

**Montana Board of Housing
Qualified Contract Policy**
Approved: November 15, 2021

The Montana Board of Housing (MBOH) is responsible for implementing Internal Revenue Code Section 42(h)(6)(F) and Treasury Regulation 1.42-18. This policy describes the requirements and process that govern Qualified Contract requests by owners of low-income housing tax credit projects (Project).

SECTION I –General Policy for Qualified Contract Requests

The Qualified Contract process may reduce the stock of affordable housing units and is contrary to MBOH 's mission to preserve and increase the availability of affordable housing. MBOH will rigidly and stringently enforce every aspect of this policy, except in cases where MBOH determines that alternative arrangements will further MBOH's mission. Owners interested in alternatives should contact MBOH staff.

A. Eligible Properties. Owners are eligible to submit a request only if all of the following requirements are met:

- the Project's LURA and applicable law permit the owner to request a Qualified Contract;
- at least the 15th year of the Compliance Period has commenced for all buildings;
- the entire project is in full compliance with Internal Revenue Code Section 42 (Section 42) and MBOH requirements; and
- MBOH has determined the project is eligible to submit a request.

B. Scope of Request. The request must apply to all of the buildings in the overall development project (regardless of whether made on a building basis) and must include all market rate units.

C. Completeness. The inability or failure to provide required documents will preclude submission of a request.

D. Costs. All third-party costs will be the owner's sole responsibility.

E. Determination of One-Year Period. Time spent on disputes or negotiation, or pending owner compliance with MBOH policy, will not be included in the one-year period.

F. Bad Faith. Disputes resulting from unreasonable, unprofessional, and/or bad faith conduct on behalf of the owner may result in MBOH determining that its obligation to present a Qualified Contract within the one-year period has been met and that the property will remain subject to the LURA for the full duration specified therein.

G. Applicable Law. The Qualified Contract process is subject to all applicable provisions of state and federal law and this policy.

SECTION II – Qualified Contract Procedure

A. Eligibility Determination Request. An owner may start the process by submitting an Eligibility Determination Request letter with all required documentation and a fee of \$1000. This submission does not bind the owner to submit a request and does not start the one-year period.

B. Minimum Documentation Required for an Eligibility Determination

1. Completed 8609s;
2. Legal opinion to confirm when each building reaches the end of the 15-year compliance period;
3. Signed Form 8821;
4. Copies of the two most recent MBOH compliance review close-out letters;
5. Copy of most recently filed annual owner certification form;
6. Copies of any additional affordability restrictions and regulatory agreements (e.g., HOME, USDA Rural Development, local funding, etc.);
7. Property Based Rental Assistance Agreement(s) (if applicable); and
8. Waiver of First Right of Refusal or Option Agreement (if applicable).

MBOH will notify the owner in writing within 90 days of owner's submission of a complete Eligibility Determination Request and all required documents whether the project is eligible to submit a request.

C. Qualified Contract Request Process.

1. Upon receipt of an MBOH determination of eligibility, the owner may submit a Qualified Contract Request Letter and Agreement (Request) on the current MBOH form (available on the MBOH website), together with the following:
 - a check for the \$20,000 non-refundable administrative fee;
 - a check for any additional fees specified;
 - all required documents listed below; and
 - any additional items or fees identified by MBOH.
2. MBOH will order a Qualified Contract price determination, which will be completed by or under the direction of MBOH, and a 100% unit physical inspection and file audit for the low-income portion of the project to determine whether the owner and property are in compliance with the provisions of Section 42, the Project's LURA and MBOH requirements. The Owner must correct any deficiencies identified.
3. The one-year period will commence upon the date specified in a written notice from MBOH, which date will not be earlier than owner's:
 - receipt of the MBOH price calculation and notification to MBOH to proceed;
 - correction of all identified physical deficiencies;
 - submission of all required documentation; and
 - payment of all fees due.
4. The owner must notify all current residents of the pending process within 14 days of the commencement date. The notification must include a clear, MBOH-approved statement regarding tenants' rights regarding terminations and rent increases.

D. Documentation Required to Request Qualified Contract. The Owner must submit the following information and documentation to MBOH with the Request. All of the following documents are required and MBOH will not consider any exceptions or waivers.

1. Partnership tax returns for all years of operation;
2. Capital Contribution Schedule for all years of operation;
3. Audited annual financial statements for all years of operation;
4. Monthly operating statements for the most recent 36 months, including annual operating expenses, debt service, gross receipts, net cash flow, and debt service coverage ratios;
5. Current and complete rent roll for the entire property;
6. Appraisal (dated within 60 days of the Request);
7. Project Needs Assessment (dated within 60 days of the Request);
8. Title Report (dated within 60 days of the Request);
9. Phase I Environmental (dated within 60 days of the Request);
10. Written consent by all ownership entity partners and/or members;
11. Copies of all leases affecting any portion of the land or improvements;
12. Draft listing agreement with a broker who works with affordable multifamily housing properties;
13. A thorough narrative description of the property, including all amenities, sufficient to familiarize prospective purchasers with the property;
14. A detailed description of all income, rental and other restrictions applicable to the operation of the property;
15. A detailed set of digital photographs of the property (in a format satisfactory to MBOH), including the interior and exterior of representative apartment units and buildings, and the property's grounds, to be displayed on the MBOH website and in any other marketing materials; and
16. Any additional financial and other information and documentation reasonably required and requested by MBOH for purposes of the Qualified Contract process.

E. Access to Property. The owner must provide reasonable access to the property and relevant files and records for inspection or audit by MBOH, its agents, inspectors, appraisers, prospective purchasers and any other third parties reasonably required for purposes of the Qualified Contract process.

F. Payment of Fees and Expenses. In addition to the required fees, the owner must pay MBOH's costs for the physical inspection and file audit, and, in the event that additional third-party reports are required by a potential buyer or MBOH, the owner must pay the cost of the additional reports. All payments for such items must be made within thirty (30) days of the date of any invoice provided to the Owner.

G. Program Compliance; Owner's Failure to Comply or Cooperate with Qualified Contract Process.

MBOH may temporarily suspend the Qualified Contract process in the event the owner fails to comply or cooperate with any requirements and may permanently terminate the Qualified Contract process in the event of multiple instances of non-compliance/non-cooperation.

If at any time during the Qualified Contract process, MBOH determines that the owner or property is out of compliance with the provisions of Section 42, the Declaration of Restrictive Covenants or MBOH requirements, MBOH will terminate the Qualified Contract process until such time as MBOH determines that the owner or property has achieved compliance.

H. Qualified Appraisers.

Montana-certified general appraisers must perform all appraisals. MBOH will not accept an appraisal performed by any individual or organization currently on any list for active suspension or revocation for performing appraisals in any state or listed on the Excluded Parties Lists System (EPLS) maintained by the General Services Administration for the United States Government.

I. Commencement of One-Year Period; Marketing of the Property.

MBOH will notify the Owner in writing when the one-year period has commenced. In addition to diligent marketing by the broker, MBOH may also undertake any marketing efforts, including without limitation posting the marketing information and Qualified Contract price on the MBOH website and such other efforts as may be deemed reasonable in the sole discretion of MBOH. The Owner must complete the listing agreement and cooperate with MBOH and the broker.

SECTION III – Completion of Process.

A. Effect of Qualified Contract. MBOH has the one-year period in which to present a Qualified Contract to the owner. If MBOH presents a Qualified Contract within the one-year period, the possibility of terminating the extended use period early through the Qualified Contract process is removed forever and the project remains bound to the recorded LURA requirements for the full duration of the Extended Use Period term (including all of the Owner's commitment period) specified therein. There is no requirement that the owner accept any Qualified Contract or that the prospective buyer actually purchases the project. Whether the transaction closes is a separate and legally unrelated matter.

B. Qualified Contract. A Qualified Contract is a bona fide offer to purchase the project for the Qualified Contract Price. A bona fide offer means a written offer stating the buyer's offer and intent to purchase the project, together with an earnest money deposit, a timeline for the closing process, and either a letter from a lender affirming the ability to close or proof of available funds for the purchase price. Inclusion of any other terms or conditions in the offer will not disqualify the offer unless otherwise determined by MBOH.

C. Effect of No Qualified Contract.

If the owner has performed its obligations and cooperated in the Qualified Contract process and MBOH is unable to present a Qualified Contract before the expiration of the one-year period, the Section 42 restrictions set forth in the Project's LURA shall be terminated, except with respect to the Section 42 tenant protections. MBOH has presented a Qualified Contract within the one-year period if MBOH notifies the owner of the Qualified Contract by email, facsimile transmission or deposit in the U.S. Mail on or before the last day of the one-year period.

In the event of termination of the restrictions, the property will remain subject to the tenant protection requirements of Section 42(h)(6)(E)(II), which provide that, prior to the close of the three-year period following such termination, no Owner shall be permitted to evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit or increase the gross rent for such unit in a manner or amount not otherwise permitted by Section 42.

In such event, the Owner will be required, at the end of each year of the three-year tenant protection period, to provide certification to MBOH that these requirements have been met. In addition, the Owner will provide written notice to the existing tenants within thirty (30) days after the beginning of the three-year period and annually thereafter for the next two (2) years in a form satisfactory to MBOH that the low-income use restrictions have been terminated and of the Section 42 tenant protections provided during the three-year time frame.

SECTION IV – Applicability.

This policy applies to all Qualified Contract requests submitted to MBOH on or after [the effective date of the policy].