

## Qualified Contract Process

The Omnibus Budget Reconciliation Act of 1989 required that all properties receiving an allocation of Housing Credits after January 1, 1990 be subject to an “extended use period” that lengthened the period of time that LIHTC developments are required to maintain affordability from 15 to 30 years. In an effort 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 the state allocation agencies assist in finding a purchaser, willing to continue the affordability restrictions, at a “Qualified Contract Price” (QCP).

**Even though the 1989 Act provided owners with an opt-out provision in year 15, many developers in Iowa, as well as across the country, waived their right to an early opt-out in exchange for additional points in the scoring and allocation process.** The policy below will apply to those properties that are eligible for opt-out at some point prior to the 29th year of use.

Owners are encouraged to review their copies of applications submitted to IFA when applying for an allocation of credits, as well as the deed restrictions (LURA), to determine if and when they are eligible to pursue the opt-out provision. If eligible for early opt-out, owners may request, in writing, that IFA find a buyer for the low-income portion of the property. If IFA is unable to find a buyer pursuant to a Qualified Contract, the property may be converted to market rate, provided the owner has encumbered no other use restrictions, (i.e.; subordinate loans, HUD Use Agreements, etc.).

Owners must notify IFA of their desire to sell the property using the process outlined below. Once complete and proper notice has been received, IFA will have one year to find a buyer for the development at a pre-determined price, not to exceed the QCP. The qualified purchaser may be a nonprofit or for-profit entity that agrees to maintain the affordable housing units and fulfill all requirements of the LURA. The period for finding a buyer is the one year period beginning on the due date of the QCP package that the taxpayer submits along with their written request to the housing credit agency (but no sooner than the beginning of the last year of the initial compliance period.) For developments which consist of more than one building (as evidenced in the development’s 8609(s)) all buildings must be in last year of their initial compliance period or after in order to request the Qualified Contract.

The development and owner should be in compliance with all program 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 who elect to exercise this option must complete the following information and provide all required due diligence documentation listed therein.

### **1. Qualified Contract Notification Letter (Required Document Provided by IFA)**

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Wherein the owner acknowledges that information submitted may be shared with prospective purchasers, real estate brokers, and staff and agents of IFA, and that data provided may be reasonably posted on IFA's website for purposes of marketing the development.

The owner must agree to work with and cooperate with IFA in efforts to market the property. This may include providing copies of rent rolls, income certifications, repair and maintenance records, operating expenses, and other due diligence documents, as well as allowing access to the property for inspection by IFA, its agents, and prospective buyers, upon proper notice and request. Prior to sharing any information with a prospective purchaser, the owner may require that the prospective purchaser enter into a commercially reasonable form of nondisclosure agreement.

The owner acknowledges and certifies in the notification letter that it has conducted due diligence review of the calculation of the Qualified Contract Price and is solely responsible for documents and information provided to IFA.

The owner agrees to indemnify, defend and hold IFA harmless with respect to IFA's use of the development information in pursuit of a Qualified Contract.

The owner understands that if IFA presents a prospective purchaser willing to make an offer to purchase the property for an amount equal to or greater than the Qualified Contract Price, the owner must agree to enter into a commercially reasonable form of earnest money agreement or other contract for sale of the property that will allow the prospective purchaser a sufficient period of time to undertake additional, usual and customary due diligence prior to closing.

### **2. Calculation of Qualified Contract Price Form (Required Excel Workbook)**

The workbook contains the *Calculation of Qualified Contract Price* worksheet as well as worksheets A through E and instructions for the use of each. This workbook must be accompanied by a signed letter, or an examination report, from a certified public accountant, stating the name of the development and that they are an independent CPA. The letter must further state that they have completed, or examined, the calculation of QCP in accordance with 26 CRF Part 1, Section 1.42-18 and the AICPA Statements on Standards for Attestation Engagements. The letter must also state the determined QCP.

The completed workbook document and CPA letter or examination report must be submitted to IFA electronically when you submit your other documentation to IFA. Please rename the document with the Project number and Project name for ease of identification.

### **3. Attachment for Qualified Contract Notification Letter and Excel Workbook**

- a. *Property narrative* - A thorough narrative description of the development including all amenities within the units as well as common areas, and proximity to schools, business districts, shopping, mass transportation, highways sufficient for familiarizing prospective purchasers with the property.
- b. *A description of all income, rental or other restrictions* applicable to the operation of the property.

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- c. *Property photographs* – A detailed set of digital and hard copy photographs for use on the IFA website, including the interior and exterior of representative apartment units, buildings and property grounds. Photographs must be taken within 6 months.
- d. *Copies of the most recent 12 months operating statements* for the property which will fairly apprise a potential purchaser of the property’s operating expenses, debt service, gross receipts, and net cash flow and debt service coverage ratio.
- e. *Copy of lease(s)* if any portions of the land or improvements are leased (not the normal LIHTC tenant leases but other types of leases such as the land being leased or commercial property being leased, etc.).
- f. *Current rent roll* documenting unit number, name of head of household, move in date, security deposit held in trust, current rental charge, amount delinquent, and move out date for current vacant units
- g. *Copy of the partnership agreement or other legal documentation* granting any form of preference for purchasing the development (for example, a right of first refusal granted to a nonprofit partner, or tenants), and provide a waiver of that right if it is to be waived. If it is not waived, please provide further information.
- h. *First Years 8609’s showing Part II completed.*
- i. *Payment of the non-refundable processing fee* to be submitted at the time the Qualified Contract Notification Letter.

**4. Non-Refundable Processing Fee.** This fee is for processing a Qualified Contract request. The fee must be submitted at the time the Qualified Contract Notification Letter is presented to IFA, and is non-refundable.

The processing fee is determined based upon the number of units in the development to include both market rate units and rent restricted units.

24 units or less	\$ 500
25 to 74 units	\$ 1,000
75 to 149 units	\$ 1,500
150 to 199 units	\$ 2,000
200 or more units	\$ 2,500

Qualified Contract packets will be accepted and processed by IFA in March and October of each calendar year. Packets received by IFA 30 days prior to March 31<sup>st</sup> or October 31<sup>st</sup> deadlines will be reviewed by IFA within 30 days after the deadline. Any packets received more than 30 days before the deadline will not be processed or reviewed and will be returned to the Owner.

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All documents and fees set forth above must be addressed or delivered to:

Iowa Finance Authority  
ATTN: Director of Compliance  
2015 Grand Avenue  
Des Moines, IA 50312

### 5. IFA Procedure

Upon receipt of the owner's properly submitted request to exercise their option year (Qualified Contract Notification Letter, Calculation of Qualified Contract Price form with worksheets, Fee and all required documentation) IFA staff may do any or all of the following:

- a. Review the owner's packet of due diligence materials and agree on an appropriate QCP. This will require IFA staff and the owner to work closely together to ensure all required information has been submitted and a QCP has been set. The one-year period begins once this step is complete. IFA will review the owner's request package within 30 business days of deadline set for submission of QCP packages. Upon completion of this review, should the request package be determined to be complete, it will be considered to have been complete on the date of the submission deadline and that date will start the one year period. Upon completion of the review, should the package be determined to be incomplete or lacking in required submissions, IFA will provide a written notice of deficiency to the owner. The one year period will begin on the day the owner cures the noted deficiencies.
- b. Post the property information on IFA's website.
- c. Send the property information to the Federal Home Loan Bank (FHLB) and ask them to immediately post the information on their website.
- d. Prepare an informational flyer and send to a pre-established mailing list. This list will include current owners of Tax Credit Developments; contacts at large; management companies; other public funding agencies in the state; local, state and nation-wide nonprofit and for-profit Owners interested in preserving affordable housing; and tax credit investor contacts.
- e. Present information on the development(s) to preservation groups at stakeholder meetings IFA attends.
- f. Act as a conduit for all requests of prospective purchasers by responding to requests for additional information from the Owner and forwarding that information upon receipt.

For more information on this process, contact the Director of Compliance. The required Qualified Contract forms are located on the IFA website at [www.iowafinanceauthority.gov](http://www.iowafinanceauthority.gov).

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### 6. General Information

- a. IFA shall be under no obligation to undertake an investigation of the accuracy of the information submitted for Qualified Contract. IFA's review shall not constitute a warranty of the accuracy of the information, nor of the quality or marketability of the housing to be purchased, constructed, or rehabilitated pursuant to IRC §42. Developers, potential investors and interested parties should undertake their own independent evaluation of the feasibility, suitability and risk of the development. If any information submitted by building owners to IFA is later found to be incorrect in any material respect, it is the responsibility of the building owner to inform IFA and to request a reexamination of the information. IFA is not, and is not acting in the capacity of, a real estate agent or real estate broker. IFA's role is limited to implementation of IRC §42 requirements and facilitating the presentation of a Qualified Contract, as defined in the code. Interested parties should obtain advice from independent sources, including consultation with knowledgeable tax professionals and legal counsel.
- b. IFA will market the property in good faith and will continue such efforts until the property is sold or the one year period has expired. Lack of cooperation by the owner in the marketing of the property will cause the process to cease, and the owner will be required to comply with the full term of the LURA. Lack of cooperation shall include, but shall not be limited to: the owner's failure to respond to any request for additional documentation, delay or refusal by the owner to allow inspections of the property by IFA or potential purchasers, or the owner's intentional misstatement of material facts. The owner is not required to accept any purchase offers presented through IFA; however, if the owner rejects an offer at or above the QCP, the development will remain subject to the terms specified in the LURA through the remaining term. IFA may reject purchasers who have failed to demonstrate proficiency in the LIHTC program or any other housing program administered by IFA.
- c. If IFA is unable to locate a buyer pursuant to the Qualified Contract before the expiration of the one year period, the development may be released from the LURA restrictions; however, the property will continue to be subject to the requirements of IRC §42(h)(6)(E)(II) for the three-year period commencing with the date of release from the LURA. IRC §42(h)(6)(E)(II) states the owner may not evict or terminate tenancy (other than for good cause) of an existing resident of any low income unit OR increase the gross rent with respect to such unit except as permitted under IRC §42.

In this event, IFA will issue a partial release of lien with respect to the LURA within 30 days of the end of the one year period. Such partial release will be filed with the appropriate recordation authority and a filed copy forwarded to the owner. The owner will be required to provide written notice to each existing resident of the development advising of the protections afforded by IRC §42(h)(6)(E)(II). The owner will be required to submit a certification to IFA at the end of each year of the three-year period, stating that the requirements of IRC §42(h)(6)(E)(II) have been met.