

<p>GEORGIA HOUSING AND FINANCE AUTHORITY QUALIFIED CONTRACT POLICY AND PROCEDURES</p>
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## OVERVIEW OF REQUESTS FOR QUALIFIED CONTRACTS

The Federal Housing Credit ("HC"), 26 U.S.C. § 42 ("Section 42"), was created by Congress as part of the 1986 Tax Reform Act. The Georgia Department of Community Affairs ("DCA") administers the HC program on behalf of GHFA. The Georgia Housing and Finance authority is the primary HC allocating agency for the State of Georgia.

Properties awarded HCs in 1987, 1988, and 1989 have a Compliance Period of fifteen (15) years beginning with the 1st taxable year of the credit period. A change in federal law in 1990 mandated that properties are eligible for the credit only if they are subject to an extended use agreement which requires the property to remain in low income use for an additional 15 years. In accordance with Section 42, the extended use period commences with the first day in the Compliance Period on which any building that is part of the Property is placed in service and ends on the date which is 15 years after the close of the Compliance Period. As a result, properties that were awarded HCs in 1990 or afterwards must comply with rent and income restrictions for a total of 30 years unless the property can meet certain statutory requirements which would allow them to "opt out" of the extended use period.

### QUALIFIED CONTRACTS

The qualified contract (QC) option was designed as a way for Owners of HC properties who are no longer interested in owning HC properties and/or retaining the low income use restrictions associated with the property, to "opt out" of the tax credit program after the first 15 years. At the same time, the qualified contract option gives allocating tax credit agencies a tool for preserving the affordability of these properties. The qualified contract option allows an Owner to make a request that the allocating agency secure an offer to purchase the property for a price that is determined by the statute. If the allocating agency is unable to present a contract for that price within a one year period, the extended use period terminates. The IRS Code contains the formula for determining the qualified contract price. GHFA has developed policies and procedures that will allow proper administration of this process.

Owners should note that if GHFA does not provide a qualified contract within the required one year period, the property is still subject to the three year decontrol period set forth in Section 42. During such three year period, the Owner may not:

- evict the tenant of a low income unit or terminate the tenancy of an existing tenant of any low income unit other than for good cause and
- shall not increase the gross rent above the maximum allowed under the Code with respect to any such low income unit.

Current Owners have the ability to sell the property at any time to a buyer subject to adherence to the rent and income restrictions as set out in the Land Use Restrictive Covenant (LURC). All Owners are strongly encouraged to contact their accountant and/or attorney specializing in housing credit matters prior to taking any action. Any prospective buyers must have the written approval of DCA prior to confirmation of the sale documents.

## GHFA's POLICIES AND PROCEDURES REGARDING QUALIFIED CONTRACT REQUESTS

The following terms and conditions will allow GHFA to administer requests from Property Owners who intend to make a request under IRS Code Section 42(h)(6)(E)(i)(II) ("Request") to produce a QC.

### GHFA QUALIFIED CONTRACT POLICIES

In determining when a property is eligible, GHFA will only consider the latest date for properties with multiple credit periods or allocations. Owners may not submit a Request until after the 14<sup>th</sup> year of the last Compliance Period for properties with buildings that were placed in service in different years (i.e. different credit periods). All allocations for the same property will be taken into consideration when determining when the last Compliance Period expires.

**Example:** If five buildings in the property began their credit periods in 1991 and one started in 1992, the 14<sup>th</sup> year for the purposes of a Request would be 2005. If the property received its first allocation of \$500,000 in 1991 and a subsequent award of \$25,000 in 1993, and credits were claimed in 1994, the 14<sup>th</sup> year for the purposes of a Request would be 2007.

1. GHFA will not consider a Request until the Owner secures a complete, unconditional waiver of all purchase options, including a nonprofit general partner's right of first refusal or any buy/sell options.
2. Properties that do not meet the basic physical compliance standards that are (or would be) necessary to claim some or all of the Housing Credit allocation are ineligible for consideration. Owners must correct all such violations prior to submitting a Request.
3. The Request for a Qualified Contract must be for all of the buildings in the property and must include all market rate as well as low income units.
4. GHFA will not consider a Request until after receipt of all supporting documentation. The QC (one year) period will not begin until GHFA determines that the Owner has met all of the submission requirements.

Owners who expect to take advantage of the QC option have a corresponding duty to maintain the all records necessary to allow computation of the QC Price. If the Owner has not maintained the necessary records, then GHFA may take the following actions:

- a) GHFA may deem the property ineligible for consideration, or
  - b) GHFA may allow an accountant to deduce missing information (interpolation)
5. The QC one year period will not include any period of time in which GHFA is waiting for additional documentation from the Owner.
  6. Under IRC §42(h)(6)(E)(i)(II), GHFA's only obligation is to "present" to the Owner a bona fide contract to acquire the property for the QC price ("Contract"). If the Owner elects not to proceed with the sale of the property once a prospective purchaser has been found, the Owner cannot submit any further Requests for a Qualified Contract in an attempt to "opt out" of the program.

7. GHFA will provide a standard form agreement that includes basic real estate transaction terms (i.e. costs, due diligence period). This form establishes what the buyer needs to

accept in order for GHFA to meet its statutory obligation of presenting a Contract. Once a buyer agrees to the standard terms and QC Price, the Owner is no longer eligible to terminate the extended use period. The parties would then be free to negotiate different transaction terms prior to closing.

8. GHFA will resolve every case of doubt or interpretation in determining the QC price calculation, both with regard to the overall process and for particular properties, in favor of a lower value, subject to any then available guidance from the IRC.
9. Time lapsed during disputes or negotiation regarding the calculation of the QC Price will not be included in the QC period.
10. GHFA may add to or amend these policies at any time. Such changes will be posted to the DCA website with an effective date of the change.

## GHFA PROCEDURES FOR SUBMITTING A QUALIFIED CONTRACT REQUEST

### I. PRELIMINARY APPLICATION

1. Please refer to the Preliminary Application Checklist for fee information. Any necessary third party costs will be passed on to Owners.
2. GHFA will require Owners to submit a Preliminary Application to allow GHFA to determine that the property is eligible to request a QC prior to either the Owner or GHFA expending significant time and/or resources on calculating the QC price. This Preliminary Application does not bind an Owner to submit a Request for a QC and does not start the QC period. The Preliminary Application and list of required documents can be found at the following link:
  - <http://www.dca.ga.gov/housing/HousingDevelopment/programs/housingTaxCredit.asp>
3. Preliminary Applications must be submitted to GHFA at least 60 days prior to the submission of a Request for a Qualified Contract. Upon receipt of the Preliminary Application and all required documentation, GHFA will determine whether the property is eligible for consideration for a Qualified Contract. DCA may also make an initial determination at this stage that a Qualified Contract will not be offered. There are several reasons that an Owner may not be eligible for such a Contract or why DCA may decide that a Qualified Contract will not be offered. These reasons include, but not limited to, the following:
  - Many Owners elected to waive the right to make a Request for a Qualified Contract for a period of time (or to extend income and rent restrictions for a period of time beyond the Compliance Period) to earn points in the competitive HC process. This commitment is documented in the LURC, generally under Section 5. Policies regarding additional rent and/or income restrictions can be found at the following link: <http://www.dca.ga.gov/housing/HousingDevelopment/programs/compliance.asp> (Rent Restriction Change Guidance)
  - The 14th year of the latest Compliance Period for each building in the property must be satisfied before an Owner can submit a Request for a Qualified Contract.
  - The documentation provided for GHFA to review a Request may be insufficient.
  - Other factors that may make some properties conditionally eligible.

4. The Owner must certify in the Preliminary Application that all purchase options, including any rights of first refusal, will be waived at the time that the Request for a Qualified Contract is submitted.
5. The Owner must provide GHFA with a legal opinion of the date that the property met/will have met the Compliance Period for all buildings.
6. GHFA will notify Owners in writing as to the eligibility to Request a Qualified Contract.

## II. REQUEST FOR QUALIFIED CONTRACT

Once an Owner has been notified that the property is eligible to Request a Qualified Contract, the Owner must submit a Letter of Request, the items listed in the Request for Qualified Contract Checklist and the 15 Yr Contract Calculation Form and Schedules. (Items submitted with the Preliminary Application do not have to be resubmitted) The documents are located on the DCA website at:

<http://www.dca.ga.gov/housing/HousingDevelopment/programs/housingTaxCredit.asp>

These items will be reviewed, and if complete, the Owner will be notified within approximately 30 days of DCA's receipt of a complete request of the date that the Qualified Contract Period begins. The property will be listed on DCA's website, and may be listed on other publications. Failure to provide professional, complete analyses performed by qualified third party analysts, as required, could impact the ability of the property to move forward in the Qualified Contract process. Failure to provide additional documentation, information or reports in a reasonable time may 'stop the clock' for the Qualified Contract one year period until they are received and accepted.

Under IRC §42(h)(6)(E)(i)(II), GHFA's only obligation is to "present" to the Owner a bona fide contract to acquire the property for the QC price ("Contract"). If the Owner elects not to proceed with the sale of the property once a prospective purchaser has been found, the Owner cannot submit any further Requests for a Qualified Contract in an attempt to "opt out" of the program.

GHFA will provide a standard form agreement that includes basic real estate transaction terms (i.e. costs, due diligence period). This form establishes what the buyer needs to accept in order for GHFA to meet its statutory obligation of presenting a Contract. Once a buyer agrees to the standard terms and QC Price, the Owner is no longer eligible to terminate the extended use period. The parties would then be free to negotiate different transaction terms prior to closing. Please see GHFA Qualified Contract Policies above for additional information.