

**STATE OF NEW MEXICO
HOUSING TAX CREDIT PROGRAM**

**QUALIFIED CONTRACT PROCESS
GUIDE**

Effective as of August 2006



**NEW MEXICO
MORTGAGE FINANCE AUTHORITY**

INTRODUCTION

In 1975 the New Mexico state legislature created the New Mexico Mortgage Finance Authority (“MFA”), a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality, with the power to raise funds from private investors in order to make such private funds available to finance the acquisition, construction, rehabilitation and improvement of residential housing for persons and families of low or moderate income within the state. MFA’s mission is to house New Mexico’s people by serving as the State’s lead affordable housing finance and resource provider, engaging in self-sustaining practices, and promoting sound housing policy. MFA is the Housing Credit Agency for the State of New Mexico responsible for administering the federal Low Income Housing Tax Credit Program.

Affordable housing projects (“Projects”) allocated federal low income housing tax credits (“Tax Credits”) are subject to an initial fifteen year Compliance Period beginning the first taxable year that the building was “Placed in Service” or at the Owner’s election, the following taxable year. Projects that were allocated Housing Tax Credits in 1990 or later, are also subject to an Extended Use Period for a minimum 15 years subsequent to the initial Compliance Period. The MFA encourages the extended use of Tax Credit Projects and continued management of Tax Credit Projects in compliance with MFA’s extended use restrictions as a means of preserving affordable housing.

Section 42(h)(6)(E)(i)(II) of the Internal Revenue Code (the “Code”) provides that the Extended Use Period shall terminate if a housing credit agency is unable to present a Qualified Contract to a taxpayer who has requested such, unless more stringent

requirements are provided in the Extended Use Agreement or in State law. Many owners have chosen to waive the right to request a Qualified Contract and have committed to operating Projects for thirty years or more as low-income rental housing.

The Code contains some basic provisions for administering Qualified Contract requests. However, the overall procedure and specific guidelines required are at the MFA's discretion. The purpose of this Qualified Contract Process Guide ("Guide") is to set out the procedures to be followed by MFA and an Owner of a Tax Credit Project who is considering making a request for a Qualified Contract ("Request"). The provisions of the Code with respect to Requests are subject to modification and clarification by the Internal Revenue Service. MFA reserves the right to revise this Guide from time to time. Compliance with the requirements of the Code is the responsibility of the Owner of the building for which the Request is made.

The Request by the Owner of a Tax Credit Project is a substantial commitment of time and energy of all parties involved. MFA highly encourages Owner's to consider all other options and only choose to follow make a Request when all other alternatives available to the Owner are inadequate. In addition, Owners should review the relevant Qualified Allocation Plan, the Project Tax Credit application, and the Land Use Restriction Agreement for the Project to determine whether the Project has waived the right to make a Request prior to contacting MFA.

MFA's role is to implement the Code requirements and facilitate the presentation of a Qualified Contract, as defined in the Code. 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. MFA does not make any representation to any party

concerning compliance with the Code, Treasury Regulations or other laws or regulations governing Low Income Housing Tax Credits. Interested parties should obtain advice from independent sources, including consultation with knowledgeable tax professionals and legal counsel. MFA is not obligated to verify the accuracy of any information with respect to an Application or a Project, or the quality or marketability of the Project, and is not acting as a real estate agent or broker. Owners and prospective purchasers are solely responsible for undertaking their own investigation of the information presented. If any information submitted to MFA is later found to be inaccurate by the Owner, the Owner is responsible to notify MFA.

**QUALIFIED CONTRACT APPLICATION PROCESS -
LETTER OF INTENT AND QUALIFICATION PROCESS**

At any time after the fourteenth year of the Compliance Period the Owner may submit a Letter of Intent to MFA together with the information required stating Owners intent to request a Qualified Contract for a Project. MFA will then verify the Project's eligibility to receive a Qualified Contract. Eligibility will be determined based on verification of the Compliance Period, whether the right to a Qualified Contract has been waived, and if there are any outstanding compliance issues. If there are any unresolved compliance issues with respect to the Project, MFA may extend the deadline for submitting an Application until the compliance issues are resolved and the Project shall continue to be subject to Tax Credit restrictions until such time. Owner shall submit the following items with the Letter of Intent:

- non-refundable \$250 processing fee
- copies of the form 8609 with Part 2 completed for each building the first year submitted
- copies of all forms 8823
- documentation regarding any right of first refusal for purchase of the Project and any waivers thereof

The eligibility review does not bind the Owner to submit a Request and does not start the one year Sale Period (defined below). The eligibility review will be completed within 90 days of receipt of the Letter of Intent and all required materials and if the Property is determined to be eligible the Owner will be so notified in writing that the Owner may submit a Qualified Contract Request Application.

QUALIFIED CONTRACT APPLICATION

After a Letter of Intent has been submitted and MFA has determined that the Project is eligible for a Qualified Contract, and so notified the Owner, Owner may submit a Qualified Contract Notification Letter (“Notification Letter”) together with all required application materials (the required application materials together with the Notification Letter constitute the “Application”). The Notification Letter contains statements by the Owner that the Owner will reasonably cooperate with MFA and its agents with respect to marketing the Project, and acknowledges that the application materials may be disclosed to prospective purchasers, real estate brokers and other interested parties, together with any other information MFA deems reasonable to disclose to obtain a Qualified Contract. The Notification Letter requires Owner to take sole responsibility for documents and information submitted with the calculation of the Qualified Contract Price, in accordance with the Internal Revenue Code Section 42(h)(6)(F).

Required Application Materials:

1. Qualified Contract Price determined and certified by an independent certified public accountant (“CPA”) in compliance with Section 42 together with copies of all documents and other information that were used to calculate the Qualified Contract Price. The CPA shall certify that annual partnership federal income tax returns for all years of operation of the Project, loan documents for all secured debt, and partnership agreements and other organization documents have been reviewed in connection with determining the Qualified Contract Price. The CPA shall also certify that the CPA is not being compensated for the assignment based upon a predetermined outcome or a percentage of the Qualified Contract Price or return on sale.
2. A thorough narrative description of the project, including all amenities, suitable for familiarizing prospective purchasers with the project.

3. A description of all income, rental and other restrictions, if any, applicable to the Project, together with copies of any documents imposing such restrictions.
4. Current title commitment agreeing to issue a Standard Owners Policy of Title Insurance to a “to be determined” purchaser.
5. Confirmation that any existing mortgages on the Project will permit the sale or transfer of the property and/or that pre-payment of any existing financing is allowable.
6. A detailed set of digital photographs of the project, including the interior and exterior of representative apartment units and buildings, the main Project entrance, the Project grounds and all built amenities.
7. Monthly operating statements for the Project for the 12 months preceding the notification.
8. A current rent roll and occupancy report for the 12 months preceding the notification.
9. Audited annual project financial statements for the three fiscal years preceding the notification.
10. If any portion of the land or improvements is leased, copies of the leases.
11. Qualified Contract Application fee in the amount of \$3,000.
12. \$20,000 deposit for any third party reports. This deposit will be used to pay for accounting consulting, a physical needs assessment, an appraisal, and Phase I Environmental Assessment (and a Phase II if necessary) of the Project, as needed. The Owner may submit a current appraisal, physical needs assessment, and/or environmental assessment if already available, but not in lieu of the deposit and MFA retains the right to still order any and all reports determined necessary.
13. Current as built ALTA survey of the property and buildings.
14. Copies of all Partnership tax returns.
15. Copies of all amendments to the original Limited Partnership Agreement.

Within 120 days after receipt of the complete Application and within 30 days from the receipt of all third party reports ordered by MFA on behalf of the Project MFA will review the Application and materials and notify owner of acceptance or rejection of the owner’s Qualified Contract Price calculation. If rejected, MFA and Owner will attempt

to agree upon a Qualified Contract Price. If MFA and Owner fail to agree on a Qualified Contract Price within 30 days of the notice of rejection, then Owner will have an additional 30 days in which to (a) seek binding arbitration before a single arbitrator in Albuquerque, New Mexico in accordance with the New Mexico Uniform Arbitration Act or (b) withdraw the Application. If Owner fails to seek binding arbitration or withdraw the Application within 60 days of notice of rejection of the Qualified Contract Price MFA will proceed with locating a Qualified Purchaser at the Qualified Contract Price as determined by MFA. MFA will have one year from the date of written acceptance, agreement or determination of the Qualified Contract Price to locate a Qualified Purchaser and present a Qualified Contract to Owner (“Sale Period”). During the Sale Period MFA will advertise the property in good faith. MFA’s procedure for identifying interested purchasers may include, but not be limited to: 1) posting the Project information on MFA’s website; 2) mailing informational flyers to other federal low income housing tax credit property owners, management companies, other funding agencies, local and national groups interested in preserving affordable housing, and tax credit investor contacts; and 3) sharing information on the Project at local and regional meetings of development groups, affordable housing preservation groups and other stakeholder meetings attended by MFA. MFA reserves the right to contract directly with a third party in the marketing and sale of the Project or direct the Owner to contract with a broker approved by MFA. Cost of such service, including a broker’s fee not to exceed 6% plus New Mexico gross receipts tax will be paid by the Owner.

All reasonable costs incurred by MFA with third parties will be paid by Owner. The Owner will be required to make additional deposits if costs exceed the initial deposit. If

the Owner delays in making a deposit MFA may suspend processing, extend the Sale Period, or terminate an Application.

COMPLETION OF QUALIFIED CONTRACT PROCESS

If MFA identifies a prospective purchaser during the Sale Period it will present the Owner with a Qualified Contract, as defined in IRC Section 42(h). The Owner must agree to enter into a commercially reasonable form of contract of sale for the Project and provide a reasonable time for purchaser to complete its due diligence and closing of the purchase. If the owner accepts the Qualified Contract and sells the Project, MFA must be notified in compliance with the guidelines in the applicable Qualified Allocation Plan (“QAP”) and Land Use Restriction Agreement (“LURA”) for sales or transfers of property. If a Qualified Contract is offered to Owner, but Owner declines to accept it or the sale does not close for any reason, the restrictions of the Extended Use Period as set forth in the LURA shall continue to bind the Project for the remainder of the Extended Use Period.

If MFA is unable to present a Qualified Contract within the Sale Period MFA will notify Owner that the extended-use period will terminate. However, pursuant to IRC Section 42(h)(6)(E)(ii) existing low-income tenants will not be evicted (other than for good cause) or charged rents in excess of tax credit rents for a period of three years following such termination. Owner will continue to meet regular reporting, compliance and monitoring requirements of the LURA with respect to such tenants during this three year period.

A request for a Qualified Contract may be submitted only once for each Project. If an Owner rejects an offer presented under the Qualified Contract or withdraws its request at

any time after the Notification Letter and Application Materials have been received by MFA, no other opportunity to request a Qualified Contract will be available for the Project.

Qualified Contract Notification Letter

Linda Bridge
NM MFA
Housing Development
Senior Projects Manager
344 4th Street
Albuquerque, NM 87102

Re: Project name, number

Dear Ms. Bridge

On behalf of _____, [Project Owner] (“Owner”), we hereby request that the New Mexico Mortgage Finance Authority (“MFA”) present a “qualified contract” as defined in Section 42(h)(6)(F) of the Internal Revenue Code (“Code”) for the purchase of _____, [Project Name] (“Project”). This request is made pursuant to Section 42(h)(6)(E)(i)(II) of the Code. We understand that MFA has one year to present a Qualified Contract for the purchase of the aforementioned project and that one year period will begin on the date the MFA and the owner agree to the Qualified Contract Price in writing and will terminate twelve calendar months thereafter. We further understand that submitting this request and the materials required does not cause the one year period to commence, but that receipt of this letter and all of the information described below is a prerequisite for MFA to assess the Qualified Contract Price.

Enclosed with this request are the following documents and information required by the MFA:

16. _____ Qualified Contract Price determined and certified by an independent certified public accountant (“CPA”) in compliance with Section 42 together with copies of all documents and other information that were used to calculate the Qualified Contract Price. The CPA shall certify that annual partnership federal income tax returns for all years of operation of the Project, loan documents for all secured debt, and partnership agreements and other organization documents have been reviewed in connection with determining the Qualified Contract Price. The CPA shall also certify that the CPA is not being compensated for the assignment based upon a predetermined outcome or a percentage of the Qualified Contract Price or return on sale.

17. _____ A thorough narrative description of the project, including all amenities, suitable for familiarizing prospective purchasers with the project.
18. _____ A description of all income, rental and other restrictions, if any, applicable to the Project, together with copies of any documents imposing such restrictions.
19. _____ Current title commitment agreeing to issue a Standard Owner's Policy of Title Insurance to a "to be determined" purchaser.
20. _____ Confirmation that any existing mortgages on the Project will permit the sale or transfer of the property and/or that pre-payment of any existing financing is allowable.
21. _____ A detailed set of digital photographs of the Project, including the interior and exterior of representative apartment units and buildings, the main Project entrance, the Project grounds and all built amenities.
22. _____ Monthly operating statements for the Project for the 12 months preceding the notification.
23. _____ A current rent roll and occupancy report for the 12 months preceding the notification.
24. _____ Audited annual project financial statements for the three fiscal years preceding the notification.
25. _____ If any portion of the land or improvements is leased, copies of the leases.
26. _____ Qualified Contract Application fee in the amount of \$3,000.
27. _____ \$20,000 deposit for any third party reports. This deposit will be used to pay for accounting consulting, a physical needs assessment, an appraisal, and Phase I Environmental Assessment (and a Phase II if necessary) of the Project, as needed. The Owner may submit a current appraisal, physical needs assessment, and/or environmental assessment if already available, but not in lieu of the deposit and MFA retains the right to still order any and all reports determined necessary.
28. _____ Current as built ALTA survey of the property and buildings.
29. _____ Copies of all Partnership tax returns.
30. _____ Copies of all amendments to the original Limited Partnership Agreement.

We understand that the above information may be shared with prospective purchasers, real estate brokers and agents of the MFA, and *summary* data may be posted on the MFA's website.

We will reasonably cooperate with the MFA and its agents with respect to the MFA's efforts to present a Qualified Contract for the purchase of the project and we understand that our failure to reasonably cooperate will extend or cancel the one year time period MFA has to present a Qualified Contract. In this regard, we understand that before the presentation of a Qualified Contract, we may need to share project "due diligence" with the MFA and with prospective purchasers, including but not limited to, additional rent rolls, project tax returns, income certifications and other Section 42 compliance records, records with respect to repair and maintenance of the project, operating expenses and debt service. Provided however, that before information is shared with a prospective purchaser, we may require that it enter into a commercially reasonable form of nondisclosure agreement. We also agree to allow the MFA, its agents, and prospective purchasers, upon reasonable prior written notice, to visit and inspect the project, including representative apartment units.

We acknowledge that –

1. We have conducted our own investigation and due diligence with respect to the Calculation of the Qualified Contract Price and the Qualified Contract procedure set forth in Section 42(h)(6)(F) of the Code;
2. We are solely responsible for documents and information provided to MFA with this notification letter, including the Calculation of Qualified Contract Price form and the exhibits thereto, and any other documents or project information that we may provide to the MFA and/or share with prospective purchasers at a later time;
3. To our knowledge the information submitted is truthful, accurate and complete and contains no misstatements or misleading information;
4. Neither the MFA nor any of its employees or agents have made any independent investigation or review of the accuracy, truthfulness or completeness of the information; and
5. By submission of this notification letter, we agree to indemnify, defend, and hold the MFA harmless with respect to the MFA's use of the information.

We agree that the MFA and its employees and agents shall have no liability to us with respect to the Calculation of the Qualified Contract Price or any other act, omission, or determination by the MFA with respect to marketing the project or carrying out its responsibilities under Section 42(h)(6)(F) of the Code, so long as the MFA is acting in good faith.

We also understand that if the MFA finds a prospective purchaser willing to present an offer to purchase the Project for an amount equal to or greater than the Qualified Contract Price, we agree to enter into a commercially reasonable form of contract of sale for the Project which will allow prospective purchaser a reasonable period of time to undertake additional, customary due diligence prior to closing the purchase. We further understand that if we fail to enter into a commercially reasonable form of contract of sale for the Project, we have irrevocably waived any right to further request that MFA present a Qualified Contract for the purchase of the Project and the Project will remain subject to the requirements of the Land Use Restriction Agreement for the full extended use period.

Sincerely,