

**ALABAMA HOUSING FINANCE AUTHORITY  
QUALIFIED CONTRACT POLICIES AND PROCEDURES**

**INTRODUCTION**

These Qualified Contract Policies and Procedures (“these QC Policies”) establish the terms and conditions for the Alabama Housing Finance Authority’s (the “AHFA”) administration of requests from Project owners who intend to make a request for a Qualified Contract (a “QC”) under Section 42(h)(6)(E)(i)(II) of the Internal Revenue Code (the “IRC”) to produce a bona fide contract to acquire (within a reasonable period after the contract is entered into) the non-low-income and low-income portions of a Project for the QC Price (as such term is defined below). Capitalized terms not defined herein shall have the meanings assigned to them in IRC Section 42 and its regulations.

**ELIGIBILITY TO SUBMIT A QC REQUEST**

1. AHFA will consider a request for a QC (a “QC Request”) only from an owner of an eligible Project. The earliest date on which a Project is eligible for its owner to submit a QC Request is governed by the Declaration of Land Use Restrictive Covenants recorded against the Project in connection with its receipt of Housing Credits (the “Declaration”). Subject to the specific terms and conditions of each Project’s Declaration, the general rules for eligibility to submit a QC Request are as follows:
  - (a) If a Project received low-income housing tax credits (“Housing Credits”) without HOME Investment Partnerships Program Funds (“HOME Funds”) and the owner did not enter into an additional Extended Use Period at the time of application (an “Additional Use Period”), the owner may submit a QC Request at the end of the 14<sup>th</sup> year of the Project’s 15-Year Compliance Period, unless prohibited by applicable law or conflicting requirements in other sources of funding for the Project.
  - (b) If a Project received Housing Credits combined with HOME funds and the owner did not enter into an Additional Use Period, the owner may submit a QC Request at the end of the 19<sup>th</sup> year of the Project’s Extended Use Period, unless prohibited by applicable law or conflicting requirements in other sources of funding for the Project.
  - (c) If a Project received Housing Credits without HOME Funds and the owner entered into an Additional Use Period, the owner may submit a QC Request no sooner than one year prior to the end of the Additional Use Period, unless prohibited by applicable law or conflicting requirements in other sources of funding for the Project.
  - (d) If a Project received Housing Credits combined with HOME funds and the owner entered into an Additional Use Period, the owner may submit a QC Request no sooner than the later of (a) the end of the 19<sup>th</sup> year of the Project’s Extended Use Period, or (b) one year prior to the end of the Additional Use Period, unless prohibited by applicable law or conflicting requirements in other sources of funding for the Project.
  - (e) For Projects with multiple allocations of Housing Credits or multiple compliance periods, AHFA will determine the Project owner’s eligibility to submit a QC Request based solely on the last compliance period to expire. For these properties, the owner will not be eligible to submit a QC Request until after the end of the last compliance period for:

- (i) Projects with multiple buildings placed in service in different years, or
- (ii) Projects with multiple Housing Credit allocations in different years.

For example, if five buildings in a Project began their credit period in 1991, one building in the Project began its credit period in 1992, and the owner did not enter into an Additional Use Period, the 14<sup>th</sup> year for the purposes of eligibility to submit a QC Request would be 2006. Similarly, if a Project received its first Housing Credit allocation in 1991, received a subsequent Housing Credit allocation in 1993, and the owner did not enter into an Additional Use Period, the 14<sup>th</sup> year for the purposes of eligibility to submit a QC Request would be 2007.

- (f) The foregoing items 1(a)-(e) are merely common scenarios, presented as examples, and AHFA will determine the actual eligibility of each Project owner to submit a QC Request based upon the information submitted in its Preliminary Application, as described in these QC Policies, and the facts and circumstances of that particular Project.
2. Even if a Project owner is eligible to submit a QC Request, AHFA will not approve a QC Request for any Project until the owner secures a complete, unconditional waiver of all purchase options, rights of refusal or any other right or option that would delay, condition or interfere with a bona fide purchaser's ability to acquire the Project, including without limitation any such right or option in favor of any existing general or limited partner or their affiliates or related parties.

#### **PROCESS FOR SUBMITTING A QC REQUEST**

The process for submitting a request for a QC Request consists of four steps, which are described in more detail below. Each step must be completed in order for the process to move to the next step. The Four steps are as follows:

1. *Submitting a Preliminary Application and Processing Fee:* A Project owner must begin the QC process by submitting a Preliminary Application to AHFA, which will enable AHFA to determine whether the Project owner is, in fact, eligible to submit a QC Request.
2. *Submitting a QC Request:* If AHFA determines on the basis of a Preliminary Application that a Project owner is eligible to submit a QC Request, the owner may, but is not required to, submit a QC Request, which must be accompanied by the other information described in these QC Policies.
3. *Marketing the Project for Sale:* If a Project owner submits a QC Request and AHFA notifies the Project owner that the QC request is complete, the owner must provide to AHFA the Marketing Materials and other information described under Step Three below and will be required to cooperate in a commercially reasonable manner with AHFA and with any prospective purchaser in the marketing of the Project. As discussed below, failure to provide such materials or cooperation may result in penalties and other sanctions for the owner, including without limitation the tolling of a Project's 1-Year Period (1YP) until the materials or cooperation is provided.
4. *Presenting a Qualified Contract:* If AHFA presents the owner with a QC executed by a prospective purchaser within the 1YP, the Project shall remain subject to its Declaration, regardless of whether the owner elects to keep the Project or sell it pursuant to the QC.

Each of these four steps is described in greater detail below.

**Step One: Submitting a Preliminary Application and Processing Fee**

1. The first step of the QC process is for the owner to submit a Preliminary Application to AHFA. The Preliminary Application is available at [www.ahfa.com](http://www.ahfa.com), and it requires the owner to certify all facts and circumstances necessary for AHFA to determine whether a Project owner is eligible to submit a QC Request. Submitting a Preliminary Application will not bind an owner to submit a QC Request, even if the Project is determined to be eligible to do so.
2. The owner must pay to AHFA a non-refundable application fee of \$2,000 at the time of delivery of the Preliminary Application. This fee will be fully earned by AHFA upon receipt and will not be refundable, in whole or in part.
3. AHFA will not consider a Preliminary Application to be complete unless and until AHFA has received all of the following items:
  - (a) Written request from owner to AHFA to determine whether a specific Project owner is eligible to submit a QC Request.
  - (b) Preliminary Application executed by the owner with all information completed.
  - (c) The \$2,000 non-refundable application fee.
  - (d) First year IRS Form 8609 for each residential building on the Project site, showing Part II completed.
  - (e) Documentation satisfactory to AHFA confirming that all beneficiaries or holders of purchase options, rights of refusal and similar options or rights, as described above, have agreed to grant a complete, unconditional waiver thereof if the Project submits a QC Request, or a written certification that no such rights or options exist.
  - (f) Copies of all uncorrected IRS Form 8823's or a written certification that there are none.
  - (g) Copies of all affordability restrictions (i.e., USDA Rural Development, HUD, AHFA, FHLB, state or local funding, etc.) or a written certification that there are none.
  - (h) Copies of all Project-based rental assistance agreements or a written certification that there are none.
4. All instances of noncompliance must be corrected before the Project owner will be eligible to submit a QC Request. If the Project or any part thereof is damaged or destroyed, whether before or after submission of a QC request, the owner shall provide written notice to AHFA using AHFA's Property Damage Notification form available at [www.ahfa.com](http://www.ahfa.com). The owner shall use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction. The owner will not be permitted to begin the 1YP unless and until such repair and restoration is complete and reflected in the marketing materials for the Project. Owners who choose not to make repairs or restore any parts of the Project will be subject to additional review and requirements, including without limitation the denial of a QC Request for that Project.

5. AHFA will inform the owner in writing whether or not the Project owner is eligible to submit a QC Request within 10 business days after AHFA has determined that the owner's Preliminary Application is complete and the Project is in compliance.

***Step Two: Submitting a QC Request***

1. If AHFA confirms that a Project owner is eligible to submit a QC Request, the owner may, but shall not be obligated to, submit a QC Request. In order for AHFA to consider a QC Request for a particular Project, the owner must submit all of the items listed below with respect to the Project (collectively, the "QC Documentation") to AHFA within 60 days after receiving AHFA's written notification that the Project owner is eligible to submit a QC Request:
  - (a) Written request from owner to AHFA to terminate the Declarations recorded against the Project.
  - (b) Non-refundable processing fee of \$5,000. This fee is in addition to the \$2,000 application fee required for the Preliminary Application and will also be fully earned by AHFA upon receipt and will not be refundable, in whole or in part.
  - (c) Certification of the price required for the Project under IRC Section 42(h)(6)(F) (the "QC Price") by a certified public accountant that is not an employee of the owner, of any member or partner of the owner, or of any affiliate or subsidiary of such member or partner (an "Eligible CPA"). AHFA reserves the right to engage a third-party CPA to review the QC Price submitted for accuracy, at the owner's expense.
  - (d) Physical needs assessment for the entire Project, performed by a qualified third party selected by the owner and reviewed by AHFA prior to preparation of the assessment.
  - (e) Title Commitment not more than 30 days old, along with complete and legible copies of all exception documents. If the owner making the QC Request is not the original owner, the title transfer and applicable documents must be provided.
  - (f) Complete and legible copies of all leases affecting all or any portion of the Project.
  - (g) Consent and authorization letter(s) in form specified by AHFA and signed by all partners/members of the owner consenting to owner's submission of the QC Request, to owner's delivery to AHFA of all information and documentation deemed necessary or desirable by AHFA in connection with the QC Request, and to AHFA's use of all information and documentation received in connection with the QC Request.
  - (h) Written certification from the owner that all information included in the Preliminary Application, the QC Documentation and QC Price Documentation (as defined below), whether or not requested by AHFA, is and remains true, correct and complete.
2. AHFA will not consider a QC Request to be submitted and will not take any action with respect to a QC Request, until it has received all QC Documentation.
3. The items listed below (collectively, the "QC Price Documentation") are necessary to determine the QC Price and should be provided to the Eligible CPA for use in determining the QC Price for purposes of submitting item 1(c) above. These items should not be sent to AHFA unless specifically requested by AHFA.

- (a) annual partnership federal tax returns (Form 1065) for all years of operation since the start of the credit period.
  - (b) annual financial statements for the Project for all years.
  - (c) loan documents for all debt and grants during the Compliance Period.
  - (d) partnership agreement (original, current and all interim amendments).
4. The QC Price must be calculated in accordance with Section 42(h)(6)(F), which provides currently that the QC Price is the sum of (1) the fair market value of any portion of the Project that is not low-income; plus (2) the product of “adjusted investor equity”, as such term is defined in IRC Section 42(h)(6)(G), increased by the consumer price index for each year (not to exceed 5% per year); plus; (3) the outstanding debt secured by or with respect to the Project; plus (4) capital contributions not reflected in “2 or 3” minus cash flow distributed or available to be distributed by the owner. If the Project sells pursuant to a QC, the final QC Price is subject to adjustment as required by the provisions of 26 C.F.R. Section 1.42-18(c)(1)(ii).
5. Owners who expect to take advantage of the QC option have a corresponding duty to maintain the records necessary to allow computation of the QC Price. Failure to fulfill the record keeping requirements necessary for determining the QC Price will deem the Project ineligible for consideration of a QC Request.
6. AHFA will notify an owner in writing whether or not a QC Request is complete within 15 business days after AHFA has received all QC Documentation, and if requested, all QC Price Documentation.

***Step Three: Marketing a Project for Sale***

1. The owner will be responsible for submitting all the following items to AHFA (collectively, the “Marketing Materials”), within 30 days after the date of AHFA’s notification in writing that the QC Request is complete:
  - (a) Name, address, e-mail, website address, and phone number of the licensed real estate agent selected by the owner to market and advertise the Project for sale.
  - (b) Copy of the marketing plan and/or advertising materials, which must include high quality digital photos of the Project (interior and exterior), amenities, and grounds.
  - (c) An executed *Agreement and Purchase of Sale* (Form of Qualified Contract) including Owner’s disclosures regarding and/or qualifications to the representations and warranties found in the form of QC.
  - (d) *Optional:* Copy of owner’s preferred and commercially reasonable form of Confidentiality and Non-Disclosure Agreement (an “NDA”), if owner wishes to provide such a form. AHFA recommends strongly that owners provide a form of NDA in order to facilitate the marketing process, ensure that the owner has acceptable protection of its confidential information in the hands of prospective purchasers, and avoid potentially tolling of the 1 YP if the owner attempts to renegotiate an NDA received from a prospective purchaser. Notwithstanding the foregoing, in order to facilitate an efficient marketing process, AHFA reserves the right to determine whether any proposed NDA is commercially reasonable, regardless of its source.

2. AHFA reserves the right at any time, before or after commencement of the 1YP, to require owner to provide copies of any or all of the following supplemental documentation (collectively, the “Supplemental Marketing Materials”):
  - (a) Appraisal by a State certified general appraiser for the entire Project.
  - (b) Market study for the entire Project.
  - (c) Phase I Environmental (and reliance letter and Phase II if necessary).
  - (d) Rent rolls certified by an authorized officer of the owner.
  - (e) Most recent as-built survey of the Project.
  - (f) Current zoning letter from the municipality having jurisdiction over the Project.
  - (g) UCC searches in owner’s state of organization.
3. Upon owner’s receipt of an NDA (either in the form provided by owner or in the form promulgated by AHFA) that has been duly executed by a prospective purchaser, owner shall be obligated to promptly disclose or make available any other information pertaining to the Project that is reasonably requested by such prospective purchaser, to the extent that such information is in possession or control of owner.
4. The owner must timely cooperate with AHFA in providing all Marketing Materials and all required Supplemental Marketing Materials and must cooperate with AHFA and each prospective purchaser in connection with prompt execution of an NDA, when requested, and prompt delivery of all information reasonably requested by a prospective purchaser pursuant to an NDA. **Pursuant to 26 C.F.R. Section 1-42.18(d), any unreasonable or intentional delays caused by the owner, including without limitation any refusal or delay in providing the foregoing information, as determined in AHFA’s sole discretion, will cause the commencement or continuation of the 1YP to be tolled during any period of time during which AHFA and/or a prospective purchaser is waiting for additional documentation or information from the owner.**
5. The 1YP will begin on the date AHFA receives all the Marketing Materials (and any Supplemental Marketing Materials requested by AHFA) and advertises the Project for sale. AHFA will advertise the Project for sale by posting the Project information on its website at [www.ahfa.com](http://www.ahfa.com) and may use other advertising methods available to AHFA. This information may include, but not be limited to, the Marketing Materials, any required Supplemental Marketing Materials and any other non-confidential information in the possession of AHFA that would be subject to public review under the Open Records Act. At minimum, an owner should expect AHFA to post on its website photos of the Project, QC Price, name of the Project, address, owner’s name, phone number and email address, number of units, the unit mix by number of bedrooms and rent levels, and the real estate/marketing agent’s name, phone number and email address. If AHFA discovers any noncompliance during the 1YP, the 1YP will be suspended until the noncompliance is corrected. If the Project or any part thereof is damaged or destroyed during the 1YP, owners must notify AHFA within three (3) business days of the event and provide AHFA’s Property Damage Notification form located at [www.ahfa.com](http://www.ahfa.com). AHFA will suspend the marketing process and the 1YP retroactive to the date of the damage or destruction. The owner shall use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction. The owner will not be permitted to resume marketing or the 1YP unless and until such repair and restoration is complete and is reflected in the marketing materials for the

Project. Owners who fail to timely notify AHFA of damage to a Project during the 1 YP or fail to repair or restore damage or destruction to the Project will be subject to additional review and requirements, including without limitation the termination or denial of the QC Request for that Project.

6. Owner must provide to AHFA, within three (3) business days of receipt, a copy of each written indication of interest to purchase the Project for the QC Price, or more, that is received by owner or owner's licensed real estate agent. **Failure to timely provide AHFA with copies of all written indications of interest received in connection with the Project may constitute a violation of Section 42 of the Internal Revenue Code, as well as these QC Policies, and could result in tolling of the 1YP, the Project no longer being eligible to terminate its Extended Use Period, along with financial penalties, point reductions in future application cycles or other sanctions under AHFA's programs, including suspension or debarment.**
7. All costs associated with any transfer of a Project from the owner to a purchaser in accordance with these QC Policies (including without limitation all taxes, insurance premiums, transfer fees, legal fees, prorations or other costs or expenses of any kind or nature) shall be paid by the owner or purchaser on such terms as they may agree. In no event shall AHFA be responsible for any such costs.

#### **Step Four: Presenting a Qualified Contract**

1. If AHFA receives an indication of interest executed by a prospective purchaser, or its licensed real estate agent or broker, indicating that the prospective purchaser is willing to enter into a bona fide QC to acquire a Project from the owner for the QC Price (or more) within a reasonable period after the QC is executed, AHFA will populate its standard form of QC with the QC Price and other terms of the prospective purchaser's offer, as reflected in the indication of interest. Earnest money of not less than three percent (3%) and not more than five percent (5%) of the QC Price must be deposited by purchaser with the seller or an escrow agent. AHFA will work with the prospective purchaser to finalize the form of the QC. If the QC is executed by the prospective purchaser and is presented by AHFA to the owner before expiration of the 1YP, the owner can no longer terminate the Extended Use Period for the Project, regardless of whether the owner elects to sell the Project to the prospective purchaser or to keep it.
2. Under IRC Section 42(h)(6)(E)(i)(II), AHFA's only obligation is to "present" a QC to the owner. Once AHFA presents a QC to the owner within the 1YP, as it may be tolled, the possibility of early termination of the Extended Use Period is removed forever and the Project remains subject to the provisions in the Declaration.
3. There is no requirement in the IRC that the prospective purchaser actually purchase the Project from owner. Owner's right under IRC Section 42(h)(6)(E)(i)(II) to terminate the Project's Extended Use Period will terminate upon AHFA's presentation of a QC to the owner, regardless of whether the owner actually executes the QC or another purchase contract and regardless of whether the owner keeps the Project or sells it.
4. Owner shall notify AHFA within three (3) business days if it counter-executes the presented QC.
5. **Any sale of the Project pursuant to a QC will remain subject to AHFA's policies and procedures.** For example, owner and purchaser shall independently be obligated to notify AHFA in writing at least thirty (30) days in advance of any transfer of ownership of the Project and must complete and submit to AHFA its required Notice of Transfer of Ownership documentation for

review and approval. The Notice of Transfer of Ownership forms and requirements are available at [www.AHFA.com](http://www.AHFA.com).

6. If a QC is not presented to the owner before the expiration of the 1YP, then the Declaration on the Project will terminate and its Extended Use Period will end, effective on the first calendar day after the last day of the 1YP; provided, however, that pursuant to IRC Section 42(h)(6)(E)(ii), for a three-year period commencing with the release of the Declaration, the owner may not (a) evict or terminate the tenancy of an existing tenant of any low-income unit except for good cause, and (b) the owner may not increase the gross rent with respect to any low-income unit except as permitted under IRC Section 42. The owner must provide written notice to existing tenants informing them of their protections under IRC Section 42(h)(6)(E)(ii) and provide AHFA a copy of the notice. A sample notice is available at [www.ahfa.com](http://www.ahfa.com).
7. If an owner receives and accepts an offer lower than the QC price, AHFA will suspend the marketing of the project and the 1YP until the sale of the Project to the purchaser is closed. When the closing occurs, the QC process for the selling owner will end. The ownership transfer will be subject to AHFA's transfer of ownership requirements. AHFA reserves the right to approve or decline the proposed transfer of ownership. The new owner retains the right to request a Qualified Contract at a future time.

#### **GENERAL**

**These QC Policies are subject to the requirements of IRC Section 42 and its regulations. To the extent that these QC Policies conflict with Section 42 or its regulations, as the same may be amended from time to time, Section 42 and its regulations will govern.**

**AHFA reserves the right to modify or amend these QC Policies with or without notice; provided, however, that any amendment will be posted promptly after its effective date at [www.ahfa.com](http://www.ahfa.com).**

All information provided to AHFA in connection with the QC process will be subject to the Alabama Open Records Act and to AHFA's Open Records Policy. Except for certain items of personally identifiable financial information that the law permits to be redacted, such as social security numbers and personal financial statements, all information provided to AHFA will be made available for inspection by the public in accordance with the Open Records Act and our Open Records Policy. The act may be found at Ala. Code § 36-12-40, and the policy is available for review at [www.ahfa.com](http://www.ahfa.com).

Before submitting a Preliminary Application, please visit AHFA's website to obtain the Preliminary Application form and the most current information: [www.ahfa.com](http://www.ahfa.com).

Please direct questions to: AHFA Multifamily-Asset Management Department (334) 244-9200 or email: [ahfa.mf.assetm@ahfa.com](mailto:ahfa.mf.assetm@ahfa.com).

[End of Policy]