



Arizona
Department
of Housing

Asset Management Handbook

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I. PROCEDURES FOR CHANGING THE OWNER, MANAGING MEMBER/GENERAL PARTNER OR LIMITED PARTNER/INVESTOR MEMBER OF A LOW INCOME HOUSING TAX CREDIT PROPERTY

Multi-family residential properties developed using Federal Low Income Housing Tax Credits (LIHTC) provided by the Arizona Department of Housing ("the Department") require the Department's approval for changes to the owner, or members of the Ownership Entity, namely the managing member (for a Limited Liability Company), general partner (for a Limited Partnership), limited partner (for a Limited Partnership), or an investor member (for a Limited Liability Company). This document provides the Department's Policies and Procedures for requesting an ownership change.

KEY CONSIDERATIONS

The request must demonstrate that the new owner, managing member/general partner, or limited partner/investor member possess the experience and financial capacity necessary to own and operate the property consistent with the Department's objective of providing safe, decent, affordable housing. To this end, the new party must not be involved in any capacity in a project with any State agency that has excessive non-compliance violations, outstanding IRS 8823 Forms, or complaints about their performance and maintenance of existing projects. The Department expects that the seller will convey the property in good condition and; therefore, will only approve requests for properties in which there are no outstanding non-compliance issues.

SUBMITTING THE REQUEST

To request a change of owner, managing member/general partner, or limited partner/investor member, please submit the following documents through the Asset Management Portal on the Department website:

1. A letter requesting a change to the owner, managing member/general partner, or limited partner/investor member stating the reason(s) for the change.
2. Purchase and Sale Agreement or Assignment and Assumption Agreement.
3. A completed Contact Sheet which can be found on the ADOH website at: <https://housing.az.gov/documents-links/forms/asset-management>
4. Evidence the equity partner has approved the new managing member/general partner.
5. Organization chart illustrating the relationship whether through ownership, control, or contract within the ownership entity between the managing member/general partner and limited partner/investor member.
6. Copy of the limited partnership agreement, operating agreement for a limited liability company, a development services agreement, or similar agreement.
7. Resumes specifically identifying the officers or key employees of the managing member or general partner demonstrating the knowledge and experience necessary to successfully manage the property.
8. Financial Statements for the prior two (2) years of the developer/parent company of the acquiring entity in the transaction.
9. Evidence the new owner, managing member/general partner, or limited partner/investor member are duly formed legal entities authorized to transact business in the State of Arizona and in good standing with the Arizona Corporation Commission or the Arizona Secretary of State. See below for specific requirements.
10. Evidence the proposed property manager has attended a two-day compliance training offered by a vendor listed in the current Qualified Allocation Plan within one-year prior to submission.

11. Fifteen (15) year operating pro forma.
12. Current rent roll on the property.

ADMINISTRATIVE FEES

Administrative Fees to process the request may be submitted by credit card through the Payment Portal on the Department's website or by check. The Fees are as follows:

- \$1,500 for owner or managing member/general partner change.
- \$500 for limited partner/investor member change.

REQUIREMENTS FOR LEGAL FORMATION AND AUTHORIZATION TO DO BUSINESS IN ARIZONA

Corporations

If the entity is a corporation, provide the Articles of Incorporation and Bylaws and all amendments thereto. If the corporation was incorporated in Arizona, provide a certificate of good standing issued by the Arizona Corporation Commission confirming the legal existence of the entity as of the date of the certificate ("Certificate of Good Standing") and dated not earlier than thirty (30) calendar days prior to the submission. Entities incorporated in another state and doing business in Arizona must submit a certificate of good standing or its equivalent from the state of incorporation confirming the legal existence of the entity dated not earlier than thirty (30) calendar days prior to the submission and a certificate of good standing to transact business in Arizona ("Certificate of Authority") for such foreign corporation, issued by the Arizona Corporation Commission and dated not earlier than thirty (30) calendar days prior to the submission..

Limited Partnerships

If the entity is a limited partnership, provide an executed copy of the limited partnership agreement and all exhibits and amendments thereto. If the limited partnership was organized under the laws of Arizona, provide a certificate of existence issued by the Arizona Secretary of State confirming the legal existence of the entity ("Limited Partnership Certificate of Existence") and dated not earlier than thirty (30) calendar days prior to the submission. Limited Partnerships organized under the laws of another state and doing business in Arizona must submit the following: a limited partnership certificate of existence or its equivalent from the state of organization confirming the legal existence of the entity, dated not earlier than thirty (30) calendar days prior to the submission, and an Arizona Certificate of Authority from the Arizona Secretary of State dated not earlier than thirty (30) calendar days prior to the submission.

Limited Liability Companies

If the entity is a limited liability company, provide the Articles of Organization (or its equivalent) and Operating Agreement and all exhibits and amendments thereto. If the limited liability company is organized under the laws of Arizona, provide a certificate of good standing existence, issued by the Arizona Corporation Commission confirming the legal existence of the entity ("LLC Certificate of Good Standing"), dated not earlier than thirty (30) calendar days prior to the submission. Limited liability companies organized under the laws of another state and doing business in Arizona must submit the following: a certificate of existence or its equivalent from the state of organization confirming the legal existence of the entity dated not earlier than thirty (30) calendar days prior to the submission and an Arizona Certificate of Good Standing issued by the Arizona Corporation Commission for such foreign limited liability company dated not earlier than thirty (30) calendar days prior to the submission.

II. FINANCIAL STATEMENT REQUIREMENTS

The Arizona Department of Housing has established minimum requirements for the types of financial statements it receives depending on the type of financing it has provided for multi-family properties. These requirements (listed below) are outlined in the Financial Statements Requirements document and located on the ADOH website at the following link:

<https://housing.az.gov/documents-links/forms/asset-management>

Property Type and/or Note Type	Audited	Unaudited*
9% or 4% LIHTC – First 15 Yrs	Required	
9% or 4% LIHTC – Yrs 16-30, no ADOH loan		Accepted
ADOH Loan – Set Payment or Cash Flow Note –50 or more units, w/ or w/o LIHTC	Required	
ADOH Loan – Set Payment or Cash Flow Note – less than 50 units, no LIHTC		Accepted
ADOH Loan – no payment until maturity		Accepted

*Must be prepared on an accrual basis and, at minimum, consist of a balance sheet, income statement and cash flow statement with all accompanying schedules and notes.

If more than one situation applies, creating a conflict in the type of financial statement that is required, or if the property is financed with other financing sources that require audited financial statements, then the audited financial statement is required.

Financial Statements **are required to be submitted to ADOH through the following portal:**

<https://housing.az.gov/portals/document-upload-portals/financial-statements-upload-portal>

Audited Financial Statements and Single Audits are no longer accepted in paper form as of March 31, 2016 pursuant to IB 06-16.

III. LOAN DEFERRAL PROCEDURES

Only loans that contain a cash flow payment provision are eligible to receive a payment deferral. ADOH will consider requests to defer or modify a scheduled payment of a State Housing Fund (HOME, Housing Trust Fund, NSP or TCAP) loan containing a cash flow payment provision for Projects that did not generate sufficient cash flow to make the annual payment, after payment of the deductions specified in the Promissory Note, if applicable. Review of the request will not commence until all outstanding documents are received as outlined below:

To request a loan deferral submit through the Rental Properties/Asset Management Portal the following information:

1. Written request for loan deferral (letter or copy of email) containing loan information, property location, the name of the borrower entity and an explanation of why the deferral is being requested.
2. A copy of the property's Audited Financial Statement for the applicable fiscal year.

Based on the audited financial statement, initial underwriting and the terms and conditions of the Promissory Note, ADOH will conduct a cash flow analysis and make a determination whether, and to what extent, loan payments may be deferred. Loan deferrals will not be considered for properties that are out of compliance with applicable CC&Rs and LURAs.

To request a loan deferral send the above documents via the ADOH *Rental Properties/Asset Management Portal* on the ADOH website: <https://housing.az.gov/portals/document-upload-portals>. **Loan deferral requests will not be accepted via email.** Loan servicing questions may be directed to the Asset Manager at (602) 771-1034.

IV. QUALIFIED CONTRACT PROCESS

WHAT IS A QUALIFIED CONTRACT?

All Qualified Low-Income Housing Projects allocated Low Income Housing Tax Credits ("LIHTC") in the 1990 tax year or later must comply with all LIHTC requirements for the duration of the Extended Use Period, a period of not less than thirty (30) years after the project is placed in service. However, the Land Use Restriction Agreement (LURA), Section 42 (h)(6)(E) of the Internal Revenue Code (IRC), allows the extended use period to terminate after the initial fifteen (15) year Compliance Period by applying to the State Tax Credit allocating agency for a Qualified Contract, provided the owner did not waive such rights. Section 42(h)(6)(I) of the Internal Revenue Code provides that Project owners may apply to the state Tax Credit allocating agency for a Qualified Contract after the fourteenth year of the Compliance Period.

A Qualified Contract is a bona fide contract to acquire an LIHTC project for the sum of the existing debt, adjusted investor equity and other capital contributions, less project cash distributions as set forth in IRC §42(h)(6)(F). The "Qualified Contract Price" will establish the minimum price which is required by IRC Section 42. Under the Qualified Contract process, the State Tax Credit allocating agency has one year from the date of application to procure a qualified buyer to purchase the project at the Qualified Contract Price. If the agency fails to do so, it may release the project from the requirements of the LIHTC subject to the three-year deregulation period required by IRC § 42(h)(6)(E)(ii).

THE QUALIFIED CONTRACT APPLICATION PROCESS

The Qualified Contract Application process and the requirements for requesting that the Arizona Department of Housing ("ADOH") procure a Qualified Contract buyer to purchase a Qualified Low Income Housing Project from the owner. The application implements the Qualified Contract process described by IRC § 42(h)(6)(F). Only Qualified Low-Income Housing Projects (i.e. LIHTC properties with no outstanding I.R.S. 8823 forms) after the fourteenth year of the Compliance Period or later are eligible to apply for a Qualified Contract. The Application for Qualified Contract can be found on the ADOH website at: <https://housing.az.gov/documents-links/forms/asset-management>

By executing the application, the applicant agrees to the Qualified Contract process described below. To initiate the ADOH Qualified Contract Application Process the property owner must **submit the following items through the ADOH Asset Management Portal**:

1. Cover letter describing the project and its eligibility for a Qualified Contract;
2. Completed application forms (parts A, B and C);
3. All documents and materials listed in part D - "Documents and Supporting Materials";
4. Signed Owner's Warranties and Representations (part F);
5. Calculation of the Qualified Contract Price (part G) as of a date within ninety (90) days of the date of application. This price is subject to reduction based on ADOH review.

In addition, the fees described below must be paid through the ADOH Payment Portal or by delivering them to the ADOH office:

- A non-refundable Administrative Fee in the amount of \$5,000.00; and
- The applicable Professional Service Fee, which will be determined by ADOH shortly after receipt of the submission.

Upon submittal of a Qualified Contract Application, the Owner will be provided with a "LURA Amendment Options Form". This Form will afford the Owner an opportunity to amend the existing Land Use Restriction Agreement (LURA) recorded against the Property to increase the rent and income restrictions identified in the LURA to 50% or 60% AMI through the remainder of the Extended Use Period in accordance with the initial election of the project. In other words, a unit currently restricted to 20% AMI, 30% AMI, or 40% AMI would be restricted to 50% or 60% AMI, as applicable when the LURA is amended ("LURA Amendment"). This is the **only** change that would be permitted to the LURA. The LURA Amendment shall only be available to Owner if a Qualified Buyer is not identified during the one-year qualified contract period according to the Qualified Contract procedures identified herein.

- If Owner elects to pursue a LURA Amendment, the Project will be marketed according to the Qualified Contract procedures identified herein. If a Qualified Buyer presents an offer during the Qualified Contract period accepting the LURA as-is (with the existing rent and income restrictions below 50% or 60% AMI as applicable), the Buyer will be considered to be presenting a Qualified Contract, which may be accepted by the Owner. If the Owner does not accept the Qualified Contract presented by the Buyer, this action by the Owner voids the LURA Amendment Option and the Owner will be required to maintain the original rent and income restrictions for the remainder of the Extended Use Period.
- If the Owner does not elect to pursue a LURA Amendment, the Project will be marketed to potential Buyers during the Qualified Contract period. A potential Buyer who presents a Qualified Contract would be afforded the option to pursue a LURA Amendment. If a Buyer presents a Qualified Contract accepting the LURA as-is (i.e., with the existing rent and income restrictions), that Buyer's Qualified Contract supersedes a Qualified Contract requesting a LURA Amendment. If the Owner does not accept the Qualified Contract from the Buyer, the Owner will be required to maintain the original rent and income restrictions for the remainder of the Extended Use Period.

More specifically, to pursue a LURA Amendment, the Owner must agree to the following:

- Allow the property to be marketed for the qualified contract period
- Comply with the terms of the existing LURA throughout the qualified contract period
- Execute a LURA Amendment to take effect at the end of the qualified contract period with language that holds ADOH harmless as a result of any changes to the rent and income restrictions that take effect at the close of the qualified contract period
- Allow existing tenants with existing rent and income restrictions below 50% or 60% AMI as applicable, to remain in their units with the existing rent and income restrictions for a three-year deregulation period beginning at the end of the qualified contract period. Once the LURA Amendment is in effect, the Owner would be permitted to lease vacant units to new tenants at the 50 or 60% AMI rent and income restrictions, as applicable.
- Tender a Legal Opinion from Owner's counsel holding ADOH harmless as a result of any changes to the rent and income restrictions pursuant to the LURA Amendment

If Owner foregoes a LURA Amendment and no Buyer presents an offer to purchase the Project as-is (i.e. with the existing rent and income restrictions), a Buyer opting to pursue a LURA Amendment must agree to the following:

- Tender a qualified contract
- Execute a LURA Amendment at the time the LURA is assigned and assumed by the Qualified Buyer with language that holds the Department harmless as a result of any changes to the income restrictions that take effect at the close of the qualified contract period
- Allow existing tenants with existing rent and income restrictions below 50% or 60% AMI, as applicable to remain in their units with the existing rent and income restrictions for a three-year deregulation period. Once the LURA Amendment is in effect, the Buyer would be permitted to lease vacant units to new tenants at the 50% or 60% AMI rent and income restrictions, as applicable.
- Tender a Legal Opinion from Buyer's counsel holding ADOH harmless as a result of any changes to the rent and income restrictions pursuant to the LURA Amendment

ADOH will invoice the applicant for the Professional Service Fee, which is due upon receipt. The Qualified Contract Application will not be reviewed until the Administrative Fee and Professional Service Fee are received. The Department will use the Professional Fee to cover the costs of an appraisal prepared by a State-certified general appraiser and other third party reports as deemed necessary. In the event that ADOH determines that additional third party reports are necessary, ADOH will invoice applicant for any additional amount. Failure of applicant to remit any additional amounts requested by ADOH within thirty (30) calendar days will result in the suspension of further action on the Qualified Contract by ADOH and the property will remain affordable through the term of the LURA. Copies of any professional reports or opinions commissioned will be provided to the applicant upon request when they are available to ADOH.

ADOH will review the third party reports and other available information. Upon acceptance of the third party reports ADOH will offer the project for sale to the general public, based upon reasonable efforts, at the determined Qualified Contract Price. This includes, at minimum, advertising the availability of the property on its website, issuing an information bulletin to its mailing list and continuing its efforts until a Qualified Contract is presented to the owner or the one (1) year period has expired.

In the event that the owner fails to cooperate with ADOH in the marketing of the property, ADOH may suspend the one (1) year Qualified Contract period or deem the project ineligible for a Qualified Contract and the owner will be required to comply with the full term of the Extended Use Period of the LURA. Failure to cooperate shall include, but not be limited to, Owner's failure to complete the application, respond to any ADOH request for documentation, delay or refuse to allow inspections of the property by prospective purchasers.

The Owner is not required to accept any purchase offers presented through ADOH; however, if the Owner rejects an offer at or above the Qualified Contract Price, the development will remain affordable throughout the term of the LURA recorded against the property.

If ADOH fails to present a Qualified Contract to purchase the project property by the end of the one (1) year Qualified Contract period, ADOH may issue a Partial Release and Release of Declaration of Affirmative Land Use Restriction Covenants Agreement ("Partial Release"). This document terminates and releases the Land Use Restriction Agreement except as required by IRC §42(h)(6)(E)(ii). If there are any compliance issues at the property, ADOH would delay or consider revoking the Partial Release until such time as the issues are corrected.

The execution of a Qualified Contract or passing of the one (1) year Qualified Contract term shall not result in the termination of any restrictive covenant or other regulatory agreement related to a source of funding other than the Low Income Housing Tax Credit program.