Lease-Purchase LIHTC Projects

Requirements for Partial Releases of LURA for Tenant-Purchased Units

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The owner ("Owner") of a tax credit development (the "Development") may request that WHEDA release certain units of the Development from the Land Use Restriction Agreement ("LURA ") as part of a sale of units to tenants during the extended use period. The following factors will be considered by WHEDA in connection with such a request:

1. The following prerequisites must be met:

    a. The existing LURA must contemplate possible purchases by tenants in the extended use period.
    b. The Owner must include language stating the potential of the right of first refusal in all leases.

2. The Owner must provide WHEDA with a "Letter of Intent" to sell units of a Development to tenants. The Letter of Intent shall:

    a. Identify the units to be sold,
    b. Make a formal request for a waiver of the extended use period for such units, and
    c. Include list of units not sold and an affirmation that such units will continue to be part of the Tax Credit program and its reporting requirements.

    The Owner may submit a Letter of Intent, and other documentation required herein, in year 13 of the Development's compliance period or thereafter.

3. Along with a Letter of Intent, an Owner must submit the following information for each tenant that is purchasing a unit:

    a. Identify the tenant seeking home ownership, and the specific unit that will be sold.
    b. Provide a summary of education courses and credit counseling courses taken by the tenant. Note, the Owner must make homeownership education and budget counseling available to tenants no later than one year prior to the anticipated date of sale through referrals to homebuyer counseling agencies or providing it as a part of a tenant services program.
    c. Provide the sale price for the unit, and a description of how such price was calculated, including a description of any adjustments made based on the amount of time the tenant occupied the unit.
    d. Describe proposed financing tenant will use to purchase the unit, and provide an amortization schedule for such financing.
    e. Estimate the annual cost of ownership of the unit, including debt service, real estate taxes, insurance, estimated annual reserve, utilities, and other costs.
    f. Compare annual cost of ownership to current annual rent for the unit paid by the tenant. Note, the annual cost of ownership must be less than or equal to the current permissible rent for such unit.
    g. Calculate the "minimum purchase price" per Section 42(i)(7) of the Internal Revenue Code. Note, the actual purchase price must exceed the calculated "minimum purchase price." The minimum purchase price equals:
        i. The principal amount of outstanding indebtedness secured by the building or project (other than indebtedness incurred within the 5-year period ending on the

date of the sale to the tenants), and proration of such outstanding indebtedness to each unit; plus

  ii. Amount of all Federal, State, and local taxes attributable to each such sale.

Consult the Internal Revenue Code for more information.

h. Provide information on the current status of the replacement reserves of the Development, and whether Owner will allocate such reserves to the unit being sold.

i. Provide copies of the following documents:

  i. The original move-in certification and most recent certification of the prospective home buyer,

  ii. A copy of the sales contract between Owner and the tenant,

  iii. A copy of lease with the tenant, which includes the right of first refusal,

  iv. A copy of the appraisal for each unit to be sold, and

  v. Documentation substantiating the calculation of item 3g, above.

4. Upon receipt of a Letter of Intent and all required information, WHEDA will approve or reject each proposed sale of a unit.

5. WHEDA may require a Capital Needs Assessment to establish the upgrade requirements to all interior and exterior elements. WHEDA may also perform an inspection of the property.

6. No sale will be approved if there are any outstanding Form 8823 notices or adverse findings incurred for the Property.

7. Tenant-purchased units must remain owner-occupied.

8. Tenants who do not wish to purchase their units, or are unable to qualify for such a purchase, shall have the right to continue to rent the units. The Owner may not evict or terminate tenancy for other than good cause of an existing tenant of any low income unit or increase the gross rent beyond that allowed under the program.

9. If a renter vacates the unit, the unit may be sold to a Section 42 income qualified household.

10. The qualified contract process is not applicable to the units that are not purchased.

11. It is anticipated that any Section 8 voucher tenant would be offered within the guidelines established by the PHA, a chance to enroll in the HUD Homeownership Program. Tenant must be qualified by the PHA and Owner.

12. No annual recertification will be required on purchased units.

13. WHEDA may require additional documentation or information consistent with the foregoing at any time.