

Property Transfers

Summary

An Owner may not sell a property or transfer its interest in a tax credit property without prior notice to the Commission and prior written consent by the Commission. This also applies to changes in the general partner of a partnership owning a property, or the managing member if a limited liability company is the Owner. The Commission will require information on the prospective new Owner to ensure it is validly assuming the obligations under the Regulatory Agreement, and that the new Owner is aware of all the existing commitments regarding the low-income use of the property. A fee is assessed for processing the transfer request. To initiate a transfer consent, contact the Compliance Officer assigned to your property. Since a transfer may affect the Owner's tax credit, the Commission is required to report transfers to the IRS.

Bond Posting No Longer Required

The IRS no longer requires a seller to post a bond on transfers of ownership as long as there is a reasonable expectation that the property will remain in compliance throughout the Project Compliance Period. Owners who do not post a bond extend the IRS recapture period on transfers to three years beyond the time when an Owner notifies the IRS of a recapture event.

General Partner, Managing Member and Partner changes require Commission approval and will require similar documentation as a complete Ownership transfer. In most cases, the old and/or remaining "For Profit" GP or MM *must post a bond for their own ownership interest*, regardless of how small an interest it is, within 60 days of the transfer of ownership interest.

The following information is being provided to assist you in understanding the Commission's role and requirements for property transfers or assignments.

The Owner should consult their legal counsel and/or tax advisor about the effect of a Property Transfer or Assignment.

Maintaining Credit Set-Asides

In the initial credit award process, the Commission sets aside stated percentages of its total credit authority for various groups of applicants, such as qualified nonprofits, other nonprofits, Rural Development Owners or for-profit Owners. The balance of the annual credit authority is allocated from a general pool. **If credit was initially awarded from a credit set-aside category, subsequent transfers must be made only to another organization fitting the category.** For example, a property which received

Types of Transfers or Assignments Requiring Commission Consent

credit in the qualified nonprofit set-aside can only sell or transfer its interest to another qualified nonprofit.

For Nonprofit Entities

If the property received tax credits from the Qualified Nonprofit Set-Aside category, the transferee (new Owner) *must* provide documentation demonstrating they are a bona fide 501(c)(3) qualified nonprofit and that one of their principle purposes is to provide low-income housing.

A Property Transfer or Assignment means any direct or indirect sale, contribution, assignment, lease, exchange, or transfer of, or other change in:

1. An interest in the Land, the Property, or any Building;
2. An Ownership interest in the Property;
3. The rights, title, or interest of the Owner in any agreement in which the Commission and the Owner are parties.

Property Transfers or Assignments requiring written consent of the Commission generally fall into one of the two categories listed below (these two categories are not intended to describe all Property Transfers or Assignments that require the prior written consent of the Commission):

1. A change in an interest in the Land, the Property, or a Building or in the Owners Property and Ownership rights.
2. A change in certain Ownership interests in the entity that owns all or a portion of the Property.

The typical types of changes in Ownership interests in these entities are related to the addition, removal or withdrawal of persons having a Restricted Ownership Interest in the Property. These include:

- Change in the structure of Limited Partnerships, Limited Liability Companies, Joint Ventures, or General Partnerships related to the actions of individuals.
- Collaterally, changes in Closely Held Corporations pertaining to the issuance, redemption or transfer of stock or shares.

Only a few specific types of Property Transfers or Assignments do not require the prior written consent of the Commission:

- To lease or rent Housing Units to Residents for their use as contemplated in the Tax Credit Program;

Conditions and Consent

- For any other incidental use, to the extent permissible under all applicable federal, state, and local laws and regulations;
- To grant a security interest or lien junior to the interest of the Commission;
- For a sale or transfer of, or change in, the interest of a Limited Partner (including the addition, removal, or withdrawal of a Limited Partner);
- In the case of a Limited Liability Company that has a Managing Member; for a sale or transfer of, or change in, the interest of a Company Manager who is not a Company Member or a Company Member who is not a Managing Member (including the addition, removal, or withdrawal of such Company Manager or Company Member); or
- For the issuance, redemption, or transfer of stock or shares of a corporation that is not a Closely Held Corporation.

The Commission will consent to a proposed Property Transfer or Assignment only if it is determined that:

1. The Transferee and/or any Related Party is not in arrears on the payment of any fees due to the Commission or in default under a Regulatory Agreement or Extended Use Agreement for any Property;
2. The Transferee and/or any Related Party has not engaged in or allowed instances of Noncompliance with the provisions of any Regulatory Agreement, Extended Use Agreement, the Tax Credit Program, or Section 42 of the Code;
3. The property is in compliance for the most recent reporting period;
4. Evidence that the Transferee *and* the Transferee's property management representative have attended, within the past year or will attend within the next 90 days, a Commission Tax Credit Compliance Training Workshop;
5. The Owner has satisfied all other reasonable requirements communicated to the Owner by the Commission.

If removal and replacement of Partner/Member do not occur simultaneously

Note: The Commission will, **in its sole discretion**, accept written notice of the removal of a General Partner in a Partnership, Managing and Administrative Members in a Limited Liability Company or Partners in a Partnership and the payment of the \$1,500 transfer fee, in lieu of the documentation above, if the removal and replacement of such entity do not occur simultaneously. The replacement of the entity **and the submission of**

the documentation listed elsewhere in this chapter must occur within six months of the removal or an additional \$1,500 transfer fee will be assessed.

Any Property Transfer or Assignment made without the Commission's prior written consent (unless otherwise expressly permitted) or otherwise in violation of the requirements or provisions of the Regulatory Agreement, or the Tax Credit Program will be:

1. Ineffective to relieve or release the Transferor, the Land, the Property, and/or any Building from the obligations and provisions of the *Policies*, the Regulatory Agreement, and/or the Tax Credit Program;
2. Considered an event of default under the Application, the Regulatory Agreement, and the Tax Credit Program, allowing the Commission to exercise any or all available remedies; and
3. Considered an event of Noncompliance that may result in the cancellation or invalidation of the Reservation and/or Allocation of Credit for the Property and/or any Building.

The indemnity and hold-harmless provisions of the Regulatory Agreement or any other Tax Credit Program agreement by the Owner and/or a successor in interest will survive the ending of such parties' interest in the Property and will continue to be a personal obligation of such party.

Fees

Commission Processing Fees to review and approve transfers are as follows:

- ◆ For complete Ownership changes and/or sale of a property to a new individual, partnership or limited liability company: Fee is \$3,162.00 due with transfer approval request.
 - If transaction fails to close, one half of this fee will be refunded.
- ◆ For changes to the General Partner(s) in a Limited Partnership; changes to the Members or Managing Members in a Limited Liability Company or changes to the Partners in a Partnership: Fee is \$1,500 due with transfer approval request.**

*** Administrative fees increase periodically as inflation costs rise. Contact your Compliance Officer for the exact fee.*

Timeframe and Completeness

For the Commission to consider the Owners request, the Owner must satisfy each of the following requirements **at least 45 days before** the proposed effective date of the Property Transfer or Assignment:

1. Pay to the Commission the applicable Transfer Fee for each Property Transfer or Assignment
2. Fully and accurately complete and return **all** of the forms, documents, and other information required in these Transfer Instructions or in writing by the Commission staff.

The Commission will review the sufficiency of the Owner's completed Transfer Packet and any other submitted information. The Commission may determine that additional information is necessary in order to consider the Owner's request or that the Commission's consent must be conditioned upon certain events, facts, or requirements.

Note: *Upon receipt of all required materials, Compliance staff will review the transfer in 30 days. Complete Ownership changes require the execution of a Transfer Agreement, prepared by Commission staff, signed by current and new Owners and recorded against the property. Changes to Managing Members, General Partners or Partners in a Partnership will generally be finalized after staff reviews required documentation and the Division Director signs the approval letter.*

Owner Cover Letter

The first step in obtaining the Commission's written consent is to advise the Commission staff in writing of the Owner's proposed Property Transfer or Assignment. In a cover letter, the Owner should describe:

1. The name of the Property;
2. The names of the current Owner(s), the proposed Transferor and Transferee, and all other relevant parties;
3. A complete description of the proposed Property Transfer or Assignment including the purpose of transfer, the proposed effective date; and
4. Any special circumstances related to the proposed Property Transfer or Assignment.
5. For changes to the General Partner, Managing Member or Partners, a description of the new roles and responsibilities.

Documentation Required for Sale of Property

1. Written cover letter explaining the transfer as noted above.
2. Schematic showing Ownership before and after proposed transfer.
3. Complete ***Owner Request for Commission Approval, Summary of Transfer (Sale of Property)*** form attached on Compliance website.

4. A check for the \$3,162 transfer fee.
5. A copy of the preliminary title report **showing the correct names of the proposed insured and property street address.**
6. IRS letter or *IRS Form SS-4* assigning taxpayer identification number.
7. *Financial Solvency and Litigation Form.*
8. *Legal Counsel and Professional Representative Form.*
9. Copy of the proposed management contract and resume of the management company including a list of all properties currently managed (a signed copy of management contract will be due at closing).
10. Final copy of the Purchase and Sale Agreement.
11. Proposed Ownership entity documentation as described below.

For Limited Partnerships

- Partnership Agreement
- Certificate of Limited Partnership with Secretary of State filing stamp from jurisdiction of formation
- Partnership Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
- Names of partners with their percentage of interest
- Entity documents for the general partner as required hereby depending on the entity type. (For example, if the general partner is a corporation, provide articles and bylaws of corporation.)
- Certificate of Existence/Authorization from [Washington Secretary of State \(http://www.secstate.wa.gov/corps/\)](http://www.secstate.wa.gov/corps/) (must be current; issued within 30 days)
- Form of Opinion letter from purchaser's attorney (draft version-original is due at closing or shortly thereafter)

For Corporations

- Articles of Incorporation (with Secretary of State filing stamp from jurisdiction of formation)
- Bylaws

- Corporate Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
- Certificate of Existence/Authorization from Washington Secretary of State (<http://www.secstate.wa.gov/corps/>) (must be current; issued within 30 days).
- Form of Opinion letter from purchaser's attorney (draft version-original is due at closing or shortly thereafter)

For Limited Liability Company

- Operating Agreement (or Limited Liability Agreement)
- Certificate of Formation with Secretary of State filing stamp from jurisdiction of formation
- Certificate of Existence/Authorization from Washington Secretary of State (<http://www.secstate.wa.gov/corps/>) (must be current; issued within 30 days)
- Names of members with percentage of interest
- Resolution pertaining to purchase, assumption of Regulatory Agreement, and signature authority
- Form of Opinion letter from purchaser's attorney (draft version-original is due at closing or shortly thereafter)

For Out-of-state Purchasers

For partnerships, corporations, and limited liability companies located outside the state of Washington the following additional documentation is required.

- A current Certificate of Existence/Authorization from the foreign state of formation is required (if issued in the state of formation)
- If the new Owner (individual(s), limited or general partnerships, corporations, or limited liability company) is a non-resident or not licensed to conduct business in Washington State, the Owner must have an agent who will act as property manager and said agent must be licensed to conduct business in Washington.

The following additional documentation is required for out-of-state purchasers, not licensed to conduct business in Washington who will be using management agents:

Documentation Required for Changes to General Partner or Managing Member

- A Certificate of Existence/Authorization (must be current; issued within 30days) for agent;
 - A certification (in the form of a letter) from new Owner that they will always maintain an agent (or management company) which is licensed to conduct business in the state of Washington or become qualified to do business in the state of Washington themselves.
1. Written cover letter explaining the transfer as noted above.
 2. Schematic showing Ownership before and after proposed transfer.
 3. Complete *Owner Request for Commission Approval, Summary of GP/Managing Member Change* form found on Compliance website.
 4. LP approval of new General Partner.
 5. A check for the \$1,500 transfer fee.
 6. *Financial Solvency and Litigation Form* for new partner(s).
 7. IRS Form SS4 (or IRS letter with same information)
 8. Copy of proposed management contract and resume of the management company including a list of all properties currently managed.
 9. Certificate of Existence/Authorization from Washington Secretary of State (must be current within 30 days) for incoming partners.
 10. Resolution pertaining to change/assumption of responsibilities and signature authority.
 11. For any out of state General Partner, Managing Member or Partners, a certification (in the form of a letter) from the Owner that agent is licensed to conduct business in Washington State and that it will always maintain an agent (or management company) which is licensed to conduct business in the state.
 12. Provide any other documentation requested by Compliance Officer, upon request.

Helpful Links:

Washington State Secretary of State

<http://www.secstate.wa.gov>

WSHFC Compliance Officer Assignment List

<http://www.wshfc.org/managers/list.htm>

Attachments: *(See Website)*

<http://www.wshfc.org/managers/ManualTaxCreditIndex.htm>

- A. Owner Request for Commission Approval – Summary of Transfer for Sale of Property (DOC)
- B. Owner Request for Commission Approval – Summary of GP/Managing Member Change (DOC)
- C. **IRS Form SS - 4** Application for Employer Identification Number
Form available at: <http://www.irs.gov/app/picklist/list/formsInstructions.html>
- D. Financial Solvency and Litigation Form (PDF)
- E. Legal Counsel and Professional Representative Form (PDF)
- F. Form of Opinion of Transferees Counsel (Sample) (PDF)
- G. Closing Contact Information (PDF)
- H. Tax Credit Transfer Agreement (Sample) (PDF)
- I. Tax Credit & HFC Bonds Transfer Agreement (Sample) (PDF)