



# Asset Management Division

## Post Award Activities Manual

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# Introduction

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The Asset Management Division is responsible for processing all post-award activities for multifamily developments that receive funding from the Department (i.e., Housing Tax Credits, HOME funds, Housing Trust Funds, and Neighborhood Stabilization Program (NSP) funds). This Manual outlines the procedures and instructions for completing activities including, but not limited to, 10% Test, Construction Status Reports, Cost Certification, LURA Origination, LURA Amendments, Application Amendments, and Ownership Transfers, which are identified in Title 10 of the Texas Administrative Code (10 TAC) Part 1, §§10.400 – 408, Subchapter E of the Post Award and Asset Management Requirements under the Texas Register section of the Texas Secretary of State website at [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=10&pt=1&ch=10&sch=E&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=10&pt=1&ch=10&sch=E&rl=Y) or on the TDHCA webpage at <https://www.tdhca.texas.gov/asset-management-rules>. Changes or updates to the Manual will be communicated through a LISTSERV announcement. To receive LISTSERV announcements, the Development Owner (Owner) must have joined our TDHCA email list by clicking on the “[Subscribe](#)” link located under the “Agency Information” section of the TDHCA homepage at (<https://www.tdhca.texas.gov/>).

Please note that processing post award activity requests may be delayed or may not be fully processed if the subject Development has issues of uncorrected noncompliance outside of the Corrective Action Period or if outstanding fees are owed the Department as specified in 10 TAC §10.400(a).

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## Delivery Instructions

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The post-award activities discussed in this Manual will require the submission of the required documentation in specific format(s). ***All documentation must be submitted to the Department electronically.*** Depending on the activity, the Department may require a PDF and/or Excel file to be submitted. Please be sure to read the chapter for the appropriate activity being performed to ensure proper delivery in the required format.

❖ **Requests submitted via email**

Requests to process any of the post award activities identified in the Manual can be submitted to the Department’s Asset Management Division via email (*unless otherwise specified*) to [asset.management@tdhca.texas.gov](mailto:asset.management@tdhca.texas.gov) or to the Asset Manager assigned to the Development. For assistance in identifying the Asset Manager assigned to a Development, please refer to the Asset Management Region Map with Assignments (PDF) at located at <https://www.tdhca.texas.gov/sites/default/files/asset-management/docs/AssignmentMap.pdf>, which is located on the Asset Management Contact List page of TDHCA's website at <https://www.tdhca.texas.gov/asset-management-contact-list>.

❖ **Requests submitted via MF Serv-U**

Documentation may also be submitted via the Department’s MF Serv-U HTTPs system that is referred to as the “FTP server.” **The Asset Management Division must be notified by email when a submission is sent via the FTP server.** Failure to notify the Asset Management Division that documentation has been uploaded to the FTP will cause delays in processing requests. Email notifications can be submitted to [asset.management@tdhca.texas.gov](mailto:asset.management@tdhca.texas.gov) or directly to the Asset Manager assigned to the Development. Please note that an email with an attachment(s) that exceed 10MB could be rejected by the Department’s email server firewall. Therefore, the sender should request a confirmation of receipt when sending emails with large file attachments.

❖ **Requests submitted via AM FTP**

For Ownership Transfer Requests that are submitted by parties that do not have access to the FTP, please contact the Asset Manager assigned to the Development to request temporary access to a portal that can used to submit the request package.

***NOTE: The Department is not able to access files from external servers. Therefore, one of the options identified above must be used for submitting documentation.***

# Instructions for Completing Electronic Files

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## Downloading the Electronic Materials

Some of the post award activities detailed in this Manual will require the Development Owner (Owner) to use an Excel file created by the Department specific to that activity. Owners should read the chapter for the appropriate post award activity to determine if submission of an Excel file is required.

1. To download any of the electronic post award files, right click on the link at the website provided in each chapter, select “Save As” and choose the storage location on your computer. The Excel file should be named in the following format -- <TDHCA Application #\_Development Name\_Activity>.xlsx (e.g. 24001\_Austin-Trails\_10%-Test.xls or 24001\_Austin-Trails\_Cost Cert.xlsx).
2. Any cell that is highlighted yellow is available to be manipulated by the Owner. All other cells, unless specifically stated, are for Department use only; these cells have been pre-formatted to automatically calculate information provided and are locked. Owners may view any formulas within the cells. Owners may not insert additional columns or rows to the spreadsheets, unless otherwise stated. If the situation requires additional rows or columns to be added, the Owner should contact the assigned Asset Manager for assistance.
3. All questions are intended to elicit a response; please do not omit any requested information. If formula references are made by the Owner to external spreadsheets, those references must be removed prior to submission to TDHCA, as this may hamper the proper functioning of internal evaluation tools and make pertinent information unavailable to TDHCA.
4. It is important to save a file as it is completed in order to avoid losing information entered.

If there are issues encountered with downloading any of the files from the Department’s website, contact the assigned Asset Manager as identified in the **Delivery Instructions** section of this Manual.

## Instructions for Converting the Excel file to PDF

Once a file is complete and ready to be converted to a PDF, follow these instructions:

**NOTE:** Please perform a *Print Preview* or *Page Break* preview to check all of the page breaks in the Excel files prior to converting it to PDF.

### **Excel 2016 (and later):**

1. With the file open, click the **File** menu.
2. Choose **Save as Adobe PDF**.
3. Choose **Sheets** or **Entire Workbook**. If using **Sheets**, choose each item you would like to convert to PDF by clicking on the item in the **Sheets in Excel** box and clicking **Add**. The item will appear in the **Sheets in PDF** box.
4. Once all items are selected for conversion, click **Convert to PDF**.
5. Save a copy of the PDF file to your computer.
6. Once files are saved in PDF, click on the **Page Thumbnails** icon to look through the document.
7. Make sure to insert bookmarks by selecting the **Bookmarks** icon. Review automatic bookmarks before submitting and edit automatic labels as needed by right clicking and choosing **Rename**.

Remember that there are forms that require a signature. Once you have executed all required documents, those pages should be scanned and re-inserted into the PDF in the original order. ***Do NOT submit hard copy documents to the Department.*** Only electronic format is acceptable. The Development Owner must retain ALL originals that are not submitted to the Department for submittal in the future, should the Department require such information.

## Creating Bookmarks

Once the file has been converted to PDF and all executed forms have been re-inserted into its appropriate location within the file, you will need to create Bookmarks. Bookmarks may or may not have already been created as part of the conversion process. You will need to designate or re-set the locations. To correctly set the Bookmark locations, you must have the PDF file open in Adobe Acrobat. Click on the Bookmark icon located on the left-hand side of the Adobe Acrobat screen, or go to the task bar and select these options in the following order: **View → Navigation Panels → Bookmarks**.

If a Bookmark has already been created for each tab within the Excel file, simply re-set the bookmarks to the correct locations. To re-set the location for the Bookmarks, go to the first page of each separately labeled form/exhibit. You will then right-click on the corresponding Bookmark for the form/exhibit you are currently viewing. Select **Set Destination** and a pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

If Bookmarks were not already created within the Excel file, then you will need to create these Bookmarks. Go to **Document → Add Bookmark**. Right-click on the first Bookmark and re-name it for the appropriate form or exhibit. You will then need to set the location of the Bookmark by going to the first page of each form or exhibit, right click on the corresponding Bookmark and select **Set Destination**. A pop-up box will appear asking you the following: "Are you sure you want to set the destination of the selected bookmark to the current location?" Select **Yes**.

If after conversion of the Excel file to PDF you have extra blank pages of any exhibit, you can delete those pages in order to limit the size of the file. To delete any unnecessary pages, identify the page number(s) you want deleted. On the Adobe Acrobat Task Bar, click on Document and select Delete Pages from the drop down list. A box will appear prompting you to select which page(s) you would like to delete. Enter the page numbers to be deleted and hit OK.

The PDF formatted file must be checked for the following prior to submission:

- ✓ All tabs must be correctly bookmarked
- ✓ Files should average less than 100 kilobytes per page
- ✓ Files must be readable with free PDF file viewers including Adobe Reader and be compatible with Adobe Reader 5.0 and above
- ✓ Files should be saved so that "Fast Web View" (or page at a time downloading) is enabled
- ✓ Text within the PDF file should be searchable using the "Find" command in the PDF viewer

**If you have any questions on using or experience difficulties with the Microsoft Excel based application, contact your Asset Manager.**

# 10% Test (Competitive HTC Only)

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Developments that received a Competitive Housing Tax Credit (9% HTC) Commitment Notice and Carryover Agreement must submit required documentation for the 10% Test to support that, no later than the deadline provided in the applicable Qualified Allocation Plan (QAP) and 10 TAC §10.401(a), expenditures comprising a part of the taxpayer's basis in the Development were incurred in excess of 10% of the total reasonably expected basis.

The deadline for submitting the 10% Test documentation will be identified in both the QAP in effect the year the Application was made and in the Housing Tax Credit Commitment Notice issued to the Development Owner. In general, the 10% Test will be due no later than July 1 of the year following the submission of the Carryover Allocation Agreement or as otherwise specified in the applicable year's QAP under §11.2. Please be sure to check these documents to ensure timely filing of the 10% Test. Should the deadline date fall on a Saturday, Sunday or holiday on which the agency is closed (<https://hr.sao.texas.gov/Holidays>), then the deadline is the business day immediately following the deadline date. This chapter describes the conditions and documentation necessary to satisfy the 10% Test requirement pursuant 10 TAC §10.401(a) of the Rules. The Department may amend any part of this section from time to time as necessary.

The Development name, Development Owner name, and General Partner names used throughout the documents must match the names on file with the Secretary of State and should be the same as indicated in the Application. Do not truncate or abbreviate any part of the name, and punctuate exactly as recorded with the Secretary of State. For example, if the ownership entity name uses the words "Limited Partnership", do not substitute "Ltd." or "L.P."

As Department staff reviews the documentation submitted, the names, calculations, and other specific information in each document must all be reconciled with the corresponding or related information in other documents. Therefore, the instructions in this section should be followed closely. The information presented will be used to verify compliance with the 10% Test.

Please note that the Development Owner is solely responsible for proper and timely delivery of the documentation. Delay in submission by the deadline will result in additional requirements such as extensions and possible fees imposed as a result.

If the deadline cannot be met, an extension accompanied by the appropriate fee must be requested through the Department's Asset Management Division and should be submitted via the submission instructions located below or in this Manual's Introduction. If an extension to the 10% Test submission deadline is needed and not requested 30 days prior to the original deadline, the Owner must pay a \$2,500 extension fee. **NOTE: Any subsequent extension request on the same activity will be charged a fee of \$3,000 for the second request and a fee of \$3,500 for the third request. Fees for each subsequent extension request on the same activity will increase by increments of \$500.**

To ask a question or find the Asset Manager assigned to the Development, please refer to the **Delivery Instructions** section of this Manual.



## Required Forms and Exhibits for the 10% Test

Submission of a 10% Test is required of all awardees of a competitive Housing Tax Credit allocation. Development Owners must use the 10% Test file provided by TDHCA and located on the Asset Management webpage at <https://www.tdhca.texas.gov/post-award-activities-manual>. *A final PDF of the 10% Test file must be submitted to the Department either via the FTP or by email. As noted in the **Delivery Instructions** chapter of this Manual, if the file is uploaded to the FTP, an email notification of the submission must be sent to [asset.management@tdhca.texas.gov](mailto:asset.management@tdhca.texas.gov) or to the Asset Manager assigned to the Development. If the 10% Test documentation is submitted as an attachment to an email, please request confirmation of receipt because the file size may be too large and rejected by the Department's email server firewall. **Do not upload the file to CMTS.***

All documentation stated in this section must be submitted to the Department behind the tabs listed and in the order stated below. If deficiencies are identified, the Department will notify the Development Owner via email. The Development Owner will be given a specific length of time to correct the deficiencies. If the Development Owner does not correct the deficiencies within the time allowed, the Department may terminate the Carryover and the Commitment of the allocation.

There are **nine** electronic tabs in the 10% Test Excel workbook that represent separate spreadsheets for Development Owner use. Note that some tabs in the workbook act as a placeholder for purposes of reminding Development Owners of the unbound documents that must be provided within the 10% Test.

Please note that all of the information outlined below is required as part of the 10% Test documentation. **Also, please remember that hard copies should not be submitted. If any document requires signature, submission of a scanned copy of the fully executed document within the final PDF is acceptable.**

### ❖ **Tab 1: Owner and Development Summary**

- This form must be completed in its entirety. If the Development has previously received approval from the Department regarding any extensions, ownership changes and/or changes to the Development (amendments), please provide a copy of that approval letter behind this tab. If any extensions, ownership changes and/or changes to the Development are being requested at the time the 10% Test is being submitted, please be sure to include the request letter(s) behind this tab.

### ❖ **Tab 2: HTC Commitment Notice, Resolution of Conditions & Carryover Agreement**

- A copy of the fully executed Housing Tax Credit Commitment Notice and Carryover Allocation Agreement must be provided behind this tab.
- If any conditions were required by Commitment Notice or Underwriting Report to be met at 10% Test, include a list of those conditions on the Resolution of Conditions form and provide a resolution for each condition.

**NOTE:** Please do not include a copy of the documentation that was submitted previously at the time Commitment Notice documentation was due. The **only** conditions reflected here should be those that were specifically identified as due at the time of 10% Test, if any.

## ❖ **Tab 3: Independent Accountant's Report & Taxpayer's Basis Schedule**

- A template for the Independent Accountant's Report is provided at the end of this chapter. The report must be submitted by a third party accountant on the accounting firm's letterhead with original signatures. **NOTE: No hard copy is required, only a scanned copy of the fully executed document within the final PDF is required.**
- The report should be addressed to the Development Owner or an Affiliate of the Owner and must include the name, telephone, and email address information of the individual CPA who actually produced the report.
- The report must have an "effective date" that is not later than July 1 of the year following the Department's signature of the Carryover Allocation Agreement. If the Development Owner has previously requested and received Department approval to submit the 10% Test documentation at a date later than July 1<sup>st</sup>, the "effective date" of the Independent Auditor's Report may not be later than the approved extended deadline.
- The "Taxpayer's Basis Incurred" referred to in the report, and all figures referenced in the report, must be consistent with the "10% Test: Taxpayer's Basis Schedule."
- The Taxpayer's Basis Schedule must be completed showing the taxpayer's basis incurred and percentage of total reasonably expected basis incurred. The form must be signed by the Development Owner. **NOTE: If at the time the accountant is reviewing and preparing their report, the accountant has concluded that the taxpayer's reasonably expected basis (TREB) is different from the amount reflected in the Carryover Allocation Agreement (CAA), then the accountant's report should reflect the TREB as of the time the report is being prepared. However, in the event the TREB determined by the accountant is less than the TREB identified in the CAA, the 10% expenditure requirement will be based on the higher TREB identified in the CAA.**

## ❖ **Tab 4: Evidence of Available Utilities**

- For New Construction, Reconstruction, and Adaptive Reuse Developments, a certification from a third party civil engineer or architect stating that all necessary utilities will be available at the site and that there are no easements, licenses, royalties, or other conditions on or affecting the Development which would materially or adversely impact the ability to acquire, develop, and operate as set forth in the Application. Copies of such supporting documents must be provided if requested by the Department.

## ❖ **Tab 5: Fair Housing Certificates**

- Complete the form with the information requested and include it with the certificates for the individuals detailed below. **NOTE: Certifications must not be older than three years from the date of submission of the 10% Test documentation.** Please see <https://www.tdhca.texas.gov/fair-housing-training> for a list of Department approved training providers:
  - A Development Owner (must be an individual that can be identified as part of the ownership structure on the Development Owner's Org Chart) **and** on-site or regional property manager attended and passed Department approved Fair Housing training relating to leasing and management issues for at least five (5) hours. If training was offered in parts or phases, two certificates supplied for the same part or phase will not be counted towards the required five-hour minimum, even if attended on different dates;

- The Development architect of record OR engineer of record responsible for certifying compliance with the Department's accessibility and construction standards attended and passed Department approved Fair Housing training relating to design issues for at least five hours. If training was offered in parts or phases, two certificates supplied for the same part or phase will not be counted towards the required five-hour minimum, even if attended on different dates.

## ❖ **Tab 6: Certifications**

- Development Owner Certification – the Development Owner must complete, execute and notarize this form certifying to compliance with requirements of the Application and the Qualified Allocation Plan in effect at the time the Application was submitted. **NOTE: No hard copy is required, only a scanned copy of the fully executed document within the final PDF is required.**
- Development Architect Certification – the architect of record for the development must complete, execute and notarize this form certifying to representations of the Application, accessibility standards and energy saving devices in accordance with Qualified Allocation Plan in effect at the time the Application was submitted. **NOTE: No hard copy is required, only a scanned copy of the fully executed document within the final PDF is required.**

## ❖ **Tab 7: Evidence of Site Control, Survey and Title Policy**

- Provide evidence that the purchase, transfer, or lease of the land has been completed by way of an executed warranty deed showing the Development Owner as grantee, or a copy of the executed lease between the landowner and Development Owner with a minimum 45-year term. The executed deed and lease or Memorandum of Ground Lease, if applicable, must show receipt by county clerk.
- Include a copy of the current survey or recorded plat of the land, prepared and certified by a duly licensed Texas Registered Professional Land Surveyor. The survey or plat must clearly delineate the flood plain boundary lines and show all easements and encroachments.
- Provide a current owner's title policy for the development site. The title policy should reflect the name of the Development Owner. For purposes of this section, a title commitment, lender's pro forma policy, or abstract is not acceptable. **NOTE: The Development Site must be identical to the Development Site that was submitted at the time of Application submission. Any changes to the Development Site acreage between the time of Application and 10% Test submission must be addressed by written explanation or, as appropriate, in accordance with Amendment requirements in 10 TAC §10.405. If the documentation submitted to verify site control is based on a recorded plat that cannot be used to confirm the acreage, please submit a copy of the recorded plat along with the other requested documentation.**

## ❖ **Tab 8: Certification from Lender and Syndicator**

- Provide certifications from both the lender(s) and syndicator identifying all Guarantors known at the time of submission of 10% Test. No specific format is required, as long as both the lender(s) and syndicator provide the information requested. **NOTE: If identified Guarantors have changed from the time of Application, a Non-Material Amendment Request may need to be submitted in accordance with §10.405(a)(3)(C) of the Rules. Additional documents needed are listed in the Application Amendments section of this Manual. However, changes in Guarantors with no new Principals (i.e., all Principals were previously checked by**

Previous Participation Reviews at Application) will be processed as Notification Items under 10 TAC §10.405(a)(2)(E).

❖ **Tab 9: Compliance Monitoring & Tracking System (CMTS)**

- Provide evidence that the required CMTS Filing Agreement has been submitted to the Compliance Division. The form can be located on the website below. Note that submission of this form within the 10% Test package is not acceptable; the form must be submitted directly to the Compliance Division as instructed on the form.
  - <https://www.tdhca.texas.gov/compliance-monitoring-tracking-system>

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## Independent Accountant's Report Template

To: Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701  
and  
\_\_\_\_\_(Owner)  
(Owner Address)  
(Owner City, State, Zip)

RE: Housing Tax Credit 10% Test  
\_\_\_\_\_(Development)  
\_\_\_\_\_(TDHCA #)  
\_\_\_\_\_(Owner)

We have audited the accompanying certification of costs incurred in the "10% Test: Taxpayer's Basis Schedule" (the Basis Schedule) of the Owner of \_\_\_\_\_ (Development) as of \_\_\_\_\_ (month, day and year), which is the "Effective Date" of this letter. The Basis Schedule is the responsibility of the Owner and the Owner's management. Our responsibility is to express an opinion about the entries the Basis Schedule based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Basis Schedule is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the Basis Schedule. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the information in the Basis Schedule. We believe that our audit provides a reasonable basis for our opinion.

The presentation in the Basis Schedule was prepared in conformity with the accounting practices prescribed by the Internal Revenue Service under the accrual method of accounting and by the Texas Department of Housing and Community Affairs (the Department), which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the Basis Schedule, referred to above presents fairly, in all material respects, costs incurred for the Development as of the Effective Date, on the basis of accounting described above.

In addition to auditing the entries in the Basis Schedule, we have, at your request, performed certain agreed-upon procedures, as enumerated below, with respect to the Development. These procedures, which were agreed to by the Owner and the Department, were performed to assist you in determining whether the Development has met the 10% test in accordance with Internal Revenue Code Section 42(h)(1)(E) and Treasury Regulation Section 1.42-6. These agreed-upon procedures were performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the specified users of the report. Consequently, we make no representations regarding the sufficiency of the procedures below either for the purpose for which this report has been requested or for any other purpose.

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We performed the following procedures as of the Effective Date unless another date is stated:

- We calculated, based on estimates of total development costs provided by the Owner, the Development's total reasonably expected basis, as defined in Treasury Regulation Section 1.42-6, to be \$\_\_\_\_\_.
- We calculated the reasonably expected basis incurred by the Owner to be \$\_\_\_\_\_.
- We calculated the percentage of the development fee incurred by the Owner to be % of the total development fee.
- We compared the reasonably expected basis incurred to the total reasonably expected basis of the Development, and calculated that\_\_\_\_\_% had been incurred.
- We determined that the Owner uses the accrual method of accounting, and has not included any construction costs in carryover allocation basis that were not properly accrued.
- Based on the amount of total reasonably expected basis listed above, for the Owner to meet the 10% test in accordance with the Internal Revenue Code Section 42(h)(1)(E) and Treasury Regulation Section 1.42-6, we calculated that the Development needed to incur at least \$\_\_\_\_\_of costs on or before the Effective Date. As of the Effective Date, costs of at least \$\_\_\_\_\_had been incurred, which is approximately\_\_\_\_\_% of the total reasonably expected basis of the Development.

We were not engaged to, and did not perform an audit of the Owner's financial statements or of the Development's total reasonably expected basis. Accordingly, we do not express an opinion on the two items just named. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Owner and the Owner's management and for filing with the Department and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes.

\_\_\_\_\_  
*Signature of Principal of Accounting Firm*

\_\_\_\_\_  
*Date*

Contact Person for questions about this report: Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

# Construction Status Report (All Multifamily Developments)

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All multifamily developments must submit a construction status report in accordance with 10 TAC §10.401(b) of the Rules. Construction status reports begin at the following points in time for each type of Development:

- For Competitive Housing Tax Credit (9% HTC) Developments, the initial report must be submitted no later than **October 10<sup>th</sup> following the year of award** (this includes Developments funded with HTC and TDHCA Multifamily Direct Loans),
- For Tax Exempt Bond (4% HTC) Developments, the initial report must be submitted as part of the **Post Bond Closing Documentation** due no later than **60 calendar days following closing on the bonds** as described in §11.906(d) of the QAP,

**Note:** For Tax Exempt Bond (4% HTC) Developments, the Development Owner should note on the cover sheet for Tab 4: Item (3) - Application and Certificate for Payment (AIA G702 and G703) and/or Tab 5: Item (4) - Construction Inspection Reports if there have been no draws and/or inspections at the time the initial CSR is submitted with the Post Bond Closing Documentation. All subsequent construction status reports must include the required information for Tabs 4 and 5.

- For Multifamily Direct Loan program Developments (HOME, HOME-ARP, NHTF, NSP, TCAP-RF programs), the initial report must be submitted no later than **90 calendar days after loan closing**.

Construction status reports are due by the 10<sup>th</sup> day of the month following each reporting quarter's end:

- **April 10<sup>th</sup>** (Reporting for January – March)
- **July 10<sup>th</sup>** (Reporting for April – June)
- **October 10<sup>th</sup>** (Reporting for July – September)
- **January 10<sup>th</sup>** (Reporting for October – December)

The submission of construction status reports will continue on a quarterly basis until the entire development is complete as evidenced by one of the following:

- Certificates of occupancy (or temporary certificates) for each building; or
- The Architect's Certificate(s) of Substantial Completion (AIA Document G704) for the entire development; or
- The final Application and Certificate of Payment (AIA Documents G702/G703), or an equivalent form approved for submission by the construction lender and/or investor.

Please note that the Development Owner is solely responsible for proper and timely delivery of the documentation. An extension of the deadline may be requested 30 days in advance of the deadline without incurring a fee. *Each construction status report received after the applicable deadline will incur a \$2,500 extension fee. The incurred extension fees will be accrued and must be paid prior to receipt of Forms 8609.*

## Required Forms and Exhibits for Construction Status Report

Submission of a construction status report is required for ALL multifamily developments, regardless of the funding source. *A complete PDF of the Construction Status Report must be submitted to the FTP to the Application folder used at initial Application submission.*

After the file is uploaded to the FTP, an email notification of the submission must be sent to [asset.management@tdhca.texas.gov](mailto:asset.management@tdhca.texas.gov) or to the Asset Manager assigned to the Development as noted in the **Delivery Instructions** section of this Manual. Submission of the construction status report via email is not recommended and could result in a missed deadline because the file size may be too large and rejected by the Department's email server. **Do not upload the file to CMTS.**

All documentation stated in this section must be submitted to the Department behind the tabs listed and in the order stated below. Any deficiencies identified through the review process will be sent to the Development Owner via email.

There are six items required to be submitted in the Construction Status Report. Items (1) – (6), described below, are required to be submitted in the initial report. All subsequent reports shall contain only items identified in (4) - (6), unless changes to the original submissions of items (1) – (3) have occurred, in which case such amendments shall also be submitted with the subsequent report.

❖ **Tab 1: Item (1)- Partnership Agreement**

Provide a copy of an executed partnership agreement with the investor or (for non-HTC developments) other documents setting forth the legal structure and ownership.

**NOTE:** If Developers and/or Guarantors were not identified at Application or are new from the time of Application and were not previously identified as a Principal of the Owner, Developer, or Guarantor at Application, see the Non-Material Amendment section of this Manual. For new Principals or entities to the ownership structure, see Ownership Transfers.

❖ **Tab 2: Item (2)- Construction Contract for the GC, Prime Subs, and Affiliates or Related Party Subs**

Provide a copy of an executed construction contract for the General Contractor, prime subcontractor(s), and Affiliates or Related Party subcontractor(s);

❖ **Tab 3: Item (3) – Construction Loan Agreement**

The construction loan agreement. If the loan has not closed, the anticipated closing date must be provided, and upon closing, the agreement must be provided to the Department;

❖ **Tab 4: Item (3)- Application and Certificate for Payment (AIA G702 and G703)**

Provide a copy of the most recent Application and Certificate for Payment (AIA G702 and G703) certified by the Architect of Record for the General Contractor, prime subcontractor(s), and Affiliates or Related Party subcontractor(s) (or equivalent forms



approved for submission by the construction lender and/or investor);

❖ **Tab 5: Item (4)- Construction Inspection Reports**

Provide all Third Party construction inspection reports received to date not previously submitted. Third Party construction inspection reports must include, at a minimum, the date construction started (initial submission only), a discussion of site conditions as of the date of the site visit, current photographs of the construction site and exterior and interior of buildings, an estimated percentage of construction completion as of the date of the site visit, identification of construction delays and other relevant progress issues, if any, and the anticipated construction completion date; and

**NOTE:** If the lender and/or investor require their own Third Party inspections and will not provide the reports to the Development Owner, the Department will accept the reports directly from the lender and/or investor provided the reports include the required information noted above and in §10.401(b)(5) of the Rules. However, it remains the Development Owner's responsibility to ensure the lender and/or investor submits their reports timely to the Department. If the lender and/or investor will not submit the inspection reports to the Development Owner, or the reports do not contain the required information, the Development Owner must hire a Third Party inspector to perform the inspections on a quarterly basis and submit the reports to the Department.

❖ **Tab 6: Item (5)- Minority Owned Business Reports (HTC Only)**

Provide a 90 day report as required by Tex. Gov't Code §2306.6734 showing the Owner's attempt to ensure that at least 30% of the construction and management businesses with which the Owner contracts in connection with the development are minority-owned businesses. Minority Owned Business is defined as a business entity that is 51% owned by members of a minority group and that is managed and controlled by members of a minority group in its daily operations. Tex Gov't Code identifies a "minority group" as: a) women, b) African Americans, c) American Indians, d) Asian Americans, and e) Mexican Americans and other Americans of Hispanic origin. Owners should complete and submit the form titled "Minority Owned Business Report (HTC Only)". Back up documentation for numbers reported on the form should be kept in the Development's or Owner's files but do not need to be submitted with the form unless requested by the Department.

**NOTE:** The submission of the final construction status report must include the final Minority Owned Business report.

# Land Use Restriction Agreement (LURA) Origination (HTC Only)

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Development Owners must provide a copy of the fully executed, recorded HTC LURA to the Department no later than the end of the first year of the Credit Period as noted in 10 TAC §10.401(c)(1) of the Rules. Using the process identified in the “Delivery Instructions” section of this manual, the Development Owner must submit a request by September of the first year of the Credit Period to initiate the drafting of an HTC LURA for their subject Development. The Department will generate a Land Use Restriction Agreement (LURA) for the Development Owner that will impose the income and rent restrictions identified in the Development’s final underwriting report and other representations made in the Application, including but not limited to, specific commitments to provide tenant services, to lease to Persons with Disabilities and/or to provide specific amenities.

Requests for LURA origination must include the required information below and ***SHOULD BE SUBMITTED NO LATER THAN OCTOBER 1<sup>ST</sup> TO ENSURE THERE IS SUFFICIENT TIME TO PREPARE, EXECUTE, AND RECORD THE DOCUMENT BY THE END OF THE YEAR.*** The internal drafting of this document may take up to 30 days (or longer if an Application amendment is required or a HUD Rider is requested in conjunction with information submitted at the time of the request) and includes ongoing communication with the Development Owner. Upon receipt of the LURA, the Development Owner is responsible for coordinating with all existing lien holders to execute the document and recording it in the county where the Development is located.

Once completed, a copy of the fully executed and recorded LURA must be returned to the Department **no later than the end of the first year of the Credit Period**, in order to avoid issues of noncompliance. In accordance with Section 42(h)(6) of the Internal Revenue Code, IRS Forms 8609 for the allocation of Housing Tax Credits are not allowed to be issued for a building unless there is a properly executed and recorded LURA in effect at the end of the first year of the Credit Period.

## Required Information for LURA Origination

Development Owners must use the LURA Origination file provided by TDHCA and located on the Asset Management webpage (<https://www.tdhca.texas.gov/post-award-activities-manual>). *A final PDF of the LURA Origination file must be submitted to the Department either via the FTP or by email as identified in the **Delivery Instructions** section of this Manual.*

All documentation stated in this section must be submitted to the Department behind the tabs listed and in the order stated below. If deficiencies are identified, the Department will notify the Development Owner via email. The Development Owner will be given a specific length of time to correct the deficiencies. If the Development Owner does not correct the deficiencies within the time allowed,

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the Department may terminate the request.

There are **12** electronic tabs in the LURA Origination workbook that represent separate spreadsheets for Owner use. Note that some tabs in the workbook act as a placeholder for purposes of reminding Owners of the unbound documents and Word version files that must be provided with the LURA Origination request package.

❖ **Instructions**

This tab only provides guidance for submitting the LURA Origination Request package and for identifying the Asset Manager assigned to a Development. This is the only tab that should NOT be submitted with the request package.

❖ **Tab 1: Dev. Info**

The information provided in this form, including the contact information for the Development Owner, will be used to draft the LURA. If the Development received points for a Right of First Refusal (ROFR) and the Development Owner would like to name a Qualified Entity or tenant organization that will have the first right of refusal, provide the name of the entity or organization. *(Please note that naming a Qualified Entity or tenant organization is optional and not required to be identified for the ROFR.)*

❖ **Tab 2: Signature Block**

In this form, identify the signature block for the Development Owner. If the format of the signature block in the top half of the form is not applicable, the bottom half of the form can be used to complete the signature block as needed. Note that the signature block identified will be checked against filing certificates entered with the Secretary of State. Resolutions or company agreements will be required to substantiate signature authority in the event of changes or discrepancies.

❖ **Tab 3: Signature Authority**

In the event of changes or discrepancies with the filing certificates entered with the Secretary of State, documentation such as a Resolutions or company agreements must be submitted behind this tab to substantiate the signature authority identified in Tab 2.

❖ **Tab 4: Name of Lienholder(s)**

Provide the name of lienholder(s) for the Consent and Subordination of Lienholder form. *NOTE: Only the lenders that have closed with the Development Owner and currently have a lien on the property should be identified as a lienholder.*

❖ **Tab 5: Leasehold Estate**

This form is only required if the deal is structured with a Ground Lease Agreement. The landowner will be required to execute a Joinder of Owner of Fee Title in Declaration that will be included in the LURA. If applicable, provide a copy of the Ground Lease Agreement and identify the signature block for the fee estate (land) owner. If the top half of the form is not applicable, the bottom half of the form can be used to complete the signature block as needed.

❖ **Tab 6: Legal Description**

The legal description for the Development **must be provided in a Word document** and submitted with the LURA Origination Request. The legal description must match the legal description at Application or a subsequent approved amendment or notification request. If

the legal description has changed from the description previously identified, the recorded plat must be provided. If the recorded plat cannot be provided, then a current survey that supports the legal description submitted in the Word document must be provided.

❖ **Tab 7: Permitted Encumbrances and Exceptions**

The permitted encumbrances and exceptions to be included in the LURA as found in Schedule B of the Owner's Title Policy for the Development **must be provided in a Word document** and submitted with the LURA Origination Request. If changes have occurred from the time of loan closing, submit an updated Nothing Further Certificate or Down Date that identifies the additional permitted encumbrances, easements, ground leases, or other recorded documents that should also be included in the LURA. These additional encumbrances and exceptions to the title **must also be provided in a Word document**.

❖ **Tab 8: Accessible Units**

This form must identify the Development's unit numbers to be designated for mobility accessibility and hearing or visual impairment accessibility. Additionally, the Unit Type, Net Rentable Area (NRA), and Building Number for each accessible unit must be identified.

**NOTE:** Specific questions related to accessible unit distribution or accessibility standards should be directed to Compliance Division's Physical Inspections staff. Their contact information is located here: <https://www.tdhca.texas.gov/compliance-division-staff>.

❖ **Tab 9: BINs (Building Identification Number(s))**

This form must identify each residential Building Number and its corresponding Building Identification Number (BIN). The BIN range to be used is issued in the Carryover Allocation Agreement or Determination Notice.

❖ **Tab 10: Applicable Fractions**

This form must identify the total units located in each BIN/Building Number, total market rate units (if applicable), total square footage of the Building, and total square footage of the market rate units (if applicable). The form will automatically calculate the Minimum Applicable Fraction based on the information entered for each BIN/Building. The minimum Applicable Fraction to be recorded in the LURA will reflect the lesser of the unit fraction (HTC Units/Total Units) or square footage fraction (HTC sq. ft./Total sq. ft.). *(NOTE: If additional lines are needed on this form, unhide rows 31 through 232 in the worksheet. The unused additional rows should be hidden again prior to printing the Tab.)*

❖ **Tab 11: HUD Rider (or HUD Amendment to Restrictive Covenants)**

Complete this form if the lender will require a HUD Rider or a HUD Amendment to Restrictive Covenants to be originated with the Development's LURA. Select on the form which option the lender prefers:

- (1) An Addendum G – HUD Rider to Restrictive Covenants (HUD Rider) to the originated LURA (which means it will be incorporated into the LURA draft at the time the LURA is initially drafted), or
- (2) A HUD Amendment to Restrictive Covenants (which means the LURA should first be recorded). The document must be submitted on the Department approved template in accordance with §10.402(b) of the Rules. Please contact the assigned Asset Manager to obtain the current approved template.

Complete the information on the form and provide a copy of the HUD document securing the loan (Security Instrument) that identifies the document number and the recording information that is required to be identified in the HUD Rider. If a HUD Amendment to Restrictive Covenants is selected, the approved template for this document must be completed and submitted.

**NOTE:** Additional time will be required for or Legal Division to review and approve the HUD Rider or Amendment to the Restrictive Covenants document. Therefore, if a request for the document is submitted less than 30 days prior to the end of the year, the Department may advise the Owner to speak with their lender about recording the LURA without the Rider and then submitting a request for a HUD Amendment to the Restrictive Covenants after the LURA is recorded.

❖ **Tab 12: Target Populations**

If the Development has an Elderly Limitation, Elderly Preference, or any other preferences or limitations in its tenant selection criteria, complete this form and provide the applicable documentation that identifies and/or supports the preferences or limitations.

**NOTE:** In accordance with 10 TAC §10.802(b)(2), allowed preferences or tenant selection criteria must be identified in a LURA. Therefore, additional time will be required for the Department's Legal Division to review the documentation provided to support a preference or tenant selection criteria and the language required for the Development's LURA.

Any discrepancies noted at the time of LURA origination must be resolved prior to issuing the drafted document. This can greatly increase the timing needed for LURA origination, particularly in cases where a material application amendment is warranted. Also note that any information submitted on behalf of the Owner that is incorrect (such as accessible unit information or unit square footages that make a change in the applicable fraction) can result in the need for LURA amendment later, which requires a fee. Owners are encouraged to review ALL documentation to be sent to TDHCA for origination of the LURA to ensure it is accurate before a final draft LURA is released.

A complete draft of the LURA will be emailed to the Owner for review prior to obtaining the Department's authorized signature. After all parties have approved the draft, staff will route the LURA for Department signatures and will mail the original document to the Owner. The Owner must execute the LURA, collect the executed lienholder pages, and record the fully executed document, including all exhibits and addendums, in the real property records for the county in which the Development is located. A copy of the recorded LURA must be returned to the Department by no later than the end of the first year of the Credit Period. For example, if the Development plans to place one or more buildings in service and claim credits on one or more buildings during the 2024 year, the LURA must be recorded and submitted to the Department by no later than December 31, 2024.

# Amendments to Application (All Multifamily Developments)

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Requests for amendments to Housing Tax Credit Application or Award prior to the recording of a LURA, or amendments that do not result in a change to the LURA, must be submitted in writing to Asset Management following the instructions in the **Delivery Instructions** section of this Manual.

Amendments to the Application will only be processed if non-compliance or outstanding payment is resolved to the satisfaction of the Department as required under 10 TAC §10.405(a)(6). The Department will not approve changes that would violate state or federal laws. If the written request from the Development Owner is submitted via email and the request is material, or if the request is non-material but has already been implemented, it should be accompanied by a copy of the amendment fee check. The required amendment fee must be submitted in accordance with 10 TAC §11.901(10).

The written amendment request must specify the following:

- The change(s) requested;
- The reason the change is necessary;
- The good cause for the change;
- If financial information has changed or if it is reasonable to assume that the amendment will have a financial impact on the Development, updated financial exhibits to the application or a statement of no financial impact; and
- An explanation of whether the necessity of the amendment was reasonably foreseeable at the time of Application;

The Asset Manager will evaluate the amendment request and determine if the change constitutes a notification, requires Executive Director or designee approval, or is a change that must be approved by the TDHCA Board. Additional information may be requested by Department staff in order to properly evaluate the request.

## Notification Items

Notification items, which may be administratively approved by the Asset Management Division, include (but are not limited to) the following:

- Changes to Development site acreage required by the City of other local governmental authority, or changes resulting from survey discrepancies, as long as such change does not also result in a modification to the residential density of more than 5%;
- Minor modifications to the site plan that will not significantly impact development costs, including but not limited to, relocation or rearrangement of buildings on the site (as long as the number of residential and non-residential buildings remain the same), and movement, addition, or deletion of ingress/egress to the site;

- Increases in net rentable square footage or common areas or decreases in net rentable square footage or common areas of less than 3% that do not result in a material amendment under 10 TAC §10.405(a)(4);
- Changes in amenities that do not require a change to the recorded LURA and do not negatively impact scoring, including changes to outdated amenities that could be replaced by an amenity with equal benefit to the resident community;
- Changes in Developers or Guarantors for the addition of new Principals previously checked by Previous Participation review at the time of Application that also do not result in the removal of all persons used to meet the experience requirement in 10 TAC §11.204(6) (notifications for changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period are not required) – such requests should include before and after org charts and any copies of draft or executed agreements verifying the changes;
- Any other amendment not identified as non-material or material.

Notification items will not be required to pay an amendment fee. If, at the time of the Department's review, the notification item is determined to require Executive Director or Board approval, the applicable amendment fee must be paid in accordance with 10 TAC §11.901(10).

Upon determination that the change meets the description of a notification item under 10 TAC §10.405(a)(2), correspondence will be sent to the Owner acknowledging the specific change(s) of which the Department was notified and filed for future reference. Submit documentation with notification items as applicable to verify the information in the request (e.g., pre and post transfer org charts and agreements for changes in Developers or Guarantors, prior and current site plans, documentation of City or local government required changes to the site acreage, etc.)

## Non-Material Application Amendments

All non-material Application amendments may be administratively approved by the Executive Director or designee. In general, a non-material Application amendment includes the following:

- Any alteration or change in items as represented in the Application that is not considered a notification item under §10.405(a)(2) or material amendment under §10.405(a)(4) and Texas Government Code §2306.6712;
- Changes to Developers or Guarantors where such changes include the addition of new entities or Principals not previously checked by Previous Participation review at the time of Application (excluding changes in Guarantors that are also the General Contractor or are only providing guaranties during the construction period). Changes in Developers or Guarantors will be subject to Previous Participation review requirements as described in 10 TAC §11.204(13) and (for HTC 9% deals) the credit limitation described in 10 TAC §11.4(a). For these changes, the following additional items should be submitted:
  - Pre and post change organization charts for the Developer and/or Guarantor;
  - Previous Participation forms for each new entity and person coming into the Developer and/or Guarantor structures (Can be found in the Ownership Transfer packet);
  - Any agreements pertaining to the change (guaranty agreements, amendments to the LPA, or development agreements); and
  - For 9% HTC Developments only, a Credit Limit Certification Form (Can be found in the Ownership Transfer packet)
- For Exchange Developments only, requests to change elections made on line 8(b) of the IRS

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Form(s) 8609 to group buildings together into one or more multiple building projects. The request must include an attached statement identifying the buildings in the project and can only be made once during the Compliance Period.

Non-material amendment requests that have not been implemented will not be required to pay an amendment fee. If, at the time of the Department's review, the non-material request is determined to be material or the change has been found to have occurred prior to Department approval, an amendment fee will be required in accordance with 10 TAC §11.901(10).

Upon approval of the amendment, a letter will be sent to the Owner and filed for future reference. Amendment requests may be denied if the score would have changed the allocation decision or if the circumstances were reasonably foreseeable and preventable at the time the Application was submitted, unless good cause is found for the approval of the amendment.

## Material Application Amendments

Regardless of the development stage, all material Application amendments must be approved by the Board. Material Application amendment requests must be received by the Department with all required documentation for staff's review **at least forty-five (45) calendar days prior to the Board meeting in which the amendment will be considered**. A calendar of the meetings and deadlines is posted on the Department's website on the Post Award Activities Manual page located at <https://www.tdhca.texas.gov/post-award-activities-manual>. Before the fifteenth (15th) day preceding the date of the meeting, notice of the amendment and staff recommendation will be posted on the Department's website on the Asset Management Announcements page located at <https://www.tdhca.texas.gov/asset-management-announcements> as required by Tex. Gov't Code §2306.6717(a)(4).

The Board shall re-evaluate any Development that undergoes a substantial change or material alteration as described in §10.405(a)(4) and Texas Government Code §2306.6712. This includes but is not limited to:

- a) a significant modification of the site plan;
- b) a modification of the number of units or bedroom mix of units;
- c) a substantive modification of the scope of tenant services;
- d) a reduction of 3% or more in the square footage of the units or common areas;
- e) a significant modification of the architectural design of the Development;
- f) a modification of the residential density of at least 5%;
- g) a request to implement a revised election under §42(g) of the Code prior to filing of IRS Form(s) 8609;
- h) exclusion of any requirements relating to Site and Development Restrictions and Requirements, Submission Requirements, Ineligibility Criteria, Board Decisions and Waiver of Rules in the Qualified Allocation Plan (QAP); or
- i) any other modification considered material by the staff and therefore required to be presented to the Board as such.



After the amendment is presented, the Asset Manager will send a final Board Summary Report to the Owner with notification of the Board's decision. Amendment requests will be denied if the Board determines that the requested modification proposed in the amendment would materially alter the Development in a negative manner, would have adversely affected the selection of the Application in the award cycle, or if the need for the proposed modification was reasonably foreseeable or preventable by the Applicant at the time the Application was submitted, unless good cause is found for the approval of the amendment.

## Material Application Amendments - Requests to Reduce Low-Income Units

In addition to the material Amendment requirements and procedures noted in the section above, if the Development Owner requests a reduction in the total number of low-income units or a reduction in the number of low-income units at any rent or income level, as approved by the Board at the time of award, the additional items will be necessary as directed below:

For amendment requests to implement (the Owner intends to rent to a household at an income or rent level that exceeds the approved AMI limits established by the set-aside election within the Development's Application or LURA) a revised election under §42(g) of the Code prior to an Owner's submission of IRS Forms 8609 to the IRS:

- a) Updated information and revised financial exhibits to the Application reflecting the proposed changes in rent and income limits (and any additional exhibits requested by the Department);
- b) Written acknowledgement from ALL lenders and the syndicator that they are aware of the changes being requested and confirmation of any changes in terms as a result of the new election from any party.

For all other Amendment Requests for reductions in the total number of low-income units or the number of low-income units at any rent or income level:

- a) Evidence supporting the need for the reduction in units;
- b) If prior to issuance of IRS Forms 8609 by the Department, written confirmation from the lender(s) and syndicator that the Development is infeasible without the adjustment;

Affirmative recommendations to the Board will be contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development.

If it is determined by the Department that the loss of low-income targeting points would have resulted in the Application not receiving an award in the year of allocation and the amendment is approved by the Board, a penalty will be assigned that prohibits the Applicant and all Persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator) from participation in the Housing Tax Credit Program (for both Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for twenty-four (24) months from the time that the amendment was approved.

## Amending the LURA after Application Amendment

There may be situations when the approval of an Application amendment requires a LURA amendment as well. After the Application amendment is approved by the Board or Executive Director, the Asset Manager will begin the process of drafting the LURA amendment as approved. Refer to the **Amendments to the LURA** section of this Manual for more information.

# Amendments to the LURA (All Multifamily Developments)

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Requests for amendments to Housing Tax Credit LURA must be submitted in writing to Asset Management following the instructions in the **Delivery Instructions** section of this Manual.

Department approval shall be required for any amendment to a LURA. Requests for a Material LURA amendment must be submitted **at least 45 days prior to the Board meeting at which the LURA amendment will be considered**. Additionally, the Development Owner must provide reasonable notice and hold a public hearing regarding the requested amendment(s) **at least 20 business days** prior to the scheduled Board meeting where the request will be considered. Non-Material LURA Amendments should be submitted as directed in the **Delivery Instructions** section of this Manual. LURA Amendments will only be processed if non-compliance or outstanding payment is resolved to the satisfaction of the Department as required under 10 TAC §10.405(b). The Department will not approve changes that would violate state or federal laws as stated in 10 TAC §10.405(b).

## All LURA Amendments

In accordance with 10 TAC §10.405(b), all requests to amend an existing and recorded LURA for a Development, whether non-material or material, must be submitted in writing to Asset Management and be accompanied by the applicable amendment fee pursuant to 10 TAC §11.901(10). The request should specify the following:

- The change(s) requested;
- The reason the change is necessary;
- The good cause for the change;
- If financial information has changed or if it is reasonable to assume that the amendment will have a financial impact on the Development, updated financial exhibits to the application or a statement of no financial impact; and
- An explanation of whether the necessity of the amendment was reasonably foreseeable at the time of Application.

The Department may request additional information such as a Market Study or appraisal to evaluate the request if it determines such items are necessary based on the nature of the request, which shall be at the expense of the Development Owner.

Once the LURA Amendment is drafted, the Asset Manager will send a copy to the Development Owner for review prior to obtaining the Department's authorized signature. Upon the Development Owner's review and approval, the original LURA Amendment will be signed and mailed to the Development Owner. The Development Owner must execute the LURA Amendment and have the fully executed document and all exhibits and attachments recorded in the real property records for the county in which the Development is located. A copy of the recorded document must be returned to the Department.

## Non-Material LURA Amendments

All non-material amendments to the LURA may be administratively approved by the Executive Director or designee. Development Owners that request to amend an existing and recorded LURA for a non-material change (any change to the LURA that is not considered a material amendment) should submit their request in writing to Asset Management with the information above and the Amendment Fee, if the requested change has been implemented. A fee will not be required for a first amendment to the LURA if the change is non-material and has not been implemented. Subsequent amendments to the LURA will require the amendment fee in accordance with 10 TAC §11.901(10).

Non-material LURA amendments include but are not limited to the following:

- HUB removals after the issuance of 8609s. The request must include:
  - Evidence that the HUB is requesting removal of its own volition or is being removed as the result of a default under the organizational documents of the Development Owner (a copy of the HUB's agreement to withdraw, letters of notification of default and/or removal, etc.);
  - A statement addressing that participation by the HUB has been substantive and meaningful, or would have been had the HUB not defaulted under the organizational documents of the Development Owner (discussions should include realized financial benefit and acquisition of skills relating to the ownership and operation of affordable housing);
  - Where the HUB will be replaced as a general partner or special limited partner and will sell its ownership interest, an ownership transfer request must be submitted simultaneously with such request as described in 10 TAC §10.406;
- Changes resulting from a Department work out arrangement as recommended by the Department's Asset Management Division;
- A change in the Right of First Refusal period as described in amended §2306.6726 of the Tex. Gov't Code;
- A de minimis modification of the Unit Mix or bedroom mix of Units to increase the Development's accessibility that has been approved by the Board;
- A bifurcation of the term of a HOME or NSP LURA with the Department that requires a longer affordability period than the minimum federal requirement, into a federal and state affordability period if it is determined that bifurcation is in accordance with HOMEfires, Vol. 17 No. 1 (January 2023, as may be amended from time to time);
- Corrections of errors.

Once the LURA amendment is drafted, the Asset Manager will send a copy to the Development Owner for review prior to obtaining the Department's authorized signature. Upon the Development Owner's review and approval, the original LURA amendment will be signed and mailed to the Development Owner. The Development Owner must execute the LURA amendment and have the fully executed document and all exhibits and attachments recorded in the real property records for the county in which the Development is located. A copy of the recorded document must be returned to the Department.

## Material LURA Amendments

All material amendments to the LURA must be considered and approved by the Board. Material LURA amendment requests must be received by the Department **at least forty-five (45) calendar days prior to the Board meeting in which the amendment will be considered**. A calendar of the meetings and deadlines are posted on the Department's website on the Post Award Activities Manual page located at <https://www.tdhca.texas.gov/post-award-activities-manual>. Before the fifteenth (15th) day preceding the date of the meeting, notice of the amendment and staff recommendation will be posted on the Department's website on the Asset Management Announcements page located at <https://www.tdhca.texas.gov/asset-management-announcements> as required by Tex. Gov't Code §2306.6717(a)(4).

Material Amendments to the LURA include requests for:

- Reductions in the number of low-income units;
- Changes to the income or rent restrictions;
- Changes to the Target Population;
- The removal of material participation by a Nonprofit Organization as further described in §10.406 of the Post Award and Asset Management Requirements Rules (Rules);
- The removal of material participation by a HUB prior to filing of IRS Form(s) 8609;
- Any amendment that affects a right enforceable by a tenant or other third party under the LURA; or
- Any LURA amendment deemed material by the Executive Director.

Note that if any of the changes described above are the result of a Department work out arrangement or loan modification or other condition recommended by the Department's Asset Management Division, it will not be considered a material amendment to the LURA and will not require Board approval.

Prior to taking a material LURA amendment to the Board for consideration, the following procedures must occur:

❖ **Submit a Written Request w/Supporting Documentation**

A written request from the Development Owner must be submitted and accompanied by the applicable Amendment Fee. Requests for reductions in the number of low-income units or requests for changes to income or rent restrictions must also include the following items:

For Amendment Requests to implement a revised election (the Owner intends to rent to a household at an income or rent level that exceeds the approved AMI limits established by the set aside election within the Development's Application or LURA) under §42(g) of the Code prior to an Owner's submission of IRS Forms 8609 to the IRS:

- a) Updated information and revised financial exhibits to the Application reflecting the proposed changes in rent and income limits (and any additional exhibits requested by the Department);
- b) Written acknowledgement from all lenders and the syndicator that they are aware of the changes being requested and confirmation of any changes in terms as a result of the new election from any party.

For all other Amendment Requests for reductions in the total number of low-income

units or the number of low-income units at any rent or income level:

- a) Evidence supporting the need for the reduction in units;
- b) If prior to issuance of IRS Forms 8609 by the Department, written confirmation from the lender(s) and syndicator that the Development is infeasible without the adjustment;

Affirmative recommendations to the Board will be contingent upon concurrence from Department staff that the Unit adjustment is necessary for the continued financial feasibility of the Development.

## ❖ **Notice and Public Hearing**

***The Development Owner must provide notice of the requested change and hold a public hearing regarding the requested change at least twenty (20) business days prior to the scheduled Board meeting where the request will be considered.*** A copy of the notifications to be provided should be submitted with amendment materials submitted 45 days prior to the Board meeting. If a LURA amendment is being requested prior to issuance of Forms 8609, notification must be provided to all parties listed below; if the LURA amendment is requested after issuance of Forms 8609, notification must be provided to only the first two recipients below (i.e., Each tenant of the Development and the current lenders and investors). If the LURA amendment is requested after issuance of Forms 8609, notification must be provided to only the first two recipients below (i.e., each tenant of the Development and the current lenders and investors).

The notice must be provided to the all of the following parties:

### *If prior to issuance of Forms 8609:*

- Each tenant of the Development;
- Current lender(s) and investor(s);
- State Senator and State Representative for the district containing the Development; and
- The chief elected official for the municipality (Mayor) if located in a municipality, or the county commissioners, if located outside of a municipality.

### *If after issuance of Forms 8609:*

- Each tenant of the Development;
- Current lender(s) and investor(s);

Sample templates of public notices are provided at the end of this chapter to assist the Development Owner. Regardless of whether sample templates are used, the notice must include, at a minimum, all of the following information:

- The Development Owner's name, address, and an individual contact name and phone number;
- The Development name, address, and city;
- The change(s) requested; and
- The date, time, and location of the public hearing where the change(s) will

be discussed.

***Minutes of the public hearing and a copy of the attendance sheet must be submitted to the Department within three (3) business days of the public hearing.***

❖ **Amending the LURA after Approval**

After the amendment is approved by the Board, the Asset Manager will begin the process to draft the LURA amendment as approved. The Asset Manager will send a copy of the draft amendment to the Development Owner for review prior to obtaining the Department's authorized signature. Upon the Development Owner's review and approval, the original LURA amendment will be signed and mailed to the Development Owner. The Development Owner must execute the LURA amendment and have the fully executed document and all exhibits and attachments recorded in the real property records for the county in which the Development is located.

## SAMPLE NOTICE TO RESIDENTS

### **[Development Name]**

Development Address  
Development Phone Number

---

[Date]

**TO ALL RESIDENTS OF [Development Name]**

RE: LURA Amendment Request to TDHCA for  
[Development Name]

Dear Resident(s):

**[Insert Owner Name]** is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restrictive Agreement (LURA) that will **[insert requested amendment here, for example: remove the requirement of utilizing Unit #8 as a residential unit for a low income household in order to continue its current use as a management office.]** TDHCA Rules require that notice of this request be provided to all residents of the property. This letter is to inform you that there will be a public hearing to discuss the request and we invite you to attend.

The public hearing is your opportunity to discuss the amendment request and voice your concern regarding **[insert requested amendment]**. Information obtained from this meeting will be submitted for consideration by the TDHCA Board at their **[insert TDHCA Board meeting date]** meeting.

If you are unable to attend the public hearing and would like to submit your concerns in writing to the Department, please send your comments via email to [asset.management@tdhca.texas.gov](mailto:asset.management@tdhca.texas.gov) or you may mail them to:

Texas Department of Housing & Community Affairs  
Asset Management Division  
221 East 11th Street  
Austin, Texas 78701

A public hearing on this issue is scheduled at **[enter location of public hearing]**:

<b>Location:</b>	<b>Name of location</b>
	<b>Address</b>
<b>Date:</b>	<b>xx/xx/xxxx</b>
<b>Time:</b>	<b>xx:xx am/pm</b>

Sincerely,

Joe Smith  
Regional Vice President  
Property Management Group



## SAMPLE NOTICE TO RESIDENTS (Spanish Version)

### **[Development Name]**

*Development Address*

---

*Development Phone Number*

---

[Date]

**A todos los residentes de [Development Name]**

Respecto a: Una solicitud de modificación del acuerdo de restricción de uso de la tierra para **[Development Name]**

Estimado Residente:

**[Insert Owner Name]** está pidiendo al Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA) aprobación para una enmienda a su acuerdo de restricción de uso de la tierra que **[insert requested amendment- TIP: use Google Translate to translate into Spanish]**. Reglas de TDHCA requieren que la notificación de esta solicitud sea proporcionada a todos los residentes de la propiedad. Esta carta es para informarle que habrá una audiencia pública para discutir la solicitud y le invitamos a asistir.

La audiencia pública es su oportunidad para discutir la solicitud de enmienda y expresar su preocupación con respecto a **[insert requested amendments- TIP: use Google Translate to translate into Spanish]**. La información obtenida de esta reunión se someterá a la consideración de la junta de gobierno de TDHCA en su reunión de **[insert TDHCA Board meeting date]**.

Si usted no puede asistir a la audiencia pública y desea presentar sus inquietudes por escrito a TDHCA, por favor envíe sus comentarios por correo electrónico a [asset.management@tdhca.texas.gov](mailto:asset.management@tdhca.texas.gov) o por correo a:

Texas Department of Housing & Community Affairs  
Asset Management Division  
221 East 11th Street  
Austin, Texas 78701

Una audiencia pública sobre este tema está prevista a las **[enter location of public hearing]**:

**Lugar:** **Name of Location**  
**Address**  
**Fecha:** **[insert date]**  
**Hora:** **[insert time]**

Sinceramente,

Joe Smith  
Regional Vice President  
Property Management Group

**SAMPLE LETTER TO STATE REP/STATE SENATOR  
AND CHIEF ELECTED OFFICIAL OR  
COUNTY COMMISSIONERS**

Date

The Honorable Senator XXXXXX  
Texas State Senator  
P.O. Box XXXXX, Capitol Station  
Austin, TX 78711

Re: **XXXXX Apartments**  
**ADDRESS**  
**LURA Amendment Request to TDHCA**

Dear Senator Smith:

NAME OF OWNER is asking the Texas Department of Housing and Community Affairs Governing Board (the TDHCA Board) to approve an amendment to its Land Use Restrictive Agreement (LURA) that will [provide a brief description of the change requested].

TDHCA Board rules require that notice of this request be given to the Senator for the district in which XXXXX Apartments is located.

A public hearing on this issue is scheduled at XXXXX Apartments:

Location: XXXXX Apartments  
ADDRESS  
Date: xx/xx/xxxx  
Time: xx:xx a.m./p.m.

You are invited to attend and offer your comments.

Yours truly,

Name

# Cost Certification (HTC Only)

Development Owners that have a valid Carryover Allocation Agreement or Determination Notice and have placed their developments in service must submit a cost certification in order to obtain the final allocation of tax credits via IRS Forms 8609. This chapter sets forth the criteria and required documentation for requesting a final allocation of housing tax credits pursuant to the Department's Qualified Allocation Plan (QAP).

The cost certification submission deadline is identified in 10 TAC §10.401(d)(1) as follows:

**Competitive Housing Tax Credit (9% HTC) Developments:**

- **January 15<sup>th</sup>** following the Development's first year of the Credit Period.

**Tax-Exempt Bond (4% HTC) Development:**

- **May 15<sup>th</sup>** following the Development's first year of the Credit Period.

If a deadline falls on a weekend or holiday, the deadline is 5:00 p.m. Austin local time on the next day which is not a weekend or holiday and on which the Department is open for general operation. The Development Owner is solely responsible for proper and timely delivery of the cost certification documentation. Late submission will result in additional requirements including the need for an extension request and an extension fee in accordance with 10 TAC §11.901(9).

**NOTE:** The cost certification submission deadline is based on the **first** Credit Period year elected for any building. It is the Development Owner's responsibility to request an extension if their Development will have multiple buildings that will begin a Credit Period in different years and the cost certification cannot be finalized in time to meet the submission deadline.

If the cost certification submission deadline cannot be met, an extension must be requested through the Department's Asset Management Division. Extension requests must be submitted as identified in the Delivery Instruction section of this Manual. The request must explain the reason an extension is needed, identify the revised submission deadline date requested, and if applicable, include a copy of the extension fee check. The requirements regarding extension fees are identified in 10 TAC §11.901(9).

### Required Forms and Exhibits for Cost Certification

Submission of a cost certification package is required of all awardees of an HTC allocation. Development Owners must use the current Cost Certification Application provided by TDHCA and located on the Asset Management webpage (<https://www.tdhca.texas.gov/post-award-activities-manual>). Submission of a complete final cost certification package will consist of **one bookmarked PDF file AND one completed Excel file**. The files must be submitted to the Department via FTP server as identified in the Delivery Instruction section of the Manual.

**NOTE:** Due to the file size, the cost certification should not be submitted via email. Additionally, the cost certification should not be uploaded to CMTS.

All documentation stated in this section must be submitted to the Department behind the tabs listed and in the order stated below. Deficiencies identified through the review process will be sent to the Development Owner via email as a Request for Information (RFI). Any communication issued to the Development Owner pertaining to the cost certification may also be sent to the syndicator contact identified within the cost certification. The Development Owner will be given a specific length of time to correct the deficiencies. Failure to comply with requests for additional information or corrective action within the specified time frame will result in a delay in the issuance of IRS Forms 8609. It is staff's goal to review cost certification packages and issue an initial RFI within 45 days of submission, and to review RFI responses within 30 days. The number of RFIs received will depend on the clarity of the responses and resolution of issues related to the file.

There are **20** electronic tabs in the Cost Certification Excel Application workbook for the Development Owner to use. Note that some tabs in the workbook act as a placeholder for purposes of reminding Development Owners of the unbound documents that must be provided within the cost certification PDF. Please note that all of the information outlined below is required as part of the cost certification documentation.

❖ **Cost Certification Requirements List**

- The checklist is provided for the benefit of the Development Owner in compiling the documentation necessary to submit a complete cost certification package to the Department but is NOT required to be submitted with the final cost certification package

❖ **Tab 1: Exhibit 1- Owner's Statement of Certification**

- This form must be executed by the Development Owner. The Development Owner is responsible for certifying to the accuracy of the information provided within the cost certification documentation. The form includes a certification from the Development Owner that they have verified the CPA firm's licenses and validity, including any restrictions.
- The form must be signed and notarized. ***No hard copy is required, only a scanned copy within the final PDF file.***

❖ **Tab 2: Exhibit 2A – Owner Summary**

- This form must be completed in its entirety. A Taxpayer Identification Number (TIN) unique to the Development Owner must be provided; without this information, IRS Forms 8609 will not be issued.
- For Tax-Exempt Bond developments, the document from the IRS or a similar official document showing the TIN or Employer Identification Number (EIN) of the Development Owner must also be submitted.
- Changes to Ownership Structure
  - Any change to the ownership structure for the Development Owner, Developer or Guarantor from what was last approved by the Department may require approval in the form of an Application amendment for changes to the Developer and/or Guarantor or an ownership transfer for changes to the Development Owner. Please note that the ownership transfer and/or Application amendment must be approved prior to release of IRS Forms 8609.
  - If the Development Owner has previously received approval from the Department regarding any ownership change, please provide a copy of the TDHCA approval letter immediately behind the organization chart.

If approval for an ownership change is required at the time the cost certification

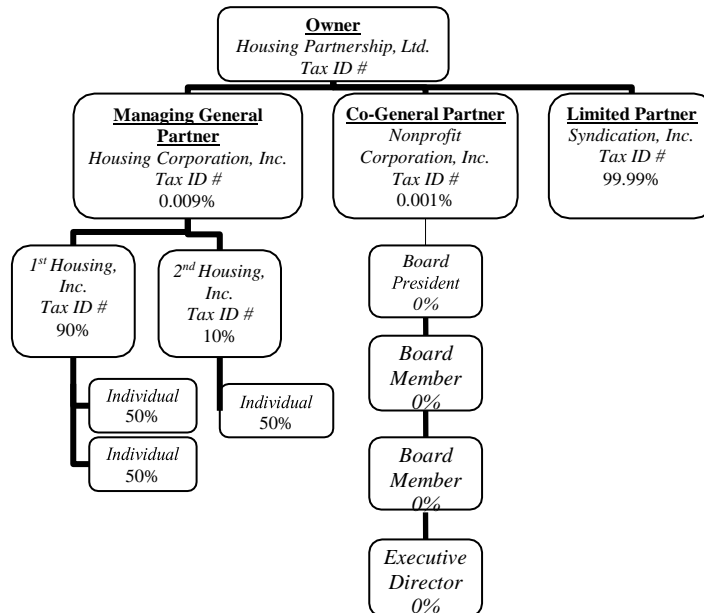
# Post Award Activities Manual

documentation is submitted, the Development Owner **must** provide a request for approval under separate cover. The request must include the documentation required as further described in the Ownership Transfer chapter of this Manual and on the Asset Management website: <https://www.tdhca.texas.gov/post-award-activities-manual>.

❖ **Tab 2: Exhibit 2B – Organization charts for the Development Owner, Developer(s), and Guarantor(s)**

- Organization charts for the Development Owner, Developer(s) and Guarantor(s) must be provided behind the Owner Summary form. An illustration of the basic format for organizational charts is provided below. Be sure the charts follow the example given and that they contain the following information:
  - Correct name, ownership percentage, and **Taxpayer Identification Number (TIN) of each entity;**
  - Clear indication of role, i.e. Member, Member/Manager, Class B, LP, etc.;
  - Trusts must include the trustee and list all beneficiaries that have the legal ability to access, control, or direct activities of the trust and are not just financial beneficiaries;
  - Nonprofit entities, public housing authorities and publicly traded corporations must show name of organization, individual board members and executive director;
  - Ownership must be illustrated to the level of natural persons, whether owners or board members.

Below is an illustration to assist owners on providing the required information:



- ❖ **Tab 3: Exhibit 3A- Copy of Carryover Allocation Agreement or Determination Notice**
  - For 9% HTC Developments - provide a complete copy of the executed Carryover Allocation Agreement issued by the Department.
  - For 4% HTC Developments - provide a complete copy of the executed Determination Notice issued by the Department.
  
- ❖ **Tab 3: Exhibit 3B- Evidence of Nonprofit Participation**
  - Only those 9% HTC Developments that were awarded points at Application for demonstrating non-profit participation under Sponsor Characteristics are required to complete this form.
  - Provide all information requested. *Note: The total percentage of ownership, Developer Fee, and cash flow from operations must meet the requirements specified in the QAP in effect when the Application was awarded.*
  
- ❖ **Tab 3: Exhibit 3C- Historically Underutilized Business (HUB) Participation**
  - Only those 9% HTC developments that were awarded 1-2 pts at Application for demonstrating HUB participation under sponsor characteristics are required to complete this form.
  - Provide all information requested. *Note: The total percentage of ownership, Developer Fee, and cash flow from operations must meet the requirements specified in the QAP in effect the year that the tax credit Application was submitted and approved for the award.*
  - Provide a current HUB certification from the Texas Comptroller of Public Accounts behind this form.
  
- ❖ **Tab 4: Exhibit 4 - Development Team**
  - Provide the information requested for each of the development team members.
  
- ❖ **Tab 5: Exhibit 5A- Development Summary w/Architect's Certification**
  - Architects should use the exhibit that is applicable to the Development based on the year that the tax credit Application was submitted and approved for the award. For example, 2024 allocations should use the exhibit titled "Ex. 5A- Dev Summary – 2024." All other Ex. 5A forms should be left blank. *Note: When the cost certification PDF is created, only the completed Ex. 5A for the Development should be converted. Do not submit the blank Ex. 5A tabs in the cost certification PDF file.*
  - All yellow highlighted cells require a response.
  - This form must be signed and dated by the development architect. The architect is responsible for certifying to the accuracy of the information provided on this form. No hard copy is required, only a scanned copy within the final PDF file. *Note: Any revised version submitted as a correction must be re-signed and re-dated by the architect as of the revision date.*
  - Documentation must be submitted behind this exhibit that demonstrates a breakdown of how the total square footage of the Common Area identified by the architect was determined. The Common Area included in the
    - For Developments that received a tax credit award in 2019 or earlier, the total Common Area square footage identified on this exhibit will be compared to the last Common Area approved by TDHCA at underwriting, or if applicable, as approved through an amendment to the Application.
    - For Developments that received a tax credit award after 2019, the total Common

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Area square footage identified on this exhibit will be compared total square footage of the Common Area certified by the architect in the Application, or if applicable, as approved through an amendment to the Application..

**Note:** If it is determined that a 3% or greater reduction to the square footage of the Common Area has occurred and was not previously approved, a material amendment request must be submitted under separate cover. The request must include the documentation required as further described in the Amendments to Application chapter of this Manual.

## ❖ **Tab 5: Exhibit 5B- Development Change Documentation**

- Complete the form to confirm whether any changes have occurred to the Development.
- If “Yes” is selected to indicate that changes have occurred to the Development and those changes were previously approved by TDHCA, place a copy of the approval letter immediately behind this exhibit
- If “No” is selected to indicate that no change has occurred to the Development, no additional documentation is required.
- If approval for a change to the Development is requested at the time the cost certification documentation is submitted, the Development Owner must provide the amendment request under separate cover. The request must include the documentation required as further described in the Amendments to Application chapter of this Manual.

## ❖ **Tab 6: Exhibit 6 - As-Built Survey**

- No hard copy is required, only a scanned legible copy (condensed if possible) within the final PDF file.
- The survey must indicate the total acreage of the Development Site and the location of all structures, drives, and easements. The survey should also identify parking spaces provided, including the number of carports and garages, if applicable.
- The survey must be labeled with residential building numbers, unit numbers and assigned Building Identification Numbers (BINs). A separate chart identifying each building by its building number, unit numbers and BINs may be provided as long as it can be compared and matched to the survey.
- The survey must identify flood zone information and all final flood elevations and flood zone boundaries.
- The survey must be prepared and signed by an accredited surveyor.

## ❖ **Tab 7: Exhibit 7 - Closing Statement**

- For fee simple estate transfers, provide a full copy of the executed closing statement for each parcel of land and/or building purchased separately and included in the Development. The Development Owner must be identified as the purchaser, and the legal name of the seller must be clearly stated. The closing statement must be signed by both the Buyer and the Title Agent or seller.
- For leasehold estate transfers, provide a copy of the Ground Lease Agreement between the landowner and the Development Owner. If the landlord is an Affiliate or Related-Party, a copy of the closing statement for their acquisition of the land must be provided if the land was acquired within five years from the date of the Ground Lease.

❖ **Tab 8: Exhibit 8A- Title Policy**

- Provide a full copy of the executed Owner's Title Policy for the Development from the Title Company. It must encompass the entire site associated with the Development. The policy must indicate the Development Owner as the insured.
- If any mechanic's or materialman's liens or judgments are reflected in the report, a copy of an executed release or evidence of a posted surety bond is required for each lien or judgment identified.

❖ **Tab 8: Exhibit 8B- Title Policy Update (Nothing Further Certificate or Downdate Endorsement)**

- If the Owner's Title Policy provided under Exhibit 8A does not list the TDHCA Housing Tax Credit Land Use Restrictive Covenant (LURA), a current title update must be provided. The title update can be in the form of a Down Date Endorsement to the owner's title policy, a Nothing Further Certificate, Abstractor's Report, or a title commitment issued after the date of the owner's title policy. The title update must identify a search date that begins from the date of the Owner's Title Policy date through at least the date the LURA was recorded.
- If any mechanic's or materialman's liens or judgments are reflected in the report, a copy of an executed release or evidence of a posted surety bond is required for each lien or judgment identified.

❖ **Tab 9: Exhibit 9A- Placement in Service**

- This form provides summary information needed to complete IRS Forms 8609 for the Development on a building-by-building basis. The exhibit must be consistent with information provided throughout the cost certification packet and the Development's LURA.
- Each following rows identified below should represent a residential building in the Development that will receive an IRS Form 8609. Once the exhibit has been completed, please hide the rows not being used.
  - Credit Period
    - Indicate the first year tax credits will be claimed for each building. This election can be the year the building was placed in service or the year after the building was placed in service.
  - Building Number
    - Enter the building number used by the Development Owner; all other building numbers will auto-fill after the first entry is made.
  - Building Identification Number (BIN)
    - Enter the Building Identification Number (BIN) for the first building only (without dashes). The rest of the BINs for other buildings will auto-fill after the first entry.
  - Placed in Service Date
    - Acquisition- This column should be completed for developments qualifying for acquisition tax credits. The placed in service date must agree with the date the Development was acquired as supported by Tab 7 and must match the date indicated on *Exhibit 9D- Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election*.



- Rehabilitation - This column should be completed for developments qualifying for rehabilitation tax credits. The placed in service date for rehabilitation must be certified by a third party CPA in *Exhibit 9D- Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election*, as having met the parameters of Internal Revenue Code §42(e). Note that the placement in service date should be the date on or after the architect or Certificate of Occupancy certifies that the building can be occupied.
- New Construction- This column should be completed for developments qualifying for new construction credits. The placed in service date for each building must be documented by the requirements discussed in detail later in this Manual under *Tab 9: Exhibit 9B- Evidence of Placement in Service*.
- Units and Square Footage per Building
  - This column should be completed with the following information for **each** residential building: total low income units, total units, total low income square footage and total square footage.
  - The number of units and total Net Rentable Area should be consistent with other information provided in the cost certification packet Exhibit 5A, in the Rent Schedule, on the rent roll, and in the CMTS system building set up.
  - A note will appear at the bottom of the form if the sum of Net Rentable Area for each building is inconsistent with information provided in *Exhibit 11A- Rent Schedule*.
- Applicable Fraction
  - The applicable fractions for each building will be auto-calculated based on information entered in the previous cells of that same row.
  - Unit Fraction- the applicable fraction based on units represents the percentage of total low income units.
  - Square Footage Fraction- the applicable fraction based on net rentable square footage represents the percentage of total low income net rentable square footage.
  - The applicable fractions should be consistent with information presented throughout the cost certification packet such as the Rent Schedule, the rent roll, and the addendums in the LURA.
- Applicable Percentage
  - Acquisition- This column should be completed for developments qualifying for acquisition tax credits. The applicable percentage rate entered should represent the actual applicable percentage determined by the Secretary of Treasury for the date indicated on this form and in *Exhibit 9D- Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election*.
  - Rehab/New Construction- This column should be completed for developments qualifying for rehabilitation or new construction tax credits. The applicable percentage rate entered should represent the actual applicable percentage determined by the Secretary of the Treasury for the date each building placed in service or the date indicated on the corresponding election to lock the applicable percentage rate.

- Eligible Basis
  - Acquisition- Enter the actual acquisition eligible basis attributable to the building. The total acquisition eligible basis for all buildings must be supported by the acquisition basis reflected in *Exhibit 10C - Development Cost Schedule*. Any difference in acquisition basis from the originally approved acquisition basis as reflected in the Department's latest underwriting must be explained and well documented.
  - Rehab/New Construction- Enter the actual eligible basis attributable to the rehab/new construction of each building.
- Requested Tax Credits
  - The form automatically calculates the request per building for acquisition and/or rehab/new construction housing tax credits based on information in the previous columns. However, the user may overwrite the cell with a request that differs from the calculated tax credits. If the user overwrites the cell, the formatting will change to a dark grey with white lettering but will not prohibit the owner from overwriting the cell.
- **9% HTC DEVELOPMENTS ONLY- Notification of Returned Housing Tax Credits** – Only 9% Competitive Housing Tax Credit developments electing to return any of the tax credits originally allocated to the Development must complete this section. Credits must be returned prior to the issuance of IRS Forms 8609. Additionally, credits must be returned within 180 days of the end of the first year of the credit period in order to avoid a penalty fee pursuant to the 10 TAC §11.901(15).
- **4% HTC DEVELOPMENTS ONLY** – Tax-Exempt Bond developments that are requesting an increase in the amount of credits awarded in their Determination Notice are subject to a Tax-Exempt Bond Credit Increase Request Fee in the amount of 4% of the amount of the credit increase for one year as required under 10 TAC §11.901(8). **Note:** Tax-Exempt Bond developments requesting a credit increase that exceeds 120% of the amount of credits reflected in the Determination Notice must make the request for additional credits before the TDHCA Board as specified in 10 TAC §10.401(d).
- ❖ **Tab 9: Exhibit 9B- Evidence of Placement in Service**
  - New Construction
    - New construction developments must submit a Certificate of Occupancy (CO) or Temporary Certificate of Occupancy (TCO) signed by the local authority responsible for final inspection of developments. A CO or TCO must be provided for each residential building that contains a tax credit unit.
    - Each CO or TCO must indicate the date the final inspection occurred and the building number.
    - If the Development is located in an area where COs are not issued by a local government, a written statement from the Owner confirming that no COs were issued must be submitted along with a completed *Exhibit 9C-Architect's Certification of Completion Date and Date Ready for Occupancy* as described below.
  - TX-USDA-RHS financed New Construction Developments
    - New construction developments financed with USDA may submit Certificate(s) of Occupancy or a full copy of the executed USDA Final Inspection Report.

- Rehabilitation
    - Rehabilitation developments that cannot provide COs must provide *Exhibit 9C- Architect's Certification of Completion Date and Date Ready for Occupancy* as described below.
  - TX-USDA-RHS financed New Construction Developments
    - New construction developments financed with USDA may submit Certificate(s) of Occupancy or a full copy of the executed USDA Final Inspection Report.
  - Rehabilitation
    - Rehabilitation developments that cannot provide COs must provide *Exhibit 9C- Architect's Certification of Completion Date and Date Ready for Occupancy* as described below.
- ❖ **Tab 9: Exhibit 9C- Architect's Certification of Completion Date and Date Ready for Occupancy**
- Complete the form with the information requested for rehabilitation developments or newly constructed developments where a Certificate of Occupancy is not available.
  - The form must be certified and signed by a Third Party architect, preferably the architect of record for the development.
- ❖ **Tab 9: Exhibit 9D- Auditor's Certification of Acquisition/Rehabilitation Placement in Service Election**
- Only acquisition and/or rehabilitation developments must complete this form.
  - A Third Party CPA must certify that the Development Owner has elected a placed in service date in accordance with the Internal Revenue Code §42(e).
  - A Third Party CPA must certify that the Development met the rehabilitation expenditure threshold defined by the Department in the QAP applicable to the year of the tax credit award.
  - The dates reflected on this form must be consistent with the same information reflected throughout the cost certification packet.
  - Submission of this document in an alternative format other than that provided may be acceptable as long as all of the information requested in the TDHCA form is included.
- ❖ **Tab 10: Exhibit 10A- Independent Auditor's Report**
- The total development cost and eligible basis certified to by the auditor must support the amounts presented by the Development Owner in *Exhibit 10C - Development Cost Schedule*. Submission of this document in an alternative format other than that provided may be acceptable as long as all of the information requested in the TDHCA form is included.
- ❖ **Tab 10: Exhibit 10B- Independent Auditor's Report of Bond Financing**
- This exhibit should be completed only if the development tax credits were allocated as a direct result of associated mortgage revenue bonds. The percentage of aggregate basis financed by tax-exempt bonds certified to by the auditor should be equal to or greater than 50%. Submission of this document in an alternative format other than that provided may be acceptable as long as all of the information requested in the TDHCA form is included.

## ❖ **Tab 10: Exhibit 10C- Development Cost Schedule**

- **Total Housing Development Cost**
  - The total housing development costs and eligible basis calculated must be consistent with the conclusions in *Exhibit 10A- Independent Auditor's Report*.
  - Each row represents a line item cost associated with the Development. The line-item costs are grouped by type, and a line for "Other" costs not listed is provided at the end of each grouping. The "Other" costs must be identified.
  - If there are not enough spaces available to identify the "Other" costs, include all "Other" costs in the line items provided and provide a detailed breakdown of those costs on a separate sheet as an attachment to this exhibit.
  - Cells shaded gray are locked and not allowed for data entry. **NOTE: If offsite costs are included in basis, the required documentation to support the eligible costs must be provided under Tab 10 – Exhibit 10E.**
  - For every individual line item cost, the sum of the figures in the eligible basis columns should never exceed the figure indicated in the total cost column.
  - The Department has additional guidance related to the treatment of certain reserves and costs. Refer to 10 TAC §10.404(b) for treatment of lease-up reserves, 10 TAC §10.404(c) for treatment of operating reserves, as well as 10 TAC §11.301 (Underwriting and Loan Policy) and 10 TAC §11.1 (Definitions) for treatment of costs and specific rules related to feasibility at the time of cost certification, including thresholds for Contractor Fees and Developer Fee.
- **High Cost Area Adjustment**
  - The rehab/new construction eligible basis may be increased by 30% if the Development was eligible for this boost at the time of application. Developments that received a tax credit allocation based on this upward adjustment should enter 130%; otherwise, 100% should be entered.
- **Applicable Fraction**
  - Enter the Development's applicable fraction based on information provided in *Exhibit 9A- Placement in Service*. The figure shown must be the lesser of the applicable fraction based on units or Net Rentable Area (NRA).
- **Applicable Percentage**
  - Enter the applicable percentage based on information provided in *Exhibit 9A- Placement in Service*.

## ❖ **Tab 10: Exhibit 10D- Contractor's Application for Final Payment (G702/G703) for the General Contractor and all prime subcontractors**

- Provide a copy of the **final** Application and certificate for payment (AIA Form G702 and G703) for the General Contractor, all prime subcontractors, Affiliated Contractors, and Related Party Contractors that includes a description of the work performed with all continuation sheets and/or supplements attached. If the permanent lender required a form other than the G702 and G703, other such documents detailing the costs of the Development that have been signed by the architect and provided to the lender for draw purposes may be substituted.
- If change orders were made, provide copies of all change orders that identify the costs and fees; additional back up documentation may be requested.

## ❖ **Tab 10: Exhibit 10E- Additional Documentation of Offsite Costs**

- If the Development Owner includes any offsite costs in eligible basis, it is the Development Owner's responsibility to present their case for allowing those costs in eligible basis. The Owner must provide an explanation and supporting documentation to show that the fact pattern surrounding the subject Development is the same as in Private Letter Ruling 200916007.
- The Owner must, via the development Civil Engineer's attestation (with professional seal affixed), answer the following questions:
  - **Timing**: What was the timing of the determination of the offsite requirements, construction of the offsites, and acceptance of the offsites as compared to the overall construction of the subject development?
  - **Improvements**: Were the offsites an improvement to existing utility service and/or an incremental improvement to increase capacity? Were the offsites an improvement to an existing roadway? Did the improvements benefit any other property?
  - **City or local jurisdiction requirement**: Were the offsite improvements required by the City of appropriate local jurisdiction? If so, detail what the specific requirements were, and describe what approvals were withheld by the local jurisdiction until improvements were made;
  - **Acceptance of Improvements**: Did the local jurisdictions accept the required improvements? If so, in what manner was the improvement(s) accepted (i.e. release of certificates of occupancy, etc.)?
  - **Reimbursements**: Were there any reimbursements by the local jurisdiction or other developers for the offsite costs? Explain the timing of these reimbursements and any contingencies; and
  - **Dedication**: Were the improvements dedicated to the local jurisdiction? Provide documentation showing the dedication.

## ❖ **Tab 11: Exhibit 11A- Rent Schedule**

- The unit mix and net rentable square footages must be consistent with the rent roll and any rental restrictions placed on the property by the recorded LURA.
- "Gross Program Rent" cannot exceed the HUD maximum rent limits unless documentation of project-based rental assistance is provided. **Note: Tenant-based vouchers or tenant-based rental assistance cannot be considered as rental assistance.**
- "Net Program Rent" is the tenant paid rent calculated by subtracting the utility allowance from the "Gross Program Rent."
- If the current market rent is less than the maximum "Net Rent" allowed under program guidelines, then the "Tenant Paid Rent" will be the market rent. If this is the case, the rents reflected in the current rent roll should support the "Tenant Paid Rent" indicated on this exhibit.
- If any non-rental income is included, describe the source(s) of the income. Ambiguous descriptions of the non-rental income such as "Misc" or "Fees" are not acceptable. **Income collected for amenities charged to the tenants (e.g., storage spaces, carport, and/or garage) should clearly be identified.**
- If the Development includes loft/efficiency Units, label these Units as "0" bedrooms as provided in the drop-down list.

- If the Development also includes TDHCA HOME, HTF, or Bond funds, identify the correct unit designation for each unit type in the applicable column. Under the “Other Subsidy” column, identify any project-based subsidy such as Section 8, 811 units currently occupied by tenants, RAD units, PHA units, or other Participating Jurisdiction (non-TDHCA) HOME designated units (do not list tenant-based vouchers such as Housing Choice Vouchers). Please ensure that the correct utility allowance is listed for all “Other Subsidy” units.
- **Tax-Exempt Bond Developments ONLY**
  - Space has been added under the “Development Name” to identify the Private Activity Bond Priority. Choose the applicable priority from the drop-down list.
  - Priority must be designated, as submitted to the Bond Review Board, regardless of Bond Issuer. The priority designations include the following:
    - **Priority 1(a)**: Set-aside 50% of the Units at 50% AMGI and 50% of the Units at 60% AMGI.
    - **Priority 1(b)**: Set-aside 15% of the Units at 30% AMGI and 85% of the Units at 60% AMGI.
    - **Priority 1(c)**: Set-aside 100% of the Units at 60% AMGI for Developments located in a census tract with a median income that is higher than the median income of the county, MSA or PMSA in which the census tract is located.
    - **Priority 2**: Set-aside 80% of the Units at 60% AMGI; up to 20% of the Units can be at market rate.
    - **Priority 3**: includes any qualified residential rental Development. Market rate Units can be included under this priority.
- ❖ **Tab 11: Exhibit 11B- Utility Allowances**
  - Drop down lists are provided to identify “Who Pays” for the utility service and what type of “Energy Source” will be used.
  - If Development is all bills paid, utilities and energy source are still required.
  - **Remember to include your support documentation** (i.e., current PHA utility allowance sheet, TDHCA Compliance approval letter, HUD/USDA Approved Utility Allowance, etc.) that clearly identifies the most up to date utility costs included in the estimate and the effective date of the documentation. Note that most TDHCA Compliance Utility Allowance approval letters must be received annually and most PHA Utility Allowance schedules (though not all) are updated and published annually. Please do not include utility allowance documentation for any Housing Choice Voucher tenant units or the Utility Allowance Application package.
- ❖ **Tab 11: Exhibit 11C- Annual Operating Expenses**
  - Fill in all yellow highlighted cells.
  - Expenses entered should reflect actual stabilized performance of the property, if available, or a current projection of the performance based on comparable properties.
  - All “other” costs included in any of the expense categories must be described. “Misc” is not an acceptable description.
  - Annual Debt Service should be consistent with information provided in *Exhibit 11D- 30 Year Rental Housing Operating Pro Forma* as well as *Exhibit 13A- Summary of Sources and Uses of Funds*.

- Debt Coverage Ratio will be calculated automatically. The Development Owner should familiarize themselves with the underwriting rules in the QAP (10 TAC §11.302 Underwriting Rules and Guidelines) regarding thresholds for these items.
- Provide a current property insurance invoice or current property insurance quote to document the estimated cost for insurance.
- Provide a copy of the management agreement if the Limited Partnership Agreement does not identify the management fee percentage and the fee percentage is outside of the standard estimated 5% fee.
- Provide copies of agreements or contracts that document Other Expenses such as supportive services and security.

❖ **Tab 11: Exhibit 11D- 30 Year Rental Housing Operating Pro Forma**

- Any deferred developer fee must be shown to be fully repaid by Year 15.
- Any “Other” debt service included in the pro forma must be described.

❖ **Tab 12: Exhibit 12A- Current Operating Statement**

- **The operating statement must be submitted within the cost certification PDF and as a separate Excel file.**
- The operating statement must be a trailing 12-month statement (also referred to as a T-12) through the last closed accounting month. However, a partial year’s statement will be accepted as long as the period of months is clearly identified.
- The operating statement must be provided in a format that details individual expense items.

❖ **Tab 12: Exhibit 12B- Current Rent Roll**

- **The rent roll must be submitted within the cost certification PDF and as a separate Excel file.**
- The rent roll must be current (preferably not older than **one** month prior to the first day of the cost certification submission deadline) and must include the following:
  - Terms and rates of lease;
  - Income/rent set-aside;
  - Unit mix; and
  - Tenant names or vacancy.

*The sample rent roll below illustrates the information to be included:*

Unit	Unit Type	Sq. Ft.	Lease Status	Set-aside	Tenant Name	Lease Start	Lease End	Rental Rate	Tenant Pays
101	1/1	630	Occupied	60%	Jones	10/1/12	10/1/13	\$450	\$450
102	2/1	750	Vacant	50%	Smith	1/1/11	1/1/12	\$450	\$400

❖ **Tab 13: Exhibit 13- Summary of Sources and Uses of Funds**

- Choose the Funding Descriptions from the drop-down list for Debt and Third Party Equity:
  - Conventional loan
  - Conventional/FHA
  - Conventional/letter of credit
  - TDHCA HOME
  - Housing Trust Fund
  - CDBG
  - Mortgage Revenue Bonds
  - USDA/TXRD Loan

- Federal Loan
  - State Loan
  - Local government loan
  - Private loan
  - If applicable, downward timing adjusters (**not basis adjusters**) should be identified separately from the equity proceeds under the Third Party Equity section. Additionally, a statement must be provided from the syndicator/investor that confirms the amount of the adjuster and their calculation that identifies how the amount of the adjuster was determined.
  - Funding descriptions in the “Deferred Developer Fee” and “Other” sections do not have drop-down lists. Development Owners must identify the Funding Description and details.
  - For each funding source listed, identify as applicable:
    - Interest rate
    - Amortization period -**Identify in the form of years.** (If a source is non- amortizing, enter “0.”)
    - Term - **Identify in the form of years.**
    - Syndication rate - **The information included here must be consistent with the limited partnership agreement and loan agreements or commitments.**
  - Total Sources of Funds must equal the Total Uses of Funds reflected in *Exhibit 10C- Development Cost Schedule*.
- ❖ **Tab 14: Exhibit 14 - Final Limited Partnership Agreement with all amendments and exhibits**
- The executed agreement must identify all partners and the ownership percentage of each partner.
  - The following items must also be clearly identified:
    - Net syndication proceeds
    - Projected annual tax credits or purchase price per tax credit dollar
  - **TAX-EXEMPT BOND DEVELOPMENTS ONLY** – if the Development received a mortgage revenue bond allocation of 4% tax credits and the Development Owner requests more tax credits than originally reflected in the executed Determination Notice, the agreement should clearly state the price that will be paid per tax credit dollar for tax credits in excess of the anticipated annual tax credit allocation. If not, a firm commitment with terms to purchase the additional tax credits must be attached.
- ❖ **Tab 15: Exhibit 15 - Loan Agreement(s) and Promissory Note(s) or Final Commitment(s)**
- For each source of permanent financing, provide a full copy of the executed loan agreement(s) and promissory note(s) for closed loans. For 4% HTC and Bond Developments, provide a copy of the Trust Indenture and any other documents needed to verify the loan term, amortization, amount, and final, locked interest rate. **If loans are not closed, provide firm commitment(s) for each source of permanent financing and a statement or letter from the lender indicating when the permanent debt conversion is expected to occur.**
  - The note or commitment must agree with information reflected in *Exhibit 13- Summary of Sources and Uses of Funds*.



❖ **Tab 16: Exhibit 16 - Architect's Certification of Accessibility Requirements**

- The architect of record for the Development must identify the specific Unit numbers (**not the total number of Units**) that are designated as Mobility-Accessible and Hearing or Visual Impairment Accessible.
- The architect must select the applicable box that agrees with the year of the award allocation and sign and date the form to certify that the Development meets the standards described.
- Upon the final construction inspection, if it is found that the Development does not meet the minimum Fair Housing Standards, issuance of IRS Forms 8609 will be delayed until it is determined by the Department that a remedy has been implemented.
- Questions related to Accessibility standards may be directed to staff in the Department's Physical Inspections section of the Compliance Division.

**Note:** Discrepancies between the accessible unit numbers identified by the architect and Addendum C to the LURA may require a non-material amendment to the LURA. ***Any revised version submitted as a correction must be re-signed and re-dated by the architect as of the revision date***

❖ **Tab 17: Exhibit 17A- Development Owner's Assignment of Individual to Compliance Training**

- Property Compliance training sessions, which are co-sponsored by the Department's Compliance Monitoring staff, and the Rural Rental Housing Association of Texas (RRHA) or the Texas Apartment Association (TAA), focus on requirements included in Land Use Restriction Agreements (LURAs) to ensure long term compliance with the rules and regulations governing the HTC, BOND, and HOME programs. Visit <http://www.taa.org> for online registration. Trainings are facilitated by Department staff and sponsored by TAA.
- Either the Development Owner or an assigned individual may attend and receive the required TDHCA Compliance Training.
- If an individual other than the Development Owner has taken the training and received a certificate of completion, the Development Owner must complete this form and identify the following:
  - The individual designated to attend the compliance training;
  - The individual's title and/or capacity; and
  - The TDHCA file # and Development Name for each tax credit development that the identified individual represents.
- The designation of a representative does not absolve the Development Owner of responsibility for compliance with the regulations and rules governing the Housing Tax Credit Program.

❖ **Tab 17: Exhibit 17B- TDHCA Compliance Training Certificate (not older than two years from the date of cost certification submission)**

- Provide a copy of the certificate of completion for the Development Owner or the individual assigned to receive this training and identified in *Exhibit 17A- Development Owner's Assignment of Individual to Compliance Training*. The certificate must not be older than two years from the date of cost certification submission.

❖ **Tab 18: Exhibit 18 - Land Use Restriction Agreement (LURA)**

- Provide a copy of the fully executed and recorded LURA behind this tab.
- IRS Forms 8609 will not be issued until the fully executed and recorded document is returned to the Department.
- If discrepancies are identified between information contained in the cost certification documentation and the recorded LURA, the Development Owner may be required to amend the LURA, and additional fees may apply.

❖ **Tab 19: Exhibit 19 - TDHCA Final Inspection Clearance Letter**

- A copy of the TDHCA final inspection clearance letter or evidence of submitted final inspection request to TDHCA must be provided. **NOTE: If the final construction clearance letter has not been issued, please do not include the final construction inspection request package in the cost certification PDF.**
- IRS Forms 8609 will not be issued until the final inspection clearance letter is issued.

❖ **Tab 20: Exhibit 20 - Other Documentation**

- Other documents deemed relevant to the cost certification of the Development should be included behind this tab (i.e., satisfaction of conditions from original or amended underwriting reports noted as due at cost certification, etc.).

**Please note that any and all fees, as applicable, will be required to be paid and current and all noncompliance issues (including those recently identified at the time of a monitoring review) must be corrected prior to the issuance and release of IRS Forms 8609 as required by rule.**

# Ownership Transfers

## (All Multifamily Developments)

This chapter provides guidance on the ownership transfer process for all multifamily developments that have received funding from the Department. All multifamily Development Owners must provide written notice to the Department at least forty-five (45) calendar days prior to any sale, transfer, or exchange of the Development or any portion of or Controlling interest in the Development. Department approval is required for any new member to join in the ownership structure of a Development. The Ownership Transfers rule can be found in 10 TAC §10.406.

### Notifications of Ownership Changes that DO NOT require TDHCA Approval

The following types of ownership changes require notification to the Department prior to the transfer but do not require the Department's approval:

- ❖ Changes to the Investment Limited Partner, non-controlling limited partner, or other non-controlling partners affiliated with the investment limited partner or a General Partner's acquisition of the interest of the investment limited partner unless some other change is occurring\*
- ❖ Changes to the Limited Partner or other Partners affiliated with the Investment Limited Partner (Syndicator, Tax Equity Investor)\*
- ❖ Changes resulting from foreclosure do not require advance approval but acquiring parties must notify the Department as soon as possible of the revised ownership structure and ownership contact information
- ❖ Transfers to Affiliates that do not include the addition of new individual(s)
- ❖ Transfers to non-controlling Related Parties for estate planning purposes
- ❖ Changes that are the result of an involuntary removal of the GP by the LP (except when the LP has proposed a new GP or will permanently replace the GP)

For changes described above, the Development Owner must notify the Department in writing and include the following:

- ❖ **Explanation of Transfer**  
The written request should include a description of persons and organizations departing and entering the ownership structure and include the changes in percentages of ownership interest. The reason for the change must be identified. Please also include a contact name, address, phone number, and email for any new entities that can be entered into our CMTS database to update ownership information.
- ❖ **Organization Charts**  
A copy of the pre-transfer and proposed post-transfer owner organization charts including each entity and person, ownership percentages, clear indications of role, and TINs for each entity. Note that ownership must be illustrated to the level of natural person owners, whether Owners or Board Members.

## ❖ **Agreement among Parties**

An executed copy of any and all agreements acknowledged by all parties associated with the transfer.

**\*NOTE:** In the event an investment limited partner or its Affiliate assumes a Controlling interest in a Development Owner, such acquisition shall be subject to full Ownership Transfer requirements and principals of the investment limited partner or affiliate will be considered new Principals and will undergo previous participation reviews.

The Department, after reviewing and processing the notification, will issue an acknowledgement of the transfer and make the requested changes in the Department's CMTS database system.

## **Ownership Changes that require TDHCA Approval**

All other changes to a Development's ownership structure that are not listed above will require the Department's prior written approval. In accordance with 10 TAC §11.901(14), a non-refundable Ownership Transfer Fee in the amount of \$1,000 is required. **Transfer requests will not be processed until the fee is received by the Department.** Submission of the fee does not guarantee approval of the transfer request. Fees for transfers that are not fully completed by Owners or sales that do not finalize will not be refunded.

The Department may deny an application for an Ownership Transfer request if it cannot be demonstrated that the proposed new individuals or entities have the financial capacity or experience to participate as an owner of the Development or if members or affiliated members of the proposed Owner are considered ineligible Applicants under 10 TAC §11.202(1)(A)-(N) of the QAP.

In accordance with 10 TAC §1.301, Previous Participation Rules, the Department will conduct a previous participation review for ownership transfer requests, including requests to add a new entity or person to Developer or Guarantor structures if the entity or person was not previously checked at the time of Application.

Applications to add a new Developer or Guarantor will be processed as a non-material amendment request (unless new Principals were previously checked by Previous Participation review at the time of Application) and will require submission and payment of the applicable fee cited in the "Amendments to the Application" section of this Manual. In addition to the fee, the Owner must submit pre- and post-transfer org charts, uniform previous participation forms, agreements verifying the change (such as a Developer or co-Developer agreement or a Guarantor agreement or contract), and the Credit Limit Certification form (only if the Development is a competitive 9% HTC development). These forms are available in the Ownership Transfer forms.

## **Required Forms and Exhibits for the Ownership Transfer Package**

The ownership transfer documentation must be submitted electronically in PDF format. Please refer to the **Delivery Instructions** chapter of this Manual for more information on how to properly submit the documentation. Please do not submit the Ownership Transfer request until all documentation is complete. Partial submissions will not be accepted or reviewed until all documentation is submitted. If an Ownership Transfer for multiple Developments or multiple Ownership Transfers for one Development are being requested, a separate request packet and fee must be submitted for each Development. Combined requests will not be accepted.

You must use the Ownership Transfer forms provided by TDHCA and located on the Asset Management webpage at (<https://www.tdhca.texas.gov/asset-management/pca-manual.htm>). **A complete Ownership Transfer will consist of one bookmarked PDF file.** All forms and supporting documentation must be submitted to the Department behind the tabs listed and in the order stated below. Any deficiencies identified through the review process will be sent to the requesting party via email. The requester will be given a specific length of time to correct the deficiencies. Failure to comply with requests for additional information within the specified time frame may delay approval of the Ownership Transfer.

There are **10** electronic tabs in the Ownership Transfer file that represent separate forms or documents that all Ownership Transfer requests must contain. There are an additional seven cover pages for Exhibits A through G that are available for use where additional exhibits are required based on a Development's unique circumstances or LURA requirements. Bookmarks should be labeled as titled below and in the order presented. The additional exhibit cover pages should follow the forms packet with requested documentation included behind each tab.

❖ **Tab 1- Statement of Explanation**

A written statement describing the proposed change(s) in the ownership structure must be submitted. The statement should include:

- A description of the persons and organizations departing and entering,
- Change(s) in percentage(s) of ownership interest, and
- An explanation of the reason for the ownership change (hardship, foreclosure, loss of partner, property sale, etc.)

❖ **Tab 2- Ownership Transfer Information**

Complete the yellow highlighted portions of the form as shown below by form question or block. Automatic messages will appear if additional exhibits will be required; a list of these exhibits will also generate for reference in Tab 10:

**Property Information:**

- **TDHCA ID #:**  
Enter the Development's current HTC file number or HOME/HTF/TCAP/Exchange/NSP Contract number.
- **Primary Program:**  
Enter applicable program from the list; if the Development is HTC and HOME, enter HTC. If the Development is HTC and TCAP, enter HTC, etc.
- **CMTS #:**  
Enter the property number assigned to the Development in the Compliance Monitoring and Tracking System.
- **Property Name and Current Owner:**  
Enter the property name and the name of the current Owner of record.

- Type of Transfer:  
Enter the type of transfer from the drop down menu. Messages will populate if you choose a type of transfer that does not generally require Department approval. If this message populates, see “Notifications of Ownership Changes that DO NOT Require TDHCA Approval” above for confirmation or contact your Asset Manager.
- Date of Transfer:  
Enter the date the transfer will occur (for example, if the transfer will be dependent on a closing transaction, enter the scheduled date of closing. If the transfer is only dependent on TDHCA approval and no other firm agreement or sale date, this date should be 45 days from the submission date of the packet). If the transfer already occurred and this packet has been submitted to correct non-compliance, enter the actual date the transfer occurred and check the “Already Occurred” box.
- Have Forms 8609 been issued for this property?:  
This question pertains only to HTC properties. Non-HTC properties can leave this question blank. For HTC developments, answer whether 8609s have been received.  
**NOTE:** In accordance with 10 TAC §10.406(e), an Applicant can request an amendment to its ownership structure to add Principals but the parties reflected in the Application as having control must remain in the ownership structure and retain control, unless otherwise approved by the Executive Director. Development sponsors, GPs, or Development Owners may not sell a Development in whole or voluntarily end their control prior to the issuance of 8609s. If you have elected “No”, the form will suggest that you contact your Asset Manager.
- Has Construction been completed?:  
This question pertains to all properties. Enter a “Yes” or “No” to indicate whether construction is complete.  
**NOTE:** In accordance with 10 TAC §10.406(e), the parties reflected in the Application as having control must remain in the ownership structure and retain control, unless otherwise approved by the Executive Director. If you have elected “No”, the form will suggest that you contact your Asset Manager.
- Did this property receive points for non-profit participation?:  
If the property is a 9% HTC development that received an award under the Non-Profit Set Aside or received points for a non-profit joint venture, select “Yes” and answer whether the last approved non-profit included in the transaction will change as a result of the transfer. Also select “Yes” if the property is a HOME-only development that received points or funding as a Community Housing Development Organization (CHDO). HOME- only properties with a CHDO requirement may only sell the property to CHDO entities (if allowed by the LURA) that meet the HOME Final Rule requirements in 24 CFR 92 §92.300. If the non-profit will change as a result of the transfer, either a new CHDO certification package or a CHDO self-certification form must be submitted under Exhibit B. If a transferee was certified as a CHDO by TDHCA prior to 2016 or has not been previously certified as a CHDO by TDHCA, a new CHDO certification package should be submitted under Exhibit B; if a transferee was certified as a CHDO by TDHCA after 2016, the CHDO may instead submit a Self-Certification form under Exhibit B. Non- HTC developments and non-CHDO HOME-only developments should enter “No”.

- **Non-profit Summary block:**  
If the answer to the non-profit participation question was “Yes” and the non-profit will change, describe how a new non-profit entity will be involved in a way that satisfies requirements for material participation throughout the Compliance Period. For HTC developments, the involvement should be part of the principal business of the non-profit, be integral to the actual operations of the property, occur throughout the year, and occur on-site regularly. Descriptions entered here for HTC developments should reflect compliance with these portions of IRS Code, Chapter 22 of the 8823 Guide, and any additional requirements in the year of the applicable QAP. Descriptions entered for HOME-only CHDO properties should reflect compliance with 24 CFR Part 92 §92.300.
- **Did this property receive points for HUB participation in the ownership structure?:**  
This question pertains only to 9% HTC properties. Non-HTC developments should enter “No”. If the property is an HTC development that received points for a HUB, select “Yes” and answer whether the last approved HUB included in the transaction will change as a result of the transfer. If the HUB will change, submit Exhibit C. If the Owner is seeking removal of a HUB, a non-material amendment request and applicable fee must also be submitted. HUB removals can select “Yes” and submit amendment items under Exhibit C.
- **HUB Summary block:**  
This question pertains only to 9% HTC properties. If the answer to the HUB question was “Yes” and the HUB will change, describe how a new HUB will be involved in a way that satisfies requirements for material participation throughout the compliance period and meets any additional requirements in the year of the applicable QAP. If the HUB will be removed, submit either a short summary about when the amendment will be submitted or submit the amendment cover sheet, amendment request, and copy of fee payment.
- **Is this property in or past year 15 of its Compliance Period?:**  
This question pertains only to HTC properties. Non-HTC properties should enter “No”. HTC developments should answer accordingly based on the date the last building at the Development placed in service.
- **Does the ROFR process apply?:**  
This question pertains only to Competitive (9%) HTC Developments. Non-competitive HTC properties should leave this item blank or enter “No”. The Right of Refusal (ROFR) requirement can be found in the LURA, if applicable. Subchapter E, §10.407 includes more detailed information about the ROFR process, including applicable fees and submission requirements. *ROFR requirements must be satisfied prior to proceeding through the Ownership Transfer approval process.* If the ROFR requirements have been satisfied, submit Exhibit D.

## **Compliance Status:**

- **Any uncorrected issues of noncompliance not in the Corrective Action Period?:**  
If the property has uncorrected issues of noncompliance that are not within a 90-day corrective action period, select “Yes” even if items have been submitted for review and submit Exhibit F.

- *Any Corrective Action for noncompliance items currently in review?:*  
Select “Yes” even if you have Corrective Action in review for items within the 90-day corrective action period.
- *Date Submitted:*  
Include the date your Corrective Action was submitted to the Department if you have indicated that any items are currently in review.

**NOTE:** The new Owner will be responsible for submitting the required Annual Owner's Compliance Reports (AOCR) and the Annual Owner's Financial Certification (AOFC). For information regarding these reports, please refer to TDHCA's website at <https://www.tdhca.texas.gov/compliance-reports> for guidance on the AOCR and <https://www.tdhca.texas.gov/financial-reports> for guidance on the AOFC. **The new Owner will be responsible for obtaining all necessary information from the seller for completion of the reports.**

## **Ownership Transfer Contact Information:**

- *Ownership Transfer Contact Information:*  
Include contact information for a point person who can answer questions about the packet submitted and respond to any deficiencies.
- *Ownership Transfer Fee Submitted?:*  
Fees should be submitted with all Ownership Transfer packets; a packet will not be reviewed until the fee is submitted. If the fee was submitted separately, please provide a copy of the check with the packet submission.

## **Property Financing:**

- *Property Sale Information:*  
This information will fill as “N/A” automatically if “Property Sale” is not chosen from the Type of Transfer menu. This information should only be filled out if a property sale will occur as part of the transfer request.

### *Title Company:*

Include the name of a Title Company and Title Company contact information for the agent who will have information related to the Title Commitment and Transfer.

### *Sale Will Be:*

Select whether the transaction will be a cash sale or financed. Identify the amount of the new financing, the lender name, the percentage interest rate, and the am/term of the new financing amount. Enter the amount of reserves that will transfer as part of the property sale.

**NOTE:** *If the sale will be financed, the information requested in Exhibits E through E.4 of the Ownership Transfer file must be submitted.*



Amount of Reserves to Transfer:

Enter the total current reserves held for the property by the current Owner (operating, reserve for replacement, capital reserves, and any other relevant reserve amounts).

**NOTE:** As specified in 10 TAC §10.406(c)(5), any initial operating, capitalized operating or replacement reserves funded with an allocation from the HOME American Rescue Plan (HOME-APR) and Special Reserve required by the Department must remain with the Development.

Developments that received a Multifamily Direct Loan (MFDL) from the Department:

For Developments undergoing a full property sale with TDHCA Multifamily Direct Loan funds that will not be partially or fully repaid at the time of sale (see 10 TAC §13.13 of the Multifamily Direct Loan Rules to determine whether a loan can be assumed or re-subordinated and the conditions that may be placed on the request) and for HTC Exchange Developments, the Department's Legal Division will require additional time to draft items like assumptions, assignments, agreements to comply, and any other necessary documents.

- Multifamily Direct Loan Assumptions and Contract Assignments (following approvals of Ownership Transfer requests):
  - The Executive Director or authorized designee can only approve the Contract Assignment and Assumption of MFDL Liens if:
    - The assignment or assumption is not prohibited by the Contract, Loan Documents, or regulations;
    - The MFDL Borrower is current with loan payments to the Department and no notice has been given of any Event of Default on any MFDL Loan;
    - The refinance does not propose payment to any of the Development Owner or Developer parties (including the Limited Partners);
    - There are insufficient funds available in the transaction to fully repay the Direct Loan at the time of acquisition, for which Deferred Developer Fee, Development Owner or Affiliate Contributions, or other similar liabilities will not be considered in determining whether the Direct Loan could be repaid at the time of acquisition; and
    - The corresponding Ownership Transfer has been approved and no prospective Owner is subject to State or Federal Debarment or suspension.

**NOTE:** *Some assumptions, subordinations, and re-subordinations will require Board approval as identified in 10 TAC §13.13 and may need to consider Board approval timelines in the prospective closing date (see the Material Application or LURA amendments sections for instructions in locating the list of Board Meeting dates)*

## **New Proposed Owner Information:**

- **Proposed Owner:**

Enter the proposed Owner name and the authorized signatory agent of the proposed Owner. If the proposed Owner or any of its members were formed in a state other than Texas, select “Yes” and submit Exhibit A with copies of a Certificate of Authority from the Texas Secretary of State and organizational documents. If not, select “No” and submit copies of organizational documents (Certificates of Reservation and Account Status may not be necessary if filings are current and accurate in the Secretary of Statesystem).

**NOTE:** All new entities of the proposed Owner will be checked for Certificates of Reservation and Account Status with the Texas Secretary of State and the Texas Comptroller. ***If filings cannot be found or are not current, do not represent structures as indicated, or if signatory authority cannot be verified, Texas formed entities will also be asked to submit Texas Secretary of State filings and any additional documents needed.*** Staff recommends that you submit these items with your transfer packet if you have verified problems with filings and need to provide an explanation.

- **Proposed Owner Experience Summary:**

Enter “Yes” if the proposed Owner or its members have experience in affordable housing operations or management. Enter a cumulative number of years of experience. If “No” was entered or the proposed Owner entered less than five years of cumulative affordable housing specific experience, the form will prompt you to include information on trainings to be attended and information on any experienced partners that will bring additional experience (such as consultants or management companies). Enter a short statement summarizing the Owner’s experience in affordable housing operations and management; experience of a management agent should be included if the management agent will be replaced as a result of the transaction.

## **New Management Agent Information:**

- **New Management Agent Information:**

If “N” is entered for whether the management agent will be replaced at the time of the transfer, the block will automatically show “N/A” for the remaining information. If the Management Agent will be replaced, enter all information requested.

## ❖ **Tab 3 - Organization Charts**

A chart of the current ownership structure before the transfer and a chart of the proposed ownership structure after the transfer must be submitted. An illustration of the basic format for organizational charts is provided within the Ownership Transfer file. The charts must contain the following information:

- Correct name of each entity and person;
- Federal Tax Identification Numbers (TINs) for each entity;
- Ownership percentage for each entity and person;
- Clear indication of role, i.e. Member, Member/Manager, HUB, Non-Profit, Class B, LP, etc.;

- Non-profit entities, public housing authorities and publicly traded corporations must show name of organization, individual board members and executive director;
- ***Ownership must be illustrated to the level of natural persons***, whether owners or Board members. For Multifamily Direct Loan Fund (MFDL) transactions, Limited Partner information to the level of natural persons must also be provided in order to check for federal debarment status.

## ❖ **Tab 3.1 –Board Roster**

All controlling entities identified on the Organization Charts that are managed by a Board must complete this form. Identify the board member’s name, title, and at least the city and state where they reside. This information for each member must be provided in order to check for federal debarment status.

## ❖ **Tab 4 – New Organization Chart Information**

Additional information needed from the Proposed New Owner Org Chart is requested on this form. Complete all yellow highlighted cells. Note the following:

- Entities AND natural persons will be listed on this form.
- Each ***entity*** will have its own section, in which its individual structure will be given.
- For any controlling ownership entity, the date of the entity’s last financial statement and the total liquid assets and cash on hand should be entered. Total liquid assets and cash should be cumulative among the entity and all natural persons identified. All proposed new individuals/entities with a controlling interest should submit financial statements with Tab 10. At a minimum, at least one new controlling entity or individual must provide a financial statement.
- Select the appropriate TDHCA experience for each person from the Yes/No drop-down menu. Make a selection for each entry.
- Be sure names match the organizational charts. Avoid nicknames or abbreviations.
- Additional entity boxes are available by unhiding rows after 367.
- Submit as many pages of the form as necessary to report all entities and natural persons.
- All new controlling entities of the proposed Owner will be checked for Certificates of Reservation and Account Status with the Secretary of State and Texas Comptroller.
- ***When converting to PDF format, be sure to adjust page breaks as necessary.***

## ❖ **Tab 5 - Uniform Previous Participation Form**

Information needed by the Compliance Division for purposes of a Previous Participation review as required under 10 TAC, Subchapter C, §1.301 is requested on this form. Complete all yellow highlighted cells. Note the following:

- The form must be completed for each entity AND natural person shown on the organizational chart. For non-profit entities, public housing authorities and publicly traded corporations, complete forms for each board member, individual with signature authority, executive director, or elected official that represents the person/entity (as applicable).
- This form is still required of all Persons or entities, regardless of whether the Person or entity has previous experience with TDHCA funding. If a person or entity has no prior experience with TDHCA funding, the box above the experience table should be checked verifying no prior experience with any TDHCA administered affordable rental program.

- For “Control Begin/End” enter the time period a person’s or entity’s controlling role in each property identified began and ended. This applies to any Developments that a Person or entity might have been involved with originally, but have since been transferred over to another Person or entity.
- If the Person’s or entity’s control in a property or service related activity has not ended then leave the “Control End” column blank.
- If more space is needed, additional copies of the form can be printed.

❖ **Tab 6 - Agreements Among Parties to the Transfer**

A copy of executed agreements pertaining to the transfer must be submitted. Such agreements include the contract for sale (if applicable), documents conveying or establishing the interest(s) of the new member(s) of the Owner, partnership agreements, and supplementary agreements and amendments.

❖ **Tab 7 – Certification of Tenant Notification**

The current or proposed Development Owner must certify that the tenants in the Development have been notified in writing 30 days before the transfer. This form must be notarized. **A copy of the notification to the tenants must be attached to the notarized form.** A sample of a tenant notice letter is embedded in the form page as a Word document. It may be edited as needed to reflect the details of the subject transfer. The notice to tenants should reflect all new entities of the impending transfer. For example, if a development is being sold to a new managing GP and co-GP, both new GP entities should appear in the notification letter.

**NOTE:** The transfer cannot be approved until at least 30 days have transpired from the date of the written notification to the tenants. If the Development is not occupied, a notice is not required. However, a brief explanation for the Development’s vacancy should be included under this tab.

❖ **Tab 8 – Credit Limit Certification Form – (9% HTC developments only)**

A Credit Limit Certification form must be completed and executed by each natural person that will be a new member of the Development Owner after the ownership change and for any new developer, guarantor, board member, or related party. Complete all yellow highlighted cells and execute. Note the following:

- This form is NOT required for allocations made prior to 1995.
- Form must be executed by each proposed new individual and/or the individual representing the proposed new entities.
- The credit limit that applies to a Development is stated in the QAP of the year of the Development’s allocation.

*The credit limit may be waived if the award of credits was made at least five years prior to the transfer or if the syndicator, investor or limited partner is taking ownership of the Development and not merely replacing the general partner.*

❖ **Tab 9 – Owner Certification & Agreement to Comply with the LURA**

The Owner Certification & Agreement to Comply with the LURA must be submitted on behalf of any proposed new entity or Owner. If a proposed new Owner is a non-profit organization, the Executive or Director authorized to bind the corporation must execute and submit this form. This form must be notarized.

❖ **Tab 10 – Certification of Financial Statements Form**

A financial statement and Certification of Financial Statements form must be completed for each proposed controlling entity and/or individual. At a minimum, at least one new controlling entity or individual must provide a financial statement to demonstrate financial capacity.

❖ **Exhibits A – G Cover Page**

This form will automatically populate from entries made on the Ownership Transfer Information form (Form 2). This form should be submitted with your Ownership Transfer package. Note that the List of Exhibits is provided for your convenience in tracking additional items requested but that errors or omissions may occur. Items shown in the List of Exhibits do not waive or change any additional requirement to which the current or proposed Owner is otherwise subject under the Ownership Transfer Rule or the Post Award Activities Manual. Asset Management staff may request additional information or documentation as needed. Cover sheets for each applicable Exhibit are provided as follows:

❖ **Exhibit A: Organizational Documents**

Select the applicable boxes highlighted in yellow. Exhibit A must be submitted for all entities shown on the Tab 4 - New Org Chart Information form. For these entities, the following must be submitted:

- For all controlling entities: Copies of governing documents such as partnership agreements, company agreements, operating agreements, articles of incorporation or organization, and/or bylaws verifying the relationship and authority indicated in the Ownership Transfer packet, and
- For controlling entities filed in other states only: A Certificate of Authority from the Texas Secretary of State authorizing the entity to conduct business in Texas.

All new entities of the proposed Owner will be checked for Certificates of Reservation and Account Status with the Texas Secretary of State and the Texas Comptroller. ***If filings cannot be found or are not current, do not represent structures as indicated, or if signatory authority cannot be verified, Texas formed entities will also be asked to submit Texas Secretary of State filings and any additional documents needed.*** Please submit these items and an explanation of the issue with the Ownership Transfer file when known problems with filings have been identified.

❖ **Exhibit B: HTC Non-Profit Set-Asides, Joint Ventures (9% HTC Developments), and HOME CHDOs**

Select the applicable box highlighted in yellow. Exhibit B must be submitted when a 9% HTC Development received funding as a Qualified Non-profit under the Non-Profit Set-Aside or received points as a materially participating non-profit participating in a joint venture. This Exhibit is also required for HOME Developments that received Community Housing Development Organization (CHDO) operating funds or have CHDO provisions in the HOME LURA. These requirements must remain with the property throughout the affordability period.

***NOTE: During different HTC award years, requirements may vary in the QAP. The QAP in the Development's award year should be checked for any additional relevant requirements.***

**HTC Developments under the Non-Profit Set-Aside, Developments awarded points for a non-profit joint venture, and HOME CHDOs must all submit the following:**

- A copy of the 501(c)(3) or (4) determination letter from the Internal Revenue Service;
- Articles of incorporation and bylaws indicating that fostering affordable housing is an exempt purpose of the organization (this should be highlighted or noted for Asset Management staff's review)

**HTC Developments under the Non-Profit Set Aside must also submit:**

- Evidence that the non-profit organization prohibits members of the board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board (this may be part of the articles of incorporation or bylaws submitted and should be highlighted or noted for Asset Management staff's review);
- A third party legal opinion (a template for the opinion can be found in the current year's Application forms) stating:
  - that the non-profit organization prohibits members of the board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board;
  - that the non-profit organization is not affiliated with or controlled by a for-profit organization and the basis for that opinion, and
  - that the non-profit organization is eligible, as further described, for a housing tax credit allocation from the Nonprofit Set-Aside and the basis for that opinion. Eligibility is contingent upon the nonprofit organization controlling the Development and otherwise meeting the requirements of the Internal Revenue Code, §42(h)(5);
- A certification (signed by the chief executive or other authorized officer) stating that a majority of the members of the non-profit organization's board of directors principally reside:
  - in this state, if the Development is located in a rural area; or
  - not more than 90 miles from the Development if the Development is not located in a rural area;

**HOME Developments with a CHDO requirement must also submit:**

HOME Developments with a CHDO requirement may only sell the property to CHDO entities (as allowed by the LURA) that meet the HOME Final Rule requirements in 24 CFR 92 §92.300.

- For properties funded under the HOME CHDO set-aside **in 2016 or later** by TDHCA, a CHDO Self-Certification form certifying that the CHDO continues to meet the CHDO definition in 24 CFR Part 92 for purposes of qualifying as a Qualified Entity; **OR**
- A completed 2019 Community Housing Development Organization ("CHDO") Certification Packet.

The CHDO Self-Certification form and CHDO Certification Packet are located on the Asset Management Division's website at <https://www.tdhca.texas.gov/post-award-activities-manual>).

❖ **Exhibit C: Historically Underutilized Business (HUB) Participation (9% HTC Developments only)**

Select the applicable box highlighted in yellow. Exhibit C is required when the Development received points for material participation of a Historically Underutilized Business (HUB). The proposed new HUB must submit:

- A current certificate from the Texas Comptroller of Public Accounts verifying that the entity is a HUB.

❖ **Exhibit D: Right of First Refusal (ROFR) (9% HTC Developments)**

Select the applicable box highlighted in yellow. A review of the LURA must be conducted to determine if a ROFR applies to the Development. Any ROFR requirement will be reflected in the Development's LURA.

If it is determined that the Development has a ROFR requirement, the process outlined in 10 TAC §10.407 must be followed when a Development Owner seeks to sell the property anytime after the 15<sup>th</sup> year of the Compliance Period (regardless of any extended use or Compliance Period). **NOTE: If the 15<sup>th</sup> year of the Compliance Period will end before the Department approves a transfer or before the transfer is completed, then the ROFR process requirement will still apply.**

The following documentation must be provided in the Ownership Transfer packet showing either that the ROFR, if applicable, has been satisfied or that the proposed transfer would satisfy the ROFR:

- For previous satisfaction of the ROFR: A letter from the Department evidencing ROFR conditions were satisfied and dated within 24 months of the Ownership Transfer request (letters older than 24 months must repeat the ROFR process), and a copy of the final Sales Contract with all amendments and the final settlement statement.
- For proposed transfers to Qualified Nonprofit Organization: If the LURA requires a ROFR to a Qualified Non-profit as defined in Section 42(h)(5)(C) of the Internal Revenue Code, the following must be provided:
  - a copy of the 501(c)(3) or (4) determination letter from the Internal Revenue Service (IRS);
  - a statement that the non-profit entity is not affiliated with or controlled by a for-profit organization; and
  - articles of incorporation and bylaws indicating that fostering affordable housing is an exempt purpose of the organization (this should be highlighted or noted for Asset Management staff's review.)

- For proposed transfers to Qualified Entities: For properties that require a ROFR to a CHDO or a public housing authority or public facility corporation. The proposed Owner must be either:
  - A nonprofit that obtained a CHDO designation through an award funded under the HOME CHDO set-aside **in 2016 or later** by TDHCA, a CHDO Self-Certification form certifying that the CHDO continues to meet the CHDO definition in 24 CFR Part 92 for purposes of qualifying as a Qualified Entity;
  - A nonprofit certified as a CHDO by the Department. For this certification, the nonprofit must submit a completed 2019 Community Housing Development Organization (“CHDO”) Certification Packet;
  - A public housing authority or public facility corporation that owns the fee title to the Development Owner's leasehold estate; **OR**
  - An entity controlled by a CHDO, public housing authority, or public facility corporation as described above.

**NOTE:** The CHDO Self-Certification form and CHDO Certification Packet are located on the Asset Management Division’s website at <https://www.tdhca.texas.gov/post-award-activities-manual>).

❖ **Exhibit E: New Financing Pro Forma (Ownership Transfers involving a property sale or new financing)**

Select the applicable boxes highlighted in yellow. If the Ownership Transfer will include a property sale and/or new financing will be introduced as part of the transfer, submit copies of the following:

- 1) Term sheet or commitment letter from lender that identifies the loan amount, interest rate, and terms for the loan;
- 2) The lender’s pro forma, **OR**
- 3) An updated TDHCA pro forma. *(The forms in Tabs E1 through E4 should be completed and submitted for the TDHCA pro forma.)*

❖ **Exhibit F: Compliance Plan**

Select the applicable box highlighted in yellow. If the property has outstanding uncorrected issues of noncompliance outside of the 90-day Corrective Action Period, submit the following:

- 1) A timeline for correcting any outstanding non-compliance issues, **and**
- 2) A brief summary listing all uncorrected non-compliance items outside of the Corrective Action Period (or a copy of the most recent compliance letter showing all uncorrected non-compliance items), plans for correction, an update on current progress, and a statement regarding whether the items will be corrected by the current or proposed Owner.



## ❖ **Exhibit G: PRA 811 Documents**

Select the applicable box highlighted in yellow. If the Ownership Transfer involves a sale and the Development is participation in the Section 811 PRA Program, submit the following:

- 1) Section 811 PRA Program Owner Participation Agreement;
- 2) Rental Assistance Contract (Parts I and II); and
- 3) Recorded Use Agreement.

**NOTE:** The new Owner will be required to execute assignment and assumption agreements for the Section 811 Program documents that will be drafted by TDHCA's Legal staff.

## **Additional Forms Required of New Owners and/or General Partners**

Upon a change in the ownership structure of a Development, the following form must be completed within 10 days of transfer approval and submitted to the Compliance Division by emailing the form to [cmts.requests@tdhca.texas.gov](mailto:cmts.requests@tdhca.texas.gov):

- CMTS Filing Agreement

You can find this form at the Department's Compliance Monitoring & Tracking System webpage at <https://www.tdhca.texas.gov/compliance-monitoring-tracking-system>. Any questions related to these forms should be directed to [cmts.requests@tdhca.texas.gov](mailto:cmts.requests@tdhca.texas.gov). Note that a unit/building spreadsheet is not required as part of the ownership transfer process.

## SAMPLE NOTICE TO RESIDENTS

### **[Development Name]**

Development Address  
Development Phone Number

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Date

Resident  
Name Address  
City, State Zip Code

Dear Resident:

Please be advised that **[CURRENT OWNER, the GENERAL PARTNER OR OTHER ENTITY ROLE]**, **[intends to assign its GENERAL PARTNERSHIP OR OTHER INTEREST to PROPOSED NEW OWNER]**  
**OR [is under contract to sell NAME OF DEVELOPMENT to PROPOSED NEW OWNER OR PARTICIPANT NAME] OR [intends to transfer its interest to PROPOSED NEW OWNER, an affiliate of CURRENT OWNER]**. The Texas Department of Housing and Community Affairs requires us to notify you of this change in writing at least thirty (30) days prior to any change taking place.

**[We will notify you when the sale is completed. The sale described above will not affect your lease or the conditions of your unit or apartment building. Future rent payments and all current inquiries and communications should continue to be addressed to the property management office onsite.] OR**

**[This letter is formal notice of the intended assignment. The assignment described above will not affect your lease or the conditions of your unit or apartment building. If you have any questions, please call the onsite management office.]**

Sincerely,

**[NAME]**

**[TITLE]**

**[NAME OF ENTITY or PROPERTY MANAGEMENT GROUP], Representative of [CURRENT OWNER or PROPOSED NEW OWNER]**

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# SAMPLE NOTICE TO RESIDENTS (Spanish Version)

## **[Development Name]**

Development Address  
Development Phone Number

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Date

Resident Name  
Address  
City, State Zip Code

Estimado Residente:

**IF OWNER INTENDS TO ASSIGN OR SELL ITS INTEREST IN GP OR OTHER INTEREST USE THE FOLLOWING LANGUAGE:**

“Se le notifica que **[INSERT NAME OF CURRENT OWNER, the GENERAL PARTNER OR OTHER ENTITY ROLE]** tiene la intención de ceder o vender su participación en esta propiedad a **[INSERT NAME OF PROPOSED NEW OWNER]**. El Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA) nos requiere notificarle de este cambio por escrito al menos treinta (30) días antes de cualquier cambio que está teniendo lugar.

Esta carta es la notificación formal del cambio propuesto. Este cambio no afectará su contrato de arrendamiento o las condiciones de su edificio de apartamentos. Si usted tiene alguna pregunta, por favor llame a la oficina.”

Sinceramente,

**[NAME]**

**[TITLE]**

**[NAME OF ENTITY or PROPERTY MANAGEMENT GROUP], Representative of [CURRENT OWNER or PROPOSED NEW OWNER]**

**IF OWNER INTENDS TO SELL THE PROPERTY USE THE FOLLOWING LANGUAGE:**

“Se le notifica que **[INSERT NAME OF CURRENT OWNER]** está bajo contrato para vender **[insert NAME OF DEVELOPMENT]** a **[insert name of PROPOSED NEW OWNER OR PARTICIPANT NAME]**. El Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA) nos requiere notificarle de esta venta por escrito por lo menos treinta (30) días antes de la aprobación.

Esta carta es la notificación formal del cambio propuesto. Este cambio no afectará su contrato de arrendamiento o las condiciones de su edificio de apartamentos. Si usted tiene alguna pregunta, por favor llame a la oficina.”

Sinceramente,

**[NAME]**

**[TITLE]**

**[NAME OF ENTITY or PROPERTY MANAGEMENT GROUP], Representative of [CURRENT OWNER or PROPOSED NEW OWNER]**

# Requests for Legal Documents (All Multifamily Developments)

This chapter provides guidance for submitting requests for Asset Management related Legal Documents from the Department. The rule regarding Subordination Agreements, HUD Amendments to Restrictive Covenants, and HUD Riders to Restrictive Covenants can be found in 10 TAC §10.402. In general, each request begins with the below submission of information, which will assist the Asset Manager in preparing and routing a request for Legal document drafting or review. During the review of the document(s) by TDHCA’s Legal staff, the Asset Manager will serve as the primary contact for the request. The Asset Manager will be responsible for forwarding questions from external and internal Legal staff, and will send the final document(s) for execution and recording. Please note that requests for Legal Documents should be entered *no later than 30 days in advance* of the date such documents are needed to ensure documents are in queue with enough time to resolve any questions and allow for attorney consideration of any return comments or changes. TDHCA Legal staff will not typically return calls or emails about any document until Asset Management has approved the request for Legal document drafting or review. General questions can be submitted to the Asset Manager.

## Information Requested

TDHCA has prepared a form that can be used as a cover sheet with the submission of any document drafting or review requests. If the form is not used, all of the information must be submitted in the text of an emailed or written request. Requests for documents or review can be submitted as directed in the **Delivery Instructions** chapter of this Manual. Information requested includes (but, based on the needs of the individual transaction, is not limited to):

- ❖ Document(s) requested (if a document is being provided for review rather than drafting, submit an electronic copy)
- ❖ Date the final document is needed (or date closing will occur, if subordination request)
- ❖ Name and file number or CMTS # of Development
- ❖ Name, email, and phone # of requestor or contact for the transaction (must be someone who can answer questions about the request) and name, email, and phone # of attorney involved in the transaction
- ❖ Confirmation of Owner’s signature block  
**NOTE:** All requesting entities will be checked for good standing with the Texas State Comptroller and will be reviewed for discrepancies and expirations with the Secretary of State. Discrepancies with SOS may result in the request for additional documents showing the signature authority or organization of the entity.

- ❖ Address where final, original documents should be sent (phone and email of person to receive package if different from requestor or contact for transaction)
- ❖ Titles of any attached documents

## Additional Information Required for Subordination of the LURA

For requests to subordinate the LURA (Subordination Agreement, HUD Amendment to Restrictive Covenants, or HUD Riders to Restrictive Covenant), the following must be submitted pursuant to 10 TAC §10.402:

- The requested document on Department approved template, if available, and completed with the Development specific information;
- Documentation such as a loan commitment or application that identifies the proposed loan amount and terms;
- A survey, title commitment, or recorded plat that agrees with the legal description in the requested document if the proposed legal description is different from the legal description in the Department's regulatory agreement. *Changes to the Development Site acreage may be subject to further review and approval under 10 TAC §10.405 as instructed in the Amendments chapter of the Manual;* and
- The Development's most recent 12-month trailing operating statement. *If the financial statement provided indicates that the proposed new debt cannot be supported by the Development, the Development Owner must submit an operating pro forma and a written explanation for the differences from the actual performance of the Development.*

**NOTE:** For HTC Developments seeking to refinance within two years from the issuance of the IRS Form(s) 8609, a review of the Development's cost certification will be conducted to determine if the change in the financing structure would have affected the credit award. If it is determined that the change to the financing structure, net of additional costs associated with the refinance, would have resulted in over sourcing the Development, thereby resulting in an adjustment to the credit award, the Development Owner may be required to fund a Special Reserve Account in accordance with 10 TAC §10.404.

For requests to subordinate the MFDL LURA:

- ***Subordinations of Multifamily Direct Loan LURAs will not be allowed*** with the exception of partial subordination or re-subordination of receivership rights (as long as the receiver entity is not debarred or suspended by the Department or the Federal Government).
- The Borrower must be current on all loan payments to the Department and must not have a current Notice of Event of Default on any Multifamily Direct Loan. Histories of late payment or non-payment on Multifamily Direct Loans will also be considered.

## Requests for Multifamily Direct Loan (MFDL) Subordinations

Subordinations or re-subordinations of Developments with Multifamily Direct Loans from the Department are also subject to the requirements under 10 TAC §13.13(c)(2) relating to Multifamily Direct Loan Rule and 10 TAC §11.302 relating to Underwriting Rules and Guidelines, including but not limited to 10 TAC §11.302(g)(4).

# Post Award Activities Manual

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❖ Requests for a Multifamily Direct Loans (MFDL) subordination must include the following:

- Information related to whether the loan will be partially or fully repaid at the time of transaction closing;
- Information regarding proposed payment to any Development Owner or Developer party (including the Limited Partners) that will occur as part of the refinance; and
- Information related to any lender required changes in TDHCA loan terms or amounts to occur as part of the refinance.

**Note:** The Borrower must be current on all loan payments to the Department and must not have a current Notice of Event of Default on any Multifamily Direct Loan. Histories of late payment or non-payment on Multifamily Direct Loans will also be considered.

❖ Board approval is required for any Multifamily Direct Loan (MFDL) subordination or re-subordination that:

- Does not propose a partial repayment of the MFDL loan;
- Proposes payment through the refinance to the Development Owner or Developer parties (including the Limited Partners); or
- Requires subordination to a new superior lien in an amount that is greater than the original senior lien or negatively affects the financial feasibility of the Development (defined by rule as a reduction in DCR by 0.05 or by no longer meeting the requirements of 10 TAC §11.302 relating Underwriting Rules and Guidelines).

**NOTE:** Additional documentation may be requested if needed for the financial analysis performed by the Asset Manager.

❖ For Easement/Easement-related Consent and Subordination Requests (All programs), submit the following:

- All agreements pertaining to such easement(s);
- Explanation of request and purpose of easement.

❖ Post Closing TDHCA Loan Modification Requests (Direct Loan programs where revised loan terms will be requested):

- Loan Modification Requests will **only be considered as part of a Department or Asset Management Division work out arrangement** in accordance with 10 TAC 13.13(c)(3). Contact the Asset Manager assigned to the Development or the Division Director directly to determine whether a request for relief will be considered based on demonstrated financial risk to the Development.

**NOTE:** Any request for revised terms should include proposed options intended to help mitigate Department risk or loss in accepting any modified term arrangements.

# Annual Rent Approvals: HOME/HOME-ARP/ HOME MATCH/NSP/ TCAP-RF/NHTF (Direct Loan Programs Only)

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This chapter provides guidance on how to request a Development's Annual review of HOME, NSP Multifamily, TCAP-RF, and National Housing Trust Fund rents as required under 10 TAC §10.403.

In accordance with 24 CFR §92.252(f), the Department is required to review and approve HOME, NSP, TCAP-RF and National Housing Trust Fund Multifamily property rents on an annual basis. The Department is also required by 24 CFR §92.219 and §92.252(d)(2) to approve rents for HOME Match units. ***In accordance with the CFR, only Direct Loan programs where Commitment of Funds occurred on or after August 23, 2013, AND construction is complete are required to submit annual rent approvals.*** If the Development is required to submit annual rent reviews, the request must be submitted no later than **August 1st** of each year.

## Required for the HOME Rent Review

Development Owners must use the ***Rent Approval Tool*** Excel file located on the Asset Management webpage at <https://www.tdhca.texas.gov/post-award-activities-manual>. The annual rent review package consists of the completed Excel file and the attachments specified in Tab instructions. The completed ***Rent Approval Tool*** Excel file **and** required attachments must be submitted to the Department as identified in the **Delivery Instructions** chapter of this Manual.

To ask a question or find the Asset Manager assigned to the Development, please refer to the **Delivery Instructions** section of this Manual.

There are **six** electronic tabs in the ***Rent Approval Tool*** Excel workbook that represent the separate spreadsheets for Development Owner use. Note that some tabs in the workbook act as a placeholder for purposed of reminding Development Owners of the information that must be provided in addition to the Excel file.

## Required Forms and Exhibits for the HOME Rent Approval

### ❖ **Tab - Rent Request:**

- Complete the form with the information requested.
  - Development Information
    - Enter the TDHCA file/Application number for all TDHCA programs in which the Development participates and elect under “Program Type” whether the approval request is being submitted for HOME, NSP, TCAP-RF, or NHTF. If the property has more than one funding source, a separate packet for each program rent approval must be submitted.
    - Enter the Development name, address, county, and place in which the Development is located. If the place is not listed in the drop down menu, select “Not Listed” from the drop down menu.
  - Contact Information
    - Enter the contact name/title of the person responsible for entering the rent approval request. Then, enter the contact’s address, city, state, zip, phone with extension, and email. This is the only person who will be contacted regarding the rent approval request – as such, please ensure that the contact will be available to discuss any issues or additional information needed to review the rent request.
  - Program Rent Request & Utility Allowance Information
    - Select what type of utility allowance (UA) model is currently being used at the property from the drop down list. Enter the approved date of the last utility allowance (for PHA Allowances, enter the date on the newest effective utility allowance you are using; for all other methods, enter the date the utility allowance was last approved by the Department). Enter your Asset Manager and select the check boxes to show attachment of the UA schedule, current rent roll, and tool showing maximum HOME rents.

### ❖ **Exhibit 1 (UA):**

- Enter who pays each utility (owner or tenant), the energy source, and the amount of each utility allowance. The categories should auto-total. Check the bottom of the auto totals to ensure that they correctly add to the right utility allowance total for the bedroom size. These totals will auto-populate into the Exhibit 3 (Rent Schedule).



- ❖ **Exhibit 2 (UA back up): attachment**
  - Submit documentation to support the current the utility allowances for the Development. If a utility method is used that requires Department review, attach the most recent letter issued from the Compliance Division approving the allowance. The utility schedule must clearly indicate which utility costs are included in the estimate. If using a HUD or USDA approved utility allowance, provide the most recent approved rent and utility allowance schedule approved by HUD or USDA.
  
- ❖ **Exhibit 3 (Rent Schedule):**
  - Unit Designation – HTC/MF Direct Loan/NSP/TDHCA MRB/ NHTF/Other - Although the rents submitted for approval are only for the HOME/HOME-ARP/TCAP-RF/NHTF/NSP: All of the Development’s units, including market rate units, must be identified on the Rent Schedule in order to conduct the required financial review. Unit designations should be entered from smallest to largest based on “# of Bedrooms” and “Unit Size”, then within the same “# of Bedrooms” and “Unit Size” from lowest to highest “Rent Collected/Unit”. All applicable programs should be identified for Units that are layered with multiple programs. For additional guidance, please refer to the Unit Mix identified in the Development’s underwriting report located on TDHCA’s website at <https://www.tdhca.state.tx.us/rea/reports-all-other.htm>.
  - # of Units, # of Bedrooms, # of Units (A): Enter the number of units for each unit type.
  - Program Rent Limit (B): Enter the Program Limit for each unit designation using the *Income and Rent Tool* located on TDHCA’s website at <https://hrc-ic.tdhca.state.tx.us/hrc/IncomeAndRentTool.m> or the rent limits for the unit(s) that is required by another funding source (e.g., Section 8 project-based subsidy, RAD/HAP, or USDA). *Print and submit a copy of the generated Income and Rent Tool results with the rent review request and provide a copy of any contract rent limits approved by another funding source.*
  - Tenant Paid Utility Allow. (C): The utility allowances should automatically populate after the Exhibit 1 (UA) is completed. However, the formals can be overridden in the column if needed.
  - Rent Collected/Unit (D): Enter the rent amount collected for the unit after deducting the Tenant Paid Utility Allow.
  - Total Monthly Rent: The total monthly rent will automatically populate after the information on the row is completed. If auto-calculations do not appear to be correct, check to confirm that all data on each form has been accurately entered.
  
- ❖ **Exhibit 4 (Rent Roll): attachment**
  - Submit a copy of a current rent roll for the Development or a copy of the Unit Status Report from CMTS (provided it is current through the previous month).
  
- ❖ **Exhibit 5 (Operating Statement): attachment**
  - Submit a copy of a current operating statement in a 12-month trailing format.

## The Approval Process

After a HOME Rent Review request is submitted, the Asset Manager will review the information and submit an approval or disapproval notification to the contact identified in the Rent Request within 30 days of receiving all required items. The notification will also be attached in CMTS. Development Owners and representatives must keep copies of all approval letters on file at the Development site to be reviewed at the time of Compliance Monitoring reviews. Approval of rents by the Asset Management Division will be limited to a review of the documentation submitted HOME, HOME-ARP, HOME Match, NSP, TCAP-RF, and NHTF units. The Asset Management Division's approval will not guarantee compliance with the Department's rules in Subchapter F or otherwise absolve an Owner of any past, current, or future non-compliance related to Department rules, guidance, Compliance Monitoring visits, or any other rules or guidance to which the Development or its Owner may be subject. Compliance will conduct an in depth review of rent and utility allowance practices at the time of Compliance Monitoring reviews.

# Right of First Refusal (ROFR) (Competitive HTC Only)

This chapter provides guidance on the Right of First Refusal (ROFR) process for all Competitive Housing Tax Credit (9% HTC) Development Owners that received points and/or other preferences for agreeing to provide a ROFR to a Qualified Entity or, as applicable, a Qualified Nonprofit Organization, as memorialized in the Development's LURA.

If a LURA requires a ROFR requirement, the Development Owner may not request a Preliminary Qualified Contract (if such opportunity is available under the applicable LURA and 10 TAC §10.408 until the ROFR requirements have been satisfied. Satisfying the ROFR requirement does not terminate the LURA or the ongoing application of the ROFR requirement to any subsequent Development Owner.

In accordance with 10 TAC §11.901(11), a non-refundable Right of First Refusal Fee in the amount of \$2,500 is required when submitting a request to the Department to initiate a ROFR. **ROFR requests will not be processed until the fee is received by the Department.** Submission of the fee does not guarantee approval of the request. The Right of First Refusal rules can be found in 10 TAC §10.407.

## ROFR Triggers

The ROFR process is triggered in the following circumstances:

- 1) The Development Owner's determination to sell the Development to an entity other than as permitted in the LURA; or
- 2) The simultaneous transfer or concurrent offering for sale of a General Partner's and limited partner's interest in the Development's ownership structure.

The ROFR process is not triggered if a Development Owner seeks to transfer the Development to a newly formed entity:

- a) that is under common control with the Development Owner; and
- b) the primary purpose of the formation of which is to facilitate the financing of the rehabilitation of the Development using assistance administered through a state financing program.

Development Owners seeking to amend the LURA to incorporate updated provisions of Tex. Gov't Code 2306 should refer to the Amendments to the LURA chapter of this Manual.

## **Direct Sale of a Development without going through ROFR**

A direct sale of a Development without going through the ROFR process is allowed only in the following circumstances:

- 1) The LURA requires a 90-day ROFR and the Development Owner is selling to a Qualified Nonprofit Organization as defined in Section 42(h)(5)(C) of the Internal Revenue Code;
- 2) The LURA requires a two-year ROFR and the Development Owner is selling to a Qualified Nonprofit Organization that also meets the definition of a Community Housing Development Organization (CHDO) under 24 CFR Part 92, as approved by the Department; or
- 3) The LURA requires a 180-day ROFR and the Development Owner is selling to a Qualified Entity that meets the definition of a CHDO under 24 CFR Part 92, or that is controlled by a CHDO, as approved by the Department.

Where the Development Owner is not required to go through the ROFR process, it must go through the ownership transfer process in accordance with 10 TAC §10.406. If there is a conflict between the LURA and the Department's rule, every effort will be made to harmonize the provisions. If the conflict cannot be resolved, requirements in the LURA will supersede the rule. If there is a conflict between the LURA and Tex. Gov't Code Chapter 2306, every effort will be made to harmonize the provisions. A Development Owner may request a LURA amendment to make the ROFR provisions in the LURA consistent with Tex. Gov't Code Chapter 2306 at any time.

## **Required Forms and Exhibits for the Right of First Refusal**

There are two general expectations of the ROFR offer price and the LURA will identify and describe the applicable ROFR offer price for the Development. Upon establishing the value of the property, the ROFR process is the same for all types of LURAs. The ROFR documentation must be submitted electronically in PDF format. Please refer to the **Delivery Instructions** chapter of this Manual for more information on how to properly submit the documentation.. Please do not submit the ROFR request until all documentation is complete. Partial submissions will not be accepted or reviewed until all documentation is submitted.

Within 30 business days of receipt of all required documentation, the Department will review the submitted documents and notify the Development Owner of any deficiencies. The ROFR package must use the forms provided by TDHCA and located on the Asset Management webpage at <https://www.tdhca.texas.gov/post-award-activities-manual>. A complete ROFR package will consist of **one bookmarked PDF file**. All forms and supporting documentation must be submitted to the Department behind the tabs listed and in the order stated below. Any deficiencies identified through the review process will be sent to the requesting party via email. The requester will be given a specific length of time to correct the deficiencies. Failure to comply with requests for additional information within the specified timeframe may delay the start of the ROFR posting period and approval of the ROFR.

There are **13** electronic tabs in the ROFR file that represent separate forms or documents that all ROFR requests must contain. Bookmarks should be labeled as titled below and in the order presented. Any additional exhibit cover pages should follow the forms packet with requested documentation included behind each tab.

❖ **Tab 1- ROFR Request/Notice of Intent**

A letter describing the owner's intent with the Development, specifically identifying the appropriate reason for requesting a ROFR (see ROFR Triggers previously discussed in this chapter).

❖ **Tab 2- ROFR Property Information**

Complete the form for the Development to be posted for ROFR.

❖ **Tab 3- Certification of Notification**

The Development Owner must certify that they have provided, to the best of their knowledge and ability, a notice of intent to all required persons and entities identified in the Rule:

- All tenants and tenant organizations, if any, of the Development;
- Mayor the municipality (if the Development is within a municipality or its ETJ);
- All elected members of the governing body of the municipality (if within a municipality or its ETJ)
- Presiding officer of the governing body of the County in which the Development is located;
- The local housing authority, if any; and
- All qualified buyers maintained on the Department's list of qualified buyers listed on the Property for Sale page of the Asset Management website: [https://public.tdhca.state.tx.us/pub/T\\_HF\\_CLEARINGHOUSE.list\\_buyers](https://public.tdhca.state.tx.us/pub/T_HF_CLEARINGHOUSE.list_buyers).

The letters must include, at a minimum, all of the information required by Rule and cannot contain any statement that violates Department rules, Texas government code, or federal requirements:

- The Development's name, address, city, and county;
- The Development Owner's name, address, individual contact name, phone number, and email address;
- Information about tenants' rights to purchase the Development through the ROFR;
- The date that the ROFR notice period expires;
- The ROFR offer price;
- A physical description of the Development, including the total number of units and total number of low-income units; and
- Contact information for the Department staff overseeing the Development's ROFR application.

The form must be notarized and a copy of all notices provided must be attached to the notarized form. A sample of a tenant notice letter is embedded/provided in this Manual at the end of this chapter.

❖ **Tab 4- Existing Contractual ROFR**

The Department will notify any Qualified Entity or, as applicable, any Qualified Nonprofit Organization that the Development Owner identifies as having a contractual ROFR of the Owner's intent to sell. Likewise, if the LURA for the Development identifies a Qualified Entity or Qualified Nonprofit Organization, the Department will notify such entity of the Owner's intent to sell, unless documentation is provided by the owner to document that a ROFR was offered to that entity and provides a written response from identified entity. Documentation evidencing any contractual ROFR (outside of the Development's TDHCA LURA) between the Development Owner and a Qualified Nonprofit Organization or Qualified Entity, along with evidence that such entity is in good standing must be provided.

❖ **Tab 5- ROFR Offer Price**

There are two general expectations of the ROFR offer or sale price identified in the Development's LURA:

1. Fair Market Value (FMV) - if the Development Owner has a LURA that requires a ROFR at Fair Market Value, the value may be established in one of two ways described below:
  - a) a current appraisal of the property (completed within three (3) months prior to the ROFR request and in accordance with the Underwriting Rules and Guidelines in, 10 TAC §11.304, relating to Appraisal Rules and Guidelines). The appraisal should take into account the existing and continuing requirements to operate the property under the LURA and any other restrictions that may exist; or
  - b) if the Development Owner receives an offer to purchase the property from any buyer other than a Qualified Entity or Qualified Nonprofit Organization that the Owner would like to accept, the owner may execute a purchase offer that the Development Owner would like to accept. The purchase offer must contain specific language that the offer is conditioned upon satisfaction of the ROFR requirement (this should be highlighted or noted for Asset Management staff's review).

If a subsequent ROFR request is made within six months of the previously approved ROFR posting, the lesser of the prior ROFR posted value or new appraisal/purchase contract amount must be used in establishing Fair Market Value.

2. Minimum Purchase Price (MPP)- if the Development Owner has a LURA that requires a ROFR at MPP pursuant to §42(i)(7)(B) of the Code, the price is calculated as the sum of:
  - a) The principal amount of outstanding indebtedness secured by the project (other than indebtedness incurred within the five (5) year period immediately preceding the date of said notice – supporting documentation of any amounts used in the calculation must be provided with the ROFR package); and
  - b) All federal, state, and local taxes incurred or payable by the Department Owner as a consequence of such sale. If the property has a minimum applicable fraction of less than 1, the offer must take this into account by multiplying the purchase price by the applicable fraction and the fair market value of the non-Low Income units.

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**NOTE:** A property may not be transferred under the ROFR process for less than the Minimum Purchase Price, but if the sequential negotiation created by statute yields a higher price, the higher price is permitted.

❖ **Tab 6- Property Description**

A description of the property, including all amenities and current zoning requirements.

❖ **Tab 7- Restrictions**

Copies of all documents imposing non-TDHCA income, rental and other restrictions, if any, applicable to the operation of the Development.

❖ **Tab 8- Title Policy**

A current title commitment or policy not older than six months prior to the date of submission of the ROFR request.

❖ **Tab 9- Physical Needs Assessment**

The most recent Physical Needs Assessment (PNA) or Property Condition Assessment (PCA), pursuant to Tex. Gov't Code §2306.186(e) conducted by a third party. At a minimum, the PNA/PCA should include a statement extending reliance on the report to the Texas Department of Housing and Community Affairs. Additionally, if the PNA/PCA is dated more than six months prior to the submission of the Owner's ROFR request to the Department, staff will request that the Owner provide an update regarding any critical repairs identified by the PNA/PCA provider at the time the report was originally prepared. If the PNA/PCA identifies the need for critical repairs that significantly impact habitability and tenant safety, the identified repairs and replacements must be resolved to the satisfaction of the Department before the Development will be considered eligible to proceed with a Right of First Refusal Request.

❖ **Tab 10- Operating Statements**

A copy of the latest 12-month operating statements, including income statements and balance sheets for the Development. Financial statements should identify amounts held in reserve. Additionally, a copy of the three most recent consecutive annual operating statements should be provided (audited if available).

❖ **Tab 11- Photos**

A detailed set of photographs of the Development. Photos should include interiors and exteriors of representative units and buildings as well as the Development's grounds.

❖ **Tab 12- Rent Roll**

A current rent roll (preferably not older than one month prior to ROFR request date) that includes the information as illustrated in the sample provided below:

Unit	Unit Type	Sq. Ft.	Lease Status	Set-aside	Tenant Name	Lease Start	Lease End	Rental Rate	Tenant Pays
101	1/1	630	Occupied	60%	Jones	10/1/12	10/1/13	\$450	\$450
102	2/1	750	Vacant	50%	Smith	1/1/11	1/1/12	\$450	\$400

❖ **Tab 13- Commercial Leases**

If any portion of the land or improvements is leased for other than residential purposes, copies of the commercial leases must be provided.

Once any deficiencies are resolved and the Development Owner and the Department come to an agreement on the ROFR offer price of the Development, the Department will list the property for sale on its website and send a listserv to potential buyers to inform them of the availability of the property at the agreed upon ROFR offer price. The Development Owner will receive notification from the Department when the property has been listed and when the ROFR posting period (as specified in the LURA) begins and ends.



## SAMPLE RIGHT OF FIRST REFUSAL NOTICE TO RESIDENTS

### **[Development Name]**

*Development Address and County*  
*Development Owner's Name*  
*Development Owner Individual Contact Name*  
*Development Owner's address*  
*Development Owner's email address*  
*Development Owner's Phone Number*

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*Date*

*Resident*  
*Name Address*  
*City, State Zip Code*

*RE: Notice of Intent – Right of First Refusal*

*Dear Resident:*

*This letter is to notify you about a pending sale of [Name of Development], a multifamily Housing Tax Credit Development with a total of [total number of units] units, of which [number of HTC units] are low-income units, to [proposed buyer], subject to satisfaction of a [90-day, 180-day, or 2-year] Right of First Refusal (ROFR) requirement of the Land Use Restriction Agreement (LURA). [Name of Current Development Owner] has agreed to provide a Right of First Refusal to a Qualified Nonprofit Organization or a Qualified Entity (including tenant organizations) to purchase this Development before selling the Development to any buyer other than a Qualified Nonprofit Organization or Qualified Entity.*

*Pursuant to the rules under 10 TAC §10.407 and law under §2306.6726 of the Texas Government Code, this letter provides proper notice of intent to the residents of [Name of Development] that the Development Owner, [Name of current Development Owner], has requested the Texas Department of Housing and Community Affairs (TDHCA) to find a Qualified Nonprofit Organization or Qualified Entity who will purchase the Development at the established [Fair Market Value or Minimum Purchase Price]. If a Qualified Nonprofit Organization or Qualified Entity is not presented by the end of the [90-day, 180-day, or 2-year] ROFR period, [Name of current Development Owner] may sell the Development to [name of proposed buyer] or any buyer other than a Qualified Nonprofit Organization or Qualified Entity, subject to TDHCA approval.*

*You will be notified if and when a Qualified Nonprofit Organization or Qualified Entity is found to purchase the property, or you will be notified when the pending sale to [proposed buyer] is completed. The proposed sale will not disturb existing tenant leases. Future rent payments and all current inquiries and communications should continue to be addressed to the property management office onsite. If you have any questions, please contact (insert name of contact for the property management and/or Development owner) at (insert phone number) or via the contact information at the top of this letter. You may also contact the staff member at the Texas Department of Housing and Community Affairs that is overseeing the Development's ROFR application, Rosalio Banelos, at (512) 475-3357 or [rosalio.banelos@tdhca.texas.gov](mailto:rosalio.banelos@tdhca.texas.gov).*

*Sincerely,*

**[NAME]**  
**[TITLE]**

## SAMPLE RIGHT OF FIRST REFUSAL NOTICE TO RESIDENTS -(Spanish version)

### **[Development Name]**

*Development Address and County  
Development Owner's Name  
Development Owner Individual Contact Name  
Development Owner's address  
Development Owner's email address  
Development Owner's Phone Number*

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*Date*

*Resident  
Name Address  
City, State Zip Code*

**RE:** *Aviso de Intención – Derecho de Preferencia para Comprar esta Propiedad*

*Estimado Residente:*

*Esta carta es para notificarle acerca de una venta pendiente de **[Name of Development]**, una propiedad de vivienda multifamiliar con un total de **[total number of units]** unidades, de las cuales **[number of HTC units]** son unidades de bajos ingresos, al comprador propuesto, **[proposed buyer]**, sujeto a la satisfacción de un derecho de preferencia para comprar esta propiedad por **[90 días, 180 días o dos años]**. Esto es un requisito del acuerdo de restricción del uso de la tierra para la propiedad.*

*El dueño de esta propiedad, **[Name of Current Development Owner]**, ha acordado otorgar un derecho de preferencia para comprar esta propiedad a una organización calificada sin fines de lucro u otra entidad calificada (incluyendo organizaciones de inquilinos) antes de vender la propiedad a cualquier otro comprador.*

*Conforme a las reglas bajo el código administrativo de Texas, Sección 10.407 y Sección 2306.6726 del código de gobierno de Texas, esta carta provee una notificación de intención apropiada a los residentes de **[Name of Development]** que el dueño ha solicitado al Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA) que encuentre una organización calificada para comprar esta propiedad **[Fair Market Value = al valor de mercado establecido or Minimum Purchase Price = al precio mínimo de compra]**. Si el TDHCA no puede encontrar una organización calificada para comprar esta propiedad al final de **[90 días, 180 días o dos años]**, el propietario puede vender a cualquier comprador, sujeto a la aprobación de TDHCA.*

*Usted será notificado si y cuando se encuentra una organización calificada para comprar esta propiedad, o cuando se termina la venta pendiente al comprador, **[proposed buyer]**. La venta no cambiara la renta o los arrendamientos existentes. Cualquier pregunta debe ser dirigida a la oficina de la propiedad, o puede llamar a **(insert name of contact for the property management and/or Development owner and phone number)** o mediante la información de contacto en la parte superior de esta carta. También puede comunicarse con el miembro del personal del Departamento de Vivienda y Asuntos Comunitarios de Texas que supervisa la solicitud, Rosalio Banuelos, al (512) 475-3357 o [rosalio.banuelos@tdhca.texas.gov.us](mailto:rosalio.banuelos@tdhca.texas.gov.us).*

*Sinceramente,*

**[NAME]**  
**[TITLE]**