

MHDC's Transfer of Physical Assets (TPA) Process and Policy

The Missouri Housing Development Commission (MHDC) must provide written consent prior to any transfer (sale, assignment, conveyance, or other disposal) of ownership or transfer of ownership interest to a new/incoming entity in a tax credit or loan property, unless such new/incoming entity is a "Permitted Transferee", as defined in the property's organizational documents and as agreed to by MHDC at the initial closing.¹ Even where the new/incoming entity is determined to be a Permitted Transferee, MHDC must be provided notice of the intended transfer and must be provided certain basic documentation related to the transfer. Where MHDC consent is required, the purchaser is not authorized to transfer any interest in, take possession of, or assume the burdens and benefits of ownership of the subject property without the prior written approval of MHDC. This includes change of the general partner or limited partner of a partnership owning a property, or the managing member if a limited liability company is the owner.

MHDC must be provided advance notice of the intent to transfer, along with the documentation MHDC requires to support the transfer. The documentation assists MHDC in determining the status of the transferor and transferee and ensures that the transferee is aware of the requirements regarding the low-income use of the property, including those under the applicable Land Use Restriction Agreement (LURA) (e.g. LIHTC, including properties in the Extended Use Period, AHAP, etc.), and/or the loan's Regulatory Agreement. Properties may also have additional HUD approval requirements.

Property Transfers or Assignments that require MHDC's written consent generally fall into one of the three categories listed below. **However, other transfers may require MHDC's consent, so please contact MHDC to confirm requirements.** Documentation requirements vary by type of transfer and include a description of the transfer, partnership agreement(s) associated with the transfer and entity, various organizational documents, MHDC forms, as well as financials if applicable.

Most Common Transfers:

1. **Limited Partner Change:** Transfer to an incoming entity of the ownership interest of one or more limited partners in the owner limited partnership, or investor members in a limited liability company (LLC).
2. **General Partner/Manager Managing Member Transfer:** Transfer of the ownership interest of the general partner of the owner limited partnership, or manager/managing member of a LLC.
3. **Full Ownership Transfer:** A complete transfer or change of ownership of the property from the owner (LP, LLC, or Corporation) to an entirely different person or entity. Complete property ownership transfers require the most extensive documentation since the entire ownership structure is changing. Documentation requirements include information on the replacement owner entity, which entails all of its sub-entities and all principals relative to such sub-entities in order to adequately evaluate the proposed replacement owner entity's ability to operate a low-income housing project, comply with program requirements, and financially support the property. Note that there are different requirements for tax credit properties and loan properties.

¹ MHDC does not generally require approval of percentage of interest changes between partners, but we ask that you submit the partnership agreement amendment to MHDC for our review prior to these changes.

4. **Other Examples** that generally require notification and/or approval include but are not limited to the scenarios listed below:
 - a. Change in control or structure of the partnership or limited liability companies related to the actions of individuals; and
 - b. Restructure/refinance of loan through creation of a new owner entity

Section 8 Housing Assistance Payment (HAP) Contracts: Properties that have Section 8 HAP contracts or other HUD financing require a HAP Contract Assignment, which is a separate but related process involving HUD and MHDC. Please contact Wendy Clark, wclark@mhdc.com if you need additional information on the HAP Assignment process. Note that MHDC requires HUD Form 2530 approval prior to issuing its transfer consent letter.

Permitted Transferee Exception

As stated above, transfers that fall under this exception do not require MHDC consent but do require prior notice and submission of documentation relating to the transfer as requested by MHDC. Please contact MHDC if you believe this exception applies to your transfer.

Notification and Review Process

The category of the property that is subject to the transfer will generally dictate which MHDC department is the lead program reviewer for the transfer: Tax Credit Only Properties are managed by Asset Management and Loan Properties are managed by Legal with review from MHDC Loan Servicing and or Finance Departments when necessary.

To notify MHDC of a transfer and request approval, please complete the **Application for Approval of Transfer of Physical Assets (MHDC Form #TPA01)** and submit the application to tewing@mhdc.com and ssmith@mhdc.com in advance of the transfer. Please plan the timing of your request and the timing of the transfer so as to allow enough time for MHDC review. (See Table 1)

Once MHDC receives your application, MHDC will make its best effort to respond to the requesting party within ten (10) to fifteen (15) business days. Upon receipt of Form # TPA01, MHDC will perform a noncompliance check on the property and incoming management company, where applicable. The requesting party will be provided with the applicable checklist that lists the documents necessary to process the transfer. A list of outstanding noncompliance at the property and/or the management company will be included with the checklist, or emailed to the requesting party as soon as possible thereafter.

Please submit the documents to MHDC on a recordable CD. Once MHDC receives the documents, the items are reviewed in the order received. MHDC prefers to receive the majority of the items together so they may be reviewed concurrently for accuracy and consistency and for efficiency. If the document submission is partial or otherwise incomplete, processing may be delayed. Additionally, please be aware that upon review of required documentation, MHDC may have follow up questions or request additional items, e.g. to verify the composition, additional tiers, etc. of the applicable entities.

Non-compliance Fee

Failure to notify MHDC and receive MHDC approval in advance of transfer may result in a finding of non-compliance and an associated fee.

Post-transfer Documentation

Transfers generally require submission of post-transfer documentation, e.g. recorded documents. This documentation is listed on MHDC’s approval letter and must be submitted within 45 days of the date of closing. In the event that closing is delayed more than 30 days beyond the date of MHDC’s approval letter, please notify MHDC in writing with an explanation.

Typical MHDC review and processing times for transfer requests are as follows:

Table 1.

Full Ownership transfer	45 days* after complete submission package received
General Partner transfer	30 days* after complete submission package received
Limited Partner transfer	15 days* after complete submission package received
<p>*Additional forms and processing time are required for: 1) loan properties with layered financing, such as Risk Share or Fannie Mae; 2) Properties or management companies in noncompliance; or 3) change to a new management company that has not yet been certified by MHDC. Visit http://www.mhdc.com/program_compliance/index.htm for additional information on a change in management company. Guidance will be provided on a case-by-case basis.</p> <p>These time frames are also based upon receipt of all required documents listed on the applicable MHDC checklist. Partial submissions may result in longer response times.</p>	

Notice for year-end transfers:

Due to increased year-end reporting requirements, all requests for MHDC approval of transfers that are scheduled to occur on or before December 31, must be submitted no later than November 1. Requests that are not received by November 1, are not guaranteed to be processed by December 31.

MHDC may withhold consent unless:

1. The Owner/transferor is in compliance with the requirements of all applicable agreements with MHDC and is not deficient on the payment of any fees due to MHDC.
2. The proposed transferee of the property evidences, to the reasonable satisfaction of MHDC, by its performance with respect to other LIHTC or government-assisted housing projects and otherwise, its willingness and ability to comply with the terms of the applicable agreements.

3. The parties have submitted the requested transfer-related documentation, approved based on the sole discretion of MHDC (additional documentation may be requested on a case-by-case basis within the timeframes specified by MHDC).

Notice of Transfer Fees

MHDC plans to begin charging transfer fees for TPA processing services **beginning January 1, 2019**. Please check the website for updates.

TPA Submission Reminders:

1. **Noncompliance:** MHDC expects that noncompliance at the property or associated with the incoming management company will be addressed prior to the transfer, unless a compliance plan is permitted and approved by MHDC. Property noncompliance may include but is not limited to outstanding inspection, reporting, programmatic, and financial/payment deficiencies; and other violations of regulatory agreements and applicable federal, state, and local laws. Incoming management company deficiencies may include failure to comply with MHDC's certification process or failure to correct deficiencies at existing properties. For more information on compliance requirements, please visit MHDC's website.
2. **Compliance Periods:** Projects with non-profit set asides and/or HOME Program Community Housing Development Organization set asides have transfer limitations tied to the project's affordability period. Check with MHDC if you have questions.
3. **Format:** Submit complete request package on a recordable CD and number and label documents according to MHDC checklists.
4. **Corporate/Partnership Formation Documents:**
 - a. Certificates of Good Standing must be dated within 30 days of the transfer.
 - b. Foreign state entities and their General Partners/Managing Member must register to do business in Missouri.
 - c. Entity formation documents must be file stamped/certified unless the entity's formation state requires otherwise.
 - d. Trust entities must provide a certificate of trust or copy of the trust agreement.
 - e. When LLC is member-managed, submit an organizational chart that identifies all GPs and LPs or LLC managing members and investor members.
5. **Purchase and Sale Agreements (PSA), Contracts, Partnership/Operating Agreement Amendments, and related agreements**
 - a. Dates on PSAs, Contracts, Partnership/Operating Agreement Amendments, and related agreements must not include a closing date prior to MHDC approval.
 - b. Provide an assignment of contract if PSA is assigned to a different entity.
 - c. Legal descriptions on the proposed Deed, PSA, and Assumption Agreements generally must match those on the regulatory agreements. Discrepancies should be noted in a

written explanation to MHDC. Legal description revisions may require a modification of the relevant document, e.g. LURA.

- d. Draft Deeds and Assumption Agreements must be submitted in recordable format.
- e. Bond LURA Assumption may be required for projects with tax exempt bonds – check with MHDC

6. Title Policy (for transfers involving loan assumptions)

- a. Submit pro forma date down endorsement of MHDC's original policy which does not reflect any additional encumbrances or title exceptions.
- b. Alternatively, a new MHDC policy with the same endorsements from MHDC's original closing policy is acceptable.

7. Original Signatures Required: Transfers will not be approved without the receipt of these signed original documents, where applicable.

- a. Attorney Opinion letters
- b. Exhibit A-2– must have notarized signature
- c. Affirmative Fair Housing Market Plan (AFHMP)
- d. Exhibit G – must have notarized signature
- e. Exhibit J – must have notarized signature
- f. Exhibit J-1 – must have notarized signature

8. Post-transfer: Post-transfer documentation must be submitted to MHDC as soon as possible after closing, but no later than 45 days afterwards. Transfer agreements must be dated no earlier than the date of MHDC's approval letter. Notify MHDC if closing does not occur or occurs more than 30 days after the date of MHDC approval letter. Updated Certificates of Good Standing may be required.