



**Low Income Housing Tax Credit Program  
Qualified Contract Procedures Guide**

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## Section I – GLOSSARY OF TERMS

**1YP** – The one year period commencing on the date on which the Authority receives a complete and accurate Qualified Contract Request, as defined in Section 42(h)(6)(I) of the Code

**3YP** - The three year period following early termination of the Extended Use Period if the housing credit agency fails to present a Qualified Contract prior to expiration of the 1YP, during which the project shall be restricted pursuant to Section 42(h)(6)(E)(ii) of the Code

**Authority** – The Michigan State Housing Development Authority, or MSHDA

**Code** - The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the U.S. Department of Treasury or the Internal Revenue Service

**Compliance Period** – With respect to a project, the period of 15 taxable years beginning with the first taxable year of the credit period for the last building that was placed in service, pursuant to Section 42(i)(1) of the Code

**Extended Use Period or EUP** – The period beginning with the first day of the Compliance Period and ending on the date that is not less than 15 years after the end of the Compliance Period or such later date agreed to by the owner and set forth in the Land Use Restriction Agreement, unless terminated pursuant to Section 42(h)(6)(E)(i) of the Code

**Guide** - This Qualified Contract Request Procedures Guide

**IRS** - The Internal Revenue Service, United States Department of Treasury

**LIHTC** - Low Income Housing Tax Credit Program

**Land Use Restriction Agreement or LURA** – The extended low income housing commitment (or tax credit regulatory agreement) between the Authority and the owner that maintains the affordability of a project through the Extended Use Period and satisfies the requirements of Section 42(h)(6)(B) of the Code.

**MSHDA** - The Michigan State Housing Development Authority

**Negotiation Period** - The sixty (60) day period following receipt of an offer of a QC during which the owner may negotiate the other terms of the QC with the prospective purchaser

**PA** - Preliminary Application

**Program** - The LIHTC Program, as administered by MSHDA pursuant to Section 42 of the Code

**Qualified Allocation Plan or QAP** - The Qualified Allocation Plan adopted by MSHDA pursuant to Section 42(m)(1)(B) of the Code.

**Qualified Contract or QC** - 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 (specified in the LURA) of the Qualified Contract Price

**Qualified Contract Price or QCP** – The purchase price of the project for purposes of the Qualified Contract, calculated as prescribed in Section 42(h)(6)(F) of the Code and discussed in Section VII of this Guide, subject to adjustment under Treas. Reg. 1.42-18(c).

**Qualified Contract Request or QCR** – An owner's request for a Qualified Contract as discussed in Section VI of this Guide

**Qualified Purchaser (QP)** – a buyer who is will to purchase the project and continue to remain in the LIHTC program for the remainder of the extended use period.

**Tenant Notification** – Tenants must be notified about the project's participating in the qualified contract process and the possibility that the project's extended use period will be terminated.

## Section II – INTRODUCTION AND FOREWORD

The Michigan State Housing Development Authority (MSHDA or the Authority) is designated as the Low Income Housing Tax Credit Allocating Agency for the state of Michigan. As the designated housing tax credit agency, MSHDA is required by Section 42(h)(6)(E)(i)(II) of the Code to respond to requests for presentation of a Qualified Contract (QC) from the owners of LIHTC projects with expiring Compliance Periods. The purpose of this Qualified Contract Procedures Guide (Guide) is to outline the procedures an owner of a LIHTC project with an expiring compliance period must follow in order to request MSHDA to present a Qualified Contract for the purchase of the LIHTC project.

The initial Compliance Period for a project receiving an allocation of LIHTC is fifteen years. For LIHTC allocations made in 1990 and later, an extended use agreement, as required by Section 42(h)(6) of the Internal Revenue Code of 1986, as amended (the Code), extends the Compliance Period for a minimum of fifteen additional years, also referred to as the Extended Use Period (EUP). Section 42(h)(6)(E)(i)(II) of the Code provides that the Extended Use Period EUP shall terminate, however, if a housing credit agency is unable to present a "qualified contract" (in this Guide, referred to as a QC) to a taxpayer who has requested such a contract within one year following the request.

The request for presentation of a QC may not occur until after year 14 of the Compliance Period. The request for presentation of a QC is a request that the housing credit agency find a qualified purchaser, or a buyer who makes an offer to purchase the property for a qualified contract price (QCP) (calculated pursuant to IRS regulations) and who will continue to operate the property as a qualified low-income property. Once an offer is made by a qualified purchaser (QP) at the qualified price, the housing credit agency has satisfied its obligation, whether or not the offer is accepted by the owner. If the housing credit agency is unable to find a QP within one year, the Extended Use Period as set forth in the LURA is terminated after the 3-year period required by the Code (3YP).

The Code contains some of the basic provisions for handling QC requests. A number of important questions, however, have not been answered through federal regulation or other guidance. The purpose of this guide is to set forth the procedures to be followed by MSHDA and the owners of Michigan tax credit projects who are considering making a request for a QC.

Owners are cautioned that the Qualified Contract Request (QCR) is a complex process, involving substantial time, resources and energy on the part of the owner, management company and MSHDA. As such, it may not be the best alternative in each situation and owners are encouraged to consider all options. It is hoped that many owners will choose to remain in the LIHTC Program throughout the Extended Use Period.

**DISCLAIMER:** MSHDA shall be under no obligation to undertake an investigation of the accuracy of the information submitted with the request for the presentation of a QC. MSHDA'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 the Program. Developers, potential investors, and other interested parties should undertake their own independent evaluation of the feasibility,

suitability and risk of the project. If any information submitted by a building owner to MSHDA is later found to be incorrect in any material respect, it is the responsibility of the building owner to inform MSHDA and to request a reexamination of the information. MSHDA is not, nor is MSHDA acting in the capacity of, a real estate agent or real estate broker. Its role is limited to interpreting and implementing the requirements of the Code and regulations and facilitating the presentation of a QC, as defined herein and in the Code. Interested parties should obtain advice from independent sources, including consultation with knowledgeable tax professionals and legal counsel.

This guide has not been reviewed or approved by the IRS and should not be relied upon for interpretation of federal income tax legislation or regulations. The provisions provided in the Code are subject to modification and clarification by the IRS. MSHDA reserves the right to revise this Guide from time to time. Compliance with the requirements of Section 42 is the responsibility of the owner of the tax credit project.

## Section III - Overview of the Qualified Contract Process

- Step 1 The owner submits a PA for a QCR [Form QCR-PA, see Appendix A-1] and required fee.
- Step 2 If requested by the Owner or if deemed necessary or appropriate by MSHDA, a meeting is arranged to discuss alternatives for the project rather than applying for a qualified contract process.
- Step 3 MSHDA reviews the PA to determine if the owner/project has met the prerequisites and is eligible to request a QC.
- Step 4 MSHDA sends the owner a letter indicating whether or not the project is eligible to submit a QCR.
- Step 5 The owner engages a CPA, contractors, consultants and other professionals necessary to develop and submit a QCR.
- Step 6 The owner submits the QCR (Form QCR, see Appendix A-2) and the required processing and third party deposit fees to MSHDA, along with the CPA's calculation of the QCP, and the other documents and information detailed in Section VI of this Guide.
- Step 7 MSHDA reviews the QCR for completeness and whether the calculation of the QCP is acceptable (see Section VIII).
- Step 8 If the QCR is complete and the QCP is acceptable, MSHDA will notify the owner of the start date of the 1YP.
- Step 9 If the QCP as calculated by the owner's CPA is not acceptable, MSHDA will notify the owner of any adjustment to the QCP and the start date of the 1YP. The owner may appeal MSHDA's determination (see Section VIII), but if the owner chooses to appeal, the running of the 1YP will be suspended until the owner and MSHDA agree on the QCP.
- Step 10 The Owner must notify all of the current tenants and all prospective tenants (applicants) about the project's participation in the qualified contract process (see Section IX).
- Step 11 MSHDA will prepare and send to the owner a letter ("letter") indicating the start date of the one-year marketing period and the QCP. The Owner must review and then sign and return the letter to MSHDA. In addition, within 14 days of the date of the letter, a copy of the Notification to Tenants (Section IX), which is a final submission requirement for the qualified contract request, must be received by MSHDA.
- Step 12 Once the QCP is accepted by MSHDA (or the owner has accepted the QCP

as adjusted by MSHDA), the owner and MSHDA enter into an agreement authorizing MSHDA to engage a broker and market the property for sale at the QCP.

- Step 13 The real estate broker is engaged and proceeds to market the project to potential QPs (see Section X).
- Step 14 If a QCP is located during the 1YP, a QC is presented to the owner.
- Step 15 The owner accepts or declines the QC offered by the QP (see Section XI).
- Step 16 Upon the closing of an accepted QC, the QP assumes the owner's obligations under the LURA.
- Step 17 If no QP is located within the 1YP, the EUP terminates and MSHDA discharges the LURA following the 3YP. If the owner declines a QC, or accepts a QC but the sale fails to close due to a default by the owner, the LURA is not discharged and the EUP continues.
- Step 18 If no QP is located within the 1YP, the Owner must notify every LIHTC tenant in writing about the 3YP (see Section IX).



## Section IV – PREREQUISITES FOR ELIGIBILITY TO SUBMIT A QCR

1. **Determination of Eligibility.** The owner must submit a PA and MSHDA must determine that the project is eligible for submission of a QCR.
2. **Date of Eligibility to Submit QCR.** An owner may submit a QCR at any time after the end of the 14<sup>th</sup> year of the Compliance Period.

In determining when a project is eligible, MSHDA will only consider the latest date for projects with multiple credit periods or allocations. For example, if five buildings in the project began their credit periods in 1991 and one started in 1992, the 15<sup>th</sup> year for the purposes of a QCR would be 2006.

3. **Development Financing.** If the project has mortgage financing or other funding from MSHDA, such as HOME or CDBG funds, the owner must obtain a letter from the division at MSHDA having oversight of the project, authorizing participation in the QC process. If the project has other financing, the loan(s) must be eligible for prepayment within ninety (90) days.
4. **Waiver of Right to Submit a QCR.** In the initial application for tax credits, many owners chose to waive the right to request a QC and have committed to thirty years or more of operation as low-income rental housing. Owners should review the respective QAP, the project's tax credit application, carryover agreement, and the LURA to determine whether the owner has waived the right to request a QC prior to contacting MSHDA.

**IMPORTANT NOTICE:** Owners who applied for and were awarded an allocation of credits on or after January 1, 2005 were required to waive this right and are therefore NOT eligible to submit a QCR.

5. **One-Time Request.** A request for QC may be submitted only once for each project. If an owner rejects an offer for a QC or withdraws its request at any time after the QCR has been received by MSHDA, no other opportunity to request a QC will be available for the project.
6. **Waiver of All Purchase Options.** MSHDA will not consider a QCR until the owner secures a complete, unconditional waiver of all purchase options, including a nonprofit general partner's right of first refusal and tenant purchase options.
7. **Consent.** The owner must have obtained the necessary authorization from its partners or members to negotiate on behalf of the owner for a QC.
8. **Compliance Status.** Projects that do not meet the basic compliance standards required under Section 42 of the Code and by the LIHTC Program are ineligible for consideration. The owner must have corrected all 8823 violations and other outstanding issues of non-compliance prior to submitting a QCR.

## Section V – PRELIMINARY APPLICATION

The first step for an owner desiring to participate in the QCR process is to submit a PA to MSHDA. MSHDA's review of the PA will determine the project's eligibility for a QCR. The PA form (QCR-PA) and its submission requirements are contained in Appendix A-1 of this Guide. No PA will be accepted prior to the 6-month period ending on the date on which the owner is eligible to submit a QCR. The PA will not bind the owner to submit a QCR and does not start the 1YP. Additional prerequisites for eligibility to submit a request for a QC are discussed in Section IV of this Guide. The PA must include the following:

- Copies of the 1st Year 8609s for each building in the project with Part II completed;
- Current proof that any purchase options or rights of first refusal have been waived;
- Applicable fraction information for each building in mixed income projects;
- Statement explaining the nature and dates of any uncorrected 8823 violations, with copies of the uncorrected 8823 forms;
- Statement listing additional affordability restrictions on the project, if any;
- If the project is MSHDA-financed, or has received other MSHDA funding, documentation of approval to participate in the QC process by MSHDA's Director of Asset Management (or other responsible division) within the previous 60 days;
- Copies of all occupancy or use restrictions affecting the project (other than zoning) and agreements for project-based assistance, if any; and
- Non-refundable PA fee of \$500, as discussed in Section XIII of this Guide.

MSHDA will endeavor to respond to a PA submitted by an owner within forty-five (45) days of receipt. MSHDA will notify the owner in writing whether or not the owner is eligible to submit a QCR, and of the basis for any determination of ineligibility. MSHDA will also notify an eligible owner of any deficiencies in the PA. A PA will not be considered approved by MSHDA until all deficiencies are corrected. If all deficiencies are not corrected within thirty (30) days after receipt of MSHDA's notice, the PA will be deemed withdrawn by the owner. An owner who is not eligible to submit a QCR at the time MSHDA reviews the PA but will be eligible at a later date may resubmit a PA after that date. A resubmitted PA must include all documentation required in the original PA, including the \$500 fee.

### Alternatives to the Qualified Contract process

If requested by the Owner or if deemed necessary or appropriate by MSHDA, a meeting will be arranged to discuss possible alternatives to the qualified contract process. Requesting a qualified contract is a difficult process that involves substantial time and energy on the part of the owner, the Management Company, and MSHDA. It may not be the best alternative in every situation. Owners are encouraged to consider other options. An important aspect to take into account when making this decision is to understand that after the compliance period, MSHDA has adopted policies that reduce compliance and redefine some of the eligibility criteria (please refer to the Michigan LIHTC Compliance Manual). As a result, compliance can be achieved much easier, but the spirit of the program is not compromised, and the housing will continue to serve the people for whom the program was intended. It is hoped that many owners would choose to continue the

development under the existing restrictions throughout the extended use period. Alternatively, the owner may sell the development outside of the qualified contract process. In this instance, the purchaser would continue to operate the property with the LIHTC restrictions on the property under the reduced compliance requirements referenced above. In some instances, a partial modification of some of the LIHTC requirements, such as income and rent restrictions, could be possible.

## Section VI – QUALIFIED CONTRACT REQUEST (QCR)

After a determination of eligibility by MSHDA, the owner's next step in the QCR process of requesting a QC is to submit a complete QCR application, together with all required exhibits, the non-refundable fee and the deposit for third party expenses as outlined below. The QCR must be submitted within six (6) months after MSHDA's approval of the PA, as discussed in Section V of this Guide. The owner may request, and MSHDA may approve, for good cause, an extension of the deadline to submit the QCR. The owner's QCR must be submitted on the form contained in Appendix A-2 of to this Guide and must include all of the following:

- **APPRAISAL** - A current (performed within 6 months prior to submission of the QCR) appraisal of the project performed by a State Certified General Appraiser. The appraisal should include a valuation of the entire LIHTC property, including land, all buildings, all facilities, all units (LIHTC, common area and market rate), the low-income portion, and the non-low income portion.
- **CALCULATION OF QUALIFIED CONTRACT PRICE AND WORKSHEETS A – E** - A fully completed calculation of the QCP, which must include Worksheets A – E (as discussed in Section VII of this Guide). See Appendix A-3.
  - The Worksheets must be accompanied by the **signed Independent Accountant's Report on Applying Agreed Upon Procedures** (see Appendix A-4).
- **OTHER ITEMS** -
  - 1) Name, address, telephone number, and primary contact person of the accounting firm that completed Worksheets A – E.
  - 2) A thorough narrative description of the project, including all unit and site amenities, that is suitable for familiarizing prospective purchasers with the project.
  - 3) Narrative description of all income, rental and other restrictions, if any, applicable to the operation of the project, plus copies of all regulatory, use and other agreements restricting the income, rents or other aspects of the operation of the project.
  - 4) Current rent roll
  - 5) Year-to-date income and expense information as well as for the two prior years of operation, including sufficient detail to fairly apprise a potential purchaser of the project's gross operating revenues, operating expenses, capital expenditures, debt service, and net cash flow
  - 6) Additional information as may be requested by MSHDA (or the listing agent), including but not limited to, additional rent rolls, income certifications and other Section 42 compliance records, records with respect to repair and maintenance of the project, operating expenses, capital improvements and debt service.
  - 7) An electronic version (DVD, CD-rom, zip drive, or via e-mail) of the entire QCR, including the application form, appraisal, and all exhibits and attachments.
- **CONFLICTS OF INTEREST DISCLOSURE** - Completed Conflicts of Interest Disclosure signed and dated by the owner, on the form contained in Appendix A-5.

- **FEES** – The following are required:
  - 1) Nonrefundable QCR processing fee in the amount equal to **\$1,500 per project plus \$25.00 per residential unit** (includes all low-income units and all market rate units), and
  - 2) Deposit for third party expenses in the amount of **\$3,500**, including the broker's listing fee of \$2,500.
- **TENANT NOTIFICATION** – The Owner must complete the tenant notification requirement as discussed in Section IX. Tenant notification is required in order for a qualified contract request to be deemed a complete submission.

**Additional documents and exhibits to support the QCR** - The items listed below are not required for every submission, but may be requested if determined necessary by MSHDA to proceed with marketing the project:

- 1) **Capital Needs Assessment (CNA)** - A current (performed or updated within 6 months prior to submission of the QCR) Capital Need Assessment (CNA). A CNA is a detailed outline of the current and future physical and related financial needs of a multifamily project. The guidelines for completing a CNA are located on MSHDA's website at [www.michigan.gov/mshda](http://www.michigan.gov/mshda) (select "Developers and Contractors", then "Michigan Combined Application for Rental Housing").
- 2) **Environmental Review** – An up-to-date Phase I report and a Phase II report, if necessary. The guidelines for completing an Environmental Review are located on MSHDA's website at [www.michigan.gov/mshda](http://www.michigan.gov/mshda) (select "Developers and Contractors", then "Michigan Combined Application for Rental Housing").
- 3) **Local Code Compliance Letter** – A current (dated within 6 months of submission of the QCR) letter from the municipality indicating that the project is in compliance with all applicable zoning, building and safety codes and local ordinances.
- 4) **QCP supporting documents and other financial data** - Documents to support the calculations in each of Worksheets A, B, C, D and E, accompanied by the signed Independent Accountant's Report on Applying Agreed Upon Procedures (see Appendix A-4). These include, but are not limited to copies of the following documents:
  - a. Annual audited financial statements for all years of operation since the commencement of the Compliance Period.
  - b. Annual partnership tax returns for all years of operation since the start of the Compliance Period.
  - c. Loan documents for all debt currently secured by the project and an estoppel letter from each lender indicating that the loan is in good standing, the outstanding loan amount and that the owner is not in default.
  - d. Owner's final certification of actual cost.
- 5) **Photographs** - Detailed set of color, digital photographs of the project (on CD or DVD), including the interior and exterior of representative apartment units and buildings, the main project entrance, and the project grounds. Photographs must have been taken within six (6) months prior to submission of the QCR. These photographs may be posted on

MSHDA's website or the website of the real estate broker contracted to market the project.

- 6) **Leases** - If any portion of the land or improvements is leased, copies of the leases must be included. Copies of residential tenant leases are not required.
- 7) **Title Report and Survey** - Title report showing all outstanding liens and encumbrances on the title and boundary survey showing the location of all improvements on the property (if available).
- 8) **Agreements** - The owner's Partnership or Operating Agreement and all amendments.
- 9) **Other information** - Additional information as may be requested by MSHDA (or the listing agent), including but not limited to, additional rent rolls, income certifications and other Section 42 compliance records, records with respect to repair and maintenance of the project, operating expenses, and debt service.
- 10) **Fees** – Additional deposit for third party expenses, if necessary.
- 11) An updated or additional **Conflict of Interest Disclosure form** for each additional Professional Service Provider.

A reasonable amount of time will be provided to the owner to obtain the items listed in this Section of the Guide following MSHDA's determination that they are necessary to proceed with marketing the project.

## Section VII – CALCULATING THE QUALIFIED CONTRACT PRICE

The QCP is derived from a statutory formula set forth in Section 42(h)(6)(F) of the Code. The statutory formula allocates the purchase price between the low-income portion of the project and the market rate portion of the project, if any. Section 42(h)(6)(F) defines the term “Qualified Contract” as a bona fide contract to acquire (within a reasonable period of time after the contract is entered into) 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 (specified in the LURA) multiplied by (i) the sum of:

- (I) the outstanding indebtedness secured by, or with respect to, the building (not to exceed qualifying building costs),
- (II) the adjusted investor equity in the building, plus
- (III) Other capital contributions not reflected in amounts described in (I) or (II), reduced by (ii) cash distributions from (or available for distribution from) the project.

The formula for calculating the value of the low-income portion may be expressed as:

(	Applicable Outstanding Adjusted Equity	+	Other Capital Contributions	-	Cash Distributions	)	=	Price for Low-Income Portion of Building
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Then, the QCP may be calculated as follows:

$$\begin{array}{rcccl}
 \text{Qualified Contract} & & & & \\
 \text{Price} & = & \text{FMV of the non-low income} & & \text{Price for Low-income} \\
 & & \text{portion of the building} & + & \text{portion of the building}
 \end{array}$$

Under § 1.42–18(c) of the Section 42 Qualified Contract regulations, the QC amount is determined at the time of the agency's (MSHDA's) offer of sale of the project to the general public. The amount of the low-income portion of the QCP is subject to mandatory adjustment to reflect changes in the components of the QC formula (such as the reduction of the outstanding indebtedness due amortizing payments on a mortgage loan) between the time of the agency's offer of sale and the building's actual sale closing date. The fair market value of the non low-income portion of the building may be adjusted after the offer of sale and before the end of the 1YP by mutual agreement of the owner and MSHDA.

Because the intent of the extended long-term commitment is the continued use of the low-income portion of the building as low-income housing, the Treasury Department and the IRS have taken the position that determination of the fair market value of the non low-income portion and the land underlying the entire building must take into account the existing and continuing requirements under the LURA for the building (§ 1.42–18(b)(3)).

Worksheets have been developed for assistance in calculating the QCP. The QCP for the low-income portion of the project is equal to the applicable fraction multiplied by the total of the project's outstanding indebtedness (**Worksheet A**), plus the adjusted investor equity in the building for the calendar year (**Worksheet B**), plus other capital contributions (**Worksheet C**), but not to exceed the qualifying building costs, reduced by the total cash that has been distributed, or is available for distribution, from the project (**Worksheet D**). If the project has any market rate units, the QCP is increased by the fair market value of those units (**Worksheet E**). The Worksheets are contained in Appendix A-3 to this Guide, and must be certified by an independent CPA in accordance with the standards set forth in Appendix A-4.

MSHDA reserves the right, at any time, to request additional information to document the QCP calculation or other information submitted.



## Section VIII – MSHDA ACCEPTANCE OF THE QCR AND QCP

MSHDA will conduct an initial in-house review of the QCR and may also contract with an independent CPA and other consultants to review the owner's QCP, the environmental report, the appraisal and any other supporting documents submitted with the QCR. MSHDA's initial review of the QCR will be completed within sixty (60) days after submission. MSHDA will identify any deficiencies in the QCR and make a determination of whether the QCP is acceptable within that time.

If the QCR is complete, the QCP is acceptable and the owner has met all other QCR submission requirements, MSHDA will notify the owner and the 1YP will commence as of the date of submission of the acceptable QCR. **The 1YP for presentation of a QC by MSHDA will not begin until the owner has met all of the submission requirements, including an acceptable QCP and completion of the Tenant Notification requirement.**

If MSHDA identifies any deficiencies in CPA's calculation of the QCR and determines that the QCP is not acceptable, MSHDA may reject or adjust the QCP. MSHDA will notify the owner in writing of any adjustment in the QCP and the basis for the adjustment or of the need for the correction of any error or deficiency in the supporting documents, the QCP worksheets or other information submitted. Further processing of the QCR will be suspended until the error or deficiency is corrected or the adjusted QCP is accepted by the owner. A failure by the owner to object to any adjustment in the QCP in writing within 30 days of notice will be considered an acceptance and the 1YP will begin to run.

If an owner is unwilling to accept the adjusted QCP required by MSHDA, the owner may appeal in writing within 30 days of MSHDA's notice. A meeting will be arranged with representatives of the owner, MSHDA and the reviewing CPA to attempt to resolve the disagreement. The 1YP will not begin until MSHDA and the owner have thereafter mutually agreed to the QCP in writing.

Owners should note that an owner's failure to respond promptly to any notice from MSHDA regarding the QCR, or failure to resubmit or correct any items in a timely fashion after a request by MSHDA, will result in the suspension of the processing of the QCR and the 1YP and may result in the owner being required to submit new or updated QCR information.

## Section IX – TENANT NOTIFICATION

MSHDA requires that the owner notify all existing LIHTC tenants (and new applicants) that it has applied for a qualified contract for the LIHTC project. A Notice to Tenants must be provided to existing tenants within 14 days of when MSHDA informs the owner the one-year marketing period has begun. Failure to provide the Notice to tenants and applicants, along with forwarding a (one) copy to MSHDA, could cause the qualified contract request to be deemed incomplete and could result in the delay in or redetermination of the start date of the one-year marketing period or the suspension or tolling of a current one-year marketing period. Additional requirements for the notice are as follows:

- Distribution and/or Posting - Each Notice must be distributed to all residents and/or must be prominently posted in a common area that is frequently used by all residents (such as the leasing office, mail area, laundry room, etc.). If posted, it must be posted continuously throughout the one-year marketing period and throughout the three-year tenant protection period.
- Contact person - The Owner must designate a representative of the ownership entity or the management company to be the contact person for questions from residents and other interested parties about the project's participation in the qualified contract process. The Owner must indicate the individual(s) name, title, company name, phone number and/or e-mail address, and, (optional), indicate a time when the contact person will be available (at the site) for questions from residents and other interested persons.
- Pre-approval by MSHDA of Notice #1, Notice #2, and Notice #3 is not required, however, a copy of it should be sent to MSHDA within 14 days.
- The required Notices are described as follows:
  1. Notice #1 must, at a minimum, include or satisfy the following:
    - This Notice must be provided to all existing tenants at the start of the one year marketing period. It must also be provided to prospective tenants who apply for housing at the development during the one-year marketing period.
    - A statement that the project is participating in the qualified contract process;
    - A statement that the project is being marketed to locate a qualified purchaser who would continue to operating the projects as part of the LIHTC Program;
    - The end date for the one-year marketing period;
    - A description of the Three-Year Tenant Protection Period; and
    - Contact Person information.
  2. Notice #2 must, at a minimum, include or satisfy the following:
    - This notice must be provided to all existing tenants, which are those households that moved into an LIHTC unit on or before the end date of the one year marketing period.

- Explain that a qualified buyer was not located and that the project will no longer be an LIHTC program.
  - Provide a description of the three-year tenant protection period.
  - Indicate the start and end dates of the three-year tenant protection period.
  - Contact Person information.
  - Optional - Provide a list of resources to aid the tenant in locating alternative housing.
  - Optional – Indicate that existing residents may, at the sole discretion of the owner/management agent, continue to reside at the property after the end of the three-year tenant protection period, but will no longer have rents that are restricted to the LIHTC limits.
3. Notice #3 must, at a minimum, include or satisfy the following:
- This notice is required for projects for which a qualified purchaser was located (or the owner rejected an offer from a qualified purchaser) and thus for which the project will continue to operate as an LIHTC project.
  - This Notice must be provided to all existing LIHTC tenants, which are those households that moved into an LIHTC unit on or before the end date of the one year marketing period.
  - Indicate that the project will continue to operate as part of the LIHTC program for the remainder of the extended use period;
  - Contact Person information.

Also note the following:

- Sample notices - Samples of the each of the required Notices are provided in Appendix A-6. These samples are intended as examples only and are not mandated by MSHDA. The owner may create its own notices.
- City of Detroit – For projects located in the City of Detroit, the City has a requirement that notification be provided to the City Clerk, Detroit Housing Commission and tenants prior to the expiration of the affordability restrictions. The City of Detroit should be contacted for further information about its notification requirement.
- Notice #1 must be provided to tenants and a copy of it must be sent to MSHDA before the qualified contract request will be deemed complete.
- Notice #2 must be provided to tenants and a copy of it must be sent to MSHDA before MSHDA will deem the qualified contract process complete and before MSHDA will issue a partial release of the Regulatory Agreement, if such is requested by the Owner.

## Section X – MARKETING THE PROPERTY

Upon final determination that the QCR is acceptable, MSHDA and the owner will enter into an agreement authorizing MSHDA to market the project, and MSHDA will engage a licensed real estate broker to list and market the property on behalf of the owner. The owner will must agree to cooperate fully with MSHDA and the broker during the marketing process, to warrant the financial and other information submitted regarding the project, and to be responsible for payment of all commissions, fees and expenses owed to the broker. MSHDA and/or the listing broker may also take any of the following steps to identify an interested purchaser:

- Posting the property information on websites; or
- Creation of an informational flyer and submission to a pre-established mailing list. This list will include (i) owners of tax credit properties; contacts at management companies, (ii) other public funding agencies in the state; (iii) local and national nonprofit and for-profit owners interested in preserving housing; and (iv) tax credit investor contacts

MSHDA and/or the listing broker will also act as a conduit for requests for additional information from owners by prospective purchasers and collecting and forwarding that information to the prospective purchasers.

All pertinent project information that is requested by a prospective purchaser must be provided within three (3) business days of request. Pertinent project information may consist of pictures of the project, a summary indicating location, amenities, number of units and building description, maintenance and repair records, operating statements, service contracts, utility bills, current rent rolls, tenant leases, etc. The owner (or any other party designated by the owner) contact information will also be provided to interested parties. The owner is responsible for providing assistance to arrange site visits and inspections promptly on request. The owner must act in good faith at all times during the QC process, and must otherwise cooperate fully with MSHDA and the listing broker in the search for a QP and a QC.

Responsibilities of the owner include but are not limited to:

- Allowing MSHDA, its agents and employees, the listing broker and prospective purchasers prompt access to the property for inspections, tests and review of tenant files; and
- Keeping MSHDA informed of any interested party, and letters of intent or offers from potential purchasers

Marketing of the project will continue until such time that a QC is presented or the 1YP has expired. The listing price of the property will be the QCP as approved by MSHDA. In the event that the owner refuses to accept a bona fide offer at the QCP, as may be adjusted pursuant to

Treas. Reg. 1.42-18(c)(ii) and (iii), or the owner fails to close a sale following execution of a binding, written purchase agreement, the owner will be deemed to have forfeited its right to utilize the QC provisions of Section 42 for that project and the project will be required to comply with the provisions of the LURA for the remainder of the EUP.

## Section XI – OFFERS TO PURCHASE

### Receipt of an Offer

Any prospective purchaser wishing to submit an offer should submit the offer in writing to the listing broker prior to expiration of the 1YP. The listing broker will review the offer with MSHDA promptly after receipt. If MSHDA determines that the offer is complete and meets the requirements for a QC under Section 42, the listing broker will present the offer to the owner. MSHDA's determination that the offer is a QC and presentment of the QC to the owner satisfies the requirements of Section 42 of the Code. Whether a QC is accepted or rejected, the Extended Use Period will continue, unless the closing does not occur for reasons other than a default by the owner or matters within the owner's control, as described below.

Upon receipt of an offer of a QC, the owner and the prospective purchaser shall have a sixty (60) day Negotiation Period to negotiate the other terms of the transaction. No later than the end of the Negotiation Period, the owner must accept or reject the QC. A failure to accept or reject will be deemed a rejection.

An owner may not require a higher price than the QCP, but may accept an offer at less than the QCP. Consequently, any offer that is submitted to the listing broker even though it does not qualify as a QC will be presented to the owner for review and possible acceptance. If the owner accepts an offer at less than the QCP and closes on the sale of the project within the 1YP, however, the Extended Use Period will not terminate and MSHDA's obligation to market the project and present a QC will end.

### The Owner's Acceptance of the Qualified Contract

If the owner accepts the QC prior to the end of the Negotiation Period and agrees to sell the property, the owner must proceed diligently and in good faith to closing. The owner shall assign its obligations under the LURA to the purchaser at the closing.

### The Owner's Rejection of the Qualified Contract

The owner is not required to accept any QC that is offered. Under Code Section 42(h)(6)(E)(i)(II), however, MSHDA's only obligation is to present the owner with a QC, or bona fide contract to acquire the property for the QCP. If the owner rejects an offer of a QC at (or above) the QCP from a QP, the project shall remain subject to the provisions of the LURA throughout the entire EUP, and MSHDA will have no further obligation to market the project. In addition, the owner will be liable for payment of any broker's fee or commission that is earned upon presentation of a QC if the owner chooses to reject it.

### A Qualified Contract Is Accepted but Fails to Close

If the sale pursuant to any QC that is accepted by the owner does not close for any reason other than a default by the owner or matters within the owner's control (e.g. failure of a condition precedent to closing such as the purchaser's inability to obtain financing or the purchaser's dissatisfaction with other aspects of the project), then MSHDA will continue to seek offers at the QCP through the end of the 1YP and the owner's obligation to cooperate in the marketing of the project will continue. If no other QC is presented to the owner during the 1YP, then the project will be treated as if no QC had been presented and the EUP will terminate.

If the sale does not close due to a default by the owner or other matters within the control of the owner (such the owner's failure to clear title, to provide financial information or otherwise act in good faith), then unless another QC is presented, accepted and closed, the project shall remain subject to provisions of the LURA for the entire EUP. In addition, the owner will be liable for payment of any broker's fee or commission that is earned upon presentation of a QC.

#### Obligations of the Purchaser

A prospective purchaser is at all times expected to act in good faith, and to proceed diligently to closing once a QC has been accepted. The purchaser shall enter into a written assumption of the owner's obligations under the LURA at closing.

#### A Qualified Contract Is Not Presented

If MSHDA is unable to present the owner with a QC by the expiration of the 1YP, the EUP will be terminated. The project will, however, continue to be subject to the 3YP as required by Section 42(h)(6) of the Code. During the 3YP, the owner may not:

- Evict or terminate the tenancy of an existing tenant of a low-income unit, other than for good cause; or
- Increase the gross rent with respect to such unit except as permitted under Section 42 of the Code.

## Section XII – THE THREE YEAR TENANT PROTECTION PERIOD (3YP)

If a qualified purchaser is not located and the extended use period is terminated, the project will be subject to a Three-Year Tenant Protection Period for existing residents. Under IRC §42(h)(6)(E)(ii), there are two requirements that must be met when an extended use agreement is terminated:

1. No eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit during the 3-year period following the termination of the extended use period, and
2. No increase in the gross rent of any unit occupied by an existing tenant during the 3-year period following the termination of the extended use agreement. In other words, units occupied by income-qualified tenants continue to be rent restricted for three years, or until the tenants vacate the units.

The Owner must complete the required notification to tenants, as discussed in Section IX.

Rent Restrictions during the 3YP

The rent restrictions **as specified in the LIHTC Regulatory Agreement** remain applicable during the 3YP. If the LIHTC Regulatory Agreement for the project mandated rent levels that were more restrictive (lower) than those specified in Section 42 of the Code, the owner and project must continue to maintain rents at those more restrictive levels during the 3YP. It is **not** permissible for the owner to increase the rent of a deeper targeted tenant to 50% AMI or 60% AMI, even if the 20/50 or 40/60 minimum set-aside had been elected for the project. For example, if the owner agreed to restrict a portion of units to 35% of AMI, then the rent for the existing tenant that was designated as a 35% AMI household during the extended use period must continue to be rent-restricted at 35% of AMI so long as the existing tenant continues to reside at the development during the 3YP.

3YP Reporting Requirements

The owner will be required to submit quarterly reports as required by MSHDA for the duration of the 3YP. The quarterly reporting requirement includes completion of the report shown below.

<b>Tenant Protection Period (TPP) Report</b>											
Property #				Date of Report:							
Property Name:				TPP Beginning Date:							
Address:				Reporting Period Ending:				1st Quarter (3/31)		2nd Quarter (6/30)	
								3rd Quarter (9/30)		4th Quarter (12/31)	
<small>Instructions: Please complete this form for <u>all tenants</u> that occupied a unit when the Tenant Protection Period began.</small>											
<small>Note: Gross Rent = Tenant Paid Rent + Utility Allowance</small>											
Unit#	# of Bedrooms	Tenant Name	Household Size	Move-in Date	AMI %	Rent Effective Date	Tenant Paid Rent	Utility Allowance	Gross Rent	Move-out Date	Move-out Reason



## Section XIII – FEES AND CHARGES

**Preliminary Application Fee** - MSHDA will assess owners a non-refundable fee of **\$500** for processing the PA.

**Qualified Contract Request Fee and Deposit** - MSHDA has established a non-refundable QCR processing fee of **\$1,500 per project plus \$25.00 per residential unit** (includes all low-income units and all market rate units). The non-refundable QCR processing fee must be submitted at the time the QCR is submitted to MSHDA, along with a deposit of **\$3,500** for third party expenses, including a listing fee of \$2,500. This fee may be reduced by MSHDA for projects that are small in size (i.e. less than 12 units). This deposit will be held by MSHDA in a non-interest bearing account. If additional items as listed in Section VI of this Guide are determined to be necessary, an additional deposit may be required.

**Third Party Expenses** - Owners must pay all costs incurred by MSHDA in connection with the review of the QCR, the QCP and supporting information, all commissions, fees and expenses owed to any broker for services rendered, and any other third party expenses incurred by MSHDA, including reviews of the Phase I and Phase II (if applicable) Environmental Reports and the appraisal. MSHDA will not terminate the EUP with respect to any project until all such third party expenses are paid. All other costs associated with the preparation and submission of the QCR is the responsibility of and must be paid by the property owner. If the third party expenses are less than the amount submitted by the owner, the balance will be refunded. If the expenses exceed the amount deposited, the owner must remit the balance to MSHDA within ten (10) days of receipt of an invoice or letter requesting the additional payment. The owner may also be responsible for payment of the full brokerage commission in the event that a QC is presented but is rejected by the owner, or the owner accepts a QC but fails to close for any reason.

## Section XIV – MISCELLANEOUS

1. MSHDA reserves the right to waive any requirement applicable to the QCR for good cause shown.
2. MSHDA reserves the right to disqualify any third party professional or consultant used by an owner if MSHDA determines that a conflict of interest exists between the owner and the professional or consultant or between MSHDA and the professional or consultant, if the quality or integrity of the professional or consultant's work has been determined to be unacceptable, or if other substantive issues arise. Owners may request a list of any disqualified professional or consultants.
3. MSHDA reserves the right to modify this Guide or the QCR process at any time. An owner is responsible for ensuring that it is using the most current Guide and other forms or information published by MSHDA in completing and submitting a QCR. Any owner who's QCR has been submitted and found acceptable may, however, elect to proceed under the guidelines or procedures that were in effect at the time of submission.
4. NOTICE: ANY PERSON WHO, WITH INTENT TO DEFRAUD OR CHEAT, INCLUDING ANY FALSE STATEMENT OR REPRESENTATION, OBTAINS MONEY, OR THE USE OF AN INSTRUMENT, FACILITY, ARTICLE OR OTHER VALUABLE THING OR SERVICE, INCLUDING WITHOUT LIMITATION, PARTICIPATION IN PROGRAMS INITIATED PURSUANT TO THIS ACT, IS GUILTY OF A CRIME, PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN TEN (10) YEARS OR A FINE OF NOT MORE THAN \$15,000 OR THREE TIMES THE VALUE OF THE THING OBTAINED BY FRAUD, WHICHEVER IS GREATER, OR BOTH.

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## **Section XV – APPENDICES**

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- A-1 Preliminary Application (Form QCR-PA)
- A-2 Qualified Contract Request (Form QCR)
- A-3 Qualified Contract Price Worksheets A – E
- A-4 Independent Accountant's Report on Applying Agreed Upon Procedures
- A-5 Conflicts of Interest Disclosure
- A-6 Sample Tenant Notification letters