

Ralph M. Perrey, Executive Director



**MEMORANDUM**

TO: Low-Income Housing Tax Credit Program Participants  
Multifamily Tax-Exempt Bond Authority Program Participants

FROM: Multifamily Development Division

DATE: July 12, 2016

SUBJECT: Land Use Restrictive Covenant Policy

The following policy regarding the Land Use Restrictive Covenant (“LURC”) requirement for the Low-Income Housing Tax Credit Program and the Multifamily Tax-Exempt Bond Authority Program is effective immediately.

If you have questions, please contact Michael Blade, Director and Assistant Legal Counsel for Multifamily Development, at [MBlade@thda.org](mailto:MBlade@thda.org) or 615.815.2029.

## **Tennessee Housing Development Agency**

### **Low-Income Housing Credit Program - Land Use Restrictive Covenant Policy**

Tennessee Housing Development Agency (“THDA”) administers the Low-Income Housing Tax Credit (“LIHTC”) program in Tennessee. The LIHTC program was created by the Tax Reform Act of 1986 under Section 42 of the Internal Revenue Code of 1986 (“IRC §42”) as amended, to encourage the construction and rehabilitation of rental housing for low-income individuals and families. IRC §42(h)(6) requires owners of housing credit projects to enter into a land use restrictive covenant with the state housing agency and details the requirements to be included. Owners must agree to maintain the project as a low-income housing credit project for a minimum term of 30 years and must encumber the property with the executed and recorded land use restrictive covenant at all times.

Tennessee Code Annotated Section (Title 67, Chapter 4, Part 20) 67-4-2008 identifies exceptions from Tennessee’s Excise tax. TCA 67-4-2008 (a)(8) exempts from excise tax limited partnerships and limited liability companies organized exclusively for the purpose of providing affordable housing when the project receives an allocation of low-income housing tax credits pursuant to IRC §42 and when there is an extended low-income housing commitment as defined in §42(h)(6)(B) in effect for each residential building owned by the entity.

THDA’s Land Use Restrictive Covenant Policy (“the Policy”) establishes guidelines for new and subsequent land use restrictive covenants for projects awarded low-income housing credits incorporating federal and state requirements.

#### Initial Awards of Competitive Low-Income Housing Tax Credits

Under THDA’s Qualified Allocation Plan, applicants compete for low-income housing tax credits. A point system rewards commitments beyond IRC §42 requirements and increases the project’s opportunity for success. As projects are awarded housing credits, a land use restrictive covenant is drafted and provided to the owner for execution and recordation with the carryover agreement. Recording the land use restrictive covenant exempts the property from franchise and excise taxes. Point commitments, elections and terms are included in land use restrictive covenants which include but are not limited to: deeper income targeting restrictions (rent and income), serving designated special needs populations, and extending the term of the extended use period beyond 30 years.

#### Multifamily Tax-Exempt Bond Authority

Under THDA’s Multifamily Tax Exempt Bond Authority Program Description, projects using tax-exempt bonds are required to execute a land use restrictive covenant. The term of the land use restrictive covenant is fifteen years. The land use restrictive covenant is provided to the owner for execution and recordation with the commitment letter. These types of projects are ineligible for Tennessee’s excise tax exemption.

#### Initial Awards of Non-competitive Low-Income Housing Tax Credits (with Multifamily Tax-Exempt Bond Authority)

## **Tennessee Housing Development Agency**

### **Low-Income Housing Credit Program - Land Use Restrictive Covenant Policy**

Under THDA's Multifamily Tax Exempt Bond Authority Program Description, projects receiving non-competitive low-income housing tax credits through the use of tax-exempt bonds are required to execute a land use restrictive covenant. Elections and terms included in the non-competitive tax credit application are based on the point system in THDA's Qualified Allocation Plan. The minimum term of the land use restrictive covenant is 30 years. Selected elections and terms are incorporated into the land use restrictive covenant, which is provided to the owner for execution and recordation with the commitment letter. These types of projects are eligible for Tennessee's excise tax exemption.

#### **Subsequent Awards of Competitive or Non-competitive Low-Income Housing Tax Credits**

As projects are awarded subsequent low-income housing credits through the competitive or non-competitive award process, new land use restrictive covenants will be drafted for execution and recordation as detailed in the respective program. Point commitments, elections and terms included, yet not expired from the prior award of low-income housing credits will be included and enforced in the new land use restrictive covenant. The term of the prior commitments will be limited to the remaining extended use period.

Point commitments, elections and terms carried forward will include but are not limited to:

- Special housing needs
- Lowest income preference
- Extended use preference
- Public housing waiting list/priority
- Tenant ownership
- Affirmatively furthering fair housing marketing plan for households with children
- Residency preference.