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# Chapter 27 - Transfers of Ownership Interests. 2014

Maine State Housing Authority

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CHAPTER 27 TRANSFERS OF OWNERSHIP INTERESTS

Summary of Rule: This Rule applies to changes of ownership interests in multifamily and supportive housing projects on which Maine State Housing Authority ("MaineHousing") holds a mortgage given to secure financing provided for the project. The Rule applies to the outright transfer of a MaineHousing-financed project to a new owner along with the assumption by the new owner of the existing MaineHousing mortgage loan obligations. The Rule also applies to a significant shift in ownership interest within a business entity that continues to own the MaineHousing-financed project. This Rule does not include criteria for financing in excess of the outstanding balance of the MaineHousing mortgage loan in existence at the time of the request for MaineHousing consent to a change of ownership interest.

1. Definitions. The following terms have the following meanings:
  - A. "Additional Circumstances" means any one or more of the following in connection with the Transfer of an Ownership Interest: a request for additional MaineHousing financing or for refinancing by MaineHousing of existing MaineHousing loan obligations; the existence of a HUD housing assistance payments contract for the Project; management issues; a Project that is troubled, on MaineHousing's watch list or in default; or increased risks to a Project as assessed by MaineHousing.
  - B. "Affiliate" means, with respect to any entity, another entity that it controls, is controlled by, or is under common control with.
  - C. "Application" means the form of application required or recommended by MaineHousing and any other information required or considered by MaineHousing in connection with the Transfer of an Ownership Interest in a Project.
  - D. "Controlling Interest" means an interest of fifty-one percent (51%) or greater, alone or in the aggregate.
  - E. "HUD" means the United States Department of Housing and Urban Development.
  - F. "Investor Limited Partner" means a limited partner of a limited partnership Owner of a LIHTC Project that is required to make capital contributions in exchange for low-income housing tax credits allocated pursuant to Section 42 of the Internal Revenue Code of 1986, as amended ("Section 42").

- G. "Investor Member" means a non-managing member of a limited liability company Owner of a LIHTC Project that is required to make capital contributions in exchange for low-income housing tax credits allocated pursuant to Section 42.
- H. "LIHTC Investor Buyout Transaction" means a Transfer of the Ownership Interest of an Investor Limited Partner or an Investor Member in a LIHTC Project to the Sponsor of the LIHTC Project or an Affiliate of the Sponsor.
- I. "LIHTC Project" means a Project to which MaineHousing has allocated low-income housing tax credits pursuant to Section 42.
- J. "MaineHousing" means Maine State Housing Authority.
- K. "Owner" means a person or entity having an Ownership Interest in a Project.
- L. "Ownership Interest" means any of the following:
  - (1) a fee simple interest in a Project;
  - (2) a leasehold or sub-leasehold interest under a lease of a Project with a term not shorter than the term of the MaineHousing mortgage loan secured by the Project;
  - (3) the general partner interest of a general partner of a limited partnership Owner of a Project;
  - (4) the partner interest of a partner of a general partnership Owner of a Project;
  - (5) the limited partner interest(s) of one or more limited partners holding 51 percent or greater of the limited partner interests in the aggregate in a limited partnership Owner of a Project, or any lower percentage that may be established by HUD;
  - (6) an Investor Limited Partner interest in a LIHTC Project;
  - (7) the member interest(s) of one or more members holding 51 percent or greater of the member interests in the aggregate in a limited liability company Owner of a Project, or any lower percentage that may be established by HUD;
  - (8) an Investor Member interest in a LIHTC Project;
  - (9) the interest of a shareholder in a for-profit corporation or of a voting member in a non-profit corporation holding a 51 percent or greater interest in a corporate Owner of a Project; or

- (10) any other Controlling Interest in an Owner.
- M. "Project" means a multifamily or supportive housing project for which MaineHousing has provided financing and on which MaineHousing holds a mortgage loan secured by the multifamily or supportive housing project at the time of the request for MaineHousing consent to the Transfer.
- N. "Sponsor" means the entity that exercises management control over the general partner of a limited partnership Owner of a LIHTC Project or the managing member of a limited liability company Owner of a LIHTC Project.
- O. "Transfer" means a change, whether voluntary or involuntary, of all or part of an Ownership Interest in a Project regardless of the type or nature of the change or the means used to accomplish it, including but not limited to a sale, mortgage, lease (except residential tenant leases in the ordinary course of business of operating a Project as a residential rental project), sub-lease, assignment, bond or contract for deed, land installment contract, like-kind (1031) exchange, real estate investment trust, merger, consolidation, change of control, gift, grant, death, or operation of law.

2. Background.

MaineHousing provides financing for affordable multifamily and supportive housing projects through a number of multifamily and supportive housing loan programs.

MaineHousing documents evidencing and securing this financing typically prohibit the assumption of multifamily and supportive housing loans and prohibit the Transfer of an Ownership Interest in a Project without MaineHousing's prior written consent.

MaineHousing will consider a request for consent to a Transfer as set forth in this Rule and the associated procedures established by MaineHousing. MaineHousing may consent to the Transfer request, with or without conditions or restrictions, or may withhold its consent to the Transfer, except that MaineHousing's consent will not be unreasonably withheld.

MaineHousing reserves the right to require repayment of any Project loan that does not expressly permit its transfer, assignment or assumption, in accordance with the terms of the documents evidencing and securing the loan.

3. Application for Ownership Transfer.

- A. (1) Except as provided in part (3) of this Section 3.A, MaineHousing's written consent to a Transfer of an Ownership Interest is required prior to the Transfer.

- (2) Owners requesting MaineHousing's consent to a Transfer will be required to submit an Application as required by MaineHousing. The form and content of the Application will be determined by MaineHousing and may differ based on the type of Ownership Interest or Transfer involved or whether the Transfer involves any Additional Circumstances. MaineHousing reserves the right to require or obtain from the Owner, any other party to the Transfer or any third party, at any time in connection with a request for MaineHousing's consent to the Transfer of an Ownership Interest in a Project, any additional information that MaineHousing determines is reasonably necessary to evaluate fully the Transfer request.
- (3) No MaineHousing consent is required for any of the following:
  - (i) a Transfer by a limited partner of its limited partner interest to its Affiliate, regardless of the Ownership Interest percentage held by the transferring limited partner, provided that the limited partnership or the limited partner gives prior written notice of the Transfer and provides evidence of the Transfer, including any amendment to the limited partnership agreement, to MaineHousing;
  - (ii) a Transfer of a Controlling Interest in a limited partner or Investor Limited Partner that continues to hold a limited partner interest in the Project; or
  - (iii) a Transfer of a Controlling Interest in an Investor Member that continues to hold a member interest in a LIHTC Project.

MaineHousing may establish additional reasonable requirements relating to such Transfers.

- B. All Applications will be subject to a non-refundable application fee to be determined by MaineHousing.
- C. If MaineHousing consents to the Transfer, a processing fee will be charged. The amount of the processing fee for Transfers will be established by MaineHousing from time to time and will be based in part upon the estimated cost of processing Transfer Applications.
- D. MaineHousing will notify each Owner requesting MaineHousing's consent to the Transfer when the Application is complete and provide an estimated date or date range by which MaineHousing will make a decision on the Transfer request.
- E. MaineHousing may establish procedures for the processing and evaluation of Transfer requests, including simplified procedures for categories of Transfers of Ownership Interests with similar characteristics, such as LIHTC Investor Buyout

Transactions or Transfers by limited partners of their interests in limited partnership Owners of Projects to non-Affiliates when no Additional Circumstances are present as determined by MaineHousing.

4. Criteria for Consent to an Application for Transfer.

In determining whether or not to consent to a request for a Transfer, MaineHousing will be guided by the following, to the extent applicable to a specific Transfer as determined by MaineHousing:

- (a) whether consenting to the request is consistent with the objectives and eligibility requirements of the applicable multifamily or supportive housing loan program under which the Project was financed;
- (b) whether, in MaineHousing's judgment, a more efficient use of public resources will result by consenting to rather than denying the Application;
- (c) creditworthiness of any proposed new owner of the Project;
- (d) management experience;
- (e) regulatory findings and other determinations, including but not limited to debarment or other ineligibility, by MaineHousing, HUD or any other federal, state or local government agency;
- (f) the Application, including any additional information required by MaineHousing;
- (g) the existence of any Additional Circumstances; and
- (h) any additional information available to MaineHousing from any source, including third parties.

5. Terms of MaineHousing Consent to a Transfer Request.

MaineHousing will notify each Owner requesting consent to the Transfer in writing of MaineHousing's decision on the Transfer Application, including any conditions or restrictions, or, if the request is denied, the reason for the denial, within a reasonable time after a completed Application has been submitted.

If MaineHousing consents to the Transfer, MaineHousing may require the parties to the Transfer to execute assignment and assumption agreements, amendments to the existing loan documents for the Project, additional security documents, guaranties of payment, intercreditor and subordination agreements, and other documents, and may require new or updated title insurance policies and property and liability insurance, adequate funding and

control of Project reserves, escrows and other accounts, evidence of and a legal opinion concerning authority, and the satisfaction of other requirements relating to the Project.

6. Waiver.

Upon a determination of good cause, the Director of MaineHousing or the Director's designee may waive any provision of this Rule. The waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

FISCAL IMPACT NOTE: This Rule will not impose any cost on municipalities or counties for implementation or compliance.

BASIS STATEMENT: MaineHousing is adopting this Rule to clarify and simplify its policy on changes in ownership interests in multifamily and supportive housing projects financed by MaineHousing and on which MaineHousing holds a mortgage.

**Summary of Comments on the Proposed Rule and MaineHousing's Response**

Comment: Jan McCormick, Vice President, Asset Management of Northern New England Housing Investment Fund, submitted written comments and testified at the public hearing on the proposed rule. Her comments addressed the contents of the written application required by MaineHousing for transfers of projects that have been allocated low-income housing tax credits by MaineHousing (LIHTC Projects) and the processing of such applications. Ms. McCormick also expressed concern with respect to the impact of MaineHousing's consideration of "Additional Circumstances", as defined in the proposed rule, in determining whether to consent to a request for the transfer of an ownership interest.

Response: MaineHousing has clarified the requirements in the application and the process for transfers of LIHTC Projects. To address the comment concerning the consideration of Additional Circumstances, MaineHousing has revised the proposed rule to clarify that MaineHousing's consent to a request for an ownership transfer will not be unreasonably withheld.

STATUTORY AUTHORITY: 30-A M.R.S.A. §4741.1.

EFFECTIVE DATE: March 25, 2014