The Agency will create a standard form agreement that includes basic real estate transaction terms (i.e. costs, due diligence period). This form simply establishes what the buyer needs to accept in order for the Agency to meet its statutory obligation of presenting a Contract. Once a buyer agrees to the standard terms and QC Price, the owner cannot terminate the extended use period. The parties would be free to negotiate different transaction terms prior to closing.

### **General**

1. In keeping with the clear purpose of IRS Code Section 42, the Agency will resolve every case of doubt or interpretation in determining the QC Price, both with regard to the overall process and for particular properties, in favor of a lower value.
2. Any time spent by the owner questioning or challenging the Agency's calculation of the QC Price will not count against the 1YP.
3. The Agency may add to or amend these Y15 Policies at any time. Such changes may include, but are not limited to the following: effect withdrawing a Request, number of times an owner may submit a Request for a particular property, treatment of owner investment, and characterization of cash distributions.

Please contact Chris Austin at (919) 877-5662 or [claustin@nchfa.com](mailto:claustin@nchfa.com) with any questions.