

**PROPOSED REGULATION OF THE HOUSING DIVISION OF
THE DEPARTMENT OF BUSINESS AND INDUSTRY**

LCB File No. R124-04

July 22, 2004

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §1, NRS 319.140 and 319.210; §§2, 3 and 6, NRS 319.140; §§4 and 5, NRS 319.145.

A REGULATION relating to affordable housing; providing that the Administrator of the Housing Division of the Department of Business and Industry may authorize the household income of a qualified applicant for a mortgage loan granted pursuant to a program administered by the Division to be greater than a certain threshold under certain circumstances; requiring the credit enhancer on certain projects of the Division to have a certain minimum credit rating; making various changes to the documents required to apply for financing from the Division for a project; and providing other matters properly relating thereto.

Section 1. NAC 319.553 is hereby amended to read as follows:

319.553 A qualified applicant must:

1. Have obtained or be in the process of obtaining a mortgage loan for the purchase of a qualified residence pursuant to a program administered by the Division pursuant to NAC 319.300 to 319.489, inclusive;

2. Have a household income of not more than 80 percent of the median income for this state ~~and~~ *unless the mortgage loan is not funded with money from the Federal Government, in which case the Administrator may authorize, in his sole discretion, a household income in excess of 80 percent of the median income for this State;*

3. After paying closing costs for the qualified residence, have no more than \$8,000 in liquid assets in his possession;

4. Meet the criteria for underwriting applied by the Federal Housing Administration, the Department of Veterans Affairs or the private mortgage insurance company, as appropriate, depending on which entity insures or guarantees the mortgage loan; and

5. Have completed a training course on the purchase of a home approved by the:

(a) Entity that insures or guarantees the mortgage loan; or

(b) Division, if the entity described in paragraph (a) has not approved such a course.

Sec. 2. NAC 319.712 is hereby amended to read as follows:

319.712 The Division shall not submit a project to the State Board of Finance for approval unless the Division determines that:

1. The project has binding commitments on either the mortgage or bonds, as required, from a credit enhancer who *has a credit rating on his outstanding long-term debt of not less than “Aa2” by Moody’s Investors Service, Inc., or “AA” by Standard and Poor’s Ratings Services, or their successors, if any, and* has been approved by the Division;

2. If tax-credit equity is to be part of the total financing, the project has binding commitments from the tax-credit equity investor; and

3. Sources of funding for the proposed project have all been identified and are adequate to fund the project to completion.

Sec. 3. NAC 319.7125 is hereby amended to read as follows:

319.7125 To receive financing from the Division for a project, the sponsor must:

1. Pay the application fee described in NAC 319.700;

2. Prove to the satisfaction of the Division that the project will comply with the provisions of NAC 319.600 to 319.790, inclusive; and

3. Submit the following documents, as applicable, to the Division:

- (a) A binding letter of commitment from a credit enhancer which is rated AA/Aa or AAA/Aaa and which covers the principal of and interest on the bonds through the earlier of:
- (1) The maturity of the proposed bond issue; or
 - (2) A mandatory tender or redemption date;
- (b) If tax-credit equity is to be used as a source of funding for the project, a binding letter of commitment from the tax-credit syndicator verifying the amount and timing of money from the sale of tax credits less all associated fees;
- (c) A document describing:
- (1) The proposed final sources and uses of funds for the project, including, without limitation, net bond proceeds, tax-credit equity, grants and any subordinated debt; and
 - (2) The proposed draw schedule for use of bond proceeds;
- (d) The partnership agreement or articles of incorporation of the sponsor;
- (e) The certificate of registration issued by the Secretary of State pursuant to NRS ~~86.551~~ **86.545** or 88.580, as applicable, for the sponsor;
- (f) The articles of organization and any resolutions or operating agreements that establish the authority of a person to sign documents associated with the financing of the project;
- (g) A written contract to purchase or option to purchase the property on which the project is to be built, or a title report showing ownership of the property on which the project is to be built;
- (h) A title report for the site of the project that includes a list of all exceptions and a pro forma American Land Title Association policy to be issued to the lending organization;
- (i) A copy of the most recent Phase I Environmental Report, that is less than 12 months old, for the site of the project;

(j) A copy of the most recent geotechnical report, that is less than 12 months old, for the site of the project;

(k) A copy of a certified appraisal of the site of the project that is *performed by an appraiser certified pursuant to chapter 645C of NRS or that is* approved by the credit enhancer;

(l) A copy of a certified “as-built” survey of the site of the project which is American Land Title Association qualified and which shows the project in its proper place on the site and all exceptions to title;

(m) A copy of any development agreement with the owner of the proposed project;

(n) A copy of any management agreement to be used for the proposed project;

(o) A copy of any general contractor’s agreement between the sponsor and the proposed general contractor for the project;

(p) A parcel map of the site of the project that is recorded with the county recorder;

(q) If the site of the project is located on a flood zone as designated by the Federal Emergency Management Agency, a map that shows the bounds of the flood zone, the property on which the project is to be located and the project; ~~and~~

(r) A copy of the zoning restrictions on the site of the project showing that the applicable zoning laws and regulations allow for the development of the project on the site ~~;~~;

(s) An audit or report completed by a specialist in the efficient use of energy who is approved by the Division which details the components of the project which are necessary for the efficient use of energy which must be installed and used in the construction or rehabilitation of the project; and

(t) A physical assessment of the capital needs of any project that is more than 10 years old.

Sec. 4. NAC 319.987 is hereby amended to read as follows:

319.987 1. To meet the requirements of financial feasibility of a project for which an application for tax credits is submitted, the applicant must demonstrate to the satisfaction of the Division that the project will be financially feasible based on the amount of rent charged for units in the project as stated by the applicant in his application.

2. In evaluating the financial feasibility of each project, the Division will, in addition to any criteria set forth in the annual plan, consider:

(a) The reasonableness of construction costs, using the maximum amount of costs established in the annual plan;

(b) The cost of the project;

(c) The cost per unit of the project;

(d) The projected income, expenses and cash flow for the period specified in the annual plan;

(e) The reasonableness of the projections of income and expenses and the assumptions upon which those projections are based;

(f) The fees for developers or contractors;

(g) The sources and uses of money for the project;

(h) The projected proceeds from the sale of tax credits;

(i) The plan for financing the project;

(j) The percentage of the housing credits used for the cost of the project;

(k) The demonstrated stability of the project sponsor, including an analysis of the financial statements of the project sponsor; and

(l) Any other criteria set forth in the annual plan or required by the Code.

3. Unless otherwise provided in the annual plan or in the instructions included in an application, the Division will use the following assumptions and limitations to analyze a pro forma included with each application:

(a) A minimum debt service coverage ratio of 1.15 on all combined debt based upon the mortgage rates at the time the Division considers the application. In determining the ratio, the Division will not consider any notes that do not require payment until the sale of the property. Developer or deferred notes will be included by the Division in the determination at the beginning of the repayment period. If a project receives money or any other assistance from the Rural Development Program of the United States Department of Agriculture, the ratio of debt service coverage established by that department for that program shall be deemed acceptable to the Division. If the applicant demonstrates to the satisfaction of the Division that a permanent lender has agreed to provide all of the permanent financing for the project at a ratio of debt service coverage other than 1.15, the Division will consider the ratio of that lender. To be considered by the Division, the commitment must be:

(1) In writing;

(2) Specifically limited to that project; and

(3) Unconditional unless the commitment is conditioned upon the successful completion of the construction of the project and the award of tax credits for that project.

(b) Tax credits will not be reserved to finance or capitalize any type of reserve account including, but not limited to, operating reserves or replacement reserves.

(c) Annual increases in income and expenses that are less than 3 percent.

(d) A vacancy factor of not more than 7 percent after each unit in the project is rented.

(e) An operating ratio of at least 35 percent but not more than 45 percent.

(f) Replacement reserves must be funded at a level of not less than \$150 per unit per year for projects for older persons that received preference points pursuant to NAC 319.989 and at a level of not less than \$200 per unit per year for any other project.

4. ~~Except as otherwise provided in NAC 319.996, the~~ *The* total amount of a developer's fee for the project, including any profit or overhead of the developer and any fees for consultants or processing agents, must not exceed 15 percent of the eligible basis of the project, excluding the developer's fee.

5. The Division will consider an amount that is more than 14 percent of the construction costs for the total of builder's profit, builder's overhead and general requirements to be excessive. General requirements include the cost to:

- (a) Install temporary fencing at the site of the project;
- (b) Provide services of a public utility to the site during the construction of the project; and
- (c) Provide an office or supervisor at the site of the project.

6. Additional criteria, assumptions and limitations may be required in the annual plan and instructions for an application.

Sec. 5. NAC 319.996 is hereby amended to read as follows:

319.996 1. Except as otherwise provided in this section, tax credits awarded to a project that is financed by 50 percent or more of the proceeds of tax-exempt bonds are governed by the provisions of NAC 319.951 to 319.998, inclusive.

2. The provisions of NAC 319.972 to 319.978, inclusive, 319.980, 319.981, 319.988, 319.990, 319.991 and 319.992 do not apply to tax credits awarded to a project specified in subsection 1.

3. An application for tax credits for a project specified in subsection 1 must be completed and will be evaluated in connection with the application for the financing of any bonds for that project.

~~[4.— For the purposes of subsection 2 of NAC 319.987, if the developer’s fee for a project specified in subsection 1:~~

~~—(a) Is collectible within 5 years after the completion of the project, the developer’s fee for the project must not exceed 15 percent of the total amount of the costs of the project, excluding the developer’s fee; or~~

~~—(b) Is collectible 5 years or more after the project is completed, the developer’s fee for that project must not exceed 20 percent of the total amount of the costs of the project, excluding the developer’s fee.]~~

Sec. 6. Section 48 of LCB File No. R140-01, which was adopted by the Administrator of the Housing Division of the Department of Business and Industry and which was filed with the Secretary of State on August 2, 2002, is hereby amended to read as follows:

Sec. 48. 1. This section and sections 1 to 4, inclusive, 6 to 10, inclusive, 12, 13, 15, 17, 19, 21, 22, 23, 25, 27, 28, 29, 31, 33, 35, 36, 38, 40 and 42 to 47, of this regulation become effective upon filing with the secretary of state.

2. Sections 2, 3, 9 and 21 of this regulation expire by limitation on June 30, ~~[2003.]~~ **2009.**

3. Sections 5, 11, 14, 16, 18, 20, 24, 26, 30, 32, 34, 37, 39 and 41 of this regulation become effective on July 1, 2003.