

## **South Carolina State Housing Finance & Development Authority's Low Income Housing Tax Credit Year 15 Policy**

Created by Congress in 1986, the federal Low-Income Housing Tax Credit (the "LIHTC") Program was created to promote the development of affordable housing for low-income individuals and families. The LIHTC Program is governed by Section 42 of the Internal Revenue Code of 1986, as amended (the "Code") and by Treasury Regulations for the LIHTC Program that can be found at 26 CFR §1.42 et. seq. The South Carolina State Housing Finance and Development Authority (the "Authority") is responsible for administering the LIHTC Program for the state of South Carolina and allocating tax credits to developments throughout the state.

Properties awarded Tax Credits in 1987, 1988, and 1989 had a 15-year compliance period. However, the federal law was changed and an extended use period requiring an additional 15 years of compliance was added for developments awarded Tax Credits in 1990 and afterwards. Therefore, all developments awarded credits in 1990 and afterwards must comply with program restrictions for a total of 30 years, subject to certain exceptions. These restrictions are outlined in a recorded document called the Agreement as to Restrictive Covenants which is recorded on each tax credit development.

Section 42(h)(6)(F) of the Code allows owners of Tax Credit developments a way to exit the program after the first 15 years of compliance. The Qualified Contract option allows owners to request the allocating agency to present a Qualified Contract for the purchase of the development by a person or entity willing to continue to operate the development as a qualified low-income property. If the agency is unable to present a Qualified Contract from a qualified purchaser, the extended use period for the development will be terminated and the development will no longer be restricted to the low-income requirements. However, for the three (3) years following the termination of the extended use period, the owner will not be able to evict or displace tenants for reasons other than good cause and will not be permitted to increase rents beyond the maximum tax credit rents.

### **I. Procedures to Obtain a Qualified Contract**

The following procedures set forth the terms and conditions in which an owner can request the South Carolina State Housing Finance and Development Authority to obtain a Qualified Contract.

An owner is not eligible to request that the Authority provide a Qualified Contract for a development if (1) the development is already obligated under an Agreement As To Restrictive Covenants under another Authority administered program (HOME or Housing Trust Fund) or (2) if the owner has already knowingly and voluntarily waived its right to request the Authority to find a buyer to acquire the tax credit portion of the building or (3) if the development is out of compliance with the tax credit program then a request cannot be made until such time the development is brought back into compliance.

Per Section 42(h)(6)(E)(i)(I) of the Code the extended use period for any building shall terminate on the date a building is acquired through foreclosure or instrument in lieu of foreclosure or on the last day of the compliance period if a buyer is not found who is willing to purchase, maintain and operate the tax credit portion of the development.

After the last day of the 14<sup>th</sup> year of the compliance period of the last building placed in service or the last year of a multiple allocation, an eligible owner of a development utilizing federal low-

income housing tax credits may request that the Authority attempt to find a purchaser to submit a Qualified Contract pursuant to Section 42(h)(6)(E) of the Code for the acquisition of the low-income portion of the development.

For example, if four buildings in a development began their credit periods in 1990 and one started its credit period in 1991, the 15<sup>th</sup> year for the purposes of a request would be 2005. If a development received its first allocation of credits in 1990 and a subsequent allocation was awarded in 1992, the 15<sup>th</sup> year for the purposes of submitting a request would be 2006.

The Authority will have one year from the receipt of both a Qualified Contract Request and a completed Qualified Contract Package, with all necessary attachments, to present a Qualified Contract. The owner will cooperate with the Authority and its agents with respect to the Authority's efforts to obtain a Qualified Contract for the purchase of the tax credit portion of the development. The owner's failure to cooperate with the Authority during this process will delay the one year time period the Authority has to present a Qualified Contract.

Under Section 42(h)(6)(E)(i)(II) of the Code, the Authority's only obligation is to attempt to obtain a purchaser willing to enter into a bona fide contract to acquire the owner's development for the qualified contract price. If the Authority presents the owner with a Qualified Contract from a qualified purchaser, regardless of whether or not the contract is acted upon, the owner voluntarily and irrevocably waives any right to further request that the Authority present a Qualified Contract for the purchase of the tax credit portion of the development and the possibility of terminating the extended use period is removed forever and the development will remain bound by 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 issue.

In the event no buyer is found to acquire the tax credit portion of the building within one year as previously described, the extended use period shall be terminated and the units converted to market rate. As per Section 42(h)(6)(E)(ii) of the Code, the termination of an extended use agreement shall not be construed to permit before the close of the 3-year period following the termination of the extended use period either the eviction or the termination of tenancy (other than for good cause) of an existing low-income tenant residing in the building or the increase in the gross rent above the maximum allowed under the Code with respect to such low-income unit. The owner will be required, at the end of each calendar year of the three (3) year period, to provide a certification, and certified rent rolls, if requested, to the Authority that these requirements have been met. If the owner sells the development during the three (3) year period the new owner will be required to submit the annual certification to the Authority.

## **II. Compliance Monitoring During the Extended Use Period**

Developments which received allocations in 1990 or thereafter have Extended Use Period requirements that extend the low-income restrictions for an additional 15 years or more beyond the initial 15-year Compliance Period.

For owners subject to the low-income restrictions during the Extended Use Period and for purchasers of Tax Credit developments under the Qualified Contract Process, the authority will modify compliance monitoring criteria and procedures, as allowed under Section 42 of the IRS Code. Income and rent restrictions, fair housing requirement of general use, acceptance of Section 8 tenants, minimum set-aside, applicable fraction, initial and annual recertification requirements and compliance monitoring fees will remain as program requirements.

**A. Modifications to the Monitoring Criteria During the Extended Use Period:**

- A self-certification from the tenant will be required at annual recertification to ensure the annual reporting information can be completed by the owner.
- The next available unit rule and vacant unit rule will not be enforced during the extended use period.
- At a minimum of every five years a property review will be completed. At a minimum, 5 or 5% of the tenant files/units may be examined. More files may be reviewed at the discretion of the Authority.
- The physical review of the property will include all public areas (playgrounds, clubhouse, pool, etc.) vacant units and all building exteriors.

**B. Other Criteria:**

1. Compliance will be monitored property wide, including the number of eligible affordable units. Unit transfers are not restricted provided they occur within the property.
2. Set-asides and targeting will be as stipulated in the Agreement as to Restrictive Covenants, not the tax credit application.
3. Owners must follow all provisions of the Agreement as to Restrictive Covenants, unless modified in writing by the Authority.
4. Upon completion of the Extended Use Period, a Satisfaction of the Agreement as to Restrictive Covenants will be issued and filed. (Just curious as to who is doing this as Tracey makes the developer's attorney do this for those that come out from under the restrictions at year 15 we don't prepare the release) During the three-year period after the expiration of the Extended Use Period, owners will be required to submit a certification that no residents have been evicted or displaced for other than good cause and the rents have not been raised above the tax credit maximum rents. The owner is to provide evidence that tenants have been apprised of these rights.

**C. Noncompliance:**

In addition to other remedies allowed by law, the Authority may designate the owner of, and any party responsible for, properties remaining in noncompliance (after any opportunity to cure) as being not in good standing with the Authority.

**III. Qualified Contract Request and Qualified Contract Package**

The Qualified Contract Request and Qualified Contract Package can be downloaded from the tax credit webpage of the Authority's website at [www.schousing.com](http://www.schousing.com). Once completed, all forms should be sent in their entirety to the Authority as follows: SC State Housing Finance and Development Authority, Attn: Laura Nicholson, Development Director, 300-C Outlet Pointe Blvd., Columbia, SC 29210

Should you have any questions please call Laura Nicholson at (803) 896-9190. Questions may also be sent via e-mail: [laura.nicholson@schousing.com](mailto:laura.nicholson@schousing.com) or fax (803) 551-4925.