

CHAPTER 27 TRANSFERS OF OWNERSHIP INTERESTS

Summary of Rule: This Rule sets forth the requirements and procedures for obtaining the consent of MaineHousing to changes of ownership interests in multifamily and supportive housing projects that have funding or an allocation of tax credits from MaineHousing. The Rule applies to the transfer of a project to a new owner along with the assumption by the new owner of the existing MaineHousing obligations. The Rule also applies to the transfer of a direct or indirect ownership interest in a business entity that continues to own the project. This Rule does not address criteria for modifying the term or amount of any MaineHousing obligation in connection with a proposed change of ownership interest.

1. Definitions. The following terms have the following meanings in this Rule:
  - A. “Additional Circumstances” means any one or more of the following in connection with the Transfer of an Ownership Interest: (i) a request for additional funding or tax credit allocation from MaineHousing or for the modification, assumption or refinancing by MaineHousing of existing MaineHousing obligations; (ii) the existence of HUD project-based rental assistance for the Project; (iii) management deficiencies in the Project; (iv) a Project that is financially unstable, on MaineHousing’s watch list or in default; or (v) increased risks to a Project as assessed by MaineHousing.
  - B. “Affiliate” means, with respect to any entity: (i) another entity which has a Controlling Interest in the entity; (ii) another entity in which the entity has a Controlling Interest; or (iii) another entity that is subject to a common Controlling Interest with the entity.
  - C. “Application” means the form of application required by MaineHousing and any other information required or considered by MaineHousing in connection with the Transfer of an Ownership Interest in a Project.
  - D. “Code” means the Internal Revenue Code of 1986, as amended.
  - E. “Controlling Interest” means an Ownership Interest, contractual right, or other interest with respect to an entity which confers upon its holder the authority or right, directly or indirectly, to manage or otherwise direct any material part of all of the business or financial affairs and policies of the entity and/or any material part of or all of the day-to-day or long-term operation of the entity’s business or assets.
  - F. “HUD” means the United States Department of Housing and Urban Development.

- G. “MaineHousing” means Maine State Housing Authority.
- H. “Owner” means a person or entity having an Ownership Interest in a Project.
- I. “Ownership Interest” means any right or indicia of ownership, possession or title of any kind or nature in a Project or Owner, including without limitation:
- (1) a fee simple interest;
  - (2) a leasehold or sub-leasehold interest;
  - (3) a general partner interest or a limited partner interest in a limited partnership;
  - (4) the partner interest of a partner in a general partnership;
  - (5) the member or manager interest in a limited liability company;
  - (6) the interest of a shareholder in a for-profit corporation ;
  - (7) a voting member or director in a non-profit corporation;
  - (8) a beneficial interest in a trust; or
  - (9) a Subsidiary Interest, specifically excluding an upper-tier limited partner or non-managing member interest of an investor in a tax credit fund that has a limited partner or non-managing member interest in the Owner of a Tax Credit Project;
- J. “Project” means a multifamily or supportive housing project that has funding or an allocation of tax credits, or a commitment or reservation thereof, from MaineHousing at the time of the request for MaineHousing consent to the Transfer.
- K. “Qualified Rural Development Preservation Project” has the same meaning as set forth in Chapter 35 of MaineHousing’s rules, the *State Low Income Housing Tax Credit Rule*.
- L. “Sponsor” means the entity that is the designated developer of a Tax Credit Project or has a Controlling Interest in the general partner of a limited partnership or the manager or managing member of a limited liability company that owns a Tax Credit Project.
- M. “Subsidiary Interest” means the direct or indirect interest of any person or entity in an entity that has an Ownership Interest as determined by MaineHousing.

- N. “Tax Credit Investor Transfer” means a Transfer of the Ownership Interest of a limited partner of a limited partnership or a non-managing member of a limited liability company that owns a Tax Credit Project.
- O. “Tax Credit Project” means a Project for which MaineHousing allocated federal low-income housing tax credits pursuant to Section 42 of the Code or State of Maine affordable housing tax credits pursuant to 36 M.R.S. §5219-WW and 30-A M.R.S. §4722(1)(GG).
- P. “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 change made by 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, merger, conversion, dissolution, substitution of partners or members, consolidation, submission to a condominium or land trust or similar construct, change of control (other than incremental change through occasional individual vacancies due to resignations or expirations of terms in the ordinary course of voting members or directors of corporations), gift, grant, death, creation of an estate or inheritance resulting from the death of an Owner, or operation of law.

2. Background.

MaineHousing provides funding and/or tax credits for affordable multifamily and supportive housing projects through a number of multifamily and supportive housing programs.

MaineHousing documents evidencing and securing this funding or tax credits typically prohibit the assumption of these obligations in the Transfer of an Ownership Interest 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’s consent to a Transfer does not automatically constitute MaineHousing’s consent to an assignment or assumption of any funding or tax credits. MaineHousing may require payment or satisfaction of any funding, recapture or other obligation in connection with a Transfer.

3. Application for Ownership Transfer.

- A. (1) 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. The form and content of the Application will be determined by MaineHousing and may differ depending on the type of Ownership Interest or Transfer involved or whether the Transfer involves any Additional Circumstances. MaineHousing may at any time require additional information from the Owner, any other party to the Transfer, or any third party, that is reasonable or necessary to fully evaluate the request for MaineHousing's consent to the Transfer.
- (3) The process for obtaining MaineHousing consent is simplified for the Transfers described in subsection (a) below.
  - (a) The following Transfers, provided no Additional Circumstances exist as determined by MaineHousing, must comply with the requirements of subsection (b) below:
    - (i) Transfer of the Ownership Interest of a general partner of a limited partnership to its Affiliate;
    - (ii) Transfer of the Ownership Interest of a limited partner of a limited partnership to its Affiliate;
    - (iii) Transfer of the Ownership Interest of a manager or managing member of a limited liability company to its Affiliate;
    - (iv) Transfer of the Ownership Interest of a non-managing member of a limited liability company to its Affiliate;
    - (v) for a Tax Credit Investor Transfer, Transfer of the Ownership Interest of a limited partner of a limited partnership to the Sponsor of the Project owned by the limited partnership or the Sponsor's Affiliate;
    - (vi) for a Tax Credit Investor Transfer, Transfer of the Ownership Interest of a non-managing member of a limited liability company to the Sponsor of the Project owned by the limited liability company or the Sponsor's Affiliate;
    - (vii) Transfer of an Ownership Interest in a Qualified Rural Development Preservation Project;
    - (viii) Transfer of less than a Controlling Interest in an Owner, as determined by MaineHousing, with the exception of a Tax Credit Investor Transfer and, a Transfer of the Ownership Interest of any partner, member, or manager of a limited

partnership or limited liability company that owns a Tax Credit Project; or

- (ix) any other Transfers expressly allowed in writing by MaineHousing.

Transfers with Additional Circumstances, as determined by MaineHousing, including the above Transfers without limitation, are not eligible for the simplified process set forth in subsection (b) below.

- (b) The following are required for MaineHousing to consent to the Transfers described in subsection (a) above:

- (i) Written notice of the proposed Transfer and request for MaineHousing's consent, which must be submitted by all of the general partners for a Transfer of Ownership Interest of any partner in a limited partnership or all of the managers or managing members for a Transfer of Ownership Interest of any member or manager of a limited liability company, including without limitation, any Transfer in connection with a Tax Credit Investor Transfer;
- (ii) a written description of the proposed Transfer, including the Ownership Interest to be transferred, the transferor(s) of the Ownership Interest, the transferee(s) of the Ownership Interest, any consideration for the Transfer, any transfer taxes or other amounts due in connection with the Transfer, source(s) of funding to pay any such consideration and other amounts due, and any conditions of the Transfer;
- (iii) all instruments and documents evidencing the Transfer, including without limitation, any assignment and assumption of the Ownership Interest and any amendments to the organizational documents of the entity that owns the Project in which the Ownership Interest is being transferred, all of which instruments and documents must be on terms and conditions acceptable to MaineHousing;
- (iv) written consent of any lender, regulatory agency, or other person or entity that is required in connection with the Transfer; and
- (v) any other information or requirements that are reasonably related to the Transfer.

- (c) MaineHousing will consent to the Transfer of an Ownership Interest in a

Qualified Rural Development Preservation Project if (i) the conditions of subsection (b) above are satisfied, (ii) Rural Development consents to the proposed Transfer, and (iii) when the Owner of the Qualified Rural Development Preservation Project changes, the new Owner executes and delivers a written assumption of all of the MaineHousing obligations in connection with the Qualified Rural Development Preservation Project.

- 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 upon receipt of the required Transfer documents, provide an estimated date or date range by which MaineHousing will make a decision on the Transfer request.

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 funded or allocated tax credits;
- B. whether, in MaineHousing's judgment, a more efficient use of public resources will result by consenting to rather than denying the Application;
- C. the creditworthiness of any proposed new Owner;
- D. the management experience of any proposed new Owner;
- 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. whether the person or entity to whom the Transfer will be made, or any Affiliate thereof, has sought to achieve early termination of an extended low-income housing commitment, as defined in Section 42(h)(6)(B) of the Code, through a written request

to a housing credit agency to present a qualified contract, as defined in Section 42(h)(6)(F) of the Code, or otherwise;

- H. whether the person or entity to whom the Transfer will be made, or any Affiliate thereof, has sought to undermine the exercise of a right of first refusal or purchase option with respect to any Tax Credit Project by refusing to honor a right of first refusal or purchase option, by involvement in a lawsuit challenging the exercise of a right of first refusal or purchase option, or otherwise;
  - I. whether the Transfer will result in a loss of affordability or adversely affect the financial stability of the Project as determined by MaineHousing;
  - J. whether the Transfer will adversely affect satisfaction of all applicable regulatory and contractual obligations;
  - K. whether the Transfer will reduce the likelihood the Project will continue to serve the lowest income tenants for the longest period of time;
  - L. whether the new Owner was responsible for (1) the physical or financial condition of another project not being maintained in a satisfactory manner, (2) the capital needs of another project not being met, or (3) another project not complying with applicable regulatory or contractual obligations, with the term “responsible for” meaning causing or not making a good faith event to prevent such events;
  - M. the existence of any Additional Circumstances; and
  - N. 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 or regulatory documents for the Project, additional security documents, extensions of affordability or use covenants, 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 legal opinions concerning entity authority, and the satisfaction of other requirements relating to the Project.

MaineHousing’s approval of a Transfer is not intended to override any conditions to the

Transfer that are contained in the limited partnership agreement, limited liability company agreement or other organizational documents of an Owner, and MaineHousing's conditions set out in this Rule are in addition to any that are contained in the organizational documents.

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: This Rule, which replaces the prior rule, sets forth the policies and procedures for approving changes in ownership of multifamily and supportive housing projects that are subject to MaineHousing financial or regulatory oversight. The changes in this Rule reinforce protections against the transfer of ownership interests in projects or the owners of projects that could undermine the public benefit of the projects during the period committed by the owners when they received assistance from MaineHousing. This Rule applies to projects that have an allocation of federal or state tax credits from MaineHousing as well as projects with financing or grants from MaineHousing. The application of the Rule to transfers of ownership interests in an entity that owns a project is expanded to include any direct or indirect change in the entity, not just controlling interests in the entity. This Rule also eliminates all exceptions contained in the prior rule, but does maintain simplified procedures for certain transfers, such as transfers to affiliates, transfers of investor interests in tax credit projects to the project sponsors, and transfers of certain non-controlling interests.

PUBLIC COMMENT:

*Process:*

Notice of Agency Rule-making Proposal (MAPA-3) was published in the October 26, 2022 edition of the appropriate newspapers. Additionally, MaineHousing sent the proposed rule to Interested Parties and initially published the proposed rule on its website on October 26, 2022.

MaineHousing held a public hearing on Tuesday, November 15, 2022, to receive testimony on its proposal to repeal and replace the Rule. The comment period was held open until 5:00 p.m. on Friday, November 25, 2022. No one testified at the public hearing and MaineHousing did not receive any other comments from the public.

MaineHousing made one non-substantive change to the rule to clarify that a transfer of the interests of an upper-tier investor in a tax credit fund that has a direct or indirect limited partner or non-managing member interest in the owner of a tax credit project is not subject to the Rule. These ownership interests have never been subject to MaineHousing's ownership transfer rule and the expansion of the ownership interests made subject to this Rule was not intended to include them.



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

EFFECTIVE DATE: JANUARY 30, 2023